

Ross N.
VICTORIAN BAR COUNCIL
OWEN DIXON CHAMBERS
205 WILLIAM STREET,
MELBOURNE 3000

VICTORIAN BAR COUNCIL

ANNUAL REPORT

1963 - 1964

VICTORIAN BAR COUNCILANNUAL REPORT1963 - 1964

To be presented to the Annual General Meeting of the Victorian Bar to be held on Thursday 20th February 1964.

MEMBERSHIP OF THE COUNCILElection

In February 1963 the following persons were elected to the Council :-

Counsel of
not less than
7 years standing

Sir James Tait, Q.C., Messrs. J.A. Nimmo, Q.C.,
M.V. McInerney, Q.C., G.H. Lush, Q.C.,
B.L. Murray, Q.C., K.V. Anderson, Q.C.,
X. Connor, Q.C., P.A. Coldham, D.F.C., Q.C.,
R.E. McGarvie, Q.C., L.S. Lazarus, and
N.M. Stephen.

In May 1963 Mr. J.A. Nimmo, Q.C., resigned from the Council upon his appointment as an Acting Justice of the Supreme Court. Mr. L. Voumard, Q.C., was elected to fill the casual vacancy.

Counsel of
not more than
10 years standing -

Messrs. N.M. O'Bryan, P.U. Rendit, J.E.R. Bland,
D.G. Williamson.

In October 1963 Mr. N.M. O'Bryan resigned from the Council. The casual vacancy was not filled.

The Attorney-General for the Commonwealth of Australia, Sir Garfield Barwick, Q.C., M.H.R., as a member of the Victorian Bar, continued to be an ex officio member of the Council.

Officers

The following appointments were made by the Council:-

Chairman : Mr. M.V. McInerney, Q.C.

Vice Chairman : Mr. G.H. Lush, Q.C.

Honorary Treasurer : Sir James Tait, Q.C.

Honorary Secretary : Mr. D.G. Williamson.

Registrar : Mr. D.E. Edwards.

Standing
Committees

The following Standing Committees were appointed :-

Ethics

Messrs. K.V. Anderson, Q.C., (Chairman)
J.A. Nimmo, Q.C., P.A. Coldham, Q.C.,
N.M. Stephen, L.S. Lazarus, P.U. Rendit,
(and later, Mr. L.C. Voumard, Q.C., vice
Mr. J.A. Nimmo, Q.C.)

Law Reform

Messrs. X. Connor, Q.C., (Chairman)
R.E. McGarvie, Q.C., N.M. O'Bryan and
P.U. Rendit.

<u>Social and Common Room</u>	Messrs. B.L. Murray, Q.C., (Chairman) K.V. Anderson, Q.C., R.G. DeB. Griffith, J.E.R. Bland, and D.G. Williamson.
<u>Accommodation</u>	Messrs. B.L. Murray, Q.C., (Chairman) Sir James Tait, Q.C., K.V. Anderson, Q.C., L.S. Lazarus, N.M. O'Bryan, J.E.R. Bland, (and later Mr. L.C. Voumard, Q.C. was added).
<u>Practice Sub-Committees</u>	The Practice Sub-Committee system introduced 2 years ago, was continued. In all 36 members of the Bar assisted the Council by making their services available for the following sub-committees:- Civil Juries, Crime, Causes, Miscellaneous Causes, Matrimonial Causes, Licensing, Workers Compensation, County Court and Petty Sessions. Mr. P.A. Coldham Q.C. was appointed co-ordinator of the sub-committees.
<u>Library Committee</u>	The Council appreciated the efforts of Messrs. R.G. DeB. Griffith, W.B. Treyvaud and J.D. Phillips who administered the Common Room Library. Mr. L.S. Lazarus was the Council representative upon the Committee. The Committee was assisted by a roster of members of the Bar who had recently signed the Roll of Counsel.

AD HOC COMMITTEES

A number of committees for particular purposes was
appointed. They included the following :-

<u>Uniform Companies Act</u>	Sir James Tait, Q.C., Messrs. Young Q.C., and W.E. Paterson.
<u>Federal Courts</u>	Messrs. Lush, Q.C., Aickin, Q.C., Connor Q.C., and N.M. Stephen.
<u>Restrictive Trade Practices Legislation</u>	Messrs. Lush, Q.C., Aickin, Q.C., Connor, Q.C., and N.M. Stephen.
<u>Liability without Fault</u>	Messrs. Voumard, Q.C., Murray, Q.C., Belson, Q.C., and E.A. Laurie.
<u>Appeals from Administrative Tribunals.</u>	Messrs. Coppel, Q.C., Anderson, Q.C., K.H. Gifford, E.A. Lloyd and B.M. Snedden, and later, N.M. Stephen, vice B.M. Snedden.
<u>Attorney-General's Committee on Facilities in the County Court Building</u>	Mr. E.A. Laurie.
<u>New Courts - Plans and Facilities</u>	Messrs. Lush Q.C., Coldham, Q.C., E.A. Laurie and L.S. Lazarus.

