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ARTICLES

THE NORTHERN TERRITORY: A CELEBRATION OF CONSTITUTIONAL HISTORY

Chief Justice Robert French

The year 2011 marks the centenary of the establishment of the Northern Territory as a Territory of the Commonwealth of Australia and the creation of the Supreme Court of the Northern Territory. In the past century, the Northern Territory has been the site of significant constitutional, political and social questions, particularly concerning Australia's indigenous population. Justice Martin Kriewaldt, in whose honour this lecture was delivered, made an important contribution to the recognition of cultural difference not only in the Territory but in Australia more broadly. This lecture reflects upon the constitutional history of the Northern Territory. 735

TRUTH AND THE LAW

Hon J J Spigelman AC

There are three views about the relationship between truth and the adversarial system. First that the system is not concerned with the truth at all but with "procedural truth". Secondly, that the system is the most effective mechanism for the discovery of the truth. Thirdly, that the system seek the truth subject to qualifications. This article supports the third view. It discusses the restrictions on truth finding that arise by reason of the application of a variety of legal rules. The article compares common law and civil law systems and sets out the way in which the latter contain comparable restrictions on truth finding. Psychological research indicates both the frailty and fungibility of human memory and, accordingly, the process of establishing the truth must be approached with humility. 746

GRIFFITHS AND THE "SPIKE": "RARITY" AND "RESTRAINT" IN CROWN SENTENCING APPEALS RE-ASSESSED

Steven Thomson

This article argues that the touchstone for "rarity" and "restraint" in Crown sentencing appeals, the High Court's judgment of *Griffiths v The Queen* (1977) 137 CLR 293, needs to be fundamentally reconsidered in light of a sudden "spike" in Crown appeals in New South Wales in 1974-1976. In addition, it can be argued from first principles that

an expectation of rarity of Crown appeal cannot be supported in light of the “error principle” in *House v The King* (1936) 55 CLR 499, particularly when sentencing today involves the application of far more complex sentencing statutes than existed in the 1970s. The danger to the judiciary of failing to fundamentally re-assess the proper theoretical approach to Crown sentencing appeals is that Parliaments may extend their recent reforms in the area and restrict judicial sentencing discretion even further. 761

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 - ¹ Hayton D, “Unique Rules for the Unique Institution, The Trust” in Degeling S and Edelman J (eds), *Equity in Commercial Law* (Lawbook Co, Sydney, 2005) p 284.
 - ² Hayton, n 1, p 286.
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