

# Victorian Bar News

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IN THIS ISSUE:	PAGE
BAR COUNCIL REPORT . . . . .	2
YOUNG BARRISTERS' COMMITTEE . . . . .	3
THE READING RULES . . . . .	3
WELCOME: JUDGE RAVECH . . . . .	3
JUDGE CAMPTON . . . . .	4
THE NEW SILKS . . . . .	4
CANADIAN LAWYERS TO VISIT . . . . .	4
ACCOMMODATION – FURTHER DEVELOPMENTS . . . . .	5
FRANKNESS AND HONESTY IN COURT . . . . .	5
CAPTAIN'S CRYPTIC No. 14 . . . . .	6
FAMILY LAW PROCEDURE . . . . .	7
MOUTHPIECE . . . . .	10
THE OPTIMISTIC TESTATOR . . . . .	10
MOVEMENT AT THE BAR . . . . .	11
SOLUTION TO CAPTAIN'S CRYPTIC No. 14 . . . . .	11
CROC. RESTORED . . . . .	12

## BAR COUNCIL REPORT

### Commercial Law Association of Australia Ltd.

The Bar Council has resolved that there is no objection to members of the Bar joining the Commercial Law Association of Australia.

### Fees to Counsel in Family Law Proceedings

A representative of the Matrimonial Causes Practice Committee attended a conference with His Honour Judge Burnett relating to the proposed Second Schedule to the Family Law Regulations and the scale of costs under the Family Law Act. The view of the Committee was that the new Schedule of Costs would have the effect of excluding junior members of the Victorian Bar from undefended divorces. The Bar council made submissions upon this question to Judge Burnett and forwarded copies to the Australian Attorney-General, the Law Council of Australia, and the other independent Bars which are members of the Australian Bar Association together with copies of the Memorandum received from the Matrimonial Causes Practice Committee concerning these matters. Subsequently a reply was received from Judge Burnett which indicated that the Scale of Costs was receiving further consideration.

### Subscriptions to the Bar for 1975/1976

There is no increase in annual subscriptions for 1975/1976, apart from the additional subscription to set up the new Clerks. Subscription notices have been circulated and are now due.

### Gift from Immediate Past Chairman

The Immediate Past Chairman of the Bar Council, McGarvie Q.C. has donated to the Bar the Howland Medal awarded by Yale University to the late Sir Owen Dixon in 1955. McGarvie Q.C. also has presented to the Bar the Chairman's filing cabinet. These gifts have been received with gratitude, and with the thanks of the Bar.

### Bar Council — Voting System

The question of election procedures is to be considered again by the Bar Council early

next year and in the meantime the matter of the marking of ballot papers for election to the Bar Council with asterisks opposite the names of present members of the Bar Council has been referred to the Committee dealing with Counsel Rules.

### Signing the Roll at the Commencement of Reading Period

From March, 1976 a new procedure is to be adopted with respect to signing the Roll. Readers will be permitted to sign the Roll of Counsel at the first Bar Council Meeting following the commencement of their reading rather than at the completion of the first two months of reading.

### Leo Cussen Institute — Provision of Funds

The Victoria Law Foundation has agreed to fund the Legal Practice Course to be conducted in 1976 by the Leo Cussen Institute for a maximum of sixty students. In the event that more than sixty students apply for the course, places will be allotted by ballot. It is hoped that in 1977 and thereafter the course will be funded by grant from the Australian Universities Commission.

### Bar Library

Miss L. Carmody has been appointed Assistant to the Bar Librarian at an appropriate salary.

Members of the Bar are reminded that books may not under any circumstances be removed from the Bar Library and it is the responsibility of members of the Bar using books in the Library to return such books to the shelves.

### Annual Christmas Cocktail Party

The Bar's Annual Cocktail Party is to be held on Thursday, 18th December, 1975.

