

By Michal Horvath

In this edition of *Precedent*, we tackle the issue of evidence. We are privileged to have the views of Justice Peter McClellan on the use of concurrent evidence in the New South Wales Supreme Court. It seems this is the way of the future. We also have the Honourable Michael Lavarch, the former Federal Attorney-General and the current chair of COAG consultative group on the National Legal Profession Reform, giving us an insight into where the reform may lead.

I have to confess to having been a little scared when I read some of the articles regarding covert searches and the admissibility of *ad hoc* expert evidence. Dorne Boniface deals with covert searches in New South Wales and, in particular, the frightening concept of the police having the power to gain access to your property just because you happen to live next door to a property that they want to search. Just as alarmingly, a practice is developing in New South Wales where judges are allowing police to give evidence about the identity of people in voice recordings, as well as the content of voice recordings, simply by having heard the tapes a number of times. Further, courts have allowed evidence consisting of police identifying people on videos based on their prior dealings with them. In contrast, an expert would be allowed only to point out the similarities and differences. Paradoxically, in some instances, the

defence team has not been allowed to lead rebuttal evidence on these issues. The practice seems very dangerous, and our authors, Gary Edmond and Mehera San Roque, advocate the cessation of this activity immediately.

Tom Goudkamp provides us with a very helpful summary of how to take evidence outside of Australia in personal injuries claims, an issue that arises from time to time. Going hand in hand with that is the use of interpreters and translators in court, and Gavin Rebetzke tells us how to go about doing that. And we must not forget medical experts: Ngaire Watson gives us an overview of how to utilise them effectively. We round off the edition with some more criminal law articles regarding the concepts of fresh memory under section 66 of the *Commonwealth Evidence Act* as amended, a case note on *Jones v The Queen* dealing with propensity evidence, and a reminder about principles involving the discretionary exclusion of evidence. ■

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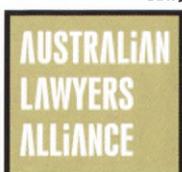
This issue of *Precedent* is cited as (2009) 93 PRECEDENT. ISSN 1449-7719 © 2009 Australian Lawyers Alliance, ABN 96 086 880 499
Trading as the Australian Lawyers Alliance, GPO Box 7052, Sydney 2001, DX 10126, Sydney Stock Exchange Phone: (02) 9258 7700 Fax: (02) 9258 7777
Email: enquiries@lawyersalliance.com.au Website: <http://www.lawyersalliance.com.au>

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