VICTORIAN BAR NEWS

No. 124 ISSN 0150-3285 AUTUMN 2003

Farewell Justice Beach

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LUDLOWS

VICTORIAN BAR NEWS

No. 124 AUTUMN 2003

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for the year 2002/2003
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Owen Dixon Chambers East: Brutalism at its Best

IT is a little known fact that Owen Dixon Chambers East has much in common with the Waverley Park football ground. Both are fine examples of architectural "brutalism". This is a school of architectural design that also spawned such national treasures as the now departed Gas and Fuel Building, the now present Federation Square, the old County Court and the twin Telecom Towers in William Street.

As a result of its contribution to Melbourne society as an outstanding piece of architecture, Waverley was placed on the National Heritage Register after a particularly bitter hearing. Many believe that ODCE should likewise be registered as a national treasure being an "1960s glass tower of significant importance".

Now that the asbestos has been removed it is envisaged that guided tours be taken through the building. Of special note is the roof and its air conditioning/lift unit. Views can be had from Owen Dixon Chambers West which confirm the high artistic quality of the top of the building as "RUST ART"; much in the style of the magnificent sculpture situated in the AMP Square. It is a marvel of engineering and design that the roof of Owen Dixon Chambers has remained intact in its present form.

But things are changing in the old building. Workmen come and go, silver lined pipes can be seen exposed in the ceiling.

The lifts have been transformed. One lift is covered in box packing, another has gone art nouveau and is all smoky green glass. The lifts even talk to you. It is gratifying to be told that you are going down or even up. This clears the minds of those crowded inside, giving them a real sense of direction. Of course it is irrelevant that the lifts do not go any faster — that would take the old world charm out of the building.

The massive renovations have meant massive changes to the residents. Like the London children of the Second World War they are being temporarily housed in the fresh air of other buildings until

the "building war" is over. Refugees are bobbing up in such far flung places as the 18th Floor of Owen Dixon Chambers West. The suggested doubling of the rent on return to the renovated Chambers has caused quite a deal of debate. Some are somewhat disgruntled. But most agree it is worth it to conserve the essential "brutalism" of the building.

THE COST OF DISCIPLINE

The cost of regulating the legal profession is rising. A recent report indicates that the cost of the Ombudsman's office and other regulatory bodies in the Law Institute and the Bar rose from about $6 million to $11 million last year. It was gratifying to find that the Bar's Ethics Committee only needed $225,000 of this money, the vast majority being consumed by the ever-increasing permanent staff of the Ombudsman. Many can remember the pre-Ombudsman days when the profession (as it was then known) regulated itself — the cost was almost non-existent. There are complaints that the present system is too complicated with solicitors and barristers having disciplinary bodies operating alongside that of the Ombudsman. If a barrister has a complaint against a fellow barrister there is a choice of complaining to the Ethics Committee or to the Ombudsman.

Many can remember the pre-Ombudsman days when the profession (as it was then known) regulated itself — the cost was almost non-existent. Less bureaucracy means less costs and greater efficiency.

There is a push for greater powers to be given to the Ombudsman, but why? Has it been demonstrated that the Ethics Committee operates in a manner which is inferior to the Ombudsman, or somehow or other is more lenient to its own? On the grounds of public cost alone it would make more sense to revert back to the older system of greater self-regulation. Less bureaucracy means less costs and greater efficiency.

THE FINANCIAL REVIEW

It is very gratifying that that august publication *The Australian Financial Review*

should find the comings and goings of the *Victorian Bar News* so newsworthy. Intrepid legal reporter Kate Marshall was very pleased that Judy Benson has been appointed an editor. So much so that she reported it in her column (see November edition of *AFR* at right). It seems she was very delighted that Judy and the "two old cronies" being Nash and Elliott are getting on so well. Obviously ageist statements are not a worry for Kate.

It seems Kate is very interested in all aspects of the Victorian Bar. Initially she telephoned one of the editors to breathlessly enquire as to the success of the Bar's children's Christmas party and the identity of Santa Claus. It was only after these initial enquiries that she moved on to her more profound investigation as to the state of the editorial board of the *Bar News*. We look forward to her in-depth investigation of the Christmas party. We are very happy to allow Kate access to the excellent snaps of the occasion contained in this edition.

We are sure the enjoyment of barristers and their children has always been a subject close to the heart of *AFR*.

So What's Going On?

HEARSAY — Edited by Kate Marshall

A woman has at last got a hands-on editing role at *Victorian Bar News*.

Hearsay finally caught up with barrister Judy Benson this week to ask why she had been pictured sandwiched between the two *Bar News* editorial stalwarts, Gerard Nash QC and Paul Elliott QC, in the last edition with no word of explanation.

She assures us all will be revealed in next week's issue.

So what's going on?

It seems that after years of complaints and mutterings from a group of determined barristers, not all of them female, Nash and Elliott finally bowed to the wishes of the Bar Council and welcomed Benson, a former publisher, as a fully fledged member of their team (not counting the sprinkling of women on the editorial committee).

"There have been representations over the years about *Bar News* being a bit 'blokey' and it was thought it would benefit from being a bit more inclusive," she says.

Readers may recall an editorial on political correctness and the Victorian bar last year that referred to a new breed of "tip-tap" anti-fun barrister that got Nash and Elliott into hot water with some of their colleagues.

Benson has enjoyed her first few weeks in the company of the two old cronies, describing them as "delightful".

For his part, Elliott acknowledges that Benson "fits in very well".

❑❑❑

Congratulations are due to

The Editors

Of Barristers and the Legal Ombudsman

THE Attorney-General announced on 9 February 2003 that he had ordered an independent audit of the costs associated with the regulatory regime of the legal profession. The Bar has met with Jane Tongs, the auditor appointed by the government. We have, in addition, provided detailed written submissions concerning the economic and qualitative advantages of the Bar continuing its regulatory functions.

The Bar has preferred throughout the course of the review of the Legal Practice Act to base its case concerning retention of its regulatory functions on reasoned and logical argument — initially to the review team and later to government.

The main attack on the Bar's position concerning self-regulation has come through the office of the Legal Ombudsman. Regrettably this attack has been marked by unsupported allegations, blind ideology and a reluctance to engage in reasoned debate.

The public campaign of the Legal Ombudsman, Kate Hamond has cranked up this year. Hamond has used the media to attack the profession, in lopsided and extravagant terms. The Ombudsman's rhetoric appears to be based on the following propositions:

(i) The current system "… is wasteful because of enormous duplication". It would save $3 million a year if her office investigated all complaints.

(ii) The annual monitoring by her office of [the Bar's] investigation files results in recommendations for improvement and, every year, the basic benchmarks "her office sets are pretty much ignored".

(iii) There is a need for "independence and impartiality" in legal regulation.

(iv) The "mood of the public" is for change. "Everybody agrees that change is needed."

See *Lawyers Weekly* 28 February 2003, *The Sunday Age* 8 December 2002, *Herald Sun* Saturday 11 January 2003.

The Ombudsman's claims as far as the costs of the Bar's administration of regulation are nonsense. The total cost of the

regulatory system of the legal profession in 2001/02 was $11.688 million. Of this amount the Bar's costs were $226,000. Any blow-out in legal costs cannot be blamed on the Bar. Significant factors explaining the minimal cost of Bar disciplinary regulation are the relatively small number of complaints against barristers but also, importantly, the fact that the disciplinary functions of the Bar are carried out in large part by barristers who volunteer to serve on the Ethics Committee at no cost to the regulatory system. The Legal Ombudsman has, in her reported public utterances, chosen to ignore this enormous contribution.

The 15 barristers who comprise the Ethics Committee have experience across all jurisdictions and major areas of practice. Ten of the fifteen members are Queen's Counsel or Senior Counsel. These barristers give of their time generously. In the eight months to 28 February 2003 the Committee has made 47 written rulings and countless oral rulings.

Oral rulings are given quickly, not uncommonly by telephone, to counsel engaged in a hearing. Such timely rulings are an important component of the Bar's regulatory framework and provide support and certainty to barristers before the event.

The contribution of the Ethics Committee to the administration of justice is incalculable. The annual cost of the labour, based on approximate charge out rates, is estimated to be around $1.75 million. It would be impossible to replace or replicate the function of the Ethics Committee outside the Bar at any price.

An examination of the costs per complaint file handled at the Bar as opposed to the costs of files handled within the Ombudsman's office (2001–02) is revealing. The cost per complaint filed at the Bar was $1330. For the office of the Legal Ombudsman it was $2962 per file. Part of the reason for the disparity is that some of the Ombudsman's costs relate to functions other than complaint file-handling. However, even if such other costs could be identified and factored out, the Bar's costs would still be significantly lower because its disciplinary functions are carried out by barrister volunteers. The fact is that the Ombudsman's claim that it would save $3 million a year if her office were to investigate all complaints cannot be made out.

If the Bar was failing in its regulatory function, one might understand the ideological fervour of the Ombudsman. If there had been complaints from the Ombudsman over a prolonged period of time as to the failure of the Bar and the Ethics Committee to properly perform required functions, her contentions might be worthy of attention. However, the Ombudsman has never expressed any significant criticism of the operation of the Bar's disciplinary system.

The Legal Ombudsman has the power to review individual disciplinary files either as a result of the request for review from a complainant or on the Ombudsman's own motion. There has never been an occasion on which the Ombudsman has reached a different conclusion to the Bar upon such review. She has, on occasion, stated that a dismissal under section 141(1) (unjustified complaints) might more appropriately have been a dismissal under

section 151(5) (no reasonable likelihood the Tribunal would find misconduct or unsatisfactory conduct).

The Legal Ombudsman is also charged under section 147 of the Legal Practice Act with the responsibility of monitoring investigations by the Bar generally. Since 1997, there have been three monitoring reports. The Bar has responded to each report, and acted promptly to ensure that its practices and procedures comply with its obligations. The most recent monitoring report received by the Bar was nearly three years ago, in July 2000. The Ombudsman's monitoring team made an inspection in March 2001, but no report on that inspection was ever received by the Bar. The Ombudsman's monitoring team visited again in February 2003.

This history and a review of the correspondence between the Ombudsman and the Bar over the years since the new Act does not support the reported comment of the Legal Ombudsman that her annual review demonstrates that "benchmarks her office sets are pretty much ignored". The comment is inaccurate and unjustified.

What of the allegation of the Ombudsman that the "mood of the public" is against the Bar being involved in regulation? The Bar strenuously disagrees. There is no demonstrated groundswell of community opinion against the Bar regulating barristers. In any event it is reasonable to speculate that, if the "members of the public" to whom the Ombudsman refers were properly informed as to the Bar's role and history of regulation, any concerns would be greatly allayed.

It is interesting to note that despite extensive media campaigns promoting her Office as a focal point for complaints against barristers, the vast majority of complainants come direct to the Bar rather than to the Legal Ombudsman. I have no doubt that such complainants come direct to the Bar with the justifiable expectation that the Bar will properly investigate complaints against barristers. It has always done so.

Why interfere with a system that is efficient and that works? The Ombudsman would argue to show "independence and impartiality". The argument is shallow and again fails to reflect reality. Prior to the current *Legal Practice Act 1996*, the regulatory system at the Bar was monitored by a Lay Observer attending Ethics Committee meetings. The Lay Observer reported to Parliament. Year after year, different persons holding this position reported favourably on the Bar. The report of the Lay Observer, Jan King, in 1996 is typical of such reports.

"Again I wish to congratulate the Chairman and Members of the Ethics Committee for their time and effort in investigating complaints against barristers. The time allocation to meet this task is considerable.

"Special mention needs to be made of the work of the secretary as well as Debbie Jones for their unfailing efforts."

The Chair of the Ethics Committee, upon the change in legislation in 1996, invited the Legal Ombudsman to attend Ethics Committee meetings. Meetings are attended by the Ombudsman, or an employee of her office.

The charge that the Ethics Committee is not "independent" begs the question, independent of whom? The Bar has no interest at all in protecting barristers who engage in misconduct. Such barristers reflect badly on the whole Bar. The Bar is interested in identifying and eliminating such conduct.

The present system of regulation imposes professional self-reliance and responsibility for regulation on the Bar as a whole. In particular, the system promotes a sense of responsibility for the ethical conduct of one's own colleagues and maintains the standards of professional conduct through constant peer review. The present system is a vital component in ensuring the independence of the Victorian Bar. It is a system that has worked to the benefit of the Victorian community, the administration of justice and the Bar. No compelling argument has been produced to justify the changes sought by the Legal Ombudsman, let alone her extravagant claims.

Jack Rush QC
Chairman

Looking Forward in 2003

OBVIOUSLY, it is the responsibility of any government to ensure that the legal system, as the context in which the profession operates, is functioning at its peak. Over three years as Victoria's Attorney-General, I have overseen a quiet revolution in our legal system, turning around the devastation of the past and setting a course for a promising future.

However, there is still much to do, and a significant portion of the reforms we have planned for this second term are directed at the broader legal system itself — at cementing a place for Victoria at the forefront of national reform, and creating a cohesive infrastructure in which Victorian justice can be administered.

Central to our plan for this cohesive infrastructure are the Justice Statement and Courts Strategic Directions projects. These are flagships for the Justice portfolio, as they signal not only that we are here for the long haul, but also that we see a better future for our legal system. The Justice Statement Project will articulate a vision for the whole of Victorian justice, while the Courts Strategic Directions Project is examining the specific challenges facing our court system over the next 10 years, developing strategies to deliver more accessible and more efficient justice to the community, through co-ordination, shared administration and resources, and a collegiate approach.

Of course, a key project for 2003 is the regulation of the legal profession and the review of the Legal Practice Act. Regulation of the legal profession is one of the most crucial contributors to public opinion of the profession. Regulation and complaints handling need not only to be beyond reproach, but must be seen to be beyond reproach, for the profession to fulfil its responsibilities in and to the community. It is crucial to access to justice in Victoria that we develop the best possible model for the regulation of its legal practitioners.

As you all know, the Sallmann Report proposed a model that involved an independent regulator, but retained an active role for the legal profession. Obviously there is a range of possible models open to us, from one in which professional

associations play no part to various permutations and combinations of regulation and independence.

Our framework will be to prioritise simplicity, efficiency and independence and will likely involve:

- simplification of the complaint system with all complaints being made at the initial stages to a single independent entity, the Office of the Legal Services Commissioner;
- A Legal Services Board with a chair appointed by the Government, certain members elected by the profession, and other community representative members with specific expertise including finance and prudential expertise, to be appointed by the Attorney General after consultation.

However, I have yet to form a final view regarding the role of professional associations, including whether they participate in the handling of complaints once received by the Legal Services Commission, or participate in regulation. The legal regulatory system is currently undergoing an important financial audit which I have initiated, and the outcome of that audit may inform my decision in relation to those areas. The audit will be completed by the end of March.

In my view, Continuing Legal Education or professional development is the future for the legal profession. It is a key element of the dual responsibility of the legal profession — namely to provide the best possible legal services and to enhance the regard in which the public views the profession. CLE enhances the competence of the profession, ensuring that its clients receive correct, considered and up-to-date advice. This, in itself, is an access-to-justice issue.

However, on a broader level, a profession that undertakes ongoing education sends a message to the public: a message that the profession is not complacent or isolated; that it is eager to remain informed and adapt itself to developments in the law; that it takes its duty as a profession seriously. It is this kind of message that helps secure the community's confidence in the profession, and in the capacity of the law to deliver real justice.

For these reasons, I think it is absolutely imperative to continue to modernise the legal profession and keep legal practitioners updated. I am very keen to explore the possibility of a minimum legal education requirement for all practitioners. This may mean ensuring that real CLE activities are undertaken by lawyers and that they are linked to the renewal of their practising certificates. Naturally, any mandatory system would need to have regard to the demands of practice and not be unduly onerous.

I want Victoria's legal system to be a best practice model, both nationally and internationally. To achieve this, we cannot rest on our laurels. As well as having an unrelenting eye to reform of our courts system and the operation of our legal profession, we must also lead the charge on the national agenda. This will mean continuing to challenge the Commonwealth, whether it be to demand:

- that the Commonwealth meets its obligations in relation to legal aid;
- that it respects the rights of same sex couples in the context of any referral of power for de facto relationships law; or
- that it desist from its proposals to vet legal-aid lawyers in national security cases, as an unacceptable political incursion in court proceedings.

Turning to the legislative program

for 2003, the Autumn session contains a number of Bills from my portfolio areas. Significantly, the Legal Practice (Validations) Bill will address the ramifications of the Court of Appeal decision in the case of "B" a solicitor and "G" a solicitor v Victorian Lawyers RPA Limited and Legal Profession Tribunal. Other Bills will create new computer sabotage and bushfire offences and fulfil Victoria's responsibilities in relation to a national response to terrorism.

As we move into 2003, my commitment to access to justice involves ensuring that the legal profession is contemporary, flexible, and highly regarded. It involves ensuring public access to the best possible legal advice, advice that the public knows it can trust. Our reform agenda for the legal profession on a State and national level is a vital part of our agenda for Victorian justice, as is our commitment to an accessible justice system which meets the needs and demands of the 21st century. It is exciting to be a part of these changes and to see such a promising future ahead.

Rob Hulls
Attorney-General

Letters to the Editors

Editors

WE were disappointed by your simplistic dismissal (Spring 2002 Edition) of the need to take action to ensure Saddam Hussein no longer controls weapons of mass destruction. Regardless whether Saddam was involved in the 11 September attacks, al-Qaeda has made it clear that they aspire to attack the West with weapons of mass destruction. It is reasonable to assume that given Saddam's hatred of the West, he would supply al-Qaeda with these weapons. Saddam is undeniably a major threat to world peace. He has gassed thousands of Iraqi Kurds and Iranians, invaded two of his neighbours and continues to commit unspeakable violations of human rights against his citizens. His periodic threats to his neighbours, and refusal for the last twelve years to give up his weapons of mass destruction or to comply with numerous other mandatory UN resolutions, is ample proof that he is yet to give up his aspirations to be a major military power. It should be obvious that to allow Saddam to continue upon this path is to invite potentially global disaster. As for your assertion that more civilians have been killed in Afghanistan than in the 11 September attacks, AP reported last February that, after a comprehensive review, they believed the number of such deaths to be in the mid hundreds. The estimate of over 3000 was based largely on figures supplied by the Taliban. Abhorrence of war is understandable and proper and your views were no doubt expressed with the best of intentions. But that is not to say that military might should never be exercised. History has demonstrated time and again that appeasing tyrants inevitably emboldens them. Similar action by the free world in 1938 would almost certainly have saved many millions of lives.

Jeffrey Sher QC
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Anthony Rockman
Norman Rosenbaum
Aaron Shwartz
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Editors

THE political view expressed in any article published in the *Victorian Bar News* is the sole responsibility of the author/s of each article.

The "Editor's Backsheet" published in the Spring *Bar News* reflects the opinions of the Editors and not necessarily the individual members of the Editorial Committee.

I expressly disassociate myself from the views in that article and point out that I took no part in the decision-making process to publish the article.

Nor do I endorse the opposing political view. The issues raised are important and complex but no inference can be drawn about the political views of individual members of the Editorial Committee.

The question of what is the most appropriate forum for the expression of political views by members of the Bar is still open for debate.

Olyvia Nikou S.C.

Legal Profession Tribunal: Publication of Orders

UNDER section 166 of the *Legal Practice Act 1996* ("the Act"), the Victorian Bar Inc ("the Bar"), as a Recognised Professional Association, is required to provide the following information in relation to orders made by the Legal Profession Tribunal ("the Tribunal") against its regulated practitioner:

1. Name of practitioner: Alan H Swanwick ("the legal practitioner")
2. Tribunal Findings and the Nature of the Offence
   (a) Findings
      (i) The legal practitioner was guilty of misconduct as defined by paragraph (a)(i) of the definition of "misconduct" in section 137 of the *Legal Practice Act 1996* in that he wilfully or recklessly contravened section 314(1) of the Act by engaging in legal practice in Victoria from 1 July 2001 to 1 November 2001 without being the holder of a current practising certificate ("the first finding of misconduct");
      (ii) The legal practitioner was guilty of misconduct as defined by paragraph (a)(i) of the definition of "misconduct" in section 137 of the *Legal Practice Act 1996* in that he wilfully or recklessly contravened rule 74(a) of the Rules of Conduct of the Victorian Bar by failing to respond to a requirement of the Ethics Committee of the Victorian Bar ("the second finding of misconduct");
      (iii) The legal practitioner was guilty of misconduct as defined by paragraph (a)(i) of the definition of "misconduct" in section 137 of the *Legal Practice Act 1996* in that he wilfully or recklessly contravened rule 74(b) of the Rules of Conduct of the Victorian Bar by failing to respond to correspondence from the Ethics Committee of the Victorian Bar ("the third finding of misconduct").
   (b) Nature of the Offence
   1. The legal practitioner engaged in legal practice between 1 July 2001 and 1 November 2001 when he did not hold a current practising certificate;
   2. Contrary to an instruction from the Ethics Committee of the Bar contained in a letter of 22 October 2001, the legal practitioner did not provide to the Committee at a hearing on 30 October 2001 a schedule of work performed since 1 July 2001 nor did he provide one forthwith as instructed by the Committee at the hearing;
   3. The legal practitioner failed to reply to correspondence from the Ethics Committee when asked to do so.
3. The Orders of the Tribunal were as follows:
   (a) In relation to the first finding of misconduct, the legal practitioner is to pay a fine of $2000 to the Legal Practice Board;
   (b) In relation to the second finding of misconduct, the legal practitioner is to pay a fine of $500 to the Legal Practice Board;
   (c) In relation to the third finding of misconduct, the legal practitioner is to pay a fine of $500 to the Legal Practice Board;
   (d) The legal practitioner is to pay the costs of the Victorian Bar fixed by the Full Tribunal at $3700.
4. As at the date of publication no notice of appeal against the orders of the Tribunal has been lodged. The time for service of such notice has expired.

Legal Practice Act 1996

Determination of Contributions to Fidelity Fund for the period 1 July 2003 to 30 June 2004

THE Legal Practice Board, acting under Division 1 of Part 7 of the *Legal Practice Act 1996* has determined that the classes of persons required to pay a contribution and the contribution payable by members of each class, for the period 1 July 2003 to 30 June 2004, are as set out below. Interstate practitioners and foreign practitioners must pay any contribution to the Legal Practice Board by 30 June 2003. Approved clerks must pay any contribution to the Legal Practice Board by 30 April 2003. All other practitioners must pay any required contribution to Victorian Lawyers RPA Ltd by 30 April 2003.

Class of Persons

Contribution

Authorised to receive trust money

1 An approved clerk or the holder of a practising certificate that authorises the receipt of trust money (other than an incorporated practitioner) who received, or was a partner or employee of a firm, or a director or employee of an incorporated practitioner that received trust money exceeding $500,000 in total during the year ending on 31 October 2002 $200

2 An approved clerk or the holder of a practising certificate that authorises the receipt of trust money (other than an incorporated practitioner) who received, or was a partner or employee of a firm, or a director or employee of an incorporated practitioner that received trust money not exceeding $500,000 in total during the year ending on 31 October 2002 $100

Interstate and Foreign Practitioner

3 An interstate practitioner or a foreign practitioner (not including a body corporate) who has established a practice in Victoria within the meaning of section 3A of the Act and received, or was a partner or employee of a firm, or a director or employee of an incorporated practitioner that received trust money in Victoria, exceeding $500,000 in total during the year ending on 31 October 2002 $200

Contribution

4 An interstate practitioner or a foreign practitioner (not including a body corporate) who has established a practice in Victoria within the meaning of section 3A of the Act and received, or was a partner or employee of a firm, or a director or employee of an incorporated practitioner that received trust money in Victoria, not exceeding $500,000 in total during the year ending on 31 October 2002 $100

Employee practising certificate and not authorised to receive trust money

5 The holder of a practising certificate that authorises the person to engage in legal practice as an employee but holds a practising certificate that does not authorise the receipt of trust money and who is employed by a legal practitioner or firm that is authorised to receive trust money $50

Exempt Practitioners

6 Corporate practitioners, sole practitioners not authorised to receive trust money, employee practitioners employed by a legal practitioner or firm not authorised to receive trust money and employees of community legal centres are not required to make a contribution NIL

A person who applies for a practising certificate after 31 July 2003, or where a variation to the conditions of a practising certificate requires a person to pay a contribution, must make a pro rata contribution which may be ascertained by contacting Victorian Lawyers RPA Ltd or the Legal Practice Board.