### Delays in Supreme Court Lists

The question of congestion in the Supreme Court lists has again attracted the attention of the Bar Council. A special committee has been established to consider the problem. This committee a joint committee of the Bar and the Law Institute are gathering factual

material as to the present situation in order to assess the magnitude of the problem and to make recommendations for future action.

#### **Advice to persons sentenced to imprisonment**

Certain members of the Bar have communicated to the Bar Council their concern at the situation of persons sentenced by Magistrates' Courts to a term of imprisonment. It appears that these persons are not normally made aware of their rights to appeal, to apply for bail pending the hearing of the appeal and to seek legal aid.

The question of what other steps should be taken in connection with this matter has been referred to the Young Barrister's Committee and the Crime Practice Committee for urgent report.

#### **New Clerks**

The Bar Council has approved the appointment of an eighth clerk Mr. Barry Stone (Clerk "B") formerly employed by Clerk "F" Mr. Stone and the seventh clerk Mr. Wayne Duncan (Clerk "W") will be acting for Counsel from the 12th day of January 1976.

### **YOUNG BARRISTERS COMMITTEE**

The Members of the recently elected Young Barristers' Committee are the following:—

Chairman:	Hedigan Q.C.
Vice Chairman:	Brind Zichy-Woinarski
Secretary:	John O'Brien
	Bruce Waemsley
	Brind Zichy-Woinarski
	Greg Levine
	Damian Maguire
	Robert Webster
	Geoff Horgan
	David Belson
	Tom Wodak
	John Philbrick
	John O'Brien

Any member with a query or a complaint of interest to this committee is encouraged to make contact with a committee member.

### **READING RULES**

The Reading Committee has been asked by the Bar Council to consider the efficacy of the new reading rules which have now operated for some two years. In particular the Reading Committee wishes to examine and report upon the advantages and disadvantages in practice of the requirement that no brief can be accepted for the first two months of a reader's pupillage.

Both masters and pupils (including former pupils) are invited to write or contact Ormiston Q.C. if they wish to comment on the practical working of the rules.

#### **Welcome:**

#### **JUDGE RAVECH**

Martin Ravech was admitted to practise in 1949 after War Service and signed the Bar Roll on the 6th April 1951. His Honour enjoyed a long and distinguished career at the Bar culminating in his appointment as Silk in 1974, and now, most recently, his elevation to the County Court Bench.

It is said by some that the practise of law at the Bar has much in common with the theatre. His Honour exemplified the less pejorative construction of this maxim inasmuch as in his student days he took an active part in productions of the Melbourne University Dramatic Society and has retained a keen interest in that art ever since. On the other hand, His Honour must be acquitted of any suggestion of excessive histrionics in the style of advocacy which he employed to such effect before juries. Indeed, the self control and equable temperament which characterise his life at the Bar will stand him in good stead in his new career.

Furthermore, if it is a desirable quality in a judge to pursue single-mindedly a faint path through the thicket of the law, His Honour must have been well schooled in this virtue by his persistent support of the cause of the

**South Melbourne Football Club.**

The Bar is grateful for the work Judge Ravech had done on its committees such as the Juries Practice Committee and that which considered the National Compensation Bill, and it congratulates him on his appointment and assures him of its support in his tasks ahead.

**Welcome:****JUDGE CAMPTON**

On 4th of December 1975 John Richard Campton Q.C. commenced his appointment as Chairman of the Liquor Control Commission of Victoria following the retirement of Judge O'Driscoll in September, 1975. His Honour was educated at Melbourne Grammar, and in 1942 commenced a Law Degree at Melbourne University, graduating in 1947, after interrupting his studies to serve in the R.A.A.F. between 1945 and 1946. He obtained several honours including 1st Class Honours and the Exhibition in the Law of Wrongs incorporating crime and torts.

