Victorian Bar News

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BAR COUNCIL REPORT

1. Joint Standing Committees with Law Institute of Victoria.

The Bar Council and the Law Institute have continued their discussions concerning aspects of practice at the Bar. They have now agreed that the various matters which have been suggested for discussion between them should be considered by five committees as follows:—

(1) (a) Rule that Solicitors must attend Barristers' Chambers.
(b) The retainer rules.
(c) Should wigs and gowns be retained?
(d) Use of a Solicitor's name in firm after he has gone to the Bar.

(2) (a) Rule that Barristers can only appear in Court with another member of the Bar.
(b) Rule that a Queen's Counsel can only appear with a junior.
(c) Specialisation in the profession and recognition, designation or certification of specialties.
(d) Membership by Barristers of the Law Institute.
(e) Partnership by Barristers with other lawyers. (i.e. Associations of lawyers practicing in particular fields of law).
(f) Sections.

(3) (a) Discipline generally.
(b) Competence of both Solicitors and Barristers to ensure that proper standards of competence are maintained by both.
(c) Discipline of Barristers for earlier misconduct as Solicitors.

(4) (a) The two-thirds rule insofar as it still applies.
(b) Fees of Barristers.
(c) Whether it is misconduct for a Solicitor to unreasonably retain Counsel's fees after they have been paid to him by his client.
(d) Payment of the same amount under County Court Scales where a Solicitor appears in Court as is payable under the Scale to Counsel.
(e) Fees of Counsel on County Court briefs, particularly for hearings where the amount claimed is the limit of the jurisdiction.

(5) Legal education and of the joint involvement of the Institute and the Bar.

2. New Caretaker

As a consequence of the recent retirement of Mr. Brown as caretaker of Owen Dixon Chambers, a new caretaker, Mr. George Melbourne, has been appointed and has taken up his duties. Mr. and Mrs. Melbourne are now in residence on the 13th floor and may be contacted by tenants of Owen Dixon Chambers for replacement of fluorescent tubes and routine maintenance which is the responsibility of Barristers' Chambers Limited. Counsel using the building at weekends are requested to ensure that the front door is relocked after entering or leaving the building, to maintain security.

3. Board of Inquiry into motor vehicle accident compensation in Victoria.

The Bar Council has joined with the Law Institute in presenting a report of a joint committee of the Bar and the Institute, to the Board of Inquiry.

4. New Application Rules, and a new form of application to sign the roll of Counsel have been adopted by the Bar Council. Copies of the Rules and the Application Form are available from the Executive Officer.

5. Approaching witnesses at Courts.

The Bar Council has given consideration to proposals for a policy to be adopted with respect to the rights of legal representatives and the police to approach the other side's witnesses. After considering proposals put forward by the Police and Lawyers Liason Committee, and the views of the Bar's

Advisory Committee on Criminal Law Reform, the Bar Council has approved in principle of the policy suggested by the Police and Lawyers Liaison Committee. If and when an appropriate rule is formulated by the Police and Lawyers Liaison Committee the Bar Council will then consider whether that rule should become a rule of professional conduct. The policy is as follows:

VICTORIAN BAR COUNCIL

POLICE AND LAWYERS LIAISON COMMITTEE

1. The third meeting of the Committee took place on 4th March, 1977.
2. At that meeting it was resolved that the Committee:
   1. Acknowledges the principle that "there is no property in a witness".
   2. Notes that concern has been expressed by police officers in relation to lawyers speaking to a person known to be a witness who the prosecution proposes to call (called herein a prosecution witness) and by lawyers in relation to police officers speaking to a person known to be a witness who the defence proposes to call (called herein a defence witness).
   3. Confirms the impropriety of a police officer or a lawyer or any other person attempting to influence, harrass or intimidate a witness in order to have him give evidence contrary to that which he proposes to give or which is false or concocted.
   4. Confirms, subject to the observations set out in paragraph 3 hereof, that it is not improper for a police officer to discuss with a defence witness the evidence to be given by that witness or for a lawyer to discuss with a prosecution witness the evidence to be given by that witness.
   5. Is of the view —
      (a) that the possibility of misunderstanding as to the nature of an approach by a lawyer to a prosecution witness or by a police officer to a defence witness is removed when such an approach is made in the presence of or with the prior approval of a representative of the party proposing to call the witness and that it is desirable in the interest of justice being done and appearing to be done if, before any such approach is made, notice is given to the party proposing to call the witness;
      (b) that for the purpose of clause (a) the appropriate person to be given such notice is, in the case of a defendant or an accused person, his lawyer, and, in the case of proceedings in a Magistrates Court, the informant or if he is unavailable another police officer associated with the case or the prosecutor (if known) and in the case of proceedings in the Supreme Court or the County Court, the prosecutor (if known) or the Crown Solicitor;
      (c) that in the event of notice being given in accordance with clause (a) it is proper for the person receiving such notice —
         (i) to inform the witness that he is free to discuss the matter and his evidence with the party making the approach but that he is not required to do so, and
         (ii) if he so desires to tell the witness that he would prefer the witness to not so discuss the matter or his evidence;

(d) that if notice is given in accordance with clause (a) the person receiving such notice should co-operate as far as is reasonably possible with the person giving such notice but that in the event of reasonable co-operation not being given, it is proper for the party giving notice to approach the witness.

6. Ethics -- Opinions of fellow Counsel

The Bar Council has resolved that it is improper for Counsel to publish whether orally, in writing, or otherwise, his opinion of the professional characteristics of his fellow Counsel or any of them, in such a way, or in such circumstances as to impugn the dignity and high standing of his profession.

7. Thirteenth floor facilities.

The renovations and redecoration on the thirteenth floor have now been completed. The facilities now available are as follows —

1. A new coffee lounge in the former lounge area, which has been refurnished and redecorated. This area is open from 9 a.m to 5 p.m, and in addition to light snacks and morning and afternoon tea, the lunchtime menu includes a full range of sandwiches, cold dishes and drinks. An espresso machine is to be installed shortly. The coffee lounge is open to all members of the Bar, their employees, employees of the Bar Council and of Barristers Chambers Ltd., and Clerk's employees. Solicitors may be invited into the coffee lounge as guests of members for morning and afternoon teas.

2. A new area has been set aside as a lounge exclusively for members of the Bar as part of the Common Room. Light meals and morning and afternoon tea obtained from the Coffee Lounge may be enjoyed in this new lounge. This area is reserved at all times only for members of the Bar.

