

Supreme Court Notes

Negligence - Damages - Principles Applicable to Assessment of Damages - Interest

Julie Namals v Northern Territory of Australia

No 377 of 1987

Judgment of Kearney, J delivered 14 May 1996

The plaintiff was a 23 year old Aboriginal woman bearing her first child. Throughout most of her pregnancy the plaintiff was cared for at Daly River. About 24 days prior to commencing labour she was transferred to Royal Darwin Hospital for further management and delivery. Due to complications a caesarean section was subsequently undertaken. During this operation the plaintiff's uterus was damaged and as a result, a total abdominal hysterectomy had to be performed to save the plaintiff's life.

The plaintiff sued the defendant for damages, claiming that her uterus was

damaged to the point where a total hysterectomy was necessitated.

At the commencement of the second day's hearing the defendant conceded liability and the sole remaining issue before the court was the question of the quantum of damages and interest thereon.

Held, (1) The High Court's decision in *Carson v John Fairfax & Sons Ltd* (1992-3) 178 CLR 44 does not permit the court now to consider comparable verdicts in personal injury damages awards.

(2) The problems associated with making separate awards of damages under separate headings are notorious and in this case it was neither necessary nor desirable to adopt such an approach.

(3) That the greater bulk of the damages was created at the time of the operation and accordingly interest thereon should be at the rate of 4% for the entire pretrial period. Where the damages accrued gradually (the loss of cultural fulfilment

through the plaintiff's inability to fully participate in traditional ceremonies with her children) interest should be calculated at the rate of 4% for half the pretrial period.

His Honour made a global award of damages in the amount of \$80,000. Interest on the award was calculated to be \$32,119.67.

Factors His Honour took in to account in reaching his decision as to the quantum of damages included:

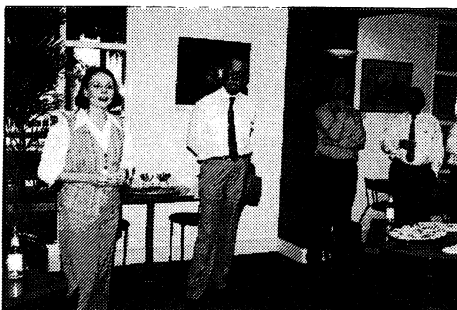
- (a) the aggravation of the plaintiff's subjective suffering by virtue of the cultural importance of having a large number of children within her community and
- (b) the plaintiff's subjective suffering, resulting from a loss of cultural fulfilment through inability to fully participate in traditional cultural ceremonies and activities.

Mr JE Reeves, instructed by Cridlands, for the plaintiff.

Mr PM Barr, instructed by the Solicitor for the Northern Territory for the defendant.

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NT Young Lawyers Articles Handbook Launch



Samantha Miles, the Hon Austin Asche, Prof Ned Aughterson and Chief Justice Brian Martin at the launch

The NTYL Inc Articles Handbook was launched on April 19 1996 by the Administrator, the Honourable Austin Asche at *Rumpole's* in the Supreme Court.

The Handbook is a guide to undertaking and enjoying Articles in the Northern Territory and was compiled by Samantha Miles.

It provides a useful guide to graduates who realise that their university degree has not fully prepared them for their new professional life. As the Administrator

pointed out in his speech, it is a guide and not exhaustive. The Handbook should be used with common sense and in consultation with the clerk's principal.

It includes information on the legal requirements of entering articles and seeking admission together with precedents and as such provides a welcome aid to students in their transition to clerk and ultimately practitioner.

In addition, the Handbook can assist clerks in familiarising themselves with office procedures, often a more complex subject than the law itself.

A series of checklists has been included to assist clerks in ascertaining which areas of law they should be exposed to to ensure fulfilling and well-rounded articles.

The Handbook is available free of charge, thanks to the sponsorship of Clayton Utz, De Silva Hebron, Elston & Gilchrist, Halfpenny's, James Noonan & Associates, Mildrens, Ward Keller, Withnall Cavenagh and Morgan Buckley. Copies may be obtained from Andrew Farr and Heather Bedson at Clayton Utz.

NT Young Lawyers AGM

Following the launch of the Articles Handbook, the NTYL held their Annual General Meeting. Special thanks were given to Samantha Miles, who was instrumental in forming the NTYL and the dedicated outgoing committee.

The new committee is as follows:

President:	Sue Porter
Vice-President:	Andrew Farr
Secretary:	Teegan Lindsay
Treasurer:	Heather Bedson
Public Officer:	Angela Smith
Social Convenor:	Jodie Truman

Anyone with any queries about the Northern Territory Young Lawyers is invited to call any of the above committee members.

BALANCE

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