NORTHERN TERRITORY LAW REFORM COMMITTEE

REPORT

on

LOCAL COURTS ACT

DARWIN

November 1983

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(Chairman)

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Judge of the Supreme Court
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NORTHERN TERRITORY LAW REFORM COMMITTEE

REPORT ON LOCAL COURTS ACT

To: The Honourable J. M. Robertson, M.L.A.,
Attorney-General for the Northern Territory

The Northern Territory Law Reform Committee has conducted a review of the Local Courts Act and submits the attached report and recommendations for your consideration.

Dated the 25th day of November 1983.

(The Hon. Mr. Justice Kearney)
Chairman

(The Hon. Mr. Justice Muirhead)
Vice-Chairman

(B. F. Martin, Esq., Q.C.)
Member

(G. P. Galvin, Esq., C.M.)
Member

(M. Ward, Esq.)
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(J. A. Dorling, Esq.)
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(T. J. Riley, Esq.)
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(S. R. Bailey, Esq.)
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(Miss M. P. Lyons)
Member

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LOCAL COURTS ACT

1. INTRODUCTION

The conduct of lesser civil claims in the Northern Territory is governed by two main Acts:-

(a) The Local Courts Act for personal actions not exceeding $10,000-00 and some other actions and
(b) The Small Claims Act for similar actions not exceeding $2,000-00.

The Local Courts Act (hereinafter referred to as "the Act") is a heritage from South Australia. Some parts of the legislation are irrelevant to practice in the Northern Territory and it is recommended that the Act be amended to bring it into line with modern practice.

2. LOCAL COURTS ACT

(a) Jurisdiction

Lesser civil claims up to $10,000 are dealt with in the Local Court. The Local Court is inherited from South Australia which introduced Local Courts in 1850, one year after the establishment of the English equivalent, the County Courts. The Local Court is solely a creature of statute, but in the 100 odd years since their establishment, Local Courts have developed their own practice and are governed as well by Local Court Rules. If neither Act, practice nor rules govern any particular situation, Local Courts are governed by the practice of the Supreme Court and the Rules of Court there in force : Local Court Rule 203.

Although, from time to time in the past, legally unqualified justices of the peace have exercised jurisdiction in Local Courts, this practice has now ceased and it can be assumed that all Local Courts in the Northern Territory will be manned by legally qualified Stipendary Magistrates. It is recommended that the Act be amended to recognise this fact.

Since the Act is based upon the South Australian Act, and that Act has a text book written about it (Hannan: Local Court Practice, 3rd Edition), it is recommended that the Northern Territory Act retain the text of the South Australian Act so far as is consistent with the Northern Territory conditions.

Further, the South Australian and Northern Territory Acts have worked well for a number of years and a system that works well in practice ought to be retained if possible.

Thus, no radical alterations are recommended, but several culling-out and up-dating procedures would appear to be desirable.

(b) Nomenclature

The Act refers to Local Courts of "full jurisdiction" and "limited jurisdiction." The South Australian Act, in addition, has Local Courts of "special jurisdiction". It is recommended that there be only one jurisdiction in the Local Courts of the Northern Territory, viz, to hear and determine all claims up to $10,000-00 and all unsatisfied judgment summonses.

This would require alternations to ss. 5, 18, 19, 27, 28, 35 and 36.

The Act refers to "Judges", "Stipendiary Magistrates" and "Justices". In practice, only Stipendiary Magistrates constitute a Local Court and it is recommended that references to Judges and Justices be deleted.

This would require alterations to ss.
5, 10, 19, 20, 21, 24, 30, 63, 64, 66, 68, 70, 71, 72, 74, 75, 76, 83, 84, 85, 88, 89, 101, 112, 115, 116, 117, 120, 131, 134, 135, 136, 138, 140, 141, 143, 147, 148, 164, 166, 167, 171, 175, 177, 178, 179, 180, 181, 184, 193, 205, 216, 261, 262, 263, 265, 268, 270, 272, 273, 274, 275, 277, 278 and 280.

