

CITATION: *Tudor-Stack v Meyerhoff & Indo-Smith & Waters* [2003] NTMC 027

PARTIES: Paul Tudor-Stack
(Complainant)
v
Gary William Meyerhoff
Robert Paul Inder-Smith
Roy Waters
(Defendants)

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Criminal

FILE NO(s): 20206759; 20206762; 20206761

DELIVERED ON: 22 May 2003

DELIVERED AT: Darwin

HEARING DATE(s): 6 November; 2 December 2002; 24 February;
15 May 2003

DECISION OF: Jenny Blokland SM

CATCHWORDS: CRIMINAL LAW - *ss 5, 9 Legislative Assembly Security Act (NT) ; s 16(2) Legislative Assembly (Powers and Privileges) Act NT ; NATIVE TITLE - "DEFENCE" - DPP Reference No1 10 of 1999, 10 NTLR 1; Margarula v Rose [2000] NTCA 12.*
HUMAN RIGHTS LAW - *Martin Flynn, Human Rights In Australia, (2003), Butterworths.; Common Article 2 The Geneva Conventions.*

REPRESENTATION:

Counsel:

Complainant: Mr Tom Berkley
Defendants: Self Represented

Solicitors:

Complainant: Office of the Director of Public Prosecutions
Defendants: Self Represented

Judgment category classification: B
Judgment ID number: [2003] NTMC 027
Number of paragraphs: 15

IN THE COURT OF SUMMARY JURISDICTION
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20206759; 20206762; 20206761

BETWEEN:

PAUL TUDOR-STACK
(Complainant)

AND:

GARY WILLIAM MEYERHOFF
ROBERT PAUL INDER-SMITH
ROY WATERS
(Defendants)

REASONS FOR DECISION

(Delivered 22 May 2003)

Ms Jenny Blokland SM:

Introduction

1. The three defendants are charged with each committing an offence against s9 *Legislative Assembly Security Act (NT)*, namely, that on 2 May 2002 they failed to comply with a requirement to leave premises, namely, lawns outside the front doors of the NT Legislative Assembly, made by an authorised person. On 2 May 2002, it is common ground, that all three defendants were present on the lawns outside of the Northern Territory Legislative Assembly and were part of a group protesting against drug laws of the Northern Territory. As part of that protest, members of the group, not necessarily all three defendants had erected tents – possibly with a view to camping on the lawns. Before the Court there was evidence that the particular area, namely the lawns outside of the Legislative Assembly are part of the gazetted precinct of the Legislative Assembly: (*Exhibits P1 and P2, and see also s 14 Legislative Assembly (Powers and Privileges) Act NT.*

As such, that area falls under a legal regime that differs in part from the usual laws of the Northern Territory.

2. Special laws apply to the precincts of the Legislative Assembly. Aside any customary or common law powers either enacted in, or preserved by, the *Legislative Assembly (Powers and Privileges) Act*, security issues are dealt with in the *Legislative Assembly (Security) Act NT*. The *Legislative Assembly (Security) Act NT* gives certain powers to *Authorised Persons*, (s 5 *Legislative Assembly (Security) Act*. Of relevance here are the *Clerk* and *Deputy Clerk* of the Legislative Assembly and a *member of the Police Force* who are authorised persons under the *Legislative Assembly (Security) Act*, s5. Section 9 of the *Legislative Assembly (Security) Act* provides:

“UNLAWFUL, DISORDERLY CONDUCT,

- (1) Where an authorised person believes that a person on the Assembly precincts is behaving unlawfully or in a disorderly or menacing manner, the authorised person may require the person to leave the precincts.
- (2) A person must not contravene or fail to comply with a requirement under subsection (1).

Penalty: \$5,000 or imprisonment for 12 months”

3. The prosecution alleges only that the authorised person believed that the defendants were behaving *unlawfully*. It is not alleged they were behaving in a *disorderly or menacing manner*. Initially, the complaint alleged the Acting Speaker, Mr Gerry Wood MLA was the *authorised person*, however, I permitted an amendment to the complaint towards the end of the hearing removing Mr Wood from the complaint. Although Mr Wood had power as the Deputy Speaker to direct the Clerk to do certain things, he is not an *authorised person*. Both the Deputy Clerk and Superintendent Rennie are authorised persons and both gave relevant directions. I note s 9 *Legislative Assembly (Security) Act* does not require that the impugned behaviour be *actually* or in *reality* unlawful, but merely that the authorised person *believes* it to be *unlawful*. Although there is no qualitative component expressed in s 9 concerning the belief, I have approached this issue on the basis that the belief must be honest or genuine, but it does not need to be

correct or reasonable, save that a completely unreasonable or wrong-headed belief may fuel a conclusion that it is not genuinely held.

