

Criminal Lawyers Association NT

by Jon Tippett, President

The Advocate and the Layman

Despite all the advances in media technology the public seems to know less than ever about the principles which govern the work of the advocate. It may be the result of the preference of the media to publicise in particular those cases where the offender appears to have received a very light sentence. When in doubt blame the "media". Most likely it is the result of lawyers neglecting to inform the public of the reality that without a body of advocates prepared to act on behalf of anyone irrespective of the nature of their cause it would in the words of Sir Gerard Brennan "be difficult to bring unpopular causes to court and the profession would become the puppet of the powerful" That principle does not always endear itself to the political advocate.

If there ever was a lesson on how to botch a good argument it was given in graphic detail by the outgoing Attorney General in relation to the issue of Statehood. He knew it all. No input from the profession sought and none given, thank goodness. The majority of the people in the Territory wanted statehood. Mr Stone exhibiting a unique and influential personal style managed to persuade them otherwise. Now that is a feat of advocacy few if any of us could possibly hope to aspire to. It outshines by the length of a law library the disastrous final address of Mervyn Griffith-Jones as prosecuting counsel in the Lady Chatterley's Lover obscenity trial when he said to a jury of ordinary men and women (holding up the book) "Is it a book that you would even wish your wife or your servants to read?" Pure genius. The Oberwocky is dead.

The new Attorney General appears to be a person who is prepared to listen. Mr Burke's appointment is hopefully an opportunity to re-establish dialogue between the legal profession and the government. Much needs to be done. Already he has met with representatives of the Criminal Lawyers

Association, the Law Society and the Bar Association. The meeting was pleasant and frank. The Criminal Lawyers Association has offered to forward a discussion paper on matters that it feels need to be addressed by the legislature. Obviously the Attorney will need a little time to settle into the portfolio. The discussion paper will be produced over the next couple of weeks and we look forward to a response within a reasonable time thereafter. We cannot expect that all of our concerns will be met immediately. However the opportunity to discuss with government matters of considerable importance to laymen and lawyers is to be welcomed.

David Pannick in his book "Advocates" makes the following observations about the discourse between the legal profession and government;

"Freedom of expression is central to a liberal, democratic society. Only by exercising the right to discuss, dispute, and dissent can we hope to understand what is true and to identify what is prejudice, confusion, or plain error. Without the liberty to impart and receive information and ideas, we cannot take full advantage of our potential as autonomous individuals. And it is futile to boast of democracy if we are prevented from learning and then criticizing what those who govern us are doing on our behalf."

It is the advocate who adopts and asserts the primary value of freedom of expression. What takes place in our courts is the practical manifestation of freedom of speech. It is critical to the development of individual dignity autonomy and equality. Unfettered judicial discretion assists in stability by permitting the articulation of grievances and by promoting the peaceful resolution of conflicts. The presence of an independent judicial system and a legal profession dedicated to keeping it that way constitutes one of the essential foundations of a democratic society.

Well that might not be a brand new idea to most of you who read this. Unfortunately it is a new idea to many laymen. The persons level of education does not seem to have a lot to do with it. It is clear that advocates have not been persuasive in the cause of their own profession. Quite how that can be rectified is not an easy question to answer. Advertising is



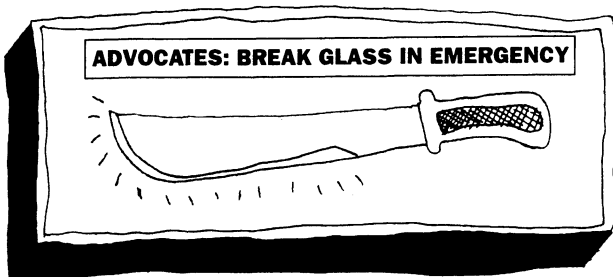
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unlikely to do the trick. The image of a cuddly lawyer is about as likely to draw public support as the image of a cuddly landmine. Any attempt at sincerity is likely to be met with an armed and aggravated response. The reasoned approach does have merit. At least it is evidence that we have a sense of humour.

Advocacy is a difficult trade and little understood. There are courses that purport to teach advocacy. But I think it is fair to say that stupid people generally make stupid advocates. Unfortunately the legal profession is not short of stupid people. On the other hand as Proust observed ability as a lawyer "does not imply any superiority in the other departments of the intellect, and a person of the utmost vulgarity, who admires the worst pictures, the worst music, who is without the slightest intellectual curiosity, may perfectly well possess great expertise in his professional capacity." It is unlikely that many lawyers would be sticking their hands up for that one.

