



HIGH COURT OF AUSTRALIA

Public Information Officer

17 June 2004

NORTH AUSTRALIAN ABORIGINAL LEGAL AID SERVICE INC v HUGH BURTON BRADLEY AND THE NORTHERN TERRITORY OF AUSTRALIA

Mr Bradley was validly appointed Chief Magistrate of the Northern Territory in March 1998, the High Court of Australia held today, dismissing a challenge from the NAALAS.

When appointed Mr Bradley indicated he wanted to serve only two years. Later he changed his mind and two further determinations were made by Territory Administrator Neil Conn in November 1999, one to revoke the 1998 determination and one to reappoint him until the mandatory retirement age of 65, which Mr Bradley attains in 2009. In the NT Supreme Court in 2000 the NAALAS sought a declaration that his appointment was invalid. The action was transferred to the Federal Court of Australia. Justice Mark Weinberg dismissed the NAALAS application in 2001 and the Full Court of the Federal Court dismissed an appeal.

On appeal to the High Court, the NAALAS argued the NT Magistrates Act was invalid insofar as it authorised the appointment of a Chief Magistrate to age 65 but with remuneration fixed for only the first two years. The High Court accepted the NAALAS proposition that under the Constitution a court capable of exercising Commonwealth judicial power (as the NT Magistrates Court was) be, and appear to be, an independent and impartial tribunal, but the Court held that this requirement had not been infringed.

Section 6 of the Magistrates Act provides that a magistrate shall be paid such remuneration and allowances and hold office on such terms and conditions as the Administrator from time to time determines. The Court held that this should be construed as impliedly conferring on the Administrator the statutory authority to make determinations from time to time and the power to make determinations necessarily carries a power to revoke them. The phrase "from time to time" was not to be read as permitting the Administrator to fail to exercise power under section 6 where that failure would produce a hiatus where no determination was in operation. There was no such hiatus as the 1999 determinations preceded the end of the two-year period covered by the 1998 determination, and none was contemplated or provided for by section 6. The Court held that NT magistrates were not inappropriately dependent on the legislature or executive in a way that compromised or jeopardised their integrity. Rather, the legislative requirement of continued attention by the NT executive to preserving adequate remuneration of magistrates was apt to defend the interests of judicial independence and impartiality.

The High Court unanimously dismissed the appeal.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*