

Pegasus Scholarship to Sydney, Australia, 2007

Richard Munden

Watching friends who had qualified as solicitors or in the medical profession jet off to far flung destinations to practice or train abroad was one of the very few causes I have had to curse my choice of career. It's a lifetime working in England for me, I thought; until a small card detailing the Pegasus Scholarship was dropped into my pigeonhole. Encouraged by colleagues in Chambers who had had positive experiences of the scheme I applied and was lucky enough to be selected to spend three months in Australia.

I spent three months in Sydney: two months with Mallesons Stephens Jacques, one of Australia's leading law firms, and a further month split between the Supreme Court of New South Wales and the in-house lawyers at Fairfax Media, publishers of numerous newspaper titles, most prominently the *Sydney Morning Herald* and Melbourne's *The Age*.

Mallesons are an extremely impressive outfit in every respect. Their huge resources were evident from the moment I was put in touch with them, with a friendly and knowledgeable Human Resources team handling my visa and arrival arrangements with ease. Their offices cover a total of 10 floors in Governor Philip Tower – the tallest office block in Sydney, at least according to my *Lonely Planet* - and the neighbouring Governor Macquarie Tower, in the centre of Sydney's Central Business District. Looking out over the City from my 54th floor office was rather different to my usual 2nd floor view in Gray's Inn!

I started with three days of training – primarily spent on getting to grips with the firm's bewildering array of IT resources and applications, many of them custom-designed – but was soon drafting pleadings and generally getting into the thick of things. As I specialise in media and entertainment law in my practice at the Bar, I spent most of my time with Mallesons' media team, led by partner (and Englishman!) Ian Angus. Ian and his team were fantastic throughout my time in Australia, both to work with and socially – many of my lunch hours were spent dining in Sydney's finest restaurants – and I am enormously grateful for all their assistance.

Mallesons handles all of Channel Seven's media law work (Channel Seven being the largest commercial TV station in Australia) and so enjoy a steady diet of fascinating cases. The matters I worked on included: numerous libel actions, including high-profile claims brought by the family of convicted marijuana smuggler Schapelle Corby and by actor and 'Wolf Creek' star John Jarratt; copyright infringement actions over Sky News footage on the internet; reporting restrictions and media access to evidence in a Coroner's inquest into the death of a woman on a cruise ship; and, at one point, advising on the finer points of child pornography offences!

Experiencing law from the perspective of a solicitor taught me a lot about how to be a good barrister – being always available, open and honest with your instructing solicitors about your thoughts and intentions being obvious yet vital lessons learned. Attending court having instructed counsel was also an illuminating experience, emphasising the importance of the audience sitting behind the advocate in addition to that sitting in front. Whether as part of a Pegasus Scholarship or otherwise, I would

thoroughly recommend the process to any barrister who has never had the advantage of working in a solicitor's office.

The bulk of my time at the Supreme Court of New South Wales was spent with Justice Nicholas, who hears the majority of the interlocutory defamation hearings. I was fortunate enough to be able to sit with him during the Defamation Directions List, a week each month which he sets aside to hear interlocutory matters relating to defamation. As this occurs each month the following month's week is used as the default return date for any defamation issue. I understand this system is used in each of the specialised list in the court. While very useful as a way of ensuring that cases keep moving, this system would not seem viable in the High Court or necessary in the lower courts of this jurisdiction.

I also spent time with Justice of Appeal Basten in the Court of Appeal and Justice Cowdroy in the Federal Court, the latter involving the briefly amusing but ultimately infuriating spectacle of a key witness being cross-examined with an interpreter via telephone.

At Fairfax I assisted Richard Coleman in advising the company's large stable of newspaper publications. This was a very different experience to English newspapers, where virtually every word is checked by a lawyer; there all of the 150 newspapers are put together without any legal input at all unless the journalist or editor deems it necessary. This leads to phone calls and meetings about both the most trivial things as well as the most serious – and even some of the latter being published without the lawyers' knowledge. The same lawyers deal with complaints and litigation as are advising on a daily basis, whereas in the UK there tends to be some division of those functions.

Australian media law obviously differs from English law but the basic structure is very much the same, which makes what differences there are all the more interesting to analyse. In defamation the central differences I observed stem from the fact that until recently in New South Wales the cause of action was the defamatory imputation itself as opposed to the publication of material bearing a defamatory meaning. While legislation has now been introduced to bring NSW, and indeed the whole of Australia, in line with England (in the shape of the 2006 Uniform Defamation Act), the mindset of practitioners and the substantial body of case law that had grown up around the acceptable forms of imputations, as well as a couple of unfortunate wrinkles in the new Act, mean that there is still a great focus and a surprising amount of interlocutory skirmishes over the form in which defamatory imputations are pleaded.

Another significant difference between the jurisdictions is the availability of the defence of 'contextual truth' in Australia. This provides a defence where the defamatory publication contains other defamatory imputations not complained of by the plaintiff (and they remain plaintiffs, rather than claimants), the truth or substantial truth of which means that the imputations complained of do not damage the plaintiff's reputation. While this concept exists to some extent in the law of England and Wales in the shape of s.5 of the Defamation Act 1952, it is nevertheless open to a claimant in this jurisdiction to limit his complaint to one particular part of a publication containing a distinct charge against him, and he will not be deprived of a remedy because another part of the publication contains a different and more serious charge

against him which is true. In my view the English approach is preferable, both because it encourages journalists and others to be careful in respect of each allegation they make rather than only the most serious and also because it confines actions to their proper boundaries and prevents defendants dragging in extra evidence to prove the truth of matters that the claimant does not complain of.

I was aware of some of the differences in the law of the two jurisdictions before I travelled out there, but I did not anticipate the great difference in procedure. Trial by ambush is alive and well, at least in defamation actions. I was astonished to learn that is not even the norm to provide a list of witnesses to the other side prior to trial, let alone witness statements. Pleadings are still full of the bare denials that CPR r.16.5(2) does away with, obscuring the real issues between the parties and leading to weeks of correspondence and requests for further and better particulars. Indeed there is no sign of the type of reform instigated by Lord Woolf, the effects of which I don't think I had fully appreciated previously, having never practiced in the pre-Woolf era. The Woolf reforms and their effect was a subject on which I was fortunate enough to attend a breakfast lecture given by Sir Igor Judge to the Anglo-Australian Lawyers Society. The Society and its Executive Officer Malcolm Longstaff were always available for assistance during my time in Sydney and I would encourage any future Pegasus Scholar to Australia to make contact with them.

I learned a lot during my time in Sydney and greatly enjoyed myself to boot – I would certainly encourage any eligible barrister to apply for the Scholarship. Any future Scholar with an interest in media law could not do better than to follow in my footsteps and spend time with Mallesons, Justice Nicholas and Fairfax.