<u>Clerking System</u>	Messrs. Lush, Q.C., Murray, Q.C., McGarvie Q.C., N.M. Stephen, N.M. O'Bryan and J.E.R. Bland.
<u>Payment of Fees by Solicitors</u>	Messrs. Murray, Q.C., Coldham, Q.C., and N.M. O'Bryan.
<u>Supreme Court Costs</u>	Messrs. Lush, Q.C., Coldham, Q.C., McGarvie, Q.C., and N.M. Stephen.
<u>County Court Fees</u>	Messrs. Voumard, Q.C., N.M. O'Bryan and D. G. Williamson.
<u>Appeal Costs Bill</u>	Messrs. McGarvie, Q.C., and L.S. Lazarus.
<u>Transcripts of Charges and Judgements</u>	Messrs. Voumard Q.C., Kaye, Q.C., Coldham, Q.C. and W. Lennon.
<u>Tertiary Education</u>	Messrs. McInerney, Q.C., Menhennitt, Q.C., McGarvie, Q.C., H. Storey and D. Dawson.
<u>Lecture Programme</u>	Messrs. L. S. Lazarus and N.M. Stephen.
<u>Building Committee</u>	The directors of Barristers' Chambers Ltd., and Mr. N.S. Stabey, Q.C.
<u>Representatives</u>	The following representative appointments of Council members and other members of the Bar were also made -
<u>Directors of Barristers' Chambers Limited</u>	Sir James Tait, Q.C., (Chairman) Messrs. M.V. McInerney, Q.C., J.X. O'Driscoll. O.B.E., Q.C., and G.H. Lush, Q.C., (and later Mr. B.L. Murray, Q.C. vice Mr. J.X. O'Driscoll, Q.C.)
<u>Nominees on Board of Counsel's Chambers Limited</u>	Messrs. B.L. Murray, Q.C., (Chairman) J.A. Nimmo, Q.C., and N.M. O'Bryan, (and later Mr. L.C. Voumard, Q.C., vice Mr. J.A. Nimmo Q.C.).
<u>Barristers Superannuation Fund-Trustees</u>	Messrs. M.V. McInerney, Q.C., (Chairman) Sir James Tait, Q.C., C.I. Menhennitt, Q.C. and G.H. Lush, Q.C., <u>Hon. Secretary</u> Mr. S.G. Hogg.
<u>Superannuation Fund for Supreme Court Librarian</u>	Bar Nominee upon Board of Trustees - Mr. S.G.Hogg.
<u>Law Council of Australia Executive</u>	Mr. M.V. McInerney, Q.C., (assisted by a committee comprising Sir James Tait, Q.C., Messrs. N.M. Stephen and I.J. Greenwood).
<u>Australian Bar Association Executive</u>	Messrs. M.V. McInerney, Q.C., (Vice-President) and G.H. Lush, Q.C.

<u>Standing Committee with Law Institute</u>	Sir James Tait, Q.C., and Mr. G.H. Lush Q.C.
<u>Legal Aid Act Committee</u>	Messrs. P. Murphy, Q.C., and L.S. Lazarus.
<u>Faculty of Law Melbourne University</u>	Messrs. M.V. McInerney, Q.C., G.H. Lush Q.C., and N.M. Stephen.
<u>Board of Examiners and Supreme Court Library Committee</u>	Messrs. N.M. Stephen, J.X. O'Driscoll, O.B.E., Q.C., and W.C. Crockett, Q.C., (Upon the appointment of Mr. J.X. O'Driscoll. O.B.E., Q.C., to the County Court, Mr. A.E. Woodward was appointed in his place).
<u>Council of Legal Education</u>	Messrs. M.V. McInerney, Q.C., G.H. Lush, Q.C., and R.E. McGarvie, Q.C.
<u>Legal Education Committee of Council of Legal Education</u>	Mr. G.H. Lush, Q.C., (Alternate Mr. R.E. McGarvie, Q.C.).
<u>Council of Law Reporting</u>	Sir James Tait, Q.C. and Mr. S.T. Frost, Q.C.
<u>Attorney-General's Procedure Committee</u>	Mr. M.V. McInerney, Q.C., (assisted by a committee comprising Messrs. G.H. Lush, Q.C., X. Connor, Q.C., and P.A. Coldham, Q.C.)
<u>Attorney-General's Committee on Sale of Land</u>	Mr. R.K. Fullagar.
<u>Chief Justice's Law Reform Committee</u>	Messrs. X. Connor, Q.C., R.E. McGarvie, Q.C., and P.U. Rendit.
<u>Chief Justice's Rules Committee</u>	Mr. P.A. Coldham, Q.C.,
<u>Bar History Committee</u>	(Bar Council liaison) - Mr. J.E.R. Bland.

Council Meetings There were 22 meetings of the Council during the period to December 1963, comprising 18 evening and 4 lunchtime meetings. In addition there were numerous committee meetings and attendances by representatives at meetings of the various outside bodies.

Special General
Meetings of the
Bar Special General Meetings of the Bar were called on 1st August 1963 (to discuss the retirement of L.E. Harvey as a Barristers' Clerk and the adding of numbers to the group which formerly employed Harvey as a clerk) and on the 25th October 1963 (to discuss plans for the extension of Owen Dixon Chambers).