County Court

Judge Howie

ON 24 October 2002 a large crowd of friends and members of the legal community gathered to welcome Judge Howie on his appointment to the County Court. His Honour's appointment comes after an outstanding career as a lawyer and an advocate. The hallmark of His Honour's legal life has been concern for others.

His Honour was educated at North Williamstown State School and later at Wesley College and then at the University of Melbourne where he graduated in 1967. His Honour served articles with Brian Bayston at the firm of McCracken and McCracken. He was admitted to practice in 1968.

Subsequently he was admitted to the partnership and remained with the firm until 1975 when he went to Alice Springs as principal legal officer, first of the Australian Aboriginal Legal Aid Service and then of the Central Land Council. His Honour was among the first of a number of leading Victorian barristers who have made an enormous contribution to ensuring the legal rights of Aboriginal people in the Northern Territory. It was his friend Geoffrey Eames who caused him as His Honour said "to withdraw from a comfortable (solicitors) partnership, pack the wife and three children into the Kingswood and head north". In an interview with John Faine His Honour gave an insight into what motivated him to take his family up north. He gave a number of reasons; mid-life crisis, an interest in justice, altruism and a response to the Christian gospel that enhanced justice for the poor. Mid-life crisis apart, these principles have strongly influenced so much of His Honour's life.

His Honour was based in Alice Springs. When he arrived there he had no experience dealing with Aboriginal people. His Honour attacked the work with great enthusiasm. He gained a basic understanding of the language. The work meant calls at night to look after people in strife; running a Legal Aid office; daily court appearances with lists as long as one's arm requiring conferences, cross-examination, negotiation and plea. All those events were interspersed with flying to Aboriginal settlements in his area, Papunya, Yuendumu and Hooker Creek, to deal with the monthly lists. Sometimes there are up to 40 cases in a sitting in the bush courts. Such experience means His Honour should have no difficulty in handling the circuit work of the County Court!

His Honour lived and worked in Alice Springs for the Aboriginal people for over six years. He returned to Melbourne in 1982 and read first with Ron Merkel and then with Barney Cooney. His Honour signed the Roll of Counsel in May 1982. His Honour continued to work for Aboriginal people in land rights and native title cases and appeared in numerous major cases before the Aboriginal Land Commissioner and on appeal in the Federal Court and the High Court.

His Honour took silk in November 2000. In over 20 years working for Aboriginal people in land rights and native title cases His Honour has played a significant role in returning substantial parts of the Northern Territory (some 40 per cent of the Territory) to freehold title for the benefit of Aboriginal people. His Honour has appeared in cases in Western Australia, South Australia, Queensland and for the Yorta Yorta Aboriginal community in Melbourne.

The cases in which His Honour has appeared raised complex issues of law. His Honour with others was constantly in the High Court. The Warumungu/Tenant Creek land claim went to the High Court on three occasions. The Kembi Cox Peninsula land claim went to the High Court on three occasions. His Honour argued the first native title claim to rights over the seas, the Yarmirr case, and two major cases on native title litigation, the Ward and Yorta Yorta cases; the Yorta Yorta case involving an urban environment. All of these cases made a significant contribution to legal principle and raised the consciousness of the community to the plight of the Aboriginal community.

Judge Howie comes from a family background committed to helping the community. His father for many years sat as a Magistrate at the Footscray and Moonee Ponds courts. His children and extended family have been involved in community service in various fields. His Honour's wife Janet is a secondary school teacher, who has taught adult education courses at the Institute of Aboriginal Development and taught English as a second language at the Adult Migration Service Centre.

The appointment of Judge Howie has been widely acclaimed by the legal community. His personal attributes and outstanding reputation add greatly to the standing of the County Court. The Victorian Bar wishes His Honour a long and satisfying judicial career.

Judge Campton

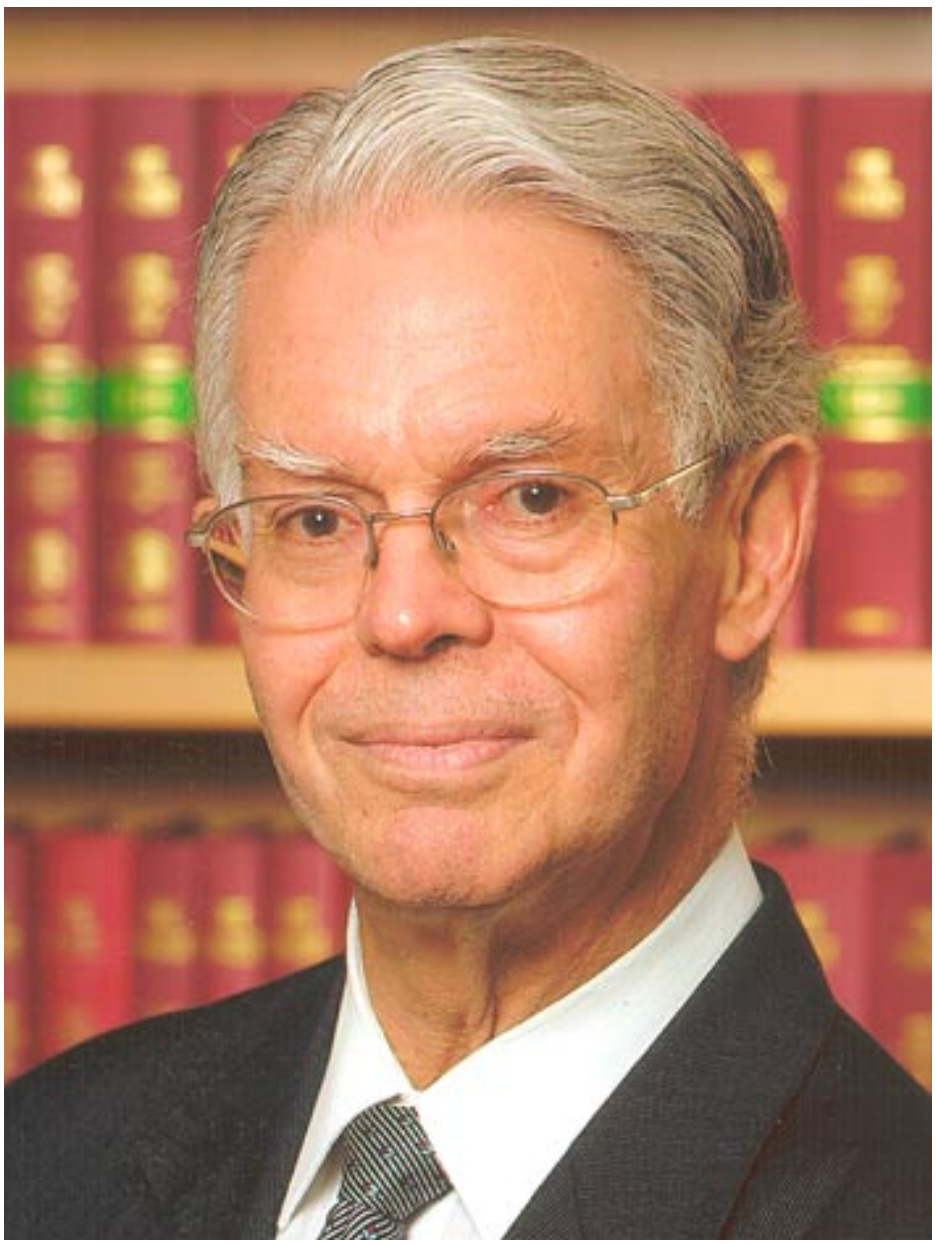
JUDGE Campton is the eldest of Judge Campton's six daughters. Her sister, Prudence, the second eldest, is Special Counsel at Allens Arthur Robinson and thereafter His Honour's daughters' interest in the law waned. Educated at St Catherine's, Her Honour had a distinguished academic and sporting career, being the school athletics champion. Graduating Bachelor of Laws from Melbourne University Her Honour was articled at Allens & Smith, Solicitors of Moorabbin, and was admitted to the Bar in 1977 and read with Justice Gillard. Her Honour's practice spanned a very broad area and in many ways defies description. Initially at the Bar Her Honour practiced in family law and Childrens' Court work together with Magistrates' Court "crash and bash" work and criminal work. Her Honour's practice developed into an extremely competent and well regarded overall insurance practice but still managed to defy description as Her Honour's busy practice included Trade Practices work and prosecution and disciplinary tribunal work, especially for the Law Institute of Victoria. Her clerk always put Her Honour forward for any difficult or unusual case.

Her Honour's particular skill lay in her calm and unruffled presentation with an ability to let the Tribunal or Court know exactly what it wanted to hear, presented concisely. Her Honour's practice was interrupted by two years in Geneva where Her Honour was employed mainly at the World Health Organisation.

Married with two daughters, Sophie and Nicola, Her Honour is a passionate skier, Aboriginal Arts Collector, keen horse woman and a dab hand at renovating houses. Her Honour's calm, practical and unruffled style and ability to tackle anything, together with her excellent pedigree, will make a welcome addition to the County Court.

County Court

Chief Judge Waldron



THE PUBLIC FACE

THE retirement of Glen Royce Doral Waldron from the office of Chief Judge of the County Court of Victoria tests to its limits the truth of the old adage that no one is irreplaceable. He has left an indelible imprint on the busiest trial court in the State and he has been the driving force in its expansion from a Court of 27 judges on his appointment in 1982 to the Office of Chief Judge to its present complement of 58 plus reserve judges, all housed in the magnificent new court complex, the completion of which shortly preceded his retirement.

Glen Waldron drew together in one personality the traits of first-class administrator, inspiring leader, all-round legal and judicial skills, framed by a friendly disposition and a well-balanced sense of humour.

Those who were his contemporaries at law school and the Bar were well aware of his keen intellect, analytical skills and sound judgment, all of which made him a leader of the common law Bar in the 70s prior to his appointment.

He is surely one of the few prominent persons in modern life about whom it might truly be said that he has no enemies.

It is the sum of these attributes that enabled him to lead the County Court Bench to become an efficient and hard-working arm of government and a welcoming and supportive Court family. It should also be said that in the discharge of his duties as Chief Judge he had the tireless and selfless support of his wife Beverley who did so much to draw new judges' partners into their friendly community.

Glen read with the late Olaf Moodie-Heddle QC, a flawed but brilliant advocate who knew much about life as well as the law. He shared Chambers with Sam Gray, Jack Hedigan, Brian Treyvaud and others. He took silk in 1973 with Costigan, Barnard and Hedigan. He built a huge practice before that in the 60s, an era when there were daily four or five "rolling" Supreme Court lists of civil juries, and when the common law leaders were John Starke QC, Bill Crockett QC, Peter Murphy QC, Bill Kaye QC and others, all at their peak. These were not the days of "serious injury" applications before Judges sitting alone. They were nearly all hard-hitting jury trials run at high speed, with no quarter asked nor given. Exchanges between Bench and Bar were frank, often fierce.

Glen's advocacy was notable for its focused style, quite brief really, concentration on main issues and an attractive presentation to the average juror. His

prudent and careful approach to economic matters, deriving from his Scots ancestry, appealed to the many, insurers who flocked to his chambers. He was not an easy man to get a good offer out of.

Away from the law, Glen's family was of paramount importance to him. He has had many other interests over his life. They included tennis, squash, thoroughbred horse racing, league football (a deplorable attachment to the Essendon Football Club) and bridge.

The whole legal community of Victoria (and, it should be said, in many other States) wishes him a happy and fulfilling retirement.

A PERSONAL VIEW

WHEN Glen Waldron was appointed to the County Court in February 1982 it was housed in a building which could only be described as in an autumnal state, not only because of the façade which the building was reluctant to retain but also because the then County Court was already showing signs of being too small. At the time that building was opened in 1969 there were 21 judges in the County Court. By 1985 the space in the County Court building was shown to be 79 per cent less than was required. One of Glen Waldron's major tasks throughout his term in office was to obtain *Lebensraum.*

With Glen's charm, persuasion, logic and sheer tenacity, the County Court expanded into three floors of Owen Dixon Chambers West, and temporary civil courts were established at 471 Little Bourke Street, at 565 Lonsdale Street and eventually at 436 Lonsdale Street. The acquisition and the maintenance and logistics involved entailed a huge amount of work on the part of the Chief Judge.

Despite this fact and despite the expansion of the Court and the administrative burden that came with that expansion, His Honour found time not only to sit regularly as a member of the Court, but also to perform the "show pony" roles required of a Chief Judge, appearing and speaking at functions of the Law Institute and its various branches from Mildura to Dinner Plain.

In the last year of his office Glen Waldron saw his "impossible dream" come true when the new County Court building was opened on the old ABC site on 31 May 2002.

He was always available to the profession, on first-name terms with more members of the profession than most of us even know by sight, and at all times modest and self-effacing. Perhaps it is this self-effacing aspect of his life that has caused him to create a building which, whatever its virtues, cannot be described as self-effacing. Even the new County Court's "justice" is a rather aggressive and, on the face of it, violent-looking female.

At his farewell the Attorney-General said:

> When contemplating his term of office three themes come to mind, administrative excellence, thoughtful leadership and uncompromising advocacy on behalf of the Court. I believe that the health and independence of a legal system is measured to a large extent by the strength of its courts and over nearly 21 years His Honour has helped forged his Court's reputation as Australia's pre-eminent intermediate jurisdiction. His commitment to quality, innovation and efficiency have ensured the just and expeditious conduct of the Court and brought access to justice to the Victorian community.

Supreme Court

Justice Beach

WHEN Justice Beach laid his wig down on the bench of Banco Court at the end of the ceremony to mark his retirement as a Supreme Court Judge, the Supreme Court lost its last link with the immediate post-war generation of barristers. His Honour's service to the law has spanned over 55 years.

Justice Beach was born on 16 February 1931. His father, Arthur, was a clerk with a wool company and could not afford to educate him except at State school. His Honour commenced his education at Newtown State School, Geelong, and after four years was awarded a scholarship to Geelong College where he remained a scholarship student until he matriculated in December 1947. His schooling at Geelong College did not entirely reform His Honour's larrikin ways and high jinks that he and his friends caused in Geelong.

As he could not afford to go to university he underwent five years of articles of clerkship with the Honourable Alan McDonald (father of Justice McDonald) of the firm White & McDonald. His Honour's first three years were spent performing Titles Office duties and probate lodging, together with conveyancing. For his last two years His Honour instructed in common law personal injuries trials on the Geelong Circuit where he met the likes of Reginald Smithers, Hazeldene Ball and Bill Martin.

He was admitted to practice on 2 March 1953 at the same time as SEK Hulme QC, Sir Edward Woodward, and Judge Mullaly. He commenced reading at the Bar that very same day with Lionel Revelman and received a brief to appear that day from Bill Magennes of Morris Coates & Hearle.

Justice Beach did not complete a law degree, having completed his articles of clerkship, and was the only Supreme Court Judge at the time of his retirement-not to have a law degree. He kept distinguished company with other judges who did not have a law degree such as Justice McHugh of the High Court.

His Honour was required to write papers on subjects which were submitted to Melbourne University to be evaluated for tutors for "external students". Before His Honour answered each of the questions, he had to discuss his answer with Arthur, whose only experience of the law was a short time that he had spent with Birdsey & Birdsey (now Birdsey Dedman & Bartlett of Geelong) as an office boy and a time he spent recuperating with the Chief Justice of Scotland as a wounded soldier during World War 1.

His Honour's career was meteoric. He was granted silk in November 1968 at the tender age of 37. His Honour was the pre-eminent jury advocate at the time he took silk and had a large jury and inquiry practice. For example, His Honour was counsel for the master in the Atlas Dredge Inquiry which lasted four months. He was junior counsel in the Winton Air Inquiry which lasted four months and was senior counsel for Freeman Fox & Partners in the Royal Commission into the failure of the Westgate Bridge, conducted by Sir Esler Barber, which sat for 80 days. His Honour also appeared for Superintendent Frank Holland at the Board of Inquiry concerning corruption in connection with the illegal abortion practices conducted by William Kaye (as he then was) in 1971 and appeared in many other inquiries.

His Honour also defended in many murder trials. After taking silk in 1968 he undertook to the Public Solicitor to appear in at least two murder trials a year for a nominal fee. His Honour was regarded as an excellent cross-examiner with a good understanding of juries and an ability to put his client's case clearly and concisely, which was only achieved after mastery of his brief.

His Honour also gave considerable service to the Victorian Bar, being a member of the Bar Council from 1954 until 1960. His Honour was the first secretary of Council's Chambers Limited which found extra accommodation for the 40 or so counsel, mainly ex-servicemen, who attended chambers in Selbourne, but were unable to be accommodated. One of the first areas in which new chambers were created was Saxon House, where His Honour moved to the third floor. His Honour, although not a political animal, stood for pre-selection for the Liberal Party for the seat of Kooyong in 1966 and was defeated by Andrew Peacock.

His Honour was appointed chairman of the board of inquiry into complaints against members of the Victorian Police Force which commenced in March 1975 and continued until June 1976. His Honour required protection as many threats were made against him. The Beach Inquiry heard many sensational allegations and was constantly in the media spotlight. His Honour's inquiry recommended charges be laid against many policemen. All of the prosecutions were unsuccessful. All the recommendations made by His Honour, which included video-taping of records of interview and identification parades, together with children being interviewed by the police in the presence of their parents, and an arms register for hand guns, were adopted. Another of His Honour's recommendations was that another and far-ranging inquiry should not be held. The Beach Inquiry changed the culture of police in Victoria and that is a mark of His Honour's industry, courage and common sense that he was able to promptly deal and make concise recommendations from an inquiry that sat for 15 months, took 766 exhibits and ran to over 12,000 pages of evidence.

For reasons that need not be examined now, His Honour was not appointed

a Judge of the Supreme Court until 18 July 1978.

On his appointment as a Judge, His Honour gave his red bag to Bernard Bongiorno QC (as he then was). The red bag had been given to His Honour by Justice Crockett when His Honour was appointed to the Supreme Court. The red bag had originally been owned by Sir Douglas Menzies who, upon his appointment to the High Court, gave it to Sir Richard Eggleston, who upon his appointment to the Arbitration Commission, gave it to Olaf Moodie-Heddle QC, who on his appointment to the County Court gave it to Crockett. When Justice Bongiorno was appointed to the Supreme Court, he gave it to His Honour's son, David Beach S.C., when he took silk in November 2001.

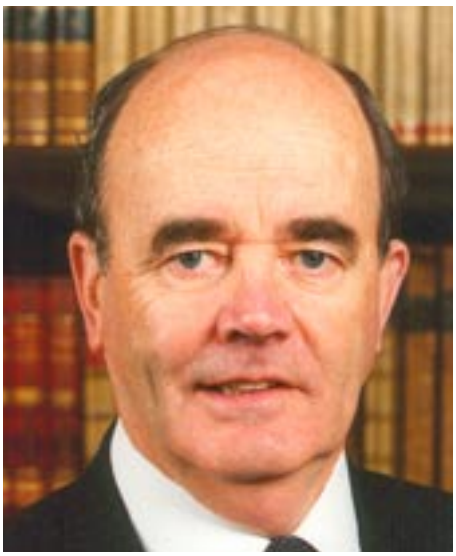
As a Judge, His Honour was noted for his hard work, his ability to get to the issues in a proceeding promptly and to promptly give judgment. Anyone appearing before His Honour was generally left in little doubt as to His Honour's thoughts. His Honour's trials were marked by His Honour's attention to detail and ability to comprehend a large volume of material. His Honour in 1980 conducted the "Caravan Conspiracy" trial which lasted some six months. Initially, His Honour largely conducted jury and criminal trials. His Honour was appointed Chairman of the Council of Law Reporting in April 1984, a position he held until October 1997. His Honour was also the first Judge to preside over the Commercial List with Justice Marks and managed many of the spectacular take-over cases of the late 80s and early 90s.

His Honour was appointed to the Executive Committee of the Court in 1986 and commenced sitting in the Practice Court in 1993 in which His Honour remained except for a few occasions until His Honour's retirement. His Honour also conducted the Spring offensive on the Causes List and the Autumn offensive on the Causes List in 1994 and 1995, and in the time that His Honour conducted the Practice Court His Honour literally performed the work of two Judges. Where previously two Judges had heard the Practice Court Applications, His Honour reduced that to one Judge. His Honour managed a number of important cases including the Dow Corning settlement and gave a much-discussed wide-ranging injunction in the 1999 waterfront dispute.

His Honour also edited, with Justice Anderson, the 1958 Workers' Compensation Act, and had six readers: Jeremy Darvall, Judge Dove, Judge Dean, Judge Ross, Justice Ashley and George McGrath QC.

The Bar wishes His Honour well in his retirement, at the end of a career marked by industry, integrity and common sense. Given that both his sons, David and Jonathan, are members of the Inner Bar it will not be long before there is another Justice Beach.

Justice McDonald



JUSTICE Allan William McDonald was born on 3 March 1937. He was born into the Geelong McDonald family — a family well known and respected in the region, and in the wider community of Victoria, in the practice of law and for service to the community.

His grandfather, Edward Allan McDonald OBE (1874–1937), sometime Chief Magistrate of Geelong, formed the well-known Geelong firm of Wighton and McDonald, when he entered into partnership with James Wighton in 1917. He was a well-known councillor, alderman, Mayor and advocate for the city of Geelong, and the imposing and powerful lion which sits at the entry of the Geelong Town Hall is a monument which was erected to mark his efforts in the representation he gave to the city. His father, Allan Elliott McDonald (1903–1957), followed in the footsteps of his father in the practice of law and service to the community. He joined the firm of Wighton & McDonald and was a member of the Legislative Council and served as Minister of Labour and of Regional Development from 1948 to 1950. Justice McDonald's father saw active service in World War II in New Guinea and together with Professor Eric Osborne (father of Osborne, J) was a passenger on the troopship *Anshun* when it was sunk upon its arrival in Milne Bay.

The young McDonald was understandably the subject of the strong influence of his father. His day would start early, with music practice before breakfast, classroom pursuits, sportsfield activities or the cadet corp after class, and rigorous study until late evening. This discipline of mind and body remains with His Honour until this day.

Justice McDonald was educated at Geelong College. He was a noted footballer, oarsman and outstanding athlete.

His Honour commenced his law degree at Melbourne University and was resident at Ormond College. This time, Ormond College benefited from his sporting prowess. As a member of MUAC at club and inter-varsity level, he set a record for the 100 dash — 9.9 seconds. Justice McDonald was awarded a full blue in 1957 for his athletics prowess, which was re-awarded in 1958, in the same year he captained the inter-varsity and inter-club teams.

In 1957, Justice McDonald became honorary secretary of the MUAC. In 1962, he became chairman of the Victorian Amateur Athletics Association and so remained until 1976, when he was succeeded by Sir Murray McInerney. From 1978 to 1983, he was president of the Australian Athletic Union. In 1980, at the time of the Moscow Olympics, his presidency and counsel proved invaluable. Under the Royal Warrant, Justice McDonald was one of the few to be awarded the Australian Sports Medal in 2000 for Australian sporting achievement. Justice McDonald is patron of MUAC, a life member of Athletics Australia, Athletics Victoria, and the MUAC. Justice McDonald remains a valuable member of the Committee of the MCC.

