

JOURNAL OF JUDICIAL ADMINISTRATION

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ARTICLES

Implications of the current economic crisis for the administration of justice – *Hon James Jacob Spigelman AC*

This article is based on a paper delivered at the Law Society of New South Wales' Opening of Law Term Dinner 2009. Chief Justice Spigelman looks at the challenges for the courts and the administration of justice resulting from the current economic crisis. He looks particularly at the need to contain legal costs and the responsibility which judges have to control costs especially where this results from delay and the length of trial. 205

The future of case management in litigation – *Hon Ronald Sackville AO*

Enthusiasm for active case management as the principal means of tackling the endemic problems of cost and delay in the judicial system shows no sign of diminishing. The result has been a reorienting of priorities within the civil justice system and a fundamental shift in the role of judges. The courts have introduced a diverse range of practices, reflecting the reality that Australia has a multitude of courts, each with a different history, culture, jurisdiction and caseload. This diversity should not obscure the need for systematic evaluation of case management arrangements through well-constructed and properly funded empirical research. The importance of such research has been emphasised by a new phenomenon – legislative endorsement of case management principles. The legislation is significant for two reasons. First, case management principles have received an imprimatur that only elected representatives can bestow. Second, the legal framework within which the courts, including appellate courts, must now operate has changed. The concept of forensic fairness has been redefined in recognition that justice is a scarce resource. 211

Towards better judicial mentoring – *Hon Bernard Teague AO*

The following report was written by the Honourable Bernard Teague AO as a 2008 Churchill Fellow under the Churchill Trust. A Churchill Fellowship is designed to enable Australian citizens from all walks of life to travel overseas to undertake an analysis, study or investigation of a project or an issue that cannot be readily undertaken in Australia. Mr Teague's report is a valuable resource for Australian Courts. 219

Pretrial conferences and sentence indications in magistrates courts – *Dr Andrew Cannon*

This article discusses the evolving views of what is acceptable in pretrial conferences and plea bargaining by considering the practice in the Magistrates Court and drawing some comparisons with the German civil code system. This leads to the conclusion that pretrial sentence indications will be an accepted part of our system and some suggestions to militate against dangers in that process. 230

Judicial independence amid a powerful Executive in Bangladesh: A constitutional paradox? – Professor M Rafiqul Islam

After 36 years of subservience to the Executive, the judiciary of Bangladesh has recently been separated to dispense justice independently. This separation happened in 2007 during the term of an interim caretaker government in power with limited constitutional mandates. The caretaker government enjoyed full army support and operated within its proclaimed state of emergency, which resulted in its extraordinary empowerment far beyond the *Constitution*. Its all-powerful orientation had an encroaching effect on constitutional guarantees and a marginalising effect on judicial independence. Apex court decisions in the post-separation period accorded priority to the emergency power over the *Constitution*. Insulated by the emergency powers, the law enforcement apparatus abused human rights with impunity. The emergency powers predefined the legal consequences of these abuses to ensure that legal challenges to any emergency measures were unsuccessful. Pending high-profile cases, particularly against former prime ministers, are set to serve as further testing grounds for judicial independence. A preference for judicial restraint over activism during a state of emergency, in view of the vulnerability of judicial independence, may not be gainsaid in some cases. But a general abdication of judicial impartiality in favour of a pliant role in Bangladesh, where the judiciary is the only forum for enforcing citizens' rights, is paradoxical to the judiciary's guardianship of the *Constitution*. 237

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 - ² Hayton, n 1, p 286.
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Editorial inquiries:
Tel: (02) 8587 7000

HEAD OFFICE
100 Harris Street PYRMONT NSW 2009
Tel: (02) 8587 7000 Fax: (02) 8587 7100



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