Bad advocacy is not confined to bad advocates. One of the most egregious errors to be made by the advocate is a failure to take the obvious point. An example of that was provided by Lord Denning who regretted in Cassidy v. Ministry of Health (1951) 2KB 343 at 363 that it was "unfortunate that the principle which I have enunciated was not drawn to the attention of the court in (an earlier case) but that was my fault because I was counsel in the case." Lord Campbell acknowledged that during his time at the Bar he had "repeatedly given erroneous opinions." I don't quite understand how Lord Campbell believed the situation had changed once he had gone to the bench.

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What is the layman to make of all of this? Advocates up on their high horses one minute and buggering things up the next. No wonder the importance of the advocate in our society is sometimes a difficult idea to sell. What is in it for the advocate? Well money if there is work. Reputation if it can be maintained. The remote possibility of a judicial appointment with the luscious prospect of sabbaticals and a pension. One thing is certain for the advocate, he or she will find very few avid listeners when an attempt is made to relive an old victory. The advocate knows like a sportsman or an actor he or she is as good as that person's last performance. Chief Justice Cardozo said "reputation in such a calling is a plant of tender growth, and its bloom once lost, is not easily restored." In Darwin that plant is likely to be pruned with a machete.

So are advocates a bunch of poor misunderstood prats? Yes they are. But they demonstrate an uncanny skill at being prats. That is what the layman finds most difficult to come to terms with and so should the advocate.

More on the life of the advocate next month.

The Bali Conference

Preparations are starting to reach the frantic stage. This is going to be a good one.

The design for the t-shirts is in its final stage of completion. I can tell you that the image of a dingo is the conference icon. The Association has decided to pay homage to the unrepresented accused.

For goodness sake get your registration forms completed and sent in. Your collective approach to case management may result in you missing out on a great event. A least Nero did something while Rome burned. As the fire raged you lot would be lucky to be able to raise the subject in polite conversation.

The new Attorney-General for the Northern Territory, Denis Burke has indicated that if protocol allows he will attend the conference. He will be made very welcome. It is an opportunity for a large number of Territory lawyers to meet our first law officer and discuss matters of mutual interest.

We are still looking for local speakers. If you have an idea for a paper that you would like to present yourself or in conjunction with other people send a synopsis of the topic to

me at James Muirhead Chambers. We particularly want to encourage people with ideas that include multi media presentations, to give papers.

This conference, from the material that has already been put forward as speaking topics, has both a Territory and a national perspective. It has over the years become an important national legal event. It will remain so with your support.

Finally it is important to point out that the deal we have secured with the Hard Rock Hotel in terms of a package is fantastic. If you are thinking of staying elsewhere think again. The hotel is great fun and the atmosphere is not something you should contemplate missing.

Darwin River Rocks ain't got nothing on CLANT Bali 1999. The bonus is that you might learn something and meet interesting people. See you there.

G C O'Donnell Copyright Essay Prize

The Trustees of the G C O'Donnell Biennial Prize Trust are pleased to announce a competition for the 1999 G C O'Donnell Copyright Essay Prize. The competition is in honour of Gus O'Donnell, author, founder of the Australian Copyright Council and one of the fathers of copyright in Australia.

A prize of \$3,000 AUD will be awarded to the author of an essay displaying original thinking on a topic of the author's choice regarding copyright and the protection of the interests of authors.

This competition is open to any interested persons including authors, lawyers and students.

COMPETITION RULES

1. Entries must be unpublished essays which are the original work of the author. They may be on any topic regarding copyright and the protection of the interests of authors. The winning entry is likely to exhibit original ideas on issues of practical importance in copyright or on copyright theory.
2. Entries should be a minimum of 5,000 and a maximum of 10,000 words in length.
3. All entries are to be on A4 paper and typed, double-spaced. The original and two copies should be submitted. The name of the author and a short biography should be included on a detachable page. The author's name should not appear on the essay or copies.
4. The entries will be judged by the Trustees of the G C O'Donnell Biennial Prize Trust who shall award the prize in their absolute discretion. The Trustees retain the discretion not to award the prize in any year.
5. The prize will be \$3,000 AUD.
6. The prize is expected to be presented at a function of the Copyright Society of Australia.
7. The winning essay will be published in the Copyright Reporter, the official journal of the Copyright Society of Australia.
8. Entries must be received by the closing date 30 June 1999.
9. Entries should be sent to: The G C O'Donnell Prize Trust, c/- Centre for Copyright Studies Ltd, 245 Chalmers Street, Redfern, NSW 2016, Australia (tel: 02 9318 0659, fax: 02 9698 3536).