BALANCE
LAW SOCIETY NORTHERN TERRITORY

FORGING LINKS WITH THE EAST TIMOR PROFESSION

Darwin lawyers Richard Coates and Colin McDonald QC visited East Timor for three days in February to ascertain whether it was feasible for the Australian and Territory legal community to provide worthwhile assistance to the recently appointed judges and legal profession in East Timor. *Balance* spoke to Mr Coates about what he learned about East Timor from his trip.

"It was readily apparent that there is an overwhelming need for assistance at a professional level to help both the new judiciary and the emerging legal profession in East Timor," said Mr Coates, Convener of the Law Society East Timor Liaison Committee and Director of NT Legal Aid.

"There are certainly ways the Australian legal community and the Northern Territory profession can provide support and assistance," he said, speaking after three intensive days in Dili on 11, 12 and 13 February 2001 meeting with members of the fledgling East Timor legal community.

The court house in Dili is now home to furniture, including the witness box used by Lindy Chamberlain, from the old Darwin Supreme Court

The visit was designed to provide Australian lawyers and judges, including the members of the Australian Institute of Judicial Administration (AIJA), the International Commission of Jurists (ICJ) and the Law Society Northern Territory, with a current situational report on the issues of continuing need for assistance, the feasibility of it and where efforts might best be directed.

A report written by Mr Coates and Mr McDonald of their investigative trip highlights a number of the problems facing the East Timor judiciary and legal profession, including inexperience, case backlog and language issues. There are also specific issues for private lawyers.

"The lawyers in East Timor have previously had very little to do with the practice of law. People weren't encouraged to be involved in the practice of law under the Indonesians," said Mr Coates.

When the Indonesians left after the 1999 referendum there was a complete disintegration of the legal system; records were burnt or destroyed, court houses abandoned and the prison emptied.

UNTAET gave an early priority to establishing a court system. The administration of justice came under the Judicial Affairs

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MARCH 2001

DEPARTMENTS

INPRACTICE

FEATURES

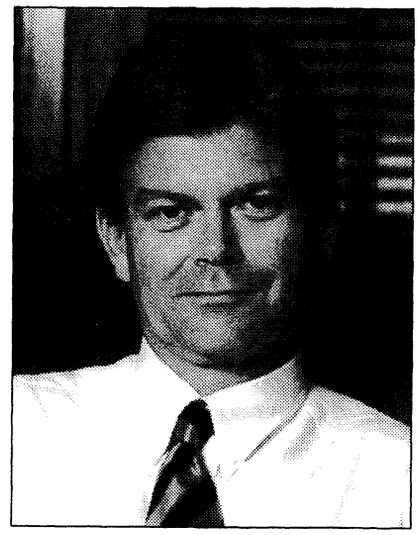
changed your work address?

Practitioners are reminded that pursuant to section 33A of the Legal Practitioners' Act, they are obliged to notify the Law Society of any change of address.

Please provide your change of work address details to us in writing by fax on 8941 1623 or via email: lawsoc@lawsocnt.asn.au

president's column

AROUND THE TRAPS



Jon Tippett, Law Society President

The media and juries

When Ted Kavanau was asked to describe the editorial policy of CNN he was succinct, "If it bleeds, it leads".

I have commented before how impoverished the Northern Territory's daily newspaper would be if it were not for the doings in the law courts. Stories of blood and mayhem, preferably involving a hatchet or a meat clever, are a regular accompaniment to the morning Weetbix in Darwin. Some times the enthusiasm of the press to capitalize on a particularly mouthwatering set of "facts" in the course of a criminal trial results in an application being made to the court for a discharge of the jury on the grounds of prejudice. The assumption has been to date that such reporting is liable to influence the members of the jury in their role of impartial judges of the facts presented in evidence in the court room.

However a recently released three year study into the impact of prejudicial media publicity in 41 selected trials in New South Wales indicates that the assumption that jurors are influenced by the media may be wrong. According to the New South Wales Attorney-General Mr Debus the study sought the views of juries on the subject of prejudice arising from media reporting and compared them with those of judges and counsel involved in the same trials.

The response of the jurors was that they routinely ignored judicial warnings not to read news papers and said they avidly followed the press coverage of the trial. Indeed jurors regularly brought the newspaper into the jury room where the articles were often discussed.

The study found that only three per cent of the jurors surveyed admitted to being faintly influenced by the newspaper reports. According to Professor Chesterman of the University of NSW and Law and Justice Foundations Justice Research Centre 83 per cent of jurors said publicity had no influence at all on their verdict. Apparently a significant proportion of jurors considered the press coverage inaccurate and that it failed to convey a good impression of what really happened in the courtroom. One juror responded by saying that newspaper reports are "a lot of crap normally". Another said "If you didn't know any better, you would have thought that the reporter was watching another murder trial, not ours."

Of course if you were a juror who participated in such a survey you would not be about to admit that you were a complete knucklehead and preferred the account of a journalist to your own assessment of the evidence. I would be inclined to think that the three per cent figure should have a multiplication sign immediately next to it followed by a question mark. However to parrot that famous quote from Oscar Wild "A cynic is a man who knows the price of everything and the value of nothing". It would appear that the value of the report is, in the words of Professor Chesterman, "a tick in favour of the current jury system, and while they didn't get it right every time, jurors had shown they were not puppets of the media".

There are some very good court reporters about and for my money Bob Watt of the *NT News* and Murray McLaughlin of ABC Television are two of them. Pity they did not have more influence in how the issues relating to the law in the Northern Territory are purveyed by the media.

The media is critical to the way in which our society functions. Its importance was recently adverted to by Justice Angel in a speech published in the last edition of this magazine. An alternative view was once espoused by that great lateral thinker Sir Johannes Bjelke-Petersen when he said; "The greatest thing that could happen to the state and the nation is when we get rid of all the media. Then we could live in peace and tranquillity, and no one would know anything". Now there's a thought. Its surprising a Territory politician didn't think of it first.

The politically pro-active lawyer

The Australian Plaintiff Lawyers Association (APLA) has been getting a lot of press recently. A recent article in *The Bulletin* under the rubric of "The Blame Game" discussed the apparently rising tide of civil suits in Australia. The article makes the observation that APLA is a politically pro-active organization in much the same way, but on a smaller economy of scale, as the American Trial Lawyers Association which has become the sixth most powerful lobby group in the United States.

