

Debrief

The members of NSW Young Lawyers are all legal practitioners under the age of 36 or in their first 5 years of practice, and all law students **NOVEMBER 2006**



Human Rights Committee Launch of Mental Health Brochure



2006 McCallum Medal Presentation Competition



InterProfessional Ball - Sara Gul NSW Golden Gavel winner gives another performance.

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Prez Sez

As we drift towards summer and the seemingly endless Christmas parties and client functions all encased in the faint smell of sun screen and barbecues, I would like to reflect on some of the achievements of New South

Wales Young Lawyers in the last few months.

One of the highlights of the Young Lawyer's social calendar was the Inter-professional Ball held on 2 September 2006 and attended by over 190 young professionals. As the photos on the following pages demonstrate, a wonderful time was had by all. The pens of Young Lawyers have been working hard and producing some outstanding submissions and publications including a joint submission by the Pro Bono Task Force and the Civil Litigation Committee on Litigation Funding in Australia and a submission on Sentencing and Juries prepared by the Criminal Law Committee. The Property Law Committee has produced its second edition of *Gazumped* and the Human Rights Committee launched its pamphlet "Understanding Your Clients and Mental Illness". The winners of the McCallum Medal Essay Competition hosted by the Employment and Industrial Law Committee and the Animal Rights Committee Essay Competition, were announced. Congratulations to all the winners. The first NSW Young Lawyers Evidence One-Day Seminar was held and was a sell out event. All NSW Young Lawyers events and its activities are detailed in full on our website; www.younglawyers.com.au

This is my final Prez Sez. My term as President of New South Wales Young Lawyers ends in November. I would like to take this opportunity to thank all of you for reading *Debrief* and supporting New South Wales Young Lawyers. Also, thanks to those of you who have participated in its projects, social events and seminars, without your support Young Lawyers would not be as successful an organisation as it is. I have enjoyed my time as President and now leave you with the closing lines from my favourite poem by Dylan Thomas, which in some ways has become my mantra for living:

"Do not go gentle into that good night.
Rage, rage against the dying of the light".

Never forget that a small group of dedicated people can make a difference.

Susannah Maclaren,
President October 2006
president@younglawyers.com.au



2006 McCallum Medal Presentation Competition

In its second year the NSW Young Lawyers' Employment & Industrial Law Committee was delighted that it received a record number of entries for the McCallum Medal. This year it was expanded to be a truly national competition following the Federal Government's Work Choices legislation with entries received from law students in four states across the country. The McCallum Medal is a presentation competition with an industrial and employment law focus, named in honour of Professor Ron McCallum AO, Dean of the Faculty of Law, University of Sydney and a former NSW Young Lawyers' Patron. The standard of entries was high, with two of the five finalists from interstate, and one traveling all the way from Western Australia. The five finalists stepped up to compete on Friday, 13th October, 2006.

On the night Professor McCallum was accompanied by a camera crew, recording a documentary to be screened on the ABC program *Compass*. The documentary follows Professor McCallum's recent Order of Australia honours recognizing his service to the law. "Professor McCallum is a great role model for not only young lawyers but all those who practice in the field of Workplace Relations. In naming the competition after the Professor, NSW Young Lawyers seeks to recognize the Professor's valuable and tireless contribution to the law" said Kelly Godfrey, Chair of the Committee.

This year the judges indicated that the decision was exceptionally close and first prize was awarded to Rhianne Grieve from the University of Technology with an excellent presentation on damages from wrongful dismissal in light of House of Lords decision of *Johnson v Unisys Ltd [2001] 2 All ER 801*. The event was generously sponsored by Clayton Utz, Thomson Legal and the College of Law.

2006 Executive Council



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Young LAWYERS
A Fresh Perspective

- Mental Health Launch
- Same Sex: Same Entitlements
- Upcoming CLE

Litigation Funding

Litigation funding is shaping up to be a potential new hotbed of activity following the High Court's decision in *Campbells Cash and Carry v Fostif Pty Ltd* [2006] HCA 41, which gave the High Court its first opportunity to comment on the validity of litigation funding agreements. Fortunately, that decision came down just in time to play a central role in the NSW Young Lawyers submission to the Standing Committee of Attorney-General's Review into Litigation Funding ('the Review'), which was written by the Pro Bono Taskforce in conjunction with the Civil Litigation Committee.

