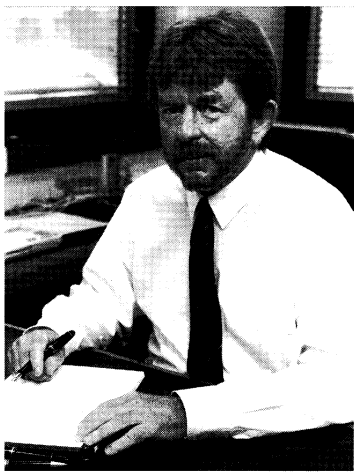
# Advocacy – the opening

*by The Hon. Justice Riley*

**"If you want to win a case, paint the Judge a picture and keep it simple".**
*John W. Davis*

Your first opportunity to present your case to the Court is in the opening. This is not an opportunity to be wasted. It will provide you with the occasion to set the scene and create a favourable framework for the proceedings. It enables you to describe in the most compelling way the case which is to be presented on behalf of your client. It follows that the opening should not be a matter of simply getting to your feet and presenting an unrehearsed or mechanical summary of the case to the Court.



*Hon. Justice Riley*

Preparation is again the key. You need to carefully consider what it is that should be said in the course of your opening. You should craft the presentation of that information in order to have the greatest impact. You should carefully select the words to be used and the order in which your thoughts are to be presented. You will, of course, open in a manner which reflects your pre-determined case strategy.

There is no formula to be applied in presenting an opening. What can and should be said will vary with the circumstances of each case. However there are some observations which will apply to most cases.

The first suggestion I would make is that, when considering what you will say and how you will say it, you put yourself in the position of the Court. In most cases the Court will have limited familiarity with the matter. The pleadings will have been considered and the Judge or Magistrate will therefore have some idea as to what the case is about but he or she will have only the barest of information. A jury will have even less information. Bearing that in mind it will be your role to put some flesh on the bones. You should keep in the forefront of your mind the fact that, because of your detailed preparation, you will have a thorough knowledge of the whole of the matter whereas the Court will not. The Court is unlikely to be familiar with the identities of the players in the proceedings, or with the sequence of events, or with the differing versions of events which may come from various witnesses.

It is necessary to deliver a succinct and, so far as is possible, instructive and engaging account of the case to be presented on behalf of your client. In a civil case of any complexity I suggest you use a chronology as an aid in your opening. I have previously discussed the use of a chronology for the purposes of preparation and I suggest that that document be adapted to make it suitable for the purpose of presenting it to the Court to assist in your opening. You should show your opponent the document prior to presenting it to the Court and you should obtain the approval of the Court for its use. Obviously you should not include in the chronology any reference which you are not in a position to prove or, alternatively, has not been agreed by your opponent. The chronology will enable the Court to obtain a ready understanding of the sequence of events and will provide a convenient method of reminding itself of the history.

If numerous witnesses are to be called it would also be prudent to provide a "list of players". By this I mean a list of people who may be referred to, whether witnesses or not, setting out their names and a limited amount of information which will serve to identify them. Descriptions should be non-controversial and should be shown to your opponent before being presented to the Court. When those persons are referred to in the course of your opening and in the course of evidence, the Court will have available to it a ready means of reminding itself who that person is and where he or she fits into the overall picture.

The use of a chronology and a list of players will also assist in overcoming the difficulty which arises from the fact that the information you are providing to the Court is received aurally which, of course, is a less than satisfactory way of conveying information.

In presenting the factual background to the matter you should do so in a logical (and that generally will mean chronological) manner. You should be as interesting and as concise as you can be. This will make your opening easier to follow. It is not necessary to present the background first. The order in which you present matters will be dependant upon the nature of the case and your determination of the most effective approach.

At this time it will be necessary for you to determine whether you should confront all issues in the opening. Obviously you will present your own case in a convincing way. Whether you should address your opponent's case will be a matter for judgment in the particular circumstances of the matter. It may be preferable to address difficulties with which you are sure you will be confronted in order to resolve some of the impact of those problems. Of course you may wish to leave those issues to see what your opponent makes of them. It is all a matter of judgment and anticipation. In the event that you choose to address your opponent's case you should only do so if it can be dealt with simply and you should not descend into argument at this time.

It is a mistake to open your case at a higher level than necessary. You may be confident that you can establish your case at that high level but why should

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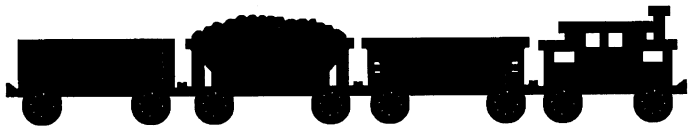

# MOVEMENT AT THE STATION

**Jenni Daniel-Yee**
is now at:
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Tel: 8999 7466
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**Tim Pritchard**
is now at:
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8 Manton St
Darwin NT 0801
GPO Box 3180
Darwin NT 0801
Tel: 8941 9952
Fax: 8941 3773
Email: edont@edo.org.au

**Mr David John Collier**
has been appointed as a Judge of the Family Court of Australia.

**Georgia McMaster**
is now at:
Summary Prosecutions - DPP
Tourism House
43 Mitchell St
Darwin NT 0800
Tel: 8999 7900
Fax: 8999 7575

**Jason Schoolmeester**
is now:
GST Policy Analyst
Treasury Department
Darwin NT 0800
Tel: 8999 6038

**Barbara Tiffin**
is now at:
Attorney General's Department
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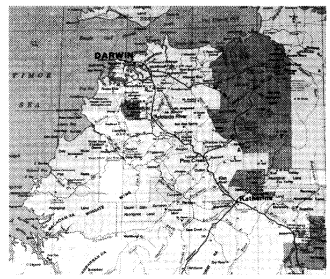
Darwin NT 0801
Tel: 8999 6320
Fax: 8999 7095

**Rigby Cooke and Read Kelly**
have merged from July 1, 1999
The merged firms will operate in Melbourne as Rigby Cooke Lawyers with 16 partners and 36 lawyers in total.

## Heading out of town?

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# Advocacy

## continued from over.

you take on the unnecessary burden? If you fail to achieve the higher standard that you have adopted for your client you can be sure that it will be the subject of embarrassing comment by your opponent. It can only reflect adversely upon your client's case. However if you set your opening at a moderate level and, at the end of the day, you achieve a higher level, then obviously your client's case is enhanced.

The opening is an opportunity to provide a favourable direction to the proceedings and to make a first and telling impact on the Court. You should ensure you make full use of that opportunity.

# Memorandum re default judgement for debt

This memorandum replaces the former memoranda of the Deputy Master dated 23 September 1988 and of the Acting Register dated 27 October 1994.

A default judgement for debt (Form 60G) shall contain only 2 sets of figures:

1. the gross amount of the debt, which will include interest if applicable (SCR21.03(1)(a)), and
2. the total amount of costs (SCR 63.08 (2)).

Where interest is to be included in the default judgement, a letter to the Registrar is to be provided detailing how the gross sum of the judgement from the date of commencement of the proceeding to the date when the default judgement is filed in the Registry.

Where costs are claimed, a breakdown of those costs is also to be included in the covering letter and if service fees are claimed a copy of the receipts for payment of those fees is to be attached. If the service fee exceeds $75.00 (for 2 attempts), an explanation as to why the greater amount is reasonable should be included.

Any default judgement which does not comply with this memorandum, and with the rules (e.g. requirements for affidavits proving service of the Writ on the defendant or the default of filing a defence), will be rejected.

Jenni Daniel-Yee
A/Registrar
27 May 1999