In the 1999 Victorian election APLA campaigned against the then sitting Liberal Government in marginal seats on the platform that the government had removed common law rights to sue a negligent employer. When Labor won power those rights were restored. The Northern Territory, in a flurry of activity in the late 1980s, removed many rights to sue at common law. Perhaps our legal community should rethink the supine way in which we allowed that to happen. In a small community it is often the closeness of government and the munificence of government patronage that can encourage a professional lethargy to develop in the face of the imposition of pernicious political doctrine.

Nick Styant-Brown, a partner of the firm Slater and Gordon makes the point in the article that the asbestos litigation resulted in the company CSR offering

Continued over

an umbrella settlement for all miners employed by it. The history of the common law is full of ground breaking cases that have resulted in better work practices, improved legislative frameworks for employees and employers to operate under, and the dignity of litigants who have been able to take action against the party that caused them injury. The legislation such as that enshrined in our Work Health Act and our Motor Accidents (Compensation) Act which denies common law rights to members of the Northern Territory community disengages the legal process form being able to offer those things to litigants whose action may fall to be determined by that legislation.

The article observes that the Australian Plaintiff Lawyers Association has begun to set itself up professionally and that it will soon have six full time employees. It has an expert data base and specialist litigation subgroups which link lawyers with similar interests. The President of the Northern Territory chapter of APLA is John Neill of Messrs. Ward Keller. It costs $250 a year to be a member and according to everyone who attends the Associations annual conference is jam packed full of useful information. John Neill has all the details and perhaps many more you hadn't even thought of. Contact him if you are interested.

One thing that stuck in my craw as I read the article were some comments by one of those ubiquitous experts. Apparently this character Peter Cane who is head of the law school at the Australian National University's Research School of Social Sciences (an academic, who has studied the expansion of plaintiff law in Britain as well as in the US and Australia — wow!) reckons that "lawyerising" must be thought of as a business, not as a service profession. I suppose he thinks of his academising and theorising as a business but I wonder if he has a market for it. It was Thomas Jefferson who said that "Error of opinion may be tolerated where reason is left free to combat it". I wonder if Jefferson was so sanguine about people who got right up his nose?

Closer to home

By the time you read this you will have all received the bad news about our professional indemnity insurer going into provisional liquidation. No doubt it has been the subject of some grumbling here and there particularly as it has meant a further impost upon the profession in the Northern Territory. That is understandable. It is particularly unfortunate as much work went into trying to secure the cheapest deal the Society could for professional indemnity insurance cover. The events that have overcome HIH were entirely unforeseen. In the circumstances I hope you agree that the Law Society was bound to act quickly with the object in mind of ensuring everybody had proper insurance cover.

On a brighter note the office of the Commonwealth Attorney-General Daryl Williams QC has contacted the Law Society and advised that the Attorney is coming on a short visit to the Territory and has some time to meet members of the profession at a "sundowner" type event on 9 April next. We hope that a suitable wet season welcome can be arranged in a place that is likely to be dry and that doesn't test the roll-on deodorant.

The Commonwealth Attorney has displayed a sincere interest incoming to the Territory and meeting members of the profession for some time. Last August I attended a Pro Bono conference in Canberra hosted by the Attorney. I gave a paper as a representative of the Northern Territory Law Society which was published in edited form (perhaps to the eternal gratitude of readers) in *Balance*. Some other Territory practitioners also gave papers. During the conference Daryl Williams made the time to meet with me for a discussion of about half an hour. I felt it an honour that our profession was acknowledged and welcomed by him. I hope you feel we ought to return the favour. The secretariat of the Society will keep you advised.

Premises

To speak of the profession contributing funds for the purpose of purchasing a permanent home for the Law Society might be seen as a brave move at this time of difficulty with our PI insurance. However I feel that I must resist my natural penchant for cowardice and raise the matter now. Presently the Society is in fine premises that are the subject of very advantageous leasehold terms from the Government. That situation will not continue forever. There is the additional matter of a profession as small as ours losing significant income as a result of becoming part of the national travelling practising certificate scheme. We need to look to the future now, both in terms of establishing a viable income base, and developing methods whereby that can be implemented. A premises owned by the Society would inevitably further both objectives. In the short term I will be seeking a resolution from Council for a sum of money to be put aside from funds already held by the Society into a trust that has as its purpose the purchase of a building.

In addition to those monies there will need to be a fundraising drive to increase the sum available for the purchase. Some of you may have ideas as to what you would like done or not done as the case may be. I have in mind a premises that can be used by legal firms for business and functions. I would like to see all CLE's take place on Law Society premises. The premises would obviously be a base for an expanded range of services to be offered to practitioners both electronic and advisory.

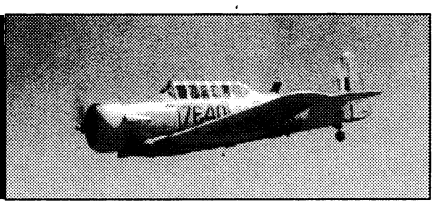
Like all ideas it is much easier to talk about them than to put them into practice. I have been of the view that the Society has been in need of securing a permanent residence for some time. The changes that are rapidly taking place in our profession seem to me to require that step to be taken sooner than later. I am optimistic that the profession, having given the idea its usual due consideration and rejecting it, will conclude that the future is upon us and that it needs a stout heart with equally stout ideas to deal with it. I am also acutely aware that the place where optimism most flourishes is the lunatic asylum.

Your comments would be most welcome.

The Council of the Law Society Northern Territory welcomes feedback and comments from Law Society members. Write to the Society c/ GPO Box 2388 Darwin NT 0801 or email: lawsoc@lawsocnt.asn.au

OTHER PASSIONS...

Ron Lawford takes us to the skies



Ron Lawford is the sole practitioner from Jingili with the intriguing letterhead featuring a drawing of something that looks likes a cross between a kite and the space shuttle. It is in fact a *Rutan Longez* aeroplane and Darwin residents became familiar with seeing it skimming through the skies above Casuarina and Vesteys Beach on weekends between 1986 and 1999.

