

# PRO BONO PUBLICO

I suppose that we owe a lot to Latin. It provides us — as it did and does with the Catholic Church and the medical profession [inter alia!] — with the mysticism we relied on to distance ourselves from the hoi poloi (looks like the Greeks will have to take some blame as well!) and to prove to all and sundry that we are educated people, a profession and not associated with the mundane, except to pass judgment when some illiterate, poor 'punter' (umm, the sport of kings too!) crossed one of the many lines that were well described in documents written in Latin, or just written, really. That is a bit harsh, I guess, because it wasn't Latin that did all that, it was just the vehicle used, and we were the guilty party.

On the credit side, though, Latin also allows us to glorify selfless acts of the profession by the phrase *pro bono publico*. No one else has that sort of phrase, although those same sorts of acts happen all the time in many different ways and by many different people. We just have a high falutin' name for it.

Some of you may have noticed that the back of a junior's gown has a pocket. That was where grateful clients would place money in thanks for the service they had received. Of course, the barrister didn't know what the client put there (unless he had put the scales of justice to a different use) as money was beneath him. When he became a Silk the pocket disappeared because Silk's didn't need any money as they were generally rich beyond the dreams of a normal man (well, at least some things haven't changed) and didn't need the money. It was an honour to accept the title, and that was enough. Similarly, we all know about the free medical attention meted out by the local GP, and work done by the senior members of other professions.

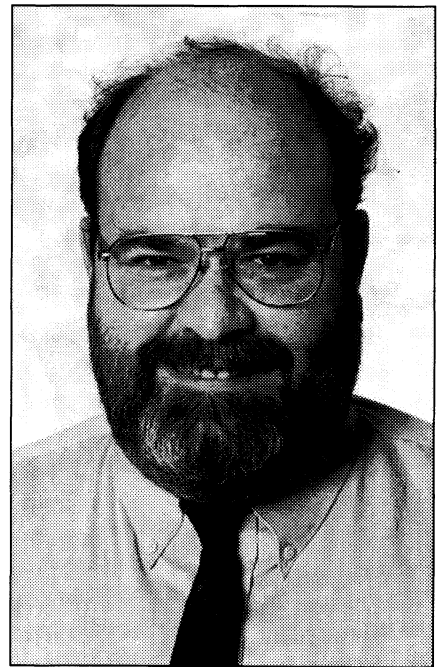
All this got lost in the gradual devolution of law from a profession to something more like a business over the last 40 years. I don't intend to mean that the change has come through bad motives, it has come about because the

world has changed. However, the last few years have seen the incidence of work for the people increasing. For the dark years, the work continued in the provision by the Law Societies and other organisations of legal aid and eventually that developed in to Government funded organisations that have provided legal assistance to a large range of people in difficult circumstances. It was the view of the profession, justifiably, that the contribution made by it to the provision of legal aid was enough, and for some time that was so. The provision of legal aid was expected by the public, and it failed to have the impact it once did. As stories of extraordinary large amounts paid to lawyers inured the public to the free services they enjoyed; the public came to the view that if lawyers were paid so much the profession could afford to offer their services. Legal aid came to be seen by the public as a right, rather than a gift.

But even that has not lasted. Recent times have seen the re-emergence of what are said to be pro bono services. No longer was free legal assistance a thirty minute interview with an (often) junior lawyer, or sometimes the harried advice and conduct by funded, but overworked legal aid organisations. Now it came with all the bells and whistles of a fully fledged legal action.

How did this come about? I think it was partly a reaction to the fact that as the funding for legal aid organisations was seen as politically expendable the source of those funds began to dry up, and partly the recognition by firms that good deeds publicised were better than good deeds unknown. As firms became larger and larger, they became more able to donate substantial services to the community as a firm, and not from the individual contributions of their members. Class actions provided that sort of publicity, as did conduct of actions for special interest groups.

Clients of the large corporate sort are more than comfortable with the thought that their legal firm/s contribute to the community. They, after all, are part of that community and the establishment



*Ian Morris, President*

and maintenance of their own credibility is important to them.

As pro bono work moved along that path, it began to receive its own credibility through interest shown by legal associations and the inclusion of lectures in legal conferences. It became not only something the profession might do, but something the profession **had** to do. But it had to do it in a structured way. The provision of these services became budgetary items, and the firms allowed a certain amount of time to perform them. There was advice from those at conferences on how to provide free services, examination of the clientele one would attract and the purpose for doing so. This approach has seen the approval of government. It provides the sort of legal aid that the governments cannot afford to provide, at least at this time. The Federal government has a real but unnecessary philosophical problem with the provision of services to some of the community. That is not to criticise that position, but simply to observe it. Having recognised the position, we can understand why this trend has received their tacit approval. No obvious financial assistance is provided to the firms who provide the service. The trend amongst legal firms to take on high profile legal work on a pro bono basis is a bonus for the government, or so it thought.

