

## Lack of expertise

Expertise is a curious thing. It gets a run in a lot of legal cases, where experts of every field of knowledge give evidence before a Court, but at the end of the case it is the Court that makes the final decision as to which of two or more experts it prefers, and in some more unusual cases, actually dispenses with expert testimony and gives its own decision.

I don't know whether the general public is aware that the Court elevates itself to the level of expert in many facets of knowledge. Even if they did I doubt any could explain the revenge that we as a profession suffer – everyone knows more about law and how to administer it better than we do. They are the experts, not us. That is until they need a lawyer of course.

Having said that, my unreasonable degree of paranoia raises its ugly head. The firm motto is "You can be paranoid, but you can be right". Maybe it is all a plot! Perhaps, like Diana's death, it ought to be the subject of conspiracy theories that are bandied about in those magazines that occupy waiting rooms.

Maybe I'm just getting a little twitter and bisted, as they say, but lately it seems "everybody" knows more about law than I, and the better portion of the Law Society council members, seem to know. I have discarded the possibility that those "everybody" might be right.

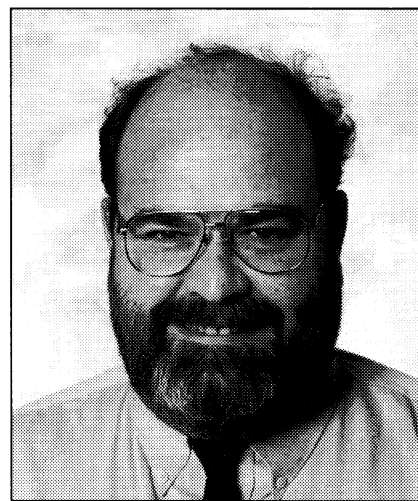
Perhaps I should mention a few of the "experts" to whom I refer. I should do so chronologically, but only from the last few years, otherwise I could be here all night. A good place to start is quite a few years ago when the government of the day was introducing the Work Health Act. I was on a committee organised by the Law Society with Riley J and Bradley CSM. Riley J and I met with the panel that was charged with drafting the legislation, and although we first tried to save common law, we said that at least we could help them draft the legislation so that it gave them what they wanted. We were told that we weren't needed, because the Act would exclude lawyers anyway. History has shown how unsuccessful they were!

More lately there was a good example when the then Attorney General asserted that the justice system was corrupt, but it turned out he didn't know exactly what he really meant, so that wasn't

much of a call. One can only wonder at the qualifications he had enabling him to make that penetrating observation. Then there were hundreds of experts writing in to the paper about sentencing and how you could properly jail someone from the newspaper report of the crime. Next were those people in NSW who thought that doctors ought not be responsible for their own actions, and should be protected by statute from lawyers who were mucking up the whole medical negligence system by representing people who has suffered from the negligent actions of doctors. Thank you Dr Phelps.

Enter Joe Hockey (who apparently is a lawyer) and he thought that no win no fee systems caused the blow out in public liability. After all, if there were a large number of claims then they must have been "invented" by the lawyers. Then the Insurance Council knew that lawyers were the ones that had blighted the green fields of insurance and they blamed no-win no-fee, and ambulance chasing. The *NT News* lightweighted in with an editorial about why all the insurance ills were the fault of lawyers. (By the way, I wrote to them criticising their editorial, but they declined to run my views.) At no time did anyone turn around to the legal profession and ask what our view was, and we had to try and get printed and published somehow, and I think the eventual exposure we had was in anticipation of some blood letting rather than actually seeking our views.

I thought everything had calmed down, there were a few supporters of the legal profession popping up. The odd journalist read the figures and statistics from the Australian Prudential Regulating Authority and saw that they did not support the allegations made against the profession, and even, in the words of Banjo, the ICA took a pull, saying capping damages wasn't the panacea they said it was (I secretly



Ian Morris, President

wondered if they realised their campaign was succeeding too well and if it kept going that way we would have a national compensation scheme that would be funded by the Government, a la NZ, and they wouldn't have a product to sell at all!) The ACCC's Professor Alan Fels, seemly our bete noir, declared that insurers ought to stop blaming everyone else for their own mistakes, and, gradually, the debate started to reach an even keel.

Then I was shown an editorial from the *Financial Review* about public liability. Now I don't read the *Fin Review*, so I don't know whether their editorial of 5 February was more gormless than normal, but I do know that we, as lawyers, according to them, should share the blame and do something about *IT*.

I thought about that. What can Joe or Joanne Lawyer do about *IT*?

When our representative bodies try to do something about *IT*, we were cried down as self interested, and no one believed what we had to say (see whine about paranoia, above). It would follow that if there were some suggested changes by the profession, those suggestions would also be ignored.