At the controls was Ron Lawford and *Balance* spoke to him recently to find out more. **"I decided about the aeroplane in 1981 and went over to Oshkosh, which is the mecca for people interested in such things and I bought one in kit form. It turned up as big blocks of white foam and blue foam, red foam and bottles of epoxy resin and so forth. I started building it in 1983 under my house where my legal office now is. It took just under three years and about six thousand hours to complete."**

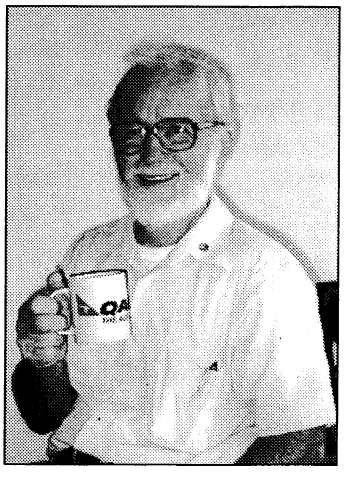
The aircraft has been decommissioned now and its new home is the Darwin Aviation Museum along with one of Ron's earlier aeroplanes, a *Skycraft Scout*. **"The *scout*" he says "is one of the very first ultra lights in Australia. Mine was number nineteen off the production line and when it was in action flew at nineteen knots powered by a 4.5 horsepower engine, which is similar to a victa lawn mower engine. It had a little propellor and no instruments whatsoever. I bought it in 1976 and it came in a cardboard box. I just stuck the wings and tail on and started the engine and it took off and flew. In hindsight it was underpowered for the air. The highest it got was sixty feet. But it was great fun to float around the wetlands where the old rice farm used to be at Humpty Doo and to be able to fly at ten feet watching the buffalo."**

Flying is a passion for Ron. He has been involved with aviation since the age of fourteen when he joined the Air training Corps. This led to a flying scholarship and the RAAF in 1958. He was in Darwin in the early 1960's flying *Dakotas* and *Vampires*. His pilots log book shows that he has spent 15,000 hours in the air as a pilot. No mean feat.

These days Ron combines flying with legal practise. He still holds a commercial pilots licence and is qualified to instruct at many levels including aerobatics. These days he describes himself as an aviation lawyer and estimates that half of his legal practise involves flying and aircraft in some shape or form, mostly in matters coming before the Administrative Appeals Tribunal involving the Civil Aviation Safety Authority or advising in respect of commercial documents to do with the purchase or lease of aircraft. But law will never totally supplant flying in Ron's life. **"Flying is a release from the pressures of legal practice. It is a totally different ball game. There is no physical risk in the law unless you get belted up by an irate client. But in flying you always have to be aware that things that can go wrong. There is a different mind set to practising the law. There is nothing to compare with the view from the cockpit when you can fly from 10,000 feet above the ground or down to 500 feet or even 10 feet if there is a good reason to do it. I never tire of looking at the cloud scapes or down to the ground where I can see all sort of things which the average Australian just does not see."**

Ron describes himself as both an open cockpit pilot and a modern one. His latest aircraft is a RV6 which is equipped with all the latest computer gismos and global positioning systems. But at heart one can't help but think that Ron's heart is more in a world of wooden struts and ailerons and the romance of early aviation. Apart from the RV6 which is set up for long haul flying he has been flying a *Harvard* of late. **"The *Harvard* is lots more fun to fly. It was designed before World War Two and was the advanced trainer of the war. Its got a big engine and makes lots of smoke when you start it up. But it would be hard work flying one of those to Perth."**

Another time and another place for Ron Lawford? **"Definitely the period from 1935 to 1950. That was a fascinating period. A period of rapid change. Pilots went from flying craft made of canvas and wood to flying supersonic jets in a period of just fifteen years. And of course during World War Two there were all sorts of interesting aeroplanes. I think if I could be guaranteed survival I would go back and fly then!"** And the ultimate aeroplane? **"The spitfire, of course. I'm still working on flying a spitfire."**



FERAE NATURAE

I had a query the other day from a woman who was completing a law degree in another state. The query was whether her degree would satisfy the academic requirements for admission to practise in the Northern Territory. After a brief chat I said that as far as I could see her degree would satisfy the requirements of the *Priestley 11*. I might as well have been talking double dutch or serbo-croatian.

She had no idea what I meant.

The *Priestley 11* are the eleven areas of study, a knowledge of which is the academic basis for admission to practise as a lawyer. In the Northern Territory they are set out in Rule 10 of the *Legal Practitioners Rules*. Readers will be familiar with each of them. They are the building blocks of a law degree: Torts and Contracts; Property and Equity and so on.

I myself remember weary hours in dusty lecture theatres hearing the drone of lecturers trying to teach me the rule in *Foss and Harbottle* and the intricacies of equity. It was all very dry. At the time it did not seem to have much to do with the actual nuts and bolts of the practice of the law nor, when I come to think of it now, much to do with advising a client about a tricky work health claim or a difficult assault charge or indeed the running of a busy practise in either Alice Springs or Darwin and certainly nothing to do with the difficulties of actually making a buck or allocating time in a legal practice.

The relevance of much academic training to the actual practise of the law has long been questioned. But the *Priestley 11* have remained more or less intact now for several generations of lawyers. It may not always remain so.

The Australasian Professional Legal Education Council or APLEC for short has suggested sweeping changes to the *Priestley 11*. APLEC has recently released a discussion paper in this regard. It has the rather forbidding title of *Statements of Competency for Entry Level Lawyers*. It makes interesting reading.

In essence APLEC has suggested a minimum of nine areas of study to replace the *Priestley 11*. These will encompass in broad brush, the skills, values and practical abilities which each person, who wishes to practise as a lawyer, must have to be able to secure entry to the profession.

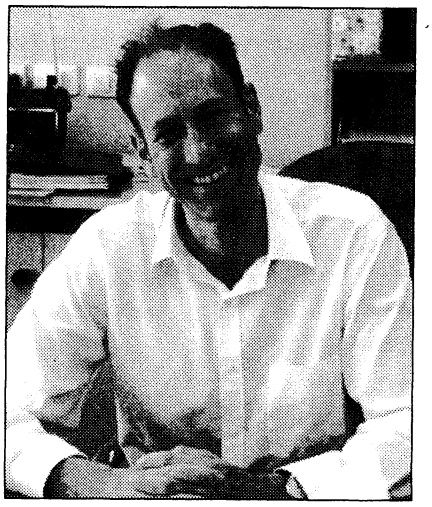
At admission would-be lawyers would have to be able to demonstrate competence in skills as set out under such headings as : *Problem Solving; Lawyer's Skills; Work Management & Business Skills* and *Trust & Office Accounting*. The new emphasis in legal training will be on practical and relevant skills delivered to the student in an innovative and flexible manner.

