# ***"Language and The System"***

*by Dominic McCormack, De Silva Hebron*

## 1) Introduction

In my initial article *"Interpreting:- Practically Speaking"*, published in the July 1998 edition of "*Balance*", I looked at the issue of interpreting from a personal and practical point of view as it related to the current state of affairs in the Northern Territory, particularly our legal system. Simply put, Aboriginal interpreters, although available in a raw and untrained sense are not readily accessible to the general public, particularly our key service providers in the areas of Law and Health, and yet they are without question urgently needed. With minor exceptions there is no comprehensive list of people who have the necessary skills to carry out the type of work required in fields such as legal and medical practice.

In my view, it is obvious that many, many cases, both legal and medical, have clearly proceeded over the years, in fact the decades, without Aboriginal people actually knowing their position or rights.

I expressed the opinion that the legal system appears far more concerned with the administration of administration, rather than the provision of justice. Cost, as usual in these times, appears to be the bottom line. However, it remains my firm view that should a central register of interpreters be provided, the cost of administration and the length of court lists involving Aboriginal persons would decrease considerably. The same could be said for hospital waiting lists and the treatment of injured and sick people.

Since the publication of my previous article, a number of important things have happened and continue to happen. These include the change in leadership of both the Country Liberal Party and the Labor Party here in the Northern Territory, the Federal Liberal Party has been restored to power, defence numbers in the Top End continue to grow, legal services to the Northern Territory Government have been almost completely privatised, and the change of millenium draws nearer bringing with it all its inherent bugs . . . and a GST.

But for the Aboriginal people of the Top End of Australia . . . has their ability to meet the challenges that the new millenium has to offer been improved or enhanced in any way? Have we drawn any nearer to ensuring that the indigenous people within this Northern Territory who do not have access to English as a first language will be able to participate within "The System" - where are we up to now?

## 2) The Trial Program

### A) Results -

A trial Aboriginal Languages Interpreter Service ("the trial") was conducted on a limited basis in the Top End between 6 January 1997 and 30 June 1997 to assess the feasibility of establishing an effective interpreting service for Aboriginal languages in the Top End region by using interpreters who were not formally accredited.

As a result of the trial, a report was commissioned by the Northern Territory Attorney-General's Department. Subsequently, two reports were produced - the published report ("the Published Report") is entitled "*Trial Aboriginal Languages Interpreter Service - Evaluation Report, Northern Territory Attorney-General's Department*"[1]. The second report ("the Second Report"), which is far more detailed and was in fact prepared first, is entitled "*Executive Summary – The Northern Territory Sets a National Precedent: Objective and Principle Findings of the Trial*",[2] however was never published.

It is most interesting to compare the content of the two, in both analysis and conclusion. The following statements are taken from each (any emphasis is mine):-

### i) The Published Report -

According to the Published Report, "[t]he results of the Trial Service indicate that it is possible to provide an effective interpreting service without necessarily using accredited interpreters. However the average cost of interpreter fees and expenses for each service provided was approximately $630.00. This figure does not take into account staff and administration costs. It is not possible to quantify any cost savings attributable to the Trial Service.

In addition, the results of the Trial Service cannot be used to accurately predict the future level of demand for interpreting services because of the failure of some key agencies to fully participate in the trial, the limited promotion of the trial, the under-utilisation of the after hours facility and the fact that the trial did not operate in Central Australia". (p. 2)

"[A] comprehensive register of interpreters for Aboriginal languages in the Top End was compiled for the first time in the Northern Territory. Although there are over 40 major languages used by Aboriginal groups throughout the Territory, linguists established it was possible to substantially meet interpreting and translating needs by the use of interpreters in 15 of the most commonly used languages.

For the purposes of the trial, a total of 87 interpreters covering 61 languages (including the 15 major languages) were located and indicated a preparedness to participate in the trial service. As a result of the (training) program, 32 interpreters in 12 languages (10 Top End and 2 Central Australian languages) were accredited by the National Accreditation Authority for Translators and Interpreters ["NAATI"]. With appropriate

support, this process could be replicated in many more communities to produce accredited interpreters in a wider range of Aboriginal languages". (p. 4)

"[A] number of practitioners (and the interpreters themselves) identified the need for more in-depth specialist training in health and legal terminology and procedures. The need for training of the users of interpreters was also a consistent theme". (p. 8)

The Published Report ended with a summary stating that "professionals using interpreters were almost unanimous in their support for the service". Further, it specifically noted comments made by the Director of Public Prosecutions since commencement of the trial:-

i) Interpreters are used more often;
ii) The process of finding interpreters is now simple and efficient. It requires one (1) telephone call to the service as against six (6) – ten (10) calls to the various communities in an attempt to locate a particular interpreter;
iii) The office is saving a lot of money because it is not financing interpreter fees, travel and accommodation; and
iv) When interpreters are used the witnesses are more confident, informed and better able to give their evidence.

