

# Hearsay



INSIDE THE WORLD OF LEGAL AFFAIRS

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It was a big deal when major national law firms signed up to equitable briefing policies last year. But since then it's become clear that there's a world of difference between commitment to the principle of equitable briefing — which is aimed at encouraging the participation of women — and putting the principle into practice.

Earlier this year *The Australian Financial Review* published a confidential report showing that some of the country's largest law firms were still briefing very few female barristers in relation to Victorian government matters.

Overall, the 2003-04 *Barristers Briefing Report* shows that while women were briefed in 25 per cent of cases, they received only 14 per cent of fees invoiced. The percentage of women at the bar across Australian jurisdictions varies from 15 to 20 per cent. In addition, some of the big firms have resisted putting in place reporting processes that would show how often they briefed female barristers.

There were complaints after the study was made public that such reports fail to capture the complexities of briefing and the importance of ensuring that merit is not sacrificed to gender politics.

A survey is now being conducted in Victoria to update the 2003-04 findings. In addition, superior courts across the country have been compiling figures on the number of court appearances by female barristers — there being a difference between the number briefed and those actually appearing in court.

The survey is due out later this year and will provide insight into the number of women getting superior court experience — a prerequisite to appointment to the bench.

In the meantime, it's worth looking at what's happening in the litigation between the Seven Network, News Ltd, Publishing &



Lawyers are concerned about a legal publisher's link to an arms fair.

Photo: AP

Broadcasting, Telstra and others (C7) that began this week in the Federal Court in Sydney. It's one of the largest lawsuits ever in Australia and a fee-fest for the small army of barristers and solicitors involved.

It involves nine law firms — including Freehills, Allens, Mallesons, Blake, Minter, Gilbert & Tobin and Atanaskovic Hartnell — and more than 40 barristers.

Seven Network has even managed to find one of the common-law world's most expensive barristers.

So, among all that, you'd expect to find a few female barristers, surely — given the big national firms' commitment to equitable briefing.

But there's only one — Kelly Rees, who has been briefed by Freehills to appear for Seven — in the whole case. That's equivalent to about 2.5 per cent of the total barristers appearing.

Appearing in an interlocutory action, Rees had this exchange with justice Ronald Sackville when she announced her appearance:

Sackville: "Excellent. Are you appearing at the trial?"

Rees: "I will be."

Sackville — You'll be the only female barrister?

Rees — Yes, so I hear.

Sackville — In the whole of this large-scale endeavour.

Indeed, it's hard to believe that, across Australia, there's not more than one female barrister with the requisite commercial experience to appear in this case.

For all the fanfare from the Federal Court about the multimillion-dollar technology fit-out of the courtroom for the C7 hearing, it wasn't an auspicious start for the IT boffins when the case began on Monday.

The large, flat screens perched on

the rows of bar tables flickered and faded as the barristers struggled to work out which switch they should punch. It was a sure sign that things weren't going well when some even used the tried-and-true method of banging the computer with a fist.

Mid-morning the screens all went dark. Seven Network counsel Jonathan Sumption had been making a fair fist of his opening — apart from his obvious ignorance of Australian sport and vernacular. As he gathered pace he rocked backwards and forwards, side to side, faster and faster. But then, to use cricketing parlance, play was stopped due to bad light.

"If I am unable to bring up documents, I will be reduced to silence," complained Sumption.

"In that case, we'll resolve the case very quickly," retorted Sackville. "I am told an electrician is on his way. Apparently, he is coming from Newcastle."

LexisNexis, formerly Butterworths, has a big slice of the legal publishing market through its online, loose-leaf and text products. The tentacles of the multinational, owned by Reed Elsevier, reach into most aspects of day-to-day legal practice.

But it's the non-legal tentacles of Reed Elsevier that are worrying some Australian lawyers.

One of Reed Elsevier's subsidiaries, Spearhead Exhibitions, is in the business of organising arms fairs and is staging the Defence Systems and Equipment International (DSEI) exhibition in London this month. The event will showcase technology for military and civil use.

The exhibition has caused a bit of a stir in medical circles. Respected medical journal *The Lancet*, owned by Reed, had a spray on the subject in its latest editorial. "Values of harm reduction and science-based decision-making are the core of public health

practice," its editorial says. "Certain military technologies that Reed Elsevier allowed to be showcased at DSEI are contrary to those values."

In Australia, a group of barristers, lawyers and law librarians is acting on its own concerns. In a petition sent this week to Reed chairman Jan Hommen and LexisNexis Australia chief executive Max Piper, the group claims the arms fairs are "totally incompatible with Reed Elsevier's core business of publishing for the legal and medical professions".

"The very phrase 'arms fair' is abhorrent: first, because there is nothing 'fair' about the arms trade, and second, because the word 'fair' implies that it will be a festive occasion," the petition says.

"Such an association must surely damage LexisNexis's reputation as an impartial conduit for legal information and knowledge.

"It could lose its respected legal writers and authorities, as well as shareholders, who may not care to be associated with a conglomerate which also peddles death and destruction."

In response to *The Lancet* editorial, Reed Elsevier company secretary Stephen Cowden said the defence industry was "central to the preservation of freedom and national security".

"The sale of equipment and services for national defence is not only sanctioned and supported by the British and other leading governments around the world... but is also enshrined in article 51 of the United Nations charter," he said.

"It is vital that trade shows serving this sector operate in as visible and tightly regulated an environment as possible. Reed Elsevier... is well placed to work in conjunction with the UK Ministry of Defence to do this."