In 1991 and 1992, Justice McDonald was chairman of the advisory panel of Deakin University law school. The foundation of that law school was in good hands. Justice McDonald played a crucial role in developing the law school, a role which Professor Du Plessis, the current Dean has said was such that without Justice

McDonald and Professor Philip Clarke, there would have been no law school.

In 1960, Justice McDonald began his long and successful run in the law and was admitted to practice, having served articles of clerkship to Vernon Wilcox at Hall & Wilcox. He was called to the Bar and signed the Bar Roll on 27 April 1961. He read in the Chambers of W.C. Crockett. Justice McDonald quickly came to realise the speed and acumen required for success at the Bar. Justice McDonald learnt quickly, and soon established a wide practice, with a tendency towards the personal injury jurisdiction, general insurance work, and a divorce practice in the days when footprints and movie tape recordings were part of that jurisdiction. Indeed, on circuit in Ballarat, he once set a record for the number of undefended divorces disposed of in one day, prompting him to call his wife at the end of the day and tell her she could "go ahead and order the new carpet".

Justice McDonald married Margaret (a physiotherapist specialising in the treatment of disabled children) on 29 June 1962. He and Margaret raised three ladies and a fine young man. He is now the devoted grandfather of eight grandchildren. His Honour's devotion to his family is complete. Margaret's support of His Honour has been something which he has publicly recorded as immeasurable.

Justice McDonald took silk on 23 November 1977 and held retainers for the Tramways Board and the SEC. It became well-known by those responsible for maintaining the defence of the medical profession that it was far better that the medical practitioners of Victoria have his services at their end of the Bar table. That remained so.

His Honour's command of the art of cross-examination drew wide acclaim, from both grateful clients, and impressed instructors. When appearing for the defence he had occasion to cross-examine a plaintiff's medical expert who was reading the X-rays back to front, the verdict for the defence was a pleasant one. His Honour's vigorous cross-examination of London underwriters in the UK proceedings commenced by the SEC concerning its indemnification arising from the Ash Wednesday bushfires, enlightened certain members of the Inns of Court. Indeed His Honour formed a long and lasting friendship with Johan Steyn QC (now Lord Steyn of the Judicial Committee of the House of Lords) with whom he appeared for the taxpayers of Victoria.

His Honour's practice whilst at the Bar included trial work, general appellate work and appearances before various commissions of inquiry including the deregistration of the BLF.

Justice McDonald's career at the Bar was marked by his punctilious and reliable dealings with solicitors and his courtesy and appreciation of the human condition. These qualities marked him for judicial office.

Justice McDonald was appointed to the Bench of the Supreme Court in May 1988. His Honour sat in all jurisdictions — crime, commercial causes, civil juries, the Full Court (as it then was). He may be one of the last great "all-rounders". He was a fine trial judge.

In 1989, Justice McDonald was the presiding Judge in the "Jetcorp" trial which was a long and difficult criminal trial, with four co-accused, which covered complicated financial matters. Lengthy interruptions ensued and in the face of yet another, His Honour acceded to an application to discharge the jury on the ground that the length of the trial hitherto and the interruptions past and future to it would give rise of the verdict being unsafe. Requisite precedent did not exist. Two years later, the English Court of Appeal in *R* v *Cohen* (the "Blue Arrow" case) reached the same conclusion on similar facts. In 1995, the Full Court in the appeal from the second trial of "Jetcorp" followed Blue Arrow and described the decision of His Honour as having seemingly anticipated the sentiments of Blue Arrow, and the Full Court.

The mark of Justice McDonald's judicial career — sound judgment and the appreciation of the human condition was present from its earliest days.

In latter years, Justice McDonald became Chief Judge in the Commercial and Equity Division.

Justice McDonald always bore more than his fair share of the judicial burden of the dispatch of the court's business. Counsel who appeared before him who had mastered the facts of their case and who had a reasonable understanding of the applicable law found a judge who was always prepared to listen and who always understood that a case often takes an unexpected turn. Such counsel always received a proper hearing in Justice McDonald's court. His fellow Judges always appreciated his good humour and support. His work for the court, its executive and various committees, particularly in the refurbishment of various courts and the Court of Appeal was both significant and appreciated.

To Justice McDonald, the dignity of the person who had left the court and lost was one of the paramount matters to be preserved in the maelstrom of the court process.

Justice McDonald came to the Bench expressing the onus upon him, that those before him would know that justice had been done to their case. He left the Bench on 30 August 2002 having discharged that onus.

The Bar and his many friends still there wish him a long and well-earned retirement.

Wilson Eats Again

Federal Court of Australia

13 December 2002
Coram: Mr J. Efthim, Deputy District Registrar
Mantech Systems Pty Ltd v *Elph Nursing Pty Ltd*
C.D. Golvan for the applicants
Wilson QC with Lye for first and sixth respondents
Lawrence for second, third, fifth and seventh respondents

Mr Golvan: In that matter I appear for the applicants.
Mr Lye: If the Registrar pleases, I appear with my learned leader Mr Wilson, who I believe is frantically trying to get here from lunch.

Family Court

Justice Smithers

ON 15 March 2002 members of the legal profession, family and friends gathered in the Family Court to farewell Justice Adrian Smithers. Like his father, the late Sir Reginald Smithers who served as a Judge of the Federal Court, His Honour has distinguished himself during 25 years of judicial service.

His Honour was educated at Melbourne Grammar School. Upon completing his secondary education he enrolled at the University of Melbourne and graduated with a degree of Bachelor of Laws. In 1958 he was admitted to practice as a barrister and solicitor of the Supreme Court of Victoria. In 1961 His Honour signed the Roll of Counsel and practised as a barrister until appointed to the Family Court. At the Bar His Honour enjoyed success as a general common law barrister including practice in the family law jurisdiction. Immediately prior to his appointment in 1976 he was counsel assisting the Board of Inquiry into motor vehicle accident compensation in Victoria. His Honour's appointment came at a time when judicial appointment was for life rather than a retiring age upon reaching 70 years.

It is to be remembered that at the time of his appointment the Family Court and its judges were under severe criticism and personal attack from fringe litigates who saw the outcome of family law cases as unacceptable. This group saw the judges and the Family Court process as too passive and unfair to male litigants. At the time the administration of the Family Law Act was in its infancy. Court procedures were informal. His Honour was a proponent for the implementation of a more formal approach to the hearing of cases by implementing rules of court. Further His Honour believed the introduction of wigs and gowns for judges and counsel would give the court officials an appropriate distance from the litigant. In hindsight there is no doubt that His Honour's views and the changes that followed in the way cases were conducted gave the Family Court and its judges the community's respect for its decisions and the process of administering justice where so often emotions between the parties are running high. In his approach to the administration of family law His Honour adhered to a practice of formality and strict adherence to the rules of court. Litigants and the profession always knew where they stood in His Honour's court. This atmosphere helped overcome the emotional turmoil the parties so often brought with them into court.

His Honour was always a courteous judge to the profession. It was therefore not surprising that in his farewell speech he paid respect to the members of the profession, both solicitors and counsel in presentation of their cases. His Honour said: "Without them the work of the Court would grind to a halt. I admire their efforts, skills and their commitment to their clients' interest. This includes their preparedness to help their clients towards compromise, where appropriate, costs being particularly significant in a jurisdiction where there is no one else but the parties to pay them."

His Honour also referred to the vastly increasing rate at which litigants now represent themselves in the Family Court. His Honour noted that the increasing presence of litigants in person opposed to competent professionals significantly interferes with the chances of a just and appropriate result. His Honour further noted that litigants in person in their present numbers are creating a serious problem in the administration of justice in the Family Court at many levels.

Justice Smithers has brought to the Family Court a careful and thoughtful mind. His judgments were always scrupulously fair to all parties and considered. As a result he was rarely appealed. He has given the Family Court and the community exemplary and dedicated judicial service. The Bar wishes His Honour a happy and fulfilling retirement.

A New-found Freedom

Coram: Ormiston, Batt and Vincent JJA
Nurses Board v *R.J.T.*
Ruskin QC and Wheelahan for the Appellant
Hurley for the Respondent

In paragraph 56 of the judgment below, Nathan J had said: "Every citizen whether a registered nurse or otherwise has a basic freedom to fornicate." In relation to this issue the following exchange took place:

Ormiston JA: Mr Hurley, do you support everything said in paragraph 56 of the judgment?
Hurley: Yes we do, Your Honour.
Ormiston JA: We have looked at the human rights texts and cannot find any reference to the freedom referred to.

Russell David Barton

RUSSELL Barton was born in Warrnambool in 1926 and died there on 13 December 2002. He grew up on his father's farm at Naringal near Warrnambool. He had an abiding love and deep knowledge of the Warrnambool area, both sides of his family having been there since the mid 19th century. His father's ancestors included a convict transported for life from Aberdeen in 1827 for stealing five head of cattle and those driven out of Ireland by famine, one of whom drove his buggy through Koroit on St Patrick's day festooned with orange ribbons. His mother's ancestors included two convicts on the First Fleet, the male transported for theft and the female for armed robbery, whose daughter married the son of a member of the New South Wales Corps, a later convict, and a soldier at Waterloo who became an early publican in Melbourne.

He was the first on either side of his family to be particularly academic or to attend university, reaching there from Naringal State School, Warrnambool High School and Scotch College. After failing first year Medicine he turned to Law, attaining his LLM by the exacting means then permissible of attaining a high mark in examinations, sat shortly after the end of final year law, in a number of subjects including those studied in earlier years. He retained a thorough grasp of legal principle, most recently acknowledged by Judge Jones, who when in his retirement speech recalling his appointment as President of the AAT in 1988, said "It also brought me into contact with one of the best lawyers I have ever had anything to do with, Russell Barton".

He was called to the Bar on his 24th birthday, reading with Mr Benjamin Dunn. He initially had few briefs but in time his practice grew. The size of the Bar of the 1950s enabled general practice, which in his case included appearing for the prisoner in a murder trial and frequent appearances for the Crown to argue points of law, particularly on orders to review. These included such random points as whether the offence of using indecent language in a public place is committed if the language is inaudible (*Lunt* v *Bramley* [1959] VR 313) or whether the *Herald*'s "Wealth Words" was an illegal lottery. His ability was acknowledged in *Lang* v *Lang* (1953) 86 CLR 432 which he argued when aged 26 before Dixon CJ, Fullagar and Kitto JJ. He faced the difficult task of persuading the court that one of its recent decisions was wrong. Although unsuccessful, Dixon CJ (at p. 435) described his argument as "dispassionate, clear and painstaking".

He also showed courage at a meeting of the Bar called on 19 November 1959 in connexion with the departure from Selborne Chambers and the establishment of Owen Dixon Chambers. In his book *Selborne Chambers Memories* Max Bradshaw wrote that at that meeting: "Russell Barton dropped the bombshell that there had not been compliance with article 77, which required notice of all meetings adjourned for more than 21 days to be given in the same manner as for the original meeting." This shift of Chambers also provided a memorable incident in his deepest friendship at the Bar, with Max Bradshaw. After being among the final tenants in Selborne Chambers they went in 1961 to Brougham Chambers in Chancery Lane, being eventually in 1967 the last two tenants in the building. They were prised out of it only by the offer of a sufficient sum to surrender their tenancies, made by a director of the owner, who desired to redevelop that and the adjoining building, sent from England for that purpose. They went to chambers on opposite sides of the passage on the third floor of Equity Chambers in which they remained until Max's death in 1992. Their friendship, described by my father in his obituary to Max Bradshaw in the 1992 *Bar News*, was curious in that Max was a strong Calvinist and teetotaller, both of which Russell was anything but. And, I suspect like many other barristers, their friendship was enjoyed only in the city: in the mid 1970s Russell lived opposite Max for some time, but Max only learnt this when seeing Russell at a polling booth on Federal Election day. Nonetheless they shared a deep interest in history, particularly related to the legal profession in Victoria and former judges and barristers, a similar conservative outlook, and iconoclastic tastes. Basil Buller Murphy, a photocopy of whose imperious photograph adorned the wall of his final residence, was Russell's other great friend in his early years at the Bar. He also enjoyed the company of many solicitors, particularly the late Tom Ottaway, and held Kevin Foley in great regard.

From about 1960 to 1975, due in part he said to recommendation by Sir John Barry, he practised solely in matrimonial causes, dividing his time between Melbourne and the Bendigo circuit. He became an expert in this field. A retired judge has written to me:

"As a warm and helpful colleague and a learned and wise barrister, he was constantly plagued by younger (and often older) barristers for advice. He always obliged and helped many to avoid traps and pitfalls and judicial censure, especially in the Divorce Court. He was quite unflappable, even when Barry or Martin JJ were testy or difficult. Russell was universally liked and respected then — and later in his years as Chairman of Tribunals."

A solicitor who briefed him in these years described him as very organized. You knew when you took your client up to see him that the client would be treated with dignity and courtesy in a difficult climate. He knew his brief absolutely, so that he knew all about the client and could immediately put the client at ease. He was an able cross-examiner: courteous, patient, subtle, and not abrasive.

His greatest professional pleasure was on the Bendigo circuit. This was not without amusement. On one occasion a solicitor from Kyneton was consulted by a woman of mature years about getting a divorce. Her closing instruction was: "And can we have that nice Mr Barton — he did such a good job in my last two divorces." In another case, on the luncheon adjournment, this solicitor and Russell went across the road from the Supreme Court in Bendigo to the Shamrock Hotel for lunch. Russell ordered pots of beer for each, repeated this more than once, and eventually announced, "We'd better go back to court." The solicitor said, "What about

lunch?" Russell replied, "You just had it", returned to court and, according to the solicitor, performed very well.

In 1975, referring to the replacement of the Matrimonial Causes Act by the Family Law Act, he commented over a drink with a solicitor at the City Family Hotel in Bendigo, "The fun's gone out of it, Peter." Accordingly in 1976 his career changed direction with his appointment as Chairman of the Environment Protection Appeals Board and shortly after as Chairman of the Drainage Tribunal. These were inspired appointments because, for a layman, he had good scientific and engineering knowledge, and he had a farmer's feel for drainage and a lawyer's interest in arcane drainage law, as shown in the long 1982 PAB decision of *Oberin* v *Shire of Deakin* and in the 1989 AAT decision of *Hayward* v *Haintz* which ran for over 30 days. He was the first and, as it turned out, only Chairman of both tribunals. In 1981 they were incorporated into the Planning Appeals Board of which he became a Deputy Chairman. In 1988 the PAB was itself incorporated into the AAT, of which he was a Deputy President from 1988 to 1996. In 1977, in common with a number of other persons in public office in Victoria, he was awarded the Queen's Jubilee medal.

The staple diet of his work from 1981 to 1996 was hearing town planning cases. Illustrating this from the area with which he was so familiar, one may journey from Dennington (where the first Barton settled), where a tribunal chaired by him granted a permit for demolition of Nestlé's workmen's cottages dating from the early 20th century, past Rafferty's Hotel, the permit for which was granted by a tribunal chaired by him (although his publican cousin, who sat at the back of the hearing throughout, was an objector), reaching the Warrnambool Cemetery where he is buried virtually within sight of Logan's Beach, a scene of planning controversy at which I think he granted an early permit for a large dwelling.

He was, however, particularly proficient in cases in which he sat with expert tribunal members, which combined heavy competing commercial interests, many objectors, expert witnesses and leading counsel. Examples were cases where permits were sought for quarries, municipal tips or abattoirs. A Queens Counsel has said to me that he ran a "beautiful" hearing, knew what point was important, directed the hearing, did not make long speeches, would ask appropriate questions, and would provide clearly written and unappellable reasons.

This was most illustrated in the 1982 decision of the Environment Protection Appeals Board in *Shire of Dimboola* v *Horsham Sewerage Authority*. This case concerned the Wimmera River, which discharged into Lake Albacutya, from which water was extensively drawn by inhabitants, and in which they swam and fished. For some time the Authority had been discharging treated effluent into the river and there was evidence that this caused prolific reed growth, and, when the weeds rotted, pollution.

The Authority now needed a licence to discharge under the *Environment Protection Act 1970*. Apparently no Authority had ever lost such a case in Victoria. The Board went up and down the length of the river talking to locals and heard many expert witnesses. The key scientific point turned out to be this. Sewerage authorities in Australia had been using a biochemical oxygen demand standard used in the United Kingdom and based on the proposition, true there, that a river would generally run to the sea within five days. But how did that apply to an inland river in Australian conditions?

The Board found for the Shire. It revolutionised standards for Australia by rejecting the biochemical oxygen demand used in the United Kingdom and, exceeding the submission of even counsel for the Shire, holding that 100 per cent of the discharge of treated sewerage should be to land.

In retirement he enjoyed his penchant for gastronomy and reading history, particularly related to Germany and Britain from the mid 19th century and the two World Wars. He was spared a lingering death without full mental facilities. He is survived by his wife Marg and his children Philip, Ruth and Anne.

Ashley J Addresses Suburban and Country Law Associations

Late last year, Mr Justice David Ashley, Principal Judge of the Common Law Division of the Supreme Court, initiated discussions between the Judges of that Division and members of the profession. On 16 November 2002 at the Bar Council dinner for the presidents of the Suburban and Country Law Associations, Mr Justice Ashley outlined concerns that had been raised in those discussions, and steps being taken by the Court to meet those concerns. What follows is the text of Mr Justice Ashley's speech, and a very brief update on what has occurred since November 2002.

WHAT I want to say tonight is addressed to the lawyers who are here, on both sides of the profession. I offer my apologies to their wives, husbands and partners.

The Supreme Court, overall, has plenty of work to do. All the judges work hard. I know that at the age of 60 I work more hours each week than I did as a busy silk in the late 1980s.

Looking at the work of the court more particularly, there is, generally, lots to be done by the Common Law Division of which I am the Principal Judge.

In two areas, however, neither I nor the other judges of the Division are satisfied with the situation. First, too few of the really substantial torts cases — particularly personal injuries matters, but also to a lesser extent defamation proceedings — are being commenced in the Court. Second, circuit work — except at particular venues — has declined.

Why should the Court worry? The answer is simple: the Supreme Court should be doing the biggest cases in every area of its jurisdiction.

Why are commencements in these two areas too low? The objective facts are, first, that the Court on the civil side has been rated by a federal authority as the most efficient superior court in Australia. Second, the Court's own statistics, which are reliable in this connection, show that very few cases fixed for trial do not get a hearing on the first occasion that they are listed. In the first six months of this year 334 civil matters were fixed for trial. Only eight were not reached. It was a very small proportion also in the equivalent periods in 2000 and 2001. Third, cases do get on quickly, providing the interlocutory work is done to time. I took a snapshot of trials fixed in the Common Law Division in the three weeks commencing Monday next. I excluded single judge appeals, which get on very quickly. Of 13 matters listed,

David and Sally Curtain, Jenny and Justice David Ashley, Sandy and Jack Rush (new President).

Annette O'Callaghan, John Tebbutt, Anne and Paul Lacava S.C.

Chris and Craig Harrison, Bill and Anne O'Shea.

George and Gail Traczyk, Kim Galpin and Paul Fink.

Brian and Mary Halpin, Russell and Rosemary Young.

Damien Maquire, Marie and Michael Houlihan and Maree Maquire.

Jenny Richards, Peter Moore, Alison and Arthur Adams QC.

10 were commenced in or after June last year, and of those 10 half were commenced this year.

So, again, what is the problem? Why are not enough of the big torts cases being commenced in the Supreme Court and why the decline in circuit work?

The Common Law Division judges recently met with members of the profession nominated by the Bar and the Law Institute. There was a frank discussion. The profession raised various matters. Some were more perception than reality; but we all know that perception is its own reality.

The judges have discussed the matters which were raised. We have made some decisions already. More will be made. We intend to keep on discussing things with the profession as we go. Changes, I emphasise, must be made in a principled way. Simply copying the arrangements in another court would not be satisfactory.

What we have so far decided is this, in no particular order of priority:

1. Subject to the approval of the Chief Justice, the present Major Torts List will be broadened and will offer individualised management to each case that is entered into that list. When I say that management will be individualised I want to emphasise that the Court knows that management entails cost, and that some cases require little management, others more.
2. We intend to introduce a pilot program giving cases entered into the Torts List a date for trial at an early stage. We have some doubt that this will have a practical effect on how quickly a case gets on. Already, although it may not be the perception of the profession, cases do get on quickly. But the profession raised the issue and we will trial it and compare outcomes.
3. The profession condemned the requiring of synopses of evidence in torts matters. Such orders were made in the Major Torts List in the past. They are not ordinarily made now. They will not be made in the future.
4. The profession complained about small but annoying matters. Requiring an affidavit to explain misaligned staple holes was instanced. The judges understand the problem and will take steps to address that and similar matters.
5. The judges accept the profession's expressed concern that the 50 per cent jurisdictional limit costs rule is a concern in defamation cases. They recognise that the critical issue in many defamation proceedings is the vindication of the plaintiff's reputation; and that the amount of damages awarded may not correlate well with the importance of a re-established reputation. Although it is the fact that judges of the court have exercised their discretion to award Supreme Court costs where the amount of damages awarded has fallen short of 50 per cent of the County Court jurisdictional limit, there is every prospect, having regard to the profession's reasonably expressed concern, that the prima facie threshold for Supreme Court costs in defamation claims will be reduced to $50,000.
6. The judges accept the need for speedy resolution of interlocutory disputes in defamation cases. A pool of judges who have experience in defamation matters will work with the judge in charge of the Torts List to ensure that interlocutory matters are got on and disposed of more quickly than might be the case if all interlocutory matters were dealt with by a single judge.
7. On the circuit front, Justice Bongiorno has been appointed to liaise with the profession and the Deputy Prothonotaries in the circuit towns.

So, again, what is the problem? Why are not enough of the big torts cases being commenced in the Supreme Court and why the decline in circuit work?

John Cain, Jenny Wright, Michael and Margaret Phar, Jacqui Billings and Robert Davis.

Alan and Margaret Marshall, George Traczyk, Irene Bolger, Marie Russo and Peter Chadwick.

He will be meeting with the Deputy Prothonotaries in early December to make clear the Court's willingness to deal with circuit matters and to discuss any problems that there may be. He is accessible to members of the profession in provincial centres who wish to discuss problems with him, or to offer solutions.

8. The Court gives this commitment: if cases are commenced in circuit towns, it will go to hear them. Do not fear that, if there are only a few cases, the Court will not sit.
9. It may often be a good idea to enter a circuit torts case in the Torts List. This is already done by a few practitioners. Such cases can be managed in the List and then fixed for hearing on circuit. Justice Bongiorno, as judge in charge of that List, is happy to deal with applications by video link. You need not fear that there will be inconvenience if you do commence a circuit case in the Torts List.

Jacqueline and Richard Ingleby, Robyn Wheeler and Phillip Dunn QC.

May I mention one final matter. It is not a court initiative but a simple observation. Serious injury applications, by statute in some cases and sensibly otherwise, are brought in the County Court. But that does not mean, if an application is successful, that the substantive proceeding must be brought in that court. There is every reason why a big case should be brought in the Supreme Court.

Serious injury applications, by statute in some cases and sensibly otherwise, are brought in the County Court. But that does not mean, if an application is successful, that the substantive proceeding must be brought in that court.

SHORTLY before this issue of *Bar News* went to print, the Editors spoke with Mr Justice Ashley and obtained the following update. All the initiatives described in the speech are either in place, or are progressing. In particular, the pilot program (initiative 2) has commenced and, since late last year, a number of cases in the Major Torts List have been given dates for trial at an early stage. The program will be expanded at directions hearings to be held in the near future. In relation to circuit lists and cases (initiatives 7 and 8), Justice Bongiorno has met with the Deputy Prothonotaries from the circuit towns, and with members of the profession in Mildura, Geelong, Ballarat and Horsham; and the Court has delivered on its commitment to hear cases on circuit, even if only a few cases are ready for trial at a particular venue. Between November and February the Court listed cases for hearing in three circuit towns where, in one instance, only two cases were ready for trial and, in each of the other two instances, a single case only was involved.

