

# How do you address the Court?

Barbara Bradshaw,  
Former Chief Executive Officer,  
Law Society Northern Territory

**M**any new practitioners query about how to address the Court. This is of concern to a number of practitioners in what are small communities where you may frequently see a member of the judiciary walking their dog along a beach or shopping at a supermarket. Indeed, you may share a convivial glass of wine with one of their Honours at a Law Society social function or dismiss them during a cricket match.

A main issue is in Court where the Court of Summary Jurisdiction, Local Court, Family Matters Court, Supreme Court and various Tribunals deal with complex and often sensitive matters.

This issue came up in the recent NSW Supreme Court case of *Wilson v. Department of Human Services* [2010] NSWSC 1489 where judgment was delivered on 17 December 2010.

This was an intervention by the Supreme Court in a Children's Court matter where there were a number of sensitivities, and there was some criticism of the matter in which the

Bench and Bar Table had interacted with the mother in a case where the baby had been "taken from her" two days after its birth

Mr Justice Palmer, in delivering judgment, made the following comments.

**"106.** The second matter calling for comment occurred in the conduct of the case in this Court but it is not peculiar to this case – it has been observed by a number of Judges in the Supreme Court and it is currently the subject of discussion between this Court, The Bar Association and the Law Society. I refer to the practice of advocates, which seems to have developed over recent years, of announcing their appearances to the Bench or beginning the examination of witnesses with the salutation "Good morning your Honour" or "Good afternoon, Mr Smith". I am informed that this is a practice which

has developed in the Magistrates' Courts. The Supreme Court is of the view that it is a practice which should be abandoned in contentious litigations.

**107.** Lest it be thought that this view is the relic of a stilted and now-outdated judicial self-esteem, let me illustrate, by reference to what occurred in this case, how the practice can cause substantial misperceptions prejudicial to the conduct of a fair trial.

**108.** Mr Chapman, who is obviously a highly experienced and capable solicitor frequently conducting cases in the Children's Court, routinely greeted me with the salutation of "Good morning, your Honour" or "Good afternoon, you Honour" each time he announced his appearance at directions hearing and on each day of the trial. In



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accordance with the usual etiquette of this Court, Mr Moore of Counsel did not. Mr Chapman's apparent familiarity with the judge could have caused a misapprehension in the mind of Ms Wilson, already distrustful of the judicial system, that Mr Chapman enjoyed a relationship with the Judge which was something more than merely professional. Such a suspicion should never be allowed to arise. A Judge should not feel compelled to allay such a suspicion by rebuking an advocate for misplaced courtesy.

**109.** More importantly, Mr Chapman routinely began his cross-examination with the salutation "Good morning, Ms Wilson (or Mrs Wilson)". He was met with a stony silence. How could Ms Wilson or Mrs Wilson greet politely the man who was avowedly intent on taking Anna away from them by destroying their evidence? A witness in their position would inevitably feel it to be the most odious hypocrisy to be compelled to return the salutation with a polite "Good morning, Mr Chapman".

**110.** Mr Chapman, of course, noted the rebuff and, on occasion, directed a meaningful look at the Bench. I do not think he intended it, but the impression which could well have been conveyed to Ms Wilson and Mrs Wilson was that, even before Mr Chapman had begun his cross-examination, he had already unfairly scored a point against them because he had put them in the position in which he could say – eloquently, by a look, not even a word – "You see what rude and unpleasant people we are dealing with here, your Honour".

**111.** I wish to make it clear that, by these remarks, I intend no personal criticism of Mr Chapman. He conducted the case professionally and courteously, in what he saw to be the best interests of Anna. I am sure that, in using salutations as I have described, Mr Chapman was merely following a practice which is now routine in the Magistrates' Courts.

**112.** However, a witness should never be placed

in the position of having to greet politely a cross-examiner who is an avowed opponent. An advocate should never use this technique to score against a witness. It is far better to avoid the perception that this technique of discrediting a witness is being used unfairly.

**113.** For these reasons, the practice of salutations by advocates should be completely abandoned in all Courts in all contentious litigation."

These comments caused some discussions at a recent meeting of the Law Council's Professional Ethics Committee; there has apparently been some criticism of them in the Queensland Administrative Appeals Tribunal.

How would these comments fit in with, say, the examination of an Indigenous witness in a Bush Court? What should be said to both the Judge and Magistrate on the Bench, or a witness, likely or unlikely to be hostile?

The Law Society would appreciate any feedback on this issue. Please email your comments to Suzie Simmons, Editor of *Balance* at [publicrelations@lawsocnt.asn.au](mailto:publicrelations@lawsocnt.asn.au). ●