3. The main Dining room has now been extensively renovated, modernized and re-arranged. A char-grill has been installed enabling top quality grills to be served at very modest prices. In addition to grills, a varied menu is available, changing from day to day.

   The new seating arrangements and bistro-style decor have been designed to create a more convivial atmosphere. This area also is reserved at all times only for members of the Bar.

4. The whole of the 13th floor has been re-designed for use as an art gallery and exhibition area. The present showing is of a selection of leading Australian contemporary artists such as Fred Williams and John Brack. A new exhibition of works by John Robertson will commence during September. Most of the exhibits are for sale and prospective buyers should contact Paul Guest. Catalogues will be available for future showings.

YOUNG BARRISTERS' COMMITTEE

The sarcasm in the last report on the Young Barristers' Committee in "Bar News" has precipitated the Committee into action. Readers may recall the report published in the same edition of Charles Q.C.'s address to the Medico-Legal Society — and its reference to ignorance, incompetance and downright dishonesty discernible at the Bar. The Young Barristers Committee has asked the Bar Council to refer these comments to the Ethics Committee; and the Bar Council, after some hesitation decided to do so. The ruling of the Ethics Committee was that there was no prima facie case against Charles in respect of his address to the Medico Legal Society.

The recent notice in the "Law Institute Journal" calling on solicitors to advise the Journal of the names of solicitors practicing at particular magistrates' courts for publication of a list of "advocates" received the attention of the Committee. It was decided that such a list would amount to solicitors advertising a particular speciality; that it would inevitably be detrimental to the tradition of a divided profession; that it would lessen the availability of legal skills to the Community; that it would jeopardize smaller solicitors' practices and that if such a list were in fact published the Bar might have to give very serious thought to altering its rules of practice so as to enable barristers to take work in without the intermediary of a solicitor. It was noted that such a plan as that suggested in the Journal could only be motivated by financial considerations rather than the desire to serve the best interests of the lay client. These views have been conveyed to the Bar Council by the Committee.

CONGRATULATIONS: GRAY J.

Since 1968 His Honour has graced the County Court Bench. In 1977 he received the accolade of the Victorian Government in the form of an invitation to serve on the Supreme Court.

An so on 18th July this year the profession gathered to welcome His Honour in his new office. There tribute was paid to his courtesy fairness and expedition and sense of humour and to his ability to get to the real issue in a case and to sum them up well. In his reply, the Judge adknowledged the assistance given to him by his erstwhile brethren, confessing that his period on the County Court "has been the happiest and most satisfying period of my professional life".

The Bar congratulates His Honour on his elevation and trusts that this greater dignity will bring in its train even greater happiness and satisfaction.

WELCOME: KING J.

On the 22nd July, 1977 Alfred Capel King took his seat on the Supreme Court Bench.

Receiving his education at those fertile judicial breeding grounds Box Hill High School and Scotch College, His Honour studied Law and Arts at Ormond College in the University of Melbourne — and with considerable distinction since he gathered the Supreme Court Prize in 1942 and graduated with an LL.M as well as a B.A.

After service in the AIF he was admitted to practice in August, 1946. For seven years he served as legal officer to Nicholas Pty. Ltd. and then on 5th February, 1954 signed the Bar Roll and commenced reading with Pape.

With his quiet manner and his specialisation in one of the more arcane areas of law, he was probably not one of the most widely known members of the Bar. But those whose fortune it was to work with or against him soon came to respect his knowledge, not only in the field of industrial property of which he was master, but in other related areas including commercial and contract law.

Who's Who does not record his Honour as indulging in any recreations, but it seems he is a member of the Savage Club and the RACV Club.

The Bar has already welcomed His Honour to his new position and wishes him much satisfaction and success in the future.

WELCOME: JUDGE RENDIT

Peter Uno Rendit, 48, was admitted to practice on the 15th February, 1954 after completing his articles with Messrs. F.S. Newell & Marsh. On the 10th February, 1956 he signed the Roll of Counsel and commenced reading with Opas.

His Honour was born in Sydney and educated at Box Hill High School, Melbourne High School and Melbourne University. Up until his appointment he maintained a close link with the Melbourne University Law School as independant lecturer in Professional Conduct.

At the Bar he soon developed a wide practice, although for some years he specialised in Workers' Compensation. His experience in this field was shared with the profession when he became a co-author of the second edition of Butterworth's text book on the subject. At the time of his appointment he had been doing preliminary work on the third edition of that text book. In 1976 he took silk.

In addition to his practice at the Bar, His Honour made a significant contribution to the Bar itself, serving on the Bar Council from February, 1963 until September, 1972. He was Honorary Secretary from February, 1964 to September, 1967. His Honour also served for a number of years on the Interstate Practitioners' Committee and was himself admitted to practice in the A.C.T. He was also editor of the Bar Roll, the new edition of which had just been completed prior to his appointment.

One of Judge Rendit's closest friends was the late Louis Voumard Q.C. In 1965 His Honour assisted Voumard in the enquiry into the acquisition of land by the Education Department at Rowville and Berwick.

Much of His Honour's spare time is spent at his holiday retreat at Blairgowrie, where he is known to entertain many members of the legal profession.

Part of his fame was the long list of attractive secretaries who worked for him over the years. This, of course, encouraged many members of the Bar to seek his expert guidance in ethical problems. His three readers Boyes, Munro and Burnside recall his readiness to offer them the benefit of his advice in this and in all of the fields of his expertise.

His Honour always displayed a quiet courteous efficient manner in his dealings with the Judges before whom he appeared and in his dealings with the public and the profession generally. Undoubtedly, these qualities will ensure many happy and productive years on the Bench.

WELCOME: JUDGE CULLITY

On the 21st July 1977 Eugene John Cullity Q.C. was appointed a judge of the County Court.

All of his Honour's schooling was received at Christian Brothers' College, St. Kilda, save for his Matriculation year, which was spent at St. Kevin's, Toorak. After Completing a five year Articled Clerks course in the office of Royston T. Cahir, His Honour was admitted to practice on the 1st March 1955, and then signed the Roll of Counsel a day or so later. Some ten days before his Admission, he took up residence in Selbourne Chambers with Starke, with whom he read until the latter took silk, whereupon His Honour completed his reading with Mornane.

