Speaking of rights

Barristers in schools

As I write this column Law Week has just concluded. The Law Week breakfast put on by the City of Sydney Law Society featured a discussion on the relationship between the media and the legal profession. Familiar questions were raised about why the media only seems interested in scandalous stories about lawyers and how the bad apples make life so difficult for the vast majority of upright, ethical practitioners.

For many years we have struggled to interest the media in stories that showcase the good work done by the bar.

With this in mind, the Bar Association has opted for a new approach. Because some of our poor press arises from ignorance and prejudice, we decided to take a long-term approach to the problem by informing the public about who we are and what we do before their prejudices are formed. To this end we developed a programme for primary schools. The barristers provide the children with some rudimentary information about the law and the legal processes after which they participate in a mock trial. The children play all the roles in the courtroom except for the judge. The programme received the strong support of the NSW Department of Education and Training. A successful pilot was held late last year. During Law Week year six students from four schools participated: Penrith, Summer Hill, Newbridge Heights and Newtown North Public Schools. The exercise with Newtown North Public School was conducted in the courtroom at the Police and Justice Museum in Phillip Street with the children appearing in the mock trial in wigs and gowns. I was privileged to attend two of them.

The children participated enthusiastically and the feedback from the schools and the department has been excellent. At Summer Hill the exercise was covered by the *Daily Telegraph*. The children asked many intelligent questions and the interaction was superb. When the reporter asked how many of them wanted to be lawyers, more than half put up their hands!

The programme was developed from an idea I took to the Working Party on the Bar in the Community. My thanks go to all members of the working party but, in particular, to Karen Conte-Mills and Margaret Cunneen SC for preparing the curriculum and for giving up so much of their time to conduct the exercises, to Andrew Martin, who filled in for Karen at two schools at short notice, and to Alastair McConnachie, the director of law reform and public affairs at the Bar Association for his effective coordination of the programme and liaison with the department.

In the near future I expect to be in a position to call for expressions of interest from barristers to run similar programmes in other primary schools across the state. A programme of this kind has the potential to make a real difference to the community's appreciation of the law and of lawyers, make the law more accessible and demystify the court process, which will benefit all who come before the courts, no matter in what capacity.

The notion that the appointment of foreign lawyers to judicial posts in Fiji under a military dictatorship will assist in the restoration of the rule of law is illusory.

Fiji

The demise of the rule of law in Fiji, to which the editor has referred, is of considerable concern. The military leader, Commodore Frank Bainimarama, who remains in control despite the decision of the Court of Appeal in *Qarase v Bainimarama & ors* declaring his government illegal, has refused to sanction elections until 2014. The editor mentioned the expulsion of independent journalists. It was widely reported that the highly respected ABC journalist, Sean Dorney, was deported because the regime was 'unhappy' with his reporting. The local media are forbidden from publishing anything that is critical of the government. Regulations enabling the Information Ministry to censor local media and also outlawing political meetings, which were due to expire on 10 May, have been extended.[1] The muzzling of the media has meant that little news is coming out of the country. As far as we can tell, the former solicitor general, New Zealander, Christopher Pryde, who supported the

legality of the current regime in the proceedings and who immediately sought leave to appeal when the decision was handed down, was dismissed along with all judges when the constitution was suspended, has been reappointed and some new magistrates including a new chief magistrate have been named but there have been no announcements of the appointment of any superior court judges.

The profession here and in New Zealand have condemned the developments in Fiji.

