Journalists play a vital role in armed conflicts, bearing witness to the consequences of war and ensuring that its impacts on the most vulnerable are not forgotten. Due to their responsibility to report, they maintain close proximity to armed actors and situations of violence and are consequently among the most at risk of harm. Since 1992 over 1100 journalists have been killed and many more injured, kidnapped, detained or otherwise mistreated.

Journalists' rights and responsibilities In recognition of their role and the risks they face, journalists are explicitly protected under the Geneva Conventions and Additional Protocols.

- In war zones journalists are considered civilians (provided that they don't take up arms themselves or contribute directly to military objectives) and must be protected against direct attack.
- Journalists accompanying the armed forces of a state (termed 'war correspondents' in the Conventions) are also considered civilians and must be protected from direct attack. If captured, they are granted prisoner of war status, with corresponding protections and guarantees on conditions of detention.
- Radio and television facilities must be protected from direct attack unless used for military purposes.
- Media facilities distributing propaganda can retain protection; however they may lose it if used to incite crimes or acts of violence. Journalists may also be held liable for their conduct—in 2003, two Rwandan Hutu radio journalists were sentenced to life imprisonment for calling for the extermination of Tutsis.

Protecting journalists in war The International Committee of the Red Cross (ICRC) is mandated under the Geneva Conventions to inform all parties to conflicts, as well as media, about their rights and responsibilities under the law.

The ICRC also maintains a journalists' hotline to provide support and follow-up when journalists or their crews are arrested, captured, detained, missing, wounded or killed. ICRC also assists by seeking confirmation of reported arrests or detention, providing information to next of kin and employers on the whereabouts of journalists, maintaining contact between family members, recovering and transferring mortal remains, and evacuating wounded journalists.

For example in 2003, ICRC evacuated injured ABC reporter Eric Campbell from Suleimaniyah in Iraq, along with the body of cameraman Paul Moran (who was killed by a suicide bomber). They were taken to Iran, to safety in the Australian embassy.

Educating journalists in the law While ensuring compliance with the laws of war is the responsibility of armed actors, journalists play a vital role educating the public, as well as promoting accountability and respect for the law. It is critical that journalists understand these laws, so that they can report accurately and impartially on armed conflicts with full understanding of the obligations of all parties. It is also crucially important that journalists, along with all groups working in areas of armed conflict, understand their rights and responsibilities so that they can keep safe in difficult and dangerous operational environments.

For this reason the Australian Red Cross, together with other National Societies around the world, engages with these groups (including militaries, humanitarian workers, journalists and police among others) to raise awareness of the law as it applies to them or to those they encounter in the field. This legal education takes place in every state and territory in Australia as well as overseas.

If you are interested in learning more about the laws of war, contact Anna Foster at afoster@redcross.org.au

Cameron Ford's Supreme Court case notes

More detailed notes of all Supreme Court decisions are published on www.ntclr.org and in the Northern Territory Law Journal

CHILDREN

Care and control – Court's powers

In *CEO Department of Children & Families & Anor v TC & Ors* [2015] NTSC 49, Kelly J held at [6] that the CEO does not require leave to withdraw a protection application under the *Care and Protection of Children Act* (NT), once an application is withdrawn there is no proceeding on foot; there is nothing that can be properly adjourned; and a magistrate does not have jurisdiction to make interim orders in relation to the daily care and control of a child—or any other matters relating to a child.

COSTS

Indemnity – Gross amount

In *Lawrie v Lawler* (No 2) [2015] NTSC 46, Southwood J awarded costs on an indemnity basis for a trial and set a lump sum of $214 876 under r 63.07 of the *Supreme Court Rules*. His Honour said at [5] that lump sum costs awards ensure that the expense, delay and aggravation of obtaining taxation orders are avoided and may be particularly useful where the conduct of the unsuccessful party has been such that they are unlikely to cooperate with the process of obtaining a taxation order. It may also be appropriate to make a lump sum costs award where a party's conduct has unnecessarily contributed to the costs of the proceeding. This proceeding was commenced in wilful disregard of the known facts and ought not to have been commenced (at [17]). Although there was an agreement between the defendant Commissioner of Inquiry and the Northern Territory that the latter would pay the defendant's costs, he could recover those costs because the litigation naturally and obviously caused the Territory (a third party) to incur costs and the defendant undertook to reimburse the Territory any of those costs he might recover (at [26]). Costs were awarded on the standard basis for an application that the judge recuse himself and for the costs argument (at [30]).