The Common Law Division Judges are committed to further dialogue with the profession on the matters raised in Mr Justice Ashley's speech. Any member of counsel who has something he or she wishes to raise should contact, in the first instance, the Bar Legal Policy Officer, Ross Nankivell, on extension 8775 or by e-mail at <legal@vicbar.com.au>.

Characters of Bench and Bar

An address by SEK Hulme to a private luncheon at the Melbourne Club, Tuesday 4 June 2002

"I said at the luncheon that time did not permit me to speak of everyone I would have wished. The omissions from the material I had prepared are enormous: Owen Dixon, Garfield Barwick, Keith Aickin, and many another. That may some day be rectified. Meanwhile this record is confined to what I said on the day. I hope that some day the full record will stand as a single whole."

I have been asked to recall characters I have known from Bench and Bar, during my years at the Bar. In accepting the invitation I have in various ways allowed myself some flexibility. I was called to the Bar in 1953 (though I did not begin practice, reading with Keith Aickin, until the very end of 1956). But I first saw a court — appropriately the High Court — in 1948. From that date I have allowed myself to mention anyone I actually saw in a court, whether I had anything to do with them or not. With one or two trivial exceptions no one else is mentioned. I have allowed myself to mention some people who were neither Bench nor Bar, but witnesses. In order to prevent any of you from being called as witnesses in a defamation case (to say that what I said about someone made you think even worse of him than you already did), with one exception I will speak of no one save those who are safely dead. Everyone present here today may listen without trepidation: at any rate in regard to what he did in a law court.

SEK Hulme QC.

Sir Charles Lowe

At the time I began practice the Supreme Court included two judges holding — a better phrase might be holding on — under life appointments from an earlier era.

The last to go was to be Sir Charles Lowe. He was appointed on 1 February 1927, and retired on 31 January 1964. Bob Menzies remarked of Sir Charles Lowe that no one could possibly be half as wise as Sir Charles Lowe looked. It is something of a backhander, if one takes it slowly, but it does give a picture of the enormously august appearance of this judge, Chancellor of Melbourne University, Royal Commissioner into the events in Darwin in 1942, after the first big Japanese air-raids, and Royal Commissioner into Communism. It was the contrast with the appearance, and the solemnity with which everything that he said was spoken, that helped make so memorable many of the remarks Charlie Lowe made. I remember a Medico-Legal Society dinner, where he was called on late in the night for a few words. He happily agreed, told three stories ranging from the risqué to the downright dirty, and sat down leaving everyone convinced that they had heard a most remarkable man. As indeed they had.

The story is well known of the occasion when Charlie was presiding over applications by persons called as jurors to be excused. He was delighted when he heard a man ask to be excused on the ground that his wife was about to conceive a child. Lowe could feel a one-liner coming on. Counsel waiting for the applications to conclude intervened to help. He had a word with the man, and then said: "Your Honour, the position is that this gentleman's wife is in the Margaret Coles Maternity Hospital, and is about to be delivered of a child." Lowe's immortal reply was instant. "In either case, the presence of the husband is eminently desirable. The juror is excused."

In another case a witness in a sex case got his terminology sufficiently wrong to talk of suffering from the Venetian Diseases. Lowe knew just what he meant. "That would be an attack of The Gondoliers, I presume."

And so it went. But even the great can be caught, and Lowe was well and truly caught one day by Eugene Gorman. That eminent advocate had ceased to practise by the time I went to the Bar, but he still maintained chambers (sublet to Charles Sweeney). There he gave each year his Christmas party. It was full of judges and politicians and other important people,

and an invitation to Gorman's Christmas Party was seen as an infallible sign that one was getting on well at the Bar: or at any rate that his legendary secretary Pam Nickisson, later to marry Justice Peter Coldham, thought one was.

On the fateful day, Gorman was appearing before Charlie Lowe for one Molly Fitzgibbon, on a charge to do with running brothels. He had acted for her on earlier occasions, on similar charges. He called her to give evidence. She agreed that she was Molly Fitzgibbon. Gorman asked her to state her address. "Oh, Mr Gorman," she said archly but not very helpfully, "You know my address." A rumble was heard from the Bench. Clearly another one-liner was coming on, this time to be at the great Gorman's expense. Alas, alas. Gorman got in first. "Oh yes, Mrs Fitzgibbon, I know your address, but His Honour wants to know."

Sir Charles Gavan Duffy

The second-last judge to hold under a life appointment was Sir Charles Gavan Duffy. Dear Charlie. His appointment in 1935 had caused a mild scandal in its unexpectedness, for he had not commanded that position at the Bar which was in those sterner days normally required for appointment to the Supreme Court. Indeed the apparent inexplicability of the appointment on any basis involving what Lord Melbourne used to call "damned merit", and the coincidence of certain events, led to the emergence of the legend of a four-sided arrangement. The powerful influence of Victoria's brilliant young Attorney-General and Deputy-Premier Bob Menzies would be used to bring about Charlie's appointment to the Victorian Supreme Court. Satisfied that his son's future was secure, Sir Frank Gavan Duffy would retire as Chief Justice of the High Court. He would be replaced by the Honourable John Latham, MP, QC, member for Kooyong and Attorney-General of the Commonwealth. That appointment would leave Kooyong open. Kooyong would be given to Bob Menzies, who would thus leave Victorian politics and enter the federal Parliament, whereupon he would be made Attorney-General.

Certainly the quadrilateral events took place. Whether the whole arrangement or understanding existed, who shall say? There was to be a substantial gap (1 June 1933 to 11 October 1935) between the appointment of Charlie and the retirement of Sir Frank Gavan Duffy, and it was during that gap that Mr Latham retired as Attorney-General of the Commonwealth and member for Kooyong, and Mr Menzies was given Kooyong and made Attorney-General of the Commonwealth. But whatever the gap, letters of Lord Casey [as he became] to the Prime Minister Joseph Lyons show that the connection of three of the moves was in open discussion within the United Australia Party prior to June 1933. Sir Frank Gavan Duffy did retire, Mr Latham was indeed made Chief Justice on that retirement, and Menzies did succeed Latham in Kooyong and was made Attorney-General of the Commonwealth. All that was quite clearly orchestrated. Whether the appointment of Charlie was connected with the matter

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KNOWING THE JUDGE

The judge is not old

If one seeks to convince a judge, it is always politic to know something of him, and to adjust one's remarks to his particular circumstances. The age attained by these last two life-appointment judges gave rise to a particular problem. It is well known that no one younger than the judge is old. As Lowe and Gavan Duffy soared into the 80s, one would hear counsel saying with perfect aplomb things like "If Your Honour pleases, the plaintiff in this matter is a middle-aged man." "Precisely how old?" "Oh, ah, 76 Your Honour."

The position of a second wife

The ignorance of one barrister (who subsequently became a judge, and a good one too) of other facts concerning the judge did his client no good. The case concerned testators family maintenance, the jurisdiction where the court is given power to interfere with a will if its terms leave a widow or children inadequately provided for. Obviously there is room for conflict between the claims of a widow and the claims of children, and obviously an estate may not suffice to meet all justifiable claims. It can become a matter of priorities.

In the case involved, adult children of the first marriage were challenging testamentary dispositions in favour of the second wife as being too favourable to her and insufficiently favourable to themselves.

Counsel for the children acknowledged the primary duty to provide for the widow. But, he explained to the judge earnestly, a second wife does not have so strong a claim as a first wife does. A first wife has shared the toils and hardships of the early years of the career. She has a very strong claim, meeting which will often justify total exclusion of adult children. But a second wife, he explained, enters upon a scene already established. She does not have the years of struggle. She joins during the era of comfort. A second marriage is not so much as a vehicle for love and facing the future, as a respectable arrangement for mutual comfort. Her claim as against children of the first marriage must be very much less.

The point was argued eloquently. It met with the success which attends all lead balloons. I cannot help feeling that counsel would not have put the matter quite as he did had he known that Mr Justice O'Bryan, whose first wife had died, had not so very long since married again. He greatly loved his second wife, indeed loved her so much as to have married his deceased wife's sister, something most strongly disapproved of by conservative sections of the Roman Catholic church of which he was a notable and most loyal adherent. Certainly no other way of putting counsel's argument could have fared worse than the way he did put it. As Sir Wilfred Fullagar had said in relation to Norman O'Bryan in some Bar dinner doggerel a few years earlier:

> And when Irish eyes are smi-ling
> Ye'd best watch your step, me lad.

seems destined to remain a mystery. But at the relevant time Menzies was not only Attorney-General and Deputy Premier, but also Acting Premier of Victoria. Menzies was an astute and far-sighted man, and it is not easy to think that he did not see certain possibilities.

Whatever the merits of his appointment, Charles Gavan Duffy was an old-fashioned gentleman. An officer and a gentleman, for in World War I he had been a major in the Field Artillery. A noted horseman, he is almost certainly the last member of this club to have ridden a horse up the steps of Parliament House. He soon became a popular judge, though as a mild precaution it was rarely that he was found sitting on appeals.

In time the gentleman became a fine old gentleman. Old and indeed older, for Charlie Gavan Duffy was not going to waste a life appointment in retirement. Sleep could pose a problem after lunch here in this club, but there were honourable understandings among those who commonly practised before him, that things would be run on a fairly consensual basis whenever for a time the judge was not following as closely as usual what was happening.

Two instances will illustrate the Gavan Duffy style. One arose at the trial of a young station-hand for the rape of the station-owner's wife, down by the water hole a little distance from the homestead. The young man's defence was that everything had been perfectly consensual and had been going along swimmingly until the station-owner arrived unexpectedly, whereupon the wife had sung the usual Wives' Tale in explanation of the scene that confronted him.

The case was heard in Mildura. Charlie addressed the jury broadly as follows:

> Gentlemen [no women jurors in those days], you have heard the evidence of both of the people concerned. It is admitted that they went down to the water hole together, and no suggestion has been made that that did not happen voluntarily. No explanation has been given for going there, other than the one that seems obvious. You have heard that caressing and kissing and fondling took place, and, gentlemen, it is not disputed that that was consented to. Now gentlemen, I must tell you that when caressing and kissing and fondling take place, between on the one hand a healthy and well set-up young man (slight bow to the accused) and on the other hand a no doubt more mature but very attractive lady indeed (deeper bow to the prosecution's main witness), very strong emotions can be aroused, and these emotions can lead to the happening of things which at the start of the matter neither party may have intended. Oh gentlemen, gentlemen, you do not need me to tell you about these matters. You know far more about these matters than I do. I'm too old for it now.

It is not a total surprise that the young station-hand was acquitted with acclamation.

The second instance arose in an undefended divorce hearing, proceedings which even earnest newly appointed judges could find tedious. Charlie dozed off for a time, sat up with a start, brushed the cobwebs away from his eyes and said to the witness, perhaps a little brusquely, even fiercely, but determined to cut right through these boring irrelevancies and get to the heart of the matter, "Yes yes yes, but the essential thing is, do you admit the adultery?" The court sat in stunned silence. Counsel recovered his wits. "If Your Honour pleases, this witness is Mr Yuncken, giving evidence of having served the petition." Charlie looked up, and saw that it was indeed the highly respectable Mr Yuncken, of Messrs Yuncken & Yuncken, whom he had met professionally and in a more wide-awake state would have recognized. The charm of Charles Gavan Duffy did not desert him. "Mr Yuncken, I do apologise. Your evidence [which quite clearly Gavan Duffy had not heard] is accepted in its entirety. Mr Yuncken, you may step down from the witness box without a stain on your character."

Sir Charles Gavan Duffy died on 12 August 1961, still in office ,(he) not having wasted a single day of his life appointment.

A BRACE OF STARKES

Sir Hayden Starke

I never practised before Sir Hayden Starke, but I trust that having seen him sitting in the *Banking* case in 1948 justifies me recalling a story or so about him.

In the decade leading up to 1920, Hayden Starke became the dominant figure at the Victorian Bar. From 1914 he refused to take silk, because other barristers senior to him were away at the War ("at the Front" as it was put during the first World War). So he dominated the Bar as a junior, and became the first junior to be appointed a judge of the High Court.

Hayden Starke had, said Sir Owen Dixon on his death, "A forensic power as formidable as I have seen." Formidable is the right word. Certainly he was never an easy man to deal with.

When he was at the Bar a judge had made a criticism which Starke considered unjustified. Harsh words were exchanged. That evening, in the habit of many judges, the judge walked through the home of the Bar, the old Selborne Chambers, on his way to Flinders Street station to catch the train by which judges then travelled, just like people. In Selborne Chambers he paused to have a pee, and found himself alongside Hayden Starke. Conscious of having been somewhat hasty, indeed wrong, he half-apologised. Starke looked at him, grim, unsmiling, unplacated.

Mr Starke got to his feet, announced his appearance in a considerably louder voice, and sat down. "You do not take my point, Mr Starke. The court has been kept waiting, and the court expects an apology." That was not what the court got. What it got was "This court is paid to wait. I am not."

"That's just the sort of bastard you are. Insult a man in open court, and apologise to him in a piss-house."

Sir Garfield Barwick twice told me of a brush Hayden Starke as a barrister had with the High Court of the time, sitting in Melbourne. The hearing of the first case listed for the day ended prematurely, and the court not having excused counsel in the second case from remaining on hand, the second case was called on immediately. No one announced an appearance for the respondent. The dreadful silence was broken by a very nervous solicitor telling the court that Mr Hayden Starke had been briefed, but he did not appear to be present. The court adjourned while Mr Starke was sent for. Mr Starke came up from Selborne Chambers, the case was called again, Mr Starke announced his appearance for the appellant, and sat down. The Chief Justice, the vastly august Sir Samuel Griffith, intervened. "Mr Starke, the court is waiting." Mr Starke got to his feet, announced his appearance in a considerably louder voice, and sat down.

"You do not take my point, Mr Starke. The court has been kept waiting, and the court expects an apology." That was not what the court got. What it got was: "This court is paid to wait. I am not."

What intrigued Barwick was what in the ultimate the court could do. Was it contempt of court, to keep the High Court waiting? If not, was it contempt not to apologise for having done so? Was it all merely rude? The questions remain open. I have always advised young barristers that those who lack the formidable forensic power, which Dixon saw in Starke, would do well not to learn the answers. They will do well to stay on hand. If something does go wrong, they will find it more comfortable, and possibly safer, to apologise.

Hayden Starke could have his lighter moments. The case of *The King* v *Dunbabin* (1935) 53 CLR 434 concerned an article in *The Sun* newspaper of Sydney, criticising a decision in which the High Court had disappointed the Government in relation to the dictation test used to keep out of the country people the Government did not want in the country. The dictation test had been given in Scottish Gaelic, and the court had held that Scottish Gaelic was not a "European language" within the meaning of the Act: *The King* v *Wilson* (1936) 52 CLR 234. The good Scot Hayden Starke had dissented. The thrust of the article was that the envisaged amendments to the Act would only be useful "if the ingenuity of five bewigged heads cannot discover another flaw", normally remembered as a reference to "five bewigged old fools".

I note in passing the startling resemblance to the recent action by the Federal Court through its Chief Justice Michael Black (a member of this Club, though his entry in *Who's Who* has never said so), in asking the Minister for Immigration Phillip Ruddock to explain a comparable statement in relation to asylum seekers. Both cases concern immigration. Both cases concerned keeping people out of the country. In both cases the court concerned undoubtedly rendered Commonwealth legislation ineffective. In both cases there followed amendments. And in both cases came the suggestion that the court concerned would white-ant these amendments also.

That matter must remain for another day, though for myself I fancy that at the end of it the Federal Court may wish it had not opened this particular Pandora's box. Restraining public commentary by a Minister on matters of high interest to the electorate seems to me a daunting adventure. We shall see.

To return to *Dunbabin*. The whole court found that the passage as a whole constituted contempt of court. By a 4–1 majority the court fined the company 200 pounds and the editor 50 pounds. Starke thought it sufficient to impose no fine, and leave payment of the costs as sufficient punishment.

At home that night, John Starke asked his father why he had been so lenient. Hayden Starke, who never wore his wig during the court's sittings, and had dissented in the dictation test case, replied: "My boy, if he'd said '*four* bewigged old fools' it wouldn't have been contempt at all." Not, you will observe, a collegiate minded man.

Like all High Court judges at that time Starke held a life appointment. He held on through the late 1940s — doing the work as well as ever, I should add — and must certainly have had in mind waiting for the 1949 election and the hope that a Liberal success would let Bob Menzies do the selecting of his successor.

During those final years Harry Alderman, of Adelaide, was a strong favourite for an appointment if a vacancy should arise while the Labour Party still held power. Alderman decided to push things along a bit. One day he called on John Starke. He outlined the unfairness of the rather stingy retirement arrangements then in place for High Court judges. John agreed that they were stingy. Alderman said that he thought it could be arranged that if Hayden Starke resigned, a tax-free

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ONE-LINERS

Judges are not professional script writers, but having the enormous advantage of deciding when the conversation stops, from to time they do give us memorable one-liners.

In a case before the High Court, one of the judges was Sir Alan Taylor, a man of considerable but very sturdy intelligence. Taylor asked counsel a question. "I'm coming to that matter, your Honour," said counsel. "You've reached it," replied Taylor.

In another High Court case in the early years after World War II, Counsel were announcing their appearances. Counsel included PD Phillips KC, Bill Coppel KC, Maurice Ashkanasy KC, Trevor Rapke, and so it went on. Old Sir George Rich could not help noting the coincidence that virtually all were Jews or of Jewish ancestry. "Where are the Arabs?" he muttered darkly to his neighbouring judge, perhaps more loudly than he had intended.

For many years the shortest one-liner known to the courts was the English one known as the Lord Chancellor's Devastating Monosyllabic Correction. During the hearing in the House of Lords of a case concerning a gambling debt arising out of a game of roulette, one of the Law Lords inquired of counsel, the Attorney-General, how the game of roulette was actually played. Quite rightly, that good Baptist Sir Thomas Inskip KC had not the faintest idea. He sought whispered help from those behind him, and replied "With cards, I am instructed, My Lord." "Balls," said Lord Chancellor Birkenhead in stentorian tones.

You will rejoice to know that a local lad managed to take one letter off Lord Birkenhead's record.

Norman O'Bryan senior, who I mentioned earlier and who was one of the best trial judges Victoria ever had, was presiding in a case involving the crime once known to the statute book as "the abominable crime not to be mentioned among Christians", and later as "the abominable crime of buggery", and now known as sex of choice between consenting adult male persons.

The evidence had been that human faeces had been found on various articles of clothing. Relevant and useful evidence, which would have been even more useful had the jury-room been able to agree as to just what faeces was. The jury requested the opportunity to ask the judge a question.

Their written question was sent to the judge. The jury were brought back into court. O'Bryan faced them. "Shit,"said His Honour to the jury. And the jury knew precisely where they were.

grant would be made of twelve months' salary. That, he suggested, would be generous. John agreed that it would be generous. Good, said Alderman, and would John like to convey the offer himself? Starke said No, he would not like to do that, but he would be more than happy to come along while Harry did so. "That would be very kind of you, John," said Alderman. "Not a bit," said Starke, "I wouldn't miss it for quids. Look the old man and I don't get on much, Harry, but I've never heard anyone suggest that he takes bribes. I want to be there when someone offers him one." Alderman splutteringly said it wasn't like that at all, but his campaign to bring about an early retirement was carried no further.

With Menzies safely in power in December 1949, Starke resigned on 31 January 1950, taking only the precaution of having his vacation before he did so.

Sir John Starke

John Starke was accustomed to use language not often heard in this gracious dining-room. But the stories concerning him are worth telling. And they must be told or not told. They cannot be bowdlerised. Those whom this language may offend should skip to the next section.

Like father like son. For if in our time any barrister rivalled the forensic force of Hayden Starke, it was his son John. Their similarities underlay the fact that for most of their joint lives neither derived any satisfaction from the connection with the other. It is pleasing that in the final months of Hayden Starke's life the powerful father and the powerful son were reconciled. On his own appointment to the Supreme Court, John Starke was deeply moved when Sir Owen Dixon gave him his father's ceremonial sword and gloves.

Many here today will have known John Starke, whether at the University or — more briefly — in Trinity College, or in the AIF, or at the races, or in many other places. He had a happy but more than sufficiently wild university course. It was during this period that Hayden Starke ordered the conductor to put a drunken young man off the tram: his own son. Wild, but never without wit. When he and some friends were most kindly given accommodation overnight in the city police station, only Starke poked his shoes through the bars so that the police could clean them.

His career as a barrister effectively began in the army, where prisoner after prisoner named him as their Prisoner's Friend, a role in which he was considerably more effective than the military authorities always approved. Even so early in his career, he was rarely at a loss. One prisoner was asked in impressive tones by a rather pompous officer how he pleaded, whether guilty or not guilty. He gave an answer that was firm rather than responsive. "You can all fucking well get fucked." In the silence that followed, Starke rose to his feet imperturbably. "I will ask the Tribunal to accept that as a plea of not guilty."

Starke was a big man, with a fine appearance, a strong personality, and an intelligence much more considerable than he could easily hide. He quickly acquired a good and then a leading and then the dominant position in his jurisdiction, the "common law" one, as it was called, where the questions are not what the law is, but what the facts are. Whenever men committed crimes, or cars crashed, or bridges fell down, or airliners crashed, or a jockey's best efforts were widely misunderstood, retainers flowed to Starke's chambers. Within Victoria the show had never started until the big fella appeared. Within Australia he had no peer.

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As with his father, it was Starke's openly stated object to dominate whatever proceeding he was in. He started every case with courtesy, but he could become annoyed, he was at all times utterly fearless, and drama was never far away.

The judge was Doug Little. There had been a series of incidents and rulings of which Starke disapproved. As the judge moved away at the luncheon adjournment, Starke turned to his junior Peter Coldham (who as a matter of interest had two DFCs). "Fuck'n little twerp," he said. A wise judge would have kept going. Little turned back. "What was that, Mr Starke?" "Just commenting to my junior on a matter relevant to the case, Your Honour", came the reply, with an air of defiance. Little pondered it a moment, and surrendered, out-manouvered in one go. The asking of the question prevented him acting on anything he might think he had already heard. The answer truthfully put the comment in a field where a judge could inquire no further. Off Starke and Coldham went to lunch.

Not much lunch, very probably, for Starke himself usually ate only an apple, so lunch was rarely in a restaurant. But whatever his junior ate, Starke paid for. That was in conformity with the old tradition, of the presumably prosperous leader paying for his presumably impecunious junior's lunch. When Stephen Charles and I were Starke's juniors in the King Street bridge inquiry, he bought our lunch every working day for six months. Often only an apple or so. Sometimes for a treat a pie and coffee in a café (we were sitting in the wilds of Hawthorn). Whatever it was, Starke bought it.

I said that Starke was fearless (except, he used to admit cheerfully, indeed boastfully, of his wife Beth). Only once did I hear him claim lack of nerve. At one point he was angry with more of the Winneke family than usual. The matter involved John Winneke, who is to say something himself a little later. I asked Starke whether he had made his disapproval known to John himself. "Christ no", he said, "'Ja see what he did to fuck'n Mithen?"[1]

There died last year Captain Harry Locke, DFC, AFC, a witness who played a part in John Starke giving some memorable courtroom advice.

The case concerned the crash of a TAA Vickers Viscount airliner into Botany Bay, on a wild and stormy night, with the death of all on board. Sir John Spicer, former Attorney-General and Chief Judge of the Commonwealth Industrial Court, was appointed to conduct the inquiry.

