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Tribunals- A five point plan for beating the wrap

Paul Brennan

Since time immemorial, apart from maybe duels, lawyers have been assisting clients at what we used to call "having a bit of a dust up" and is now optimistically described as "Dispute Resolution".

Tribunals, offering a cheap, informal alternative to court proceedings, are on the increase. They are used by professional bodies, to deal with professional misconduct, or government agencies and other industries such as estate agents to deal with customer complaints.



DAVID REACHED FOR HIS SLING SHOT.
THE MEDIATION WAS NOT WORKING.

It is becoming popular for Tribunals to exclude lawyers. Why? Well, lawyers can be nitpicky, cantankerous individuals who argue about everything, think they always know best and are forever telling everyone

what to do. There are exceptions (my wife for instance) but generally this is the case.

In these "lawyer free" Tribunals you are expected to front up, say your piece and accept the decision. This can be quick, cheap, effective justice at its best-unless of course you lose.

Tribunals seem designed to find you guilty in a nice way and compared to being hung, drawn and quartered, they do a very good job. Added to this something very odd happens to ordinary men and women when they are asked to judge their fellow man (or woman), they get all "judge like" (this is not good).

So where does this leave you, if you are summoned to appear before a Tribunal?

Well, if you are prepared to go with the flow then Tribunals combined with humble acceptance, can bring closure to your issues. But, if you are an uncooperative, difficult person who is not prepared to put your head on the block or at least "grin and bear it", you need help. Your lawyer can look at the evidence against you and advise you how to run your case.

Therefore, even though your lawyer will not get a ring side seat, he or she will be an essential part of your Five Point Plan for beating the wrap.

Here it is:

1. Obtain from the Tribunal written details of the case against you. This should be in writing and readily available, well in advance of the hearing. If the case against you is not clear, ask the Tribunal, in writing, for further particulars. I suggest that you do this sparingly so as not to point out errors and improve the case against you. However, you do not want the goal posts being moved during the hearing or leave the case against you fuzzy so that the Tribunal members can make it up as they go along.

2. Make a formal looking written submission dealing with the evidence against you, putting your evidence in the best light. This has four advantages:

- Your lawyer can do it for you.
- It may be used as the basis for the Tribunal's written decision.
- It will stop the Tribunal from misunderstanding your evidence or

fudging/ignoring any inconvenient point which happens to be in your favour.

- It will show that you have consulted your lawyer and imply that if you do not get a fair go there will be trouble i.e. an appeal, criticism or some other type of ungrateful behaviour.

3. Interview any witnesses giving evidence against you and see if you can take a further statement. Legally there is nothing wrong with this as there is no property in a witness. Often witness statements are written by your opponent who "gilds the lily" and puts in a few thoughts of his own. A second statement from that same witness revealing holes, can undermine the case against you.

4. Get statements from any witnesses who can give evidence in your favour. Do not write the statements yourself as they may look like your words rather than the witnesses (this is a common mistake). Taking statements can be time consuming and costly. In an ideal world, statements would be taken in the form of a statutory declaration. However, most Tribunals do not insist on this formal approach. If time or money is short, your lawyer can even take statements by telephone. He can then write an email of the telephone conversation and ask the witness to confirm what was said. Even if the witness does not want to give a statement, your lawyer can provide a statutory declaration to confirm what the witness has said.

5. Just before you go into the hearing give copies of your witness statements to your opponent. Hand copies to each of the Tribunal members. There may be objections to the late notice of the witness statements and your written submission. However, Tribunal members are reluctant to postpone Tribunals hearings as they want to "get on with it". They usually do not have power to compel witnesses to attend and for them to exclude evidence or argument, however informal, may risk an appeal. They simply do their best with the evidence before them. You may find that your evidence, however informally obtained, gives you the advantage and it is far better than no evidence at all.

With a lawyer as a manager/trainer are you going to win? Well it is just like Rocky. You may not win every time but you will put up one hell of a fight. Also, you will find yourself getting better if there should be any sequels.

