

## Punning Practitioners

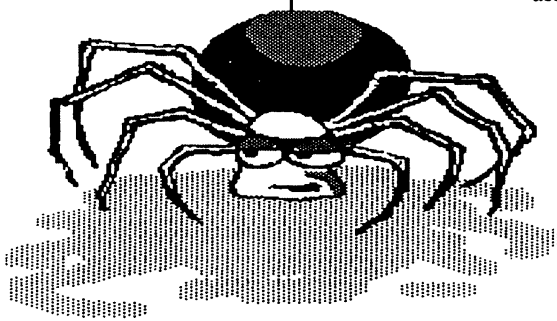
Quotable observation from perennial tennis attender, Alice Springs practitioner, Max Horton, on the retirement of German tennis ace, Michael Stich, after his epic semi-final on Centre Court this year:

"A Stich in time says nein."

...and this one from James Hebron whilst wondering why Margie Michaels ran into his ute (narrowly avoiding a picnic rug) on a recent camping trip:

"I guess she thought it was a Clayton's ute."

## THE SPIDER'S WEB



## Big Fuss About Nothing

The *Financial Review* of 8 August reports on a case recently decided in the Federal Court which rules on whether an assessment of zero dollars constitutes an assessment for an amount of tax.

Justice Jeffrey Spender, in deciding that it does, accepted the definition of zero given by the *VNR Concise Encyclopaedia of Mathematics* and said:

"In the domain of the integers the number line unarguably contains zero; that is, zero is a number, sum or amount, and an assessment of zero dollars is an assessment of a sum or amount of tax."

Something (or perhaps nothing) that we can all aspire to?

## What's Been Going on Ear?

The *Commonwealth Law Bulletin* (Vol 22, January & April 1996) reports on the current use of a new form of forensic evidence in the Netherlands – the ear print.

Police claim that use of this evidence has led to a number of convictions and that an ear print is as unique as a finger

print.

The police expert who developed the process, Mr Nico Dubois, says that burglars often listen before breaking in.

He and his colleague, Frans de Groen, researched similarities in ear prints for people of the same race and family,

before concluding that no oral organ is the same as another.

Mr Dubois continued on to suggest that many more body parts are unique and declared that they would also be looking at ways to use these in the near future.

*The mind boggles!*

## Australian Banking Ombudsman – Consideration of Family Court Matters

Practitioners should be aware that the Banking Ombudsman may not have jurisdiction to consider a complaint made by one of the parties to the marriage about the conduct of a bank where there has already been a property settlement.

The Ombudsman occasionally receives complaints that the conduct of a bank has wrongfully increased the liabilities or diminished the value of the assets of one party to a marriage. For example, additional borrowings by one spouse that may have been secured by the family home in circumstances that might amount to maladministration by the bank. In some cases one spouse has forged the other spouse's signature on security documents or credit card vouchers.

The Ombudsman will consider such complaints up to a limit of \$150,000 unless there has already been a Family Court property settlement and the spouse was

aware of the additional liability at the time of settlement. This is because, in order to investigate a complaint, the Ombudsman's office needs to be satisfied that the complainant has suffered a financial loss for which he has not already been compensated. In addition the Ombudsman does not have the power to reopen to inquire into a property settlement in order to ascertain whether the complainant has already received some benefit in return for assuming liability for the debt.

This means that it will be assumed, particularly where the complainant was represented in the Family Court proceedings, that his or her lawyers made sure that the allocation of property was on the basis of the diminished value of any equity or the increase in any liability.

Of course this is not always the case. A Family Court order may allocate liabilities as between the parties to the marriage but

that allocation will not bind a bank so as to prevent enforcement against both parties to an otherwise joint debt. In such cases, although the Banking Ombudsman may not have jurisdiction, the complainant still has the right to pursue the matter in a court. Practitioners may wish, however, to take into account the position of the Ombudsman by either ensuring that their clients receive a benefit in the settlement in return for assuming any liabilities incurred by the other spouse or seeking to resolve with the bank any such complaints before the property proceedings are finalised. If neither course is possible, it might be prudent to ensure that the property settlement includes an express statement that their clients reserves the rights to claim against the bank for compensation for the additional liability.

*-Australian Banking Industry Ombudsman Ltd*