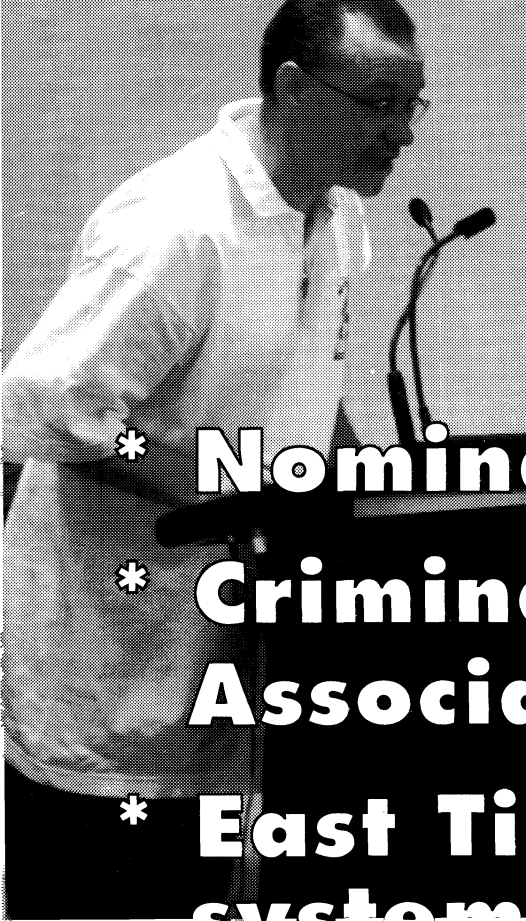


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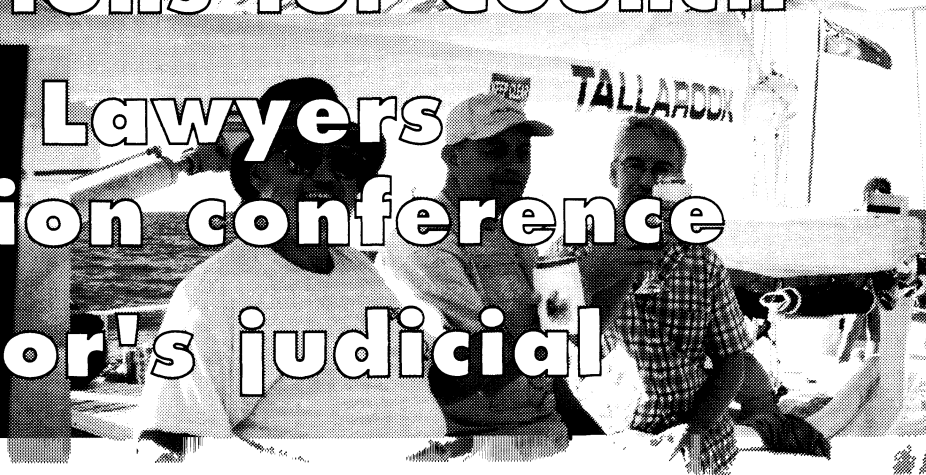
Edition: August 2003

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- * **Nominations for Council**
- * **Criminal Lawyers Association conference**
- * **East Timor's judicial system**



Home is the Catfish, home to the mud

I must say that I pen this article with mixed feelings. Mixed, only in the sense that they involve several levels of relief.

So much has happened over the past two years that it is difficult to remember precisely how the profession has changed.

The first and most significant development and one I am, probably inordinately, proud of is the way in which the profession has banded together after the destructive events that occurred in the first couple of years of the new century. If it were possible to give the profession a literary pat on the back, I now do so.

Not only has the profession been able to move on from the difficulties that were confronted, but it has also been able to meet the enormous changes that have been visited upon it.

The past two years have been very busy and have seen the implementation (against the wishes of the Society) of the Tort Law Reform package and the examination of the legal profession from the point of view of competition theory.

We have also seen a substantial amendment to the Legal Practitioners Act. For the first time, there is provision in the Legal Practitioners Act for the legal operation of Community Legal Centres, largely as a result of urging from them. Long overdue amendments to the Legal Practitioners Professional Indemnity Insurance Regulations have been effected and we have been forced to examine the path forward in relation to Professional Indemnity Insurance as we have ridden for ever-increasing wave of higher insurance premiums. We have been required to consider the possibility of abandoning our own scheme and establishing a new scheme or indeed, joining with another scheme.

