The artist
formerly known as Prince

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THE FEDERAL MAGISTRATES COURT WAS RECENTLY RE-NAMED THE FEDERAL CIRCUIT COURT OF AUSTRALIA. WITH THAT CHANGE THE PRESIDING FEDERAL MAGISTRATES WERE RE-NAMED FEDERAL CIRCUIT COURT JUDGES. IN A MEDIA RELEASE OF 12 APRIL 2013 FEDERAL CIRCUIT COURT CHIEF JUDGE PASCOE SAID "THE COURT HAS CONTINUOUSLY EVOLVED AND THE CHANGE OF NAME REFLECTS THAT CHANGE."

It is clear is that, as with the naming (and seemingly perpetual re-naming) of hotels on the Darwin skyline; re-branding is not easy. Whilst your intention to re-brand is clear and well advertised, there is no assurance that you won't continue to be referred to by your historical manifestation.

Examples of the Travelodge and the Beaufort as well as "the artist formerly known as Prince" spring to mind. This is particularly likely to be the case if your new name is not easily embraced because it is a bit of a mouthful, is not sufficiently distinctive or otherwise confusing.

In many ways it may simplify things to increase the ranks of those referred to as "judge" by adding the recently appointed, Darwin based, Federal Circuit Court Judge Harland. But in dealing with the Federal Circuit Court it will also be helpful to have some of the history of the name-change at your disposal.

History

The Federal Magistrates Court (also known as the Federal Magistrates Service) came in to existence in 2000, as a result of the *Federal Magistrates Act* 1999 (Cth). This evolution came in the context of increasing challenges in the operation of the Family and Federal Courts of Australia. By way of example:

> In early 1999 Family Court judges agreed to delegate their powers to determine interim parenting and some other matters to a new category of senior registrars, who commenced duty in May of that year. The registrars then assumed responsibility for interim parenting applications, thus allowing the judges to concentrate almost exclusively on final defended matters. Unfortunately, subsequent severe budget reductions imposed on the Court (largely in advance of workload changes anticipated to be caused by the commencement of the Federal Magistrates Court) … forced the Court to reduce the number of senior registrars employed.[1]
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> The Family Court [had], on a number of occasions, pointed out the unacceptable complexities in its structure to various governments and parliamentary inquiries. Specifically, it [..] sought the appointment of specialist 'Chapter III' federal magistrates within the Court itself, and the establishment of something akin to a small claims tribunal to allow the summary disposition of minor disputes. Instead, the Government decided to establish the Federal Magistrates Service as a separate entity under Chapter III, notwithstanding that scarce funds would be diverted from the Family Court into the administrative establishment and other costs of the Federal Magistrates Service.[2]

It seems that concerns about administration costs have been

borne out and the story of the Federal Magistrates Court and the Family Court has continued along a closely aligned path. Currently, the Federal Circuit Court and the Family Court share administrative and registry resources.

> In the second reading speech of the Federal Magistrates Bill 1999 (Cth) the Attorney-General described the new court as an example of the Government's commitment to the provision of accessible and affordable options for the resolution of disputes, and pointed out that since Federation the Federal Parliament had never established a lower-level Commonwealth court. The Attorney-General also referred to the Government's proposal that the federal magistrates develop what he described as a 'new culture, with an emphasis on user-friendly, streamlined procedures ... especially important for litigants who do not have legal representation'.[3]

At the time of its establishment the Federal Magistrate's powers differed from those of Family Court Judges and judicial registrars, from senior and deputy registrars. Federal Magistrates powers also differed from State magistrates exercising federal jurisdiction.[4]

The extended temporary closure of the Family Court registry in Alice Springs in August 2011 is a symptom of the resourcing questions that remain as apparent now as they were at the commencement of the Federal Magistrates Court in 2000. The Alice Springs Registry provided filing services in Family Court and Federal Magistrates Court matters. The Registry also hosted visiting judicial officers, visiting Family Court Registrars and Federal Magistrates Court circuits. Whilst at the time of writing a final decision is yet to be made about whether the registry will re-open, it is clear that practitioners and Court users will either have to travel over 1,500km to their nearest registry or explore alternatives. Whilst e-filing and the Courts portal are increasingly on the cards could one of those alternatives be the Local or Supreme Court?

The Local Court continues to exercise a limited concurrent family law jurisdiction as a result of ss39(6) and 63(2) of the *Family Law Act*.

The Northern Territory Supreme Court also continues to have jurisdiction in relation to matrimonial causes as a result of s39 of the *Family Law Act*.

> … this vesting arrangement was terminated by Proclamation in 1976, except in relation to the Northern Territory. … Supreme Courts may exercise the jurisdiction of the Family Court of Australia by virtue of the cross-vesting of jurisdiction legislation discussed above, under s 77(iii) of the Australian Constitution.[5]
>
> Their current powers extend to the making of interim orders in children's matters, and contested parenting orders where the parties consent to the making of those orders. Otherwise, contested matters under Part VII of the FLA (other than child maintenance matters) must be transferred to the Family Court. The property jurisdiction of magistrates' courts is limited to property with a value of less than $20 000, unless the parties agree to a determination by a magistrate.

