On court etiquette and judicial salaries

Etiquette is often regarded as simply a matter of good manners or politeness.

However, as the editor of the Australian Law Journal, Justice PW Young, points out in a recent article ((2002) 76 ALJ 303) there is more substance to it than that:

> ... *many of the points (about etiquette) are really about good advocacy, court craft, or duty. It is hard to segregate them strictly. Advocacy is the art of persuasion; politeness is often the way to persuasion.*

In his article, Justice Young sets out some 44 rules of etiquette. Many of them are obvious: be on time, be properly prepared.

Some are less obvious.

For example, Rule 13 deals with where Counsel should sit at the bar table: the plaintiff's counsel sits nearest the jury box, or on the left of the bar table (viewed from counsel's side of the bar table).

The following is a selection from Justice Young's 44 rules of etiquette:

- Rule 1 Always inform your opponent in due time if you are going to be late;
- Rule 2 Do not sledge;
- Rule 3 There is no duty to help fools;
- Rule 5 Do not mention more than two matters at a time;
- Rule 14 The bar table is not to be left unoccupied whilst the Judge is still sitting;
- Rule 15 Do not leave the court whilst the Judge is delivering an oral judgment;
- Rule 27 Generally speaking, do not ask for advice (from a Judge);
- Rule 32 See your opponent early;
- Rule 34 Do not talk about the case or the Judge in the lift;
- Rule 38 Do not disparage the Judge;
- Rule 44 Be gracious in defeat.

The details of each of the above rules and many others are contained in Justice Young's article.

It bears reading by all practitioners, whether it serves to inform for the first time, or to recall matters that may have been forgotten.

John Reeves QC, President of the NT Bar Association

JUDICIAL SALARIES

The Chief Justice of the Family Court of Australia recently arranged for a questionnaire to be circulated to senior counsel in Australia (not just those practising in the Family Court) seeking information about their incomes and the advantages and disadvantages they would see in taking an appointment to the bench.

The results are to be used to prepare a submission to the Commonwealth Remuneration Tribunal seeking a review of all judicial salaries at the federal level.

This will be of interest to Northern Territory Supreme Court judges because their salaries are generally fixed by reference to the salaries of Federal Court judges.

It seems that the level of judicial salaries is also of concern in the United States of America.

In his Year End Report for 2001, the United States Supreme Court Chief Justice, William H Rehnquist, warned that low salaries and tortuous confirmation processes were dissuading lawyers in private practice from seeking to join the federal judiciary. (See *Buckley R "Overseas Law" 2002 76 ALJ 163*).

It is of interest to note that the level of salaries paid to judicial officers in the United States in 2001 ranged from $US150,000 (for Federal District Court judges) to $US192,600 (for the Chief Justice of the Supreme Court).

By comparison, Mr Buckley points out that the leading Wall Street firms are paying first year associates, fresh from law school, up to US$145,000 in salary and bonus.

Furthermore, a second year associate who clerks for a judge for a year will start with a firm on a higher salary than the judge he or she clerked for!

Back home, I suspect that the results of the questionnaire circulated on behalf of the Chief Justice of the Family Court will show that all superior court judges in Australia are being paid salaries that are well below the income they could expect to receive practising as senior counsel at the Bar.

The results are also likely to show that the present levels of judicial salary in Australia are widely seen as a disincentive to the appointment of senior counsel to the bench.

Of course, there are many other reasons why individual barristers take appointment to the bench.

Nonetheless, I expect that we will all hear much more about these issues in coming months and years.