Victorian Bar News

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IN THIS ISSUE: PAGE

BAR COUNCIL REPORT

Informing Convicted Persons of Rights of Appeal

The Bar Council has recommended where a person is sentenced to a term of imprisonment, such person should be advised by way of a typed document to be handed to him by the Clerk of Courts that –

(a) he has a right to appeal;
(b) the extent of the Appeal Court's powers;
(c) he has a right to bail;
(d) he may see the Clerk of Courts to obtain assistance;
(e) he may seek legal advice from solicitors or other agencies.

The Bar Council has also recommended that the advice on the form should be printed in English, and also in Italian, Greek, Yugoslav and Turkish.

Subsequently the Chairman of the Bar Council communicated the resolution of the Bar Council to the Attorney-General and the Chief Secretary.

Victoria Law Foundation

The Bar Council and the Victoria Law Foundation have agreed that the Bar Council should have direct representation on the Foundation. Legislation will be necessary to accomplish this step.

Information to New Applicants

The Bar Council has prepared a circular which is now being supplied to all new applicants to sign the Roll. The form of this circular is set out elsewhere in this edition of the Bar News.

Editor's Note: *the form of circular to new applicants has not been supplied by the Bar Council at the time of printing.*

Influx to the Bar

The Reading Committee of the Bar Council has taken on the task of collecting data as to the likely earnings and expenses of Barristers in their first year at the Bar, with a view to making more information available to applicants to sign the Bar Roll. This survey will be conducted on a strictly anonymous basis.

Religious Observances

The Bar Council has joined with the Law Institute of Victoria in making recommendations to the Chief Justice that in future a Religious Service to mark the opening of the Legal Year should be an ecumenical one.

Delays in the Supreme Court

The Special Committee on Supreme Court Delays, of which Davies Q.C. is Chairman, has reported to the Bar Council upon a report of the Law Reform Commissioner and has suggested that the Bar Council should accept and approve the Law Reform Commissioner's suggestions. In addition, the Committee has presented a detailed report on delays, which has been forwarded to the Attorney-General, the Law Reform Commissioner and the Chief Justice.

Annual Bar Dinner

The Annual Bar Dinner will take place on 8th May, 1976 in the "Long Room" at the Old Customs House.

Clerking

The two new Clerks are Mr. Barry Stone and Mr. Wayne Duncan. Both new Clerks commenced in January. The Bar Clerking Committee has kept the position of the new Clerks, and the problem of allocation of new members of the Bar to Clerks, under close review and is in the process of formulating a policy to deal with the influx expected over the next nine months.

WELCOME:

Mrs. JUSTICE PEG LUSINK:

Section 22 of the Family Law Act 1975 relates to the appointment of Judges of the Family Court of Australia. Sub-section 4 provides that the Judge is entitled to be styled "The Honourable", The Act is silent as to whether the Judge is to be called Mr. Justice, Mrs. Justice, Ms. Justice or plain Justice.

Peg Margaret Lusink who was appointed to the Bench of the Family Court of Australia in February, 1976 wishes to be known as Mrs. Justice Lusink. The reason as she states is because she is happily married and is proud to be known as Mrs. Lusink — so why not Mrs. Justice Lusink? Whilst Her Honour is a champion of women's rights and the role of women in society she does not adopt the attitude of the belligerent breast beating women's liberationist but prefers a more feminine role — hence her resolve to be called Mrs. Justice Lusink. Her resolve to be so called speaks volumes for a very human person whose qualities as a wife and mother and whose considerable experience fits her well as a Judge of the Family Court of Australia.

Her Honour commenced her legal studies in 1939 but because of marriage and family responsibilities her course was deferred for a period of 20 years. Her Honour was admitted to practice on the 1st day of March 1966, exactly 10 years to the day prior to taking her place on the Bench of the Family Court of Australia for the first time.

After admission Her Honour was employed by the firm of Corr & Corr handling matrimonial causes work and then after a short period as a solicitor on her own account Her Honour signed the Roll of Counsel and commenced reading in April 1975.

Not only does Mrs. Justice Lusink have the distinction of being the first female Judge in the State of Victoria but she also no doubt holds the record for the shortest period between commencing pupillage at the Bar to appointment on the Bench. (At this stage it is uncertain whether all the credit should be taken by her Master, or by Her Honour!)

The law relating to the family is a very important branch of the law. It demands a deep understanding of human relations and conflicts and an insight into family problems. It demands an experience in human behaviour. The effect of a Court's decision upon human lives can be dramatic, far reaching and emotional. It is unfortunate in many respects that certain members of the profession in the State of Victoria including some members of the judiciary consider that originating summonses, company matters and commercial disputes are more important and deserve more attention than do family disputes. The advent of the Family Court of Australia consisting of Judges who have the necessary training and experience, is a step in the right direction.

One of the pre-requisites of an appointee to the Bench is that the Judge by reason "of training, experience and personality . . . is a suitable person to deal with matters of Family Law." The first female Judge in this State has that training, experience and personality which is so important. She is a wife and a mother of three children and a grandmother of 7 grandchildren. She comes from a famous legal family and her mother Mrs. Joan Rosanove Q.C. was the first woman barrister to practice at the Bar of Victoria and the first woman barrister to take silk. Her son John Larkins and her husband Theo Lusink are members of the Victorian Bar. Her Honour does have a deep understanding of human conflicts, she does understand the effect of decisions upon the parties and she does have a very good appreciation of family problems.

