

I nternational Bar Association

IBA's Human Rights Institute is organising a Fair Trial Training Day on Sunday 13 September at the start of the IBA's Biennial Conference in Vancouver, Canada.

The right to a fair trial has been established in several international human rights instruments. The HRI receives requests to observe an increasing number of trials each year where there are concerns that proper standards for the administration of justice may not be met, and where international standards are being violated. It also encourages bar associations and law societies to do likewise.

HRI is keen to ensure that its observers, and observers sent by member organisations, are fully briefed in the skills necessary for trial observation. The Training Day, led by lawyers highly experienced in fair trial standards will focus on the provisions of international

and regional standards, the role lawyers can play in ensuring these provisions are guaranteed, and will examine how, in practice, to observe and report on a trial.

The days programme has been drawn up and will be led by Dr Chaloka Beyani, Professor, London School of Economics and Oxford University. Dato' Param Cumaraswamy, UN Special Reporter on the Independence of Judges and Lawyers, will be a key-note speaker.

It promises to be a challenging and valuable introduction to trial observation for lawyers from all disciplines. If you, or representatives from your Bar, would like to participate, please contact the Law Society for an application form. There is no registration fee and lunch will be provided by IBA. Delegates will receive course material in advance.

FAIR TRIAL TRAINING SESSION

Sunday 13 September 1998

Session One

0945 - 1030

The Right to Fair Trial as an International Human Right Fair Trial Standards under the Covenant on Civil and Political Rights

Session Two

1100 - 1230

Fair Trial and Regional Human Rights Systems; European, American & African

Session Three

1400 - 1500

Fair Trial and the Role of Lawyers Guidelines on a Fair Trial

Session Four

1500 - 1530

How to Observe a Trial Practice Assessing and Reporting the Fairness of a Trial

H igh Court Notes

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cluded this provision did not authorise the orders made. The majority observed the Family Court could ensure funding of separate representatives for children by making appropriate maintenance orders: Hayne J [102]. The court did not find it necessary to consider whether the orders made by the Family Court were constitutionally invalid as an exercise by the judiciary of executive powers outside and incompatible with Constitution Chp III or because the orders were contrary to the Federal Principle. Order nisi for certiorari to quash the relevant order made absolute.

Criminal law (SA) - power to reserve questions of law when person "tried on information and acquitted" - when person tried - power of court to refuse to accept *nolle prosequi*.

In *DPP (SA) v B* ([1998] HCA 45, 23 July 1998) by s350(1A) the *Criminal Law Consolidation Act 1935* (SA) provides that where

a person "is tried on information and acquitted" the court on the application of the prosecution may reserve a question of law "arising at the trial" for the determination of the Full Court (SA). The prosecution witnesses failed to attend at court when B was to be arraigned. The trial judge declined to accept a *nolle prosequi* at the request of the prosecution and acceded to B's request that the trial proceed before a judge alone. On the prosecution then tendering no evidence the trial judge found the accused not guilty. At the request of the prosecution the trial judge stated a case questioning whether he had the power to refuse the *nolle prosequi* tendered by the prosecution. The Full Court (SA) held [(1996) 66 SASR 450] that the trial judge did have such a power. Before the High Court the validity of the case stated was raised. The majority concluded that B's trial had only begun after the judge had declined to receive the *nolle prosequi* and B was arraigned before him. The majority therefore concluded that

the questions concerning the *nolle prosequi* did not arise "at the trial" within s350(1A): Gaudron, Gummow, Hayne JJ JJ [22]; McHugh J [32]. Kirby J gave the phrase "arising at the trial" a generous construction [49]. He considered when courts may refuse to entertain a *nolle prosequi* for fear that it may lead to an abuse of process [65]. Appeal allowed; order that it is inappropriate to answer either of the questions.

Criminal law (Tas) - murder - murder by means of unlawful act - proof that accused knew, or ought to have known, act likely to cause death - stabbing person in neck with long knife.

In *Simpson v Q* ([1998] HCA 46, 23 July 1998) by s157(1)(c) the *Criminal Code Act 1924* (Tas) provides that culpable homicide is murder if it is committed by means of an unlawful act which the offender "knew, or ought to have known, to be likely to cause death in the circumstances ...". The appel-