Historically, the funding of litigation by third parties was stymied by the common law through the torts of champerty and maintenance. A person would be liable in the tort of maintenance if that person was not a party but encouraged litigation. Likewise, if a person funded another person's litigation for profit, they would be liable in the tort of champerty. The common law's approach to litigation funding was justified by public policy considerations: primarily that of preventing an abuse of court processes, but also the desirability of discouraging meddlers and a belief that the judicial system should not be a ground for speculative business ventures.

However, times have changed and these torts were abolished in the 1960s in New South Wales, the Australian Capital Territory, Victoria and South Australia. In addition, it should be noted that there are other instances of litigation funding by non-parties, namely:

- where there is an insurer (via subrogation);
- in an insolvency context (through a statutory exception); and
- by family members, trade unions and legal aid.

Currently, there are about five litigation funding companies operating in Australia on a relatively small scale. Despite the abolition of the torts of maintenance and champerty in the jurisdictions mentioned, it is commonplace that defendants in cases where litigation funders are involved have sought to challenge the funding arrange-

ments on the basis they constitute an abuse of process.

The purpose of the Review is to examine:

- whether legislative changes are required to clarify the role of litigation funding companies;
- whether there should be greater regulation of litigation funding; and
- how litigation funding may be used as a mechanism to improve access to justice.

In light of the High Court's decision in *Fostif*, the NSW Young Lawyers submission noted that litigation funding was here to stay and likely to grow. Litigation funding presents an exciting market-driven system to enable plaintiffs who otherwise would be without means to access the court system, but it is also an area which requires some guidance. The submission called for a uniform national approach to litigation funding companies and some degree of government oversight and regulation, but noted that in light of the embryonic nature of the industry in Australia and the existence of other consumer protection laws, over-regulation could have its own dangers. In addition, the submission discussed the possibility that not-for-profit litigation funding may have a role to play and explored the desirability of litigation insurance products in Australia, assuming the necessary legislative changes are made.

Thanks to all those who contributed and helped out on the submission!

NSW Young Lawyers keenly awaits the outcome of the Review and will continue to keep a close eye on developments in this field. A copy of the submission is currently available on the Civil Litigation Committee's website, accessible through <http://www.younglawyers.com.au/>

If you have any questions or comments about the submission or this area of the law, please contact Davyd Wong at Davyd.Wong@younglawyers.com.au

Young Professionals Ball a Sellout!

After a number of grey and cheerless years, the NSW Young Lawyers has once again spiced up the Sydney social calendar with a glittering landmark event. The Young Professionals' Ball, organised by NSW Young Lawyers in conjunction with Young Bar and others, was held early last month at the stunning Queen Victoria Building Tearoom. Apart from young lawyers, guests include young professionals from the medical, engineering, accounting, marketing, information technology, securities, defence forces and charitable sectors.

Aside from being a fabulous social occasion (noted as an "A-list" event in the auspicious social pages of the Sun-Herald), the Ball raised more than \$2,500 for KidsXpress. This is a new charity which aims to improve the lives of disadvantaged kids through participation in the creative arts.

The keynote speaker at the Ball was Margo Ward, Founder and Chief Executive Officer of KidsXpress, who explained the work of her organisation and provided some practical suggestions about how young professional people can participate in helping the wider community. Sara Gul, winner of the 2006 Golden Gavel Award, then presented some sage and humorous advice on the pitfalls of dating in the professional world.

A big thank you to those Committees who organised their own tables - Criminal Law, Family Law, Business Law and Civil Litigation, and also to the key actors who brought the whole event together - Marina and Sofia who did some terrific leg work, Chris for organising the DJ, Josh and Susannah for being tops helpers, and Poppy and Katrina in the YL office who have shouldered a myriad of queries and endured my panic attacks etc etc (this sounds a little like a thank you speech doesn't it). The fact that the Ball was a packed sellout event augurs well for the 2007 Young Professionals Ball. Looks like we'll need a bigger venue!