Her appointment is indeed welcomed by the profession of Victoria and we wish her well and hope that she has many happy and satisfying years on the Bench of the Family Court of Australia.

WELCOME:
Mr. JUSTICE EMERY:

On the 3rd January 1976 Henry Charles Emery Q.C. was appointed a Judge of the Family Law Court of Australia. The variety of cases appearing in the law reports in which he appeared as Counsel bears witness to the extent of his practice and he had a long experience in the area covered by the jurisdiction of the new Court. His association with all aspects of family and property law will be advantageous to both the profession and the litigants in cases where the Court is asked to resolve disputes as to the custody of children and the allocation of family assets.

He was born at Colac on the 9th July 1923 and educated at St. Patrick's College Sale. He served in the Army from 1941-1946 and graduated LL.B. from Melbourne University in 1950. He was admitted to practise in that year and after seven years as a solicitor signed the roll of Counsel in 1957 reading with Mr. Nubert Stabey (as he then was). He was appointed as Silk in 1974.

His Honour has maintained an active interest in the Returned Services League and the Commando Association since his discharge from the Army.

His temperament and practical common sense make him ideally suited for the appointment and it will be clear soon whether arguments he regarded as good when at the Bar get the same rating when received on the Bench.

WELCOME:
Mr. JUSTICE FOGARTY:

On 2nd February, 1976, John Francis Fogarty was appointed a Judge of the Family Court of Australia.

He was educated at Christian Brothers College St. Kilda and is a graduate of Melbourne University, receiving the Supreme Court Prize for Articled Clerks in 1954.

His Honour signed the roll of counsel on 8th March, 1956 and read with Kevin Anderson whom he succeeded in 1969 as the Editor of the Victorian Reports, a position which he held with distinction until his recent appointment. He was also the consulting editor of the Australian Argus Law Reports from 1969 to 1973.

His practice, from the beginning, was diverse, with a particular emphasis in the latter years on civil jury work, testator's family maintenance and family law. He was also at home in the criminal jurisdiction and appeared with success in a number of leading cases, including the defence of the late Detective Sergeant "Bluey" Adam in the much publicised police corruption trial in 1971.

John Fogarty was a highly skilled advocate. His arguments were invariably concise but very closely reasoned, eschewing unnecessary verbosity.

Those who had the pleasure of reading in his chambers (he was much in demand as a Master) will recall his unfailing patience and considerable command of the law. Even after they left his chambers, he remained to his former readers a staunch friend and a constant source of invaluable advice.

Despite the demands of a busy practice he somehow managed to be an author of two valuable legal texts namely Bourke & Fogarty's Maintenance Custody and Adoption Law and (with Cummins) Bourke's Police and Summary Offences.

As a barrister he displayed a willingness to act on behalf of under-privileged sectors of the community. He appeared as a counsel for aborigines of the Gove Peninsula in the Aboriginal Land Rights Case. In recent times, he made many trips to Central and Northern Australia assisting His Honour Mr. Justice Woodward with his enquiry into Aboriginal Land Rights.

Apart from Law, His Honour has a keen interest in sport particularly the fluctuating fortunes of the Melbourne Football Club. He enjoys squash and Australian history and is also known to have a partiality for the better Australian vintages. Above all, he is a committed family man with three sons between the ages of 11 and 16.

The Bar is indeed fortunate that the Family Court has Mr. Justice Fogarty as one of its judges in its formative stage. It can confidently be expected that he will add the qualities of both understanding and wisdom to this challenging office.

WELCOME:

Mr. JUSTICE NORTHROP:

Raymond Moyle Northrop, 51, has been appointed a Judge of the Australian Industrial Court and President of the Trade Practices Tribunal and Judge of the Supreme Court of the Australian Capital Territory.

His early education was at Melbourne High School.

After war service with the Royal Australian Navy 1943-1946 young Ray Northrop sought advice about university studies. A student counsellor advised him that he did not have the capacity to do law. He graduated LL.B. with honours in 1949. That 1949 class included Sir Ninian Stephen, Mr. Justice Woodward, Chief Judge Whelan, Judges Byrne & Hogg, and Justices Asche and Emery.

After graduation His Honour entered articles with John McCay of Messrs. Mills and Oakley, in East Melbourne. He was admitted in 1951. He signed the Bar Roll with McGarvie on 1st February 1952 and read with Menhennitt.

He married Joan Peacock in 1954 and now has three sons and two daughters.

In 1965 he joined the standing committee of convocation filling a vacancy caused by the retirement of Menhennitt Q.C. In 1968 he became a member of the Council of the Presbyterian Ladies College.

In 1970 he took silk. In 1972 he became Chairman of the Stevedoring Industry Council, Chairman of the Council of the Presbyterian Ladies College and Warden of Convocation (later known as President of the Graduate Committee).

He is an Elder of the Presybterian Church. Since 1974 he has been Procurator of the Presbyterian Church in Australia.

His Honour was widely regarded as a leading light in the industrial jurisdiction. His practice included many appearances before the Australian Conciliation and Arbitration Commission, the Australian Industrial Court and the High Court. For the most part he represented the trade unions. Such is His Honour's temperament that he was welcomed on behalf of employers generally on his appointment.

Lazarus Q.C. welcomed him on behalf of the Bar with these words:

> "As a barrister you were above all a man of high character and in every way a man of integrity. You are a man in whom a strong sense of principle is combined with a quiet and unassertive manner."

