MOVEMENT AT THE STATION

Dr William James Jonas AM
Has been appointed: Acting Race Discrimination Commissioner at the Human Rights and Equal Opportunity Commission.

Ms Jennifer Margaret Boland
Has been appointed: Judge of the Family Court of Australia. She took up her appointment on 29 October 1999.

Justice Robert Marsden Hope AC, CMG, 1919 - 1999
Passed away on Tuesday 12 October 1999, aged 80 years. Born and educated in Sydney, NSW, Justice Hope had a distinguished career as a barrister, Queens Counsel and Judge of the NSW Court of Appeal.

Mr Steven Strickland QC
Has been appointed to the Adelaide bench of the Family Court.

CLE Topics for 2000

The Law Society CLE Committee is currently considering topics for CLE seminars in Darwin and Alice Springs in 2000. Any suggestions or comments would be welcome. Contact the Law Society on 8981 5104 or email: lawsocietynt@bigpond.com

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interpreter to understand proceedings taking place in a formal Anglo Australian dialect.

• In the particular context of the instant case it should also be appreciated that the requirement is for the accused to "understand the proceedings". Quite arguably this requirement involves more than the mere provision of an interpreter. Rather, notions similar to Anunga requirements that the prisoner understand the meaning of the caution is required.

• Finally, in relation to trials (as opposed to committals), while strictly obiter, the joint views of five members of the High Court that "[i]f the defendant does not speak the language in which the proceedings are being conducted, the absence of an interpreter will result in an unfair trial" is a refreshingly clear and explicit statement of the requirement at law.

Implications of Nguyen

The second case that of Nguyen involved a lengthy discussion by six of the bench of procedural matters under the Racial Discrimination Act 1975 (Cth.) and s. 75 (i) of the Constitution. However, the separate judgment of Kirby J contains significant discussion of the interpreter issue. The following summarises the elements of his Honour's judgment relevant to this discussion.

• The whole decision, but particularly the judgment of Kirby J, provides strong reinforcement for the principle espoused in Ebatarinja that there is a common law requirement for an interpreter if the accused cannot understand the proceedings. Justice Kirby's specifically refers to an accused being in a position to instruct counsel and his Honour mentions the translation of documents. Both these references suggest support for a broad meaning to be attributed to the need for the accused to understand proceedings. As noted above this may prove significant to an accused who can communicate only in an Aboriginal English dialect.

• While Nguyen may have weakened the prospects for agitating the interpreter issue by way of discrimination legislation it has greatly strengthened the prospects for judicial review and appeal based on the interpreter point. Justice Kirby's comment that it is the judicial officer's obligation to ensure a fair trial, by affording the accused the services of an interpreter would seem to provide significant scope to develop this avenue. Note also that Kirby J was one of the two judges that did not sit on Ebatarinja (Gleeson CJ being the other). Thus, in the space of a few months six of the High Court justices have been quite explicit about the need for an interpreter.

• Finally, mention should be made of the role of legal practitioners. Justice Kirby comments (at 136-137): "Where the accused is legally represented, the judicial officer can usually rely upon the legal representative to communicate to the court the needs and wishes of the accused."

• This comment has a number of implications. First practitioners must consider themselves under a professional responsibility to determine whether their client requires the services of an interpreter both for appearances and for the purposes of taking instructions. Such a determination of need requires the creation of some form of objective standard. Such a standard is necessary because a client in need of an interpreter (or their legal representatives) will often not be in a position to accurately determine their own language ability in the context of legal proceedings. Further, the employment of an objective language ability assessment would serve to establish the client's language ability in any later proceedings. It should be noted that the NT Legal Aid Commission and NAALAS have jointly produced a set of "Interpreter Need Guidelines" designed for use with Non-English Speaking Aboriginal clients to meet this need for objective language assessment. Contact NTLAC or NAALAS for more information about these.

• The second implication is blunter. Legal representatives performing functions not covered by the scope of the exclusion identified in Gianerelli v Wraith may be negligent if, when faced with a client

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