The Rule of Law

The American Bar Association has 11 goals which were adopted by its House of Delegates, which is the policy making body of the association. One of the ABA's goals is "To advance the rule of law in the world". The issue of the rule of law was very much a focus of this years American Bar Association Annual Conference, which was held from 3-8 August in Hawaii. The work of the ABA on this issue at both home and abroad was highlighted at various meetings, luncheons and speeches.

In the American context there was the issue of Presidential signing statements, the proposal to appoint an Inspector General to oversee the Federal Judiciary and secret spying on US citizens in violation of the fourth amendment to the Constitution.

In the international context there was the ABA's work through its Central European and Eurasian Law Initiative, Asia Law Initiative, Africa Law Initiative Council and Latin America Legal Initiatives Council. Further information about these can be found at:

<http://www.abanet.org/ceeli/>

<http://www.abanet.org/aba-asia/home.html>

<http://www.abanet.org/aba-africa/home.html>

<http://www.abanet.org/lalic/>

These four regional initiatives are co-ordinated through the Center for Rule of Law Initiatives, or CROLI. CROLI organised an International Rule of Law symposium last November and has jointly organised the second International Rule of Law symposium with the International Bar Association ("IBA"), which is being held in September just before the commencement of the IBA's Annual Conference.

Supreme Court Justice Anthony M. Kennedy and former Special Counsel to President John F. Kennedy Theodore C. Sorenson both spoke eloquently and powerfully on the Rule of Law and the current threats to it (See <http://www.abanet.org/media/docs/kennedyremarks.pdf>; <http://www.abanet.org/media/docs/sorensenspeech8706.pdf>)

Justice Kennedy summarised the Rule of Law as follows:

1. The Law is superior to, and thus binds, the government and all its officials.
2. The Law must respect and preserve the dignity, equality, and human rights of all persons. To these ends the Law must establish and safeguard the constitutional structures necessary to build a free society in which all citizens have a meaningful voice in shaping and enacting the rules that govern them.
3. The Law must devise and maintain systems to advise all persons of their rights, and it must empower them to fulfill just expectations and seek redress of grievances without fear of penalty or retaliation.

Theodore Sorenson gave a particularly powerful and inspiring speech in which he hammered home the current threat to the Rule of Law, particularly within America.

Quoting Supreme Court Justice Brandeis he said:

For good or ill, government teaches the whole people by its example. If government becomes a law-breaker, it breeds contempt of law. It invites every man to become a

law unto himself. It invites anarchy.

Sorenson highlighted that too many lawyers had remained silent over the current threats to the Rule of Law, in contrast to the ABA, which had continually spoken out. As Sorenson said, quoting Martin Luther King, Jr, "There comes a time when silence means betrayal".

Sorenson also highlighted the work the Commission on the Renaissance of Idealism (<http://www.abanet.org/renaissance/>) in the Legal Profession and its role in maintaining the Rule of Law stating:

A year ago, President Mike Greco of the American Bar Association, established the "Commission on the Renaissance of Idealism in the Legal Profession." I had the privilege to serve as its honorary co-chairman. Surely there could have been no better time for a renewal of idealism in the legal profession, a reminder to all members of the Bar of their obligations to do justice, to uphold the law, to defend the Constitution, and to insist that our country observe international law in concert with other law-abiding nations around the globe. That's what lawyers do. As I told the New York City Fellows of the ABA Foundation regarding lawyers: "It's easy to make a buck – it's harder to make a difference." Winston Churchill, as always, said the same thing better: "We make a living by what we get – we make a life by what we give".