He was admitted to practise in 1948, signed the roll of Counsel in the same year, reading with Mr. Alistair Adam (as he then was). In that year he quickly established a large general practice at the Bar, but particularly he became known as an expert in Landlord and Tenant and Crime. It was only at a later stage that he commenced specialising in the licensing jurisdiction. His practice became, in time, diverse with an emphasis on town planning and local government and he appeared in all the leading cases in the licensing jurisdiction. Recently he has practised in the Trade Practices field.

He is married with six daughters between the ages of fourteen and twenty-two, one daughter a graduate of law, another just having completed third year law. His Honour was a St. Kilda City Councillor for two years. He has a great love for classical music and hot jazz, and whilst at Melbourne University was the Secretary of their Rhythm Club. He also enjoys Royal tennis, tennis, sailing and is reputed to be a wine connoisseur and has a most tempting cellar in his home. The position

of Judge and Chairman of the Liquor Control Commission in Victoria is one newly created by statute, and His Honour's elevation to this challenging office has been widely acclaimed.

**THE NEW SILKS**

On the 1st December 1975 the Chief Justice welcomed ten newly appointed Queen's Counsel.

John Richard Campton  
Abraham Monester  
Eugene John Cullity  
Douglas Gilbert Williamson  
Anthony Endrey  
John Harber Phillips  
Jeffrey Leslie Sher  
William Frederick Ormiston  
Cairns William Villeneuve-Smith  
Stephen Pendrill Charles

These appointments take the number of Silks in active practice to fifty-three.

The Bar wishes them well in their new office.

**CANADIAN VISIT**

The Advocates' Society of Ontario, Canada, is a society of trial lawyers who claim many common features and share many interests with our Bar.

Although the visit is still in the planning stages, a large party of members and their wives propose to come to Victoria during the last few days of April, 1976.

An advance party has already been to Melbourne to make preliminary arrangements. In the few days the visitors will be in Melbourne, they wish to discuss common legal problems and the ways in which these are being tackled in the two places, they wish to meet as many members of the Bar as possible, and to entertain us and be entertained by us.

Support for the visit has been found in many places and particularly from His Excellency the Governor Sir Henry Winneke and Lady

Winneke and from the Chief Justice and from the Canadian Consul-General in Melbourne.

More detailed planning is now in progress, and any one desirous of helping may get in touch with Rex Wild who is acting as liaison officer.

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### ACCOMMODATION – FURTHER DEVELOPMENTS

The Bar Council has decided not to proceed further with negotiations with Northrock Pty. Ltd. for the acquisition and development of the site in Lonsdale Street which was the subject of the General Meeting of the Bar.

The Accommodation Sub-committee has been authorised to make enquiries with a view to the possible purchase of an existing building in the vicinity of the Law Courts to supplement accommodation in Owen Dixon Chambers. Two appropriate buildings which have recently come on to the market are presently being investigated.



The captain requests that readers speculate upon what notes the constable is taking at this time.

### IS FRANKNESS & HONESTY DESIRABLE IN A COURT OF LAW?

#### COUNSEL:

Your Honour; you old bastard. My client instructs me that he has settled down and turned over a new leaf since this incident. In my view he is still the same conniving little con man that he always was.

The only reason I am making this plea for him is that the relatives have come up with a heap of dough and I have slugged them heavily for the privilege of having me serve up this load of crap.

He was good to his mother up until she was put in a Home ten years ago. He maintains three bastard children under an order from the Fitzroy Magistrates Court. He is a member of the Royal Oak Dart Club and has always been on good terms with his Alsatian dog.

There is nothing more I can uselessly add.

#### HIS HONOUR:

I have partly listened to the arguments advanced by Counsel. They have made not the slightest difference as I made up my mind before coming into Court.

I would like to say that Counsel has pleaded eloquently on your behalf but in fact what he said was a load of ill-prepared drivel. It was half-baked, no doubt because of his irritating habit of Court jumping. Furthermore I am crooked on the fact that he's making three times as much coin as I am.

So I am going to take it out on you by sentencing you to five years with a minimum of three.

