feature

A media view on the Murdoch committal

By BOB WATT, Northern Territory News Court Reporter

The Director of Public Prosecutions Office (and the police by association) didn't win any friends among the "image section" of the media contingent covering the so-called Falconio committal hearing in Darwin in May and June.

The journalists generally were pretty content with the arrangements and there was plenty of "good stuff" from the evidence on the days the hearing was uninterrupted by bids to lift suppressions.

But the photographers and cameramen, particularly those from interstate or servicing interstate and overseas media, were under huge pressure from their bosses to "get the shot".

The main shot they wanted was one of Joanne Lees, which proved elusive.

So were the shots of a couple of key witnesses, who made many column centimetres but little on television, which seems to require lots of "vision" to support a 30-second piece.

In scenes reminscent of the Keystone Cops (but twice as dangerous) the police raced a jacket-covered Ms Lees in and out of the Supreme Court in a convoy which included dummy cars.

Why? asked the media.

The woman who, on her own admission, happily accepted fifty thousand pounds from Granada Televison in Britain to do a long interview, was now hiding - apparently abetted most willingly by the DPP and police.

So it was almost inevitable that someone would break the rules, as one did.

That resulted in a distorted image reminscent of a fun park mirror reflection, evidently taken through the louvres of the Supreme Court's basement car park.

That, quite reasonably, drew the wrath of Court Support Services, which threatened bans.

One enterprising (and more contempt-conscious) photographer jumped on the same aircraft as Ms Lees when she left Darwin to return home and got a shot of her in Singapore.

Why, asked the media, did some witnesses have to walk out the front door of the Supreme Court and face the media stakeout like ordinary folks, while others were spirited out the back?

The VIP treatment for some seemed unfair.

Obviously, the DPP wanted to protect - indeed would have to protect - more vulnerable witnesses.

Such witnesses could be nervous for a variety of reasons.

Joanne Lees was, after all, the alleged victim in this story of her companion's mysterious disapperance on a lonely stretch of the Stuart Highway near Barrow Creek.

Some people might feel Ms Lees had gone through enough trauma.

Ms Lees said that she agreed to the Granada interview "before there was an accused" in a bid to find the missing Peter Falconio.

After that, did she just do a Mae West - or has her story, as cynical scribes suggested, been bought for when all the legal stuff is over?

The media discussed a deal with Ms Lees for just one "walk" - one appearance to satisfy their slavering picture editors and producers.

The Australian media said "no way" to paying for a picture but I understand a British outfit offered around $6000 or $7000 to be, at Ms Lee's suggestion, donated to a charity of her choice.

That failed, the offer described by her as "pitiful" when asked about it in court.

Then there were the "Broome witnesses", not the most forthcoming.

The accused man's former business partner admitted his agreement to give evidence against Bradley Murdoch was a way of getting a shorter jail sentence.

Nobody, obviously by agreement between lawyers (who can be sneaky) mentioned what sort of business, obvious as dogs' appendages as it was.

People in that sort of business, in my experience, take great pains to keep their faces out of the public arena.

This man would, like Ms Lees, be a key witness. Obviously the DPP needed him at committal and continues to need him now the matter will go to trial.

The former "girlfriend" of Mr Murdoch wasn't the most outgoing of witnesses and she was also spirited out the back after her evidence.

Again, no doubt, needed and will be again.

So one must have some sympathy for the DPP "protecting" such witnesses.

The public has a right to know what such witnesses say, I believe. But, frustrating as it is, the DPP has some good reasons to cotton-wool them.

One very good move the DPP made was to appoint a respected and

continued page 13...

Tort law regression? cont...

The risk of costs is shifted to the claimant. Almost invariably the claimant will have the smaller pocket and be less able to bear that risk. The clear intention is to dissuade claimants from making smaller claims.

The shifting of risk to the claimant of failing to equal or exceed his or her own offer clearly favours the respondent. A prudent claimant will reduce his or her final offer well below the amount which he or she expects to achieve, in order to avoid the costs risk of failing to equal his or her own offer, even when the damages exceed the respondent's offer.

The negligent respondent is not at similar risk.

The consequences

For a large proportion of our community – and I am not referring only to Aboriginal people – it is simply a fantasy to expect them to successfully negotiate the pre-litigation settlement procedure unaided. I have not heard of any proposal to expand legal aid services or the community legal services. (Anyone else proposing to advise or assist would need to be aware of the serious criminal penalties in the *Legal Practitioners Act* for inducing someone to make a personal injury claim that were introduced as part of the "reform" package).

In reality, the defendants or their insurers will be legally represented. Claimants will not be legally represented except, perhaps, for the larger claims. Lawyers will have no incentive to "spec" smaller claims or, if they do, they will have to advise claimants that they are likely to see very little, if anything, of settlements or awards.

The new litigation costs regime is harsh for claimants. Claims will not be worth the risk of adverse or inadequate costs orders even in the event of the previous definition of success; exceeding the respondent's or defendant's offer.

The probable practical consequence will be the abolition of claims for permanent impairment for less than $50,000.

There is no doubt that legal costs make up a large proportion of small tort settlements and awards. That is hardly surprising. Often the issues are as complex as for the larger claims.

Some of the changes are probably worthwhile. For example, a person may now make an expression of regret without that being admissible in evidence. That might have the potential to minimize feelings of resentment and encourage settlement.

I hear you say that some restriction on claims is necessary to keep insurance premiums down for the rest of the community. I doubt that the rise in insurance premiums is directly related to litigation in the way the insurance industry and others have claimed. Insurers seem to be making big profits[7]. But even if that argument was correct, is the best or the most just solution removing the right of people to seek recompense for a wrong done to them? Is it just to deem the discount rate for damages for future economic loss to be five percent[8] rather than the historically realistic figure of three percent and thus expropriate tens or hundreds of thousands of dollars from injured persons?

These might be matters of opinion but I believe many of the changes are mean, unworkable, unnecessary or plain unjust.①

Endnotes

1 Section 24, Personal Injuries (Liability and Damages) Act
2 The rate of real return after inflation on a secure investment
3 The court with jurisdiction to hear the claim
4 Sections 7 and 8, Personal Injuries (Civil Claims) Act
5 Section 10, Personal Injuries (Civil Claims) Act
6 The Law Council of Australia's "Tort Law Reform Discussion Paper" claims that a KPMG study indicated that Australia's 12 biggest general insurers had a six fold increase in profits in 2002/2003
7 Section 22, Personal Injuries (Liabilities and Damages) Act

A media perspective on the Murdoch committal cont...

professional journalist in Jane Munday as a media liaison officer.

She was nothing but helpful, acting as a bridge between the media and the court, treading the delicate balance between the right to a fair trial and media access.

For openers, we had an odd situation where parts of the opening address given in open court by DPP Rex Wild QC were suppressed by Relieving Magistrate Alasdair McGregor.

Thank goodness the magistrate followed Mr Wild's suggestion to give us journalists the full text with the suppressed sections marked, so at least we knew what we could NOT report - particularly here in the Territory.

It must be recorded that Court 6, the new electronic court which became an extension of the magistrates court, worked really well - not even a technical glitch that I noticed.

Press and public could see the exhibits and the photos - even if some of them were also subject to suppression.

All in all, I believe the public was well informed through the media and a balance achieved between their right to know and a fair trial.

Maybe we should pause and be thankful that in the Territory we can report committals at all. Reporting them is prohibited in the UK and in a number of Australian states.①