He practised in many jurisdictions during his twenty years as a junior, with the emphasis being in the criminal jurisdiction during his first seven years at the Bar, thereafter developing a very large practice in the personal injury field, particularly in the Supreme Court. He also enjoyed a large circuit practice in Ballarat and Wangaratta. In addition His Honour held a retainer from the Medical Defence Association.

His unassuming manner, combined with a genuine modesty and cheerful disposition, made him extremely popular among his colleagues and greatly sought after as a master before he took silk. Whilst heavily engaged in circuit work, His Honour felt compelled to decline a number of potential

readers, but in a period of only six years up to 1975, he had no less than six readers – McArdle, Ruddle, Grace, O'Brien, Johnson and Chizik. These six pupils sought and obtained ready access to his considerable knowledge of the law and to his down-to earth commonsense approach to legal problems, both during their period of reading and thereafter.

His Honour is the son of one of the Bar's most famous members, the late Jack Cullity who signed the roll of Counsel in 1922, and who, for the next forty years, established himself as a leading advocate in criminal trials, and who, as a cross-examiner, was second to none.

Eugene Cullity is a life member and former President of the Torquay Surf Life Saving Club, having been an active competitor himself for a number of years both at a state and national level. He at one stage competed as a member of the Victorian team. He is also a keen tennis and squash player, apart from being a fanatical Collingwood supporter of long standing. Being married with eight children has necessitated His Honour in holding six Reserve seats in the Ryder stand for quite some time.

Eugene Cullity combined skill in advocacy with a very sound knowledge of the law, in addition to his very thorough and pain-staking approach to his work. These and his many other qualities, particularly those of compassion and humanism, and a genuine concern for his clients and people generally, make his appointment to the County Court a popular one.

FAREWELL: JUDGE ADAMS

Judge Arthur Adams retired on the 22nd July, 1977 after fifteen years on the County Court Bench.

His Honour was born in South Africa and came to Victoria at an early age. He was educated by Presentation Nuns and later by the Jesuits at St. Patrick's College East Melbourne and signed the Bar Roll in October, 1929. He read with Leo Cussen and in turn had two readers, Kearney and Kinnane.

His time on the Bench was characterised by a kindliness and a genuine attempt to assist people in misfortune whether they be counsel or participants. This characteristic gentleness and fairness was coupled with an earnest desire that even in the most bitterly fought contests, the courtesies of civilised men should be observed.

The latter years of his judicial life were plagued with poor health but even this was borne with fortitude. His Honour observed upon his retirement "a judge should face the diminish-ments of life not in office but sensibly out of it". The Bar trusts that these diminishments will long elude him.

FAREWELL: DUNN J.

Not many members of Counsel in practice will recall the day when Benjamin Francis Dunn O.B.E. took his seat on the County Court in 1955.

His Honour signed the Bar Roll in 1929 and, except for a period of war service, practised with distinction until his appointment to the Bench. After two brief sojourns on the Supreme Court as Acting Judge in 1968 and 1972, His Honour was appointed a Judge of

that Court on 1st January, 1973. He brought to this position considerable wealth of experience since his previous judicial experience included a period as acting Judge in the Northern Territory, twice as Chairman of the Worker's Compensation Board, Chairman of the Police Service Board and Chairman of the Marine Court of Enquiry in to the "Western Spruce" disaster at Port Welshpool.

A neat Judge, His Honour will be remembered by those who appeared before him as a man of infinite courtesy and patience. Even the most outrageous propositions on scarcely credible evidence met only an impish smile and an adjustment of the pince-nez.

The Bar regrets the loss of such an experienced judge and wishes him well in his retirement.

FOR THE NOTER UP

Supreme Court of Victoria

Judges:

Delete:	Dunn J. (retired)				
Add:	Gray J. (1968)	51	6.3.26	1977	1998
	King J.	64	13.2.13	1977	1985

County Court

Delete:	Judge Gray (translated to Supreme Court 12.7.77)				
	Judge Adams (retired 22.7.77)				
Add:	Judge Rendit	48	11.6.29	1977	2001
	Judge Cullity	49	10.2.28	1977	2000

BAR COUNCIL ELECTIONS

It's on again. The following place themselves before the electorate crying "My door is always open...." For the assistance of voters we include details of where the respective doors may be found:—

Counsel of not less than 12 years' standing (11)

J.A. GOBBO Q.C.	Room	1207
J.D. DAVIES Q.C.		215
H.C. BERKELEY Q.C.		1014
FRANK COSTIGAN Q.C.		1206
G.R.D. WALDRON Q.C.		1213
J.J. HEDIGAN Q.C.		1203
B.J. SHAW Q.C.		1205
A. MONESTER Q.C.		1116
J.H. PHILLIPS Q.C.		113
S.P. CHARLES Q.C.		614
G. HAMPEL Q.C.		103
G.V. TOLHURST		519
F. WALSH		904
B.W. NETTLEFOLD		704

Counsel of not less than 6 nor more than 15 years' standing (4)

P.D. CUMMINS	1214
E.W. GILLARD	1208
L.R. OPAS (Miss)	425
A. CHERNOV	1204
P. MANDIE	314
F.M. DALY (Mrs.)	1108
B.G. WALMSLEY	104
R. RICHTER	520
R. McD. COLLINS	519

Counsel of not more than 6 years' standing (3)

B.M. HOOPER (Mrs.)	1017
T.F. DANOS	141
M. ROZENES	8 (Hume)
R.C. WEBSTER	1018
R.L. van de WIEL	515
P.F. McDERMOTT	(Equity)
T.D. WOOD	6 (4 courts)
M.A. ADAMS	14 (Hume)

FROM THE VICTORIAN HISTORICAL JOURNAL

For the law, of course, time moves slowly. It is therefore appropriate that in the May 1977 edition of the Victorian Historical Journal the death of a former Past President of that Society Dr. William Alexander Sanderson was noted. Sanderson was a member of the Victorian Bar prior to his death. Most members would be excused for not recalling Sanderson. He died on 14th January, 1939.

The following letter has been received by the Chairman from the Chief Justice of the Supreme Court of New South Wales.

5.9.77

My Dear Costigan,

My Associate has shown me your letter of 22nd August, 1977 in connection with the practice to be adopted in this State by newly appointed Queen's Counsel. As there is another matter affecting Queen's Counsel in this State that I should like to draw to your attention, I have taken it upon myself to answer your letter directly.