The task facing His Honour will be both stimulating and testing. The Bar wishes him success and satisfaction in his new offices.

LETTERS TO THE EDITOR

Chuckles:

Gentlemen,

As I chuckled over the "Mouthpiece" in the December number of of the Victorian Bar News (which is sent to this Department by courtesy of the Bar Council) I wondered whether the Editorial Committee had come across the story of the letter which the late Eve, J. received from one of counsel senior to him when he sent round the customary letters. It ran:

"My dear Eve,

Where you wear silk or a fig-leaf
I do not give
A. Dam"

Yours Sincerely,
KINGSTON BRAYBROOKE,
Professor of Legal Studies,
La Trobe University.

Overdue Fees:

Dear Sirs,

As a recent member of the Bar, with some years of prior experience as a Solicitor, I would like to endorse the spirit of Byrne's article "The Problem of Outstanding Fees" in the September 1975 edition.

As Byrne has said, no individual Barrister can act on his own about this problem. Collective action by the Bar is necessary from our point of view. This is particularly so at present where the influx of new Barristers is increasing.

But I also think that collective action by the Bar is necessary from the Solicitor's point of view, although this seems paradoxical. Many Solicitors who would be quite happy to pay our fees promptly are afraid to do so, for fear of losing their clients to other Solicitors who do not require fees to be collected promptly. Such Solicitors, especially those still establishing their practices, would be relived if they could legitimately say: "It is not possible to brief any member of the Bar except on these terms as to payment." The responsibility would shift from them.

The majority of Solicitors are perfectly well aware of the effects of inflation, provisional tax and overdraft interest on our real incomes. They know that today the commercial world is not so geared to credit. But just as we are afraid to put ourselves on a limb by taking individual action against Solicitors except in very extreme circumstances, responsible Solicitors cannot afford to be the only ones breaking with the present conventions. In my view, only collective action by the Bar can break those conventions for them. Most Solicitors, who view their obligations seriously, would actually be relieved.

In this article, Byrne canvassed the reasons why the problem of outstanding fees requires remedy. Some of these bear further comment:

1. Sole practice is undoubtedly precarious, and a "bank", of outstanding fees can be reassuring. But most Barristers can take out sickness and accident insurance instead. More importantly we can usually take out long term disability insurance, which is in fact desirable for more permanent protection, even where outstanding fees subsist.

2. In any event, by taking action to increase our real incomes and to exercise more control over the rate at which they are received, we can make better provision for our long-term security by investment.

3. Some Barristers fear the taxation implications, if a large number of fees were suddenly paid. I suggest that this problem, on careful analysis, is not as great as is sometimes thought. In any event, it is temporary while the long-term benefits are great. In fact it might later become safe to elect not to pay tax on cash receipts, which can produce initially a "taxman's holiday".

4. The present system is hardest on us at our time of greatest financial need, when paying for a house and the upbringing and education of our children.

5. State and Federal legal aid in most cases remove the excuse of clients' poverty.

6. Some fear that collective action will erode our independence. But it is already "eroded". All accounts are payable within three months unless arrangements are made to the contrary. I merely consider that this time should be reduced, and in our own interests other arrangements should truly be exceptional.

I do hope interest in this problem will remain high and will lead to its resolution. I am sure the Outstanding Fees Committee would welcome suggestions. We should not continue to be penalised by an anachronism from an era when our real incomes, (especially after tax), were really large enough to warrant latitude in requiring payment.

Yours faithfully,
IAN TURLEY.

CONGESTION IN THE MAGISTRATES' COURTS

Analysis of the returns complied during the recent survey into congestion of the lists in Magistrates' Courts reveals the following:

1. During the period 1.9.75 to 15.12.75 161 matters in which Counsel were briefed were not reached due to list congestion.

2. Arising out of these matters a total of 482 witnesses were inconvenienced.

3. Costs of these witnesses certified by Magistrates totalled $710. (The survey clearly indicated that this comparatively low figure was occasioned because the overwhelming bulk of cases not reached were civil cases where the parties had to bear their own costs.)

4. Total costs of these witnesses actually ascertained by Counsel amounted to $7,335.

I wish to thank all those who contributed to the success of this survey and I will arrange for the results to be forwarded to the Attorney-General.

J.H. PHILLIPS. Q.C.

ASPECTS OF TAXATION AFFECTING BARRISTERS

At about this time of the year members of the Bar are prone to turn their minds to the imposts levied on their hard won earnings by the Deputy Commissioner of Taxation. This article attempts to review some of the ways whereby a member of the Bar can attempt to minimise these imposts. Although it is recognised that many members of the Bar are well informed on this subject it is hoped that some of the matters discussed may be of some assistance, particularly those newly called to the Bar. Readers will, no doubt, form their own views as to the wisdom of any of the suggestions made before adopting them for their own use. Circumstances, of course, vary greatly from person to person and what may be an attractive scheme in one set of circumstances may well be a liability or little use in another. It is not intended in this article to supplant the advice which could be expected to be received from a good tax accountant, or a legal practitioner experienced in the field, but rather to comment on some of the means of minimising or reducing taxation which appear to be open to members of the Bar.