In practice these jurisdictions are not frequently exercised, if at all. In 2001 the limitations of the Local Court were considered:

> By virtue of geography and cost, State and Territory Magistrates' Courts are frequently the most appropriate venue for minor family law disputes, but (apart from their jurisdictional limitations) they are not able to provide conciliation services in matters involving children or property. Their premises and facilities obviously vary enormously around the country but security concerns, inadequate privacy and the uncomfortable combination of civil and criminal proceedings are also often issues of concern.[6]

These concerns have abated to some degree as the work of the Local Court has also changed with time. The question still remains whether the facilities are appropriate for matrimonial disputes, particularly involving children.

Another blip on the historical radar was the 2009 announcement that the Federal Magistrates Court would be integrated into the Family Court and the Federal Court. Needless to say, by 2012, after much public debate the reform was abandoned and the renaming approach adopted.

Another aspect of the name change is that it recognises what has been an expanding jurisdiction. Whilst the Federal Circuit Court exercises family law jurisdiction it also exercises jurisdiction in relation to administrative law, admiralty, bankruptcy, consumer protection and trade practices, copyright, privacy, migration, unlawful discrimination and workplace relations. Despite this, family law has been in excess of 90% of the work of the court.

The breadth of the jurisdiction of the Local Court, Supreme Court and the Federal Circuit Court gives rise to the not unreasonable community expectation that judicial

officers are skilled and experienced in the breadth of the jurisdiction of the Court in which they hold office. But the actual experience of judicial officers is something that disappears from the radar once an appointment is made. Should it?

I have often heard discussed the absence of criminal experience in the Northern Territory Supreme Court. Similar discussions have been had regarding administrative law in the Local Court. This has not in any way been in the context of criticism or disapproval but in the context of considering appointments to judicial office and what expertise should be sought in potential candidates. With Chief Judge Pascoe's ambition that the work of Federal Circuit Court will reflect its broader jurisdiction, there is a warning message to the profession.

There is no guarantee that the judicial officer that presides over your client's matter will have the experience that may be presumed in a specialist court. In practical terms this means, when making your family law application in the Supreme Court, you will be required to go that extra mile. Ensure that you have at your disposal (and put at the Court's disposal) much of the foundation information that would readily be assumed within the expertise of a former family law practitioner recently turned Federal Circuit Court Judge. The Federal Circuit Court is once again committed to a 'new culture, with an emphasis on user-friendly, streamlined procedures ... especially important for litigants who do not have legal representation,' to reference the 1999 second reading speech.

It is that expanding cohort of unrepresented litigants that are most likely to grapple with this name change. Unlike the merger of two credit unions now known as People's Choice (and I frankly cannot call to mind the two historical entities, now consigned firmly to history) this change has not been as the result of a nation-wide user survey. Hopefully it will have greater impact than Microsoft's 2012 "it's a window not a flag" logo change and be less controversial than Coca-Cola's 1985 attempt at rebranding when they replaced Coca-Cola Classic with New Coke (only to revert less than four months later due to community protests).

How will the Federal Circuit Court know if its re-branding has achieved the stated objective of a name that reflects the Court's modern role?

It is likely that the Court formerly known as the Federal Magistrates Court will persist for some years yet. The name change has allowed the community an important opportunity to reflect upon the role of the Court and to unravel the tangled web of its historical origins.

Until we meet again.

Endnotes

1. Nicholson, CJ Alastair; Harrison, Margaret --- "Family Law and the Family Court of Australia: Experiences of the First 25 Years" [2000] MelbULawRw 30; (2000) 24(3) Melbourne University Law Review 756
2. Nicholson, CJ Alastair; Harrison, Margaret --- "Family Law and the Family Court of Australia: Experiences of the First 25 Years" [2000] MelbULawRw 30; (2000) 24(3) Melbourne University Law Review 756
3. Nicholson, CJ Alastair; Harrison, Margaret --- "Family Law and the Family Court of Australia: Experiences of the First 25 Years" [2000] MelbULawRw 30; (2000) 24(3) Melbourne University Law Review 756
4. Nicholson, CJ Alastair; Harrison, Margaret --- "Family Law and the Family Court of Australia: Experiences of the First 25 Years" [2000] MelbULawRw 30; (2000) 24(3) Melbourne University Law Review 756
5. *The web of courts in family violence matters,* International and Constitutional Settings- the Context for reform; ALRC at:http://www.alrc.gov.au/publications/2.%20International%20and%20Constitutional%20Settings%20%E2%80%94The%20Context%20for%20Reform/web-courts-family-?print
6. Nicholson, CJ Alastair; Harrison, Margaret --- "Family Law and the Family Court of Australia: Experiences of the First 25 Years" [2000] MelbULawRw 30; (2000) 24(3) Melbourne University Law Review 756