CRIMINAL LAW

Fishing in AFZ

In *Aregar v Australian Fisheries Management Authority* [2015] NTSC 61, Hiley J dismissed an appeal by an Indonesian fisherman convicted of fishing inside the Australian Fishing Zone contrary to the *Fisheries Management Act 1991* (Cth). His Honour held that the prosecution could rely on an averment as to the location of the vessel and a certificate made under s 166(2) of the Act as to that location being within the AFZ. The magistrate could rely on the common law presumption of accuracy of a GPS system as that presumption had not been displaced by s 146 of the *Evidence (National Uniform Legislation) Act 2011* (NT),

which is facultative in nature (at [57]). The defendant had not discharged the evidential burden of raising the defence of honest and reasonable mistake of fact under s 9(2) of the *Criminal Code 1995* (Cth) as to the location of the AFZ and the location of his vessel. To satisfy that defence, the belief must be an affirmative belief, not inadvertence, the mere absence of knowledge, or not turning one's mind to the issue (at [82]).

CRIMINAL LAW

Restitution and maca

In *Hutchinson v Anderson* [2015] NTSC 68 at [19], Kelly J held that the abolition of an action for damages by s 5(1) of the *Motor Accidents (Compensation) Act 1979* (NT) does not preclude or render it inappropriate to order a defendant to make compensation or restitution under s 88 of the *Sentencing Act 1979* (NT) to a victim injured in a car accident. A magistrate had held that an order for criminal compensation should not be used to reintroduce a form of common law compensation. Kelly J held at [30]-[31] that the defendant's contributing towards the financial consequences of his driving without due care might encourage him to reflect on the consequences to the victim and encourage him to think twice before behaving in the same way again. It was an error of law for the magistrate not to take this into consideration.

IMMIGRATION

Detention – Injunction

SGS v Minister for Immigration and Border Protection and Commonwealth of Australia [2015] NTSC 62, Hiley J held at [58] and [74] that ss 484 and s 494AB of the *Migration Act 1958* (Cth) prevent the Supreme Court of the Northern Territory from granting an injunction to restrain the Minister from returning the plaintiff, a five-year-old girl, to the regional processing centre in Nauru. She sought damages for negligence for injuries allegedly sustained in detention and an injunction to prevent her return and incurrence or further injury. His Honour held at [57] that granting an injunction would be an exercise of jurisdiction "in relation to a migration decision" contrary to s 484 and at [35] and [72] that it would prevent the Commonwealth from performing its statutory obligations, and the Minister from freely exercising or refusing to exercise certain powers and discretions, and would have the same effect as a migration decision.

LEGAL PRACTITIONERS

Admission – Academic misconduct

In the matter of an application by Joy Onyeledo [2015] NTSC 60, Kelly J required an applicant for admission as a legal practitioner to undertake a course on legal ethics and to demonstrate that she had acquired the necessary understanding of ethical obligations. The Legal Practitioners Admission Board had referred the application to the court because of admissions of academic misconduct in copying the work of others without proper acknowledgment. At [30] Her Honour held that two issues must be determined for academic misconduct: first, whether the applicant intended to pass off the work of others as her own; and second, whether she made full and frank disclosure to the Board of the circumstances surrounding the finding of academic misconduct made against her. Her Honour observed from [31]-[37] that the applicant did not to pass off the work as her own but her inconsistent disclosures to the Board misrepresented the nature of her conduct. Her Honour held at [38] that the applicant was not then fit for admission and adjourned the application to give her an opportunity of undertaking the course.