**ii) The Second Report -**

The unpublished Second Report begins strongly by stating that "[t]he qualitative and quantitative data related to the trial strongly supports the hypothesis that a need for an Aboriginal languages interpreter and translator service does exist. In six (6) months there were 236 bookings made and a total of $110,105.00 was spent. The establishment of a permanent service is certainly feasible and its cost effectiveness evident. The establishment . . . will address the potential legal, financial and economic ramifications of not providing such a service. The most cost effective means by which to operate such a service is as part of the existing Territory Government NT Interpreter and Translator Service ("NTITS").". (p.1)

"[This could be achieved] at a cost of $370,000.00 [per year]. This amount would allow the service to be offered to the legal and medical sectors. Based on the data available from the Top End trial, [providing services to the Central Australian Region] would cost approximately $140,000 (including staffing and on-costs). This report reveals that the potential cost to Government of not providing access to interpreters in Aboriginal languages far exceeds the cost of providing them". (p.3)

"The NAATI tests conducted in 1995 yielded 31 accredited interpreters in 12 languages (10 Top End and 2 Central Australian languages). This is an unprecedented number of interpreters in Aboriginal languages to be accredited in one (1) year by one (1) institution. With appropriate support this process could be replicated . . .". (p.5)

"It has long been assumed that Aboriginal people will, eventually, all speak English, at the expense of Aboriginal languages. This is clearly not occurring. Another issue is the

lack of understanding of the benefit of minimising exposure to liability and actually saving money by the provision of an . . . Interpreter Service . . .". (p.6)

"There were interpreters signed to the register to cover all of the most commonly spoken Top End Aboriginal languages, although in a few languages a greater number of interpreters were required. On balance, there were very few occasions when an interpreter for a particular language was not able to be found. Although the statistics do suggest a need for training of a larger number of interpreters to increase the pool, it cannot be said that availability of interpreters is as big a problem as it was thought to be before the trial.

[A] greater percentage of interpreters in the trial hold accreditation (41%) than in NTITS (32%). The cost of travel related expenses is higher for interpreters of Aboriginal languages . . . because the majority live in remote areas. There were very few occasions when interpreters were requested at such short notice that they could not be provided. This is surprising given that the need for interpreters on an immediate or emergency basis was a major concern for both the Police and Territory Health Services". (p. 12)

"Although a high percentage of the trials' interpreters have qualifications in interpreting, often a difficulty exists from people who have had some training but were not immediately exposed to the practical application of that training. Should a permanent service be pursued, ongoing in-service training like that provided by NTITS will need to be offered". (p.15)

Interestingly, the Second Report also stated (at p. 32) that "many involved in the criminal justice system have commented that they are noting a decreasing level of literacy in English among Aboriginal people who have been educated since the sixties. That among the older generation there appears to be a greater understanding of English than is the case with people under 50. This anecdotal observation is supported by the findings of the Public Accounts Committee Report on the *Provision of School Education Services for Remote Aboriginal Communities in the Northern Territory (Report No. 27),* which highlights a much lower obtainment level among Aboriginal children who go to school than among non-Aboriginal children".

**B) My View on the Reports -**

The "official" Published Report quite amazingly begins by stating that it is "possible to provide an effective service without using accredited interpreters" – I suppose that depends on what one's view of the term "effective" is, and whether the base for measurement of efficiency is monetary or humanist. In my opinion, use of non-accredited interpreters would be much the same as using the dreaded "back yard boys" with your sacred V8 Holden – they would gain a great deal of practice each time, learn a bit more as they go, but at whose cost?

The Published Report, however, then goes on to state that a total of 32 interpreters were accredited as a result of the training program put in place, a number which the Second

Report acknowledges as being "unprecedented" over a 12-month period. Thus during the trial, interpreters were in the process of being accredited and subsequently utilised. Both reports then state that the users and providers of such a service recognise the fact that more in-depth and specialist training is needed for an on-going service to be successful.