You are correct in your understanding regarding the practice ordinarily followed in this State whereby newly appointed Silks attend on an early convenient occasion and announce their appointment. The announcement is made as of course by all Silks in the Court of Appeal on an occasion when either the Chief Justice or the President is presiding. The announcement is also made to the senior court or Judge in jurisdictions in which the newly appointed Silk customarily practises: Equity Silks customarily announce their appointment of the Industrial Commission, and so on. In addition, it is an accepted courtesy for a newly appointed Silk to announce his appointment to any member of the Bench with whom he may have a particular personal link.

Whilst the announcements are usually made together, it is perfectly acceptable, and not inconsistent with past practice, for a new Silk to make his announcement on any other day if for any reason he prefers so to do. It is desirable in every case for the new Silk to ensure that the Judge or presiding Judge concerned is made aware in advance of the proposed announcement and expresses his willingness to receive it.

Within the foregoing general outline of the practice in this State, a member of the Victorian Bar who has been granted Silk in this State may attend before the Court of Appeal on such date after his appointment as is convenient for him, the usual preliminary arrangements mentioned above having been made. It would be expected that he should do so in any event prior to appearing with the rank of Queen's Counsel before any court in this State. He should also observe the local practice of bringing with him his letters patent, although these are not mentioned or tendered for perusal at the time of the formal announcement.

In the event of a newly appointed interstate Silk wishing to announce his appointment prior to appearing in this State and finding that the Court of Appeal is not sitting on the day when he will be in Sydney, then it will be perfectly acceptable for him to call formally upon the Chief Justice or, in his absence, the President of the Court of Appeal.

I trust that the foregoing outline sufficiently covers the queries raised in your letter. The other topic that I should like to mention concerns the wearing of robes in this State. I have more than once in recent months observed a member of the Victorian Bar, holding the rank of Queen's Counsel in Victoria coming forward for admission to the New South Wales Bar and, on the day of his formal admission, appearing in Queen's Counsel's robes. This is not correct. Unless and until he is granted Silk in this State, an interstate Silk admitted to the New South

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CAPTAIN'S CRYPTIC

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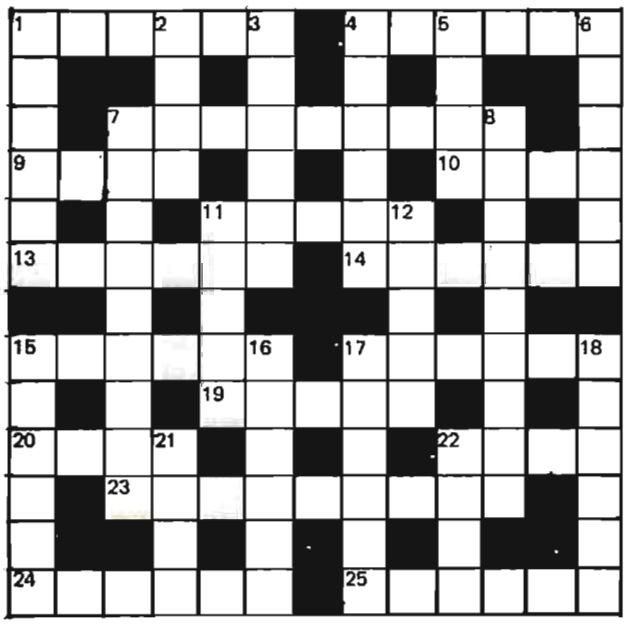

ACROSS

1. Legal ill will (6)
4. Otherwise in Latin (6)
7. Evaluators of damage (9)
9. From which he goes out (4)
10. Emit from lairs (4)
11. The family's capital (5)
13. A scent passes as law (6)
14. A tenant's horses and arms (6)
15. Prevents the sword, not the shield (6)
17. Liquids (6)
19. Wandering from a humanoid deity (5)
20. Stocked to overflowing (4)
22. Heal the french priest (4)
23. The deed's best bits (9)
24. Negligence in enforcing a right (6)
25. The next best thing to the whole adowson (6).

DOWN

1. Piracy licence (6)
2. This abbreviated month (4)
3. Puts up (6)
4. English qua (2, 4)
5. Central criminal records.(1,1,1,1)
6. Recent County Court appointment from inflammable material.
7. Point in their direction (3,2,4)
8. Traitorous (9)
11. Pas des Anglais (5)
12. Hully Federal courtier (5)
15. Involving the heirs of the body (6)
16. Caught between two faeces (6)
17. Let it be (6)
18. Fortified wine (6)
21. Network (4)
22. Close the shellfish (4)

Wales Bar takes rank and precedence as a member of the outer Bar in this State. Included in such rank and precedence is an expectation that he will wear the robes customarily worn by junior counsel.

There may have been some misapprehension in connection with this matter of the wearing of robes by interstate practitioners, and I draw this to your attention as I am sure that Victorian Queen's Counsel, whom we warmly welcome when coming forward for admission to the New South Wales Bar, would not wish to infringe in this matter of robing. I should add that, equally as we welcome them when they come forward to join our Bar, so do we view with hospitality and satisfaction their taking the appropriate steps in this State for appointment as Queen's Counsel.

Laurence Street,
Chief Justice.

MOUTHPIECE

The thirteenth floor was abuzz. Fur coated matrons and their elegant escorts sloped from the lifts and lurched towards the sactum sanctorum. A freshly scrubbed chairman was their to greet them. Inside, the velveteened attendants made those last minute adjustments to the exhibits, and themselves. Tonight was the grand opening of the Bar Art Exhibition.

I had chosen my dress with care. Inconspicuously dinner jacketted, I moved easily amongst these distinguished connoisseurs picking up the finer points. Eavesdropping was de rigueur on an occasion such as this.

Well to be truthful I don't know much about art, but I know what I like ....."

"That Fred Williams looks nice ..." "Who is he reading with"?
"I'd rather have one of Hasey Ball's pensketches of a church than all this modern bull ...."
"They're trying to begin a new tradition. A judge on appointment buys a painting and gives it to the Bar. That way they get the commission and keep the painting as well."
"Brack must be short for 'Brassley'".
"The trouble is the blighters have never learnt to draw".
"The colours in that one would match my Turkumen rug perfectly".
"Is Paul Guest really getting 5% of the catering bill?"
"Daddy, buy me that one."
"Why did they remove all of Owen Dixon and replace it with just part of him?"
"I'm no judge, but I'm not sure that it captures the essential Arthur" .... "I am and neither am I."

