



## Précis Paper

### Indigenous Representation at the Bar

An important discussion about the number of First Nations people at the NSW Bar and in the legal profession more broadly

#### **Discussion Includes**

- Background
- *Wotton v State of Queensland (No 5)* [2016] FCA 1457
- *Trustees of the Indigenous Barristers' Trust v Commissioner of Taxation* [2002] FCA 1474
- Indigenous Barristers' Trust The Mum Shirl Fund

## Précis Paper

### Indigenous Representation at the Bar

1. In this edition of BenchTV, Chris Ronalds AO SC GAICD (Barrister, Frederick Jordan Chambers, Sydney) and Damian Beaufils (Barrister, 11th Floor Garfield Barwick Chambers, Sydney) discuss the number of First Nations people at the NSW Bar and in the legal profession more broadly.

#### Background

2. Chris has been one of the driving forces behind efforts to increase the number of First Nations people within the legal profession.
3. The NSW Bar Association had an equal opportunity committee in the late 1980s, of which Chris was a member. Its initial focus was upon women at the Bar, because at that time there were very few women at the Bar.
4. In the latter part of her role in the Committee, Chris started to look at the number of First Nations people at the Bar, which did not take long, because there was only one at the time: Mullenjaiwakka – also known as Lloyd Clive McDermott – and Australia's first indigenous barrister for a long time.
5. In consultation with Mullenjaiwakka and others, the Committee started to look at ways in which to improve Indigenous representation. Its outlook was long term, taking the view that the most obvious barrier in all this was financial – that is, Indigenous practitioners were being deterred by the financial risk that inevitably comes with the first few years of practice at the Bar.
6. So the Committee decided to provide financial security to Indigenous practitioners in the first five years of coming to the Bar. And thus the Indigenous Barristers' Trust The Mum Shirl Fund was created. The Committee saw it as important that the number of indigenous barristers be increased, chiefly because the Bar should be diverse and reflect the community.
7. On the percentage of the population of First Nations people in NSW at the time the numbers were crunched in 2001, there should have been 65 First Nations barristers at the NSW Bar if the numbers were to reflect the right proportion.
8. Now that number would be larger, because there are more barristers now, and the Indigenous population has since increased.
9. Encouraging the number of First Nations people at the Bar has been important for two key reasons, among many others of course, including:

- so that Aboriginal views are represented at the Bar
  - so that there are Aboriginal people at the Bar acting as ordinary barristers
10. There is view that it is important for Aboriginal people to represent Aboriginal people in the criminal sphere, which is very limiting and can mislead Aboriginal barristers into thinking that their only option as a practitioner is to work in the criminal sphere.

Wotton v State of Queensland (No 5) [2016] FCA 1457

11. *Wotton v State of Queensland* - otherwise known as the 'Palm Island case' - was a case in which the main applicant, Lex Wotton, brought action against the State of Queensland on behalf of the Indigenous population of Palm Island in the aftermath of the Palm Island Riots in November 2004 which followed the high-profile death in police custody of Cameron Doomadgee (posthumously known as 'Mulrunji').
12. Mulrunji died very shortly after he was arrested by Senior Sergeant Chris Hurley for being drunk, which arguably is not an offence on Palm Island. There was supposedly then an investigation, whereby police arrived, and island was militarised for a few days.
13. The court found that the police did not liaise properly with the community. Following a public meeting during which it was announced that the cause of death had been an accident, the community was outraged and as a consequence, the police station, courthouse and Hurley's house were burnt down.
14. The night of the fires, the Riot Squad arrived on the island in full gear and armed with large assault rifles. At 5 am, the Riot Squad started raiding houses of the people that they claimed to be the leaders of the riots. Lex Wotton was tasered and the first person to be arrested because he was seen to be the main leader.
15. Wotton ended up serving 20 months in prison, after which he pursued action in the Federal Court for systemic racial discrimination by the Queensland Police Service.
16. Chris's junior counsel in the matter, Joshua Creamer (an Indigenous barrister from Brisbane) played a pivotal role the proceedings. Joshua spoke to many of the witnesses, who were very young at the time, and whose evidence was vital in establishing what happened in the community when the police were there.
17. Joshua interviewed these witnesses, and they had confidence in him. So Joshua was able to do an excellent job of taking the evidence-in-chief from these witnesses.
18. The case is a very important test case, and to have been able to have run it properly with the right input from an Aboriginal barrister was essential.

Trustees of the Indigenous Barristers' Trust v Commissioner of Taxation [2002] FCA 1474

19. When the Indigenous Barristers' Trust was originally established, the Committee applied to the Tax Office for 'deductible gift recipient' status, which was knocked back on the basis that the Trust did not meet the necessary criteria for providing for disadvantaged groups on the grounds that their agenda was too narrow etc.
20. The Committee took this decision to the Federal Court. The Committee won the case at first instance, which was then appealed by the ATO, and ultimately settled between the two parties. The trust has had deductible gift recipient (DGR) status since.

Indigenous Barristers' Trust The Mum Shirl Fund

21. The funds are used in a variety of different ways to support Indigenous law students and lawyers. The Trust also provides a mentoring program for law students that connects them with an Indigenous barrister for mentoring.
22. Tony McAvoy SC (Australia's first and only Indigenous Senior Counsel) and Chris were concerned that there was not any natural networking at a national level between First Nations students and practitioners. Such networking tended to be more state-based or university-based.
23. So in 2006, in an effort to create a national network of lawyers and law students, the Trust ran the first National Indigenous Legal Conference, which had about 130 attendees, and which now has around 400-500 attendees.
24. The Conference is held annually in different cities across Australia. The Conference usually focuses on First Nations people's rights.
25. The Trust also provides grants for a range of different activities. Indigenous law students who have hit financial difficulty by reason of domestic violence, family dysfunction, etc. have been provided with somewhere safe in which to live by the Trust. The Bar has been incredibly supportive of the activities of the Trust.
26. There are now five First Nations barristers (including Damien). Going into the future, Chris would like to see the diversity of the community reflected in the Bar in a number of ways. In terms of First Nations barristers, we can only hope that the numbers increase and that they are practising in a wide range of fields, and not just in native title and crime, which tend to be the areas into which they are generally slotted.

## **BIOGRAPHY**

### Chris Ronalds AO SC GAICD

Barrister, Frederick Jordan Chambers, Sydney

Chris Ronalds AO SC GAICD is a Sydney barrister, specialising in discrimination and harassment law, employment law and administrative law. She conducted of a number of landmark discrimination cases, most recently in *Wotton v State of Queensland (No 5)* [2016] FCA 1457. Chris has expertise in the education sector, working with many higher education institutions and VET colleges. She has the principal responsibility for running various programs for the NSW Bar Association to increase the representation of First Nation's people in the legal profession.

### Damian Beaufile

Barrister, 11th Floor Garfield Barwick Chambers, Sydney

Damian is an Aboriginal barrister who commenced practice as a solicitor in 2011 and as a barrister in 2016 where he specialises in criminal law and environmental law. Since coming to the Bar, Damian has appeared in a variety of different courts including the NSW Land and Environment Court, the NSW District Court and Supreme Court. Damian's experience as an environmental engineer allows him to provide a well-rounded service to his clients in a practical manner.

## **BIBLIOGRAPHY**

### Cases

*Wotton v State of Queensland (No 5)* [2016] FCA 1457

*Trustees of the Indigenous Barristers' Trust v Commissioner of Taxation* [2002] FCA 1474; (2002) 127 FCR 63