

Justice O'Loughlin, Barristers' Rules

Farewell to Justice O'Loughlin

As the year 2002 draws to a close, the Bar notes the imminent retirement of Justice O'Loughlin from the Federal Court of Australia. His Honour's departure from the bench in January next year will be a loss to the NT profession.

Before he was appointed to the South Australian Supreme Court bench in 1984 his Honour was a senior partner in one of the leading Adelaide law firms; O'Loughlin Robertson & Co, where he had a busy practice in taxation law. In those days he had frequent contact with the NT through many clients here who sought out his services.

In 1989 Justice O'Loughlin was appointed to the Federal Court bench. He was subsequently given responsibility for the Northern Territory Federal Court list and in that capacity he was able to continue his active involvement with the Territory.

He has been involved in some momentous decisions in NT legal history, including, for example, the Stolen Generation case of *Gunner and Cubillo V The Commonwealth*.

During his time on the Federal Court bench, his Honour has been a strong supporter of the local Bar and of having Northern Territory cases heard in the NT, where ever possible. He will be remembered for his courteous and quiet manner in court, for his quick legal mind and for the efficient way in which he dispatched the business of the court.

Away from the law, Justice O'Loughlin has a keen interest in horse racing. He boasts of having attended the Darwin Cup on several occasions without ever having picked a winner.

In his pre-judicial days, he was a part owner of several race horses but, as is the lot of most owners, without ever gracing the winner's circle.

He also has a keen interest in the history of World War II. He has an extensive collection of books about the role of the Australian forces during World War II. In retirement he plans to

take a tour of significant places where Australians fought during World War II.

However, his first travel plan is to take a tour around Australia, which will include visiting and re-visiting a number of places in the Northern Territory. So, we may be seeing more of him in the NT in the not too distant future. On behalf of the NT Bar I wish Justice O'Loughlin a long and happy retirement.

The new Barristers' Rules – binding on most barristers

Earlier this year I mentioned in this column that the Northern Territory Bar Association had adopted a new set of Barristers' Rules.

At present, the Barristers' Rules only apply to those barristers who are members of the NTBA. However, since about 95 percent of barristers in the Northern Territory are members of the NTBA, the new rules therefore apply to the vast majority of barristers.

In due course it is intended that the Barristers' Rules will be adopted by the Law Society as professional conduct rules under section 45A of the Legal Practitioners Act.

When that happens it is intended that the rules will apply to all legal practitioners who practice exclusively as barristers, so the rules will then apply to the other five percent of barristers who are not presently covered.

Highlighting particular rules

The Barristers' Rules are quite lengthy and detailed.

It is therefore not always possible to be familiar with every little aspect of them.

In the interests of promoting knowledge of the effect of the new Rules, I propose in this and future columns to devote a part of the column



John Reeves QC, President of the NT Bar Association

to highlighting particular aspects of the new Rules that may not be well known or fully appreciated.

Be wary of making comments about current cases in the media

Let me begin by focusing on rule 59 which is commonly referred to as the 'media rule'.

The gist of this rule is that a barrister must not publish his or her opinion about the merits of current court proceedings.

The actual heading to the rule gives a clear indication of its purpose: "Integrity of hearings".

The rule is intended to ensure that court cases are decided in court hearings based upon the relevant facts and law, not in the media based upon the opinions, usually slanted, of one side's barrister.

Such expressions of opinion are often the exact opposite of the court's assessment of the relevant facts and law expressed in the final judgment.

Just as a judge is not permitted to go to the media and explain why he decided a particular case a particular way, neither should the barristers representing the parties in a case do so.

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Duck for cover!!

The Northern Territory Women's Lawyers are funny birds. An item that created a great deal of interest at its recent meeting was the matter concerning the Argentinian Lake Duck. The supporting documentation – apparently stolen from the office of a “well known” twitcher in legal circles – was an article in the Australian Museum's nature publication on the said duck.