Similarly President Greco (who at the end of the conference became the ABA's past President), gave a speech to the ABA's House of Delegates in which he highlighted one of his international Rule of Law initiatives, the Statement of Core Principles of the Legal Profession. President Greco had this endorsed by more than one hundred bar leaders at conference of bar leaders in Paris in November last year. These principles are as follows:

- 1 An impartial, and independent, judiciary, without which there is no rule of law.
 - 2 An independent legal profession, without which there is no rule of law or freedom for the people.
 - 3 Access to justice for all people throughout the world, which is only possible with an independent legal profession and an impartial, and independent, judiciary.
- And that, these core principles shall not yield to any emergency of the moment.

In his concluding remarks President Greco also relevantly said:

"In a speech that was to be delivered in Dallas on November 22, 1963, President John F. Kennedy said this:

"We in this country, in this generation, are by destiny rather than choice, the watchmen on the walls of freedom."

In our generation, it is the lawyers of America who -- by destiny and by choice -- are now the watchmen on the walls of freedom.

Today it is the American Bar Association that is protecting the separation of powers, and the balance of powers, by checking the constitutional excesses of any branch of government".

The full text of President Greco's speech is available at:

<http://www.abanet.org/media/docs/grecohod806.pdf>

Human Rights Committee launches new brochure entitled 'Understanding your clients and mental illness'

The Human Rights Committee is delighted that Justice Greg James of the Supreme Court has launched the pamphlet entitled 'Understanding your clients and mental illness' at the YLHRC Annual Networking Evening. The pamphlet was written and published by the Committees' Mental Health Working Group, and was launched to coincidence with Mental Health Week from 8 – 14 October 2006. The pamphlet is designed to assist legal practitioners in NSW whose client has or may have a mental illness and need a quick reference guide to direct them to the key issues facing legal practitioners in this area. The pamphlet, which includes information aimed to assist lawyers in identifying mental illness, locate recourses and assist clients with their care and treatment or through the criminal justice system will be available with the October issue of the Law Society Journal. Please contact Louise Jardim at hrc.chair@younglawyers.com.au or Rebecca Smith at mhwg@younglawyers.com.au for more information.



My Job:

Sue Gabor



What do you do?

I work at the Office of Film and Literature Classification. I started at the OFLC just over a year ago in a policy/legal role but more recently moved into the operations area and I've become somewhat of a 'Jill-of-all-trades'.

Why did you choose to do the work you do?

I love film and popcorn (caramel), and the OFLC was looking for someone with a legal background so it seemed a natural fit. I enjoy that I share an interest in film with my colleagues and I work in an environment where film references abound.

What do you consider your career highlights?

My first legal job was working for a domestic violence service, obtaining apprehended violence orders for at risk women and children. It was a privilege to have been entrusted with such responsibility fresh out of university. I've had a varied career, including stints in the community legal sector, with the Law Society and the Workers Compensation Commission. But I most enjoyed working in Queensland as a legal adviser for WorkCover. I got to travel extensively through Queensland and experience the 'Hawaiian shirt atmosphere' of far north Queensland.

What factors have influenced your career plans?

I've generally 'gone with the flow' in terms of my career. I occasionally regret not having planned my career, but generally I'm quite happy to leave it to providence. Fortunately, it's worked so far ...

Have you read a case lately and what was it?

I recently read (actually, re-read) *Brown* and the Classification Review Board, a Federal Court case about whether or not certain publications should have been refused classification.

What tips can you give young lawyers who want to do similar work?

Don't let people pigeon-hole you and seek out employers who recognise that you have a transferable skill set.



Justinian Competition

The electronic journal Justinian reports on the life and times of legal Australia. It has been unpicking the exquisite finery of the law for

nearly 30 years. For the chance to win a year's subscription to Justinian, tell us the most unusual sentence in a reported judgment and provide the citation for verification.

Entries should be sent to: Editor - Debrief, C/- NSW Young Lawyers, DX 362, Sydney or Level 6, Law Society of NSW, 170 Phillip Street, Sydney.

The winner will be announced at the Committee Chair Cocktail Party and in the December edition of Debrief.

