Chief Justice Martin speaks out

In an unusual step, Chief Justice Brian Martin defended the judiciary from inaccurate utterings by politicians. This is a transcript of his address made on June 1, 1999.

Those of you who have been involved in previous admission ceremonies will recognise that at this stage the Court normally adjourns. However, on this occasion it is incumbent on me to say something about a matter of current importance to the judiciary.

I understand that there will be soon introduced into Legislative Assembly by the Chief Minister and Attorney General a Bill to do with sentencing of offenders convicted of committing crimes in the Northern Territory.

Not having seen it, I am unable to comment on the content of the Bill, but such reportscomment on the content of the Bill, but such reports as are available indicate that it may ameliorate the provisions of the present mandatory sentencing, requirements to do with property offences, but on the other hand increase the range of offences for which the regime of fixing statutory minimum terms of imprisonment will be required of the courts.

I do not presently wish to say anything about the policy issues surrounding the removal of the jurisdiction from courts in relation to the exercise of discretion when sentencing, offenders. No doubt both sides of that debate will continue to be strongly agitated by others.

The reason I raise it is to ask that when honourable members are debating the issue in the House they refrain from the sort of language which was used when the original mandatory sentencing Bill was being debated.

In the context of that debate it was said by one member:

Any feeble excuse has been used by the courts as the 'poor old bugger me' syndrome, it has become stronger and stronger over the last few decades.

From another:

The epidemic of property offences, for stealing, has been helped not only by the soft, cuddly, pussy cat magistrates and judges, but also by second hand dealers who are not doing the right thing and are not law abiding.

Another criticised the courts for using warnings, good behaviour bonds, community service orders and other options that were available to the court, and another thought it quite irresponsible the way the judiciary had used the powers available to it.

During one debate there was a point of order based upon standing orders providing that no member shall use offensive or unbecoming words against the assembly or any member of the assembly or against any member of the judiciary. The Deputy Speaker ruled that there was no point of order, because far more unbecoming and offensive things have been said about members in the chamber, acknowledging that unbecoming and offensive things had been said about members of the judiciary.

I am sure I do not have a complete collection of all the attacks made upon the judiciary either in the Legislative Assembly or through the press, but in this same vein I would like to draw attention to what was said recently by a Minister of the Territory Government as reported in the Centralian Advocate. The Minister was quoted as welcoming the expansion of the legislation to include violent and sex abuse crimes and proceeded:

Women's groups often had expressed concern at the attitude of some members of the judiciary towards women in rape cases." 'They have been appalled to see offenders walk free on numerous occasions

I had a responsibility to check on those allegations and enlisted the aid of the Chief Minister in seeking details from the Minister of the attitude of the Members of the Judiciary towards women in rape cases which were complained of and of the offenders who were said to have walked free on numerous occasions.

I received a reply just a few days ago. The examples as to the attitude of members of the judiciary given related to reported comments by a South Australian Judge, by a Victorian Suprerne Court Judge and by a Victorian County Court Judge. There was only one reference to a Northern Territory judge taken from a case in 1993 where his Honour had occasion to remark in the sentencing process by way of comparison of the seriousness of the circumstances of that offence with others. That is almost invariably done in sentencing for any offence.

As to offenders walking free, the reply I received talked about "cases where the community perceives offenders to have walked free", a significant distinction to what was asserted in the newspaper report, which the Minister did not seek to correct.

There were only two examples given, in one the offender was sentenced by a judge of this court to three years jail to be released after six months, backdated to when he was taken into custody. The second matter related to a man placed on a bond by a Magistrate having been convicted of a second charge of indecent dealings with girls.

The offender was released on a suspended jail sentence. I do not venture upon the merits or otherwise of the penalties imposed in each of those cases, but simply point out that although going back to 1993 for reference material, 1 have been supplied with details of but two matters in which the offender is said to have walked free, and in one of them, he had spent six months in prison.

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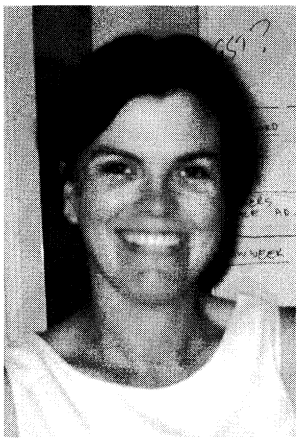
N.T. Young Lawyers

On May 22, 1999 the NT Young Lawyers held a Small Claims Seminar for the second year running as its contribution to Law Week. Committee members Sue Porter, Jason Schoolmeester, Danielle Howard and Sarah Hills presented information about procedural issues involved in making or defending a claim in the Small Claims jurisdiction, which included getting attendees to prepare their own statement of claim from a fictional scenario, identifying the defendant and conducting your own hearing.

The seminar was attended by approximately 15 people, who seemed to find the content and informal presentation beneficial to their needs. It is likely that this seminar will be a regular contribution by the NT Young Lawyers to Law Week each year.

Also in May our annual Advocacy Course was taken by His Honour Judge Riley and Rex Wild QC. It was very well attended by 22 people, all of whom are at various stages of their legal careers. It was a great success and enjoyed by all that attended.



Sarah Hills, President of NT Young Lawyers.

Up coming events put on by the NT Young Lawyers are as follows:

July 4

A cricket match at the Dinah Beach oval, live entertainment and a BBQ will be provided.

July 28

Costs CLE presented by John Neill

August 11

Damages and Quantum CLE presented by Ben O'Loughlin

August 25

Work Health CLE presented by Meredith Day

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Now I accept that parliamentary representatives have a responsibility to take up matters of concern to the community and to comment publicly on them including, where appropriate, to criticise the courts, but reckless and unfair criticism amount to a threat to this vital institution of our democracy.

I might mention, for example, that a few years ago there was a significant degree of criticism concerning a sentence imposed in a robbery case which was appealed by the Director of Public Prosecutions and the original sentence set aside and a significantly increased penalty imposed. The courts are quite capable of correcting errors of that nature and have been seen to do so.

I trust that on this occasion those debating this issue will supply adequate and proper particulars should they assert that the courts have failed to properly punish offenders.

Reliance upon intemperate and unjustified attacks based upon a misconceived community perception which has been generated by incomplete media reporting is not fair or just.

I respectfully suggest that when these issues are being debated it be remembered that the powers which are used by the magistrates and judges are powers given to them by the Parliament itself well knowing that the law is that those statutory sentencing options are not to be ignored, they are to be applied on a case by case basis taking into account all the relevant circumstances relating to the offence and the offender.

All that was expressly recognised by the passage of the Sentencing Act which consolidated all of the laws relating to sentencing into the one piece of legislation which came into operation as recently as July 1996. That is the law which has been applied.

The judiciary should not be criticised for applying the law prescribed by the Parliament in accordance with principles which must have been understood by the members when they passed that Bill.