

# **B**angladesh – An Experience in Teaching Advocacy

*By Trevor Riley, QC*

Bangladesh is an extraordinary country. Situated on the Bay of Bengal on the flood plains of the Ganges Delta this country is less than one third the size of the Northern Territory and is home to 120 million people. Think about that; in the whole of Australia there are some 18 million people. In the Northern Territory there are only 120,000. Conditions in Bangladesh can be truly described as crowded. Indeed, it is one of the most densely populated countries in the world.

The climate is in some respects, similar to that of Darwin. It is tropical and sub-tropical. There is a wet season, when the monsoons are present, from May to October, followed by a "cold" season from October to February and then a "hot" season from March to May. The country is subject to a range of natural disasters including drought, flooding and cyclones.

In recent times there have been two major cyclones, the first in 1970 when estimates put the loss of life at between 300,000 and 500,000 people. The second was in 1991 when the loss of life was estimated at between 140,000 and 200,000 people.

Just 25 years ago the country gained its independence from Pakistan following a bloody war in which some 1,000,000 people perished. Since that time the nation has suffered enormous political and economic difficulties. The father of the nation, Sheikh Mujibar Rahman, was assassinated in 1975. One of his successors, General Ziaur Rahman (Zia) was assassinated in 1981. The country has spent time under martial law, the constitution has been suspended, there have been bans on political activity, the powers of the legislature and the judiciary have been limited. In very recent times there has been a general election at which the Awami League, headed by the daughter of Sheikh Mujibar Rahman, Sheikh Hasina Wajed, was successful; and she has been appointed

Prime Minister.

The constitutional arrangements in Bangladesh are of interest in the light of the debate presently raging in Australia. The country is a constitutional republic. There is a written constitution which came into force on 16 December 1972. It has been the subject of amendment over the years. As matters presently stand the parliament is elected by secret ballot and there is universal suffrage. The head of state is the President who has quite limited powers. The President is elected by the members of parliament. True executive power rests with the Prime Minister and Cabinet.

Bangladesh, notwithstanding its turbulent recent history, is proudly and fiercely independent. On the 16th December 1996, along with members of an advocacy instruction team from the Australian Advocacy Institute, I was privileged to be present as the country celebrated the Silver Jubilee of its independence. The celebrations were fervent, joyous, emotional, in large part, spontaneous and attended by tens of thousands of people. Even though we were outsiders we found the experience to be a deeply moving one.

This is the second occasion on which an Australian team has attended in Bangladesh to conduct an Intensive Trial Advocacy Workshop in conjunction with the Bangladesh Bar Council. The first was the beginning of 1996 and was such a success that those involved from both countries were keen to ensure that others followed. The success of the latest expedition was such that there can be no doubt that there will be many more.

The enthusiasm for the project can be gauged by the reception received by us in Dhaka. Each day we were invited by local barristers to a formal lunch (generally between 1 pm

and 3.30pm) and each evening to a dinner. On these occasions we were honoured by the attendance of leading academics and politicians. At each function there were speeches made which were short, entertaining and informative. One such speech, delivered by the newly appointed Attorney-General for Bangladesh, included a powerful affirmation of the importance of the independence of the judiciary, the need to ensure the continuance of the rule of law and restated his commitment to work with the judges and the profession to achieve these ends.

A recognition of the importance with which the Bangladesh community regarded the project was demonstrated by the fact that during this busy period of national celebration we were guests of the President of the People's Republic of Bangladesh on two occasions. Admittedly on the first occasion we were accompanied by many hundreds of others and at best glimpsed the President from a distance. However on the second occasion the reception was for the senior members of the Bangladesh Bar Council and ourselves alone. The President is a former Chief Justice and, to my observation, is a humble yet much loved man in Bangladesh.

The Australian team was partly sponsored by the Australian Bar Association and was headed by Brian Donovan QC of the Sydney Bar and included David Bennett QC, the President of the NSW Bar Association. Other instructors were Robert Kent QC (Melbourne), Clifford Einstein QC, Ann Ainslie Wallace, Stephen Walmsley and Greg Laughton (all of Sydney), Dan O'Gorman (Brisbane), Graham Droppert (Perth) and myself.