So on the one hand, the "official" report states that no accreditation is necessary to provide an effective service, and yet both acknowledge that an on-going service would require in-depth, specialist training. The facts, I think, are obvious - if we wish to have competent interpreters within our courts, interview rooms and hospital wards, training is absolutely essential, and there can be no justifiable argument put to the contrary. (I may know a little about the workings of a twin engine Cessna 402, but until I have officially gained my pilot's licence, will you come fly with me??).

Importantly, the Second Report states that availability of interpreters, constantly thought to be a major stumbling block, is not the problem. During the trial period, a total of 61 languages were catered for - 61, when linguists say that we only need 15 to cover the major groups! An unprecedented total of 32 interpreters were accredited, and both reports clearly state this could be replicated with support. From this, a comprehensive register was compiled **for the very first time**.

I return to the general negativity of the "official" Published Report which states, rather predictably, that it is not possible to quantify the cost savings of having a register. Nor are we able to predict future demand - the reasons given include limited promotion, and a failure of key agencies to fully participate. As a Government run and funded program, who is to blame if it was not promoted, and agencies did not fully participate? And, yet again, we have the rumblings of "cost savings", "demand", "failure" and "under-utilisation" - but surely, and perhaps naively on my part, is not the loss of one person's leg through lack of information one too many? Is not one guilty plea to a charge of sexual assault or murder through lack of instructions, one guilty plea too many? When will "cost savings" be sufficient? When will "demand" reach a suitable level?

Finally, to turn to the "unofficial" and unpublished Second Report, there is a complete about face. It specifically states that the data gained throughout the trial supports the hypothesis that a need exists. Further, a permanent service is feasible and its cost effectiveness would be evident, as its establishment will address the legal, financial and economic ramifications of not having it. The Second Report states that the potential cost to the Northern Territory Government of not having such a service far exceeds the cost of providing it.

When considering the findings of both reports, it is interesting to note the statistics regarding usage of Aboriginal languages. The 1994 National Aboriginal and Torres Strait Islander Survey revealed that three quarters of the Aboriginal population of the Northern Territory reported that they could hold a conversation in an Aboriginal language. This figure is consistent with 1991 census statistics, which report that 70.3% of the Aboriginal population speak an Aboriginal language at home. The same census statistics also reveal that of the Aboriginal population who speak an Aboriginal language

at home, a significant proportion either do not speak English well (27.8%) or do not speak English at all (5.3%) and that these language ability levels remained constant between 1986 and 1991.

Given that this is the case, there are a number of "points" at which the legal system and Aboriginals meet, and therefore lack of effective communication needs to be considered:

i) an Aboriginal victim reporting a crime to police;
ii) an Aboriginal witness being interviewed by police or presenting evidence in court; and
iii) an Aboriginal defendant making admissions or instructing counsel or listening to proceedings in Court.

Further, in considering only one of these meeting points, an Aboriginal person in the Northern Territory is at least 4-5 times more likely to be *charged* with a criminal offence than a non-Aboriginal person. The background data for this figure is contained in the *NT Implementation Report* (1995).

Given the above, it is my view that the need for a register of interpreters for Aboriginals in the Northern Territory is beyond question. The fact that it would be well used has been demonstrated already within the trial. Further, one must remember that this trial was for a period of six months only, and its success is best demonstrated by the stated facts:-

i) the availability of interpreters, constantly thought to be a major stumbling block, is <u>not</u> the problem;
ii) during the trial period a total of <u>61 languages</u> were catered for - including, but not limited to, the minimum 15 needed to cover the major groups;
iii) an unprecedented total of 32 interpreters were accredited, and this could be replicated with support;
iv) a comprehensive register was compiled for the very first time;
v) in-depth, specialist training is required;
vi) a permanent service is feasible and its cost effectiveness would be evident, as its establishment will address the legal, financial and economic ramifications of not having it; and
vii) the potential cost to the Northern Territory Government of not having such a service far exceeds the cost of providing it.

Think about it – on the one hand, $370,000 for the Top End, and $140,000 for the Centre each year to run an interpreting service, as against negligence or wrongful imprisonment claims fought in the Supreme Court, then on appeal, perhaps to the High Court, and awards of costs against the Northern Territory Government. Which direction makes more legal, economic and humanitarian sense?

## 3) Language, Understanding and the Obligations of Lawyers

What is language? Language is our means of intelligible communication, participation and discovery. Without it, one cannot access the modern world, nor make decisions based on knowledge and information obtained - one cannot participate fully. In short, LANGUAGE IS EVERYTHING.

So I ask - is it perhaps the motive or a desire that Aboriginal people in the Northern Territory are not to be permitted to communicate, to participate, to stand up? If the answer is in the negative, then why is it that so many are in that very position?