In practical areas would-be lawyers would have to demonstrate knowledge of three core subjects namely *Civil Litigation Practice; Commercial and Corporate Practice* and *Property Law Practice* as well as one each from two groups of optional subjects. Firstly one from *Administrative Law Practice; Criminal Law Practice* or *Family Law Practice* and secondly one from *Consumer Law Practice; Employment & Industrial Relations Practice; Planning and Environmental Law Practice* or *Wills and Estates Planning*. The essential ethos and values of the profession would be inculcated in candidates for admission by them having to study a subject to be entitled *Ethics and Professional Responsibility*.

These topics may become the *APLEC 9*, required in future as the basis for admission to practise. These are major changes and feedback has been invited from the profession by the Legal Practitioners' Admission Board which in turn will report to the Council of Chief Justices. A copy of the APLEC paper is available from the Law Society to any interested member.

In June of 1994 the Northern Territory Law Reform Committee reported on the need for a Suitors' Costs Fund in the Northern Territory. At that time the Committee noted that there was such a fund available to litigants in every other state and territory as well as in the Federal jurisdiction but not to litigants within the Northern Territory. That remains the case to this day.

The purpose of such suitors' costs funds will be well known to readers. It is to relieve litigants of the burden of costs imposed on them as a result of erroneous decisions made in respect of questions of law in lower courts and to compensate litigants for costs thrown away as a result of proceedings aborted through no fault of either party. The purpose



Stewart Brown, Executive Officer

is essentially to reimburse litigants for costs incurred by them through no fault of the parties to a particular piece of litigation.

The Law Reform Committee recommended that a suitors' cost fund be established in the Territory remarking in its report: *that the need to create a discrete and independently funded scheme which will reimburse litigants for costs incurred as a result of matters over which they have no control, is beyond question. This need has been given legislative recognition in all states in Australia.*

The recommendations of the Committee have languished. Perhaps it is time for the issue of a fund for the Northern Territory to be resurrected and in particular the question of how it is to be funded to be considered. Some readers may be aware of injustices that have been occasioned to litigants through the lack of such a fund and, if this is so, the Society would be grateful to hear of them and indeed to receive any submissions or comments from members in respect of the issue.

This is my last *Ferae Naturae* for *Balance*. Maria Ceresa resumes her duties as Executive Officer at the beginning of April. It has been an interesting and enjoyable six months for me. In that time I have had to come to grips with issues as diverse as National Competition Policy and the Travelling Practising Certificate Scheme but by far the most novel request came from the producer of a Danish television program. He was searching for solicitors in Australia who were having difficulty tracing lost Danish heirs to unclaimed estates. The show - I'm not sure if it ever made it past the drawing board - was to be called *Find A Fortune* and was to be televised live. So anybody out there looking for a potentially very, very rich Dane, Great or otherwise, please let me know and I'll put you in touch.

LINES IN THE SAND

This month's *Lines in the Sand* is supplied by Ruth Morley, a lawyer at Pitjantjatjara Council, which is based in Alice Springs and services the Pitjantjatjara lands in the Northern Territory and South Australia. The purpose of this article is to briefly suggest some useful amendments to the Community Welfare Act 1996 (NT), by comparing it with the Australian Capital Territory's' Children and Young People Act, 1999. There are four primary areas for consideration.

Indigenous placement

The Children and Young People Act, 1999(ACT), states that the level of care Aboriginal children require is to be assessed using the Indigenous Children and Young People Principle. The Principle provides Aboriginal children must be placed with either: a member of their family according to custom; a member of their community in a relationship of responsibility to them; a member of their community; or an indigenous carer. This Principle is used after submissions have been received from any relevant indigenous organization and from the children's community about traditions and cultural values (s.14).

Where none of these options are suitable, Aboriginal children may be placed in non indigenous care, but reunion with their family is the primary care objective, and continuing contact is ensured (s.15(2),(3)).

The Community Welfare Act 1996 (NT) provides that every effort (non-descript) is made to arrange custody within an Aboriginal child's extended family. Where this is not possible, after reference to the child's family and relevant Aboriginal welfare organizations, the department (FACS) places a child with other Aboriginal persons, or in geographical proximity to their family, or with non-Aboriginal people who undertake to encourage and facilitate contact between the child and their kin and culture (s.69).

The purpose of the ACT Act is to facilitate an understanding of the child and their environment. The NT Act recognises that Aboriginal family, community and organisation views may be significant, but fails to provide them with any paramountcy.

Planning care

The ACT Chief Executive (CE), responsible for the Administration of the Act, must assist by providing: services to strengthen and support families, help to their community to set up programs for protection and reducing risk to children, information about the Act and its operation (s.26).

For Aboriginal children, and their families, once investigated, the CE will then provide accommodation, financial support, counselling, suitable education, training and employment, medical treatment, recreation, regular care planning involving family and community members and the child, and an explanation in language to Aboriginal children, their family and community, of the care plans (s.27(2)).

The NT Act states the Minister will provide such support and assistance to Aboriginal communities and organizations as he thinks fit in order to develop their efforts in respect to the welfare of Aboriginal families and children and provides for the promotion of employment of Aboriginal welfare workers (s.68).

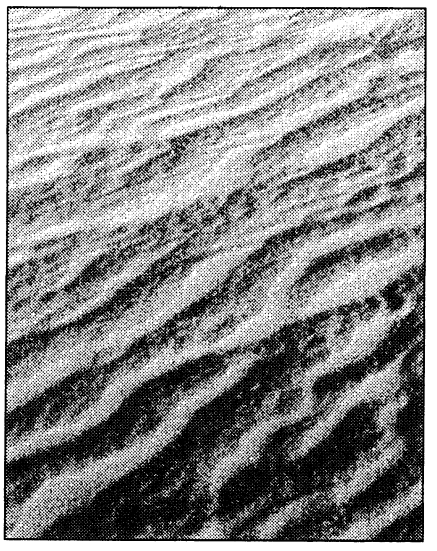
A written agreement may be entered into by the Minister with an Association or a Community to provide assistance (not specified in any way) to Aboriginal children (s.70).

The absence of commitment to any process of improving a child's environment, through resources and family community development programs in the NT Act, prevents any meaningful response to the crisis current and future generations of Aboriginal children face.