FINANCE

The Council fixed the following subscriptions for membership of the Victorian Bar for 1963.

Queen's Counsel	£ 15-15-0
Juniors of more than 3 years standing.	£ 12-12-0
Juniors of not more than 3 years standing.	£ 2- 2-0
Non-Practising List.	£ 3- 3-0

The Honorary Treasurer's Report and annual Financial Statement will be presented separately to the Annual General Meeting.

PERSONALIA

Appointment of Commonwealth Attorney- General

The Bar Council desires to record its pleasure at the announcement in December 1963 of the proposed appointment of Mr. B.M. Snedden, M.H.R., as the Attorney-General for the Commonwealth of Australia. As a member of the Bar, he will become an ex-officio member of the Bar Council, in place of Sir Garfield Barwick, Q.C., M.H.R.

Judicial Appointments

In February 1963, Mr. C.A. Sweeney, Q.C., was appointed to the Commonwealth Conciliation and Arbitration Commission and Mr. D. Corson was appointed to the County Court.

In May 1963 Mr. J.A. Nimmo, Q.C., was appointed an Acting-Justice of the Supreme Court. In January 1964 Mr. Justice Nimmo was appointed to the Commonwealth Conciliation and Arbitration Commission.

In August 1963 Mr. J.X. O'Driscoll O.B.E., Q.C. was appointed to the County Court.

In January 1964 Mr. J.E. Starke, Q.C., was appointed to the Supreme Court, and Mr. J.H. Forrest was appointed to the County Court.

Deaths

The Council records with deep regret the following deaths during 1963 :-

Judge Buller-Murphy

In March 1963 His Honour Judge Buller- Murphy died. Many members of the Bar attended a ceremony at which Judges of the County Court and members of the profession paid tribute.

Mr. Phillip A. Jacobs

Mr. Jacobs had not practised for a number of years, but was at the time of his death the most "senior junior" on the Roll of Counsel. Mr. Jacobs was the father of Master C.P. Jacobs.

Dr. A.D. Ellis

Dr. A.D. Ellis died in New South Wales. He was formerly a Judge of the County Court.

Reverend
D. Claude
Robertson

After practising at the Bar for a number of years, Mr. Robertson joined the Presbyterian Ministry and at the date of his death was serving at Lake Bolac.

Mr. F.R. Moore

Mr. Frank R. Moore had been a Prosecutor for the Queen for some years prior to his death.

Mr. J.D.
O'Sullivan

After practising in South Australia for some years, Mr. David O'Sullivan came to the Victorian Bar. He died as a result of a road accident when returning from circuit in February 1963.

Retirements

Judge Cussen

At the commencement of 1964 His Honour Judge Cussen retired from the office of Chairman of General Sessions.

Sir Kenneth
Bailey, C.B.E.

Near the end of 1963 Sir Kenneth Bailey, C.B.E. retired from the office of Secretary of the Commonwealth Attorney-General's Department, but has retained his appointment as Solicitor-General.

Master
E.H. Coghill

Also near the end of 1963 Master Coghill announced his retirement. Master E.N. Bergere has been appointed to the vacancy.

Mr. A.B.
Nicholls

Mr. Arthur Nicholls retired as a Barristers' Clerk at the end of 1963. At first he had been an assistant to the late Mr. Druce, and then he became a clerk in 1940. In all, more than 50 years of service were given to the Bar. Members of the Bar for whom he acted as clerk, and many for whom he did not act, were greatly assisted by his advice.

Honours

The following Honours were conferred by Her Majesty the Queen upon members of the Victorian Bar during 1963 and in January 1964.

The Right Honourable Sir Robert Menzies, C.H., Q.C., M.H.R., Knight of the Order of the Thistle.

The Right Honourable Sir Owen Dixon, G.C.M.G., - Order of Merit.

The Honourable Sir John Spicer; Sir James Tait, Q.C.; and The Honourable Sir Alan Mann - Knights Bachelor.

Mr. P.D. Phillips, M.M., Q.C., - Companion of St. Michael and St. George.

Mr. P.B. Toose, Q.C., (N.S.W.) - Commander of the British Empire.

The Council extended congratulations to all the above members. Particular pleasure was felt at the recognition granted to the work done on behalf of the legal profession over many years by Sir James Tait, Q.C. It was most fitting that his work for the Law Council of Australia, for the Victorian Bar Council, and as a director of Selborne Chambers Limited and of Barristers Chambers Limited was recognized in this manner. It is believed that this was the first knighthood granted to a practising barrister in Victoria for services to the legal profession.

Queen's Counsel

Letters Patent were granted to the following counsel during 1963 :-

Messrs. P.B. Toose Q.C., (N.S.W.) H.R. Newton Q.C., T.E.F. Hughes Q.C., (N.S.W.); A.P. Aird, Q.C. H.G. Ogden Q.C., N.S. Stabey Q.C.; P.A. Coldham D.F.C., Q.C.; E.E. Hewitt Q.C.; and R.E. McGarvie Q.C.

