

A number of issues

Congratulations to her Worship Ms J Blokland

On behalf of all at the Bar, I offer our congratulations to Jenny Blokland on her appointment as a Magistrate.

By the time this column is published I expect her Worship will have become a seasoned hand at the top end of Cavenagh Street.

As most of you will know, her Worship has ably discharged many varied and interesting roles in her legal career to date.

They include: Dean at the NT University Law School, general counsel with the DPP and the Head of the Policy section at the Department of Justice - to mention but a few.

But, as impressive as the foregoing list is, those of us at the Bar like to think that Jenny's time as a barrister at James Muirhead Chambers was the highlight of her career - at least until to her recent elevation.

We all wish her well in her newest role as "a beak".

The Master disallows a claim for cancellation fees

The Master's counsel's fees guidelines provide that:

Where the counsel has been engaged to appear in a matter which is expected to last longer than 2 days and the matter is settled before trial or before the completion of the hearing, the Taxing Master may, in an appropriate case and where it is considered reasonable to do so, allow a fee to counsel for having kept time set aside for the trial of the matter. As a general guide, if a matter is settled a month or more before trial, no allowance will be made.

See www.nt.gov.au/ntsc/doc/2002_almanac.doc at page 92.

The application of this guideline came up for consideration by the Master

recently in *Chatley -v- Northern Territory of Australia and anor*, NTSC unreported 2 April 2002.

In his decision, the Master referred to the observations of Wilcox J in *Australian Federal Police -v- Razzi (No 2)* (1991) 30 FCR 64 at 67 where his Honour claimed that the charging of cancellation fees seemed to be a practice of very recent origin saying that:

In 21 years at the Bar, from 1963 to 1984, I never heard of such fees being asked.

His Honour suggested:

...it would be desirable for Bar Councils and Law Societies to examine such fees, and perhaps issue a ruling or some guidelines, before the practice becomes firmly entrenched.

The Master agreed with these views and observed that:

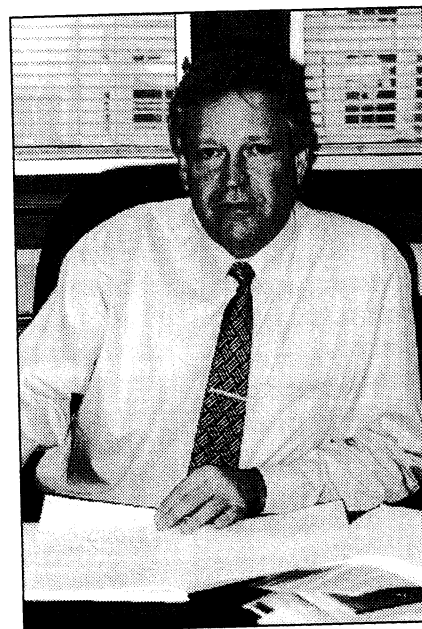
It is difficult to envisage circumstances in which a cancellation fee, other than that usually payable for the first day, would be appropriate and reasonable in a case set down for only a week....A cancellation fee is more likely to be appropriate and reasonable in a proceeding set down for several weeks.

In view of this decision, the Bar Council intends to liaise with the Law Society and the Master with the object of issuing a more specific guideline upon when a cancellation fee would be appropriate and reasonable.

Debunking urban legends

Everyone has heard about the damages award of \$2.9 million to a woman in the United States who spilt a cup of coffee in her lap in a McDonald's store.

This award is often quoted as an example of US juries having taken leave of their senses and awarding extraordinary sums in damages.



John Reeves QC, President of the NT Bar Association

Until recently I was not aware of the full facts of the case. Then I came across a section in the Association of Trial Lawyers of America web site that seeks to debunk this and several other "urban legends" (ATLA's description).

These are some of the crucial facts that led to this very large award.

The coffee was so hot that the plaintiff suffered third degree burns to 6 percent of her body.

She was awarded \$200,000 in general damages, which sum was reduced to \$160,000 because of the plaintiff's contributory negligence.

About 95 percent of the award, or \$2.7 million, was for punitive damages.

Apparently the jury was moved to make this award because the plaintiff's claim was one of 700 similar claims made against McDonalds between 1982 and 1992. Notwithstanding this number of claims from coffee scalds, McDonalds decided to continue heating their coffee to between 180 and 190 degrees Fahrenheit.

However, this punitive damages award was reduced to \$480,000 on appeal.

So, now you can judge for yourself. If you want more of the story behind this or other similar "urban legends" go to: www.atlanet.org/homepage/debunk.ht ①