Specifically with respect to the legal field, it is obvious that we are required to work within a system - rules, regulations, guidelines, timeframes, monetary constraints, administrative procedures and process. We may have the desire in our hearts to "do the right thing", but it is often difficult to work within the system and achieve those aims - so does the current system conflict with our own rules and the legal obligations imposed on us where language is concerned?

When admitted as a Legal Practitioner, I swore an oath in terms that "I [would] well and honestly conduct myself in the practice of a Legal Practitioner of the Supreme Court of the Northern Territory of Australia according to the best of my knowledge and ability. So help me God!" Others will have taken the same or similar oath or affirmation.

In the Northern Territory our Judges and Magistrates are also required to swear an oath, and each is similar in form, with the following key terms:-

i) To well and truly serve;
ii) To do right to all manner of people according to law, without fear or favour, affection or ill-will.

So, what does it mean for each of us in the legal profession to have initially taken the oath to be a legal practitioner, and later, after being called to do so, that of a Judge or Magistrate? What does it mean to "serve", to "well and honestly conduct" oneself, to "do right to all manner of people", and to do so "to the best of [our] knowledge and ability" and "according to law"?

The general rule, being the Rule of Law, is simply this:-

***"All men and women are equal before the law".***

As a result, all legal practitioners owe four (4) primary duties:-

1) Duty to the Law;
2) Duty to the Court;
3) Duty to the Client; and
4) Duty to the Profession and to the Public.

The Professional Conduct Rules ("PCR") of the Northern Territory then provide in part as follows:-

> **"1.1** Respect for law and for the freedom of the individual or citizen depend to a large extent on the maintenance of high standards by all who practise in the legal profession. A breach of these rules may be regarded as misconduct within the meaning of Part VI of the *Legal Practitioners Act*.
>
> **1.4** It is the duty of every practitioner whether or not he is a member of the Society:-
>
> (d) Not to engage in conduct (whether in pursuit of his profession or otherwise) which is illegal, unprofessional, dishonest or which may otherwise bring the legal profession into disrepute or which is prejudicial to the administration of justice;
>
> (e) To observe the ethics and etiquette of his profession; …
>
> **9.4** A practitioner shall keep a client apprised of all significant developments in any matter entrusted to him by the client unless the client has instructed the practitioner to do otherwise.
>
> **9.6** If the instructions of a client are such as to prevent the proper performance by a practitioner of his duties the practitioner should decline to act further and he should so advise the client accordingly".

Further, professional misconduct is provided for within Section 45 of the *Legal Practitioners Act* ("LPA"), which provides as follows:-

> "45. MEANING OF PROFESSIONAL MISCONDUCT
>
> 1) In this part, "professional misconduct" means misconduct in a professional capacity.
>
> 9) Without prejudice to the generality of sub-section (1), "professional misconduct" includes in particular -
>
> (a) a legal practitioners contravention of, or failure to comply with, a provision of -
>
> (i) this Act or any Regulation under this Act; or

(ii) any rules relating to the professional conduct of legal practitioners made by the Law Society and approved by the Chief Justice (in this Act referred to as the Professional Conduct Rules),

where the contravention or failure was wilful or reckless".

Our governing rules, therefore, provide that uppermost in our consideration must be respect for the law and for the freedom of the individual or citizen - these depend largely on the maintenance of high standards by all who practise in the legal profession.

Rule 9.6 of the PCR specifically provides that if instructions prevent the proper performance by a practitioner of their duties, the practitioner should decline to act further and should so advise the client. I assume that this would include *inability to take instructions* and therefore if a practitioner, due to a lack of instructions, is unable to perform they should also decline to act. Further, rule 9.4 of the PCR states that we are also required to "keep a client apprised of all significant developments".

With respect to both those rules, how does a practitioner comply if they are unable to communicate effectively, let alone at all, with that client? If there is a lack of instructions due to inability to communicate, how can the practitioner act? How are they able to keep a client apprised? What are practitioners doing now - guessing? I would say that in many instances the answer to that simple question would be a resounding "Yes". Interestingly, if there are insufficient instructions to prevent the proper performance of duties, a practitioner in these circumstances is not even able to advise the client that they are declining to act further and provide reasons why!!