So what could they do?

Picture it: stuffy leather ridden office, table piled high with mobs of paper tied up in pink ribbon, uncomfortable chairs and even more uncomfortable people: "Yes, Mr. Smith, ordinarily your claim would be worth \$1m, but I see the share

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prices for XYZ Insurance are a bit low, so I urge you to take \$1/2m for the sake of the shareholders and the community at large"; OR

"No Mrs. Brown, I am afraid that although you have a valid claim and the accident has taken away your only source of income, I am unable to act for you on a no win no fee basis as I consider that to do so may encourage more people to make claims that may increase premiums to businesses, so I am afraid you will just have to live with your broken neck. I suggest you should buy a tin dish with the money that remains after you pay my fee".

My favourite would be:

"No Mr. Politician, although I agree that you were horribly defamed in that article, commencing defamation proceedings against the newspaper and seeking large amounts of monetary damage is an anathema to the proper operation of the unsaid doctrine of free speech and some poor insurer will have to pay so you should cop it sweet".

And a close second would be:

"It seems that the materials supplied to you have resulted in a fatal flaw in the latest model of the sports wagon, Mr. Manufacturer, but I urge you to consider not instructing me to issue proceedings in negligence against the steel manufacturer as that may cause Sycom to shiver enough to lead to an economic downturn. I also suggest that you bear the cost of reparations yourself and don't claim it on your insurance as that will increase premiums for the community in the long run".

In dark moments one might conclude that we are just flotsam on the tide of public opinion, thrown out to sea and then dashed on the rocks, fated never to have the power to swim against the rip, and no one in a funny quartered hat ready to come and rescue us.

However, I can only hope things are not as bad as that.

A good example of the problem I have discussed above is that the NT Government has had a competition policy review board examine our souls and in particular the Legal Practitioners Incorporation Act.

They have formulated a very lengthy report, and lo and behold, it has been dropped on the Law Society. It is intended legislation to establish multi-disciplinary practices be enacted before 30 June 2002, so as usual we don't have a stack of time to consider what it all means, circulate it to the profession and make some suggestions before it becomes law.

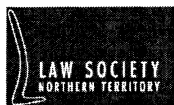
The more interested readers might now be hoping that we, as a Society, had had membership of the review committee that made the report but alas, we were **not** included in the Review Panel because we are self-interested. I quote from Page 6 of the report. "Members of the private legal profession are not part of the review team because they have an interest in the outcome".

Not one practicing lawyer was included in the Review committee. Not even a retired lawyer who has at least experienced what practising law is all about. So why were lawyers left out? After all, we are the ones who actually will be practicing in MDPs. Not only that, we were the ones that put MDPs on the agenda. You may recall the series of lectures we had a couple of years ago that brought all the national legal practice initiatives before the local legal profession.

So why were we excluded? I guess it's that perception again that we are all self interested, and people without legal qualifications or experience know more about the proper operation of the law than we do. But we are the ones who practice law, especially incorporated ones. On the other hand, the Board was a shining example of objectively un-interested people as all are employed by the Government. By contrast the Law Society of New South Wales was intimately involved in the drafting and consultation process for its incorporation act. As an aside this is the very Act the government is now looking at emulating here.

However the Society has now been asked to comment about a couple of regulatory matters. It's a shame that views are sought in such a limited way and our expertise goes unrecognised.

So as the sun sets on another build-down night, I contemplate asking the catfish what advice it would give. ①



## LAW WEEK IN THE NT

13 - 18 May 2002 - PROGRAM

**Launch by Attorney-General Dr Peter Toyne, Mon 13 May**

**NT Women Lawyers Legal Speak on 105.7 - Mon 13 May to Fri 18 May.** On Afternoons with Mike Prenzler.

**Careers in the Law expo - Tue 14 May, Wed 15 May, 10am to noon** Northern Territory University

**Red Cross talk - Refugees and the International Criminal Court - Tue 14 May, 5.30pm to 7.30pm, 9th floor, NT House. Registration via the Law Society.**

**Crime Tours - Darwin - Wed 15 May, Thu 16 May, 5.30pm to 6.30pm** Starting from the Parap Hotel. Hosted by Tom Pauling QC.

**Crime Tours - Alice Springs - Tue 14 May, Thu 16 May, 5.30pm to 6.30pm** Starting from the Alice Springs Magistrates Court. Hosted by John Stirk.

**NT Legal Aid Commission Stall - Wed 15 May, Thu 16 May, 11am to 2pm** Casuarina Shopping Square

**Supreme Court Open Day - Darwin - Sat 18 May, 10am to 2pm**

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