Information sharing

The ACT CE may give or request information from a defined entity, which includes a body established under a law of a State or Commonwealth (s.29). Confidentiality provisions apply, binding upon the CE and the entity.

Secrecy provisions under the NT Act prevent disclosure of any information to any individual or body regarding the affairs of Aboriginal children (s.97).



This is applied in spite of any agreement created under s.70.

Cooperative and meaningful planning of care for a child and their families are severely limited by this provision in the NT.

Performance

The Children's Services Council supervises the ACT Act's operation. The Council is composed of 10 members with expertise in services for young people, and who represent the interests of carers. The Council reports to the Minister, and makes recommendations about the Act and children's services (ss35and36). An Official Visitor is appointed by the CE to inspect children's services, regularly visit children in care, to investigate complaints and report to the CE (Pt.3).

Child Protection Teams (CPT) in the NT function to co-operate and consult with departments and agencies required by law, or who are resourced, to take action in relation to the maltreatment of children. They are to examine notifications, and recommend action (s.21). CPT's are composed of the relevant Public Service Dept., the police Commissioner, and others as the Minister thinks fit.

In the NT, a Council composed of relevant organizations of child, community and family representatives would enable effective research, cooperation and strategic planning for children in need of care.

***Lines in the Sand* is facilitated by Katrina Budrikis and Domenic Conidi, Alice Springs Law Society Council members.**

ROMA MEMORIAL DEBATE 5 March 2001

This month to begin with I would like to thank the protagonists in the debate, Her Honour Sally Thomas, who convened the debate and introduced the protagonists, as well as those who supported by attending.

It was a resounding success with about 100 people in attendance. The response from the public was also very welcome. This included a group of legal studies students from St John's School. The audience voted and the result was an overwhelming win for the argument in favour of a Bill of Human Rights. The teams consisted of..

- In favour — Michael Grant, Sally Gearin, Judith Kelly and Peter Barr
- Against —Sue Oliver, Steven Gray, Steve Southwood QC and Jenny Blokland

The total cost including hire of the Supreme Court, advertising, beverages, food and the purchase of the raffle prize was about $1,200.00. We did collect about $400 in donations and from the raffle of a bottle of Vintage Moet & Chandon. My greatest disappointment was that I did not win the Moet. However, it goes without saying that the Moet went to a good cause (in its consumption), regardless of who won it. Enjoy!

We now have the challenge of boosting our funds which can be achieved in some small way through membership fees. At present NTWLA have only approximately 30 financial members. The membership year runs from September each year. The fee is a moderate $20.00 and $5.00 for students. You do not even need to obtain a membership form. Simply send your cheque for the fee with all your details, including.

- Your name and postal address
- Firm/employer (identifying whether you are a student articled clerk) and postal address
- Daytime telephone, facsimile and email address
- Whether you are a new member or renewing your membership
- Include your signature and the date

Then mail your application to NTWLA Inc, GPO Box 3384, Darwin, 0801.

The committee is also calling for another committee member to join us who wishes to be actively involved as two of our committee members have moved from Darwin. That is not to say that they will not continue to be involved but we need some more local support.

Introducing....

This month I would like to introduce you to Frieda Evans, Courts' Librarian situated in the Supreme Court but which services the Supreme Court and the Magistrates Court. Frieda would of course be known to many of you. Frieda started out as a committee member of NTWLA and then was seconded to the position of Secretary on the transfer of our secretary to Alice Springs. Frieda is a very active member of the committee.

Frieda was born in London and grew up in the Middle East. Her father took an early retirement and the family moved to Australia when Frieda was a young teenager. They chose Perth as to them it had a Mediterranean appeal in terms of the climate. No more cold mother country for them. Frieda has lived in the Territory since 1978.

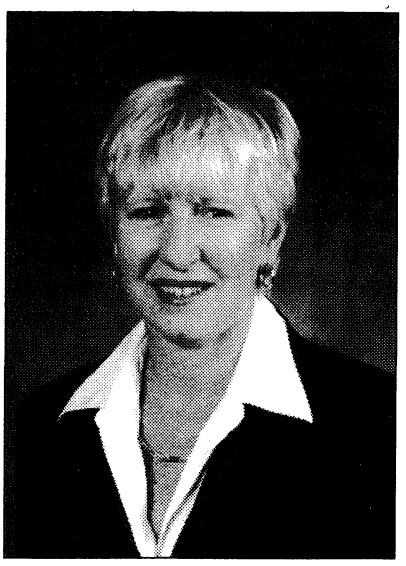
Frieda first obtained an Arts Degree in Perth, then a Graduate Diploma in Librarianship from Canberra College of Advanced Education. That was not enough so she studied at NTU and also holds a Law Degree.

Mentoring

Definition of mentoring:

> "Counsellor, wise and prudent adviser"
>
> (Webster's Universal Dictionary)
>
> "An experienced and trusted counsellor"
>
> (Shorter Oxford English Dictionary)

The word derives from the Creek and means to "remember, think, counsel" (Shorter Oxford English Dictionary). Mentor was a character from Homer's "Odyssy". He was the guide and adviser of the young Telemachus, Odysseus' son.



Jacqueline Presbury, NTWLA President

NTWLA has been approached as to whether we have a mentoring program. At present there is no formal program in place but we are prepared to offer this service on an informal basis to articled clerks, newly admitted lawyers or lawyers who are new to the Territory.

The intention of this informal program will be to provide advice (on professional issues not on legal workload issues), encouragement, career objectives and inspiration for advancement. If you are interested please provide your written expressions of interest by sending to NTWLA, GPO Box 3384, Darwin, 0801 or telephone either Frieda Evans on 8999 6585 or me (Jacqueline Presbury) on 89430423. Bear in mind the limited time and resources available to implement a mentoring program. We will attempt to match individuals to their requirements based on the framework outlined and the resources available.

Finally, if there are any NTWLA members or women lawyers generally who are prepared to offer their wealth of experience in support of this program, please contact either Frieda or me.

Bouquets

To the Committee members for the input in preparing for the debate and to Nadia Nayder (paralegal, Cridlands) and LaurenYoungman (part of Cridlands management team) who both volunteered to serve beverages and assist at the debate.

FROM DARWIN TO CAMBODIA...

A professional interest in refugee law and personal experience working with Cambodian refugees in Australia culminated in Darwin barrister Colin McDonald QC's appointment to the Board of Directors of the Cambodian Legal Resources Development Center (CLRDC) in November 1999. *Balance* spoke to him about the Center and his involvement.