Surely such a situation contravenes immediately section 45 (9)(a)(ii) of the LPA - practitioners are I would argue, both wilfully and recklessly, failing to comply with and therefore contravening both rules 9.4 and 9.6 of the PCR. However, I do not for a moment lay the blame at the feet of practitioners. This situation is entertained, and has been entertained for some time, every day in our courts. Matters are taken on, brought before Judges and Magistrates, and the Aboriginal (defendant) concerned is oblivious to what is happening - but that is administratively acceptable, because the court list is full, we all have deadlines and must comply with process. Why should a little thing such as the Rule of Law bother any of us??

In his thesis entitled "*Aboriginal Interaction with the Criminal Justice System of the Northern Territory: A Human Rights Approach*" [3], Martin Flynn states that "[A]rticle 14(3)(b) of the *International Covenant on Civil and Political Rights* ("the ICCPR") provides for a right to adequate time and facilities for the preparation of the defence "in the interests of justice". The right is one that applies both to the defendant and to the defendant's counsel". I consider that a particular "facility" necessary where Aboriginal defendants are concerned is the use of a skilled and appropriate interpreter.

The remedy as noted by Flynn in domestic law for the violation of this right is described in *Putti* [4]. Muirhead J stated that counsel for an Aboriginal defendant was under a duty to ensure that, notwithstanding language or cultural barriers, he or she has full instructions and that if time does not permit instructions to be taken, an application for an adjournment must be made. If the adjournment were refused, the subsequent proceedings would infringe the principles of fair trial described by the High Court in *Dietrich* [5]. If an application for an adjournment is not made in circumstances when it should have been, it will be necessary for the defendant to establish that the "flagrant incompetence" of counsel has resulted in a miscarriage of justice in the sense that there was a substantial chance that the defendant would have succeeded in relation to particular issues.

Is it not the case that our primary duty is to up-hold the Rule of Law - that is, equality for all before the law? Judges and Magistrates are the only buffer between Government and the citizen - they are independent of government, and this must be so in order to make a decision against the Government. When before them, we as legal practitioners must be fearless in our resolve to deal with matters appropriately, and according to law. If the obligation of our Judges and Magistrates is "to do right to all manner of people according to law, without fear or favour, affection or ill-will" why has such a situation been permitted to continue and be accepted as "the norm" by so many for so long? The current status quo is not doing right to all manner of people, and in my view is most certainly not in accordance with the law.

In my view, not only is a practitioner bound by both the PCR and LPA to ensure that an interpreter is available in all instances where necessary, and to apply for an adjournment on each and every occasion an interpreter is required but is not available, the court is bound to entertain such an application and grant the adjournment on the basis of the *Dietrich* principles.

## 4) What is the next step?

Section 357 of the *Criminal Code* provides that if it appears to the court to be uncertain whether the defendant is capable of understanding the proceedings at trial so as to be able to make a proper response, the court may determine that, by reason of abnormality of mind *or for some other reason*, the defendant be discharged. Without an interpreter, many Aboriginal defendants are not capable of understanding proceedings to the extent of being able to effectively instruct counsel and, accordingly, ought be discharged. However, to my knowledge, such a submission has never been made in a Northern Territory court.

In *Dietrich* (supra), Deane J (obiter) spelt out the terms of a domestic remedy where an interpreter is not available to either a defendant at trial or a witness for the defendant (at 330-1):

> "Inevitably, compliance with the law's overriding requirement that a criminal trial be fair will involve some appropriation and expenditure of ***public funds***: ... On occasion, the appropriation and expenditure of such public funds will be directed

> towards the provision of information and assistance to the accused: for example, ... *the funds necessary to provide interpreter services for an accused and an accused's witnesses who cannot speak the language*. Putting to one side the special position of this Court under the Constitution, the courts do not, however, assert authority to compel the provision of those funds or facilities. As Barton v The Queen (113) (l980) 147 CLR, at pp 96, 103, 107, 109 establishes, the effect of the common law's insistence that a criminal trial be fair is that, if the funds and facilities necessary to enable a fair trial to take place are withheld, the courts are entitled and obliged to take steps to ensure that their processes are not abused to produce what our system of law regards as a grave miscarriage of justice, namely, the adjudgment and punishment of alleged criminal guilt otherwise than after a fair trial. If, for example, available interpreter facilities, which were essential to enable the fair trial of an unrepresented person who could neither speak nor understand English*, were withheld by the government, a trial judge would be entitled and obliged to postpone or stay the trial and an appellate court would, in the absence of extraordinary circumstances, be entitled and obliged to quash any conviction entered after such an inherently unfair trial*." (Emphasis mine).

