



THE LAW SOCIETY
OF NEW SOUTH WALES

GOVERNMENT LAWYER

Newsletter of The Law Society of NSW's Government Solicitors Committee NO.46 / NOVEMBER 2010

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**TORTS IN COMMERCIAL
LAW CONFERENCE
17-18 DECEMBER 2010**

**CONFERENCE OF THE
COMMONWEALTH ASSOCIATION
OF LAW REFORM AGENCIES
4-5 FEBRUARY 2011**

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Chair's Message

By Doug Humphreys

Chair, Government Solicitors Committee

Dear Colleagues,

2010 has proved to be a very successful year for the Government Solicitor's Committee (Committee). This year the Committee once again held the Government Solicitor's Conference and Dinner which drew a record attendance. On your behalf, I would like to thank the organising committee and Law Society staff who contributed to a wonderful day. In addition we launched the revised Guidance on Ethical Issues for Government Lawyers (Guide) and the new area of specialist accreditation in Government and Administrative Law. Again my thanks to Brad Rowe for his work on the Guide and the working party who put together the policy for the new accreditation area.

The aim of the Committee is to demonstrate that there is real value in membership of the Law Society for Government solicitors. I believe we are achieving that aim. The Committee and I look forward to developing further initiatives in 2011.

Pro bono legal work is not hard or complex, if you have the will

By Susai Benjamin Office of State Revenue

Pro bono publico (usually shortened to pro bono) is a phrase derived from Latin meaning "for the public good". The term is generally used to describe professional work undertaken voluntarily and without payment as a public service. It is common in the legal profession and is increasingly seen in marketing, technology, and strategy consulting firms. Pro bono service, unlike traditional volunteerism, uses the specific skills of professionals to provide services to those who are unable to afford them.

Recently there has been a lot of interest generated in pro bono legal work. The leaders within the profession have been encouraging lawyers to provide legal services on a pro bono basis where it is needed and for people who deserve it.

It is fairly straightforward business. If any solicitor working for a government agency, be it at the level of Local, State or Commonwealth governments and would like to assist those who may not have access to the legal system, the approach is very simple. Nonetheless,

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A day in the life...

of John Patterson

Department of Defence

Several months ago my wife asked, "I know that you are in the military as a lawyer. But what do you actually do?" This same question later appeared at a committee meeting of government lawyers. As a consequence the committee chair decided that it would be an ideal opportunity for me to provide a brief account as to what is a 'typical day' of an army lawyer for my government solicitor peers.

And then I postulated, "What do I actually do on a typical day? What is a 'typical day?'" I conclude that there is no such creature. At best I can provide a melange of a typical day.

When I wake up in my room in Randwick barracks at 6.00am I wonder, "Should I do PT (physical training) now, or should I participate in the group PT class? After all, I'm getting old (over 40). Do I really want to embarrass myself pretending to be as fit as the 20 and 30 year old Titans in the class?" I decide that 'discretion being the better part of valour' to undergo the three minute walk to the gym and exercise in private.

Forty minutes later I think, "Gosh I'm exhausted (from PT) and haven't even started work yet!" After a short breakfast, shower and putting on my uniform I'm ready for work at 7.55am. Another 3 minute walk to work and I am greeted by the personnel officer who informs me of a new Defence policy on "Unacceptable Behaviour". Despite my natural aversion to reading policy, I'm strangely interested and start to read it.

I then look at my in-tray and notice that there is a request for a legal review of commanding officer disciplinary proceedings. I review the charge of "absent without leave". In this case it concerns a soldier who has turned up late for work by 30 minutes. I then proceed to ask myself the usual questions such as "Was the charge properly drafted?" "Was there sufficient evidence to convict the soldier?" "Did the commanding officer have the necessary power to hear the charge?" "Was there an accurate record of proceedings?" "Was the soldier afforded all the necessary legal safeguards before and during the disciplinary proceedings?" "Was the appropriate punishment imposed within the power of the commanding officer?"

I determine that the disciplinary

My work is more than just a job. It's a lifestyle choice that I have willingly made and embraced.

proceedings were correct in law and draft a short advice to this effect for final vetting by the reviewing Officer.

I am being rudely interrupted by the personnel officer who informs me, "You'll never guess what has happened?" I am then enlightened as to circumstances of the occurrence and I contemplate the potential legal risks that the Australian Defence Force may be exposed to. These risks may include inter alia, scrutiny by courts, the Minister, the Defence Force Ombudsman, and further action under the occupational health and safety legislation.