It is proposed to look at two general areas; first the treatment of what might be called normal business expenses, and second to look at the possible use of a Family Discretionary Trust as a means of income splitting. In addition, although it is not within the ambit of this article to look at concessional deductions as such, it is relevant to briefly examine the effect of the introduction of the rebate system which replaced the system of concessional deductions for dependants and other expenditures as a consequence of the changes made in the last Budget.

Concessional Deductions:

Until the 1975 Budget, taxpayers were permitted to deduct allowable concessional expenditures from their gross assessable incomes after deducting business expenses in order to arrive at net taxable income. Accordingly, the taxpayer received a benefit from his concessional deductions at his marginal rate of tax. For taxpayers on incomes attracting tax at the highest marginal rate, these concessional deductions were worth around 66c for each dollar claimed. Business expenditure and concessional deductions were dollar for dollar worth the same amount to the tax-payer. The rebate system means, however, that a rebate is available to all resident tax-payers at 40% of the total amount of the qualifying expenditures or $540 whichever amount is the greater. All resident taxpayers are entitled to a minimum rebate of $540 regardless of actual expenditures. The rebate will only exceed $540 if the qualifying expenditures are in excess of $1,350, i.e. 40% of $1,350 = $540. This change in the system has two obvious consequences to the tax-payer whose marginal rate of tax is in excess of 40% in the dollar. (Net taxable income above $10,000 at current rates). To such a tax-payer it is obviously more beneficial to claim a deduction, where this is permitted, as a business expenditure rather than as a concessional rebate. In addition, and as a consequence of the first proposition, it has also become even more attractive than before for the self-employed professional man to pay his wife a salary for the performance of secretarial duties at home rather than claim her as a dependant. Generally, because every resident tax-payer is entitled to a minimum rebate of $540, (Section 159N (2)) a wife's separate income will be tax free up to a taxable income of $2,518.

Business Overheads:

As a general proposition, the business overheads of a barrister which qualify under Section

51 (1) of the Income Tax Act as deductible expenditures are not very substantial when considered as a percentage of total gross income from the practice. However, where the deductible expenditures are incurred in acquiring assets used in the business and decisions such as whether to lease or to buy have to be made, it is obvious that those decisions can significantly affect the amounts which can be claimed as a tax deduction. It is not proposed in this article to review basic office expenditure such as rent, office telephone and office secretarial services, as those items are clearly tax deductible and appear to offer little scope for variation in their treatment. The items proposed to be reviewed are office bank accounts, library, motor vehicles, personal sickness policies and entertainment and the costs incurred in maintaining an office at the practitioner's home.

Interest on Overdraft:

In these days of high interest payments, interest on bank overdrafts can be substantial. If the overdraft is incurred in order to run a business, the interest payable on that overdraft is deductible under Section 51 (1) of the Income Tax Act. In the case of a barrister who is servicing book debts, in some cases of a considerable magnitude, it would seem that he would have a strong argument that interest payable on such an overdraft should be deductible under Section 51 (1) of the Act. With this type of claim in mind it would be prudent for a barrister to operate a separate business account clearly nominated as such, in which all fees are paid and from which business expenditures are met. Drawings for domestic and private expenditure should be transferred from the business account to a private account. If this procedure is adopted, then not only should it be possible to claim any interest payable on the business account, assuming it is operated in overdraft, but it also should simplify the preparation of tax returns at the end of each year.

Libraries:

Libraries may be written off for tax purposes at 7½% per annum using the diminishing value method of depreciation or at 5% using the prime cost method. As depreciation is calculated on cost it becomes increasingly unattractive over any time span in real money terms because of the considerable increase in the prices charged for legal books over recent years. In these circumstances, it may well be more attractive to the tax-payer to attempt to write off additions for the library in which the expense is incurred. Naturally the reference to additions only includes annual subscriptions to Law Reports, text books, reprints of Acts of Parliament and the like. Leasing should be considered as an alternative to outright purchase when the acquisition of a new set of Law Reports is proposed to be made. Although it would, of course, be a matter of comparing the net costs of cash purchase, terms purchase and leasing in each case, the fact that each payment under a lease agreement is fully deductible in the year in which it is incurred may swing the balance in favour of leasing.

Motor Vehicles:

Motor vehicles loom as one of the largest single business tax deductions in the average barrister's taxation return. Again, the decision whether to lease or buy must be made. Obviously this type of decision depends upon a large number of factors in addition to the relative taxation benefits. Consideration such as the facility to finance a purchase by bank overdraft or by saving and the marginal rate of tax presently being paid by the tax-payer must all be considered before a decision of this type is made.

Aspects of Taxation Affecting Barristers (cont.)

Insurance:

Section 159R of the Act provides that —

"Insurance . . . against sickness of, or against personal injury or accident to the tax-payer . . . shall for the purpose of Section 159N be treated as a rebatable amount in respect of that year of income."

In case E 38, 73 A.T.C. 330, No. 2 Board held that a doctor in practice on his own account was entitled to claim a deduction under Section 51 (1) for sickness/accident premiums paid under a policy providing him with benefits of an income nature during a period of incapacity. It follows from the above that a barrister would be entitled to claim such a premium under either Section 159R or Section 51 (1), the latter section being the general section relating to the deductibility of all losses and outgoings incurred in gaining or producing assessable income. The effect of the rebate system is, of course, to make a claim in respect of the payment of such premiums far more beneficial to the tax-payer on a high marginal tax rate under Section 51 (1) than under Section 159 R.

