

FERAE NATURAE

A Happy New Year to you all. It is January. A time for resolutions and new beginnings and for the soft up and down mumble of the radio cricket commentary to infuse the background of daily life. Each of these things, dear reader, have combined to inspire this month's column.

At the Law Society we are busily preparing for the Opening of the Legal Year. This year marks a departure from what has occurred in the past. The Judges of the Supreme Court and the Office of Courts Administration have agreed to allow the traditional church service, which begins the Legal Year, to take place in the Supreme Court at Darwin and in the Courthouse at Alice Springs. For this we thank them.

I appreciate that we live in a secular age and that to many the idea of attending any religious ceremony is anathema. Certainly this view seems to have strong currency if the attendances at the church ceremonies in previous years are anything to go by. On the other hand attendances at the lunch which follows have burgeoned. Whatever is the state of your belief in the existence of a deity, I encourage you all to attend the ceremony, either in Alice Springs or Darwin.

I issue this invitation not out of any religious fervour but in the belief that the service offers us all an opportunity to reflect on our role as lawyers in society and our duties and responsibilities to our clients and the wider community. Ethics are after all at the core of our profession. The start of the New Year provides a pleasing symmetry for such reflections.

The Council considered that the change of venue from church to court, an environment with which you are all familiar, would encourage a greater attendance of the profession at the more solemn ceremonies associated with the Opening of the Legal Year rather than as usually occurs, the hordes descending later at the convivial lunch which commences later in the day.

By now, each of you should have received a flyer advising of the commencement of the *Legal Practitioners Amendment Act 2000*.

One of the major changes inaugurated by the new Act is that the Law Society is empowered to make professional conduct

rules, provided those rules are consistent with the general principles set out in section 44(1) of the amended act. The Law Society hopes to be in a position to release its new professional conduct rules to coincide with this year's Opening of the Legal Year.

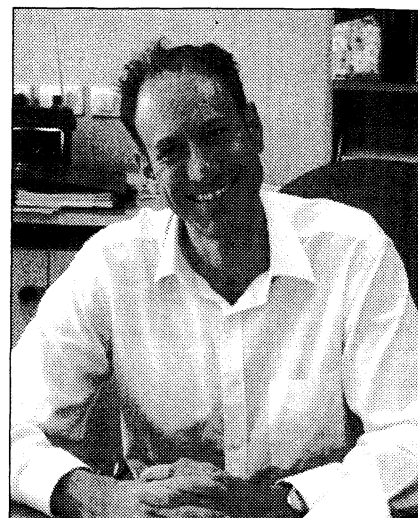
I invite each of you to consider section 44(1). The section provides the bedrock for the professional conduct rules. It is the ten commandments of legal life.

One concept which is enshrined in the section, which struck your correspondent and indeed the Council of the Law Society, is that of *fairness*. Legal practitioners are enjoined to act *fairly* for their clients and to act with *fairness* in all their dealings with other legal practitioners. What does this mean? The old proverb reminds us that *All is Fair in Love and War*. What about cricket and the legal process. How in the twenty first century is one to act fairly to one's opponent on the cricket field or in litigation?

Some of you may be familiar with the mild controversy that surrounded the dismissal of Justin Langer in a recent test match. It seems that he was caught by Brian Lara. Lara is a *walker*. If he knows that he is out, he walks. If he fails to take a catch, he tells the umpire of it. He does not seek to rely on the fact that the umpire may have been unsighted or mistaken. Lara's fairness is legendary. Langer is perhaps not a *walker*. He waits until the umpire has deliberated. If the umpire is unsighted and cannot rule or is mistaken in his favour, so be it. Cricket these days is a business, a very big business. In the words of that commercial for a multinational footwear manufacturer *there is no second*. The equation of cricket and fairness used to be legendary. These days, at least at the highest level, this equation is no longer so certain.

Practising the law is a business too. Those in power remind us constantly that it is so. Lawyers are told that they are in competition with each other and that business will follow success. What does *fairness* mean in such an environment? How is one to practise the standards imposed by the Act in today's competitive environment?

Practising the Law reminds me of Mr Micawber's advice about managing money: *Annual income twenty pounds, annual expenditure nineteen nineteen and six, result happiness. Annual income twenty pounds,*



Stewart Brown, Executive Officer

annual expenditure twenty pounds ought and six, result misery. The law is all about time limits. If you have a hundred days to do something and do it in ninety nine, all is well. If you do it in one hundred and one, life is miserable.

If I know my opponent is about to miss a time limit do I let him or her know or do I seek to take the point to the advantage of my client. What is the fair the thing to do? What would my client want me to do? Am I now being unprofessional if I keep it to myself. It is an interesting question to which I cannot claim to have the answer.

My Concise Oxford Dictionary gives nine definitions for *fair*, my legal dictionary gives only one: *a market granted to any town by privilege*. The Law Society had discussions with Government when the amendments were being considered and raised the difficulty of this concept of *fairness* in the legal context, pointing out the a lawyer's duty was not to be fair but to be candid to the court and to act in the best interest of his or her client. The argument did not find favour. *Touche*.

I leave it to you to think of examples in legal practice where being *fair* to your opponent may not be in your client's best interests and the dilemmas which may follow. I look forward to hearing from any of you who may have any thoughts to share in this regard.

My previous requests for feedback have fallen on deaf ears. In the next edition of *Balance* a letters to the editor section is to be included in the hope that this will spur members on to make contributions. You have each a licence to be controversial.

That's all for now. See you in church at court.