Consideration could be given to whether Magistrates, exercising the jurisdiction which they currently exercise both in civil and criminal work, ought to have County Court or District Court status conferred upon them by changing their title from "Stipendiary Magistrate" to "Judge". This suggestion does not envisage any alteration to their salary or conditions but simply to their status. They are in fact exercising the jurisdiction exercised by intermediate Court Judges elsewhere and there is a recent precedent for this course, namely in New Zealand, where Stipendiary Magistrates were elevated to that status. The principal benefit of such a course would be to attract the best possible applicants for vacancies in these Courts. Interested parties have been asked for their views upon the suggested title change. The Law Society was unable to come to any consensus. The Supreme Court Judges are against the suggestion. The Magistrates are in favour of it, with one exception. The Committee does not support the suggestion.

(c) Ordinary Jurisdiction and Concurrent Jurisdiction of Supreme Court - Part III

S.30 allows consenting litigants to walk in off the street and request a summary determination of a dispute. No summons, appearance, defence or, indeed, any documentation is necessary. The section, if invoked, requires of the Magistrates immediate investigation of the matter and summary (i.e. on-the-spot) determination of same. It is recommended that s.30 be repealed.

(d) Replevin - Part IV

This part appears to be in order and it is recommended that there be no amendment.

(e) Prerogative Writs - Part V

Prerogative writs of certiorari, mandamus and prohibition are abolished as far as Local Courts are concerned by s.43 of the Act. However, a party may still apply to the Supreme Court for an Order having the effect of those Writs in appropriate cases (s.44). Similar provisions apply in the Justices Act.

An order in the nature of certiorari was the appropriate procedure for bringing the record of an inferior court, such as the Local Court, before a Higher Court for an examination of the record to see whether any error existed. In other words, certiorari was the percursor of the modern day appeal. It has for all practical purposes been replaced by statutory appeal provisions except for the odd situation envisaged by Section 50 of the Act which gives a Supreme Court Judge power to order, if he deems it desirable, that an action, presumably correctly commenced in the Local Court, be tried in the Supreme Court. No doubt there were situations in the past where Local Courts could be constituted by unqualified Justices of the Peace but this section is hardly appropriate to existing conditions and, in its present form, ought to be repealed.

Mr. McGregor, S.M., has commented that, occasionally, an action for damages is instituted in the Local Court and it is found that, as the years progress, damages for personal injuries are likely to exceed $10,000.00. He considered that, rather than have the plaintiff discontinue and issue a Writ in the Supreme Court, the act should allow application to be made to a Magistrate to order that the action be transferred to the Supreme Court. Th Committee has adopted Mr. McGregor's comment and recommends that s.50 be repealed and redrawn to provide that a Magistrate be empowered to state a case to the Supreme Court on a question of law or transfer the action to the Supreme Court where application is made before the commencement of the Trial and he is satisfied that damages will be in excess of $10,000.00.

An order in the nature of prohibition still has its place in Local Court practice and can be used, for example, where a Local Court embarks upon a hearing without jurisdiction (except where the sole objection to jurisdiction is that the Local Court is not the appropriate Local Court : s.45).

An order in the nature of mandamus is the remedy appropriate where a Local Court refuses or neglects to determine an action, e.g. where judgment is reserved, and a year or so elapses and the Magistrate has not delivered his determination.

Apart from s.50, it is recommended that there be no amendment to Part V.

(f) Appeals - Part VI

The appeal provisions of the Act appear adequate and do not require extensive revision. However, it is submitted that s.54 is clearly inappropriate and it is recommended that it be revised to read as follows:-

"S.54 (1) Any party who is dissatisfied with a final judgment, determination or order of the Local Court, not being an order of Commitment, may appeal to the Supreme Court."

(2) Any party who is dissatisfied with any interlocutory order of a Local Court may, by leave of the Court making the Order or by leave of the Supreme Court, appeal therefrom to the Supreme Court."

It is recommended that ss. 59 (2) and (3), 60, 62 and 122 be amended to delete reference to the High Court.

(g) The Joinder of Parties and Causes of Action - Part VII

The existing provisions of Part VII of the Act appear adequate and, except to nomenclature which has already been dealt with, it is recommended that there be no amendment.