The Home:

There have been a number of cases over the years where tax-payers have attempted to deduct various expenses incurred at their homes, on the basis that they regularly use a room in the house as a study for professional purposes. It is clear that some portion of a tax-payer's outgoings on the house, such as insurance, lighting, heating, telephone and perhaps mortgage interest or rent may be deducted under the general provisions of Section 51 (1). However, the law is by no means clear on the circumstances in which and the extent to which such deductions will be allowed. In two High Court cases — Thomas v. F.C. of T (1972) 46 A.L.J.R. 397 and F.C. of T. v. Faichney (1973) 47 A.L.J.R. 35, the Court held that expenditure on the construction of a room or the additional cost of the purchase of a house with an additional room for use as a study by the tax-payer was expenditure of a capital private or domestic nature and the tax-payer was not entitled to deduct the mortgage interest payments referable to the cost of such a room. In the latter case the Court also held that the tax-payer was entitled to deduct expenditure for lighting and hearting and to depreciate the office furniture in the study. However, in the case of Caffrey v. F.C. of T. (1973) 4 A.T.R. 109, a Western Australian Supreme Court Judge allowed a law lecturer at a country college which was only equipped with inadequate library and study facilities, who maintained a study exclusively as such in his home a portion of rent, electricity and gas expenses related to the home. This case was distinguished in the recent decision of the New South Wales Supreme Court in F.C. of T. v. McCloy (1975) 5 A.L.R. 330 which followed the two High Court decisions. As the law now stands it appears that although a proportion of home expenses relating to heating, lighting, telephone and the like will be allowed as a deduction under Section 51 (1) no part of the mortgage interest or rent will be allowed.

Wife:

The wife of a barrister who remains at home and looks after the house and children contributes greatly to the barrister's ability to earn a living. She may well, in addition, directly assist by answering the telephone, reviewing unpaid fees, typing and in entertaining business guests and the like. It seems clear that the Commissioner will allow a small salary to be paid to a wife in this position without requiring that the tax-payer provide evidence to justify the payment. This type of expenditure may also be assisted if the barrister's home telephone number appears in the yellow pages which would provide support for the argument that he conducts an office at his home. Where salaries are

paid by a tax-payer to persons such as a wife, the Commissioner has a discretion under Section 65 (1) of the Act to allow such payments "only to the extent to which in the opinion of the Commissioner it is reasonable". Accordingly, when a barrister proposes to pay his wife a salary he should bear this discretion in mind.

Entertainment:

Expenditure on entertainment when it is connected with the conduct of a business is also an allowable deduction under Section 51 (1). A tax-payer claiming entertainment expenditure should be prepared to justify the claim if required to do so. Accordingly, it would be a sensible precaution for the tax-payer to keep a record of such expenditure which could be used to support such a claim if required.

Discretionary Trust:

As the law now stands a professional man has only very limited scope for income splitting. It seems that it is an acceptable commercial practice for a businessman to form a private company through which to sell his services, but the same approach by a professional man is unacceptable. Section 260 of the Act has been applied in Peate v. F.C. of T. (1967) 1 A.C. 308 to nullify a scheme whereby a doctor formed a family company which was to employ him on a salary to carry out his professional activities. There does, however, appear to be limited scope for a professional man to save some taxation by forming a Discretionary Trust. The beneficiaries in the trust would normally be his immediate family. Such a trust if formed then the tax-payer could ensure that it purchases, for example, the next car which the tax-payer proposes to use in the business. In addition, the trust could own the barrister's library and office furniture and fittings. The trust would then lease these items to the barrister at normal commercial rates. Ideally, such a scheme should be implemented at the time the barrister commences practice. Readers will have to form their own views as to whether the attendant risks which would be involved in transferring already acquired business assets to the trust are outweighed by the hoped-for benefits.

This article has not attempted to deal with all conceivable taxation deductions which may be open to a practising barrister, nor has it attempted to deal with any of the matters raised in any great depth. It is hoped, however, that some of the suggestions made may be of some assistance particularly to newcomers to the Bar.

MOUTHPIECE

"The advantage of our legal system is that it's the only one which could possibly work".

The bigwig seemed warmed by the thought which justified his long professional life.

"You see" he expanded, "whatever is said in court is always tested by cross-examination. That way we get the facts".

"I always thought that cross-examination was intended to show that what is said in court is wrong," ventured Whitewig, "not that it was right."

"That's correct".

". . . and that means that what is said in court is not necessarily factual in the first place," Whitewig continued.

"Right".

Whitewig looked puzzled. "Well if that's the way things work," he pondered, "we seem to be two steps away from the true facts and heading in the wrong direction".

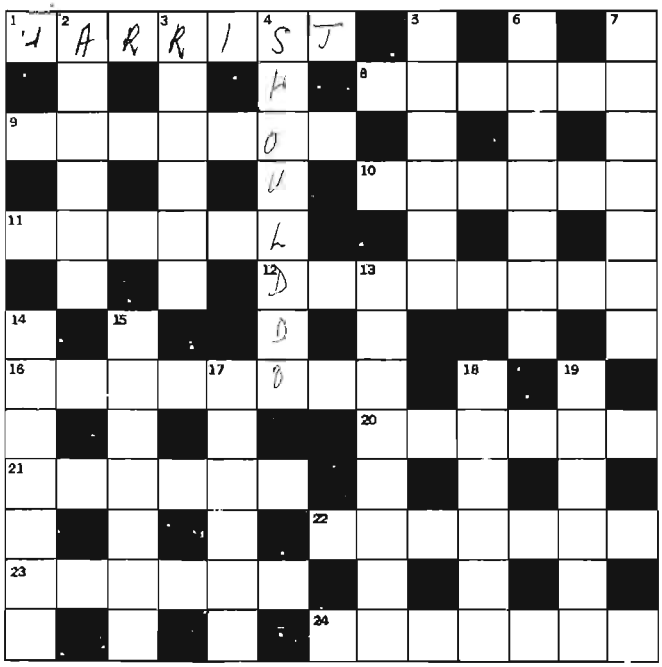
The bigwig snorted apoplectically.