This obiter statement is unambiguous. Flynn makes comment that "[t]he absence of an interpreter of proceedings for a defendant or witness in the Northern Territory has the consequence that the trial cannot proceed until an interpreter has been secured. If the trial proceeds without an interpreter or with poor interpretation a conviction will be set aside on the grounds of unfairness. Occasionally, Northern Territory Supreme Court judges have suggested that there is an obligation on Aboriginal Legal Services to locate and fund interpreters and Aboriginal Legal Aid Counsel have submitted that the Court itself ought allocate resources to funding interpreters. Each view is misconceived. The obligation to ensure a fair trial by appropriate allocation of resources is on the state itself rather than client's counsel or the court. It remains only for a single defence counsel to question the practice of one hundred years whereby criminal proceedings have been conducted as if the defendant were absent." (Emphasis mine).

There is also a strong presumption at common law in favour of permitting the defendant to have the assistance of an interpreter to translate all proceedings in court. The rationale for the rule has been described by Justice Kirby in *Gradidge* [6] (at 417) as follows:-

> "Due process includes an entitlement to a fair trial which is normally conducted in the open. It also normally includes an entitlement to be informed, in a language which the litigant understands, of the nature of the case. Where the litigant cannot communicate orally in English it also normally includes, in my opinion, the entitlement to the assistance of an interpreter. ... The principle of an open trial in public, which is the hallmark of our system of justice, is not shibboleth. It exists for a purpose. That purpose is publicly to demonstrate to all who may be concerned the correctness and the justice of the courts determination according to law. That demonstration must extend to the parties themselves, for they are most affected by the outcome of the case. Such demonstration, day by day in the courts, reinforces respect for the rule of law in our society." (Emphasis mine).

Such demonstrations have been seriously lacking in our courts for some time now, and it is high time to remedy the situation. Currently, we as a profession are not in a position to "reinforce" respect for the rule of law when this particular issue is raised - we must gain it in the eyes of all in our society - Aboriginal and non-Aboriginal.

Perhaps, if the situation is not remedied immediately by the "state" the "next step" is for the practice to be questioned.

## 5) Conclusion

The need for a central register of Aboriginal interpreters within the Northern Territory is beyond question. The establishment of a permanent service is feasible and its cost effectiveness evident. The potential cost to Government of not providing access to interpreters in Aboriginal languages far exceeds the cost of providing them.

Importantly, the availability of interpreters is not as big a problem as was thought. However, they must be accredited and on-going training be provided for all.

Currently, though, the system within which we are all bound to operate does not ensure that all men and women are equal before the law where matters of language and understanding are concerned. In my view, both the *Professional Conduct Rules* and the *Legal Practitioners Act* are being breached by practitioners on a regular basis. Unfortunately, such a situation continues to be entertained by our courts. No longer are the rumblings of "cost savings", "demands", "failure" and "under-utilisation" good enough - the loss of one limb or the acceptance of one incorrect guilty plea is one too many. In such circumstances, cost savings are irrelevant and demand had long ago reached a critical level. The Government of the Northern Territory must allocate suitable resources, and must allocate them now.

Our Judges and Magistrates have a special and powerful place within the system, and I urge them to use it to do right to all manner of people according to law with all the positive strength that they have, regardless of what the initial consequences may be. They are the buffer between Government and the citizen, and in this case the Aboriginal citizen - they are independent, and capable of making decisions against the Government, or decisions which will force the Government into action.

The time has come for the legal system in the Northern Territory - practitioners, Magistrates and Judges alike - to uphold and reinforce the Rule of Law without fear or favour, affection or ill-will, and ensure that when Aboriginal people come within the legal system they understand it, and are able to participate fully in it by the proper exercise of their rights in accordance with their instructions.

25 March 1999

[1] *"Trial Aboriginal Languages Interpreter Service - Evaluation Report"*, Northern Territory Attorney-General's Department May 1998

[2] *"Executive Summary - The Northern Territory Sets a National Precedent: Objective and Principle Findings of the Trial",* Northern Territory Attorney-General's Department, unpublished.

[3] Flynn, Martin *"Aboriginal Interaction with the Criminal Justice System of the Northern Territory: A Human Rights Approach*", LLM Thesis, 1998, with particular reference to Parts 2.3(C) and (D), 3.2(B) and 5.2(A).

[4] *Putti v Simpson* (1975) 6 ALR 47.

[5] *Dietrich v. Queen* (1992) 177 CLR 292.

[6] *Gradidge v. Grace Bros Pty Ltd* (1988) 93 FLR 414.

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