Members of the CLRDC Board of Directors: Patricia Baars JD, Colin McDonald QC, Sok Siphana JD, Matthew Rendall, and David Dennis JD

"I was initially invited to Cambodia by former refugee clients from Darwin. I met Sok Siphana JD, the Founding Member of the CLRDC Board, on my first visit," Mr McDonald told *Balance*.

Sok Siphana and Sarin Denora JD, Founding Chairman and Executive Director of the CLRDC, both suffered under Pol Pot and were themselves refugees overseas before returning to their homeland.

"They both did four years in the labour camps and survived. They were refugees through Thailand to America. Cambodia is a nation of refugees. The Cambodian profession has been developed by former refugees coming back. The Chairman of our Board is a senior member of those," he said

"After the Khmer Rouge genocide there were only four Cambodian lawyers left alive. None were left in the country. The profession is slowly being redeveloped by French expatriate lawyers and American trained former refugees returning."

The Board of Directors of the CLRDC is made up of twelve Directors, three of whom reside outside Cambodia (one in America, one in Japan and Darwin based Colin McDonald), all of whom contribute their time on a pro bono basis.

Cambodia is a nation of refugees. The Cambodian profession has been developed by former refugees coming back.

"When I first arrived in Cambodia I offered my assistance if needed and the next morning Sok Siphana rang me from the hotel reception where I was staying and said: "About that offer, I'd like to take you up on it. Can we talk about it?" I said yes and asked him for a suitable time. "Now," was his answer, so I went down to meet with him and about a week later I was invited to join the CLRDC.

"I've been back to Cambodia three times since then and I'll be going back again in July for a full Board meeting this year," he said.

The primary purpose of the CLRDC is to serve the Cambodian legal community. It functions as a major research and resources center on Cambodian law that publishes law-related publications, contributes to the development of the legal profession, provides professional development seminars on law and policy, and provides an independent source of legal opinion to law makers, administrators, the Cambodian people, and others with a professional interest in Cambodian laws.

"We are the only publisher in Cambodian laws. The Parliament actually uses our compendiums to find out what laws they have passed," said Mr McDonald.

"We have published books on Cambodian law — both in English and Khmer — such as *The Legal System in Cambodia*, and *Legal Aspects of Doing Business in Cambodia*.

"We've got our printing presses and secretariat. We've got plans to develop and publish our own Cambodian Law Journal — a quality quarterly. We are hoping to have Australian involvement in that. The Commonwealth Attorney General and the Commonwealth Shadow Attorney General have both been invited to write articles for the first and second edition," said Mr McDonald.

"We are also sponsoring a conference in July in conjunction with the World Bank on The Rule of Law and Economic Development and Globalization issues as they affect Cambodia," he said.

Mr McDonald's involvement with the CLRDC keeps taking him back to Cambodia. On a previous trip he happened upon a fascinating opportunity.

"On my last visit I was there for a Board meeting and it just so occurred that during my time there was the first community debate about the recently passed Khmer Rouge Trial Laws. From later this year and next year this is going to be a significant international legal issue in terms of the investigation and prosecution of the senior leaders of the Khmer Rouge," said Mr McDonald.

The next edition of *Balance* will feature an article about the Khmer Rouge Trial Laws as we continue our conversation with Colin McDonald QC about Cambodia.

BALI CONFERENCE REGISTRATIONS NOW CLOSING...

CLANT President John B Lawrence

Registrations for "*The Criminal Justice System: Serving the Community or Giving it a Serve*, 8th Biennial Conference at Sanur Beach, Bali are soon to close and people wishing to attend are urged to book their places now.

The Conference, to be held during the week of 23 - 29 June 2001, has been held every two years for the past sixteen years.

The program includes workshop and discussion sessions as well as entertainment and free time to explore around the beautiful Sanur Beach.

This year promises to be particularly interesting. For the first time there will be three keynote speakers addressing the throng.

The conference will begin with Justice Weinberg presenting a paper on the independence of the judiciary (there is a suggestion that hoary chestnut has been flogged to death, but we will just have to wait and see).

Mr Ackland should be particularly entertaining. Never one to take a backward step one can anticipate shellackings all round for everyone and anyone who happens to be in his sights. I will be keeping my head well below the parapet. Seriously though he does promise to address issues concerning the way the media reports the criminal justice system and what affect the media has on the public perception of criminal law issues.

On the Thursday Chief Justice Doyle will present a paper grappling directly with the conference's theme. The South Australian court system has a good name for transparency and its relationship with the general public.

As well as these main speakers there are a lot of other impressive presenters. Delegates will hear from no less than the South Australian Solicitor General, the NSW Director of Public Prosecutions and Liz Fullerton SC, who does a lot of work in Commonwealth criminal matters.

Another highlight once again will be the Wednesday jaunt known as *Tom's Terrific Tours*. This involves our learned Solicitor General Tom Pauling QC taking off into the interior with a gaggle of extremely brave punters all willing and able to learn about Bali.

I suppose one should mention that the conference is not entirely all work. There has been the odd social function associated with the CLANT Bali conference. I personally have attended many such ocassions however, sadly, I am unable to remember any of them.

Again I stress the urgency of intended delegates having their registrations completed as soon as possible.

Bookings should be made with Conference Convenor Lyn Wild on 8981 2549. Payment is due by 1 April 2001.

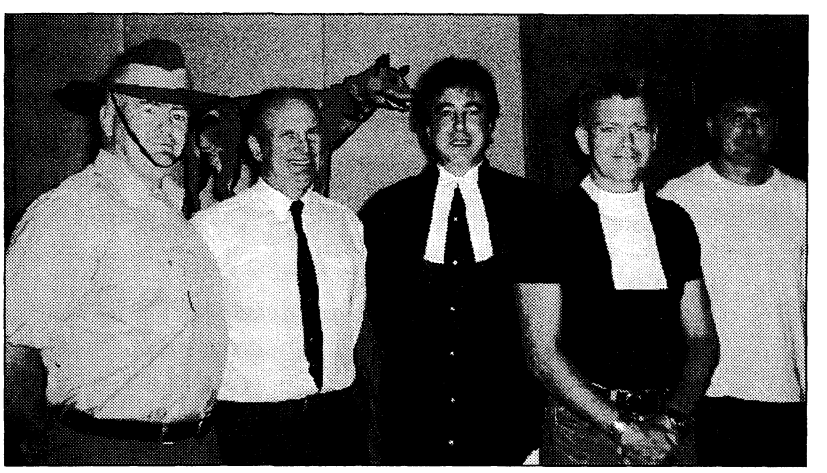
Next month: Ask any criminal lawyer what they dislike most about their job and their answer will be the same as any criminal asked the same question: going to jail. Why we all put off today what we can do tommorrow when it comes to jail visits is a question, the answer to which says a lot about our criminal justice system.