A burly and brusque but kindly man, John Spicer was deeply conscious of having been prevented by unfitness from serving in World War II. He was always most deeply respectful of those who had risked their lives in uniform. Years later, in the inquiry into the collision between the aircraft-carrier *Melbourne* and the destroyer *Voyager*, this was to have unfortunate results, when Spicer's utter unwillingness to criticise a naval officer

who had died on duty led to his being unjust to a living one.

But that lay ahead. This was the Botany Bay inquiry. Harry Locke was at that time a TAA pilot. He had taken off from Mascot about 20 minutes before the plane that crashed. A man not without some fire in his belly, he was called to give evidence.

First Locke gave the evidence to qualify himself as an expert witness. He had flown so many hundred hours with the RAAF in Europe, in Wellington and later in Lancaster bombers. He had flown so many thousand hours as a pilot with TAA. Both in Europe and in Australia he had frequently flown at night, and frequently in stormy weather. He had been flying that night. He had flown a Viscount out of Mascot 20 minutes before the fatal flight. He paused for the first substantial question.

Unexpectedly, it came from Spicer. Brusquely, almost accusingly. "Yer haven't told us everything, have you, Captain?" "I think I've said everything that's relevant, Sir," came the response. "Yer haven't told us that you were twice decorated by His Majesty the King for conspicuous gallantry, 'ave you, Captain?" Spicer said.

Two voices could be heard. One was Locke's, replying, "Didn't think that had anything to do with it, Sir." Competing with it was Starke's. Along the Bar table there rumbled, perhaps rather more loudly than even he intended, some sage advice to his fellow counsel: "Cross-examine him if you fuck'n well dare." Spicer smiled. No one cross-examined.

Eugene Gorman and the jockey

In 1926 the Melbourne *Herald* published an article concerning a jockey called McGregor. The article told of McGregor improperly giving information to a bookmaker, and used other words indicating that the riotous and dissolute life he lived had caused his premature death. A delighted McGregor wrote to *The Herald* to notify it that he was alive and well and honest, and would like some damages.

There were in fact various legal difficulties in the way of McGregor's claim, but in the end Gorman triumphed over his adversary Owen Dixon, and got the jury's verdict. *The Herald* appealed. Dixon was at the height of his fame as a High Court advocate, and was very confident of winning this one. Gorman recognised that the appeal could indeed very easily succeed. It was a time for lateral thinking and strategical genius.

McGregor came to Gorman's chambers for a conference. Gorman told McGregor that he was not going to appear for him. "Oh Jeez, Mr G", said McGregor, "Who's going to appear for me?" Gorman's reply was firm: "No one's going to appear for you. You're going to do exactly as I say." He went on to give his instructions. "When the case is called on in the High Court, Mr Dixon will get up grandly and announce his appearance, with Mr so-and-so and Mr so-and-so, for The Herald and Weekly Times Ltd. The court will look for your counsel, and there won't be anyone there. After a delay, you'll stand up and say: 'Your Honours, I appears for meself.' And God help you if you say 'myself'." Gorman gave further instructions as to how McGregor should behave.

For good reasons there are few things a barrister likes less than appearing against a decent and courteous and fairly helpless litigant in person. The judge almost automatically seeks to balance up the unfair contest. This entails helping the litigant in person put his case. In effect he puts it himself. The judge has then to decide whether the argument he himself has put is correct. It will not surprise that he often finds that it is. The Court hearing McGregor's case contained Sir Adrian Knox, Sir Frank Gavan Duffy, and Hayden Starke, all with some interest in racing. (In later years Knox would retire as Chief Justice, on being informed that it would be improper for the Chief Justice of the High Court to continue ownership of the racing stable he had just inherited.) The non-racing men were Higgins and Isaacs. The three racing men proved of great help to McGregor. He held the verdict 3-2, with these three standing firm to the arguments they had put for him, and Higgins and Isaacs dissenting.

But the victory really belonged to Gorman.

Smith J

The judges and barristers I have mentioned have been chosen — have picked themselves — because of the stories that spring to mind when one recalls them. There are judges about whom few stories are told, but who are very good judges. I am loath to leave unmentioned one particular judge about whom there are few stories of this luncheon kind.

Some of you may have known Tom Smith, father of the present Mr Justice Tim Smith. At Trinity College Tom Smith was an oarsman, because, he said, his inquiries showed that rowing was the only sport in which he could participate in a recumbent position. He was a man of not many words. But very good words. He was a magnificent lawyer, who would with elegance have adorned the High Court. He had not seen very many juries before he became a judge, for he had practised mainly in the area of disputes as to the law, not that of disputes as to the facts. Yet he was a master of the jury jurisdictions from the first day he sat. To see that their case was to be heard by Tom Smith gladdened the hearts of practitioners in all areas of the Supreme Court's wide jurisdiction; in the motor-car jurisdiction as well as in company law; in crime as well as in trusts. He was totally calm, totally competent, to all outward appearance totally confident (whatever he might have felt inside). Tom Smith was a quiet man. It is typical of him that his name was Smith. He ran a quiet court. In his presence, counsel's passions were somehow subdued. One was so satisfied with the way the court was being run, so confident that whether you won or lost, the result would be just, so aware that justice would be done with compassion, so aware that attempting to raise hell would get you precisely nowhere, that everyone there behaved themselves, and the case went quietly on. Tom Smith provided few one-minute grabs. He refused the knighthood offered to him, on the ground that a judge in office ought not to be seen as receiving favour from government. I have told no stories of him, but let me say simply this, that he is to be remembered as beyond argument the best judge who sat on the Supreme Court of Victoria in the second half of the 20th century.

Endnote:

1. With passing years, the point of the remark may require explanation. In a final Australian Rules match at the Melbourne Cricket Ground, a roar went up when it was seen that the Melbourne centre player Laurie Mithen [not a popular man] was lying on the ground unconscious. The only player anywhere near was the Hawthorn ruckman John Winneke, standing a few yards away whistling "Lily Bolero". What had happened remains a mystery. Some 80,000 people were there, and a host of commentators. I have never heard anybody claim to have seen anything. Starke's view of what had happened is clear enough. When Winneke's closest friends are asked whether he would have done such a thing, they are inclined to avoid answering.

Appointment of Senior Coun

ON 17 December 2002 the Governor-in-Council appointed as Senior Counsel the persons listed below in order of precedence:

Gerald Alexander Lewis S.C.
Bruce Godfrey Walmsley S.C.
Julian Peter Leckie S.C.
Paul Francis O'Dwyer S.C.
Presanna Nimal Wikramanayake S.C.
Vincent Alfonso Morfuni S.C.
Timothy Patrick Tobin S.C.
Jeremy William St. John S.C.
Terrence Patrick Murphy S.C.
Aristomenis Garantziotis S.C.
John Bennett Richards S.C.
Timothy John North S.C.
Stephen Alexander Shirrefs S.C.
Paul Donal Patrick Santamaria S.C.
Bruce Norman Caine S.C.
Frances Imelda O'Brien S.C.
Frank Parry S.C.
Colin Dennis Golvan
Paul Elias Anastassiou S.C.
Melanie Sloss S.C.
Michelle Lesley Quigley S.C.
Michael Leon Sifris S.C.
Maree Evelyn Kennedy S.C.

Left to right from back: T. North, C. Golvan and T. Tobin. S.Sherrefs, B. Cain, M. Sloss, J. StJohn, E. Hollingworth and A. Garrantziotis. P. Anastassiou, M. Quigley, M. Kennedy, N. Wikramanayake, V. Morfuni, T. Murphy and P. Tate.

Elizabeth Jane Hollingworth S.C.
Pamela Mary Tate S.C.

The new silks announced their appointment on Wednesday December 2002 to the Supreme Court and Federal Court. The *Bar News* warmly congratulates each of them on their elevation to the ranks of Senior Counsel.

Name:	**Paul O'DWYER S.C.**
Date of Admission:	1 March 1971
Date of Signing Bar Roll:	1 March1972
Who Did You Read With:	Judge Leo Hart
Areas of Practice:	Common law/General
Readers:	Denis McDonald, John Murphy, Douglas Parker, Marko Cvjeticanin and John Gaffney
Reaction on Appointment:	I can't recall as it was some months ago but probably very pleased.
Reason for Applying:	The usual.
Do you have any comment on the change of title from QC to S.C.?	The change is irrelevant to the institution, but probably reasonable given that most Australians support a republic.

Name:	**Nimal WIKRAMANAYAKE S.C.**
Date of Admission:	1 December 1971
Date of Signing Bar Roll:	26 October 1972
Who Did You Read With:	David Blackburn
Areas of Practice:	Commercial and Land Law
Readers:	Richard Phillips and Grant Holley
Reaction on Appointment:	—
Reason for Applying:	—
Do you have any comment on the change of title from QC to S.C.?	—

Name:	**Vincent Alfonso MORFUNI S.C.**
Date of Admission:	1972
Date of Signing Bar Roll:	1976
Who Did You Read With:	Mattei
Areas of Practice:	Commercial
Readers:	Challenger, Swhatz, Congiu Irving
Reaction on Appointment:	Delighted
Reason for Applying:	Time to move on
Do you have any comment on the change of title from QC to S.C.?	—

Name:	**Timothy Patrick TOBIN S.C.**
Date of Admission:	3 March 1975
Date of Signing Bar Roll:	24 November 1983
Who Did You Read With:	Richard Alston
Areas of Practice:	Common Law
Readers:	Rachel Quinn, Andrew Keogh, Marietta Bylhouwer, Bill Baarini
Reaction on Appointment:	Delighted!
Reason for Applying:	I need a junior to help me with computers.
Do you have any comment on the change of title from QC to S.C.?	As a long time committed Republican, I am delighted.

Name:	**Jeremy ST JOHN S.C.**
Date of Admission:	3 April 1975
Date of Signing Bar Roll:	24 November 1983
Who Did You Read With:	John Cantwell
Areas of Practice:	Family Law
Readers:	None
Reaction on Appointment:	Satisfaction and anticipation.
Reason for Applying:	It seemed right at the time.
Do you have any comment on the change of title from QC to S.C.?	Sounds just fine to me.

Name:	**Terry MURPHY S.C.**
Date of Admission:	19 June 1980
Date of Signing Bar Roll:	1 May 1980 (Re-signed 1 June 1990)
Who Did You Read With:	Jack Fajgenbaum QC
Areas of Practice:	Revenue, Trusts, Superannuation
Readers:	Michael Flynn, Andrew Robinson, Geoff Dickson, Peter Carroll
Reaction on Appointment:	Absolute delight.
Do you have any comment on the change of title from QC to S.C.?	QUE?

Name:	**Aristomenis (Manny) GARANTZIOTIS S.C.**
Date of Admission:	2 April 1978
Date of Signing Bar Roll:	3 April 1978
Who Did You Read With:	Robert J. Johnston
Areas of Practice:	Commercial/Property/Probate/ Mediation
Readers:	Savas Miriklis, Chris Wallis, Con Salpic, Andrew Halse and Simon Lopez
Reaction On Appointment:	Extremely delighted and honoured.
Reason for Applying:	The encouragement and support of some very special people.
Do you have any comment on the change of title from QC to S.C.?	No.

Name:	**John Bennett RICHARDS S.C.**
Date of Admission:	1 April 1979
Date of Signing Bar Roll:	10 May 1979
Who Did You Read With:	R.K.J. Meldrum QC
Areas of Practice:	Personal Injuries
Readers:	—
Reaction on Appointment:	Over the moon!
Reason for Applying:	Optimism.
Do you have any comment on the change of title from QC to S.C.?	What matters to me is not that the Government changed the initials of the Inner Bar, but rather that they brought back common law rights for injured plaintiffs.

Name:	**Timothy John NORTH S.C.**
Date of Admission:	1980
Date of Signing Bar Roll:	1983
Who Did You Read With:	Heerey J.
Areas of Practice:	Commercial — Banking, Insurance, Partnership, Arbitration/mediation (and anything else that comes in)
Readers:	Jeffrey Gleeson, John Nolan, Michael Osborne, Timothy Mak, Peter Nugent, Dan Christie, Ian Turnbull, Mark Rinaldi, Roisin Annesley, Philip Crutchfield, Philip Crennan, Kamal Farouque, Andrew Hanak, Gail Hubble and Glen Pauline.
Reaction on Appointment:	Surprised!
Reason for Applying:	The time had come after having 15 readers to have the "readers' snip".
Do you have any comment on the change of title from QC to S.C.?	No.

Name:	**Stephen Alexander SHIRREFS S.C.**
Date of Admission:	2 June 1980
Date of Signing Bar Roll:	18 November 1982
Who Did You Read With:	Julian Zahara (and a better Master would be impossible to find)
Areas of Practice:	Criminal Law
Readers:	Damien Hannan
Reaction on Appointment:	Thrilled; especially as I was able share the occasion with my father who is gravely ill.
Reason for Applying:	Persistence.
Do you have any comment on the change of title from QC to S.C.?	As a Republican I have a greater affinity with S.C. — and the initials SSS.C. have special attraction!

Name:	**Bruce CAINE S.C.**
Date of Admission:	1 April 1982
Date of Signing Bar Roll:	21 November 1985
Who did you read with:	Dr John Emmerson QC
Areas of Practice:	Patents, Designs, Trade Marks, Copyright, Confidential Information, Information Technology, Licensing, Trade Practices and Sports Law.
Readers:	Kim Pettigrew, Fiona Phillips, Gerard Dalton, Ben Fitzpatrick and Helen Rofe.
Reaction on Appointment:	Delighted.
Reason for Applying:	Too old to be called "junior".
Do you have any comment on the change of title from QC to S.C.?	Given the time of the year at which appointments are made the initials S.C. are deceptively similar to those of Santa Claus.

Name:	**Colin GOLVAN S.C.**
Date of Admission:	4 March 1985
Date of Signing Bar Roll:	24 November 1988
Who did you read with:	Susan Crennan QC
Areas of Practice:	Intellectual Property and Trade Practices
Readers:	Graham Smith, Dr Sam Ricketson and Susan Gatford
Reaction on Appointment:	Honoured.
Reason for Applying:	Moving on.
Do you have any comment on the change of title from QC to S.C.?	Makes sense (given the cessation otherwise of the grant of royal titles).

Name:	**Michelle Lesley QUIGLEY S.C.**
Date of Admission:	2 March 1987
Date of Signing Bar Roll:	26 May 1988
Who Did You Read With:	John Karkar QC and Anthony Southall QC
Areas of Practice:	Planning and Environment, Local Government and Administrative Law
Readers:	Allana Goldsworthy and Marita Foley
Reaction on Appointment:	Fantastic !
Reason for Applying:	My favourite leaders were either appointed or too busy, so I got a taste of running the show myself — and liked it.
Do you have any comment on the change of title from QC to S.C.?	Totally support it.

Name:	**Michael SIFRIS S.C.**
Date of Admission:	1987
Date of Signing Bar Roll:	1989
Who Did You Read With:	Charles Gunst QC
Areas of Practice:	Commercial, Insolvency Banking and Finance, Corporations and Securities
Readers:	Rachel Chrapot, Joycey Tooher
Reaction on Appointment:	All care and all responsibility, a frightening thought.
Reason for Applying:	I needed a sabbatical.
Do you have any comment on the change of title from QC to S.C.?	A positive move. A rejuvenation mechanism for some of the older silks.

Name:	**Maree KENNEDY S.C.**
Date of Admission:	30 March 1987
Date of Signing Bar Roll:	31 May 1990
Who Did You Read With:	Stephen Kaye Qc
Areas of Practice:	Administrative Law And Commercial Law
Readers:	None
Reaction On Appointment:	Very pleased.
Reason For Applying:	Needed the challenge.
Do you have any comment on the change of title from QC to S.C.?	Seems more appropriate in Australia in 2002.

Name:	**Elizabeth HOLLINGWORTH S.C.**
Date of Admission:	1 August 1988
Date of Signing Bar Roll:	28 November 1991
Who Did You Read With:	Robin Brett QC
Areas of Practice:	Commercial and Administrative Law.
Readers:	Victoria Lambropoulos
Reaction On Appointment:	Delighted. Honoured. Relieved that weeks of speculation and rumour have finally ended …
Reason for Applying:	—
Do you have any comment on the change of title from QC to S.C.?	—

Name:	**Pamela Mary TATE S.C.**
Date of Admission:	30 March 1989
Date of Signing Bar Roll:	28 November 1991
Who Did You Read With:	John Middleton QC (later) Geoffrey Nettle (now The Honourable Justice Nettle of the Supreme Court)
Areas of Practice:	Federal Court and Supreme Court Judicial Review (Administrative Law), Constitutional Law, Trade Practices, Intellectual Property
Readers:	My Anh Tran
Reaction on Appointment:	Honoured and very pleased.
Reason for Applying:	To undertake more complex cases (and have the assistance of a junior) and because I love being part of the development of the law and hope to appear in cases of increasing complexity over the years.
Do you have any comment on the change of title from QC to S.C.?	I understand and respect the reasons for the change of title.

Jack Rush QC, Carmen Randazzo, George Georgiou and David McKenzie.

Senior Public Defenders Re-signing the Bar Roll

FOLLOWING amendment of the Constitution at the Annual General Meeting last September so as to include Public Defenders with Crown Prosecutors in Division A Part II of the Practising List, three Senior Public Defenders with the Victoria Legal Aid Office re-signed the Bar Roll on 6 December 2002 in the presence of Bar Chairman Jack Rush QC.

Carmen Randazzo had practised at the Bar for five years before joining Victoria Legal Aid. She had previously practised as a solicitor for five years first with Maurice Blackburn & Co. and then with Slater & Gordon. She read with Paul Elliott QC. Randazzo has been with Victoria Legal Aid for nearly eight years, first as a Public Defender, and since 1999, as a Senior Public Defender. She has had numerous junior briefs in murder trials, and specialises in applications under the *Crimes (Mental Impairment & Unfitness to be Tried) Act 1997*.

David McKenzie was with the Malmsbury Youth Training Centre for ten years, as Acting Superintendent and then Superintendent for six or seven of those years. He read with the late Lillian Lieder QC, and was the first male barrister to read with a female barrister. He practised at the Bar for eight-and-a-half years, primarily in Crime, before joining Victoria Legal Aid as Solicitor-in-Charge of the Bendigo Office. McKenzie transferred to Melbourne in June 2000 as a Senior Public Defender, and appears primarily in the County Court.

George Georgiou practised as a solicitor with Maurice Blackburn & Co for some years, and worked for eighteen months in the office of a small firm of solicitors in London before coming to the Bar in 1990. He read with Shane Collins, and practised predominantly in crime. Following in the footsteps of many other members of this Bar, he served the Northern Territory Legal Aid Commission in Alice Springs. What was to have been an eight-week term as a locum extended to seven years as Principal Legal Officer at the Commission in Alice Springs. Georgiou returned to Melbourne in September 2001, joining Victoria Legal Aid as a Senior Public Defender. He has spent the last eight months as junior to Chris Dane QC in a murder trial in the Supreme Court.

The Bar welcomes Randazzo, McKenzie and Georgiou back to the Roll of Counsel.

William Kaye QC, retired judge, and Justice Phillip Mandie at the East Melbourne Synagogue.

Opening of the Legal Year

The four criteria urged upon the congregation for judicial leadership were these:

- *that our Judges be men of valour;*
- *that they be God-fearing people;*
- *that they be men of truth; and*
- *that they despise money or bribes.*

THUS said Rabbi Levy Tenenbaum (citing Jethro, in his recommendations to Moses in the appointment of judges) in the service conducted at the City of Melbourne Synagogue for the opening of the legal year.

It might be said that we need not be reminded of such qualities, given the quality of judicial leadership in this State, but, as Rabbi Tenenbaum said, these qualities have much to teach us.

The legal year was opened with a series of services marked by their welcoming and eclectic nature, as well as references to the troubles of the world and the imminence of war. The services — each in its own way — reminded us of the fundamentals which underpin our legal system.

Rabbi Tenenbaum, in a service attended by the Governor John Landy, the Attorney-General Rob Hulls and many members of the judiciary and the profession, opened his service with a joke about lawyers, on the basis that the Talmud relates that rabbis would often open public addresses with a joke (making this author wonder of the value of jokes as an advocacy tool generally).

He analysed the four qualities urged by Jethro. He pointed out that 'God-fearing' judges — those who realise that there is a higher force and a higher morality — will not use power for personal gain, but in the

East Melbourne Synagogue

Marilyn Mandie, Ron Salter and Judge Susan Cohen.

Mark Dreyfus QC and Michael Sifris S.C.

Dr George Levy, Judge Rachelle Lewiton and Patrick Howard (associate to Judge Lewiton).

service of justice. They realize that they will have to answer to God if they act corruptly. He reminds us all that as individuals we may judge other people, and that we must each learn to discipline ourselves, removing temptations to corruption, and use our individual power justly.

With a tale he gave an example of the nature of truth, of a famed scholar, who, as a boy, was invited to the home of a Duke. The Duke gave no instruction and excused his staff, leaving the boy to find him among the maze of rooms and corridors. The boy, noting that one window had a curtain pulled across, found the Duke. Their discussion afterwards points out that truth may be found in the guidance of the majority, but only where there is doubt as to the answer. Where truth is clear and known, it cannot be changed simply by the majority exerting their opinion. Truth does not lie in the urgings of the masses, but by pursuit of honest and transparent processes.

To say that judges ought to be resistant to bribes ought to "go without saying" but as the Rabbi said, in a world in which the maintainance of independent fiscal standards appear to be falling prey to corruption, it is a timely reminder. Our judges ought be able to stand up for what is just, despite the unpopularity of the outcome.

The service was marked by a legal prayer composed by the late Maurice Ashkenasy CMG QC.

For the first time this year a Buddhist service was introduced. Conducted at the Fo Guang Shan Temple in Queen Street, attendees were invited to participate in a service some of them may have found unusual. The Temple is hidden inside an ordinary office building on Queen Street, and conducts regular services as well as lunchtime meditation sessions.

The service was attended by about 40 people, together with a sizeable contingent of robed Buddhist monks and nuns. Master Hsing Yun, who conducted the service, is the founder of the Fo Gung Shan Buddhist monastic order, a "Humanistic Buddhist" order.

For those who wonder where the unfamiliar language and ritual of Buddhism has a place in such an event as the opening of the legal year, the description of Humanistic Buddhism sheds some light: — "A Humanist Buddhist is someone who transforms their given human character to express the same deep truths and ideals of Buddha, to be able to improve right now the well-being of our families, our culture and our nation."

The qualities called upon for each of us to fulfil that goal include kindness, compassion, joy, generosity, patience, friendship and peace. Whilst "joy" does not often feature in the more sombre calls to morality of the various services, the fundamental ethical base is the same.

Attendees to the service were welcomed with incense and chanting referring (and I apologise to Buddhist readers for the very understated version I give here)

For the first time this year a Buddhist service was introduced. Conducted at the Fo Guang Shan Temple in Queen Street, ... hidden inside an ordinary office building.

Buddhist Temple

Judge Rizkalla, Chief Magistrate Mr Ian Gray and Robert Lancy.

Angela Perry, Oscar Roos and Tom Rowan.

Ekai Korematsu, Guy Gilbert and Venerable Thich Phuoc Tan.

St Eustathios Cathedral

Byrne J, Paul Anastassiou S.C. and Chrissy Mavroudis.

Williams J,Kellam J, Coldrey J and Byrne J.

Archbishop Stylianos and Kellam J.

Judge McInerney, Judge Harbison and Kellam J.

Byrne J and Coldrey J.

Chief Justice Phillips, Mrs Phillips and Archbishop Stylianos.

to the removal of all senses, all consciousness and therefore all ignorance, suffering and fear, as the ultimate path "though confused imagination" to the Ultimate Nirvana. Whether attendees were familiar with those concepts, (or perhaps likened it to an appearance in court, passing through confusion to the ultimate 'nirvana' of a successful judgment) they would have related easily to the prayer. The Buddhist prayer was practical and grounded in the realities of the everyday world. The Master acknowledged the blessings upon our world including education, democracy, technology, but reminded us of the realities of each of those blessings being flawed with corruption, pollution and chaos. The prayer beseeched Buddha to bless our society so that it would "change from violence and brutality to auspice and joy, from shamelessness and immorality to good behaviour and modesty, from robbery and forced possession to appreciative joy and renunciation" and sought harmony and co-operation among us all.