Yes, the Bar cannot but benefit by this intrusion of the real world into its Common Room.

Byrne & Ross D.D.

THE BAIL ACT 1977

On the 1st September 1977 the Bail Act 1977 (No. 9008) came into operation. The Act brings about some important substantive and procedural changes to the law in relation to the release of accused persons on bail.

Under the new Act any person accused of an offence and being held in custody in relation to that offence **shall be granted bail** --

(a) if it is not practicable to bring him before a justice or Magistrates' Court within 24 hours after he is taken into custody —

(b) during any postponement of the hearing of a charge for the offence or whilst he is awaiting trial —

(c) where his case is adjourned by a court for inquiries on a report or whilst he is awaiting sentence except where the court is satisfied that it would not be

desirable in the public interest to release the accused person pending completion of the inquiries on receipt of the report or pending sentence.

This blanket entitlement to bail is of course subject to exceptions. It may well be that in certain cases and for certain offences bail will be harder to obtain than would now be the case.

Section 4(2) of the act provides the exceptions to the general entitlement to bail. In these cases the court **shall refuse bail.** These exceptions are, inter alia –

(a) In the case of a person charged with treason or murder. (Bail can only be granted for these offences by the Supreme Court or a Judge thereof; and presumably the same considerations will apply to an application for bail as apply now).

(b) If the accused person is in custody pursuant to the sentence of a court for some other cause.

(c) If the accused person is in custody for failing to answer bail unless the accused person satisfies the court that the failure was due to causes beyond his control.

(d) **If the court is satisfied that there is an unacceptable risk that the accused person** if released on bail **would fail to answer his bail, commit an offence whilst on bail, endanger the safety or welfare of the public or interfere with witnesses.** In assessing whether the circumstances constitute an unacceptable risk the court must have regard to all matters appearing to be relevant and in particular – (1) the nature and seriousness of the offence; (2) the character, antecedents, associations, home environment and background of the accused; (3) the history of any previous grants of bail to the accused; (4) the strength of evidence against the accused.

(e) If the court is satisfied that the accused person should remain in custody for his own protection or (if a young person or child) for his own welfare.

Perhaps the most significant provision of the Act is that which provides that where an accused is charged with certain indictable offences the onus rests with the accused of showing why bail should be granted. Section 4(4) provides that where a person is charged with the following offences the court **shall refuse bail unless the accused person shows cause why his detention in custody is not justified:–**

(1) An indictable offence that is alleged to have been committed while he was at large awaiting trial for another indictable offence;

(2) An indictable offence and is not ordinarily resident in Victoria.

(3) Aggravated burglary or any other indictable offence in the course of committing which **the accused is alleged** to have **used** or **threatened to use a firearm, offensive weapon or explosive.** (It should be noted that term offensive weapon includes any article adapted for use for causing injury or incapacitating a person or intended by the person having it with him for such use). From press reports it seems that this provision was conceived because of public concern about armed robbery and in particular armed robbery committed whilst the accused was on bail for other offences. It is perfectly clear that the provision goes far beyond armed robbery and would even apply, for example, to an alleged assault committed in a hotel with a broken beer glass.

(4) An offence against the Bail Act (e.g. failing to answer bail, which incidentally carries a maximum of 12 months imprisonment and of course forfeiture

of any deposit of money or other security).

The Bail Act empowers a Justice, Magistrate, County Court Judge and Supreme Court Judge to grant bail. Of particular significance are the provisions relating to an appeal against a refusal of bail or conditions of bail. The Act provides that where a person is detained in custody pending a preliminary hearing or trial for an offence, or pending the determination of an information, and that person has been refused bail by a justice or magistrate or objects to the amount or conditions of bail fixed, he may appeal to a magistrate or **to the court to which he would be required to surrender himself** under the conditions of the bail.

It seams that where an accused person is committed for trial at the County Court by a Justice or Magistrate and is refused bail or wishes to have the terms of the bail varied he may now appeal to a County Court Judge. The right of appeal to the Supreme Court has not been limited, but it seems that many of the applications which are now heard in that court will in future be made to the County Court. It should be noted that on any appeal against refusal of bail or conditions (except on appeal from a justice) the appellate magistrate or judge shall not proceed to hear the application unless the applicant was unrepresented at first instance or the applicant satisfied him that **new facts or circumstances have arisen since the making of the original order that were not disclosed to the magistrate or judge who made the original order.**

Other provisions of the Act which are of some significance are:—

- A member of the police force of or above the rank of Sergeant may admit an arrested person to bail after inquiring into the case, and if it is not practicable to bring the arrested person before a court within 24 hours after he is arrested, he is required to do so (subject to other provisions of the Act). Where a policeman refuses bail or the arrested person objects to the conditions of the bail the policeman must advise the person that he is entitled to apply to a justice for discharge from custody or variation of bail. If the arrested person elects to apply to a justice the police must see that this is done as soon as practicable. (Sec. 10).
- If bail is refused a statement of the grounds for refusal must be endorsed on the warrant of remand or commitment (as the case may be). (Sec. 12).
- Where a deposit of money or security for fail is forfeited the person bailed and any surety can apply (as now) under the Crown Proceedings Act to vary or rescind the forfeiture order.
- A "recognizance of bail" will become an "undertaking of bail".
- If an application for bail is opposed the court **may** make an order directing that the evidence taken, the information given and the representations made and the reasons given by the court shall not be published before the accused is either discharged or his trial has ended. (Sec. 7).

The Bail Act 1977 is an important piece of legislation with which all members of counsel should be familiar, particularly those practising in the criminal jurisdiction.

N.A. Parkinson.

Former Dog Refuses To Eat Dog

England Counsel have just received a mid-year bonus. As if the decision to allow them to appear in the Bar List according to their specialty was not enough (see "Advertising or Touting" P) they would now seem to be immune to all actions for negligence.

Since **Rondel v. Worsley** 1969 1 AC 191 it had been thought that counsel were immune only to actions for negligence in court. That case was not without its own colour. Norbet Fred Rondel had been a professional wrestler and

claimed to be an expert in judo and karate. In 1959 he bit off the lobe of a man's right ear. He also broke and tore the man's left hand which needed nine stitches.