4. Of relevance also is s 16(2) *Legislative Assembly (Powers and Privileges) Act* that provides : *The Speaker may, at any time whether the Assembly is sitting or not, direct that a person who is not a member be removed from, or be prohibited from entering, the precincts of the Assembly.*

Summary of Evidence and Findings of Fact

5. I preface this part of my reasons in the context of this hearing that has heard evidence largely unchallenged concerning the material facts. There was a deal of challenge to police methods but that is not a matter that can or should be canvassed in these proceedings. That challenge concerned questions about arrest and associated matters largely on the fringe of the material facts.
6. I find Mr Gerry Wood was the acting Speaker at the relevant time. On 2 May 2002 he attended the Legislative Assembly and noted tents, people standing around and a bar-b-cue in progress. The Clerk, Mr McNeill also noted fabric and signs in front of the Legislative Assembly earlier on the day in question, but he said at that stage it was nothing to indicate there was a *tent embassy*. Mr Wood saw on the lawns outside of the Legislative Assembly building. He spoke to some of the persons to find out their intentions and one of the persons was Gary Meyerhoff. He ascertained they wanted to camp there for two weeks as a protest to drug laws. He offered them the possibility of protesting between 8 am and 6 pm. He didn't have a problem with them protesting during those times. He later returned to the Legislative Assembly and gave a letter to persons in the crowd. That letter was addressed to Mr Meyerhoff and gave permission for the protest to take place between 8 am and 6 pm. The letter stated *A determination has been made that the Parliamentary precinct is not a camping area*. Interestingly, the letter notes that he is an *authorised person*, although the prosecution has told the court that this is *doubtful*. The letter requested Mr Meyerhoff leave the precinct. The letter was in response to earlier negotiations between Mr Meyerhoff and the Deputy Speaker. Mr Wood and the Deputy Clerk

addressed the group and asked them to leave by 6.00 pm. The Deputy Speaker did not grant permission for the group to be on the precinct after 6.00pm. Mr Wood addressed some of his comments to both Mr Meyerhoff and Mr Inder-Smith (*transcript 21-22 -23*). Mr Wood does not remember Mr Waters.

7. As of May 2 Mr Wood hadn't formed a final view of proposed amendments to the *Misuse of Drugs Act*; he supported the right of people to protest generally. He did not want to set a *precedent* by allowing people to camp on the precincts. Mr Wood acknowledged the Larrakia are the traditional owners of the land in question, as did the Clerk, Mr McNeill. Mr Wood recollects that Mr Meyerhoff told him he was waiting for other persons, possibly a senior Larrakia (Ms June Mills), but he couldn't remember the names. There is some evidence before the court that various of the Legislative Assembly Officials believed that there had previously been protests involving sleep outs or camping, but the evidence on this point is vague and not material. The Clerk, Mr McNeill recalled there had been a sleep over event in 2001.
8. Much of the hearing focussed on the question of whether camping was unlawful. Mr Wood, as the Acting Speaker said repeatedly he strongly believed in the right of people to protest but he didn't think they should be permitted to camp on the lawns. The reason he believed this was because of the need for ablutions, looking after the litter and the like. Other officers of the Legislative Assembly (*eg the Clerk, Mr McNeill*) told the court of his powers to eject persons from Legislative Assembly on request or on authority of the Speaker. The Deputy Clerk, Mr Horton, told the court he had discussions with Mr Wood on whether camping on the precinct was *considered lawful*. The Deputy Clerk recalls that he and Mr Wood conveyed to Mr Myerhoff that *they were considered to be unlawfully camped on the Parliamentary precinct*. Later in the day Mr Horton contacted police and remained in contact with them throughout the afternoon and evening. Mr Horton recalls that after negotiations with protesters, it was agreed they should leave the lawns by 6.00pm. Mr Horton checked at 6.00pm and he

told the court *there was no apparent movement at that time*. In fact, he thought the numbers to be *increasing, rather than decreasing*.