All participants, whether professing Buddhism or not, were welcomed at the service. The profession, in turn, welcomes the opportunity to give the opening of the legal year a Buddhist expression.

The eclectic theme continued throughout the other services. The Greek Orthodox Church hosted many senior members of the profession, including His Honour Chief Justice Phillips. Blessings were delivered by representatives of many orthodox branches of Christianity, including Greek, Arabic, Serbian, Romanian and Bulgarian.

The eclectic theme continued ... The Greek Orthodox Church hosted many senior members of the profession, including His Honour Chief Justice Phillips. Blessings were delivered by representatives of many orthodox branches of Christianity, including Greek, Arabic, Serbian, Romanian and Bulgarian.

His Eminence Archbishop Stylianos, Primate of the Greek Orthodox Church in Australia, took the opportunity to deliver perhaps the most strident commentary on the threat of war imminently faced by the world. Referring to the Gospel according to Matthew (10:24-33) as a springboard to comment about the present "dangerous times", His Eminence posed the rhetorical question to the congregation as to how Christians ought to respond to the threat under which our society lives. He raised squarely the difficult question — violence by terrorists is not to be justified or condoned, but does that mean we are entitled to meet violence with similar violent means? He urged upon the congregation that as Christians following the word of God the moral obligation is not to meet terrorism with criminal acts but instead to "pity them for the miserable situation into which they have fallen" and (citing St Isaac the Syrian, in Ascetical Homilies) to "offer up tearful prayer continually even for irrational beats, for the enemies of the truth, for those who cause harm, that they be protected and receive mercy".

He urged upon the congregation that society remains steadfast with the vigilance of lawful and responsible citizens of this democratic and blessed country of ours.

The Red Mass celebrated at St Patrick's Cathedral, led by the Archbishop of Melbourne, The Most Reverend Denis Hart D.D. referred the congregation to solid ethical fundamentals.

St Patrick's Cathedral

Archbishop Denis Hart; President of the Law Institute, Bill O'Shea and Jack Rush QC.

Mr Bill O'Shea and Jack Rush QC.

In the Cathedral.

Judge Sheldon, Maurice Phipps QC, FM and Judge Dyett.

The procession.

The reading from the Acts of the Apostles, delivered by Jack Rush QC, the Chairman of our Bar, referred to Peter's address to the Apostles on Pentecost day, in the presence of the Holy Spirit (in the form of "… wind and tongues of fire") reminding them that mankind had taken "Jesus the Nazarene, a man … put into your power by the deliberate intention and foreknowledge of God, you took and had crucified by men outside the Law", then raised by God to life. The reading tells us of the importance of the act of men sitting in judgment on a man.

The President of the Law Institute, Mr Bill O'Shea, gave a reading from the prophet Isaiah "that upon Him the spirit of the Lord rests ... he judges the wretched with integrity and with equity gives a verdict for the poor of the land".

The prayer of the faithful called upon the profession to be fair in the administration of the law to protect people from injustice, for the judiciary to act with wisdom, learning and patience and for the lawyers to "fully and fairly present the causes of their clients and faithfully discharge the duties and obligations entrusted to them".

All of which are fine reminders of the basic obligations we owe to the court and to our clients.

The service delivered at St Paul's Cathedral in Melbourne, conducted by the Archbishop of Melbourne, the Most Reverend Peter Watson, contained some timely and relevant comment. The service began with a delightful version of "Advance Australia Fair" with words adapted by Robyn Sharwood, with whom many readers would be familiar.

However, those who attended most recall the powerful words, attributed to Dietrich Bonhoeffer and read by His Honour Justice Ormiston, regarding the place of law in our world. Unfortunately space only permits me to paraphrase its content. The reading set out to establish that "Evil … proves its own folly and defeats its own object." Whilst that may not mean that every evil act immediately faces retribution, it does mean that our world is ordered in such a way that obeying the law is the best form of self-preservation. It is true that laws are broken all the time, sometimes as a matter of principle or an attempt at restoring society. But society can only be sustained if it realizes that any breach of the law is a sin, and can only be justified if the law is reinstated

St Paul's Cathedral

The Dean of Perth.

Ross Ray QC.

Ormiston J.

Judges gather.

Harper J and Chernov JA.

A reading.

The Bench sings.

The Cathedral.

Ormiston J, Doug Spence, Mrs Ormiston and friends.

On the steps.

and respected. The law cannot "be taken into our own hands" as that is bound to bring retribution sooner or later. Our society is best preserved by having respect for absolute laws and basic human rights and seeking to restore those ideals even when laws are broken.

During lessons read by Ross Ray QC and a blessing delivered by the Archbishop, the congregation was urged to be of good courage and "render no-one evil for evil".

And thus we return to the opening words of this article. Whether one is religious or not, the conduct of religious services for the opening of the legal year remind us year after year of the essential ethical and moral base of our legal system. We are beseeched by all religions to work with courage and justice, to search out good behavior and without corruption.

Carolyn Sparke

Congratulations to Charles Francis AM RFD QC

THE Bar warmly congratulates Charles Francis who was awarded an AM in the Australia Day Honours. The citation for his award is for services to the law and the community. An official investiture by the Governor of Victoria will take place in May 2003.

Charles signed the Bar Roll on 4 February 1949. He transferred to the list of retired counsel on 15 November 2002. Also signing the Bar Roll on the same day were Sir John Young, Sir Keith Aitkin, Xavier Connor and Dermott Corson. At his retirement Charles was the longest serving barrister at the Victorian Bar. He has made a major contribution to the administration of justice appearing in all jurisdictions for over 50 years. Charles has also given service to the country in a distinguished career as an officer in the RAAF.

Since retirement he has spent his time travelling in the United States. He is presently writing articles for journals and has in train the preparation of his memoirs.

Charles Francis August 1944 leading aircraftman at the Elementary Flying School, Benalla.

Charles Francis Barrister March 1954.

Verbatim

At the Bottom of the Food Chain

Victorian Civil and Administrative Tribunal Planning List

5 February 2003

Witness is in the course of explaining the danger of walking on crusted silt (a feat recently performed by Stewart Morris who had fallen through the crusted surface and generated a sizeable dry-cleaning bill):

"The ponds of silt give the appearance of being hard enough to walk on, posing a threat to men, beasts and barristers alike."
Interjection from lay advocate at the Bar table:
"That's in fact the hierarchy, isn't it?"

The Gun Judge

High Court of Australia

1 April 2003
Gillard v *The Queen*
Kevin Wayne Gillard, Appellant
The Queen, Respondent
Gleeson CJ, Gummow J, Kirby J, Hayne J, Callinan J
Peek QC for the Appellant
Millstead QC for the Respondent

Mr Peek QC: May it please the Court, I appear with Mr J.A. Richards, who is also my instructing solicitor, for the appellant. (instructed by Lipson Street Chambers)
Mr Millsteed QC: May it please the Court, I appear with Mr A.P. Kimber for the respondent. (instructed by the Director of Public Prosecutions of South Australia)
Gleeson CJ: Yes, Mr Peek.
……
Kirby J: He did see Mr Preston leave with a gun?
Mr Peek QC: I have to come to that. Your Honour, I wonder if I can come to that in the course of the submissions because that is a not unimportant aspect, but can I say just now, in direct answer to Your Honour, that was a matter that was postulated by the prosecution but the accused, Gillard, in fact said to the police he did not see a gun.
Kirby J: How big was the gun?
Mr Peek QC: We have it in Court and I was going to actually give a very brief demonstration of the cocking procedure later. Would it suffice if Your Honour looked at it at that time rather than now?
Kirby J: Is it a big gun or a pistol?
Mr Peek QC: It is a pistol, I am sorry, Your Honour. It is a Luger pistol and not a particularly big pistol. It is an automatic pistol, or a semi-automatic to be quite precise, rather than a bulky revolving-cylinder pistol.
Gleeson CJ: If you are going to point it at us would you mind pointing it in the direction of Justice Callinan?
Mr Peek QC: I see.
Kirby J: I am glad I was excluded.
Mr Peek QC: I will be very careful not to be pointing it at anyone …

Sales Appeal

Supreme Court of Victoria Practice Court

13 February 2003
Coram: Ashley J
On an application for an injunction to stop the sale of a property.

His Honour: Do you expect your opponent to attend or are they too busy selling the place?

The Good Life

County Court of Victoria

6 February 2003
Coram: Judge Dove
Vlahos v *Forty Ninth Mayelda Pty Ltd*
Coombes for the Plaintiff
Dyer for the Defendant

Counsel for the plaintiff sought to be excused from attending court next day for the delivery of judgment and explained that she was giving a presentation at Dunkeld to a group of solicitors the next morning. The transcript goes on:

His Honour: Does this mean you are staying overnight at the Royal Mail Hotel?
Ms Coombs: I am also stupidly a member of the Bar Council and I have not quite worked out how to achieve both. The Bar Council meeting and Dunkel tonight. But yes, that is the general plan.
His Honour: All I can say is that Mr Allan Myers has over the years got together an excellent cellar. I suggest if someone else is paying for you, you get into it.
Mr Dyer: I think that Mr Myers has recently had the wine list reprinted, it now has a whole page known as the Grange page, Your Honour.
His Honour: Yes, well, you don't have to stay on his Australian wines, there are plenty of French reds there worth drinking, if you have somebody else with the money to pay for it. Look yes, certainly I will excuse you tomorrow.

A Touch of Concern

Court Of Appeal

Coram: Ormiston, Batt and Vincent JJA
Nurses Board v *R.J.T.*
Ruskin QC and Wheelahan for the Appellant
Hurley for the Respondent

Ormiston JA: You say there are less home visits by doctors. What's the relevance of that?
Hurley: Well, less home visits therefore less opportunities for doctors to sexually interfere with patients.
Ormiston JA: But is that right? I myself have had a home visit in the last three years.
Vincent JA (kindly, and turning towards Ormiston JA)**:** I do hope you're always on your guard.

The Three-million Dollar Judge?

The High Court of Australia Office of the Registry

20 June 2002
Austin & Anor v *Commonwealth of Australia* M10/2001 (20 June 2002)
Between Robert Peter Austin
First Plaintiff, Kathryn Elizabeth Kings
Second Plaintiff, and
The Commonwealth of Australia
Defendant

Gleeson CJ, Gaudron J, McHugh J, Gummow J, Kirby J, Hayne J.

Mr Bennett: Although that way might be discriminatory for other reasons, because a provider in the normal situation pays the whole of the tax immediately on the retirement of the person. So, in a sense, the provider is holding the betting ticket in other areas.
Gaudron J: And we are talking about a provider with real funds.
Mr Bennett: Yes.
Gaudron J: Yes.
Mr Bennett: We are also talking about a judge with an asset worth $3 million.
Gaudron J: No, no, with a notional value — with a commuted value according to actuarial calculations of $3 million. Now, pension is not worth $3 million if the judge is ill, or the like, or a bachelor.
Mr Bennett: It might be worth more if the judge is particularly healthy and has a young wife and infant children. He is unlikely to have infant children, I suppose, but it is possible.
McHugh J: Why?
Mr Bennett: I was talking about a judge retiring at 72 when I said that.
McHugh J: Have you not heard of Viagra?
Mr Bennett: Yes. I will avoid getting into that one deeper. Leaving aside the questions of spouses and children, it is a betting ticket, but it is worth that. That is what the judge would pay if he or she were to go to an insurance company.

White Anting the Argument

County Court of Victoria

11 February 2003
Cor: Campton J
Prendergast v *Basketball Stadiums*
Philbrick for Plaintiff
Moloney for Defendant

This case involved a basketball injury on a timber floor and evidence was given that the plaintiff's team mates examined the floor for defects in the surface. The transcript of the submissions of Philbrick includes the following:

"It follows that the concerned termites of the plaintiff were not able to make the most elementary assessment of the state of the boards … ."

The Bar's Internet System: A Brief History

MANY barristers rely on the internet daily in the course of their practice, for legal research, e-mail and electronic delivery of documents.

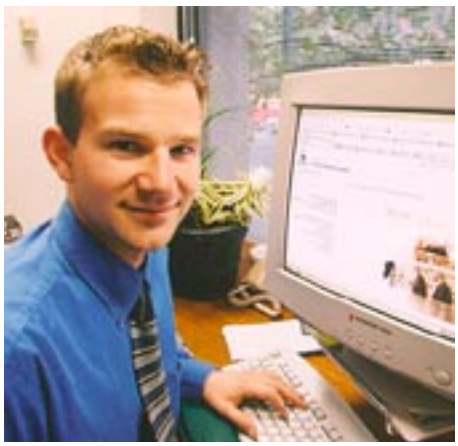
Early in 1997 believing that the internet would be the way of the future, BCL and the Victorian Bar began to research the idea of an in-house internet service. The service was established in 1997 with the aim of providing quick, competitively priced internet access for its subscribers at the Victorian Bar.

The system was engineered by BCL's consulting engineer, Mr Michael Feramez. The Board approached Michael to design and implement a system which could grow and adapt to changing demands and provide a range of services to disparate locations and be adaptable to improvements in technology. The system started out with only six users connected to a small 64 kb/s (kilobits per sec) direct connection to the internet.

The system grew rapidly and soon faster equipment and connection to the internet was sought. The Bar/BCL Communications Sub-Committee was formed to manage the network, its cost and future developments.

The internet connection was upgraded to a 128 kb/s link. With the user base growing rapidly the access was upgraded to a 2 Mb/s (Megabit per sec) link. With the network approaching 300 users BCL decided that it was time for an in-house support person. Mr Ian Green was employed by BCL in September 2000. Ian's main responsibility is maintaining the smooth operation of the network. The network is monitored on a constant basis. Ian is still with the VicBar network today supplying his expertise "on the spot" and "on demand". Ian can be contacted during normal working hours on extension 6664.

As an adjunct to the system, websites for the Bar, BCL, the Bar Superannuation Fund and the Clerks are now hosted on the VicBar network.

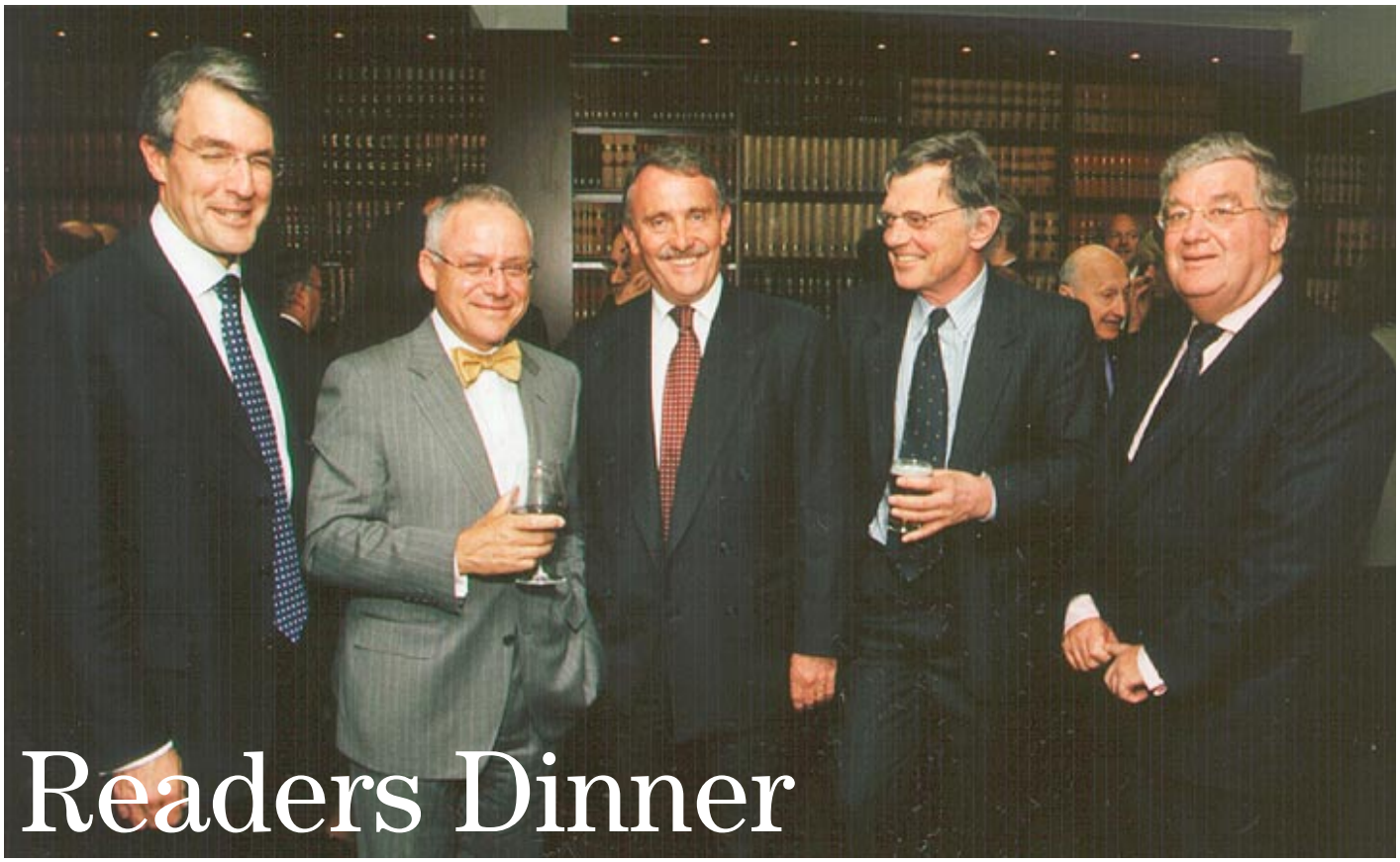


Ian Green

With the ever-growing threat of viruses, a mail monitoring system was installed in 2002 to protect users from electronic virus attacks. An added bonus of this software is its ability to block most spam (unsolicited mail) and junk e-mails. Currently the network exceeds 700 users, with an upgraded speed provided by a 100 Mb/s link.

Some interesting stats:

- Over 700 subscribers use the VicBar network.
- Over 160 GB of data is downloaded every month.
- Over 6000 spam messages are blocked every month.
- Close to 1400 virus attacks are prevented monthly.
- The Vic Bar website receives 8500 "hits" (on average) per day.
- There are approximately 300 visitors to the site each day with an average stay of eight minutes.
- The system connects seven buildings with over 50 "hubs" linked to five servers. The mail server has two back-up servers (one off site).
- The buildings are connected either by microwave link, optic fibre or ISDN connect.



Readers Dinner

Mark Dreyfus QC, Chief Judge Michael Rozenes, Ross Ray QC, Justice Peter Buchanan and Philip Dunn QC.

The September 2002 Readers intake signed the Bar Roll on 21 November 2002 and celebrated the occasion with their mentors, members of the judiciary and members of counsel at a dinner held in the Essoign Club on that evening.

THE Honourable Justice Geoffrey Nettle graciously accepted the invitation to be guest speaker at the dinner. He was brilliant! The Readers were toasted heartily, as were the two lawyers Joshua Hua and John Munnell Jnr, who attended the Course from Papua New Guinea and signed the Register for Overseas Readers. The Readers Dinners are joyous evenings and this one was no exception.

Jennifer Batrouney SC and Miranda Forsyth, daughter of Neil Forsyth QC, whose photograph is on wall and after whom the room is named.

Lisa De Ferrari, Chief Judge Michael Rozenes, Professor George Hampel QC, Ed Lorkin and Debbie Mortimer.

Geoffrey Steward, Joshua Hua, John Munnull Jr and Martin Grinberg.

Bruce Nibbs, Geoff Chettle, Ed Lorkin, Ron Gipp, Paul Lawrie and Robert Taylor.

The Readers who signed the Roll of Counsel on that evening were:

Renate Alexander
Andrew Broadfoot
Dee Brooker
Andrew Cassidy
Joseph Connellan
Angela Cranenburgh
Kaylene Dawson
Lisa De Ferrari
Marg Desmond
Tim Donaghey
Marita Foley
Miranda Forsyth
Leighton Gwynn
Yildana Hardjadibrata
Amber Harris
Louie Hawas
Sam Hay
Nick Healy
Teri Konstantinou
Stewart Maiden
Declan Manly
Peter Matthews
Tim McEvoy
Stewart McNab
Chris Moshidis
Penny Neskovcin
Bruce Nibbs
Cecilia O'Brien
Gerard O'Hara
Brett Powell
Edward Remer
Stephen Roseman
Kate Rowe
Fred Stuart
Shane Thomas
Tony Vriends
Zev Wagen
Michelle Wallace
Patrick Wheelahan.

Julian Burnside QC, Edward Remer and David Collins S.C.

Justice Robert Redlich and Tony Howard QC

Martin Grinberg, Philip Dunn QC and Paul Coghlan QC, DPP.

Richard Spicer, Michelle Quigley S.C. and Justice Nahum Mushin.

Frank Saccardo, David Curtain QC, Amber Harris, Jack Rush QC and Jim Peters.

Debbie Mortimer, Justice Geoffory Nettle, Justice Peter Gray, Felicity Hampel S.C. and David Curtain QC.

Michael Tovey QC, Paul Coghlan QC, DPP, Fiona Ellis and Michael Wheelahan.

Father Christmas holds court to the kids at the Bar's Christmas party.

The Victorian Bar's Children's Christmas Party

And into the woods they go. Or at least into the gardens. Dozens of boys, girls, babies and barristers. All to enjoy the December, sun to picnic, feed the swans and wait for the arrival of Santa!

There he is, being driven by Mrs Claus in a cute Botanical Gardens buggy. As the pictures on these pages testify the children were delighted. And more children there were. It seems that baby barristers and old have been busy. The young of the Bar are increasing. Does this mean that business is good? Or does it mean that many barristers have a lot of time on their hands?

This year co-organiser Michael Gronow thought that it would be good to have a change. Instead of Santa handing lollies out to the children, they would have to work to get them. So a Mexican Piñata was set up. For those not too knowledgeable about such things, a Piñata is a large festive container filled with sweets. Children are blindfolded and have to hit it with a big stick to release the goodies within. Unfortunately after many children had struck the Piñata and almost struck all and sundry, including Santa, nothing happened. The goodies would not burst forth. Perhaps the offspring of the Victorian Bar lack the power of Mexican children. Eventually after many attempts Santa simply ripped it open and threw the sweets to the expectant throng.

Next year Michael believes we may have to go back to simply throwing sweets to the children.

The organisers of this long-running and increasingly well attended event are to be congratulated. There is much work involved, especially enticing Father Christmas to leave the North Pole and incur the perils of the Botanic Gardens.

Elizabeth and Paul Stefanoic, son Callan (9 mths), Tony and Nina Burns.

Emily Burns tries her hand at bursting the lollies Piñata.

Young gun tries his hand to no avail.

Olivia Wells was the big hitter and had people ducking for cover as she lashed out at the stubborn Piñata.

Samuel Combes was not so sure about Santa.

Father Christmas up close and friendly with Tim De Uray and Sara.

Santa's sleigh was a modern golf cart as he heads to his next stop.

Danny Masel with Alec (5 yrs) and Patricia (3 yrs).

Godfather Graham Keil holds Sam Combes (17 mths) with Suzie Keil and Pat Edwards.

Santa with friends, Patricia, Ellena, Alex, Santa, Miranda, Christian and Alfred.

Family day in the gardens under a flowering tree.

Santa and friends, Patricia Masel and Christian.

Andrew Kirby enjoys the day with Alice (16 mths).

Tim De Uray with Sara rush to Father Christmas.