The national travelling practicing certificate regime has also produced amendments to the Legal Practitioners Act. There are still some wrinkles in the legislation particularly in relation to the nebulous concept of "practicing" and where that "practicing" actually

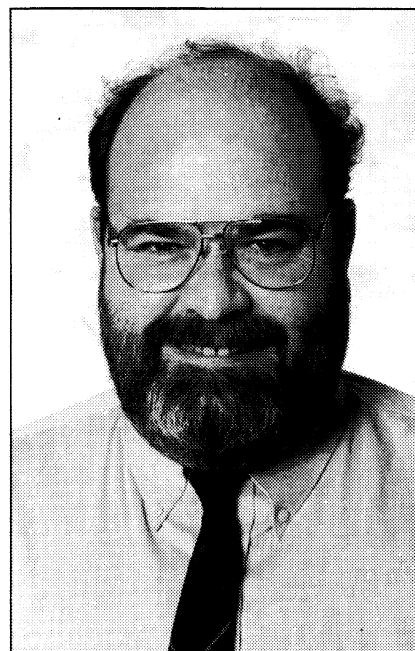
happens. This is also important to the Law Society because somehow we have to make a decision about it and keep a list of those who are "practicing" in our jurisdiction without necessarily being told by those who commence to practice in the Territory.

I have to say that over the past six years I've struggled with the Legal Practitioners Act and I think it is one of the most poorly drafted acts in the Northern Territory. Since I began to deal with it, there have been quite a lot of amendments that make the Act look like a liquorice allsort, each different colour representing a different style of drafting and coming from different generation of legal thought.

The last couple of years have finally seen the coalescence of thought necessary in the national legal profession to produce a draft of a National Practice Bill. The Law Society has examined the proposed model Bill and could find little wrong with it. The Bill is still in early form and has left a number of tricky questions for local rules and regulations to handle but even so, it is still in much better shape than our own Act.

I think there is some merit in seeking to adopt the provisions of the National Practice Bill wholesale and replacing our current Legal Practitioners Act. It will be a great deal easier to do that than to try to fix ours up and will have the advantage of keeping us directly in line with other jurisdictions. When, not if, the national gurus get their act together the changes will probably be forced upon us and we may as well act now when we have some time to properly consider the matter rather than wait until we have no time and no choice.

Over the same period we saw the partial repeal of the mandatory



Ian Morris, president

sentencing regime and, now, the introduction of legislation tailored to step back from the "life means life" bloody mindedness of the previous government. The trouble with riding the boundaries of fairness is that a return to the middle can be seen as such a long distance that any step towards the middle deserves recognition and acclaim. To think in that way is flawed. What if a rubber band behaved in the same way after it had been stretched? It would be thrown away. What if a necessary medical operation only saw a minor improvement in the patient's condition? It would be seen as a failure. A step towards only partial injustice is not a step towards justice: instead it is recognition of failure.

I have attended my last meeting of the Law Council of Australia and the Conference of Law Societies. The meeting of the Law Council was significant in two ways. The first was that we saw the end of the old unincorporated association and introduction of the new corporation, limited by guarantee. Coincidentally the occasion was precisely 70 years from the first meeting of the Law Council in 1933 although, the photo of that meeting showed it was nowhere near as cold then as it was when we had our meeting in Canberra.

continued next page

president's column

The second significant event was that the meeting saw a combined strategic planning meeting of the constitutional bodies and the sections of the Law Council as well as the executive of the Law Council itself. The purpose of the planning meeting was to consider the future of the Law Council and whether the largely unworkable internal arrangements of the Council (catfish view only) should continue into the future.

There were a lot of horses and gallons water but there was not a lot of drinking. It seems to me that any objective view of the future of the Law Council, particularly given the national trends at the moment, must be the establishment of a National Law Society, but to do so will involve a great deal of tricky work in dismantling the well-established local patches and having those who now inhabit them try to see their way clear to being part of a truly national body.

I wonder sometimes if there is an inversely proportional rule that links the size of the patch to be protected with the volume of opposition to it being changed. If so, I'm happy to report that the Law Society of the Northern Territory is the exception to the rule. I think that all members of our Council and the members of the Secretariat, looking back at the volume of work that has been done by us and could have been done instead by national body and looking forward to more of the same will agree that there are some considerable advantages in a National Law Society. At the moment, though, this is just another matter that the new Council will have to deal with in the coming months.