9. At about 6.30 pm Mr Horton requested assistance from police. Superintendent Rennie escorted him to the tent occupied by Mr Meyerhoff. The video evidence before the court also indicates that Mr Inder-Smith was chained or hand cuffed to Mr Meyerhoff in a tent. I have reviewed the video and audio tapes during the adjourned period. It is very clear to me that Mr Horton gave a direction to Mr Meyerhoff to leave and that Superintendent Rennie addressed certain of the protesters. I am certain both those defendants refused to leave in accordance with the direction. Even if camping is lawful, once a direction is given by an authorised person who *believes* there is unlawful conduct, that direction must be complied with given the special nature of the rules that operate over the *Legislative Assembly*. The evidence is simply there on the video and audio tapes.

10. The question on whether the belief held by the Deputy Clerk or Superintendent was genuine was not seriously questioned. Even if they were wrong-headed in their belief on the unlawfulness of camping, there was the belief that the Acting Speaker had directed that they leave under s16(2) *Legislative Assembly (Powers and Privileges) Act*. The two issues raised with witnesses in cross examination that are also raised as positive defences are firstly the issue that the defendants had said they had permission from June Mills, a Larrakia elder to be there, (and it would be wrong to leave before she returned) and secondly that other groups had had *sleep outs* at the Legislative Assembly. In relation to the first issue, even if *native title* does co-exist with the Northern Territory's title over the Legislative Assembly, the *native title* must give way to a law of the *Legislative Assembly* on such specific subject matter. The circumstances of using *native title* in answer to a criminal charge are extremely narrow. The Supreme Court has at least twice ruled against traditional owners or native title holders in circumstances where the potential for argument over whether such rights can survive the application of a criminal statute: (*see eg DPP Reference No1 10 of 1999, 10 NTLR 1; Margarula v Rose [2000] NTCA 12*). The position urged here is too wide of the mark to raise a *native title*

defence. In relation to the second matter, it is of very little significance at all that other people have been engaged in similar forms of protest. No-one has suggested others were required to leave by an *authorised person* and therefore fell foul of these laws.

Human Rights Issues

11. In relation to international human rights law, the circumstances that international law can be used in national law is limited. In *Human Rights In Australia*, (2003), *Butterworths*, Martin Flynn states the position succinctly:

“International law leaves to the domestic constitutional arrangements of the state the manner in which treaty obligations are to be discharged. Australia takes a “dualistic” approach to international law. An Australian Court will not enforce a treaty unless and until legislation provides for the transformation of a treaty into domestic law. Upon legislative transformation, it will be the terms of the statute that determine the manner in which the treaty is to be enforced by the Australian courts. In short, the ratification of a treaty does not transform it into Australian domestic law”

12. Mr Flynn then cites the readily accepted exceptions being *statutory interpretation, development of the common law, administrative decisions and judicial discretions*. In my view, none of those exceptions can be applied in this case in the face of a statute of such a specific purpose. Similarly, common law freedoms such as freedom of expression and association yield to the statute. The defendants might have more success on this in a *Bill of Rights* jurisdiction, but Australia has not gone down that path. I also reject the argument concerning the use of the *white flag*. For as much as the defendants believe they are defending themselves in a *war against drugs*, the *Geneva Conventions* apply only to the circumstances of *armed conflict*: (*See Common Article 2, The Geneva Conventions*, “.....the present convention shall apply to all cases of declared war or of any other armed conflict.....”) [*reproduced from Flynn (above)*].

Conclusions

13. For the reasons stated above, I find the charge proven against Mr Meyerhoff and Mr Inder-Smith. I am not however so certain about Mr Waters. I know

he put up some resistance when arrested but its not clear to me he received a direction from an *authorised person*. He was not in the close company of Mr Meyerhoff and Mr Inder-Smith and it is not until his arrest that his whereabouts are made clear to the court. I know he was part of the group, but I'm not exactly sure where and whether he heard the directions of Superintendent Rennie or Mr Horton. When Superintendent Rennie spoke on the loud speaker to the group, he actually *suggests* people who don't want to be arrested go to a particular area and those who do want to be arrested stay. I'm simply unsure of where Mr Waters fits in, other than I know he was arrested and seemed to put up some form of resistance.

14. In relation to the defendants Meyerhoff and Inder-Smith the charge is proved.
15. In relation to Mr Waters the charge is dismissed.

Dated this 22 day of May 2003.

JENNY BLOKLAND
STIPENDIARY MAGISTRATE