

# BALANCE

The Official Publication of the Law Society of the Northern Territory

## IF THE WIG FITS...

**To wig or not to wig. To robe or disrobe. These are issues being considered again by the local profession after Judges of the Northern Territory Supreme Court move to abandon wigs in civil court cases.**

So what is it about these expensive horse hair wigs? They've been around since the seventeenth century and are one of the many traditions brought to Australia along with the British common law.

Based on aristocratic dress of the time, they survived mere faddishness and have become identified, along with the jabot and gown, with the "legal profession".

It's difficult to imagine a novel, play or movie - let alone a cartoon - that does not use the wig as a potent symbol of "the law" - though ironically many members of the profession have little cause to wear them at any stage of their career.

In Australia the first move to drop the wig was by the High Court in 1988. While careful not to suggest that its decision was to set a precedent, it suggested the use of the wig was unnecessary for a court that was "constitutional and appellate ... and not a trial court".

Counsel appearing before the High Court continue to wear the customary dress of their "home" jurisdiction.

On similar grounds, Federal Court judges dispensed with the wig two years ago, with barristers following suit in February this year.

In both cases, the jabot has also been abandoned - but not the familiar black robes.

Judges and barristers have been wigless in civil cases in the Supreme Court of Tasmania since the beginning of 1998.

New Zealand judges and barristers no longer wear wigs.

Jurisdictions elsewhere in Australia have also been gradually moving away from the tradition of the horse hair wig. In Western Australia 77 per cent of the Bar Association members want to scrap

wigs in civil cases, while 53 per cent also want to abandon the horse-hair in criminal cases. By contrast, the majority of Victoria's 1250 barristers have voted to continue to wear wigs.

Indeed some have pointed to the importance of traditional garb in lessening "the visual differences of age, sex and clothing, and aid concentration on the real issues".

In particular, practitioners involved in criminal practice, especially in the area of domestic violence, have claimed that the relative anonymity imparted by the wig supplies protection for the practitioner.

As the High Court was dewigging 10 years ago, many Family Court judges were putting theirs back on for security reasons.

Many Northern Territory practitioners agree with this sentiment.

"It gives some degree of anonymity, especially in a bitter family trial or a criminal matter," Ms Merran Short lawyer with De Silva Hebron argued.

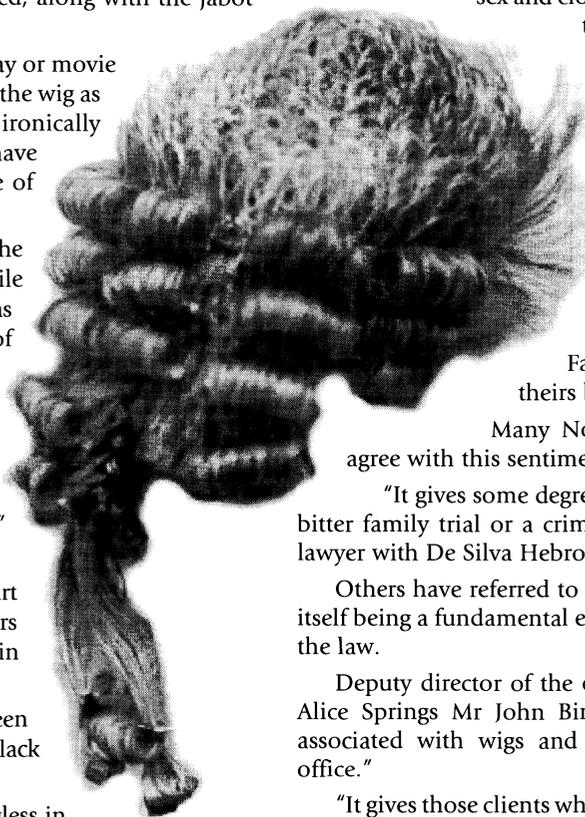
Others have referred to the importance of the tradition itself being a fundamental element in upholding respect for the law.

Deputy director of the office of Public Prosecutions in Alice Springs Mr John Birch is of the view the history associated with wigs and gowns reinforces "a sense of office."