We have seen the implementation of a web page to host the nominations for the election. I am sure that everyone found that being able to see the people who were standing and having summary of their views and ambitions a step for the better. Once upon a time everyone knew everyone else in the profession, but those times are fading. Developments of the web page will continue so that it becomes a more useful tool for the legal

profession.

The introduction of the weekly "Practitioner" has been an extremely useful development and has proved so essential in informing the profession that I wonder what we used to do without it. But developments over the internet are not the only improvements in technology or its application that has occurred after the past two years. The computer system of the Society has been upgraded and the old software replaced.

By the time practising certificates expire we will see (figuratively) the operation of the new Law Society database that will enable certificates to be issued reasonably automatically. The data base will have a great effect on the ease in dealing with not only practicing certificates but also the administration of complaints, the application of a compulsory CLE program (if that eventuates, as I expect it will) and the registration of those things required by the travelling practicing certificate regime.

Within a short period of time, and certainly by the end of the year, the Law Society will have issued its new brochure on how to start-up a legal practice and moves will be afoot to amend the standard solicitor client contract to accommodate the new cost disclosure rules in the Legal Practitioners (Costs and Advertising) Act. Both of these will see some essential information given to the profession, and both will help increase the level of service that the profession can give the public, and a well set up practice will do much to reduce the risk of complaints and claims.

Just recently we have been required to deal with the new proposals for post degree pre-admission training. The Priestly 12 set out the requirements for training in either articles of clerkship or a course at an educational institution such as the Australian National University or the College of Law.

The new requirements involve far more substance in training than we are used to here and we have had to determine how these requirements might be met. At the moment the Law

Society and the Admission Board have recommended that all our clerks and judges associates enrol in one of the courses being offered and a selection will be made of the preferred course.

Those who do not obtain articles of clerkship will be able to enrol the course themselves but will be subject to the requirement of performing the outplacements. Judges associates will no longer be required to complete six months of articles after the cessation of their associateship. It is intended that there will be a number of sections run by the local profession to assist in the crossover between the law in the course and the local law.

As mentioned in my last *Balance* article the Legal Practitioners Amendment (Incorporated Legal Practices and Multi-Disciplinary Partnerships) Act is to come into effect in September 2003 and that will have a major impact on the operation of legal practices into the Territory. We have negotiated with the Department of Justice to provide an enabling section in the legislation that will permit the current Incorporated Practices to easily change into MDPs, should they choose to do so (as I think they will).

The MDP Act will also require that the Law Society assume more extensive powers in the regulation (and some might say interference) of these MDPs. However there will be another effect upon the operation of these new incorporated practices and that will be the requirement for compulsory insurance to a particular level and capping of liability at that level. The same changes can be expected in ordinary practices and the national thrust seems to permit the anti-competitive requirements of the current legislation to be translated into the ability to operate a corporation in the same way that any other profession can.

Finally, I have to thank some people for the help they have given me in the last two years. Without that help,

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Home is the Catfish, home to the mud cont...

the job would have been much tougher, and probably impossible. In the Secretariat, chronologically, Maria Ceresa, Julie Davis, Sam Willcox, Lorelei Fong Lim, Josephine Stone and Barbara Bradshaw. I also would like to thank the current members of the secretariat, Sonya, Zoe and Sharon.

None of the improvements that have occurred over the past two years would have been possible without the great assistance from the members of the Council. Eileen Terrill, Merran Short, Duncan McLean, Sarah Hawke, Michael Grove, Michael Grant, Glen Dooley and Sue Oliver (in no particular order) have all played major roles in the Council. My thanks to them, and my best wishes for those who stand

again to face the incredible workload the Council has to take on.

My thanks also to my partners for letting me have the time to be involved in the Society, and have graciously let my failings in the firm pass uncommented.

My greatest thanks must go to my wife, who has patiently listened to my ravings, has suffered the boredom of being my proof reader and has given me the advantage of her great common sense in dealing with some of the conundrums I have had to face.

Splash. ①

Bar farewells Chief Justice Brian Martin cont...

underscoring the tenuous nature of the Northern Territory's legislative powers.

On their retirement, Brian and Lorraine have plans to 'go bush' on extensive outback camping trips. Whilst they intend to divide their time between Adelaide and Darwin, Darwin will remain their home base. In his entry in Who's Who his Honour gives as one of his recreational pursuits; barbeque cooking – what better way to spend part of any retirement than cooking up a typical barbie on a peaceful dry season Darwin afternoon.

The NT Bar wishes both Brian and Lorraine Martin a very happy and lengthy retirement. ①