BALI CONFERENCE 23 - 29 June 2001

The Criminal Lawyers Association of the Northern Territory, in conjunction with the Criminal Law Section of the Law Institute of Victoria, has organised:

"The Criminal Justice System: Serving the Community or Giving it a Serve".
8th Biennial Conference
Bali Hyatt at Sanur Beach, Bali
23 - 29 June 2001

For more information:
Tel: 08 8981 1875
Fax: 08 8941 1639
convention.catalysts@norgate.com.au



Bali Conference 1999: One of the highlights of the conference was a reenactment of Tuckiar's Trail with role plays from conference participants. From left, Tom Berkely, Rex Wild QC, David Grace QC, Jon Tippett and David Bamber

THE NORTHERN TERRITORY ICJ

The Northern Territory branch of the International Commission of Jurists (ICJ) held their inaugural dinner in Darwin on Friday 16 February and has held a special meeting to develop policy.

The next function will be a dinner to welcome the Commonwealth Human Rights Commissioner and Disability Commissioner, Mr Sev Ozdowski O.A.M onThursday 5 April 2001 at 7pm at the Asian Gateway Restaurant, Aralia Street, Nightcliff.

Prior to the meeting Mr Ozdowski will be available in the library at William Forster Chambers from 5.15 to discuss mandatorry sentencing and/or any other human rights or disabilities issues with interested practitioners.

Policy platform

The Northern Territory Branch of the ICJ met at William Forster Chambers on Friday 9 April 2001 for a special general meeting to consider a policy paper prepared by Melanie Little and Cassandra Goldie.

After much discussion, the members adopted the following policy principles to constitute its policy platform:—

1. The NT Branch of the ICJ supports the proceedings and findings of the UN Human Rights Treaty system and believes that Australia should fulfil its obligations as determined under international human rights law.
2. Supports the Australian Government ratifying and signing the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.
3. Supports the Australian Government ratifying and signing the Rome statute for the formation of the International Criminal Court.
4. Supports Australia adopting a Bill of Rights enshrined in our domestic law which will enshrine Australia's international human rights obligations.
5. Opposes laws which impose minimum mandatory sentences as being in breach of international human rights standards and inconsistent with the doctrine of separation of powers, and calls on:

— the Northern Territory Government to repeal its mandatory sentencing laws, and failing that

— the Australian Government to fulfil its international obligations by overriding these laws without further delay.

6. (a) Supports the passage through the Northern Territory Legislative Assembly of effective Freedom of Information legislation.

6. (b) Calls on the Northern Territory Government to pass effective freedom of information legislation as a matter of urgency.

7. Acknowledges and affirms that the independence of the judiciary is integral to the rule of law and opposes any action which infringes such independence of the judiciary.

8. (a) Opposes the restriction on judicial review in the Commonwealth Migration Act.

8. (b) Calls for the repeal of the provisions in the Commonwealth Migration Act which restrict judicial review.

9. Supports the provision of professional assistance to the East Timorese legal profession and the East Timorese judiciary.

Two policy matters were adjourned for further consideration. These were the issues of "stolen" and removed children and deaths in custody. There will be further consultation on these issues.

The members resolved unanimously to thank Melanie Little and Cassandra Goldie for their work.

The Northern Territory Branch of the ICJ now has its own policy principles which can be the base for further representation and action.

Mark Hunter makes a point with Peter McNab. Damien Moriarty (left) and Gordon The

Peter McNab, Rick Andrusco and Sally Gearin

FORGING LINKS WITH THE EAST TIMOR PROFESSION

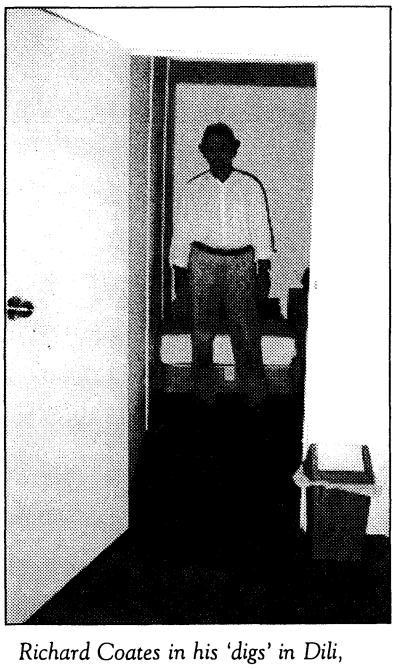
Continued from front page

section of UNTAET. It was decided to "East Timorise" the judiciary up front and early (the catchword for this is "capacity building") and a number of relatively inexperienced East Timorese persons were selected to discharge the role of judges. The first judges were appointed to office in January, 2000.

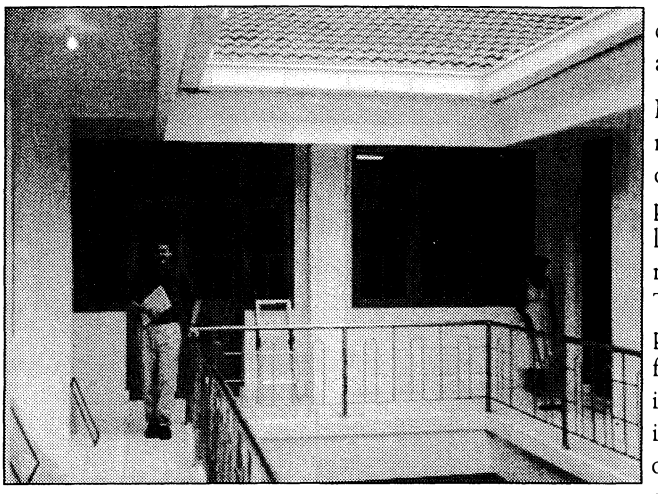
"You can presume that most of the judges and prosecutors, would probably have law degrees. The private lawyers, and some of the prosecutors would not necessarily have completed their degrees. They would still be students," said Mr Coates.

