

**Meyerhoff, Highway
& Inder-Smith v Thomas**

**21 May 2004
Angel, Mildren & Riley JJ
Ex tempore judgment**

Following a hearing in the Court of Summary Jurisdiction, the appellants were found guilty of trespassing on premises, namely, the private office of the Chief Health Officer, 4th Floor, Health House, Mitchell Street Darwin. The appellants were self represented at the hearing. It was not in dispute that each of the appellants entered and stayed in the office of the Chief Health Officer for some 15 minutes or so and that during this time they barricaded themselves inside the office and ignored requests to vacate the office. Much of the evidence adduced on behalf of the prosecution went unchallenged. The appellants did not give evidence or call any evidence on their behalf.

The appellants subsequently appealed to the Supreme Court against the findings of guilt on the grounds that -

1. a political protest in the form of a peaceful occupation is not trespassing
2. the magistrate erred by ignoring the defendants' claims of an implied invitation
3. the offence of trespass is invalid as it breaches the implied right to freedom of speech and political communication in the Australian Constitution.

Each of the appellants was deeply opposed to the Territory's drug legislation and the government's policies dealing with unlawful drugs. Each of the appellants had participated in various forms of political protest in an effort to draw the public's attention to issues concerning unlawful drugs in the hope that the government would change its policies and amend the existing legislation. In the appellants' submissions, their protests had fallen on deaf ears, and they were driven by circumstances to go to the office of the Chief Health Officer to make their point. The appellants submitted that they were exercising their right to freedom of speech, they had not set out to break the law and that they were motivated by good rather than evil intentions to draw attention to what they perceived to be the injustice of the present drug laws and policies of the government. The appellants submitted that their actions which constituted the offence of trespass were justified in all the circumstances.

The Supreme Court dismissed each of the appeals holding that –

- As trespass was a regulatory offence, intention or motive was irrelevant except to the extent that it may found one of the statutory defences set out in the *Trespass Act*. In this respect the appellants had failed to discharge the onus which the *Trespass Act* placed upon them.
- There was ample unchallenged evidence for the magistrate to find that it was fanciful for the appellants to assume that they had a right to enter individual private offices.
- The right of free speech is not an unlimited freedom.

The unsuccessful appellants then appealed the decision of the Supreme Court to the Court of Appeal. The grounds of appeal were the same as those in the Supreme Court as were the arguments in support of them. The respondent was not called upon to make any submissions.

In an *ex tempore* judgment, the Court of Appeal unanimously dismissed the appeals. In doing so, the court agreed with the reasons given by the Supreme Court for dismissing the appeals. In addition, as to ground 3, the court applied the test laid down by the High Court in *Lange v Australian Broadcasting Commission* (1997) 189 CLR 520 at 567-568 and held that the Northern Territory law of trespass does not effectively burden freedom of communication about government or political matters, either in its terms, operation or effect and in any event, to any extent that it does, the trespass law is reasonably appropriate and adapted to serve a legitimate end compatible with representative or responsible government, namely, proprietary rights and the right to personal liberty and privacy. The court held that a person's right to speak cannot authorise entry upon another's premises without their permission. Further there was no obligation on a person to hear another speak.