Magic man tries to keep kids happy.

John Richards helped son Charlie put his Christmas present together, and of course had to make sure it would fly.

Father Christmas arrives at Botanic Gardens.

Scott Stucky gives son Henry a bird's-eye-view of Santa, while mum Leigh gives him a hand with his present.

Andrew Donald and son Angus (3 yrs) try to feed the ducks.

Francine Combes and Samuel.

Cassandra Stefanovic, 3 yrs, waves goodbye to Santa after a good day in the park.

Florence Stewart (5 yrs), Penelope Pengilley, Ian Stewart and Eleanor Stewart (9 yrs).

Catherine Donald, Angus Donald, Scott Stuckey, Leigh Stuckey and Henry Stuckey.

Edward and Remer Evangeline with son William (15 mths).

Father Christmas with Vanessa and Nick Elliott.

Magic man had his hands full with kids at Christmas party.

Chris and Craig Harrison, Bill and Anne O'Shea.

High Court Career Highlights

Speech by David Curtain QC on Monday 10 February 2003 at the High Court of Australia to welcome new silks, and to honour Justice Mary Gaudron upon her retirement from the High Court and being made a life member of the Australian Bar Association.

YOUR Honours, fellow barristers, ladies and gentlemen, it's my pleasure to welcome you to the annual dinner to honour newly appointed Queen's Counsel and Senior Counsel upon the occasion of their announcing their appearances before the High Court. This year, we also mark the retirement from the High Court of The Honourable Justice Mary Genevieve Gaudron, whom we honour with life membership of the Australian Bar Association.

Upon her retirement from the High Court, which takes effect at midnight tonight, Justice Gaudron will resume the title and distinction of Queen's Counsel — the predecessor title to that of Senior Counsel, to which you have all been recently appointed. At midnight, she will become The Honourable Mary Gaudron QC.

On behalf of the Australian Bar Association, I congratulate all of you who announced your appearances in Court today, for the first time in this Court, as Senior Counsel.

The first member of what Blackstone calls "the modern order" of Queen's Counsel, learned in the law, was Francis Bacon in the reign of the first Queen Elizabeth. The appointment recognises high achievement as counsel and publicly identifies counsel as leaders of the profession who can be relied upon by the public, and by the courts, to provide outstanding services as advocates and advisers, to the good of the administration of justice.

It is always pleasing to welcome to this dinner so many spouses and partners of those who have been appointed Senior Counsel. The high achievement that is recognised in the appointment is the product, not only of the ability and industry of counsel, but also of significant personal sacrifice by them and by their families. Similarly, taking silk involves a personal and professional commitment for the future, and that involves a commitment on the part of the family to continue the sacrifices involved in supporting counsel to devote him or herself to meeting the greater demands and expectations of Senior Counsel.

David Curtain QC

Justice Gaudron was appointed Queen's Counsel in 1981. She was the first woman to be appointed Queen's Counsel for the State of New South Wales, and the first woman to be Solicitor-General of any Australian State. Her Honour had previously served as a Deputy President of the Commonwealth Conciliation and Arbitration Commission, for six years. In 1987, she was the first woman appointed to the High Court of Australia. Since 1998, she has been the Court's senior puisne Justice.

Born in the New South Wales country town of Moree, Justice Gaudron was a boarder at St Ursula's convent school in Armidale.

She won a scholarship to the University of Sydney. It was the 60's – sex, drugs and rock 'n roll — and she chose a career in the law.

The law students' magazine described her as "a slight redhead with a temper to match". University friends also remember her as "brilliant" and "good fun".

She graduated with first class honours and the University medal. She is brilliant; she's still good fun; and there are still occasional flashes of temper.

People had such a good time celebrating with Justice Gaudron at the Australian Women Lawyers' reception in Sydney a couple of weeks ago that they didn't want to let her go. The reception ended at 10 p.m. — but the fun continued with Justice Gaudron into the early hours of the morning, with good company, interesting conversations, and Bollinger champagne.

For some years, on this day when new silks announce their appearances in the High Court, Justice Gaudron has had the women silks and their families to drinks in her chambers. I understand that she did so again today. These have been fun occasions, with children welcome and included.

The redhead temper is reserved for injustice and for spurious arguments. In a case a year or so ago, a man had lived with a woman for only nine months, and a child was born six months after the couple had separated. Arguing against child support, the man's counsel argued that he had got "nothing in return" for the amount of child support assessed against him.

With what the newspaper account described as "loud incredulity", Justice Gaudron asked "Nothing in return? What

do you mean 'nothing in return'? Do the words 'responsibility' and 'obligation' mean anything to your client?"

Figuratively speaking, in the blink of an eye, "the slight redhead with temper to match" vaulted the bench, throttled counsel, and was back in her place, eyes flashing.

Justice Gaudron has contributed to the development of every important area of Australian law — the common law, criminal law, equity, conflicts of laws, constitutional and administrative law, native title, free speech and natural justice.

She has been particularly influential in criminal law, and in discrimination law. In criminal law, she brought to the Court the experience of over six years as Solicitor-General for New South Wales. This was before the establishment of Directors of Public Prosecutions, and she had major responsibility in crime.

In discrimination, she has held that "Discrimination lies in the unequal treatment of equals, and … the equal treatment of unequals." What is required is "equal treatment under the law that allows for relevant difference".

In a number of speeches, Justice Gaudron has described women's struggle to break into the legal profession. It is a remarkable story of persistence and courage.

Let me give two examples: the first woman admitted to practice in New South Wales, Ada Evans, and Australia's second woman silk, Joan Rosanove QC in Victoria.

Ada Evans enrolled in the Sydney Law School while the formidable Dean was overseas. Upon his return, he called her in and informed her that she did not have the physique for law, and would find medicine more suitable. Nonetheless, she persisted, and graduated in law in 1902. She was then refused registration as a student-at-law on the ground that there was no precedent. To the contrary, there was a line of authority that women were not "persons". She mounted a political campaign, which culminated, 16 years later, in passage of the *Women's Legal Status Act 1918* (NSW), enabling her to be enrolled as a student-at-law. Finally, in 1921, nearly 20 years after graduation from the University of Sydney law school, she was admitted to practice.

Joan Rosanove was Victoria's first woman barrister in 1923, and Australia's second woman silk. She applied for silk in 1954. She had then been in practice for 35 years. She had been the only woman barrister briefed in murder cases, and it has been said that modern divorce law reform can be traced to a report on divorce law and proposed changes she researched and wrote, which was published in the *Australian Law Journal* in 1954. She was turned down. She continued to apply, and was turned down each time. It was another 11 years before her application was granted.

Justice Gaudron says that she once believed (and I quote) that "once the doors were open, women would prove that they were every bit as good, and certainly no different, from their male counterparts" — "that women lawyers should and would take their place alongside men as their equals in the profession in the ordinary course".

We need to understand why Justice Gaudron and Justice Elizabeth Evatt, who also once believed this, have both long since rejected it.

Women have proved that they are "every bit as good". However, they are different from their male counterparts, and differences have to be accepted and asserted. As to equality, I don't believe that anyone here tonight is so naïve as to think that equality has been achieved, or that those women who have taken their place as equals have done so "in the ordinary course".

It has now been 40 years since the first Australian woman silk — Roma Mitchell, in 1962 in South Australia. Justice Mitchell was also the first State Supreme Court Judge, in 1965, and was still the only woman on any State Supreme Court when she retired in 1983. Justice Elizabeth Evatt was the first Chief Justice of the Family Court of Australia in 1976. Justice Mary Gaudron was our first High Court Judge in 1987. Justice Deidre O'Connor was our first Federal Court Judge in 1990.

Justice Gaudron has spoken powerfully on the issues of women in the profession: on discrimination and differences; on the viciousness of the system of patronage in the legal profession; on the importance of equality of opportunity, both in education, and in the profession; and on the contributions women have made, and have yet to make, to the law.

It is my great pleasure to ask The Honourable Justice Mary Gaudron, upon whom the Australian Bar Association has conferred honorary life membership, to respond to the toast to the ABA.

Letterbox Drop

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Irony

IT is common these days to hear *irony* misused. Not the device, although that certainly happens, but the word and its adjective *ironic*. So, it has been observed that it was "ironic that Shane Warne's mother gave him the fluid tablet" which got him into trouble; or that it is "ironic that bushfires in NSW were followed by flash-flooding".

Irony is a useful word which deserves more care. It may be a curious, or an interesting thing that his Mum's diuretic got Shane Warne in trouble, but it is not ironic. It may be paradoxical, and it is certainly unfortunate, that one natural disaster is followed rapidly by another of a different sort: but it is not ironic.

Irony draws its name from the Greek *eironia* "dissimulation; ignorance purposely affected", which is reflected in the name of a stock comic character in Greek drama, called Eiron. Eiron was frequently opposed to the boastful Alazon who, blinded by his own good opinion of himself, fails to notice the skill in Eiron's disingenuous observations and is defeated. The comic effect of the exchanges between Eiron and Alazon was appreciated by Athenian audiences who knew in advance that Eiron was cleverer than he seemed, and cleverer than Alazon noticed.

The central idea of *irony* is the contradiction inherent in words spoken or events depicted.

The *Oxford English Dictionary* 2nd ed. has:

> A figure of speech in which the intended meaning is the opposite of that expressed by the words used; usually taking the form of sarcasm or ridicule in which laudatory expressions are used to imply condemnation or contempt …
>
> A condition of affairs or events of a character opposite to what was, or might naturally be, expected; a contradictory outcome of events as if in mockery of the promise and fitness of things.

And Johnson:

> A mode of speech in which the meaning is contrary to the words: as, "Bolingbroke was a holy man".

Socratic irony is the device, adopted by Socrates in imitation of Eiron, of asking seemingly ignorant questions designed to drive dogmatic opponents into logical difficulties. To the audience who understood Socrates' approach, this carried all the enjoyment of seeing the engineer hoist, unwitting, on his own petard. The patient cross-examiner who, by seemingly innocent questions gradually edges her witness into an impossible position, is using Socratic irony. If others in court are aware already of the document or circumstance which will destroy the present witness when the trap is ready, the parallel with Socrates is complete.

Dramatic irony has the audience informed of larger events than are known to the play's protagonists, so they proceed in their ignorance towards a fate already prefigured by the audience. In that setting, their words can be made to carry a quite different significance to the audience than they apparently have to the speaker. The same device can be used conversationally, and with just as telling effect. In the last stages of Scott's ill-fated Antarctic expedition of 1912, Captain Oates left the shelter with the comment "I am just going outside and may be some time". The circumstances gave his words a very different meaning which must have been well understood by his companions. Oates' remark is recorded in Scott's journal on 16 March 1912. It is the last entry.

(Some will say Oates' comment is an example of *meiosis*, and so it is. *Meiosis* consists in enhancing the effect of what is intended by understatement. The extent of understatement may make *meiosis* and *irony* indistinguishable. *Meiosis* has the effect of emphasis by understatement: it does not have the edge or poignancy usually associated with *irony. Litotes* is a special form of *meiosis*. It involves understatement, but couches the statement as the negative of the opposite of what is intended: e.g.: "*no small effort*"; "*by no means insignificant*")

Linguistic irony is more concerned with semantic ambiguity than with the contrast between words and circumstances. It is cousin to sarcasm, but is less savage. Sarcasm comes from the Greek word meaning to *tear flesh*: it is always unkind. Johnson uses it in his definitions of *lash, nip* and *whip*.

Irony is gentler: the Elizabethan courtier and rhetorician George Puttenham called it "the drye mock". So: a very young and inexperienced counsel rose to deliver a plea in mitigation before a stern judge in a serious matter: "M-m-my poor client … M-m-my poor client …" he stammered. "Go on, I am with you so far …" said the judge. Aristotle said "Irony better befits a gentleman than buffoonery; the ironical man jokes to amuse himself, the buffoon to amuse other people."

It is recently fashionable to recognise two other forms of irony: *structural irony* and *romantic irony. Structural irony* looks rather like dramatic irony in post-modern clothes. The contradiction is seen between the words spoken in a text and the circumstances being depicted by the text itself. The spectacular maunderings of Sir Joh Bjelke-Petersen are often rich in structural irony, no doubt unintended. Likewise the brilliant BBC series The Office, in which the principal characters display their vanity and foolishness by their own self-inflated management-speak. *Romantic irony* has the writer and reader sharing a vantage point from which they view the characters in the story and, by their greater knowledge, they can watch with wry amusement the folly of the characters whose actions are constrained by narrower horizons.

Closely related to *irony*, but less often used, is *paradox.* Like *irony*, *paradox* has contradiction at its core. But whereas irony finds contradiction between available meanings of a single utterance, or between an utterance and the events to which it relates, *paradox* is concerned with a contradiction in things themselves.

Paradox comes from *para* against and *doxos* opinion. A *paradox* involves a statement which seems true but contradicts observed reality or the opinion or expectation born of experience. Zeno of Elea was famous for his four paradoxes. His *Achilles paradox* proves that the faster runner in a race cannot pass the slower runner. The *arrow paradox* proves that an arrow in flight is actually at rest.

The *liar paradox* was first propounded by Epiminedis in the 6th Century BC: "I am a liar" is truly paradoxical: is true only if it is false, and false only if it is true.

"The Best Party I Have Ever Had": Justice Gaudron

IT was hot and windy — Sydney at its worst. Centennial Park was a mass of yellowed grass and the taxi driver did not seem to have any idea where the Centennial Park restaurant was (I kid you not). Eventually we found our way to the hexagon-shaped open-sided venue where the band "Earth Angels" was tinkering a warm-up. Drinks and nibbles were the order of the day and we de-parched while we waited for the guest of honour.

Then she was there. No fanfare, no parting of the sea of guests, just a female icon in a purple knit suit. "I'm so embarrassed" she said. "You should not have gone to such trouble." She was thrilled to see some of her fellow pioneer women lawyers who forged their way through the chauvinism that was the NSW Bar in the 1960s.

She made sure that she visited and chatted with each and every group of embarrassed admirers. She dutifully posed for the cameras with "the Victorian mob", the girls from Canberra and so on. She is a woman of the people. No airs and graces — just a rather impish glint in her eye.

Then came the presentation of THAT brooch. It has become quite famous. It is a John Tarasin design of a Picasso type female face incorporating the scales of justice. With fire above and a sword below. Feminine wisdom and power — that was what the night was all about. Justice Gaudron said, on being presented with the brooch: "I should like to share the exquisite symbolism by passing it on as a baton to the next woman appointee to the Court with the wish that, in due course, she should pass it to her successor. That way, the brooch would acquire a significance well beyond the pleasure it gives me."

Mary hit her straps in the speech in reply. She fondly remembered the 1960s ("sex, drugs, rock and roll and … what the hell — career in the law"). She was reminded of the days when she lunched with Dame Roma Mitchell at the old Australia Hotel and Roma was "just like everybody's aunt". "Women who succeed" she said "are just ordinary women."

Wendy Kayler-Thomson, Fiona Macleod, Justice Mary Gaudron, Jennifer Batrouney S.C., Helen Symon S.C., and Katherine Rees (the Victorian Mob).

Jennifer Batrouney S.C., Mary Dixon, Justice Mary Gaudron, Dominique Hogan-Doran and Wendy Kayler-Thomson (the Board of AWL).

That brooch.

"I want to thank the young people, who have a lot of courage, grit and determination and who I know are going to make it, notwithstanding that you can still be refused silk in NSW on the basis that people have reported that you are too aggressive."

(Mary was pretty riled by the fact that, while there were six women in the latest intake of silks in Victoria, "in the whole of NSW they could find but one".)

"Since when was aggression a mark of failure in an adversarial system? Keep applying, keep fighting, the battle is far from won I say to you young people. But we are going to keep pushing on."

We pushed on to the Woollahra Hotel afterwards and relieved them of all their Bollinger. We ended up at the Woolloomooloo Hotel where they've probable never heard of Bollinger.

In Mary's words: "It has been the best party I have ever had."

More recently, *Olbers' paradox* points out that the universe is endless, and uniformly populated with stars, so every line of sight must eventually find a star; and accordingly the night sky should be light since every part of it is occupied by a luminous object.

Because *paradox* is a seemingly exotic word, it is taken and misused by those in search of ornaments for their prose. Fowler calls this tendency *Wardour Street*, after the London street famous for its antique shops: "… Wardour Street … offers to those who live in modern houses the opportunity of picking up an antique or two that will be conspicuous for good or ill among their surroundings … ."

"It's quite a paradox how completely we change from conception to death" (*Herald Sun* 9 May 1998). Troubling, perhaps; or marvellous; but not paradoxical: it is the universal experience that our appearance changes during the course of our lives, and nothing is paradoxical which conforms to universal observation and experience.

From the same root as paradox comes *orthodox*:

> Holding right or correct opinions, i.e. such as are currently accepted as correct, or are in accordance with some recognized standard. (OED2)
> Sound in opinion and doctrine; not heretical. (Johnson)

There are other useful words from the same origin. Unfortunately they have fallen out of use. As opinions on matters of high importance harden along lines drawn by the saviours of the free world, we may need to revive some of these:

Of our friends:

Homodox (adj): of the same opinion;
Pleistodox (adj): holding the opinion of the majority;

Of our enemies:

Heterodox (adj): of opinions not regarded as correct or accepted;
Pseudodox (n): a false opinion;
Adoxal (adj): absurd, not according to reason;
Cacodox (adj): holding a wrong or evil opinion.

And finally, for use on both sides:

Doxastic (adj): depending on or exercising opinion; an object of opinion;
Doxographer (n): one who collects and records the opinions of others.

Julian Burnside

Self Managed Superannuation Funds

Jonathan Stutt, Director, Stutt Partners Investment Management Pty Ltd

The purpose of this article is to outline the advantages of saving for retirement via superannuation, more particularly self managed (SMSF) or do it yourself (DIY) superannuation funds. This is one of the fastest growing sectors of the superannuation market.

BARRISTERS, being effectively self-employed, need to make these arrangements for themselves and cannot rely upon an employer fund to provide for them in retirement.

Why Contribute to Superannuation?

Super is one of the most tax effective ways to save for retirement but super monies cannot generally be accessed until retirement so that superannuation is used for the purpose of providing genuine retirement benefits.

The main tax benefits of saving through superannuation are:

- Pre-tax dollars paid into superannuation, known as salary sacrifice, attract only 15 per cent contribution tax compared to your marginal tax rate. (There maybe an additional surcharge contributions tax for high income earners.)
- Annual earnings of superannuation funds are only taxed at 15 per cent. This tax is paid by the fund, whereas earnings on non-superannuation investments are taxed at marginal tax rates.
- On retirement, benefits tax may be payable on the withdrawal of lump sums depending upon the the original source of the contribution and when it was contributed to superannuation, but super money can be transferred into retirement income products or pensions which can defer or eliminate the tax that would be paid on a lump sum withdrawal.

What is a SMSF?

Australian regulations apply different rules to a special class of superannuation funds which has no more than four members and meets requirements regarding trusteeship and investment management. These funds are known as "self-managed superannuation funds" and are commonly referred to as "do it yourself" (or DIY) super funds.

What are the advantages of a SMSF?

You and your fellow trustees, who would normally be other members of the fund, can directly control the investment of the funds assets and make changes at any time. The greater attention to detail may lead to better performance than professionally managed funds. A SMSF will also normally have cheaper fees. A common alternative to a SMSF is a Master Fund or Wrap account, which is, in many cases, more costly and less flexible.

You can invest in most assets including shares, property (including farms and residential property which are investments and not for personal use), managed funds/unit trusts, bonds and cash.

On retirement there is no necessity to change funds. Your fund can pay a tax effective allocated pension or complying pension as long as the SMSF has been set up to pay a pension.

You can include your spouse or other family members, subject to certain criteria, in your fund as long as it has no more than four members.

Creditor protection is enhanced through the shielding of investments within the fund from the member's creditors.

Tailored tax management is another advantage. This enables the reduction of income and capital gains tax within a SMSF. This can be achieved by utilizing excess franking credits to shelter other income, capital gains and contributions tax payable by the fund. The timing of investment decisions can further enhance tax planning where in a public offer fund capital gains tax payments may relate to gains made prior to investing in the fund.

SMSF allows the members to maximize their RBL entitlement. A person's RBL is the maximum retirement and termination of employment benefit that can be received at concessional, ie reduced, tax rates. As long as the trust deed allows the creation of reserves, the SMSF can accumulate investment earnings which can be distributed allowing tax benefits to be maximized, RBLs to be managed and the superannuation surcharge to potentially be deferred.

A SMSF can be used as an effective estate planning tool. It gives the trustees of a fund the flexibility to pay tax free lump sums to a spouse and to pay concessionally taxed income streams to children in the event of death.

Is this the best option?

Administering and managing a SMSF requires the active involvement of the trustees, on behalf of the members, to maximize fund members benefits.

Studies have revealed that many SMSFs are not maximizing their investment performance. Cash is the largest single asset class held by SMSFs, which is rather curious given the long term nature of superannuation and cash's poor performance over the long term. Equities (shares), on the other hand, are the highest returning asset class over the long term. The volatility of returns in the short term are higher than other classes requiring closer attention from trustees.

The sector's regulator, the Australian Tax Office, has announced plans to step up its monitoring of SMSFs because of concerns investors were receiving inadequate advice and failing to meet stringent compliance requirements.

A SMSF will incur fixed administration costs irrespective of how much is invested in the fund. For example, the trustees must prepare annual audited accounts, tax returns and compliance returns. Unless the fund has a substantial balance it maybe uneconomic to run. A Fund's assets need to be about $150,000 to $200,000 to make a SMSF economically worthwhile.

Borrowing or gearing within a fund and the investing in in-house assets or assets that belong to members is not allowed.

In conclusion, SMSFs would seem to be a strategy that members of the bar should investigate more fully when they are considering their superannaution needs.

R v A.A. Rouse

THE last issue of the *Bar News* had an item in the Verbatim column which quoted a question asked during the Esso class action. The question was "What is the coefficient of the expansion of brass". Some in court were mystified by the question; some who read the account of it in the *Bar News* were mystified by it. (The question itself was relevant, tangentially at least, to the mechanism by which a hot water service might fail if allowed to cool completely and then undergo reheating.)

Still, it was interesting that many readers did not recognise the question as a quote from a famous cross-examination in a famous case.

Alfred Arthur Rouse was a commercial traveller. He was a vainglorious man who seems to have been irresistibly charming to some women: he maintained wives and mistresses around the countryside, and visited them in the course of his journeys around the countryside as representative of Messrs Martins, garters and braces. Each was apparently unaware of the existence of anyone else in Rouse's life. If nothing else, his complex social life may explain some of his curious conduct when events began to unravel.

At about two o'clock in the morning of 6 November 1930, two young men — Brown and Bailey — were walking home from their Guy Fawkes night revels near Hardingstone, near Northampton. A well-dressed man carrying an attaché case climbed out of a ditch in front of them, walked past them without a word and turned uncertainly from Hardinsgtone Lane into the Northampton Road. Bailey then noticed a glow some 400 yards away and asked what it was. The man with the attaché case said "It looks as if someone has had a bonfire down there". Brown and Bailey later positively identified Rouse as the man with the attaché case. As Brown said during re-examination: "When you go home at that time in the morning you do not usually see well-dressed men getting out of the ditch."

Brown and Bailey ran towards the "bonfire"; Rouse made his way to the main road and ultimately hitched a lift to London. When Brown and Bailey got to the fire, they found it was a Morris Minor which was blazing fiercely. The number plate was clearly visible: MU 1468. It was Rouse's car. They called the police. When the fire had been put out, a charred body was found in the front seat of the car. In addition, police found an empty jerry-can. On closer examination of the wreck, it was discovered that the petrol cap was on, but loose, the top of the carburettor was missing, and that a junction in the petrol line was loose. The junction was in a position that petrol in the fuel line would drip into the foot-well of the car.

