

JOTTINGS ON THE BAR

Since the Bar Association has exhausted its supply of profiles of local barristers for this column, they have been given the task of filling it with other material. It has decided to call these musings "Jottings on the Bar" (to be distinguished from notes made on drink coasters late at night). President of the Association Mr John Reeves QC has supplied this first contribution.

Seasons Greetings

It is timely to begin by wishing you all a merry Christmas and a happy and prosperous 2002.

A very busy fellow

The Northern Territory Bar Association's Vice President, Mr Steve Southwood QC, is a very busy fellow. Along with Jon Tippett, he is a recent past president of the Law Society Northern Territory. In October 2001 he was re-elected to the Executive of the Law Council of Australia. At about the same time he was elected to the newly created position of Northern Territory Bar Association representative on the Council of the Law Society.

The Northern Territory Bar Association does not employ staff and has limited resources. It is only through the efforts of people like Steve Southwood that we are able to maintain our activities and presence.

An economist in our midst?

On another front, Lex Silvester, attended the recent Economic Summit in Darwin. Whilst we cannot claim him as the Northern Territory Bar's official representative at the Summit, we can at least claim to have had an unofficial presence at it. Lex is full of praise for the Economic Summit and its achievements. He is now talking up the link between economic development and the legal profession.

The NTBA website

The NTBA website is now up and running. It includes details about the NTBA, profiles of our members and the Bar Rules. For those interested in the

history of the Northern Territory Bar it includes an article which was kindly provided by Mildren J. This article has also been published in the Australian Bar Review. See (2001) 21 ABR 81.

Amendments to MACA — acquisition of property

In *Jenkins v Territory Insurance Office* (delivered 31 October 2001) Riley J. held that the amendments to Section 5(1) of the *Motor Accidents (Compensation) Act* which came into effect on 1 September 2000 and had the effect of putting a cap on claims for future economic loss by non-residents, involved an acquisition of property otherwise than on just terms. The decision is not particularly surprising given recent decisions of the High Court e.g. *Georgiadis v AOTC* and *Smith v ANL*. However, it is a local application of these decisions and it is likely to apply to other similar amendments to Northern Territory legislation. Meldrum QC and Gearin appeared for plaintiff and Southwood QC and McNab appeared for TIO.

The extensive jurisdiction of the Federal Magistrates Court

Ian Morris and I addressed the Federal Magistrates Court on the occasion of the swearing in of Stewart Brown as the Northern Territory's resident Federal Magistrate. In Stewart's 15 years in the Territory, he has spent some time at the Bar as a member of James Muirhead Chambers. His appointment is quite significant for the Territory.

The jurisdiction of the Federal Magistrates Court is quite extensive. It includes about 90 percent of Family Court matters (except annulments and property matters above \$300,000 — soon to be increased to \$700,000). With some limited exceptions, it also has concurrent jurisdiction with the Federal Court in bankruptcy matters, matters under the *Migration Act* and claims under Part IV of the *Trade Practices Act* (to a limit of \$200,000). With such an extensive jurisdiction, it is obvious that Stewart Brown FM, will have plenty of work to do. A word of warning for the uninitiated, Federal Magistrates are



John Reeves QC, President of the NT Bar Association

referred to as "Your Honour" and not "Your Worship".

A little about the Australian Bar Association

The Australian Bar Association is the peak body of the Bar Associations of each state and territory in Australia. The ABA holds approximately five meetings per year. The meetings are attended by the Presidents of the local Bar Associations from each state and territory. Its business includes the maintenance of a set of model conduct rules for the guidance of the members of all bars in Australia.

Dealings with the media

A rule that has recently received some attention in the ABA is the one that goes by the title "*Integrity of Hearings*". It deals with the publication of any material concerning current proceedings in which a barrister is appearing or has appeared as counsel. There have been some attempts in the ABA to make the rule less restrictive. The ABA has resolved to resist those attempts and instead to publicise the provisions of the rule and reinforce its importance. I will attempt to do so in this column.

What you can and cannot do

In summary, the rule prevents any barrister who is appearing or has appeared in a case from publishing any material concerning that case e.g. communicating it to the media, except:

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- pleadings or process which has been served;
- affidavits or witness statements which have been read, tendered or verified in open Court;
- corrected copies of the transcript of evidence given in open Court;
- copies of exhibits admitted in open Court; and
- copies of written submissions which have already been made to the Court and served on all other parties.

A barrister is also permitted to answer unsolicited questions about matters such as the identity of the parties and the nature of the issues in the case provided that the answers are accurate and “uncoloured by comment or unnecessary description”. In particular, the answers must not appear to express the barrister’s own opinions on any matter relevant to the case. A full text of the rule can be obtained from the NTBA website at www.ntba.asn.au.

