

Facebook pokes firms into group action



HEARSAY

Firms and their clients might be slightly alarmed to know that the Facebook group dedicated to "those who struggle with trying to bill clients for the time we spend on Facebook" is proving very popular with lawyers.

The group has 1075 members at the time of writing and is full of useful suggestions for creative time sheets when the pull of Facebook is too strong. "Practice development" — a great code for padding a time sheet to meet your daily budget!" suggests one Australian lawyer.

Some firms are trying to stamp out Facebook at work, such as Allens Arthur Robinson in Melbourne, but that hasn't stopped the bright young things of the firm starting up an AAR Facebook group, which also includes information on where to get another job.

Getting out is a recurrent theme on legal Facebook groups. The Preehills: Once Were ACs group describes itself as "trained, burnt out, and (mostly) departed" and has 73 members.

Pilots Without Lawyers is a group "dedicated to convincing all practising lawyers to pack it in and take up flying". "Let's face it, flying airplanes is a lot more fun than having your face planted in legal documents 24-7. While the money is comparable to waiting tables, the shagadelic lifestyle of the pilot is second to none," the group says.

But other lawyers are using social networking to challenge stereotypes. Lawyers Who Bring Sexy Back exists apparently "because not all lawyers are boring, ugly and tragically born without

personalities". Unfortunately the group has become embroiled in controversy, first because members are concerned the group photo of a girl's bottom isn't flattering enough and because the site has been ambushed by non-lawyers looking for husbands.

In true lawyer style Mallesons Stephen Jaques has established an alumni group on Facebook but also states, "Mallesons does not endorse or recommend Facebook."

Among a ream of dire warnings Mallesons says: "Facebook addiction is a real issue — inappropriate use in work hours, and excessive use out of hours can interfere with your enjoyment of life."

The world of Facebook is also giving law firm management some interesting insights. One Vancouver lawyer warns, "I've actually used Facebook to check out the articling student applicants that I scheduled for interviews. Seriously, if you're applying for jobs (articles or not), change your Facebook pic to something a little more professional, at least until you get a job!"

Perhaps that's a message the CU Dirty Blvd group "Clayton Utz Workplace Relations (Sydney) Whorebags" should heed.

Former High Court judge Ian Callinan is enjoying a new life of freedom away from the bench. For a start, there is no need to worry about unflattering holiday pictures turning up on the front page of a national daily newspaper. And he can also write what he wants without worrying about potential headlines like "The Tub's tawdry tale".

"It's my business to say where and when I travel, I'm free to say what I think, and best, I can write plays and novels without sensationalists deliberately seeking to portray a touch of real life as salacious," Callinan told a recent conference in Brisbane. "If I cared to do so I can even write the salacious without attracting



Freedom of speech... Ian Callinan enjoys new-found anonymity. Photo: GREG WHITE



THE COURT OF APPEAL COULD BE VERY CUTTING ABOUT THE JUDGEMENTS OF LOWER JUDGES

attention. I emphasise that I don't intend to do that. There is not the same mileage in the random thoughts of a retired judge as there is in those of a sitting judge." Very true, but at least Hearsay will always be on hand to document such random musings.

Protocol staff in the NSW Premier's Office planned the state funeral of asbestos diseases campaigner Bernie Banton down to the last second. The seating was also subject to

extensive planning. So it was of some interest who was beside Prime Minister Kevin Rudd in the front row at Acer Arena. On one side was NSW Premier Morris Iemma but on the other side was not NSW Governor Marie Bashir — who was at the end of the row — as might have been expected, but NSW Chief Justice Jim Spigelman. There might have been nothing to it, but perhaps the Premier's staff was trying to give the Chief Justice an opportunity to have some quality time with the new PM ahead of the appointment of a new High Court chief justice next year?

It was not possible to overhear the small talk, but one can just imagine what Spigelman had to say: "No, no, I am a very young 61-year-old, that Walker fellow is old before his time"

The keen observer might have noticed some interesting jewellery adorning Carneys Lawyers director Natalie Ng at the settlement of the Swiss Grand Hotel Bondi Beach on Monday. Following in the long tradition of female legal eagles who refuse to let a little thing like childbirth get in the way of a major deal, Ng gave birth to daughter Madison on Thursday, but left her in hospital to attend the

settlement four days later, before returning to hospital. She was still wearing her hospital bracelet. A group of investors headed by Rebel Property Group's Allan Lintz won control of the pink and puffy four-star hotel in March in a deal estimated to be worth \$135 million.

John Howard wasn't the only person left to count his losses after the federal election. Elderly West Australian resident Dieter Horn faces another big legal bill from the Australian Electoral Commission after he again lost his legal battle to have the AEC provide a more private setting in which to cast his vote.

As reported by Hearsay before the election, Horn has fought a three-year crusade to prove that Australia's system of secret ballots is contrary to the express terms of the Commonwealth Electoral Act, which says that polling booths shall have separate voting compartments constructed to "screen voters from observation while they are marking their ballot papers".