Now I would be grateful if you two uniformed thugs calling yourselves prison officers would remove this little punk and Counsel would rack off so I can get to the first at Flemington.

# CAPTAIN'S CRYPTIC

No. 14



**ACROSS:**

1. Davy's honourable boy Bill? (8,1)
8. Behold the pasha and comply (4)
9. It doesn't dissolve financial problems (9)
11. Provide personal satisfaction, tailor (4,2)
13. Makes a killing (5)
15. Performances of the Apostles or Parliament (4)
16. The light of latin (5)
17. Depart with consent (5)
18. Let it become an interest (5)
19. Do . . . others (4)
20. Biasses become little (5)
22. New slant on old macadam (6)
25. The living inheritors (9)
26. Proboscs for ages and ages (4)
27. Predisposed to infamy (4,2,3)

**DOWN:**

2. A hole in any tenant's budget (4)
3. Freemen before William (6)
4. A missionary of diplomacy (5)
5. No dermatologist cures the skin this way (4)
6. Reduction or termination of purchase price or nuisance (9)
7. Using (2,5,2)
10. Frog stuff (5)
12. Tiny portions of students agreements (9)
13. Confession from tent mates (9)
14. Little twinkles twinkles (5)
17. Roman Laws (5)
19. Highly irregular (6)
21. Desire despite biblical proscription (5)
23. A certain trick (4)
24. A contract perhaps neither written nor implied (4)

## SOME GENERAL OBSERVATIONS ON PROCEDURE UNDER THE NEW FAMILY LAW ACT

### COMMENCEMENT OF THE ACT

On the 5th January 1976 the Family Court Act 1975 is to commence.

Proceedings which have commenced in the Supreme Court or a Magistrates' Court prior to that date will continue in the State Court thereafter unless leave is granted pursuant to s.40 (6) to transfer them to the Federal Court. Having regard to the list of matters which the Court is to take into account — Reg. 102 (2), it seems that such an application will not be a mere formality. In respect of these continuing proceedings the Court is directed by s.9 to deal with ancillary relief under the new Act, but to deal with principal relief as if the new Act had not been passed.

After the commencement day, proceedings may be commenced in the State Court or the Federal Court at the option of the Applicant (s.39 (5) (a) ) — at least until the Governor General proclaims the exclusive jurisdiction of the Family Courts, — s.40 (3). It would seem that the State Court would require the use of the new forms and procedures.

### INSTITUTION OF PROCEEDINGS

All proceedings are commenced by the filing of an Application in the Registry of the Court in which the application is brought, that is the Family Court the Supreme Court or the appropriate Magistrates' Court (Reg. 20,157).

It is of interest to note that the jurisdiction of the Magistrates' Courts is extremely limited. They may not hear, of course, applications for principal relief, i.e. dissolution or nullity of marriage or declarations. They may entertain applications for any relief other than principal relief, provided that they are obliged to transfer to a superior Court all opposed applications with respect to custody guardianship or access and those with respect to property of value exceeding \$1,000 unless

the parties consent to jurisdiction. In such case the Magistrates' Court may hear the application or may if it thinks fit transfer the proceedings to a superior Court — S.46.

The form of application for dissolution of marriage is prescribed by form 4. It will be seen that considerable efforts have been made to simplify the procedure. The form of application is divided into a number of parts including the formal application, an affidavit verifying the application, a declaration by the applicants Solicitor (Reg. 19 (3)) and a Notice to the Respondent. At the time of filing the application the applicant must file also his marriage certificate (Reg.40).

The form of application of ancillary relief is prescribed by form 6. It seems that where the Applicant for dissolution seeks also ancillary relief he should file a separate application seeking that relief in accordance with reg.36. An application by a wife seeking maintenance for herself, custody and maintenance for her child should be accompanied by an affidavit setting out the arrangements proposed for the child and the facts relied on (Reg.36 (4), 97 (4) ) and a statement of financial circumstances in accordance with form 19 — Reg. 97 (2). A declaration should be made by the Applicant's solicitor under reg. 19 (3) and if it has not already been done, the Applicant's marriage certificate should be filed with the Registrar.