The article stated that the Argentinian Lake Duck has a penis a massive 42 inches in length. The penis is also equipped with a brush to sweep out the remains of any other drake that may have been there first. The meeting resolved to explore the feasibility of importing the duck from South America. Goes to show there is no such thing as a bad duck.



Above: one helluva duck!

Go-go-Federal-Magistrate!

Apparently our resident Federal Magistrate Stewart “The Undead” Brown had a very full Tuesday last month.

He started his day at 7am with a video link conference, sat all day with minimal breaks and delivered his last judgement around 7.50pm–8.10pm. He was THEN seen on a jog that apparently took him through to the start of work the next day!

Congratulations

To James Brohier (Commonwealth AGs) and Tracey on the birth of their baby girl, Georgia Grace.

To Penny Johnston and hubby Angus Duguid on the birth of their baby boy, Rueben Darcy Johnston Duguid.

Movers and Shakers

Lyn Bennett has moved to Hunt & Hunt from Ward Keller.

Tanya Ling has moved to Cridlands from Hunt & Hunt.

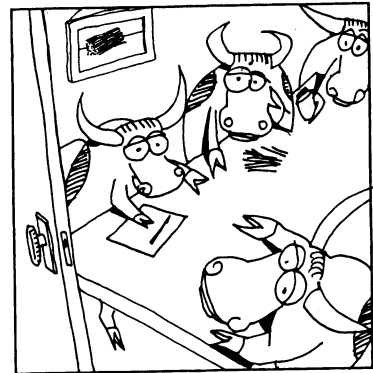
John Newman has moved to Cridlands' Commercial and Corporate Services Section from the NLC.

Peter Ward and **Jan Whitbread** are leaving Darwin for Canberra. Peter will work for Blake Dawson while Jan is going to the ACT DPP's office.

Bill Parish is leaving Ward Keller. **Cassandra Goldie** has left DCLS and Darwin.

Peter Tiffin has established a

The Muster Room



practice in the rural area in the fields of criminal law, civil litigation and administrative law. He is also prepared to accept briefs in family law matters. His contact details are ph 89881765, fax 89881713, mobile 0408841150, email ptiffin@ozemail.com.au and a court box at the Supreme Court.

Tom Walker, formerly of Noonans, is now in Adelaide at DMAW Lawyers. His details are: 3rd Floor, 80 King William St, Adelaide SA 5000, ph 82102222, fax 82102233, email twalker@dmawlawyers.com.au

Admissions and Mutual Recognitions

Admitted on 5 November was Andrew Marcus Schatz (Clayton Utz).

Mutual recognition admissions are: Jared Nathaniel Sharp (NAALAS), Gregory Francis Smith (NAALAS), Elisabeth Helen Armitage (DPP), Ruth Ellen Brebner (DPP).

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There are some exceptions to the media rule. They include:

- The ‘academic exception’ - a barrister expressing an opinion about current or potential proceedings in the course of genuine, educational or academic discussion on a matter of law.
- The ‘non contentious information exception’ - a barrister answering unsolicited questions concerning current proceedings provided that the answers are limited to information as to the identity of parties or witnesses already called to give evidence, the nature of the issues in the case, the evidence

admitted in the case, the nature of any orders made or judgment given including any reasons given by the court and the clients intentions as to any further steps in the case.

For most barristers, the ‘non contentious information exception’ is the only circumstance where they may find themselves speaking to journalists.

Even within that exception, barristers can run a number of risks if they speak to the media.

The risks include:

- Becoming identified with the client's cause and thereby compromising the barrister's independence.

- Allowing the media to unwittingly distort what the barrister says about complex legal or factual issues by editing out significant parts of the comments in the interests of brevity or simplicity.

In other words, the 30 second grab does not work well in this situation.

As is usually the case, this rule can sometimes work to the disadvantage of a party when that party's opponent is freely and inaccurately commenting on the case in the media.

The consolation is the court will always decide the case on the relevant evidence and law, not on the opponent's bleatings in the media.