(h) The Commencement of Actions and Proceedings to Judgment - Part VIII

(i) Procedure

Part VIII lays down the procedures necessary to commence an action and bring that action to fruition either by obtaining a default judgement or bringing a contested action to Trial. It may well be this part is set out in too much detail and that much of the part would more properly be housed in rules of court, e.g. s.78 which reads:-

"S.78(1) The clerk shall thereupon enter in a book to be kept for that purpose, called a Plaint Book, a plaint, stating:-

(a) the names and places of residence or business of the parties;

(b) the occupation or description of the plaintiff;

(c) the name and address of the plaintiff's solicitor or agent;

(d) the amount of the plaintiff's claim; and

(e) the sum paid by him for fees

(2) A note of the plaint shall be furnished to the plaintiff in the form, and containing the particulars and directions, prescribed.

(3) Every plaint shall be numbered progressivly in each year according to the order in which it is entered."

This section not only gives a detailed list of requirements but foreshadows others to be prescribed. In this sense the Part is untidy, but since it exists in this form, it would appear that there is insufficient justification for changing it.

(ii) Special Summons/Ordinary Summons

An ordinary summons is usually issued to commence an action. A defendant may contest an action commenced by ordinary summons without disclosing the nature of his defence. A special summons may be issued in the case of a liquidated demand. In that event, the defendant can only contest the action if he files an affidavit swearing that he has a good defence and disclosing one ground of that defence.

It is submitted that there is no valid reason why there ought to be any distinction in this respect between liquidated and unliquidated demands and that special summonses ought to be discarded. If a plaintiff alleges that, in fact, a defendant has no proper defence, he can apply for summary judgment by interlocutory summons or interrogate, etc.

The Committee was unanimous in wishing to abolish the distinctions between special and ordinary summonses. It was not unanimous in recommending which of the two should be abolished. The minority believed that defendants ought to be required to disclose the nature of the defence. The majority believed, and the Committee recommends accordingly, that the procedure ought to be more summary and that a simple appearance, having the effect assigned to it by s.93, be sufficient.

If the plaintiff claimed then that he was disadvantaged by not knowing precisely what issues were raised by the defendant, he can take appropriate interlocutory steps by way of discovery, interrogatories or admissions.

Mr. McGregor, S.M., has commented that ex parte interlocutory sommonses should be dealt with by a Magistrate on affidavit without requiring the attendance of a party or his solicitor. The Committee has adopted Mr. McGregor's comment and recommends that the Act be amended accordingly.

(iii) Assessment of Damages

Bound up with the question of special/ordinary summonses (supra), is the assessment of damages. By a combination of ss. 86 and 101, relating to special summonses and ordinary summonses, and ss. 102 and 103, the Act distinguishes between those actions relating to liquidated claims and those relating to unliqudated claims.

There are two practical results:-

(a) in a liquidated claim, a plaintiff is entitled to issue a special summons, requiring an affidavit of merits if a defence is to be filed ; only an ordinary summons can be issued in the case of an unliquidated claim.

(b) in a liquidated claim, if a defendant does not enter an appearance within the prescribed time, the plaintiff may sign final judgment upon proof of service of the summons; in the case of an unliquidated claim, he must proceed to assess damages.

Assessment of damages involves costly and time consuming gathering together of evidence, both documentary and live, and presentation of same to the Court, nearly always in the absence of a disinterested defendant, and often in the manner of a formality. This is particularly so in "recovery" cases, that is, those cases where a plaintiff seeks to recover the cost of repairing his motor vehicle damaged in an accident. It is submitted that there ought not be any distinction between liquidated and unliquidated claims, in most cases, but that the plaintiff be entitled to a default judgment as of right where no appearance is entered within time. The usual objection raised to this is that the plaintiff may well inflate his claim where it is for unliquidated damages. However, it is equally open to a plaintiff to inflate his claim where it is for liquidated damages : there is really no distinction. In claims liquidated and unliquidated alike, the plaintiff must disclose the total amount he is claiming in the face of the summons and the defendant there and then has the opportunity of deciding whether, in the light of all the matters stated in the summons, including the amount claimed, he wishes to contest.

The majority of cases of unliquidated damages relate to claims for the cost of repairing damage to motor vehicles and it is submitted that these lend themselves readily to procedures hitherto the exclusive province of liquidated claims.

The Committee, however, was not unanimous in its recommendation with respect to those claims where a plaintiff sought damages for personal injuries sustained in an accident. The majority recommend that the distinction between liquidated and unliquidated damages be abolished in all cases. With the introduction of the Motor Accidents Compensation Act, the number of actions commenced in the Local Courts for damages for personal injuries has fallen dramatically.