A standard form of notice under Reg. 19 setting out the legal and social effects the proposed proceedings and the counselling and welfare facilities available will be made available to the Courts exercising jurisdiction under the Act and to practitioners.

The forms of application include a provision for fixing a return date. In the case of applications for dissolution or nullity of marriage the return date must be at least 14 days after the time prescribed for filing an answer (28 days after service within Australia — Reg.41) Reg. 38 (1) (a). For other applications the hearing may be fixed not less than 14 days after the filing of the application provided the Respondent is in Australia — Reg. 38 (1) (b). Some flexibility is conferred by reg.

38 (2) & (3) whereby the Registrar alter the return date and authorise the amendment of the date on the sealed copy for service, such authority may be given by telephone.

### SERVICE

Service of applications is provided for by Reg. 44. In the case of applications for nullity and dissolution service may be by personal service or by acknowledged service by post pursuant to Reg.46 (Reg. 50). Service of other applications may be effected by posting by pre-paid post to the last known address of the person to be served — Reg.44 (1) (d). Service may be dispensed with in the appropriate case (Reg. 49).

Where appropriate, the documents to be served are:—

- (a) a sealed copy of the application.
- (b) a copy of the affidavit as to arrangements proposed for the child — Reg. 36 (4).
- (c) a copy of the statement of financial circumstances — Reg. 97.
- (d) a copy of Notice relating to consequences of the proceedings and welfare agencies — Reg. 19.

The Applicant may not effect personal service of his own application — Reg. 45.

### PLEADINGS

Reg. 4 defines pleading in very broad terms. It would seem that any document filed by a party is comprehended by the definition. Reg. 51 provides that the Respondent to an application for dissolution or nullity may file an answer verified by affidavit. The failure to file an answer would presumably entitle the Applicant to rely on affidavit evidence only and in the appropriate case to obtain an order without attending the Court — Reg. 106. Reg. 58 permits a party to file an affidavit in answer to an application.

Where a pleading is filed in answer to a pleading of the opposite party then any allegations in the latter document which is not pleaded to is taken to be admitted — Reg. 59. Having

regard to the very wide definition of pleading it would appear that the Respondent would be required to plead to allegations contained, for example even in the Marriage Certificate.

Further particulars of an allegation in a pleading may be sought by a party — Reg.82. This power of course extends to allegations contained in an affidavit or any document filed by a party having regard to the definition of "Pleading".

There is provision also for discovery similar to that in the existing legislation — Reg.83. Furthermore there is provided in Reg.85 that the parties may agree to mutual and informal discovery. A party who withholds a document from mutual and informal discovery may be guilty of an offence.

A further procedure somewhat analogous to discovery, and also having some of the hallmarks of interrogatories, is set out in Reg. 91 where a Court may direct a party to proceedings to answer specified questions relevant to a matter before it. Similarly the Court may seek a statement from a party giving particulars of his employment.

There is no provision for pleadings in a maintenance application in the Magistrates' Courts. Indeed this is not surprising, but some attention should be given to the ambit of Reg. 58 (2) which provides that where a Respondent seeks an order different from that sought by the Applicant he shall file and serve an answering affidavit. Furthermore the possibility of an answer is contemplated by s.46 (1).

### ENQUIRY INTO FINANCIAL RESOURCES

There is no provision for a Certificate of Means as such but there is a provision in reg. 99 for the Court to request the Registrar or other person to enquire into the financial resources of the parties and require the parties to be examined as to financial matters. The Court may, if it wishes, specify that the enquiry be made by a qualified Accountant or other suitable person — Reg. 99 (3).