The Australian Bar Association called on Australia to take a leading role against the military dictatorship, noting that

> [t]he Fijian army is substantially financed by the United Nations through international deployments. The conduct of the army in ending the rule of law in Fiji means that it is totally inappropriate that it should have any continuing role in the maintenance of law & order in the international community. Presumably the Australian Government will take such action as it considers necessary to withdraw support for the regime through tourism and sporting ties.[2]

The Fiji and New Zealand Law Societies have publicly opposed foreign lawyers taking up judicial positions in Fiji. John Marshall QC, president of the New Zealand Law Society, has urged NZ lawyers not to take up appointments to any office,[3] claiming 'it puts more pressure on the interim, unlawful regime if they cannot find people who can fulfil these role'.[4] On the other hand, the recently reinstated Fiji solicitor general has dismissed such calls arguing that the country needs qualified lawyers to help restore the rule of law.[5]

April 1, 2009: NSW Attorney-General John Hatzistergos and president of the Australian Human Rights Commission Catherine Branson at NSW Parliament House, Sydney. Pic: Carlos Furtado / Newspix

It should be remembered that economic and sporting sanctions had a large part to play in the demise of apartheid in South Africa. The notion that the appointment of foreign lawyers to judicial posts in Fiji under a military dictatorship will assist in the restoration of the rule of law is illusory. At most it will lend legitimacy to the administration.

There are many myths put about in the media about a charter of rights. Whilst some opponents will bever change their minds, Lord Bingham's address published in this issue of Bar News *should provide some sobering reading for some of the charter sceptics.*

Legislating to protect human rights

There are many myths put about in the media about a charter of rights. Whilst some opponents will never change their minds, Lord Bingham's address published in this issue of *Bar News* should provide some sobering reading for some of the charter sceptics. In addition, a joint statement recently made by a number of prominent constitutional and human rights lawyers should allay concerns about any constitutional obstacles to such legislation, in particular, whether courts exercising federal jurisdiction could validly make declarations of incompatibility. The unanimous view of those who participated (including Sir Anthony Mason, Michael McHugh QC and Bret Walker SC) was that a Human Rights Act for Australia could

be drafted that would be constitutionally valid. In particular, there was agreement that there is no constitutional impediment to a statute with the following features:

- Identifying the human rights to be protected, being rights contained in the International Covenant on Civil and Political Rights.
- Allowing rights to be limited in defined circumstances, taking into account factors like the nature of the right and considerations of necessity and proportionality.
- Requiring that the attorney-general or the member introducing the legislation prepare and table in the Parliament of Australia a human rights 'statement of compatibility' which, at a minimum, would give reasoned consideration to whether the Bill was compatible with the human rights identified in the Act.
- Requiring that federal public authorities act in a way that is compatible with the rights identified in the Act unless required by law to do otherwise, which could extend to organizations acting on behalf of the Commonwealth in carrying out public functions.
- Requiring courts to interpret all Commonwealth legislation in a way that is consistent with the rights identified in the Act, so far as it is possible to do so consistently with the purpose of that legislation.
- If a court found that it could not interpret a law of the Commonwealth in a way that is consistent with the rights identified in the Act, a statutory process could apply to bring this finding to the attention of federal parliament and require a government response.

The full text of the statement is available on the website of the Human Rights Commission, which convened the roundtable meeting that produced the statement.[6]

Endnotes

1. Radio New Zealand News, 4 May 2009
2. Press release 14 April 2009
3. http://www.lawsociety.org.nz/home/for_the_public/media_centre/media_releases/media_releases2/2009/law_society_concerned_over_fijis_legal_situation
4. AAP, 20 April 2009
5. AAP, 20 April 2009
6. http://www.hreoc.gov.au/letstalkaboutrights/roundtable.html.

BARRISTERS SICKNESS & ACCIDENT FUND

BSAF is the only insurance fund whose directors are barristers and which is operated exclusively for barristers.

Sickness & accident insurance is a key practice management strategy. BSAF's policy provides up to 100% cover. No waiting period. Prompt monthly payment of claims.

BSAF welcomes renewals and new member applications. For further information and a Product Disclosure Statement please visit www.bsaf.com.au, call 9416 0681 or email office@bsaf.com.au

BARRISTERS SICKNESS & ACCIDENT FUND

Protection for barristers since 1962

You should read the Product Disclosure Statement and consider whether the product is appropriate before making your decision.

BSAF insurance cover is issued by Barristers Sickness & Accident Fund Pty Ltd ACN 000 681 317.