"Quite so", said the waist-coat with a noticeable curl of the lip, "that is why it is the only system which could possibly work".

BYRNE & ROSS D.D.

CAPTAIN'S CRYPTIC

No. 15



ACROSS:

1. Tweedy Judge (6, 1)
8. Oyez (4, 2)
9. Very few, in fact no total (3, 1, 3)
10. Procession method of Noah's animals (2, 4)
11. Adjectival state of mind (6)
12. Affection for a divine object (8)
16. Poltroon (8)
20. Upper part of many feet moving together (6)
21. Real holder (6)
22. Reflections of small boats (7)
23. Polite sex (6)
24. Icy lair near Welsh Mountain (4, 3)

DOWN:

2. Worshipped or dead (6)
3. So rats to hot meat! (6)
4. Ought (6, 2)
5. Incline towards a humpy (4, 2)
6. Hem (5, 2)
7. Villain (7)
13. Will (8)
14. Knight's Tax (7)
15. Gross John the Judge (7)
17. Contemplate laker (5)
18. Scrowl delivered to third person (6)
19. Re Idea, sweetheart (6)

ALIBIS, SPEECHES & PLEAS

CHANGES TO CRIMES ACT

A Bill to amend the Crimes Act will, if passed, make important changes to procedures in criminal trials.

The Acting Attorney General Mr. Hunt read what will be known as Crimes Act 1976 for the first time on April 13.

The Bill contemplates the following changes.

1. Particulars of alibi witnesses must be supplied to the Crown Solicitor by the defence.
2. The order of final addresses is regulated.
3. With the consent of a convicted person a court can take into account pending charges when passing sentence.

Alibi Evidence

The bill proposes that two new sections be inserted after S.399. S.399A prevents an accused from adducing evidence of an alibi unless he has supplied particulars of the witnesses to the Crown Solicitor. The particulars which must be given are the name and address of any alibi witness or if this is not known, any information which may help to find the witness. The accused must satisfy the Court that he took reasonable steps to find the name and address of an unidentified witness. Any further information relating to unidentified witnesses must be given to the Crown Solicitor on request.

A person who is committed for trial must be advised during or at the end of committal proceedings of the alibi requirements. He then has ten days within which to notify the Crown Solicitor.

A person who is presented must give the particulars within ten days of being supplied with the presentment.

Curiously enough, the bill makes it a contempt of court for anyone acting for the prosecution, or a policeman, to communicate directly or indirectly with a proposed witness named in the notice, unless it is done in the presence and with the consent of the accused or his representative (S. 399B).

Other provisions apply similar principles to the Magistrates' Court.

This change in procedure is clearly aimed at preventing a recurrence of the events in the recent Supreme Court trials of R. v Kable and R. v Cayeux.. Kable had been charged with murder. Alibi evidence was given at his trial by Cayeux. Kable was acquitted. Cayeux was later tried and convicted of perjury in the giving of that alibi evidence.

One of the inevitable results will be that by the time of trial, any criminal record of alibi witnesses will be known. Their I.B.R. records will have been checked. The prosecution will be better prepared to assault their credit.

However, there may be a method for those representing accused persons to reverse a potentially unfavourable situation. By giving the Crown Solicitor a short summary of the evidence to be given by the alibi witness the defence may be able to require the prosecutor to call the witness. That conclusion may be inferred from R. v Lucas 1973 V.R. 693. This would enable the defence to cross-examine that witness.

We can only guess at what the notice might look like under these circumstances. What follows is one of our guesses.

The Crown Solicitor,
State Law Offices,
221 Queen Street,
MELBOURNE.

Dear Sir,

Sean Ball

I act for Mr. Ball presently committed for trial.

The following particulars are supplied pursuant to Crimes Act S399 A.

Name	Address	Miscellaneous
WITNESS 1		
Violet Gentian	Unknown	with whom the accused spent the night of 25th April 1976
WITNESS 2		
Unknown	Unknown	tall dark man, black curly hair, one gold earring who advised the accused to spend the night with Witness 1.

Yours faithfully,

Upton Showdem.

Order of final addresses

At last from chaos there is to be some order of final addresses. There could be no more uncertainty than exists in this area at the moment. The ultimate difficulty is in trials of several accused where each takes a separate course and one or more submissions of no case to answer is made. The learned trial judge is forced to try and square the Full Court Practice Note 1950 V.L.R. 153 with R v Webster 1974 VR 457. R v. Wood 1974 VR117 is often thrown in as if to make the confusion more certain.

The Bill provides new SS 417 & 418. S.417 gives the defence the right of reply in all cases except where counsel for the accused asserts facts unsupported by evidence. In that case the judge may allow the prosecutor to make "a supplementary submission to the jury confined to replying to such assertion."