The Roll of Counsel

Between 1st February and 31st December 1963 the following persons signed the Roll of Counsel :-

Messrs. J.V.C. Guest, W.B. Treyvaud, A.B. Nicholson, R.P. Dalton, T.L. Mees, M.C. Kimm, L.C. Ross, C.E. Macleod, A.R.O. Rowlands, C.L. Lipshut, J.L.P. Darvall, A.W. Tuckett, P.J.P. White, E.A. Keuneman, M.S. Sharwood, P.C. Martin, R.S. Watson, (N.S.W.) J.F. Lyons, J.C. Streeter, Miss A. Curtis, Messrs. A.L. Muller, J.G. Meagher, R.G.L. Baillie, N.H.M. Forsyth, M.J.L. Dowling, I.M. Hayden, N.B.C. Coles, A.P. Duckett, and J.L. Dwyer.

Transfers

The following persons requested that their names be transferred from the Practising List to the Non-Practising List.

Master E.N. Bergere, Mr. J.D. Davies, Mr. H.J. Solomon, (Tas.) and Professor J. Stone (N.S.W.)

Mr. A.P. Webb requested that his name be transferred from the Non-Practising to the Practising List. Subsequently he requested that his name be removed from the Roll of Counsel.

Removals

The following persons, whose names were upon the Practising List, requested that their names be removed from the Roll of Counsel.

Messrs. K.E. Shelley, Q.C., (England) M.D. Croke, and A.P. Webb.

Numbers on the
Roll

(As at 31st December 1963)

Number Signed the Roll in 1963 :-

29 (compared with 32 in 1962).

Judges List Total :-

54 (compared with 51 in 1962).

Practising List Total :-

297 (compared with 279 in 1962).

Non Practising List Total :-

38 (compared with 39 in 1962).

Total on the Roll (all Lists)

389 (compared with 369 in 1962).

Numbers of members in actual practice as counsel :-

(Excluding Prosecutors for the Queen) approximately 260 (compared with approximately 230 at the end of 1962 and 220 at the end of 1961).

Reprint of Roll
of Counsel

A new Roll of Counsel was prepared and distributed to the Bar in August 1963. In the new issue some errors have been accidentally perpetuated, and an appropriate amendment list will be issued soon.

Eligibility for
Signature of
Roll of Counsel

For some time there have been problems relating to the eligibility of applicants to sign the Roll. The circumstances of individual applicants may vary greatly. For example, an applicant may desire to delay the commencement of practice until after signature of the Roll. There may also be the applicant who is prepared to give an undertaking not to practise as a solicitor, who is willing to undertake to read in the event of commencing practice as counsel, but in fact has no intention of ever practising as counsel but desires to be able to describe himself as a member of the Bar. The Council has now formulated the following principles relating to future applications :-

No person should be permitted to sign the Roll of Counsel unless :-

- (a) he intends to practise forthwith in Victoria exclusively as counsel, or
- (b) he intends to practise in a jurisdiction other than Victoria and intends to practise in Victoria exclusively as counsel, or

- (c) he holds the office of a Master or Taxing Master of the Supreme Court, or
- (d) he holds the office of a State Parliamentary Draftsman or of an assistant Parliamentary Draftsman, or
- (e) the Council considers there are special circumstances why he should be permitted to sign the Roll of Counsel .

Gift to Bar

Once again the Bar is greatly indebted to one of its members, the Right Honourable Sir Robert Menzies, K.T., C.H., Q.C., M.H.R., for a generous gift. On this occasion the gift is a set of United States Supreme Court Reports, which have been placed in the Bar Library.

Portrait of Chief Justice

The Victorian Bar and the Law Institute of Victoria have jointly presented to the Supreme Court Library a portrait of the Chief Justice of the Supreme Court, The Honourable Sir Edmund Herring, K.C.M.G., K.B.E., D.S.O., M.C., E.D., K.St.J.

SOCIAL ACTIVITIES

Bar Dinners

The unusual step was taken of having two Bar Dinners, due to the desire to do full honour to all members of the Bar who had been appointed to judicial office or who had otherwise been honoured by Her Majesty the Queen.

The first Dinner was held in May, and the guests of honour were The Honourable Sir Charles Lowe, K.C.M.G., and Their Honours Judge Frederico, Judge Vickery, and Judge Adams.

The second Dinner was held in October, and the guests of honour were the Rt. Honourable Sir Robert Menzies K.T., C.H., Q.C., M.H.R., The Rt. Honourable Sir Owen Dixon, O.M., G.C.M.G., The Honourable Sir John Spicer, Sir James Tait, Q.C., The Honourable Mr. Justice Sweeney, and Their Honours Judge Corson and Judge O'Driscoll, O.B.E.

Common Room Functions

The Common Room in Owen Dixon Chambers has again been a convenient focal point for entertainment by the Bar.

Shortly after commencing duty as Governor of Victoria His Excellency Major General Sir Rohan Delacombe K.C.M.G., K.B.E., dined with members of the Bar.