### AMENDMENTS AND NON-COMPLIANCE

The care of the draftsman to ensure maximum flexibility and informality is to be seen in the wide powers conferred on the Court and the Registrar to permit the amendment of any pleading (Reg. 61) to extend or abridge times (Reg. 12) to grant relief from the consequences of non-compliance with the Regulations (Reg. 15) and even to dispense with the need for compliance with the Regulations (Reg. 15 (1) (c) ). Moreover it is far from certain that non-compliance in any case would be fatal. See Regs. 10 & 14.

### HEARING AND EVIDENCE

There seems every likelihood that in an undefended application for dissolution where there is no child of the marriage, all the evidence including evidence of service and corroborative evidence, may be heard by Affidavit without the presence of the parties unless the Court otherwise orders — Reg. 106.

Where there is a child of the marriage, the Court may require a party to be present to give oral evidence concerning the child but even this may not be necessary if the Court is satisfied by affidavit as to this respect — Reg. 106 (4).

Evidence in defended applications for divorce and in applications for nullity must be given orally unless the Court otherwise directs — Reg. 107.

In applications other than applications for dissolution, evidence may be given orally or by affidavit and the Court may with the consent of the parties dispense with such procedures and formalities and inform itself in such manner as it thinks fit — Reg. 108. By Regulation 111, the Court may of its own motion call any person before it as witness.

There are special provisions as to Welfare Officers' reports contained in Regulation 117. It is a matter for the Court's discretion whether these reports should be furnished to the parties or their practitioners or received in evidence and the Court is even empowered to permit oral examination of the

person making the report, although in this latter respect the observations of Barry J. in *Reeves v Reeves* (No. 2) (1961) V.R. 685 will no doubt be kept in mind.

### REPRESENTATION AND COSTS

The regulations contemplate that parties may act by legal practitioners. See e.g. Reg. 19 (3), forms 4 & 5, Reg. 44 (2) and 166.

S.117 (1) provides that, subject to two exceptions, each party shall bear his own costs. The two exceptions relate first to frivolous and vexatious proceedings and secondly to the situation where the Court being "of opinion in a particular case that there are circumstances that justify it in doing so" makes an order as to costs. In the latter case the power is expressed to be subject to the regulations.

Reg. 173 sets out the matters which the Court may take into account in making an order as to costs. These matters are extremely broad in compass. It is of interest to note that the Court is directed to fix the costs wherever possible. Moreover the Court is required to take into account not only the financial circumstances of the party against whom the order may be made but also the availability of legal aid.

### APPEALS

An aggrieved party may appeal from the decision of a magistrate to the Family Court or to the Supreme Court — s.96. In the case of proceedings before either of these latter Courts exercising original jurisdiction appeal lies to the Full Court of the Family Court — s.94.

In each case an appeal is instituted by notice in the prescribed form and filed in the appellate Court within 28 days after the making of the order appealed from — Reg. 120 and 122. In the case of appeals from a superior Court the notice must be served within this period (Reg. 120 (7) ), but in the case of an appeal from the decision of a Magistrate the Appellant has a further 14 days in which to serve the Respondent.

In an appeal from a Magistrates Court the appellate Court is directed by s.96 (4) to determine the appeal on the evidence which was before the Magistrate's Court only unless leave is given to call further evidence. It is not clear how the evidence given in the Court below is to be put before the appellate Court.

#### NOTE

The Editors gratefully acknowledge the assistance given by Senior Judge designate, Austin Asche Q.C. in the preparation of this article. Needless to say they accept responsibility for any inaccuracies which may have arisen from their departure from his draft.

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### THE OPTIMISTIC TESTATOR

Counsel was recently briefed to advise on a Will prepared by his instructing Solicitor. The first provision in the Will, after the revocation of all previous testamentary dispositions and the declaration that it is to be the last Will and testament, was as follows —

"1. I DECLARE that if I should become incapacitated or unfit to care for myself that my Trustees shall before any distribution is made to my beneficiaries and before any bequests are paid set aside sufficient funds from my estate to provide for all my needs and comforts."