Internet TV



SURE ENOUGH, THE RECESSON, HAD ARRIVED

Three years ago, Gordon Cramer started an internet radio station. Now, he has an internet TV station. He is creating Video clips using www.Viddler.com. This is just like Youtube but it produces much clearer and larger images.

His TV Channel is for micro home/small business. He is using 3 minute video clips as a series on business law.

[click](#)

<http://www.radio4smallbusiness.com.au/pbl.html>

How to Blog and stay legal

what you need to know

Paul Brennan

Winston Marsh recently interviewed Paul about How to Blog and stay legal.

[Click here to listen to the interview.](#)

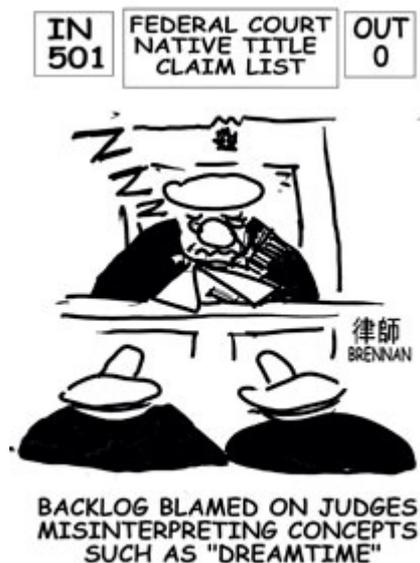


AG CUTS ITEMS ON THE SCAG AGENDA TO ACHIEVE WARP SPEED

The Old Bailey and me

Paul Brennan

This week the Proceedings of the Old Bailey, 1674-1913 were placed online.



My first appearance at the Old Bailey was for a bail application. Just before I was called into court the police officer in the case said "Shouldn't you be wearing a gown?". This made me very nervous especially when I found out a minute later that he was right. The judge took off his wig and for the rest of the application treated me as if I was a foreign language student. I found this very comforting and soon, I grew in confidence enough to join

with the judge in having a go at the police officer who was appropriately dressed and had made the mistake of appearing competent.

My client was a 45 year old Irishman charged with rape and buggery of his 74 year old landlady. He maintained that they were lovers and she had made these allegations in a fit of drunken, jealous rage.

Before you say "yer right", he was in fact telling the truth. Most of my other clients (at that time) were either persistent criminals or greatly misunderstood by the authorities. He did not even have any previous convictions.

I produced letters that she had written to the prison and a few pictures of her in drunken poses. Despite the police officer's objections he was granted bail. A few weeks later, I represented John Murphy (not his real name) at his committal hearing. The charges were dismissed and he walked free. Was it my brilliant cross examination? Well it could have been if she had turned up.

Could he have been guilty? Well, he would have been found guilty as consent was no defence to certain sexual acts.

There is "no smoke without fire". Or in the face of a serious allegation it

is difficult not to feel that he must have done something wrong. Also, there can be innocent victims. A local Bank Manager also called John Murphy unexpectedly called at my office but my then secretary refused to let him in. He too, despite being a Bank Manager was innocent.

If you are ever wrongly accused of a crime, however guilty you appear, your lawyer is prepared to fight for you like a tiger or in some cases like a foreign language student.

The "Old Bailey on line" harks back to simpler days when "wicked" children were transported rather than being sent to bed early, police evidence was believed and cross examination was not permitted.

Policeman: He stole something.

Judge: Did he by Jove? Transportation.

Juvenile Defendant: Thank you your Lordship.

Policeman: No gown.

Judge: Transportation.

Defendant: Mooloolaba, Queensland?

Judge: No problem.

If you click below, go to the Old Bailey site and type in "transportation" you will find among the penalties such as whipping and "burning in the hand" that there is a penalty called "Shove the Fumbler".

Competition: Tell us what "Shove the Fumbler" means in less than 30 words. The winner shall receive a copy of the new eBook "The Legal Guide to Dying-Baby Boomer Edition". Send your answers to info@brennanlaw.com.au. The answer and the winner shall appear in next month's Ezine. No Fumblers please.

[click http://www.oldbaileyonline.org/](http://www.oldbaileyonline.org/)

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