Gosh it's time for lunch? Unlike other lawyers, I haven't even had a chance to have my usual coffee this morning. I lament that if only I could "retire" and work with the legal latte set at Victoria Barracks.

Returning from lunch and after having considered the risks, I then advise my co-workers that an Inquiry under the Defence Inquiry regulations is appropriate. At that stage an instrument

of appointment and terms of reference are drafted by me. I make a mental note that in future I will also have to conduct a legal review when the Inquiry officer has completed their investigation.

I'm always fascinated by incidents that require an investigation. Criminal, disciplinary, or administrative – there is always something new that I haven't seen before. Having been involved with the law for 25 years it never ceases to amaze me the variety of incidents that require legal scrutiny.

Perhaps this is one of the reasons why I enjoy my work so much.

I then receive a phone call from a soldier requiring legal advice on a matrimonial separation. Recognising that family law is not my forte, I decide to contact an Army reserve legal officer. Scanning through my list I find that Capt Michael Antrum is perfect. After checking with Michael that he is available to provide legal aid, I then refer (together with my relief and gratitude to Michael) the soldier to him.

Much of the rest of my afternoon is spent with administrative tasks that include statistical returns and sifting through an endless barrage of e-mails that I receive throughout the day.

5pm and I can finally finish. It looks like I can again pretend to be fit by visiting the gym before I go to dinner.

Day over!

My work is more than just a job. It's a lifestyle choice that I have willingly made and embraced. I thoroughly enjoy the variety and challenges that my work continually demands of me. Of course there is always mundane (administrative) work.

However, most civilian or military lawyers accept this as a matter of course. There are some personal sacrifices that I make. However, the professional rewards greatly outweigh these negatives with each day providing a new set of professional challenges. ■

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Pro bono legal work is not hard or complex, if you have the will

government solicitors, while possibly having limited experiences in some areas of law, can draw on their legal skills and principles in helping disadvantaged members in the community.

Those government solicitors who are interested in serving the community on a pro bono basis can locate a community legal centre close to them, by visiting the peak body's website: www.clcnsw.org.au

One needs to have an unrestricted practice certificate if one wishes to help as an individual. Holding the unrestricted practice certificate makes life easier because, then extending assistance can be more direct without the need for supervision.

However, for those who hold a restricted practice certificate, appropriate supervision is needed. Given this requirement, holding an unrestricted practising certificate provides the freedom to assist those who may not otherwise have access to the legal system.

For those holding restricted practice certificates, it is likely that a legal practice management course needs to be completed before one gains the unrestricted certificate. This information is easily obtained from the supervised Legal Practice Guidelines 2010 available from the Law Society's website.

In addition to the unrestricted practising certificate, one needs to obtain from LAWCOVER a Compulsory Professional Indemnity (PII) insurance policy. The cost of this is very small. I obtained a PII cover from LAWCOVER. This costs me \$255.10 per annum as a nil-fee solicitor. I hold an unrestricted practising certificate.

If one were to be working as a volunteer in one of the complying community legal centres in NSW, then section 240 (1) (c) of the Legal Profession Act 2004

states that one could be working with a restricted practising certificate. Usually, community legal centres have their own professional indemnity insurance cover and supervisors.

I am the Honorary Coordinator of the newly created Toongabbie Legal Centre (TLC), which is an incorporated body. TLC is a community-based legal centre providing free legal advice, referral service and information to those who cannot afford to pay private lawyers and for those who do not know where to go when they encounter a legal problem. TLC also makes contribution in the area of legal reform, conducts community legal education seminars, and provides legal information. More information can be obtained by visiting TLC's website: www.tlc.asn.au

As a government solicitor and working on a pro bono basis outside the agency's purview, it is critical to examine if the area of work brings in any conflict of interest. For example, TLC had one solicitor from the Office of Director of Public Prosecutions working as a volunteer with us. The solicitor's involvement with TLC was formally approved by the Director of Public Prosecution, Mr Nicholas Cowdery AM QC. This volunteer was particular that he would not see any clients involved in criminal matters thus ensuring there was no conflict of interest issues which arose.

Those government solicitors who are interested to serve the community on a pro bono basis can locate a community legal centre close to them, by visiting the peak body's website: www.clcnsw.org.au

Of course, you could also provide direct help to those who are in special need through local welfare/community organisations, whether they are community groups, or a local religious congregation.

As a member of the legal profession we have obligations to those who are suffering due to their inability to access legal system properly. ■

Winners: Excellence in Government Legal Service Award 2010

The Government Solicitors' Committee congratulates the LawAccess Legal Advice Group: Emma Keir, Trina Robinson, and Tina Higgins.