2007 ANNUAL ONE DAY SEMINARS

Support our CLE Programmes - Diarise

Port Macquarie Annual Seminar – Saturday, 17th February, 2007

Employment & Industrial Law – Saturday, 24th February, 2007

Family Law – Saturday – 10th March, 2007

Criminal Law – Saturday – 17th March, 2007

Property Law – Saturday – 24th March, 2007

Litigation – Saturday – 31st March, 2007

November CLE Seminars

■ Basics in Conveyancing

Wednesday, 8th November, 5:30 p.m. to 7:30 p.m., cost \$85.

■ An Update on Financial Services Reform

Tuesday, 14th November, 2006 5:30 p.m. to 7:00 p.m., cost \$85

■ 2006 – A Vintage Year in Copyright

Wednesday, 15th November, 2006 – 1:00 pm. to 2:00 p.m, cost \$60

■ Perspectives from the Bench: Industrial Law

Wednesday, 22nd November, 2006 5:30 p.m. to 7:30 p.m., cost \$85.

■ Adjudication Under NSW Security of Payment Legislation: Process Procedure and Rights of Review

Thursday, 23rd November 2006. 1:00 pm. to 2:00 p.m, cost \$60

■ 2005 Legislative Amendments: Dispute Prevention and Resolution

Tuesday, 28th November 2006 5:30 p.m. to 7:30 p.m., cost \$85

■ Negotiation Skills for Property Matters

Wednesday, 29th November 2006 5:30 p.m. to 7:30 p.m., cost \$85

For more information or to obtain a copy of the registration material please contact Katrina Hall at the Law Society, 170 Phillip Street, Sydney 2000, DX 362 Sydney, phone 9926 0270, fax 9926 0282, email kxh@lawsocnsw.asn.au or visit www.lawsocnsw.asn.au/yl/cle.

Human Rights Committee submission on "Same Sex: Same Entitlements"

The Human Rights Committee ("HRC") has entered a submission to the Human Rights and Equal Opportunity Commission's inquiry, "Same Sex: Same Entitlements". The Commission is conducting an audit of provisions in Commonwealth and State legislation which discriminate against same sex couples and their children. The HRC was later invited to speak to its submission and accordingly we addressed the Commission's public forum in Sydney on 26 July 2006.

The HRC submission, co-authored on the HRC's behalf by Kathryn Wilson, Nana Frishling, Renee Saibi, Alecia Simmonds and Sophie McWilliam, is available at the HRC's website: www.lawsociety.com.au. The HRC submitted that the discriminatory provisions identified by the Commission must be amended such that same sex couples are legitimately recognised as equal in status to their heterosexual counterparts. The failure of State and Territory governments to protect the human rights of same sex couples has resulted in their failure to fulfill Australia's human rights obligations under various international treaties, all of which are clearly identified in the submission.

The Commission is continuing to hold forums around Australia until October 2006. Further information regarding the Inquiry can be found at www.hreoc.gov.au/same-sex/index.html.

Annual Trivia Night Extravaganza

The NSW Young Lawyers Environmental Law Committee, in conjunction with the National Environmental Law Association (NSW Division), is holding its **Annual Trivia Night Extravaganza** in order to raise funds for the Nature Conservation Council's "Marine Sanctuaries – National Parks of the Sea" campaign.

When: Wednesday, 29 November, 2006

Time: 6:00 for a 6:30 start, concluding at 9:00 pm

Where: Sparke Helmore Lawyers, Level 16, 321 Kent Street, Sydney

Tickets: \$45 per head, \$35 student concession.

(Price includes drinks until 9:00 pm and cocktail food, with proceeds going to the Nature Conservation Council <http://www.nccnsw.org.au>)

Enquiries: Golnaz Mojtahedi, NSW Young Lawyers on 99260268 or email: gmojtahedi@lawsocnsw.asn.au

This issue of *Debrief* has been edited by Rob Stokes, Susannah Maclaren and Poppy Dreki. All expressions of opinion are published on the basis that they are not to be regarded as expressing the official opinion of NSW Young Lawyers. NSW Young Lawyers accepts no responsibility for the accuracy of any opinion or information contained in this publication. Readers should rely on their own inquiries in making any decisions.