Who said that the good life does not continue hereafter?

### MOUTHPIECE

"Silk time in on us again."

"What do you mean? Are the worms active now?"

The ingenuousness of Whitewig's reply disarmed me. Out of the mouths of babes and sucklings I thought.

"No" I said gently. "The new Queen's Counsel receive their letters patent at this time every year."

"Letters Patent?" he said. "Isn't that a grant by the Crown contained in a charter exposed to open view with the Great Seal pendant at the bottom and addressed to all subjects of the realm?" (If nothing else, the lad had a good memory.) "It sounds like a delicious amount of pomp."

"Well it's not quite like that."

"How does it happen then," he pressed, "How do you become a Q.C.?"

"A 'silk' " I corrected him.

"Alright, how do you become a silk?"

"You just write a letter to the Chief"

"And what does he do? Does he then get in touch with the Queen, or the Governor and ask one of them to advise all the subjects in the realm that you are an adviser of Her Majesty?"

"No" I said. "He asks you over to his office for a cup of tea and a chat."

"Well, when does the Queen send out all of the letters?"

"She doesn't" I said. "You do. But only to everyone on the roll senior to you. To tell them that you are going to apply for a silk."

"Oh, it's like that is it. But who writes the very first letter?" he asked. "How do things get moving in the first place? How do you know when to apply?"

"That's the trap" I said. "You don't."

BYRNE & ROSS D.D.

## MOVEMENT AT THE BAR (Since September, 1975)

### MEMBERS WHO HAVE SIGNED THE ROLL

M.D.G. Heaton  
 C.G. Gee, (N.S.W.)  
 G. Graeme (U.K.)  
 L. Kaufman  
 A.J. Myers  
 P.A. Barker  
 Z. Friedman,  
 J.F.E. Turner  
 R.N. Franich  
 R.P. Meagher (N.S.W.)  
 R.G. Weil  
 J. Lenczner  
 A.J. Howard  
 R.J. Gorey  
 J.L. Bannister  
 P.W. McCabe  
 P.H. Mealy  
 N.S. Fowler  
 C.C. Sharkey  
 A. Ginnane  
 I.F. Turley  
 D.J. Martin

### MEMBERS WHOSE NAMES HAVE BEEN REMOVED AT THEIR OWN REQUEST

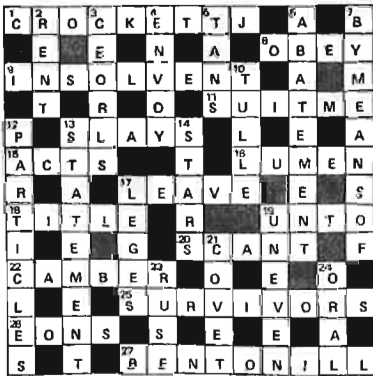
Miss M.J. McRae  
 J. LeP. Darvall (from 1/1/1976)  
 Professor G. Sawyer (Non-Practising List)  
 F.F. Knight (Non-Practising List)