The LawAccess Legal Advice Group management team were nominated for their enthusiasm, commitment and exceptional abilities which have contributed to making LawAccess one of the best services of its kind in Australia. Emma, Trina and Tina always go the extra step to ensure the professional and personal needs of the solicitors in LawAccess are met. It is this support and management that allow the lawyers to deliver a high quality service.

This year the Government Solicitor's Committee also decided to present Emma Sullivan, NSW Crown Solicitor's Office, with a special Highly Commended Award for Excellence. Emma was nominated by Deputy State Coroner Hugh Dillon for her support to the Coroners Court during the inquest concerning the collision between the ferry Pam Burridge and the motor cruiser Merinda. Emma demonstrated her professional skills with kindness and attention to the families of those who were killed and to those who had been badly affected by the tragedy.

Toongabbie Legal Centre's Third Annual Fundraising Dinner 2010

A community-based Toongabbie Legal Centre (TLC), held a third successful fundraising dinner on Friday 15 October 2010 in Blacktown.

Over 270 participants attended including the President of the Law Society of NSW who was a guest of honour.

Her Honour Justice Margaret Beazley AO of the Court of Appeal, NSW Supreme Court, the Patron of TLC, introduced the Chief Guest, the NSW Attorney General, the Hon John Hatzistergos MLC.

The Attorney General addressed the gathering and gave a detailed presentation of the history and role of the Attorney General. He congratulated TLC and its volunteers for the great work they are doing in serving the community. The full text of his speech will be placed on TLC's website at www.tlc.asn.au

Among the guests were solicitors and

barristers along with elected representatives of Parramatta, Holroyd and Blacktown City Councils, whose Local Government Areas are served by TLC. In addition there were elected members of State Parliament who attended the event.

A large number of TLC volunteers worked towards making the dinner night a success. Over 60 volunteers including 20 solicitors, 30 law students and other professionals make up the TLC team.

Any government solicitor who is interested to volunteer with the TLC should contact its Honorary Coordinator, Mr Susai Benjamin, who is also a member of the Government Solicitors' Committee, by emailing him: coordinator@tlc.asn.au

Guide to Ethical Issues for Government Lawyers Second Edition 2010

The second edition of the Guide to Ethical Issues for Government Lawyers (Guide) was recently launched at the Government Solicitors' Conference held on 1 September 2010.

The Guide has been revised over the past 18 months by the Government Solicitors' Committee to better reflect current practice and thinking.

The Guide is a valuable resource for lawyers who are employed by all levels of government and also to private practitioners retained by a government agency. The second edition will ensure that the Guide continues to be relevant and an informative resource for the profession. The Guide will continue to be updated as required and government

lawyers are welcome to make suggestions on how to enhance the Guide.

The Guide is designed to assist by setting out guides to ethical issues for government lawyers where they are affected by law or public sector codes or circumstances of practice.

The Guide may also be useful to private practitioners retained by a government agency.

Read in conjunction with the relevant practice rules and statements of ethics, the Guide will support and assist government solicitors in addressing particular circumstances and situations relevant to their areas of practice.

A copy of the Guide is available at: www.lawsociety.com.au

Winner: John Hennessy Research Scholarship

The Government Solicitors' Committee would like to congratulate Belinda Cassidy from the Motor Accidents Authority of NSW, the recipient of the 2010 John Hennessey Research Scholarship presented at the Government Solicitors' Dinner held at the Australian Museum on 1 September 2010.

Belinda will be attending the 2010 Asia-Pacific Courts Conference to develop a better understanding of the Framework for Courts Excellence in order to apply it to the Claims Assessment and Resolution Service. The development and adoption of a framework that can measure the quality of the work for the Claims Assessment and Resolution Service and the work of tribunals in general. This will also more broadly benefit the legal system of NSW by allowing our state's tribunal to become dispute resolution forums of excellence.

The John Hennessey Research Scholarship has been established by the Law Society's Government Solicitors' Committee to assist public sector solicitors undertake research in other jurisdictions and make recommendations for the improvement of the NSW legal system.

2010 Government Solicitors' Conference and Dinner

The Government Solicitors' Committee has just held its best and largest Government Solicitors' Conference and Dinner on 1 September 2010.

This year there were 258 delegates at the Conference and 130 at the Dinner compared to 170 at last year's Conference and 90 at the Dinner. Having normally been held at NSW Parliament House, the Conference was this year held at the Hilton Hotel with the Dinner at the Australian Museum. The change to and choice of new venues allowed a greater number of delegates to attend this year.