Rouse hitched a lift to London. He told the driver that he had been waiting for a colleague to pick him up in his Bentley. He did not mention that his own car had just burst into flames. Whilst in London, he told a stranger at a coffee-stall that his car (which he described as a Wolseley Hornet) had been stolen. He then caught a coach to Wales. During the trip, he told the coach driver that his car had been stolen. Later that day he reached Gellygaer where Ivy Jenkins lived with her family. Rouse was having an affair with Ivy. Rouse told Ivy's father that his car had been stolen the day before. Shortly, a colleague of William Jenkins came to the house, and said that there was a photograph in the paper of a car which had burnt the previous day. Seeing the photograph, in which the numberplate was very clear, Rouse said it was not his car. Later still that day, Ivy's sister told Rouse that there was a photograph of his car in the paper: she showed him the article, in which he was named as the owner. He asked her if he could take the article, put it in his pocket and left the house.

When Rouse returned to Hammersmith by coach, Detective Sergeant Skelly met him. Rouse said, "Very well, I am glad it is all over. I was going to Scotland Yard about it. I am responsible."

The trial before Justice Talbot began on 26 January 1931. Norman Birkett KC and Richard Elwes appeared for the prosecution. Rouse was defended by D.L. Finnemore. The Crown could not suggest a motive for the alleged murder. Neither could they identify the body, so nothing could be suggested about the deceased which might explain an otherwise senseless killing. The principal forensic dispute concerned the way in which the fire started. Finnemore tried to establish the possibility that the fire started accidentally. He sought to suggest that the junction nut might have been loosened by the passenger's foot, but the experts flatly rejected the possibility. It was against that background that Arthur Isaacs was called by the defence on the fifth day of the trial. He gave evidence that he was "an engineer and fire assessor with very vast experience as regards fires in motor cars". He advanced the theory that the junction in the fuel line had become loose in the course of the fire, as a result of the fire itself. He gave his evidence with great confidence.

The cross-examination began as follows:

What is the coefficient of the expansion of brass? — I beg your pardon.

Did you not catch the question? — I did not quite hear you.

What is the coefficient of the expansion of brass? — I am afraid I cannot answer that question off-hand.

What is it? If you do not know, say so. What is the coefficient of the expansion of brass? What do I mean by the term? — You want to know what is the expansion of the metal under heat?

I asked you: What is the coefficient of the expansion of brass? Do you know what it means? — Put that way, probably I do not.

You are an engineer? — I dare say I am.

Let me understand what you are. You are not a doctor? — No.

Not a crime investigator? — No.

Nor an amateur detective? — No.

But an engineer? — Yes.

What is the coefficient of the expansion of brass? You do not know? — No; not put that way.

(The coefficient of thermal expansion of any substance is the measure of the extent to which its size changes as its temperature changes. All substances change their volume as their temperature changes. The change is usually linear, although water is an exception: the coefficient of thermal expansion of water alters as the temperature approaches zero degrees Celsius.)

Birkett was criticized for these questions. It was said that the questions were unfair. It may seem a bit adventurous to expect a witness, however expert, to have the correct number at the top of their mind. Birkett later said that, if the witness

had known the answer, he would have then asked the coefficient of expansion of aluminium (of which the carburettor body was made) and would then have moved on to other matters. On any view it perfectly legitimate for him to expect that the witness would understand the concept which was fundamental to his evidence.

Callaway JA has suggested, extra-curially, that the key question was unfair in other ways. It is true that the question

The question was "What is the coefficient of the expansion of brass". Some in court were mystified by the question; some who read the account of it in the *Bar News* were mystified by it. Many readers did not recognise the question as a quote from a famous cross-examination in a famous case.

would have been more precise if it had asked for the linear coefficient of thermal expansion. Nevertheless, most genuine expert witnesses would assume those details, and would ask for clarification if in doubt. Clearly, Mr Isaacs would not have been helped by the greater precision. A more telling point made by Callaway JA is that the question should have identified the precise composition of the brass. Brass is an alloy of copper and zinc, but the proportions are not fixed. Since copper and zinc respectively have different coefficients of thermal expansion, the question as framed has no single answer. If Mr Isaacs had been a genuine expert, he could have devastated Birkett with a different response to the first question:

What is the coefficient of the expansion of brass? — I assume you are asking for the linear coefficient of thermal expansion, but can you tell me the precise proportion of the constituents of the alloy?

It would be impressive indeed if Birkett had been able to respond accurately.

Rouse was found guilty of murder. His appeal was heard on 23 February 1931. Sir Patrick Hastings led Finnemore on the appeal. The appeal failed. Rouse was hanged at Bedford gaol on 10 March 1931.

Julian Burnside

Solicitor-General Welcomed Back

ON 9 December 2002, Douglas Graham retired as Solicitor-General for the State of Victoria after ten years as Solicitor-General. He has now returned to full-time practice at the Bar but is (the little birds tell us) awaiting the availability of suitable chambers before making a full physical return.

The role of the Solicitor-General has in Victoria traditionally been filled by persons drawn from the full-time practising Bar. As Solicitor-General Doug Graham followed in the footsteps of some very eminent lawyers, Henry Winneke, Tony Murray, Daryl Dawson and Hartog Berkeley, to mention only those who have filled the office over the last 50 years. Not all, however, have been as meticulous about their appearance.

At a dinner held to mark Doug's retirement, Jack Rush, Chairman of the Bar Council, warned Doug that "we are a lot less formal at Owen Dixon these days" and and went on to say:

> I hope you won't find this adjustment uncomfortable. I know you've always been a rather formal chap. Even as a student, it's said that you wore suspenders to keep up your socks. Not many university students display such concern for appearances.

He went on to speak of Doug Graham's career at the Bar and the distinguished service he had given both as Honorary Secretary to the Bar Council and also as a member of the Bar Council. He also told this anecdote.

> Your first brief for the Crown came early in your career at the Bar. It was in a prosecution in the old Court of General Sessions. The prosecutor fell ill. He'd already delivered his final address, but someone was needed to appear for the Crown on the final day of the trial. With shining face and white wig, the young Douglas Graham sat at the Bar table, instructed by John Butler. Mr Butler is now Crown Counsel Advisings, and is here this afternoon.
>
> At the conclusion of the address on behalf of the accused, the Chairman of General Sessions asked: "Is there anything you wish to say Mr Prosecutor?" You replied: "No, Your Honour". Apart from announcing your appearance, those were the only words you spoke or needed to speak.
>
> From the very outset, succinctness, clarity and precision have been the hallmarks of your advices and arguments — qualities valued highly by your instructors and by judges, alike.

As Solicitor-General Doug Graham appeared in a wide diversity of actions ranging from native land rights (*The Wick People* v *Queensland*), cross-vesting (*Wakim*), corporations (*Edensor Nominees*), excise (*Capital Duplications and Ha & Lim*), industrial relations (*Victoria* v *The Commonwealth*), the liability of public servants for damage (*Mengel*), Human Rights (*Kable and Kolena*) and in a number of cases dealing with implied constitutional rights. He also appeared in *Cheatle* v *The Queen* where the issue as to the effect of majority in Commonwealth criminal cases was canvassed and in the more recent challenge to the Juries Act in *Brownlee* v *The Queen*.

We cannot promise Doug the same exotic fare at the Bar, but we welcome his return. At the farewell dinner Frank Beasley who served as Victorian Government Solicitor for most of Douglas's time as Solicitor-General said:

> It was a special privilege for those of us who worked with you to witness your special skill in preparing powerful, finely reasoned written submissions and in your presentation of them.

We look forward to witnessing more of the same.

Does Your Client Need a Diversion?

Susan Borg

MANY practitioners appearing in the Criminal Law jurisdiction are unfamiliar with the Court Diversion Program, leaving their clients with a criminal record that could have been avoided.

The Court Diversion Program seeks to divert largely first time offenders away from traditional sentencing towards a remedy that aims at preventing re-offending. The program was piloted in Victoria in 1997 and is now available at all Magistrates' Courts throughout Victoria.

CRITERIA

To be eligible to enter the program the offence must be triable summarily; the defendant must admit the facts relied upon by the prosecution; there must be sufficient evidence for a finding of guilt and diversion must be deemed to be appropriate in the circumstances.

A prior conviction does not automatically disqualify an offender from the program. If the prior is old or totally unrelated to the current offence, diversion may still be available.

Initially there was some resistance to the program with critics referring to it as a soft option for offenders. However, many have now realised that the program can be more onerous than traditional sentencing options, but with desirable results. For example, if a person is found guilty of the possession and use of a drug of dependence (cannabis), under traditional sentencing powers if the quantity is relatively small and not associated with a violent offence, a magistrate may release the offender on an adjourned bond with few conditions (see s.76 of the *Drugs, Poisons and Controlled Substances Act 1981*). There is no attempt to deal with the cause of the offending. The Diversion Program addresses such deficiencies.

PROBLEMS

The imprecise drafting of s.128A of the *Magistrates' Court Act 1989* (governing the diversion program) has led to different interpretations by magistrates, creating uncertainty amongst the profession as to which offences come within the program.

S.128A(1) states that "(t)his section does not apply to an offence punishable by a minimum or fixed sentence or penalty". Some magistrates have decided that Road Safety Act offences (e.g. careless driving) are offences with a minimum or fixed sentence by virtue of the loss of demerit points. This would exclude this type of offending from the program. Other magistrates have taken the view that the loss of demerit points is an administrative matter initiated by the Roads Corporation and is not a minimum or fixed sentence, making the offender eligible for diversion.

THE PROCESS

The first step is to contact the informant and convince him/her to recommend to the person authorising the brief that your client be considered suitable for the program. Once convinced the prosecution must file a diversion notice.

Upon receiving a notice the Court, in cases where a charge involves a victim, will seek the victim's view. If a victim is against the defendant entering the program then his/her view is taken into account but does not automatically lead to the ineligibility of an offender into the program. Practitioners should contact the court prior to the hearing date to ensure that the notice has been filed in time to enable the victim to be notified thereby avoiding unnecessary adjournments.

Prior to the court hearing, the defendant will be interviewed by the Diversion Co-ordinator to identify issues, decide whether diversion is appropriate and consider which conditions are to be set.

All documents in support of the application are to be handed to the Diversion Co-ordinator who delivers them to the presiding magistrate for consideration.

The matter is heard in open court where the offender's suitability is assessed and a plan is developed with conditions. These conditions may require the defendant to apologise to or compensate the victim, attend counselling and treatment, perform community work, attend a drink driving course, make a donation to charity or assist a local community project.

After the conditions are set the charges are adjourned to a date no later than 12 months to enable the offender to complete the conditions. A successful completion means the offender will not have to enter a plea, s/he will be discharged without a finding of guilt and as a result there will be no criminal record. Those who do not successfully complete the conditions are referred back to court where they will be dealt with under traditional sentencing principles.

The program's success is impressive. The Senior Diversion Co-ordinator, Joseph Shields told *Merit* that between November 2000 and December 2002, 6620 offenders were placed on diversion program plans with 95.9 per cent successfully completing the program.

Mr Shields is available to visit law firms (no matter how small) to give seminars on the program (ph: 9628 7862).

Any inquiries should be made to the Diversion Co-ordinator at the relevant court on the following numbers: Ballarat 5336 6295; Bendigo 5440 4121; Broadmeadows 9309 1555; Dandenong 9767 1310; Frankston 9784 5718; Geelong 5225 3386; Heidelberg 8458 2009; Melbourne 9628 7982; Moe 5127 4888; Ringwood 9871 4476; Shepparton 5821 4633 and Sunshine 9300 6231.

Susan Borg is a barrister and Sessional Member of the Victorian Civil and Administrative Tribunal.

Judge Walsh of the County Court with artist Anne Morrison take a closer look at her work called Storm*, an oil on canvas from the Grassland series.*

Anne Morrison Art Exhibition

ANNE Morrison was awarded the Scottish Arts Council one-year Australian residency bringing her to Tasmania in 1994. In 1995 she received the Commonwealth Art Scholarship with three years funding for studio-based research in a country of her choice. Anne's choice was Tasmania … again. The result of her encounter with the Australian/ Tasmanian landscape was exhibited at the Essoign Club in November last year. The exhibition she titled "Weave of Nature".

"… this feeling of being aware of the irregularity and changing nature of the ground underfoot, and the elemental forces that surround and envelop the body, triggered my interest in the body's relationship to the landscape", is how she described her works.

Anne is now living in Forth, Tasmania, and is currently involved in an exhibition called "Future Perfect", an Arts Festival Tasmania with Nobel laureate Gunter Grass as patron. In April she headed for Malaysia to undertake a one-year arts residency there.

We thank and wish her well in her career.

Gunilla Hedberg

Gunilla Hedberg; Glen Martin, Vice-President Queensland Bar; artist Anne Morrison; Professor George Hampel QC and Dan O'Connor, Queensland Bar.

David Faram, President of the Institute, presents the J.X. O'Driscoll Trophy to Tom Danos watched by Peter Mayberry of the Law Institute.

Bar Wins Tennis Trophy

IN glorious summer weather, bright sunshine with a relieving cool breeze, and in delightful surroundings on the Kooyong grass courts, the Bench and Bar tennis team was successful in winning the J.X. O'Driscoll Challenge Trophy in their annual match against the Law Institute on Wednesday 18 December, 2002.

This win breaks a long drought for the Bar, which had not previously had its name engraved on the trophy since 1986. The win was all the more meritorious given a substantial number of last-minute withdrawals of star players due to unexpected court commitments.

The Institute team was stronger in the A Section, but met substantial resistance on behalf of the Bar team in the persons of their illustrious captain, Tom Danos, and James Kewley, who won two of their three sets in this highly competitive section. Chris Beale and Ray Gibson put up a creditable performance also in the A Section, winning one of their sets and going close in the second, whilst Suresh Senathirajah and Nick Harrington put up a game performance.

Where the Bar shone was in the B Section, where we showed clearly greater depth than our opponents. Daryl Brown and Rob Williams led the charge, winning all four of their sets, while Ted Fennessy and Jack Strahan won three and Elspeth Strong and Chris Thomson won two, with spirited assistance from Geoff Herbert. The overall result was Bench & Bar twelve sets, to Law Institute nine sets.

The challenge trophy, originally struck

Marilyn Baldwin and Robyn Crozier representing the Institute with Ted Fennessey of the Bar.

Flatman-Smith Trophy awarded to Rob Williams and Daryl Brown by Beverley Smith and Margaret Flatman.

Elspeth Strong.

Chris Thomson (organiser).

in memory of Judge J.X. O'Driscoll, who before his appointment to the County Court had been a prominent member of the Bar, was reluctantly handed over to the Bar by David Faram, the Institute president at a ceremony in the Kooyong function room. Prizes were distributed to participants courtesy of our sponsor, Suncorp Metway, through the good offices of Mark Laurence of Associated Planners. We thank them for their generous sponsorship which helped make the day such a pleasant occasion. The trophy was proudly delivered to the Bar Council at its meeting on Thursday 19th December by Tom Danos and Chris Thomson.

In commemoration of Justice Geoff Flatman and Judge Tony Smith the Bar Council and the Law Institute jointly commissioned a new perpetual trophy to be awarded each year to the best contributing pair. Their Honours had been keen participants in the match for many years, Tony Smith for the Institute prior to his appointment when he joined the Bench and Bar team. Fittingly, this trophy was won in its inaugural year by the Bar Team of Daryl Williams and Rob Williams. On behalf of their respective late husbands, Beverley Smith and Margaret Flatman, with her son Sam, were on hand at the ceremony afterwards to present the trophy to the winning pair.

Chris Thomson

David Faram (Immediate Past President of the Law Institute).

Tom Danos.

Geoff Herbert.

James Kewley.

Wigs & Gowns Squadron

Howard Fox QC, winner of the Neil McPhee QC Trophy admiring the Thorsen Trophy won by Graeme Clarke.

THE Wigs & Gowns Squadron annual sailing day was again held on the waters of Hobsons Bay. This year saw 12 yachts of various shapes and sizes. Yachts ranged from *Addiction*, R. McGarvie's Ingliss 37, to *Pearl*, a 26ft couta boat, and even down to a Taipan 4.9 catamaran sailed by Graeme Clarke. The conditions for sailing were "fresh" with a 25 knot south-westerly making for exhilarating sailing or a challenging time, depending upon which boat you were sailing.

The Neil McPhee Trophy was this year taken out by Howard Fox QC in this J. Laurent Giles designed masthead sloop *Wanita* from Doug Lacey in *Taranaki* and Danny Connor in third place with his junk-rigged catboat *Max*.

The Thorsen Trophy, which has become a bit of a special achievement award, was this year convincingly won by Graeme Clarke who, together with his son Simon, managed to win the multi-hull division hands down.

An enjoyable barbecue was enjoyed by all at the Royal Yacht Club of Victoria after the morning's racing. Thanks go to Mark Laurence from the Business Insurance Group who represented Suncorp, the sponsors.

James Mighell
WAGS

Conference Update

9–15 April 2003: Melbourne Law School. Publicity and Trials: Australia and United States. Contact Catherine Bendeich. Tel: 8344 5304. Fax: 9347 9129.

13–17 April 2003: Melbourne. 13th Commonwealth Law Conference, contact: www.mcigroup.com/commonwealthlaw 2003.htm

24–27 April 2003: Cairns. Bar Association of Queensland Centenary Conference. Contact Helen Breene, Bar Association of Queensland. Tel: (07) 3236 2477. Fax. (07) 3217 9484. E-mail: helene@qldbar.asn.au.

12 May 2003: Melbourne. Tenth Annual Wills & Probate Conference organised by Ken Collins and Leo Cussen Institute. Contact Patricia Palman. Tel: (03) 9602 3111. Fax: (03) 9670 3242. E-mail: ppalman@leocussen.vic.edu.au.

23–27 June 2003: Melbourne Law School. Internationalisation of Domestic Law. Contact Catherine Bendeich. Tel: 8344 5304. Fax: 9347 9129.

29 June–5 July 2003: Bali. 9th Biennial Conference, Criminal Lawyers Association of Northern Territory. Tel: (08) 8981 1875. Fax: (08) 8941 1639.

18–19 August 2003: Brisbane. Graffiti and Disorder: Local Government, Law Enforcement and Community Responses. Contact Conference Co-Ordinators. Tel: (02) 6292 9000. Fax: (02) 6292 9002.

21–22 August 2003: Melbourne. Forensic Disabilities: Services in the Community. Contact the Conference Organiser. Tel: 9509 7121. Fax: 9509 7151.

14–19 September 2003: San Francisco. IBA Conference 2003. Contact IBA. Tel: +44 (0) 20 7629 1206. Fax: +44 (0) 20 7409 0456.

25–28 September 2003: Perth. 23rd Annual Congress — Trauma and Survival. Contact the Conference Organiser. Tel: 9509 7121. Fax: 9509 7151.

Coburn's Insolvent Trading: Global Investment Fraud and Corporate Investigations (2nd edn.)

By Niall Coburn
Law Book Company, 2003

NIALL Coburn is a senior lawyer with the corporate investigations division, enforcement directorate of ASIC. This is the second edition of his work, which deals with the civil and criminal aspects of insolvent trading and corporate fraud.

The book begins with an overview of the insolvent trading provisions of the Corporations Act, explaining such key concepts as the definitions of "debt", "insolvency" and "director" and the relationship between civil and criminal liability under the Act. Chapters 2 and 3 place the current provisions in their historical context, and analyse criticism rendered of those provisions and their predecessors. The overview chapters are assisted by a convenient appendix, which reproduces the relevant provisions of the Act. However, the appendix could have been improved by the addition of parts of the Criminal Code and the Crimes Act.

The heart of the book is a thorough and readable examination of the provisions relating to liability for insolvent trading, and the defences available to directors. Mr Coburn analyses the provisions of the Act and discusses the major cases that deal with its interpretation. He goes on to set out the procedures involved in litigating and prosecuting insolvent trading cases, dealing with the interaction between the civil and criminal provisions, and considering issues of evidence and discovery. The precedents set out in the appendices provide a useful illustration of the concepts discussed, and may be a practical tool for those involved in the civil litigation of insolvent trading claims. A separate chapter deals with the liability of holding companies.

Chapters 8 and 9 provide practical advice to directors and their advisers. They depart from the technical analysis of the preceding chapters, and, to some extent, summarise them. However, they make good use of citation, and should provide a reliable reference for their intended audience.

Chapter 10 deals with the regulatory function of ASIC, and provides a useful introduction to the wide-ranging discussion of corporate investigations in chapters I 1 and 12. Those chapters are new arrivals in this second edition, and explain how insolvent trading and corporate crime (particularly investment and audit fraud) are investigated. Chapter 12 provides an interesting discussion of global investment fraud.

The book ends with another new chapter: "Phoenix Companies — the Quiet Economic Vandal". In that chapter, Mr Coburn examines the phoenix company phenomena, and discusses some proposals to remedy its legal and economic consequences, and punish its perpetrators.

This is a timely and practical work, which makes good use of major recent developments in insolvency (such as the case of *ASIC* v. *Adler* [2002] NSWSC 483 and the collapse of the HIH group) to illustrate the operation of this area of law. It will be useful for legal advisers, litigators and regulators, and it provides useful plain English guidance to directors facing insolvency issues.

Stewart Maiden

The Immigration Kit; A Practical Guide to Australia's Immigration Law (6th edn.)

By Jennifer Burn and Anne Reich,
The Immigration Advice and Rights Centre (IARC)
The Federation Press 2001

THE Immigration Advice and Rights Centre in Sydney has again produced an excellent practical guide for practitioners to use in the increasingly complex area of immigration law. It is a valuable resource for beginners as well as specialists in the area.

The kit covers most areas of migration law with which practitioners will need to be familiar. The introduction sets out the structure of the Department of Immigration and Multicultural Affairs and the migration quotas planned for each financial year by the Minister. The kit comprehensively outlines the requirements for permanent, temporary and bridging visa applications. For each type of visa the relevant legislation, application forms and fees are provided. The kit also deals with the Department's power to cancel visas and explains the mechanisms for seeking review of an unfavourable decision made by the Department of Immigration. There is also a chapter that provides useful sources of information and assistance and contacts for referrals for each State. The strength of the kit is that it simplifies the material. It does not presume that the reader has prior knowledge or experience in the area. It can be used by non-lawyers as well as lawyers.

As the authors note in the preface migration law continues to change at a dramatic pace and is subject to frequent change. Perhaps the most significant change has been the restriction of access to judicial review by refugees and asylum seekers. The authors, however, provide tips on ways to check for any changes to the law since the book was published. Readers should take the authors' advice and check for any changes in the law as the kit is now not up-to-date in areas such as judicial review. The kit, however, is still a valuable resource in this complex area of the law.

V.E. Lambropoulos

Program for Prato in October.

Avoiding Disaster in the Forensic Process: Ten Expert Speakers at 2nd Prato, Tuscany Conference, 7–11 October 2003

THE International Institute of Forensic Studies was established to promote research and education of the professions in the forensic field. It offers a number of Graduate Courses, workshops and conferences. Following our successful inaugural conference at the Monash Campus in Prato (Tuscany) last year, the Institute is holding another conference in October.

This theme of 'Avoiding Disaster' is designed to examine where difficulties can arise during the forensic process, from investigation to the court hearing, following major calamities and how such problems can be avoided.

There will be ten expert international speakers, some from USA and Great Britain, as well as the Victorian Coroner and a number of other engineers and lawyers. The conference will include a workshop at which examination and cross-examination of experts will be demonstrated and discussed.

The conference should be of interest to lawyers practising in the fields of injury, WorkCover, criminal law and other jurisdictions where expert evidence is important.

Attractive airfare and accommodation arrangements will be available.

We look forward to seeing Australian lawyers participate in this conference.

President, The International Institute of Forensic Studies Professor The Hon. George Hampel QC

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