The proposed S.418 is as follows:—

418. Upon every trial before a jury for an indictable offence —

(a) where the only witness called by the defence is the accused he shall be called as a witness immediately after the close of the evidence for the prosecution;

(b) where the accused makes an unsworn statement in lieu of giving evidence on oath and calls no witnesses his statement shall be made immediately after the close of the evidence for the prosecution;

(c) in cases not falling within (a) or (b) —

(i) the accused may be called as a witness or may exercise his right to make an unsworn statement at such stage as he may think fit after the close of the evidence for the prosecution and either before or after the opening, if any, to the jury of the evidence of any witnesses to be called on his behalf;

(ii) the accused or, where he is defended by counsel or solicitor, such counsel or solicitor shall be entitled, if he thinks fit, to open to the jury the evidence of any witness to be called in support of the defence other than the accused himself, and when all the evidence, if any, for the defence and any unsworn state-

ment by the accused and the final address, if any, for the prosecution shall have been concluded, to address the jury for the purpose of summing up the evidence;

(d) for the purpose of enabling him to determine the proper course of the proceedings the presiding judge shall, at the close of the case for the prosecution and in the absence of the jury question the accused's counsel or solicitor or, if he is unrepresented, the accused himself, as to what course the defence proposes to follow: and except by leave of the court the defence shall not be presented in any manner other than that of which the court has been advised in response to such questioning."

It can be noted that no mention is made of the situation where one of several accused's counsel wants to make a no case submission. Probably the 1950 Practice Note and Webster's Case will still apply.

Taking account of other offences

In all cases except treason or murder a court when passing sentence will be able to take into account other offences with which he has been charged or presented, if the accused consents. No court will be able to take into account an indictable offence which it would not have diction to try.

The Bill proposes a new S.435A. The Section seems to contemplate that list of offences will be shown on a form prescribed in Part B Schedule Eight. It will be drawn by the police and signed by a prosecutor or policeman.

The Court will require the consent of the convicted person before taking into account all or any of the offences. Once an offence on the list has been taken into account no further proceedings shall be taken or continued for that offence.

It is not too hard to see that there could be a good deal of hard bargaining as to what goes on the list which is filed in the Court.

"Yer Honour, can I swap the woundings for a rape with mitigating circumstances?"

FOR THE PERIPATETIC

The Law Council of Australia has sponsored two conferences of interest to all members of the legal profession both of which are to be held in Sydney.

National Conference on Legal Education 15th – 20th August 1975

The purpose of this conference is to examine legal education in Australia in all its aspects – academic training, practical instruction and continuing legal education.

Participants will include representatives of the practising profession, the law schools and other academic law departments in universities and non-university tertiary institutions, the legal practice courses, the admission boards, the judiciary, government and other institutions involved in the field, together with prominent overseas visitors.

Registration may be effected with the Secretary Law Council of Australia Hume House.

19th Australian Legal Convention 3rd – 9th July 1977

Distinguished overseas guests will include the Chief Justice of Canada Mr. Justice Bora Laskin

Circulars will be sent in due course but any enquiries may be directed to Miss A. Ward, Convention Director, 170 Phillip Street, Sydney, 2000.

A full list of forthcoming conferences is set out hereunder.

Information may be obtained about these from the Secretary, Law Council of Australia.

2nd International Tax Planning Conference
Nice, France – 12-14 May, 1976.

Taxation and Investment Conference
Hong Kong – 24-26 May, 1976.

4th World Congress on Medical Law
Manila, Philippines – 16-19 July, 1976.

American Bar Association
Atlanta, U.S.A. – 7-12 August, 1976.

Law Council's National Conference on Legal Education in Australia
Sydney, Australia – 15-20 August, 1976.

International Bar Association
Stockholm, Sweden – 15-21 August, 1976.

Australasian Universities Law Schools Association
New Zealand – 23-27 August, 1976.

International Law Association
Madrid, Spain – 24 August - 4 Sept., 1976.

30th International Fiscal Association Congress
Jerusalem, Israel – 13-17 September, 1976.

8th Conference for Accountants in the Pacific & Asian Area
Hong Kong – 20-24 September, 1976.

The Law Society, National Conference
Torquay, England – 6-20 October, 1976.

Taxation Institute of Australia, 4th National Convention
Surfers Paradise, Queensland, Australia – 18-22 April, 1977.

Commonwealth Law Conference
Edinburgh, Scotland – 24-29 July, 1977.

Lawasia Conference
Seoul, Korea – 28 August - 2 September, 1977.

International Federation of Women Lawyers
Nigeria – August/September, 1977.

Addresses from which details of additional overseas conferences can be ascertained:

The A.B.A. National Institute,
C/o Division of Professional Education,
American Bar Association,
1155 East 60th Street,
Chicago, Illinois, 60637,
U.S.A.

American Law Institute-American Bar Association, Committee on Continuing Professional Education,
4025 Chestnut Street,
Philadelphia,
Pennsylvania 19104, U.S.A.

Practising Law Institute,
810 7th Avenue,
New York, N.Y. 10019, U.S.A.

Programme of Instruction for Lawyers,
Harvard Law School,
Cambridge,
Massachusetts 02138, U.S.A.

National Institute for Trial Advocacy (NITA)
C/o Professor Robert E. Keeton,
Harvard University Law School,
Cambridge, Massachusetts 02138, U.S.A.