In the criminal proceedings which followed, counsel accepted a dock brief for £ 2.4.6. The money was handed down from the public gallery. Fred was convicted and sentenced to 18 months imprisonment. Then, nearly six years after the trial he sued his counsel for negligence in running the case. He lost.

But after Rondel's case many counsel still took professional indemnity insurance. They wanted protection against actions for the work they did out of court, such as giving advice, drawing pleadings and so on.

Now all that will change as a result of the misfortune of Mr. Saif Ali. In 1966 Mr. Ali was injured when the van in which he was a passenger was involved in a collision. The driver of the other vehicle was a woman. Mr. Ali's solicitor briefed counsel to advise on who should be sued. Counsel advised that the proper defendant was the woman's husband, for he owned and insured the vehicle. The advice was wrong and the action had to be discontinued. By that time the limitation period had expired, and Mr. Ali had no-one left to sue, apart from his solicitor. He did just that. The solicitor then joined counsel as a third party alleging negligent advice.

The Court of Appeal was asked to strike out the third party notice and it obliged. The case is now referred to as **Saif Ali v Sydney Mitchell & Co.** in (1977) Sol. Journal 336. Counsel had his identity protected but as you can see, the solicitor did not. Lord Denning, picturesque as ever, said "The principles here stated apply not only to the conduct of a criminal case but also to the conduct of a civil case ..... They apply not only to the work in the court itself but to the preparatory work beforehand, in which I include not only the pleadings and advice on evidence, but also the opinion given before the action is brought".

The reaction of the Bar was touching in its gallantry and British in its solution. The Law Society Gazette reports "Disquiet at the Bar itself about the Saif Ali decision led to a resolution being moved at the annual general meeting of the Bar calling for the setting up of a voluntary compensation fund from which those who suffered from the negligence of barristers might be compensated.

"The difficulties in deciding in default of a court judgement whether in fact there had been negligence are probably great enough to make the scheme impractical, but the suggestion is a laudable indication of the conscience of at least some members of the Bar on the subject."

Especially as the donation is bound to be far less than the premium on the policy which they now don't need.

Now why can't we get judges like that.

The Biter Bit

In his summing up a Queensland Criminal trial judge made reference to the fact that on some occasions the evidence given by the accused differed in some particulars from questions put by his counsel during cross-examination of crown witnesses: R.V. Robinson (1977) ALMD par.1706

On 21.5.77 the Court of Criminal Appeal observed that, while questions asked at trial do not themselves become evidence at the trial, they do form part of the conduct of the trial by counsel for an accused. It is the duty of counsel to put to witnesses only those matters which form part of his instructions. Accordingly it is legitimate for the jury to be asked to infer from the matters put to witnesses the content of counsel's instructions. Any discrepancy of a significant character may properly be used to evaluate the credit of the accused.

ADVERTISING OR TOUTING

At meetings of the Victorian Bar held in 1884 regulations were adopted including the following—

"7. No Barrister shall, either directly or indirectly, solicit any attorney or solicitor, attorney's or solicitor's clerk, or a client, or the public generally, for business or in any way advertise himself as a barrister."

The prohibition against this practice, stigmatised as touting has been a constant feature of life at the bar and probably the most fertile source of applications to the Ethics Committee, as the attentive reader of the Winter Edition 1977 of the Victorian Bar News may have noted.

The regulation has a ready appeal to a shy and modest professional man particularly in a community where his services are much in demand. It is said that its removal would lead to commercialism of the grossest kind, that it would increase costs and, generally, it would serve to promote practitioners on the basis of their access to the media rather than on the basis of their ability. The code of Ethics of the American Bar Association puts the argument this way —

2.9 "The traditional ban against advertising by lawyers, which is subject to certain limited exceptions, is rooted in the public interest.Competitive advertising would encourage extravagant, artful, self-laudatory brashness in seeking business and thus could mislead the layman. Furthermore, it would inevitably produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers. Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions. History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising."

There have been, in very recent months and from widely differing quarters, pressures to weaken or qualify this absolute prohibition.

The United States

The U.S. Supreme Court has been asked to determine whether State Bar restrictions on the practice of its members may violate the Sherman Anti Trust legislation. In **Goldfarb v Virginia State Bar Association** 21 U.S. 773 (1975) the Court held that price fixing among lawyers was in fact a violation of the anti-trust legislation, since the practice of law was "trade or commerce" within the meaning of s.1. The implications of this conclusion to other forms of regulation by the State Bar Association, including the prohibition against advertising, was apparent and has formed the basis for an article in the Law Institute Journal Dec. 1976 P.515. In February 1976 the American Bar Association lifted its prohibition against this practice provided that the lawyer complied with the local standards.

Inevitably, these local advertising standards have been called into question in **Bates v State Bar of Arizona** which was argued before the Supreme Court on the 18th January, 1977.

The argument, noted in 1977 American Bar Association Journal p.340, was based largely upon the First Amendment to the U.S. Constitution but also upon the Sherman Act. In that case the State Bar of Arizona sought unsuccessfully to enforce a part of the code of professional responsibility that prevented lawyers advertising their services. The Supreme Court upheld their right to conduct business in this way.

The decision has given further ratification to advertising by U.S. practitioners in press and radio.

The ad at issue in the case

The United Kingdom

At p.625 of the Guardian Gazette Vo. 73 No. 27 (28th July 1976) there appeared a note that a Bar List of the United Kingdom is to be published in 1977. This book, which has not yet arrived in this country, is said to provide lists of counsel's chambers, lists of counsel "conversant with foreign laws etc" and most significantly –

> "There will also be a note of the specialised fields of practice of individual members of the English Bar".

Victoria

Attention has already been drawn in this edition of Bar News to the notice appearing in the July 1977 edition of the Law Institute Journal p.272. It invites all solicitors who regularly appear as advocates in the Magistrate's Courts to advise the editor. He intends to publish that information with the solicitor's name, official address and telephone number, and the courts in which he regularly appears.

Whether the U.S. decisions will affect the interpretation of the Trade Practices Act as it concerns barristers may be a matter of considerable argument. Whether we should adopt the U.K. practice, as we have adopted their practices in the past, is beside the point. And whether the Bar should collectively or individually respond to the challenge implicit in the Law Institute proposal may depend upon one's own assessment of the likely response to such an advertisement.