Members of the Bar Council and of the Committee of the Victorian Branch of the International Commission of Jurists entertained at luncheons in the Common Room Chief H.O. Davies Q.C., (of Nigeria), and Mr. Purshottam Trikamdis, (some time private secretary to the late Mahatma Gandhi), each of whom toured Australia under the auspices of the International Commission of Jurists.

Several informal dining in nights for members of the Bar and their wives were held during the year. On one occasion The President of the Law Council of Australia (Mr. J.B. Piggot, C.B.E.) and his wife were present as guests.

In April members of the Bar Council dined with a number of persons who had recently signed the Roll of Counsel. Such dinners are now held from time to time to enable Council members to meet all new members of the Bar.

On another occasion members of the Executive of the Law Council of Australia, then meeting in Melbourne, dined with members of the Bar Council.

The Christmas Cocktail Party of the Bar was attended by 300 persons, and invitations as guests of the Bar were extended to all Barristers' Clerks and their respective staffs, and to all secretarial staff employed by counsel in chambers.

Once again the Council is most grateful to Mr. and Mrs. Unger and their staff for their willingness and ability to cater so successfully for any functions that are held in the Common Room, in addition to providing daily lunches.

Representatives of the Bar Council attended the Annual Dinner of the Law Institute of Victoria, and various regional dinners at Geelong, Ballarat, Bendigo, and Shepparton. The Council was also represented at the Annual Dinner of the Council of the Honorary Justices Association of Victoria.

AUSTRALIAN BAR ASSOCIATION

The first year of work by the Australian Bar Association has been a useful one. The Association can work in complete harmony with the Law Council of Australia.

There has been a considerable exchange of information between the Bars of New South Wales, Queensland, and Victoria, particularly in matters of Ethics, Practice, and fees. The Victorian Bar Council has been appointed as the Ethics Committee of the Australian Bar Association.

The Association now has a publication - The Australian Bar Gazette - which the New South Wales Bar Association has generously made available, as a conversion of its own former Bar Gazette. It is proposed that there will be four issues in 1964. Any members of the Bar who desire to have material published should contact Mr. J.D. Merralls of Counsel, who is the Victorian correspondent.

LAW COUNCIL OF AUSTRALIA

The Council congratulates Mr. I.J. Greenwood of Counsel upon his appointment as Honorary Secretary of the Law Council of Australia. The office of the secretariat has now come back to Melbourne, and is located on the ground floor of Owen Dixon Chambers.

The Law Council of Australia has continued to deal with a very wide variety of matters of importance to all legal practitioners in Australia. To an increasing extent the Commonwealth Government has looked to the Law Council of Australia for advice. This has applied to Commonwealth Legislation or proposals as such (one important example of which is a new system of Federal Courts) and to Uniform Legislation adopted by each State arising from conferences of the Commonwealth and States Attorneys-General.

The Law Council is closely associated with several international bodies, and it is now considering the formation of a Regional Association encompassing the South East Asian area. It has also been most concerned with developments in Papua and New Guinea. With the acceleration of a movement towards the independence of the trust territories, it is a basic requirement that in those areas there should be an appreciation of the Rule of Law, and the means of sustaining it. There is an urgent need for a scheme of legal education, and the development of an independent legal profession, within the framework of secondary and tertiary education generally. The Law Council has submitted a detailed report on those matters, with specific recommendations, to the Commonwealth Government.

INTERNATIONAL COMMISSION OF JURISTS

The Bar Council has co-operated with the Victorian Branch of the International Commission of Jurists, since its formation in 1962. It has assisted in the reception of overseas visitors, and has made facilities available in Owen Dixon Chambers. The branch has made extensive submissions to the Joint Statute Law Revision Committee of proposals relating to the appointment of an "ombudsman", to enable better redress from administrative actions.

ETHICS

Complaints

Five complaints by lay clients or solicitors were made concerning counsel. The complaints were carefully investigated and in each case the Council found that there were no breaches of Counsel Rules.

Rulings

Many requests for rulings were made during the year. Members of the Bar - and particularly the younger members - are reminded that all members of the Council are available to advise on matters of conduct. If a simple answer is not readily available, then a ruling may be obtained at the next Council Meeting. Work is still proceeding upon the preparation of a consolidation of Ethics Rulings for general publication.

The Following Rulings were made during the year.

Removal of Books
from Bar Library

It is a breach of etiquette (and consequently a breach of Rule 32 of Counsel Rules) to remove, or cause to be removed, Library books from the Library in Owen Dixon Chambers, or to retain any books which have been removed. The Council will not hesitate to take action against any member found contravening this ruling. A note on the use of the Library is contained elsewhere in this report.

Separate Briefs in
Debt Collection
Matters

As a general rule in separate actions counsel should have separate briefs with separately marked fees. Difficulties can arise where counsel is retained by a solicitor whose client may be, for example, a debt collecting agency, and as a result Counsel is to appear for a large number of different complainants claiming small amounts in undefended debt recovery matters. Various views can be expressed as to what ought to be done in these circumstances, but for the guidance of counsel the following ruling has been made :-

"The Rule that forbids the acceptance of a composite brief at a composite fee shall not apply (except in the case of special summonses) in the case of a brief delivered by a Solicitor to appear on debt collection matters on any one day in a Court of Petty Sessions".