PROCEDURE

Abuse of process – Twelve-year delay in taxation

In *Lexcray Pty Limited v Northern Territory of Australia* (No 3) [2015] NTSC 6 at [182], Martin J held that a twelve-year delay in prosecuting a summons for taxation for costs while negotiations continued did not amount to an abuse of process, principally because the respondent did not suffer prejudice and the applicant was not in breach of any court processes or orders or of any duty to the respondent (although its solicitors were in breach of their duty to their client). To determine whether proceedings should be stayed as an abuse of process, the court looks to the 'objective effect' of their continuation. If, regardless of prejudice to the opposing party, the conduct of a party was such that allowing proceedings to continue would bring the administration of justice into disrepute, the power to stay would be exercised (at [164]). The respondent to the taxation acquiesced in the delay and neither party sought to disadvantage the other party or to misuse the processes of the court (at [183]). While the taxation would be made more difficult after a lapse of 12 years, it would not be relevantly unfair or oppressive to the respondent because of loss of memory and/or lack of documentation (at [15]). A court should be slow to accede to an application to stay proceedings on the basis of effects caused by a lapse of time to which the opposing party acquiesced. If prejudice was caused to that party by a course of conduct in which it

acquiesced, the court would be reluctant to find that the objective effect of the conduct is such that a continuation of proceedings would bring the administration of justice into disrepute (at [204].

SENTENCING

55g methamphetamine – Consistency

In *Truong v The Queen* [2015] NTCCA 5, the Court of Criminal Appeal dismissed an application for leave to appeal against a sentence of four years and 10 months for unlawfully supplying a commercial quantity of methamphetamine (55.81g) contrary to the *Misuse of Drugs Act 1990* (NT). The court discussed the meaning of consistency between sentences and parity with sentences of co-offenders at [23]-[27] and held at [29] that consistency between drug offences is not determined solely or principally by the quantity of the drug. Attributing a particular weight to some factors, while leaving the significance of all other factors substantially unaltered, may be quite wrong. Judges may give different sentences to later defendants simply because they disagree with the earlier sentence or they see the need to emphasise different sentencing objectives to those emphasised in an earlier sentence or series of sentences (at [30]). The courts in the Northern Territory have an obligation to protect the Northern Territory community from the dreadful effects of methamphetamine usage and addiction (at [34]). The message to both Territory and interstate residents is that any offenders who import commercial quantities of dangerous drugs into the Northern Territory from interstate risk lengthy terms of imprisonment (at [36]).

SENTENCING

Admissions – Anunga rules – ICCPR

In *R v GP* [2015] NTSC 53, Barr J admitted into evidence an accused's admissions despite technical non-compliance with the third guideline of the Anunga rules, that a caution be given that an accused may remain silent. His Honour said at [25] that *R v Anunga* is no longer (if it ever was) binding legal precedent in relation to the admissibility of evidence in court, having been displaced by s 56(1) *Evidence (National Uniform Legislation) Act 2011* (NT). Under the Act, the focus is not on the voluntariness of an admission but on the likely reliability or truth of any admissions obtained, in light of all the circumstances in which they were made. For evidence to be excluded as being improperly obtained within the meaning of s 138(1) of the *Evidence Act 1995* (Cth) there must be more than non-compliance with a rule of somewhat uncertain status, or more than an irregularity (at [53]).

WORKERS COMPENSATION

Reasonable administrative action

In *Corbett v Northern Territory of Australia* [2015] NTSC 45, Barr J allowed an appeal by a worker from the Work Health Court and ordered a retrial against a finding that her injury was the result of reasonable administrative action within the meaning of 'injury' in s 3 of the *Workers Rehabilitation and Compensation Act 1986* (NT). His Honour disagreed with bute was bound to follow the Court of Appeal in *Rivard v Northern Territory of Australia* (1999) 150 FLR 33 that for the defence of reasonable administrative action to operate, the employer must prove that the action was the sole cause of the worker's injury (at [5]-[6]). If a worker perceives conduct on the part of others in the workplace as creating an offensive or hostile working environment, and as a result of that perception suffers a mental injury, causation under workers compensation law is made out provided the perception was about an incident which actually happened or an actual state of affairs (at [20]). The magistrate did not apply the correct test or analyse the evidence correctly (at [37]).