The workshops were conducted in much the same way as those conducted by the Australian Institute of Advocacy. A hypothetical fact situation is created

*continued on page 9*

# Bangladesh – An Experience in Teaching Advocacy

continued from page 8

and the students, who are admitted practitioners ranging in experience from the very new to the quite experienced, then analyse the problem and proceed to make an application to the Court or examine or cross examine a witness. The problems were adapted to local conditions but their bases would be familiar to those who have attended workshops in the Northern Territory.

One of the problems was a contractual dispute between the owner of a number of trishaws and the driver of one of the trishaws which was damaged in an accident. The issue was to determine the terms of the contract. Another involved an application for an injunction to permit the fictional Bangladesh Infant Safety Society to conduct a public rally in the streets of Dhaka following a ban placed on the rally by police. One

participant, to the amusement of his colleagues, thought the best approach to the second problem was to form revolutionary committees in the countryside and march on Dhaka.

On this occasion we were assisted by senior advocates from the Bangladesh Bar Council. These persons had been through a teachers' course in 1996. Given that English is the second language to the participants (the first is Bangla or Bengali) there were sometimes difficulties in understanding and making ourselves understood. Nevertheless the improvement in performance witnessed in the participants reflected that experienced in the Australian workshops.

The daily routine involved commencing the workshops at 9.30am, breaking for a formal lunch at about 1pm, resuming the workshops at about 3.30pm and continuing through until about 6.30pm. On some evenings there would be a short ceremony

such as the presentation of CLE certificates after the workshops ceased. Thereafter we would be expected at a formal dinner at 7.30 or 8pm.

To my mind the benefits from the visit existed at three levels. Firstly, the links between the peoples of two countries, which are already quite substantial, were enhanced. Secondly, the close ties which exist between the legal professions both at an institutional level and also at a personal level were further cemented. Thirdly and importantly, the skills developed by the participants will enhance the performance of these people and others in the courts of the land and elsewhere. The stronger the legal profession, the more skilled the legal profession, the greater will be the respect for the rule of law and, consequently, the greater the prospect that the rule of law will be maintained.



## Book Review



N Moshinsky QC & Paul R Mallam: *Annotated Administrative Appeals Legislation* Butterworths; 240 pages; \$30.00  
Reviewed by Fred Davis

N Moshinsky QC is a Victorian Barrister. Paul R Mallam is a partner in a Sydney law firm.

As the title of the text indicates the authors have produced an annotated copy of the *Administrative Decisions/Judicial Review Act* (1997) and the *Administrative Appeals Tribunal Act* (1975). The text also indexes and reproduces the necessary forms, rules and scale of fees. The text was accurate at the time of printing. Practitioners should enquire of the Registrar of the Federal Court in respect of the latest practice notes, forms and fees.

The Commonwealth Administrative Appeals Tribunal was established in 1975. Many practitioners are unfamiliar with the function, powers and procedure of the Tribunal.

The authors in their introduction explore the relationship between the Administrative Appeals Tribunal, the

Ombudsman and the Judicial Review procedures.

The Commonwealth administrative law field is rich in case law and novel applications. The authors in their *Table of Cases* cite authorities such as *Hell's Angels -v- Deputy Commissioner of Taxation*, *Sankey-v- Whitlam* and international authorities such as *Canada-v- Inuit Tapirisat of Canada*. The diversity of administrative law is a reflection of the areas involved including the Australian Broadcasting Tribunal and Comcare (Commonwealth Workers' Compensation Scheme). Practitioners should be aware that the Supreme Court Library contains a specialist text book dealing with the Comcare system.

The chapter entitled *Introduction to the Judicial Review Act* deals extensively with the question of what is a reviewable decision. The authors have reproduced Sections 2 and 3a with the 1st and 2nd schedules of the Administrative Decisions/Judicial Review Act to illustrate the types of decisions which cannot

be reviewed.

When considering what administrative decisions can be reviewed, a sensible starting point is to examine the principal Act. For example if the proposed review involves the *Social Security Act* then that Act must be examined to determine the preliminary steps before the next Administrative Appeals Tribunal can be considered. The next step to be considered is whether the Act gives the right of access to the Administrative Appeals Tribunal.

When considering the Administrative Appeals Tribunal Act the first issue is to determine what is a reviewable decision. The authors of the text have dealt extensively with this issue.

The text details the basis on which the administrative decision can be challenged and the ultimate role of the Federal Court.

The text book is a practical and comprehensive analysis of Commonwealth administrative law and procedure.