The success of this year's Conference and Dinner is partly attributed to the speakers and topics chosen. Delegates expressed their satisfaction with the Conference with comments that the "sessions were relevant, topical, and very informative" and that it was "an exemplary conference".

The Hon. Justice Nye Perram opened the conference with a speech on the Federal Government's attempts to restrict judicial review of migration decisions. Justice Perram stated that a decision maker is chosen by the parliament or the constitution as the decision maker and judicial review should be a structure that ensures there is no excess of authority.

Other sessions at the Conference included:

- Steve Mark, Legal Services Commissioner and Virginia Shirvington, Legal Ethics Education Consultant spoke on ethical issues for government lawyers.
- Juliet Bourke, Aaequus Partners spoke on workplace flexibility for solicitors.
- Jennifer Whelan, Australian Human Rights Commission provided an update on current issues in human rights law that are of particular importance to government lawyers.

Delegates expressed their satisfaction with the Conference with comments that the "sessions were relevant, topical, and very informative" and that it was "an exemplary conference".

- John McMillan, Information Commissioner Designate and Deidre O'Donnell, NSW Information Commissioner spoke about the FOI and GIPA Acts from a Commonwealth and State perspective.
- Peter Lahy, Australian Government Solicitor covered the topical caretaker guidelines.
- Roger Wilkins, Commonwealth Attorney-General's Department spoke on the national legal profession and the impact on government legal services.
- Richard Ackland chaired a panel discussion with Commodore Vickie McConachie, Australian Defence Force, Andrew Calvin, Stockland, and Strath Gordon, NSW Police, on social media and government legal practice.

The 2010 Annual Dinner was held at the Australian Museum following the Conference.

The guest speaker at the Annual Dinner was Stephen Gageler SC, Solicitor-General.

2010 Government Solicitors Committee

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Area of Accreditation in Government and Administrative Law

The Law Society of NSW is pleased to offer a new accreditation in the area of government and administrative law for the first time in 2011.

The Specialist Accreditation in Government and Administrative Law will be available to those solicitors practising in government law, as well as private sector practitioners undertaking legal work for government clients.

The federated structure of government in Australia means there will be some solicitors who practice solely in the Commonwealth jurisdiction and others who practice only in the state jurisdictions. There will also be private practitioners providing advice to government clients who may work across both jurisdictions. Whilst practitioners are required to have a working knowledge of a number of core

skills and knowledge areas common across all areas of Government and Administrative Law, the assessment process has been structured to enable solicitors to elect to stream themselves into either the Commonwealth or state jurisdictions.

The Law Society of NSW invites all interested practitioners to register their interest for accreditation in Government and Administrative Law, by visiting the Law Society website at www.lawsociety.com.au.

A candidate information kit (including application form) will be available from November 2010.

LAW SOCIETY Journal

The Law Society Journal has been a respected voice of authority in the law in NSW for more than 50 years, a magazine with high production values and content supplied by experts in their field.

The Journal reaches 93% of all practising lawyers in New South Wales, a professional and high-value audience of over 24,000 readers each month.

Lawyers rely on the Journal to keep them briefed on developments in the law and up to date on the economics of legal practice. If you need to recruit, rent out office space, provide a service, look for a missing will or have any other need to reach this readership, advertising in the Law Society Journal is a direct and effective way to get your message across.

If you would like to find out more, please visit our website at www.lawsociety.com.au/advertise or email catherine.garcia@lawsociety.com.au

24,000
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Practising NSW lawyers

SAVE THE DATE

Torts in Commercial Law Conference 17-18 December 2010

On 17-18 December 2010 the UNSW Faculty of Law will host the 'Torts in Commercial Law' conference at the Art Gallery of NSW with the Conference Dinner being held at the Intercontinental Hotel, Sydney. The world's leading tort lawyers will speak on pressing and current issues in the law of torts. Speaking at the Conference will be Chief Justice French AC (opening address) and Lord Hoffmann (closing address).

For more details including conference program and online registration visit: www.torts.unsw.edu.au or email torts@unsw.edu.au.

Conference of the Commonwealth Association of Law Reform Agencies 4-5 February 2011

On 4-5 February 2011 the biennial Conference of the Commonwealth Association of Law Reform Agencies will be held in Hyderabad, India. All are welcome to attend, including law reformers and all others whether or not you are involved in the Commonwealth Association of Law Reform Agencies.

Those wishing to register for the Conference should contact Michael Sayers at thesayers@hotmail.com