It is, however, appropriate to give considerable thought to the desirability of continuing the prohibition laid down 93 years ago. The world then was very different from the one in which our Bar presently exists. It is difficult to imagine any of our present members engaging in the practice of hugging, a name given in 1870 to the wooing attentions bestowed upon attorney's clerks by counsel seeking benefaction.

> "It is easy to imagine the longing looks, some bold, others more coy and concealed, but all displaying anxiety, which are on

such occasions cast by the eyes of an overcrowded Bar upon those men upon whom the fate of each depends .... Afterwards, in Court, we were struck with the amount of sweet and smiling notice bestowed by some upon the brief-givers. It was somewhat like the cooing flirtations in a ballroom ..." quoted in "The Australian Jurist" May 1870, iii

Three things must be said at the outset of any discussion of this topic –

(1) The choice is not between total prohibition and total licence.

(2) To imagine that advertising of a subtle and acceptable kind is not presently practised at the Bar is unreal. Membership of the right club or the publication of an appropriate article in a journal or even of a text book is as effective a way of putting forward one's name in the context of a field of professional endeavour as could be devised by a public relations firm. Justice Powell, himself a former President of the American Bar Association, observed in **Bates v State Bar of Arizona,** that the question is not whether advertising is permissible but rather what are the acceptable limits to its practice and how to enforce them.

(3) The question posed for the Bar in a divided profession is very different to that in a unified one such as exists in the U.S. It is unlikely that the career of many of our colleagues would be substantially advanced by advertisements such as that appearing in a recent Los Angeles paper, reproduced hereunder –

PERRY L. HIRSCH, ESQ.,
Attorney at Law
Practice in Nisi Prius Courts; trespass on the case and vi et armis; Indebitatus Assumpsit; Writs of Novel Disseisin; Quia Emptores, a speciality
Coke on Littleton readily consulted
Ubi Jus ibi Remedium
2029 Century Park East, Suite 600, Los Angeles

The question which was raised in the U.S. has more relevance to a discussion of advertising by solicitors than for barristers because solicitors are concerned with advertising to the public and not to their professional colleauges.

Advertising may be looked at in two ways: from the point of view of the advertiser it serves to indicate and highlight the virtues or attributes of his commodity and from the point of the public it serves or ought to serve to enable them to make an informed choice between competitors.

Traditionally these purposes have no place in the conduct of a barrister's practice. The quality of the commodity is said to be equal; the price charged has been standardised. The task of selecting counsel is performed by solicitors experienced in the areas who may be assumed to be informed by virtue of their experience.

Not one of these reasons can escape challenge today. With the increasing trend to specialisation at the bar it is not true to say that any reasonably experienced barrister can handle with adequate competence a workers' compensation claim, a will construction summons and a Health Act prosecution. Furthermore, within the ranks of those who profess competence in any one field there are differences of ability. To a lesser extent, fees charged vary and are likely to continue to vary between counsel. Finally, and most importantly, solicitors faced with a rapidly growing Bar from which to select counsel cannot be expected to have a personal knowledge of any but a small number. Increasingly they will rely upon the clerks for guidance.

It is submitted that it would be undesirable in a professional context for individual barristers to promote themselves on the ground of relative ability or cost. Moreover the traditional objection to self-promotion as being incompatible with the dignity of the profession is too firmly embedded to be swept away without the most compelling reasons.

Nevertheless the Bar must face up to the fact of its increased numbers and to the fact of increased specialisation among its members. To refuse to those who specialise or wish to specialise, the right to advertise that fact to the solicitor who might wish to brief a specialist is, in the writer's view, an unreasonable restriant upon their professional advancement. This argument is no more radical than must have prevailed in England in the decision to publish the Bar List in its present form.

There may be a number of means of achieving this objective without abandoning professional dignity. It may be that the clerks could be instructed more formally than is presently the case, by counsel employing them as to the fields which they wish to pursue. The editors of the Law Institute Diary may be asked to include information as to speciality in their Bar List. The Bar Council may take it upon themselves to publish such information, as appears to the case in the U.K. in future.

Such recommendations, based as they are upon the individual barrister's own assessment of his competence in a particular field, fall short of a system of certification by independent assessment. In certain states of the United States pilot schemes have been introduced to require practitioners to satisfy standards of competence or experience before they are entitled to hold themselves out as specialists in any field. The advantages of such a system may provide the basis of correspondence with the editors or, possibly, an article in a future edition of the Bar News.

Whatever be the course, if any, that the Bar Council adopts, the result must be directed to enabling a busy solicitor to make a more educated selection of counsel to plead his client's cause.

PRACTICE NOTES

Full Court Business

The Chief Justice has advised that the Full Court list for October, both civil and criminal will be called over on Thursday 29th September when dates will be alloted for the hearing of all cases in much the same way as dates are allotted in other Supreme Court lists. This will enable Counsel to know that their case will not be heard before the allotted date.

This procedure is regarded as experimental but will operate for the remainder of the year at least.

Masters Business

Counsel are advised that the arrangement of business in Masters Chambers has been changed in respect of summonses issued after the 12th September 1977.

From that date the allocation by initial letter of Plaintiff's name is as follows –

A – E	Senior Master Jacobs
F – M	Master Barker
N – R	Master Bergere
S – Z	Master Brett

OUR GALLOPING GOURMET

Sometimes, but very occasionally, a barrister does something memorable. Southwick made Cedel Soap, Darvall went subsistence farming in the Deep North, and Snedden gave his endorsement to walking on Burnie Briquettes.

Now Morrie Alexander has opened a Restaurant. In deference to his wife, who slaves over the hot stove it is called "Stephanie's". (Anyway it sounds better than "Morrie's".)

Since Chairman Costigan eats there it clearly qualifies as being "under Vice-Legal patronage".

Accompanied by the Harranguing Harridan (H.H. hereafter) I ventured to try the French cuisine (Froggy for tucker).

There are two menus. Number One at $12 per head for the discerning gourmet and Number Two at $16 per head for Liberal Party Members or gluttons (or both).

I chose menu Number One and I made H.H. do the same. This menu contains appetisers main courses and desserts. Menu Number Two is virtually identical, save for the addition of some exotic entree dishes which are doubly desirable because you'd never have the skill or patience to cook them yourself. And isn't that what eating out is all about?

The individual items are subject to change with the worthy aim being variety. They all represent wonderful examples of the French culinary art of which Stephanie is an undoubted mistress.

