

# Judicial comment receives comment

Dear Ed,

I notice that the June edition of *Balance* contained an item concerning a comment by His Honour Mr Justice Wilcox on the need to establish some fair practice with regard to counsel's fees.

As one who has been bitten on two occasions now by southern counsel claiming cancellation fees in situations where: (a) no prior arrangements were made, and (b) counsel appeared to have a day's work waiting for them in any event, I feel I cannot but agree with the comments made by His Honour.

For my part, I believe there are situations where cancellation fees are fair and proper — particularly so when a large slab of counsel's time is booked so as to disrupt their practice if the case does not proceed.

On the other hand, however, there are many cases which do not run for the expected length of time, or do not run at all, but were expected to take up only a few days of counsel's time.

My experience with Territory counsel is that, generally speaking, they are busy (otherwise our opinions would be done much quicker) and that therefore there are few occasions when counsel cannot be profitably engaged in their practice when cases are can-

celled.

Let me say that I do not seek in any way to overturn the old concept of counsel being entitled to his brief fee upon the delivery of the brief — in many cases this is only charged by counsel in any event where they have put some time into the preparation of the matter for trial.

Apart from this aspect, much of the argument in favour of windfall benefits to counsel has dissipated with the modern practice of charging on an hourly and daily basis.

Subject to other arguments to be raised by members of the Bar, I express my view that the Society should not seek to take away from counsel their ability to earn fees on any day when they would normally expect to be able to earn income, but I do oppose the prospect of counsel being paid twice in respect of the same day.

If, therefore, the Society proposes to take up the matters raised by His Honour (and I recommend that it does), it is my suggestion that cancellation fees should only be charged where previously arranged and that those fees bear some relationship to the actual loss sustained by counsel in the conduct of his practice.

Hugh Bradley  
Ward Keller

## Work Health decision a lesson for all

In deferring liability under ss 85(1) and (7) of the *Work Health Act*, the employer must ensure the worker receives the deferral within seven working days after receipt of the claim. So held Mr Gillies SM in *Gavin v Westpac Banking Corporation* on 8 August this year.

The worker had delivered a claim on 12 April.

By letter dated and posted 22 April, the employer wrote to the worker's solicitors deferring liability under s85(7), seeking further medical information.

That letter did not reach the solicitors until 26 April and was not read by them until 29 April.

However, on 26 April, the worker commenced proceedings in the Court, seven working days after the date of receiving the claim, 12 April, having expired at midnight on 23 April.

After receiving the further medical information, the employer accepted the claim.

The only question remaining was one of costs of the proceeding.

In resisting an order for costs, the employer argued that the worker had commenced proceedings precipitately.

It said that at 26 April the worker did not have a cause of action or a right of recourse to the Court because the claim *continued on page 9*

## Problem caused by misunderstanding

A Tennant Creek couple who misunderstood a Building Inspection Report has an expensive termite problem in their newly-purchased home.

The couple assumed the Inspection covered the structural soundness of the property they wished to purchase. It didn't.

The Building Branch of the Department of Lands and Housing advised that an Inspection Report covers only

whether the structures on the plan have been issued in accordance with the relevant permits.

The couple's solicitor arranged the building inspection and, when the report was favourable, the couple assumed the house was structurally sound.

It was not until after they'd taken possession that they discovered they had a significant termite problem.

The couple has no claim against their solicitor or the Department of Lands and Housing.

Their experience should be borne in mind by solicitors and perhaps pointed out to home buyers before an Inspection Report is sought.

It may also be advisable that in areas of known termite infestation home buyers be advised to commission a pest check of the property.