"It gives those clients who come before the courts a sense of the gravity of the offence and some concept of the judicial process," Mr Birch said.

But Richard Coates, head of the Legal Aid Commission of the Northern Territory argued that the majority of people did not experience justice in the Supreme Court.

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# If the wig fits...

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"Let's get real. Most people deal with the magistrates court and there is no wigs and gowns there," he said.

The 1994 Sackville report into access to the law pointed to the wearing of wigs - and much else besides - as anachronistic and a barrier to popular embracement of the legal system.

"I would be happy to abolish wigs and gowns, the whole lot," Mr David Farquhar of Cridlands said. "My views are well known to the profession."

A survey of legal practitioners on court attire by the Law Society in the Territory in 1996 found that most of the profession want to alter the existing practise.



Of the 88 responses received, 68 indicated a desire for change with the greatest number opting for a judge wearing a gown, while counsel appeared in neat dress.

A large number opted for both the judge and counsel to wear gowns only, while a significant number suggested

both judge and counsel wear neat dress.

Less than one quarter of those surveyed wanted to retain existing practices.

The suggestion of Chief Justice Martin, three years on seems modest. It is at this stage limited to civil cases.

President of the Northern

Territory Bar Association, Colin McDonald QC, said the bar voted unanimously to follow the judges and abandon wigs in civil cases.

Unable to reach a clear consensus on the future of wigs or robes, a meeting of the Law Society council resolved to conduct research among its members.

In the meantime the Council considered that practitioners should follow the practise to be adopted by judges and wear wigs only when judges do.

There was broad support among councillors for retaining the full regalia in the interests of preserving tradition for ceremonial sittings, such as the opening of the legal year.

Have your say on page 7.

## Disrobing

(By A. Prosecutor, with all apologies and acknowledgments to A.A. Milne, "When We Were Very Young", "Disobedience", 1924)

Rex Stephen Leslie Wild,  
Commonly Wild QC  
Took great care of his wig and gown  
Cause he was DPP.  
Rex Wild said to his junior,  
"Jack" he said, said he:  
"You must come down to Sydney town  
to the High Court to junior with me"

Wojciech Wojciech Jacek Karczewski,  
Commonly known as Jack,  
Took great care of his leader  
Though he was sometimes slack.  
Wojciech Wojciech Jacek Karczewski  
Said Wild QC:  
"On behalf of the Crown with our wigs and our gowns  
we'll crunch them down in Sydney"

Rex Stephen Leslie Wild  
Had a pretty good day.  
Won hands down  
On behalf of the Crown

Two - nil, (so the pundits say).  
Rex Wild  
Said to his junior,  
"Jack" he said, said he:  
"This win has been great, we must celebrate;  
I'll take you out to tea"

Rex Stephen Leslie Wild  
And his junior Jack,  
Had a roast and a chance to boast  
On Cox and Odger's failure,  
Rex Wild was heard to say,  
expressions inter alia  
"We must be the best thinkers  
in the whole of bloody Australia".

Rex Stephen Leslie Wild  
And his junior Jack,  
Caught a Sydney taxi  
Hoping to make it back.  
But as the taxi dropped them off  
Down at Sydney airport  
Their wigs and gowns were whisked away  
They flew back with naught.

Rex Stephen Leslie Wild  
And his junior Jack,

Have been awfully quiet  
Since returning back.  
Rex Wild said to his junior  
"Jack" he said, said he  
"I cannot appear, this is awfully queer  
With no gown and no wig and no fear"

Rex Stephen Leslie Wild  
And his junior Jack,  
Came up with a brilliant idea,  
To fix up what the lacked.  
Rex Wild said to his junior  
"Jack" he said, said he:  
"Lets sponsor the dawning of the end of the mourning  
Of Queen Anne in the Territory"

Rex Stephen Leslie Wild  
Commonly Wild QC  
Had no wig and gown  
Though he was DPP  
Rex Wild  
Said to his junior  
"Jack" he said, said he "We're the best of the  
bloody great thinkers in the Northern Territory"