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It seems that every silver lining has a cloud, and for the Federal Government, and probably others as well, the pro bono trend has come back to bite it. The Tampa crisis is an example in point. The lawyers who have provided the pro bono service for the refugees have been criticised in the same way as we have faced criticism for our opposition to the mandatory sentencing regime: an unfair assertion that they have used the law to usurp the well being of the people. Interesting, isn't it, that work pro bono publico can be said to be male publico. Even worse, there is some suggestion that the Federal Government will seek costs from those representing the refugees. I guess it depends on the 'publico' the politicians say they speak for.

Therein lies the difference between the high profile work, and the everyday work that comprises our contribution to society. Neither should be preferred in opposition to the other as both, regardless of what politics are yours, are for the benefit of our public, for the independence of the law should know no preferences.

The new movement ignores the fact that many of the profession provide legal services for free, but, in the main, that fact is not known by the public. Pound for pound I would expect the old way exceeds the benefit of the new, but it is the new that takes the glory, and seems to be leading the profession to believe that free work should be provided in that way. I think that would be a mistake.

What should be done is that the publicity imbalance needs to be addressed. How that might be done is something the Society will work on during the coming year. In order for us to be able to do this, we need to have the profession provide us with the information to do so. We will be circulating a 'pro bono' questionnaire to all the profession so that we compile a pro bono register, and, with the permission of the members and the consent of the recipients, will be using the information in a campaign to bring awareness to the public of the benefit it receives from the profession.

So, get out your trumpets and let us hear your call!

# BIENNIAL AUSTRALIAN LEGAL CONVENTION

**Northern Territory legal representatives joined over 450 registrants at the 32nd Australian Legal Convention titled "2001 — The Century of Federation: rights and responsibilities of governments; rights and freedoms of individuals" held at the Hyatt Hotel in Canberra from 11 - 14 October 2001.**

The Convention followed a "meeting of meetings" format with a range of committees and associations gathering over the four day period. Plenary sessions included eminent speakers, the Hon Justice Michael Kirby, the Hon Chief Justice Murray Gleeson and the Hon Daryl Williams.

With the Convention focus on the Century of Federation, delegates were addressed on the challenges of cooperative federalism and the state of the judiciary and legal profession in a contemporary and historical context.

The Hon Justice Michael Kirby's opening address examined the Australian constitution and reflected on the impact of the events of 11 September on the world, its economy, its confidence and legal systems.

Chief Justice Murray Gleeson considered issues for members of the judiciary and courts, including costs and delay, the impact of information technology, judicial management and training, and guidelines for judicial conduct and review.

Federal Attorney-General Daryl Williams argued strongly for a truly national legal profession.

"In my view, the capacity of Australian lawyers to provide top quality legal services both domestically and internationally has been hindered somewhat by the lack of a national regulatory framework for the legal profession in Australia. Until we remove the barriers that prevent lawyers in different states and territories from practising on an equal footing, we run the risk of impeding the growth of the Australian legal profession both domestically and internationally," he said.

Law Council of Australia President Ms Anne Trimmer challenged attacks made on the legal profession by commentators. She highlighted the "extraordinary acts" done by "ordinary lawyers" undertaking pro bono work, arguing that the impact of the commercial world has not removed the "social trustee" characteristic of the profession.

Law Society President Ian Morris, Immediate Past President and Law Council of Australia (LCA) member Jon Tippett and LCA Executive member Steve Southwood QC attended the Convention. Steve Southwood was reelected as a LCA Executive member following the Annual General Meeting held on Saturday 13 October.

Other Territory delegates who attended sessions included Law Society Executive Officer Maria Ceresa, LawAsia Acting Director Janet Neville and Legal Aid Director Richard Coates.

"I didn't get to attend many of the plenary sessions," said Mr Coates. "I was overloaded attending a range of meetings. The first two days I was at a National Legal Aid meeting, followed by a LCA Access to Justice Committee meeting. I also went to an AIJA meeting and a LCA Criminal Law Liaison Committee meeting."

Mr Terry Coulehan, Master of the Supreme Court of the Northern Territory, attended a national meeting of Masters. President of the NT Bar Association Mr John Reeves QC joined other Bar Association presidents for a Bar Leader's forum.

Two lawyers from Cridlands made the journey to Canberra. Samantha Miles was present for the Equalising Opportunities in Law Committee meeting. Guy Riley joined the Property Group meeting.

Reinis Dancis, President of the NT Young Lawyers Association met with young lawyer representatives for a national meeting. His report of the meeting is on page 15 of this *Balance*.