

# JOURNAL OF CIVIL LITIGATION AND PRACTICE

Volume 6, Number 1

March 2017

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## ARTICLES

### **Selected blogs: The Trump litigation – *Sir Henry Brooke***

This series of selected blogs examines the litigation concerning the travel ban issued by US President Donald Trump currently before the Ninth Circuit Court of Appeals in San Francisco. Sir Henry Brooke provides chronological coverage of the litigation, from its inception to the order given by the Court denying the US Government’s motion to remove the Temporary Restraining Order placed on the President’s travel ban. The blogs also examine the litigation from various angles, such as how the panel of judges deciding on the Government’s motion is selected, and the amicus briefs filed by the technology companies and law professors in the proceedings. .... 10

### **Restraining a lawyer from acting in aid of the administration of justice – exceptional circumstances and caution prevail – *Ian Dallen***

The supervisory jurisdiction of a superior court to restrain a lawyer from acting for their client in the interests of protecting the integrity of the judicial process and the due administration of justice is regarded as exceptional and one that must be exercised with caution. However, despite the exceptional nature of this jurisdiction, applications by parties to litigation to remove their opponent’s lawyer(s) under the guise of the administration of justice have become commonplace in Australian superior courts. Indeed, over the last 18 months there has been almost a judgment a month handed down in one of the State Supreme Courts or the Federal Court dealing with applications of this type. Interestingly, the overwhelming majority of these applications have been dismissed. This trend shows that superior courts across the country are consistently taking a cautious approach to such applications, and strive to ensure that their supervisory jurisdiction is only invoked in exceptional circumstances and not for collateral advantage. .... 31

### **The role of judges in a representative democracy – *Lord Mance***

In this article Lord Mance considers the role of judges in a representative democracy. His Lordship’s discussion is wide-ranging but includes consideration of the topic from an institutional perspective; the importance of acceptance of the judicial role by society at large; the judicial role in the context of the separation of powers, and thus the relationship with the legislature and the Executive. He examines the judicial role as it affects the common law, including its declaratory theory; the disciplinary control of the common law by the application of analogy and precedent; the incremental and cautious approach to

novel situations; matters to be weighed when stating or restating the law; and discerning and giving effect to the intentions of contracting parties. His Lordship also examines the sometimes vexed area of statutory construction and the “purposive” approach. He then offers some insightful observations on public and constitutional law issues, including judicial review of the exercise of statutory powers. And at the end he touches upon the importance of an effectively diverse, but yet constructive, judiciary at appellate level. .... 40