### ASPIRING MEMBERS WHO HAVE COMMENCED READING

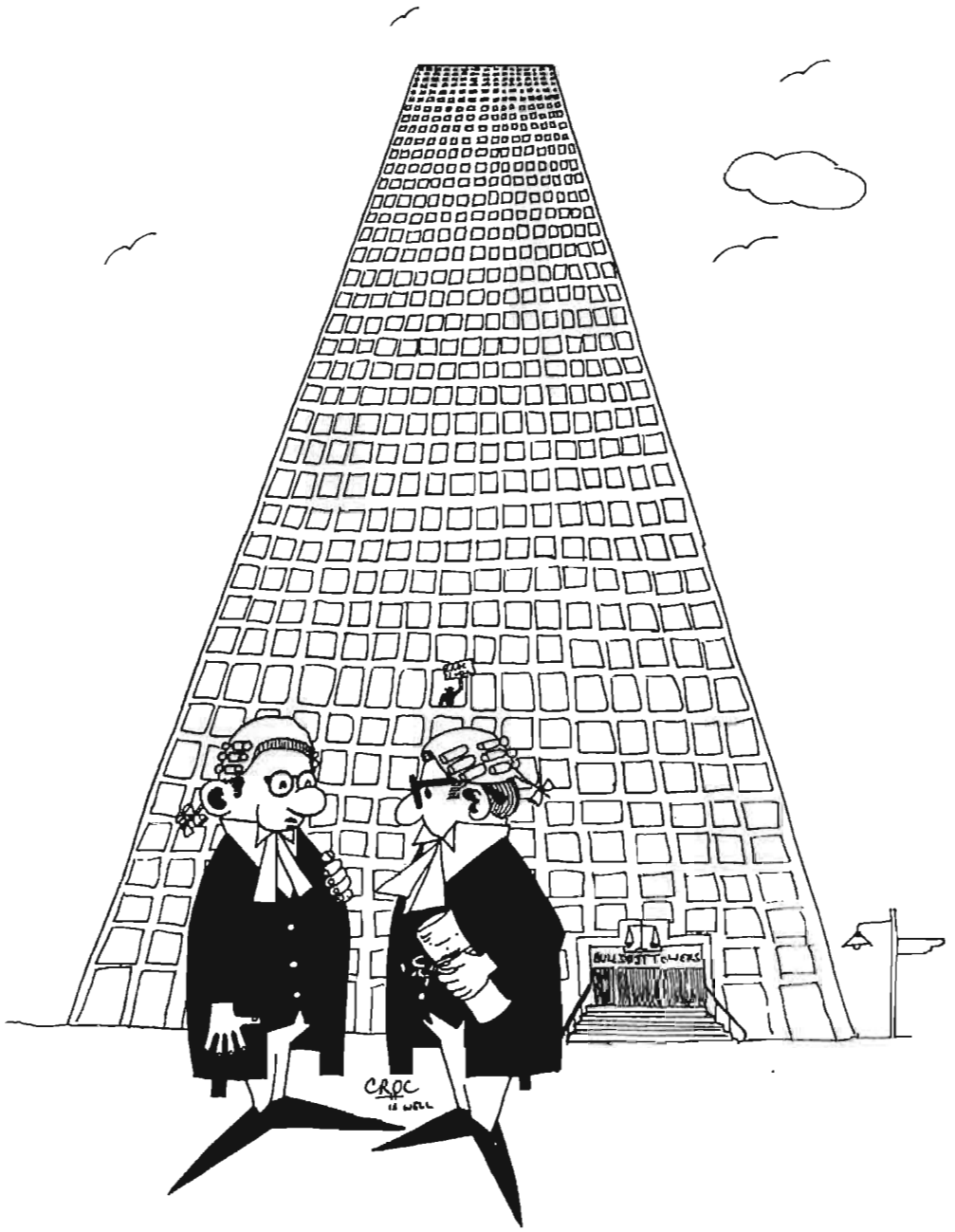
A.H.R. Border	V.A. Morfuni
P.C. Young	J.F. Fitz-Gerald
G.A. Glover	J.W. Lee
E.W. Wallace	S.P. Pallaras
I.D. Hill	P.A. Casey
J.M. Murphy	P.M. O'Hara (Miss)
M.R. Titshall	P.M. Power (Miss)
P.J. McGuinness	W.R. Ray
A.J. Nolan	B.R.S. Kendall

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## SOLUTION TO CAPTAIN'S CRYPTIC No. 14



**Editors:** David Byrne, David Ross.  
**Editorial** Ron Castan, John Coldrey,  
**Committee:** Max Cashmore, Lyn Opas,  
 Andrew Kirkham, Geoff Horgan.  
**Cartoonist:** Crossley.  
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It's not just the corporate spirit; we're so much more accessible to the people.