"Most of the lawyers and judges in East Timor are learning on the job. At the same time, they have got this extraordinary backlog of cases arising from the troubles following independence. There are competing pressures to get the job done and learn how to do the job properly at the same time," he said.

"As one judge in East Timor said: 'It is hard to focus on training when the court has to deal with the daily workload and also deal with the huge backlog of cases.



Richard Coates in his 'digs' in Dili, East Timor



Colin McDonald QC inside the Dili District Court House

The problem is further exacerbated by the requirement that the judges also attend Portuguese language classes several times a week'."

UNTAET is committed to providing judicial training through the European legal training organisation "IDLI" which has focused on training by European lawyers. It more recently introduced a mentoring system whereby mainly European judges have been working for short periods at a time with the East Timorese judges.

Language is another complex and enduring issue for the courts.

By UN Security Council resolution, the law to apply in East Timor was the existing Indonesian law varied by resolutions of the UN Security Council. The language of the court had been Bahasa Indonesia. The language of UN law in East Timor is English. The UN Department of Judicial Affairs has no Bahasa Indonesia speaking lawyers.

Seventy percent of the courts' work is conducted in Bahasa Indonesia. The remaining 30% is conducted in English and Tetum. Matters are complicated by the fact the National Council has pressed for the official language to be Portugese. Judges and public officials are required to learn Portugese. Many, if not most East Timorese do not speak Portugese and do not have the fluency necessary to communicate effectively in court. This hiatus in languages is likely to create difficulties for the ongoing administration of justice.

Mr Coates and Mr McDonald's report of the visit sites an example of one Australian Aid funded project designed to assist with language problems which received high praise in East Timor. The project involved the provision for six months of eight fluent Bahasa Indonesia interpreters from Australia. These interpreters were considered to be of great assistance in developing communication at all levels of the justice system. This was seen by the head of the UNTAET Judicial Affairs branch as the most effective Australian funded project in the justice area she had witnessed.

According to Richard Coates private lawyers in East Timor have particular problems of their own. Private lawyers are not strongly regulated by UNTAET and expressed a willingness to learn more about regulating their profession. Lawyers approached on the trip were open to Australian involvement and welcomed assistance.

"Private lawyers are given their license to practice by the UN and by the court. If they don't appear in court for six months they lose their license. There is no thought so far as to how the profession might be obliged to regulate itself, especially those people who might not go to court. There are other issues for them to consider like ethical standards and so on," Mr Coates said.

"One of the things I'll be taking to the Law Society East Timor Liaison Committee, of which I am Convener, is a suggestion that we help the lawyers in East Timor set up a Law Society of their own. The judges need their own separate association. The AIJA is the logical body in Australia which could assist the judges. The Law Society Northern Territory, in conjunction with the Law Council of Australia and the ABA, could assist in the establishment of a professional association."

Mr Coates and Mr McDonald identify another area of need which they believe can readily be addressed by Australian lawyers: the provision of assistance to the newly emerging public defenders office.

Their report notes that the precise role and function of the public defender has yet to be determined. They state that "lawyers working as public defenders were keen for assistance and this would seem to be an area where both UNTAET and the East Timorese lawyers would welcome input from Australia."

"There is talk about setting up an Australian type legal aid office with a board of directors. They see it as doing civil and criminal cases. They need help with management systems and some help training public defenders. There is work we can do," said Mr Coates.

Whilst there is much for Territory and Australian lawyers to offer the East Timorese judiciary and profession, forging links between the Territory and East Timorese professions can also be mutually beneficial, especially with the growing number of Australian companies in East Timor and increasing litigation.

"Australian companies, and overseas companies, are going to get themselves involved in litigation over there. There is nothing surer.

"As far as the Territory is concerned there is an avenue for lawyers here to have a handle on the law in East Timor and to enter into some sort of arrangement with East Timorese lawyers where they can do work for the Territory lawyer over there," said Mr Coates.

It is hard to focus on training when the court has to deal with the daily workload and also deal with the huge backlog of cases. The problem is further exacerbated by the requirement that the judges also attend Portuguese language classes several times a week

"A number of the Territory business people we were speaking to in East Timor had already been involved in the court process in Dili," said Mr Coates.

"These primarily involved disputes over land tenure and there are also a burgeoning number of wage and industrial disputes."

"Most of the work that needs to be done to establish a viable justice system, now and in the future, is not going to be directly paid for by the UN. The UN is saying it has a very limited budget for judicial administration. They are really looking for donor countries to fund these things. Whether in Australia is comes through the legal bodies themselves of whether a proposal is put together to some money from somewhere like AusAid, church groups and so on. Realistically, that's where funding is likely to come from," said Mr Coates.

Yayasan Hak Hukum.hak Asasi & Keadilan: Law Human Rights and Justice Foundation in Dili, East Timor

COURTS IN EAST TIMOR

It was originally decided to establish courts in eight regions in East Timor. This has now been reduced to Dili, Baucau, Suai and Oecussi. Oecussi is an enclave of East Timor in the west part of Indonesian West Timor and is accessible only by air and sea. As of February 2001, the Courts are only operational in Dili, Baucau and Oecussi. There is a permanent judicial and prosecutorial presence in both Dili and Oecussi. Judges and lawyers travel to Baucau and appear to operate out of temporary accommodation. Resources are scarce for all sectors of court administration.

The first cases are being heard at a trial level. There is a list of approximately 160 criminal cases waiting to be heard, several of these are complex and involve cross border criminal issues and an increasing number of civil cases being listed involving a range of issues particularly those relating to land and questions of title.

There are several trial divisions of the court. The first division comprises a single East Timorese judge who has power to deal with criminal cases involving penalties up to 5 years imprisonment. The second trial division comprises a panel of three East Timorese judges who can hear and determine ordinary criminal cases (that is, crimes under Indonesian law) exceeding 5 years. A third trial division exists which comprises a panel of three judges including two international judges. This division has exclusive jurisdiction to deal with serious criminal matters which are relevantly defined in the UN Regulations as crimes against humanity and crimes of rape and murder alleged to be committed between 1 January 1999 and 25 October 1999. This division also operates as the Court of Appeal and will soon be operating out of the newly renovated former Indonesian High Court. The international judges at present are from Italy, Burundi and Tanzania.