It is recommended that ss. 86, 93 and 101 be amended to accord with the above recommendations on special summons/ordinary summons and assessment of damages.

(iv) Time of Trial

S.104 speaks hopefully of the trial of the action taking place "at the first Court" held seven (7) days after the date of entry of appearance. Rules 107-109 are to similar effect. This must have been enacted in more leisurely times and ought to be redrafted to accord with present day reality. The Clerk of the Local Court suggested, and the Committee recommends, that once an appearance has been entered, the action be set for trial only at the request of one of the parties to the action.

(v) Judgement in default of Attendance at Trial

Mr. McGregor, S.M., has proposed that, if a party is not present when a case is called, the other party should then and there be entitled to judgment and a judgment so obtained should be a final judgment but able to be set aside for cause. The Committee has adopted Mr. McGregor's proposal and recommends it and that the Act should specify that a case will be called within 30 minutes of the advertised commencement time and that the advertised commencement time should be the time shown on the Notice for Trial or that fixed at Callover or in interlocutory proceedings or at any adjournment in open court.

(vi) Interest (Ss.121 and 135)

It is submitted that a successful plaintiff ought be allowed greater interest than that currently prescribed (8%) and that there ought not to be any distinction between liquidated and unliquidated claims.

It is recommended that interest be allowed

(i) at the rate alleged by the plaintiff to have been agreed upon, or

(ii) an amount fixed by the magistrate as reasonable, or

(iii) (in default of (i) or (ii)), ten percent

It is further recommended that interest run from the date upon which the cause of action arose with the Magistrate having a discretion to allow interest from such other date as he thinks fit.

(i) The Enforcement of Judgements and Orders - Part IX

This part was reviewed in 1979 and appears to be in order save for s.166(2) which, it is recommended, ought to be amended to provide that an unsatisfied judgment summons can only be issued out of the court nearest to where the judgment debtor resides or carries on business:- it is unfair to expect a defendant resident in Alice Springs to attend court in Darwin for examination.

(j) Interpleader Summons - Part X

This part appears in order and it is recommended that there be no amendment.

(k) Recovery of Premises and Actions of Ejectment - Parts XI and XII

Parts XI and XII purport to provide a means of recovery of, or ejection from, premises by an owner or landlord.

Parts XI and XII were repealed by implication by the enactment of the Tenancy Act. It is recommended that they now be expressly repealed. Mr. McGregor S.M. has commented that there is no provision for registering an order of the Tenancy Tribunal made pursuant to s.50 of the Tenancy Act and that, accordingly, such an order might be a barren judgment. The Committee agrees with Mr. McGregor's comment and recommends that there should be an amendment of the Tenancy Act to provide that an order of the Tribunal should be enforceable in the Local Court.

S.35(2) may have to be repealed as well and s.109 amended.

(l) Commissions for the Examination of Witnesses - Part XIV

This part appears in order, except that the words:- "where the debt or damages claimed exceed $60-00" in ss. 262 and 263 appear to be unnecessary and it is recommended that they be deleted.

(m) Bailiff's Fees and Costs - Part XV

This Part appears to be in order and it is recommended that there be no amendments.

(n) Offences - Part XVI

It is submitted that the fees prescribed are now out of date and it is recommended that they ought to be increased to more realistic amounts.

S.277 allows a Magistrate to fine a Clerk of the Court or Bailiff up to $40-00 for extortion, etc. It is submitted that this procedure and penalty are inappropriate and it is recommended that the section be repealed. A Bill is now before the South Australian Parliament to abolish the identical section there for the above reasons.

(o) Miscellaneous - Part XVII

A person can be imprisoned, not so much for a debt, as for contempt of Court for disobeying an unsatisfied judgment summons. S. 287 provides that he can be imprisoned once only where the debt was ordered to be paid by instalments. It is submitted that if he disobeys the unsatisfied judgment summons again, after imprisonment, he ought not to be immune from punishment for contempt. It is recommended that s.287 be repealed.

3. LOCAL COURT RULES

Apart from as set out above and below, they appear adequate in the main, and have a provision that, if a particular situation occurs for which there is no provision in the Act or Rules, then the Rules of the Supreme Court apply. It is submitted that consideration be given, in due course, as to whether the proposed new Supreme Court rules can simply be adopted for the Rules of the Local Court.

