

Trade practices CLE: a valuable seminar

by Peter Tiffin

A solicitor in Queensland who failed to consider the effect of the Trade Practices Act on litigation he was conducting for a client may be sued for professional negligence.

The solicitor brought the action relying on common law principles, and ignored the effect of s74 of the *Trade Practices Act* on the situation.

After the hearing, the client obtained other legal advice, and counsel has now been briefed to advise on an action against the first solicitor.

This was one of a number of cautionary tales to emerge at a CLE seminar on Consumer Law conducted by the General Practice Section of the Law Council in Darwin on June 19.

Principal speakers at the seminar were Professor David Harland and Neil Francey.

Professor Harland is the Challis Professor of Law at the University of Sydney.

Neil Francey is a barrister from Sydney and Chairman of the General Practice Section's Consumer Law committee.

He worked with the Trade Practices Commission from 1975-1980.

Four papers were delivered at the seminar.

The first was *Misleading or Decep-*

tive Conduct: the Breadth and Limitations of the Prohibition by Professor Harland who spoke to his paper.

The third paper, entitled *Loss or Damage and Time Limitation Problems* was a joint paper by David Bennett QC of Sydney and Ron Casten QC of Melbourne.

Neil Francey had been closely associated with the preparation of this paper, and he spoke to it.

The final paper, by Francis Galbally of Melbourne, was *Representative Actions, Joinder, and the Potential for Grouped Proceedings*.

The seminar considered the provisions of the *Trade Practices Act* (C'th) and the effect of the *Consumer Affairs and Fair Trading Act* (NT) which recently came into operation.

Professor Harland explained how the very liberal private rights of action given by the *Trade Practices Act* had had an extensive impact on the law of contract and the law of tort.

He gave examples of a number of situations in which action could be taken under the *Trade Practices Act* but not under the general law.

Question time included a discussion

of ways in which Part V of the *Trade Practices Act* might be used to defeat the limitation on actions imposed by the Motor Accidents (Compensation) Act.

Another topical issue raised at the seminar was passive smoking.

Neil Francey noted that recent surveys indicate that some 47 per cent of adults in the Northern Territory are smokers (the highest rate in Australia), so there is a greater exposure to other people's smoke here than elsewhere in Australia.

It is likely that this will lead to litigation in the Northern Territory in the near future, Mr Francey said.

The seminar, which was funded by the Law Council of Australia, has been conducted in all mainland capital cities.

Owing to financial restraints, only some authors have been present at each seminar.

The Darwin seminar was attended by some 50 local practitioners.

This was the second highest attendance (after Sydney) at any session of the seminar.

The Law Society has suggested that future national CLEs conducted by the Law Council should be planned to take in Alice Springs.

Bilingual lawyers wanted

From time to time the Society is approached by migrant groups or individuals for whom English is a second language.

Whilst we are not supposed to recommend any one firm, there are times when the person involved requires someone who speaks their native tongue or, at least, access to an interpreter who has a sound grasp of

English (or Australian) legal jargon. To that end, the Society would like to put together a register of bilingual practitioners.

If you are bilingual, please contact Jodie at the Society on 815104 to register your language(s).

This register will also be useful for translating pamphlets and information into other languages.

NOTICE

The Supreme Court library will be closed from 26 Aug-30 Aug subject to the building being handed over to the Department of Law.

Practitioners are welcome to use the Department's library during that time -- 2nd floor, Safety House, ph 897243.