On the day before the election, Federal Court judge Neil McKerracher dismissed Horn's case, saying the act requires only that the vote itself be secret and does not guarantee total privacy for a voter. "The secrecy attaches to the actual vote itself," McKerracher said. "There is no evidence that any risk to that secrecy will occur by the absence of a door or curtain."

"There is no reason why the fact that a voter is in a booth marking a ballot-paper as required by law should in itself be the subject of privacy. There is every reason, however, to guarantee privacy of the manner in which the vote is exercised."

"In my view that is the purpose to which the Electoral Act is directed and is consistent with both a purposive and a literal reading of the words of the two sections when taken together."

Edited by Marcus Priest

The Yin
7 Dec 2007
Honorary
Fellow
the Hon
I am
Callinan AC QC

Brevity is not necessarily the soul of judgement

Facts, more facts and all previous cases weigh heavily on those handing down High Court rulings, writes **Ian Callinan**.

A constitution is not like a statute or a detailed set of regulations. There's room for argument about all sorts of aspects of it and it can never be as full a document or as explicit as focused, detailed legislation.

Now the point of all that is that if a judge does bring to a constitutional question his or her philosophical baggage – and he or she will probably have some philosophical baggage – there is an obligation to make clear what that philosophy is and to be quite candid about it.

When I was at the bar – I do not speak of my own time on the court – I sometimes thought that some judges were not always as candid about their real reasons for deciding a case as they might have been.

Some High Court judgements are too long, too wordy and too numerous. Three or four separate judgements – often quite long – reaching the same conclusion but involving quite different or even slightly different reasoning are, it is said, unnecessary, productive of uncertainty, and self-indulgent.

There are nonetheless some

justifications. Take length. Length really occurs for a number of reasons. Sometimes you just have to take a lot of space and a lot of time to narrate the facts, particularly when they're complex.

As to quotations and citations of extensive authority, there is too much of them. I do think it would be better simply to refer more often to principle than to lengthy passages in earlier judgements, although sometimes it is necessary to put principle in context.

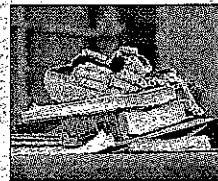
Another reason judgements may be long is that they involve repetition of matters dealt with by other judges in the case and a tendency to stray beyond the issues I found it helpful, and very often necessary – even in cases in which I didn't publish a separate judgement – to state the facts fully to help me resolve the case.

The parties are entitled to know how a particular judge viewed the facts, which ones he or she accepted, and the weight to be attached to them. The facts, even sometimes the way or order in which they are to be considered, can dictate the result. If, on the facts, a particular result is morally compelling, the right legal result will usually be the same.

High Court judges are not just constitutional judges. They also state the common law for Australia. Generally speaking the only cases that the High Court considers are difficult

ones, cases in which a plausible, legally defensible result either way is possible. In those circumstances, that too can make accurate statement of the relevant facts essential.

Why not have one judge state the facts and the others not repeat them? Of course that does often happen, but there can't be an invariable rule about it. In my time on the court, and earlier I understand, there were proposals that High Court judges agree to do



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that. Almost every time it was attempted, it failed.

People think differently about the facts. People take a view of one matter that may be quite different from the view of that matter that another takes. Sometimes a judge will say that a fact is of no consequence. Therefore he won't even refer to it in his or her judgement. Involved in all of that is at least a consciousness of the importance of the facts, and their full and correct narration.

The facts are much more relevant

and likely to be controversial in common law than they are in constitutional and rights law, the only two subjects with which the Supreme Court of the United States is concerned. Rights law and constitutional law more readily lend themselves to unanimous adoption of the facts. The facts, particularly rights law, are much less likely to be controversial. In those circumstances the debates can tend to be more about policy than the law.

forwards to other judgements. I also found the parties, for whom, after all, the judgement should primarily have been written, preferred this too.

I had another predilection. It is the business of final appeal courts to correct error. It is more than a matter of mere elementary courtesy, if a judge in the court below is said to have made an error, to identify, and set out the passage or passages in which the error had been made.

That provides an answer to any complaint that he or she may have been misrepresented or paraphrased unfairly. Similarly, if a judge's opinion is to be affirmed, the relevant passage should desirably be repeated rather than summarised: credit where credit is due.

The work of the High Court is demanding. Anyone sitting on it is conscious of the weight of history on his or her shoulders. When I sat there I often reflected upon the great judicial figures of the past. Their reputations and work ensured that the bar for their successors stood high. I did try to reach that bar. I only hope that occasionally my work managed to clear it.

■ *Ian Callinan, QC, AC, is a former High Court judge. This is an edited version of a speech given on November 23 in Brisbane to the Institute of Arbitrators & Mediators Australia.*