President’s Report

The Commercial Bar Association of England and Wales (‘Combar’), in conjunction with CommBar and the Victorian Bar, are pleased to confirm that the London 2016 International Commercial Litigation Conference (‘ICLC’) will proceed next year at the Inner Temple on Wednesday 29 and Thursday 30 June 2016. This is an exciting event in CommBar’s history and is the first time Victorian barristers have ever staged an international conference.

The conference is expected to attract delegates (barristers, judges, solicitors and corporate counsel) from Australia, England and Asia.

An impressive array of speakers have confirmed their availability to speak at the conference and so far include: Lord Neuberger (President of the Supreme Court of the United Kingdom); Lord Justice Jackson (Court of Appeal); Dame Geraldine Andrews (High Court of Justice, Queens Bench Division); Justices Sifris, Croft and Digby (Supreme Court of Victoria); Justice Jonathan Beach (Federal Court of Australia) and others. Of course many of our CommBar members will be participating in the conference, as will our Combar colleagues.

To accompany the eight business sessions covering a wide range of commercial litigation and arbitration topics, an attractive social program has been put together. This includes a black tie dinner at the Middle Temple Hall and end-of-conference drinks to be held in the Temple Gardens.

The ICLC conference will be officially launched in November 2015, which is when registration will open. The conference registration fee has been set at a competitive and reasonable subscription. The fee will also offer an accompanying person supplement for the social component. To date over 150 Victorian barristers, judges, solicitors and corporate counsel have expressed interest in attending the conference and places will be limited.

More information regarding the ICLC conference launch and the conference program will be released later in the year.

In conjunction with LexisNexis, CommBar held the book launch of Insolvent Investments on 25 August 2015 in the Neil McPhee Room. The book was launched by the Honourable Julie Dodds-Streeton, and the editor of the book, Stewart Maiden made a responding speech. The foreword was kindly contributed by the Honourable Chief Justice Warren. The book has 25 contributing authors, most of whom are drawn from the ranks of our Bar.

Thanks are due to Stewart Maiden for his tireless efforts in making this book possible and to Julie for kindly agreeing to speak. It was fitting that Julie launched this book given her deep involvement in the education of many members of our commercial Bar, and the contributors to the book in particular. As many will know Julie, together with Whelan JA, were the founding teachers of the Corporate Insolvency subject in the Melbourne University Masters course.

Finally, a reminder about the annual CommBar cocktail function. This will be held on Thursday 8 October 2015 at the Federal Court of Australia. Invitations have been sent. Please respond promptly, as places are limited.
Quotes of Note

Let’s make our mistakes slowly. General Dwight D. Eisenhower, to his advisors.

Education is the progressive discovery of our own ignorance. Will Durant

We cling to our own point of view, as though everything depended on it. Yet our opinions have no permanence; like autumn and winter, they gradually pass away. Chuang Tzu

Publius

BALLOT PAPERS

Publius has been working on the foundation of a political party. A possible title is the Publius Prosperity Party, which would fit well with a slogan like Prosper with Publius.

In the course of his researches, Publius has become aware of the importance of the order of names on the ballot paper. Some people, for whatever reason, just vote down the paper so that the candidate on top gets a benefit quite unrelated to his or her merits.

Since the Australian political scene is not dominated by people called Aaronson, Abel etc (albeit there is the occasional Abbott, Abetz) Publius deduced that the order is not determined alphabetically. There must be some other system. Perhaps by lot.

In that event, Publius thought, the legislation probably contains some provision along the lines of:

The order of names on a ballot paper shall be determined by lot, to be conducted in public.

This would be a self-enforcing law. Candidates or their agents present would ensure the procedure was conducted fairly. Eighteen words would cover it.

But Publius recalled the words of a wise judge: “Never think that, just because something seems to make sense, it is therefore the law.”

So Publius turned to the Commonwealth Electoral Act 1918 and discovered section 213 which, to put it mildly, goes into quite some detail.

The section commences by providing that the person who is required to determine the order of names shall:

“prepare a list of the names … in such order as the person considers appropriate” and then “read out the list.”

Then the person is to:

“place a number of balls equal to the number of candidates … being balls of equal size and weight and each of which is marked with a different number, in a spherical container large enough to allow all the balls in it to move about freely when it is rotated.”

Now that you have the balls in the container, the person in charge must:

“rotate the container”.

Not only that, he or she must:

“permit any other person present who wishes to do so to rotate the container.”
So how are the balls to be removed from the container after rotation? The section requires that the person in charge shall:

“cause a person who is blindfolded and has been blindfolded since before the rotation of the container … to take the balls, or cause the balls to come, out of the container one by one and, as each ball is taken or comes out, to pass it to another person who shall call out the number on the ball.”

Then:

“as each number is called out … “ the person in charge is to “write the number opposite to a name … in the list … so that the number called out first is opposite to the first name … in the list and the subsequent order of the numbers in the list is the order in which they are called out.”

Phew! So at last it’s all done?

Oh no. What we have now is a list with numbers against the names, eg:

Sally Jones, Greens 2
Bill Smith, Labor 3
Tom Black, Liberal 1

The section now requires the person in charge to:

“place all the balls back in the container.” Then once more there is to be rotation of the container, taking out the balls by a blindfolded person, reading out the number on the ball etc etc.

So the new sequence of balls might be those numbered 3, 1 and 2, with the result that the order of names on the ballot paper will be Smith on top, then Black and then Jones.

There are various other provisions including dispensing with the need for a blindfolded person, if an “approved container” is used,

i.e.:

“a container in respect of which the Electoral Commissioner has certified in writing that the container is so constructed that when it is rotated no control can be exercised over the order in which the balls come out of the container.”

Publius trembles to think of the number of cups of tea consumed in the Parliamentary Drafting Office while this edifice was constructed.

Publius

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Dr Josh Wilson QC and William Lye · August 6, 2015

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Kieran Hickie · August 25, 2015

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