

Great Expectations...?

The court room can be a harsh place to ply your trade.

Advocates at the front line are often dealing with crushing file loads, complex clients; and opponents who see the adversarial system as a cage fight rather than an opportunity to narrow issues and engage in pragmatic discussions. Not to mention the overwhelming emotions and trauma associated with confronting and difficult evidential material.

Judicial officers, many of whom are appointed to the position after decades in that court room environment, must ensure justice and fairness is achieved in all matters. It is a difficult and stressful job that brings with it a significant emotional impact and almost certainly vicarious trauma.

It is no secret that CLANT and each and every key stake holder in our justice system, including and indeed driven by the Judiciary, were involved in the drafting of a document for the institution of a judicial complaints procedure. This document was provided to the Attorney General in the early part of last year. Despite the consensus, the NT Government is yet to introduce legislation formalizing the position.

At what point does 'harsh' become intolerable or unacceptable?

Nobody should feel intimidated or harassed in their workplace. Nobody should fear turning up to work. Everybody should have faith that those entrusted to uphold justice will be even handed, patient and courteous in the exercise of their powers. If you cannot effectively communicate with the bench, you cannot effectively advocate for your client.

A legislated Judicial Complaints Commission is long overdue in the Northern Territory. Until such time, it is pertinent to consider the *AIJA Guide to Judicial Conduct (third edition)*, published November 2017; for the Council of Chief Justices of Australia and New Zealand as an appropriate reference document. Specific attention is drawn to the following sections:

2. Guiding Principles

Three main objectives of judicial conduct:

- *To uphold public confidence in the administration of justice*
- *To enhance public respect for the institution of the judiciary; and*

- *To protect the reputation of individual judicial officers and of the judiciary¹*

2.3 Conduct generally and integrity

A judge has a duty ‘to uphold the status and reputation of the judiciary and to avoid conduct that diminishes public confidence in and respect for the judicial office’.²

4.1 Conduct in Court;

‘A Judge must maintain a standard of behaviour in court that is consistent with the status of judicial office and does not diminish the confidence of litigants in particular and the public in general, in the ability, the integrity, the impartiality and the independence of the judge. It is therefore desirable to display such personal attributes as punctuality, courtesy, patience, tolerance and good humour.’

...

‘The entitlement of everyone who comes to court...to be treated in a way that respects their dignity should be constantly borne in mind. Bullying by a judge is unacceptable...the absence of any intention to offend a witness or litigant does not lessen the impact.’

...

‘A judge must be firm but fair in the maintenance of decorum, and above all even handed in the conduct of a trial. This involves...the need to protect a party or witness from any display of racial, sexual or religious bias or prejudice.’³

4.8 re critical comments;

Particular care should be taken to avoid causing unnecessary hurt in the exercise of the judicial function. This includes taking care about comments made in court (see 4.1 above) and observations made... in remarks on sentence.⁴

Absent appropriate legislation to receive, refer and investigate complaints and invoke action and consequences, the Criminal Lawyers Association wishes to reach out to any and all practitioners who have a concern with behavior in a court setting.

¹ AIJA Guide to Judicial Conduct (3rd edition), published November 2017; page 5.

² AIJA Guide to Judicial Conduct (3rd edition), published November 2017; page 8.

³ AIJA Guide to Judicial Conduct (3rd edition), published November 2017; page 19.

⁴ AIJA Guide to Judicial Conduct (3rd edition), published November 2017; page 21.

Please do not suffer in silence. If you or a colleague wishes to raise an issue, whether in confidence or otherwise, please contact us directly and we will do all we can to assist in achieving an appropriate outcome.

Most importantly be aware of relevant counselling and support services available and ensure you take advantage of them when and as the need arises.

Marty Aust