Preserving the integrity of hearings

As the title to the rule suggests, it is aimed at maintaining the integrity of court hearings. Among other things, it aims to prevent trial by media with the opposing lawyers, or their surrogates, giving their opinions about the overwhelming strength of their client’s case and the media (almost always non-lawyers) usually presenting the most

scandalous aspects of the case to their readers. Based on what they are told by the media, the public then forms views about the case and who ought to win. When the court or a jury makes a different decision, the (often misinformed) public, then thinks that the Court or the jury, and not them, has got it wrong. The integrity of the hearing process is often adversely affected and support for the judicial system is often eroded in the process. The OJ Simpson trial in America is an extreme example, but there have been many examples in Australia, both in the civil and criminal trials.

Since I have only had a limited opportunity to touch on the workings of this rule in this column, I will return to it in later columns.

Combined Chambers’ Christmas party

On a lighter note, the combined Chambers’ Christmas party is an initiative of the NTBA. It was first held in Christmas 2000. It received a mixed reception last year. Many apparently preferred standing around the corridors of William Forster Chambers. This year we intend to try a different venue — Brown’s Mart. So if you are looking for yet another Christmas party or want to find out who receives the most scandalous prize for 2001, come along to the combined Chambers’ Christmas party from 5pm Friday, 7 December 2001 at Brown’s Mart.

FEDERAL MAGISTRATE SWORN IN

Law Society President Mr Ian Morris welcomed the appointment of Stewart Brown as a Federal Magistrate on behalf of the Northern Territory legal profession at the swearing in ceremony held at the Federal Court on Monday 5 November 2001. The following is a transcript of the President’s welcoming remarks:

In my respectful view, this Court could not have made a better choice to fill the position of Federal Magistrate.

Mr Brown has had a long and varied career in the law. He was admitted to practice in the Supreme Court of Victoria in 1982, and in 1986 he chose to move to Alice Springs, where he began an eight year period working for the Central Australian Aboriginal Legal Service.

In 1994 he came to Darwin to work as a barrister in James Muirhead Chambers, where amongst many notable appearances he made a considerable contribution to the law of public liability in the case of *Zoltak V Darwin Port Authority* a case in which he was briefed by me and in respect of the result of which I am not at all bitter.

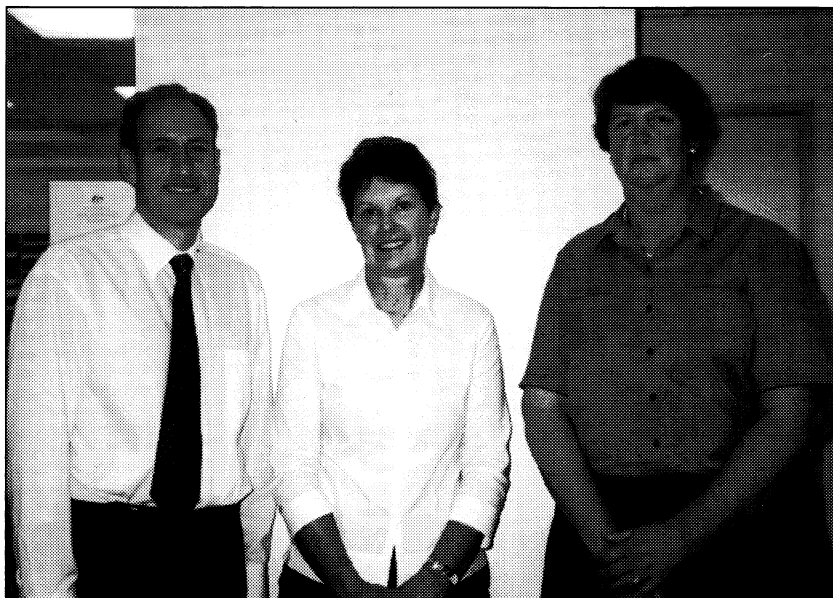
Mr Brown has demonstrated an ability to work in strange territory, with somewhat antiquated equipment and amongst people who talk in a language with which he is not familiar.

That, Your Honour accounts for the six month period during which he was Executive Officer of the Law Society.

When he had finished that task, he rode a bicycle from Rome to Barcelona.

Mr Brown’s task will mirror his penchant for travel, in that he will service all of the Territory.

His cyclic ability must therefore be of some comfort to the Court, in these troubled times of airline collapses and transport failures. In that event, and in all Courts in the Territory, with Mr Brown in the saddle, so to speak, justice may be delayed, but will not be denied.



Stewart Brown FM, with Chief Federal Magistrate Diana Bryant and Christine Mead FM