The H.H., whom I put through a Cordon Bleu course at the expense of various unsuspecting criminals, was ecstatic.

Without wishing to bore you (excessively), I must reveal that I commenced my gastronomic Cooks tour with fillets of pork whilst H.H. had chicken livers with walnuts prepared in a madeira and cream sauce.

For the main course I chose chicken and gooseberries which was cooked to perfection. All that moist white flesh — and I do enjoy moist white flesh — in a superb sauce the name of which escapes me. (Let's face it, by this time I was half plastered).

H.H. had Hapaku — a New Zealand fish — pan fried in butter. We shared a side salad and a bowl of crisply cooked fresh broccoli.

Other main courses included steak and kidney pie and rack of lamb.

The Restaurant has a B.Y.O. licence and we washed down the lot with a red that was not only unpretentious but positively meek. The label announced: "Van Diemen claret, Special this month only. Equivalent to six bottles".

One is reminded of the words of the great Andre Simon "There are no great wines only great cardboard casks". Ah, but it can be a terrible thing next morning — the Van Dieman drink!

For dessert I consumed a porcine helping of chocolate cake (okker for gateau). H.H. had chinese gooseberries and guavas in Cointreau.

If you need more after all that (and the servings are generous) you can stuff yourself with an excellent variety of cheeses for two bucks.

Additional attractions that assist in making Stephanies a memorable dining experience are the pleasant and efficient service; the complimentary bowl of black olives; the generous square of butter which frees one of the mental burden of dividing up the amount of bread by the portions available; and the bottomless cup of coffee (which is also included in the fixed price).

Book first. We went midweek on a chilling winter evening and the place was packed.

Stephanie's Restaurant
268 Brunswick Street,
Fitzroy. 419 6261

O.G.G.

LETTERS TO THE EDITOR

Dear Sirs,

The last issue of the Bar News contained a letter from Langlsow which was critical of the Bar Council and of the steps which it had taken in relation to the report to the Norris Commitee on the Beach recommendations. I think it is appropriate that I should reply to that letter and I do it now as an opportunity of replying in the Bar News was not provided.

Langslow comments in relation to the sub-committee report to the Bar Council that that report expresses "the views of the Bar" Langslow said "But if the newspaper did get hold of the views of the Bar on a matter patently of public interest, why shouldn't it be published?" It should be clearly understood that the views of a sub-committee are not the views of the Bar and it was this particular aspect that provoked the Chairman's response to the National Times article.

Ultimately the sub-committee report was in substance adopted by the Bar Council with some alterations. Had there been time for the matter to be referred to the Bar as a whole, this may well have been a course which the Bar Council would have adopted on such an important issue. However, because of the time limits which were imposed upon it by the Norris Committee, the Bar Council was forced to deal with the sub-committee's report as a matter of urgency and resolved under the circumstances to send it off with alterations as an expression of the Bar's views.

Again I wish to make it clear that while the Bar Council, which is a body representative of the Bar, may speak on behalf of the Bar, a sub-committee which is set up to report to the Bar may not do so.

I am therefore disturbed that Langslow should consider that it is surprising that the Chairman should have announced that it was a breach of ethics for a member of the Bar to make public a report from the sub-committee to the Bar Council. This Bar cannot operate effectively unless the Bar Council can have the co-operation of many members of the Bar in assisting it. An extensive committee system has been established with a view to obtaining from the Bar Council reports on a vast number of matters which have to be processed and dealt with in the Bar's interests. It is surprising that it should be thought that reports which these committees make to the Bar Council are other than confidential documents for the consideration of the Bar Council. Clearly they must be confidential for they are no more than reports of the committee to the Bar Council. What the Bar Council does with th those reports is a different matter. Finally, I should point out to you that the particular report which the Bar Council made to the Norris Committee is available for perusal by members of the Bar because it was submitted on behalf of the Bar. But it may not be copied and copies have not been distributed to the Bar for the reason that the Bar Council has been advised by the Chief Secretary that all submissions to the Norris Committee are regarded by the Norris Committee as confidential to it. Accordingly, the Bar Council does not consider that it is in a position to make public its report to the Norris Committee. That report is in the hands of the Norris Committee and it is for the Norris Committee to make public the report and submissions to it if and when it deems it appropriate to do so.

Yours sincerely,

F.X. Costigan Q.C.

The Editors have received a letter from a lady member of the Bar calling herself Ima Silke Q.C. A careful perusal of the latest edition of the Bar Roll fails to disclose any such person. They regret that letters will not be accepted unless signed by the author or, if to be published anonymously, the identity of the author is disclosed.

Director of Practical Training — Leo Cussen Institute

Applications are sought for the position of Director of Practical Training at the Leo Cussen Institute for Continuing Legal Education.

The successful applicant will assume his duties not later than 1st January, 1978. He will be responsible for the planning, administration and conduct of courses of practical training for graduates in law preparatory to admission to practice.

A salary between $20,000 and $23,000 per annum will be negotiated according to qualifications and experience. A limited right of private practice may be granted.

Enquiries to the Chairman, Leo Cussen Institute, 601 Lonsdale Street, Melbourne, 3000.

International Bar Association World Conference 1978.

The next world conference of the I.B.A. will be held in Sydney from 10th September 1978. A number of overseas practitioners are expected to attend. An invitation has been extended to the United Nations Secretary General.

Members also are urged to attend.

MOVEMENT AT THE BAR

Members who have signed the Roll (since May 1977)

B.L. STAFFORD
R. GREENBERGER
N. GOOD
J.J. GARNSEY (NSW)
R.A. LEWITAN (Miss)
F.J. LORY
F.H. CALLAWAY
L.W. KING
M. BLOOM (NSW)
A.D. VASSIE
G.E. FITZGERALD (Qld)
M.S.S. CHARLTON
R.G.W. LAWSON
N.B. CHAMINGS
J.A. CAMPTON (Miss)
J.D. ATKINS
L.W.G. HARTNETT
A.D. ROBERTSON

Member who has transferred from the Non-Practising List to the Practising List

BRUCE COLES

Members whose names have been removed at their own request.

W.M. TOOHEY
L.H. BREAR
P.F. McPHEE
H.J. SOLOMON (Non Practising List)

Member who has died

T.H. ROCHE

SOLUTION TO CAPTAIN'S CRYPTIC NO. 21

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Isn't that taking things a bit far, George?