Rights and Duties
of Masters and
Pupils

A statement has been prepared as a guide to the aims of pupillage and to the rights and duties of both Masters and Pupils. This statement has been distributed to each applicant to sign the Roll of Counsel, and to each Master taking his first pupil. If any member of the Bar desires to have a copy of the Statement it may be obtained from the Registrar.

Mock Tribunal

A request by a professional Accounting Society for permission for members of the Bar to appear in a simulated Taxation Board of Review hearing was refused.

Queens Counsel
Overseas Junior

In an action before the Supreme Court of Victoria, it was necessary to take evidence on commission before examiners in Canada and the United States of America. Senior Counsel from Victoria was retained to appear overseas. Counsel sought a ruling as to the need to appear with a junior.

Previous rulings have established that there are some tribunals before which Queen's Counsel has a discretion concerning appearance with a junior. In the present matter, it was resolved that it would be necessary for a junior counsel to appear with the leader, that he need not be the junior counsel retained in the principal Victorian action, but that he might be a person qualified to practise in the relevant foreign country.

Mode of Addressing
Retired Members
of the Judiciary

The question has been raised as to the manner or title of address of persons who upon reaching the statutory retiring age have retired from judicial office. The Council considers that

although the person concerned no longer holds office, it is not improper to address a retired Judge by the courtesy title of "Judge" or "Your Honour" should the individual addressing the retired Judge be otherwise disposed to do so. The Council does not consider that the use of such courtesy title is obligatory, but points out that a retired Judge is a person of some distinction who has served the community in an important capacity, and it is in keeping with the office vacated and of the profession to which the retired Judge still belongs, that his distinction be marked by such courtesy title. Should a retired Judge be appointed to some official position, for example Royal Commissioner, Inspector, etc., his mode of address will be governed, while he is performing his official duties, by the nature of the appointment which he holds for the time being, for example, "Mr. Commissioner", "Mr. Inspector" etc.

Counsel Acting
for a Company or
Society of which he
is a Director or
Officer

Save in exceptional circumstances, a barrister should not accept a brief for a company of which he is a director nor advise or settle documents professionally for it. A barrister who is a member of the executive committee of a society should not accept briefs on behalf of the society or against it.

Precedence of
Juniors Appearing
together

Where two juniors are appearing together for a client, precedence between them is determined by their respective dates of admission to practise, and not by their respective dates of signature of the Roll of Counsel.

LECTURE PROGRAMME

Arrangements have been made for another series of Ethics Lectures in 1964. It is proposed that two lectures will be given in February on basic matters of particular interest to those who have signed the Roll since the last series of lectures. It is also proposed that the above lectures be followed by two further lectures on selected ethics matters of interest to the Bar generally. Also under consideration is a programme of lectures on selected topics of law and practice.

LAW REFORM

During the year the Council considered all amendments to the Supreme Court Rules, proposals for changes in the jurisdiction of the County Court and Courts of Petty Sessions, proposals for the extension of road traffic offences for which the offender may opt to pay penalty without court appearance, execution of ejectment warrants, execution of distress warrants and show cause summonses, the establishment of a Suitors' Fund (costs of Appeals), extensive amendments of the Police Offences Act (concerning which the Council received considerable assistance from Mr. E.D. Lloyd of Counsel), suggestions of abolishing fault liability in personal injury matters, (a standing study Committee has been appointed), Uniform Evidence Act, Evidence Act Section 28, Amendments to the Estate Agents Act, Disposal of Uncollected Goods Act (Tow Trucks), transfer of securities, Bankruptcy law revision, restrictive trade practices legislation (particularly as to legal proceedings and procedure).

PRACTICE MATTERS

Delays in the Practice Court

Following complaints by Counsel about delays in the Practice Court a sub-committee consisting of Messrs. Connor, Q.C., Greenwood, Davies and Brooking was appointed to report upon the matter. The sub-committee received from many Counsel valuable accounts of delays they had experienced. Subsequently the Chairman attended upon His Honour the Chief Justice with the report and recommendations. The primary recommendation was for the appointment of an additional Judge so that three Judges could be allotted to do the work being done in the Practice Court and the Miscellaneous Causes List. In the alternative a number of changes in Practice Court procedure was suggested. His Honour the Chief Justice acceded to the request of the Council that this matter be discussed between representatives of the Judges and the Bar. Messrs. Connor, Q.C., and Coldham, Q.C. attended upon Their Honours Mr. Justice Smith, Mr. Justice Adam, Mr. Justice Gowans and Mr. Justice Gillard to consider the Bar's recommendations. In October a Practice Note was issued which embodied virtually all the Bar's proposals. This note is reproduced on the second page of Advance Part 1 of 1964 V.R. The present Council has recommended that the incoming Council should review this matter generally in April and in particular to see what the effect has been on the Miscellaneous Causes List. The Council records its appreciation of the courteous and co-operative attitude of His Honour the Chief Justice and other Supreme Court Justices towards the Bar's approach in this matter.