The Chairman,
Standing Committee on Continuing Education of the Bar
American Bar Association,
1155 East 60th Street,
Chicago, Illinois, 60637, U.S.A.

FEDERAL ANNIVERSARY CONFERENCE

The Faculty of Law University of Melbourne is sponsoring a Seminar on 6th-8th August 1976 to commemorate the seventy-fifth anniversary of the Australian Federation. The particular theme of the occasion will be "The Labor Government and the Constitution 1972-1975", and papers will be delivered by leading constitutional law academics, including Professors Sawer, Richardson, Campbell, Zines and Howard, as well as the former Prime Minister, the Hon. E.G. Whitlam Q.C.

Commentators on the papers will include the Australian Attorney-General, Mr. R.J. Ellicott Q.C., the Solicitor-General, Mr. M.H. Byers Q.C., and the Victorian Solicitor-General, Mr. D. Dawson Q.C. Numbers at the Seminar will be limited to approximately 100, and it is hoped that participants will include practitioners, public servants, politicians and academics from all round Australia. Registration will commence in April. Further details are available from Mr. Gareth Evans at the Faculty of Law, University of Melbourne, Parkville, Victoria, 3052.

MOVEMENT AT THE BAR
(Since December 1975)

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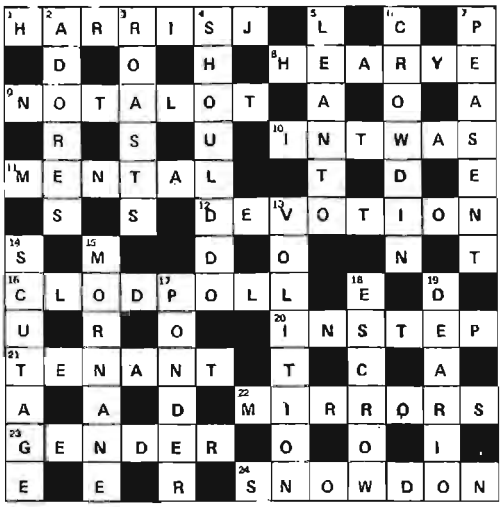

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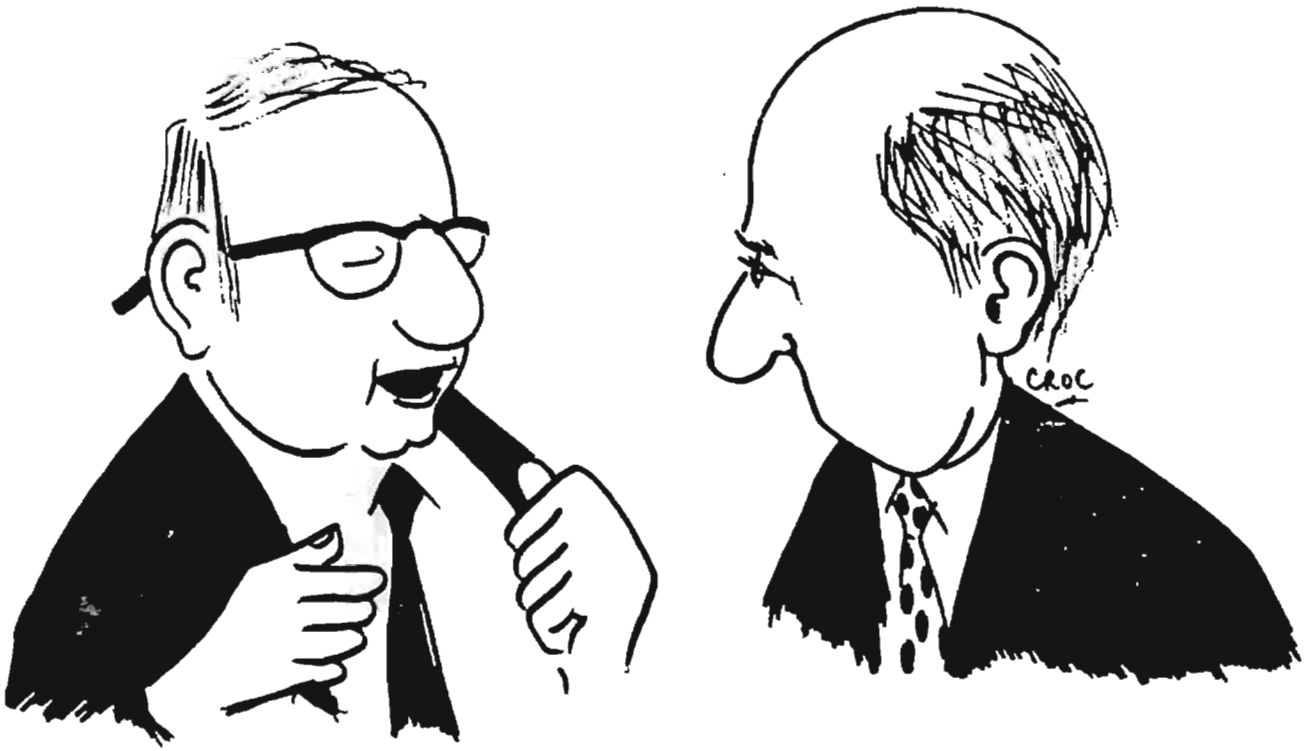

"This daily metamorphosis never fails to amaze me. Around the house, I'm a perfect idiot — but into court and on with the robes, and . . . I'm IT!"