However, one still finds out of date procedures listed, such as appear in Rule 177, referring to an order nisi on appeal, which order nisi no longer exists. It is recommended that the Rules be reviewed to eliminate similar provisions.

By s.90 of the Act, interlocutory process may be served by posting to the address for service in the Appearance. There is no requirement in either the Act or Rules that a Defendant disclose an address for service of Interlocutory Process or Notice of Trial. It is recommended that the Rules be amended to provide that the Defendant's Appearance include an address for service.

4. SUMMARY OF RECOMMENDATIONS

Number	Recommendation	Paragraph
1	The Act, which is based on the former Local Courts Act (S.A.) which has now been revised, should be amended so that it accords with modern legal practice.	1
2	So far as is consistent with Northern Territory conditions, the text of the amended Act should conform with the text of the revised South Australian Act in order that the standard text book on the South Australian Act can be used with reference to the amended Act.	2(a)
3	The Act should be amended to recognise that Local Courts are now constituted by Stipendiary Magistrates.	2(a)
4	The reference to "full jurisdiction" and "limited jurisdiction" of the Local Court should be deleted and there should be only one jurisdiction to hear and determine all claims up to $10,000.	2(b)
5	The reference to "Judges" and "Justices" should be deleted and references to "Stipendiary Magistrates" should be substituted.	2(b)
6	The special procedure for the summary determination of disputes should be deleted by the repeal of s.30.	2(c)
7	There should be no amendment to Part IV.	2(d)
8	S. 50 should be repealed and redrawn to provide that a Magistrate be empowered to state a case to the Supreme Court on a question of law or transfer the action to the Supreme Court where application is made before the commencement of the trial and he is satisfied that damages will be in excess of $10,000.	2(e)
9	Apart from s.50, there should be no amendment to Part V.	2(e)
10	S.54 should be amended in accordance with the text of the report.	2(f)
11	Ss. 59(2) and (3), 50, 62 and 122 should be amended to delete reference to the High Court.	2(f)

Number	Recommendation	Paragraph
12	There should be no amendment of Part VII.	2(g)
13	The distinction between special and ordinary summons sould be abolished, the procedure should be more summary and a simple appearance, having the effect signed to it by s.93, should be sufficient.	2(h)(ii)
14	Ex parte interlocutory summons should be dealt with by a Magistrate on affidavit without requiring the attendance of a party or his solicitor.	2(h)(ii)
15	The distinction between liquidated and unliquidated damages should be abolished for the purposes of the assessment of damages and s.86, 93 and 101 should be amended accordingly.	2(h)(iii)
16	Once an appearance has been entered, an action should be set for trial only at the request of one of the parties to the action.	2(h)(iv)
17	The Act should specify that a case will be called within 30 minutes of the advertised commencement time, that the advertised commencement time should be the time shown on the notice for trial or that fixed at callover or in interlocututory proceedings or at any adjournment in open court and, if a party is not present when a case is called, the other party should be entitled to judgment and a judgment so obtained should be a final judgment but able to be set aside for cause.	2(h)(v)
18	Interest should be allowed at (1) the rate alleged by the plaintiff to have been agreed upon or (2) an amount fixed by the magistrate as reasonable or (3) in default of (1) or (2), 10 per cent and should run from the date upon which the cause of action arose with the Magistrate having a discretion to allow interest from such other date as he thinks fit.	2(h)(vi)
19	S.166(2) should be amended to provide that an unsatisfied judgment summons can only be issued out of the court nearest to where the judgment debtor resides or carries on business.	2(i)
20	There should be no amendment to Part X.	2(j)

Number	Recommendation	Paragraph
21	Parts XI and XII should be repealed and the Tenancy Act should be amended to provide that an order of the Tenancy Tribunal should be enforceable in the Local Court.	2(k)
22	Ss. 262 and 263 should be amended by the deletion of the words "where the debt or damages claimed exceeds $60".	2(l)
23	There should be no amendment to Part XV.	2(m)
24	The penalties provided for offences prescribed by the Part XVI should be increased to more realistic amounts.	2(n)
25	S.277 is no longer appropriate and should be repealed.	2(n)
26	S.287 should be repealed.	2(o)
27	Obsolete procedures, such as Rule 177, should deleted from the Rules of the Local Court.	3
28	The Rules should be amended to provide that the Defendant's Appearance includes an address for service.	3