Courts Jurisdiction

The last Annual Report outlined the views of the Council upon proposals made by the Victorian Government during 1962, for alterations to the jurisdiction of the County Court and Courts of Petty Sessions. It was indicated that the Council supported some proposals and opposed others. During 1963 the Attorney-General's Joint Committee on Court Procedure (upon which the Bar Council has one representative) wrote a report recommending substantial extensions in the jurisdictions of the County Court and Courts of Petty Sessions. The Bar representative on the authority of the Bar Council, wrote a minority report that supported some of the proposals but dissented from others. In particular the Council opposed proposals that -

- (a) the limit of the special jurisdiction of Courts of Petty Sessions be raised from £250 to £500.
- (b) the limit of the jurisdiction of the County Court be raised from £2,500 to £5,000 in motor vehicle accident cases, and from £1,000 to £3,000 in other cases.
- (c) there should be certificates of readiness before Cases are fixed for hearing in the County Court.

In addition to the above report, the Council has had correspondence and discussions with the Attorney-General, in order to ensure that its views and the reasons for them are understood. In correspondence with the Council the Government indicated that it proposed to give effect to most of the proposals contained in the majority report. In November 1963 the Justices Act was amended in a number of respects, and in particular so as to increase the special jurisdiction of Courts of Petty Sessions to £500 in motor accident cases and £300 in other matters.

Certificates of
Readiness in Jury
Trials

The Council considered that it was not appropriate to require certificates of readiness to be given before civil jury trials could be set down for hearing in the Supreme Court. Nevertheless, the Supreme Court Rules have since been amended to incorporate this requirement.

Judges'
Salaries

The Council made representations to the Attorney-General for increases in judicial salaries.

Appointment of
and Pensions for
Chairmen of
General Sessions

The Council advised the Attorney-General that in its view it is undesirable that an acting judicial officer should be permitted to continue in office longer than a permanent occupant. (Provisions relating to the compulsory retirement of County Court Judges at the age of 72 do not apply to Chairmen of General Sessions). It also expressed the view that it was objectionable in principle that judicial officers should be appointed upon a year to year basis. Attention was also drawn to the desirability of providing pensions or other like benefits for retiring Chairmen of General Sessions.

New County Court
Building

The Council has been aware of the shortcomings of space, ventilation, acoustics, and facilities in the London Assurance building courts, and has been anxious to avoid any repetition of defects in the proposed new County Court building, to be erected on the vacant site at the south west corner of William and Lonsdale Street.

Representations have been made for provision of space for an adequate library in the building, and for conference and waiting rooms on each floor. The Attorney-General has appointed a committee to assist in the planning of the building, and the Council is represented upon it.

Legal Aid

A secretary has been appointed to administer the Legal Aid Act, subject to the direction of the Committee, and the Act has now been proclaimed. An office is to be established on the ground floor of Owen Dixon Chambers. A circular setting out details of the operation of the scheme will be distributed to the Bar soon.

Psychiatric examination of accused persons The last report referred to representations by the Council relating to psychiatric examination of accused persons by the Crown, and the subsequent use of information obtained in such examinations (see Reg. v McNamara 1963 V.R. page 402). As a result of such representations the procedure adopted by the Crown has now been modified, and the effect of the new procedure is under review.

Delays in Availability of Transcripts of Charges and Judgements Representations have been made to the Chief Justice concerning delays in the availability of transcripts of Judges' charges to juries and of reasons for judgment until after Notice of Appeal has been given.

CLERKING SYSTEM

At the last Annual General Meeting of the Bar the Council was directed to "continue the efforts to remedy the present inequalities in the numbers employing the clerks in Owen Dixon Chambers". During the year a considerable portion of the Council's work related to the clerking system, and a separate report will be circulated to counsel for consideration at the forthcoming Annual General Meeting of the Bar.

In July 1963 deficiencies were discovered in the trust account of one of the clerks, Mr. L.E. Harvey, and his financial affairs were examined. Shortly afterwards Harvey's resignation as clerk was accepted.

The Barristers who had guaranteed Harvey's overdraft thereupon became liable for the final balance of the overdraft, an amount calculated at £4,720. In addition to this the members of the group suffered a loss of approximately £3,600 in respect of deductions wrongly made by Harvey from their fees. In December 1963 the Council authorized the Chairman to request contributions from members of the Bar, graded according to seniority, to raise £3,165 towards assisting the more junior overdraft guarantors. £1,182.10.0 has already been received.

Prior to his resignation Harvey was acting for 34 men. It became clear that it was necessary to increase the number in the group if it was to be self-supporting from clerk's fees. On 1st August 1963 a general meeting of the Bar resolved that the Council be authorized to take steps for the voluntary recruitment of further men to the group. A circular from the Chairman invited volunteers to join the group. Ten barristers joined the group and Mr. K. Spurr was engaged as clerk.

COUNSEL FEES

Payment by Solicitors The last Annual Report set out the terms of a procedure agreed upon by the Bar Council and the Council of the Law Institute designed to facilitate the reasonably prompt payment of fees by solicitors.

The Council has been investigating what steps may be taken to further ensure payment, or to protect Counsel from getting into the position of not being able to recover fees in some cases. A committee has been having discussions with Barristers' Clerks, and the matter is still under consideration.

Receipt of Cheques
by Clerks

A firm of Solicitors informed the Bar Council that its auditors had queried the correctness of disbursing trust monies by making cheques for fees payable to Barristers' Clerks rather than to individual counsel concerned. It is clear that strictly it is counsel, not the Clerk who is entitled to receive the money, including the Clerk's fees. It follows therefore that the appropriate person to whom the cheques should be made payable is the counsel concerned. On the other hand it is convenient for both solicitors and clerks that a solicitor should be able to make out one cheque payable to the clerk, which cheque could include monies due to several counsel who may employ the same clerk. This is in fact the common practice and such cheques are accompanied by statements of what the cheques represent.

Enquiries showed that the only direction concerning payment given on the debit vouchers issued by the clerks was that cheques in payment should be forwarded to the clerk.

It is recommended to counsel that any steps that facilitate the payment of fees by solicitors ought to be encouraged, and that counsel should direct their clerks to print on their debit vouchers a note authorising solicitors to make the cheque payable to the counsel's clerk. The Council is of the view that in the absence of any direction to the contrary by counsel, a solicitor ought to be able to regard payment of a cheque to a barrister's clerk as a sufficient discharge of the debt to the barrister.

Audit of Clerks'
Accounts

The Council is of the view that barristers' clerks' trust accounts should be audited annually. It is proposed that the matter be raised at the Annual General Meeting of the Bar.

Public Solicitor

An agreement was negotiated with the Public Solicitor and approved by the Attorney-General for an increase in the range of counsel fees paid by the Public Solicitor. The increases related to both senior and junior counsel.

BAR LIBRARY

The Bar Library has been acquired by Barristers' Chambers Limited from Counsel's Chambers Limited. This has facilitated the repair, replacement, and expansion of the Library. It is intended that in addition to basic sets of statutes and reports, the Library should contain other material of fairly general use that is not otherwise readily available in chambers, and in particular, sets of reports from the other Commonwealth States, and from New Zealand.

Reorganization of the Library by the sale of surplus sets, and the use of the Library by counsel, have been greatly hampered by improper removal of books from the Library. It is not a borrowing library. The experiment of permitting books to be borrowed was tried 2 years ago, and found to be unworkable, as books were not returned. During 1963 more books were removed, and repeated pleas for their return did not bring results. The Bar Council then resolved that it be a breach of etiquette for counsel to remove or cause to be removed or to retain any books that have been removed from the Bar Library, and all counsel were informed by circular. Counsel were also reminded that obligations were attached to borrowing books from private libraries in chambers. Late in 1963 a circular was distributed by the Council requesting Counsel to examine their shelves and to return any books belonging to the Bar Library or to private libraries in chambers, and to indicate whether they had any books belonging to unidentified counsel, or whether any of their own books were missing. Some regarded this as an offensive request, but the result was the return of a number of books to the Bar Library, and to private libraries.

ACCOMMODATION

An accommodation shortage has again developed. At the end of 1963, there were more men seeking chambers than there were chambers available. The eventuality had been foreseen by the Council, and throughout the year a number of proposals were considered, and possibilities were investigated, for obtaining more accommodation in existing or proposed buildings in the vicinity of the Law Courts. Detailed enquiries did not reveal any attractive short term or long term propositions. As a result the Council and the Directors of Barristers' Chambers Limited decided to recommend to the Bar the extension of Owen Dixon Chambers. At a General Meeting of the Bar held on 25th October, 1963 the Bar endorsed a proposal to proceed with conversion of the present ninth floor to chambers, the addition of 3 further floors (10th, 11th, and 12th) suitable for chambers, and the construction of a new (and redesigned) Common Room and Library on the 13th Floor. It was proposed that subject to satisfactory arrangements with the M.L.C. Assurance Company Limited and with the Commonwealth Bank, the necessary work would be commenced in January 1964. Since then some delays have been caused by negotiations with the Uniform Building Regulations Committee. It is hoped that the additional requirements of the Committee will not take the cost of the project beyond the limits fixed by the Directors in negotiations with the financing institutions. As a result of the delay, however, it is likely that work will not commence until April 1964. A circular will be distributed to the Bar shortly giving a full progress report upon the building scheme, and asking counsel to give a preliminary indication of (i) the amount that they are prepared to subscribe for a new issue of shares and debentures in Barristers' Chambers Ltd., and (ii) the accommodation that they may wish to take up on the new floors.

In the course of the year numerous matters have involved consultation and discussion with the Chief Justice, the Chairman of the County Court Judges, the Attorney-General, the Assistant Attorney-General, the Solicitor-General, the Secretary of the Crown Law Department, the President of the Council of the Law Institute of Victoria. The Bar Council desires to record its appreciation of the courtesy and consideration which its representatives have received on every such occasion.

Murray V. McInerney

Chairman
Victorian Bar Council.