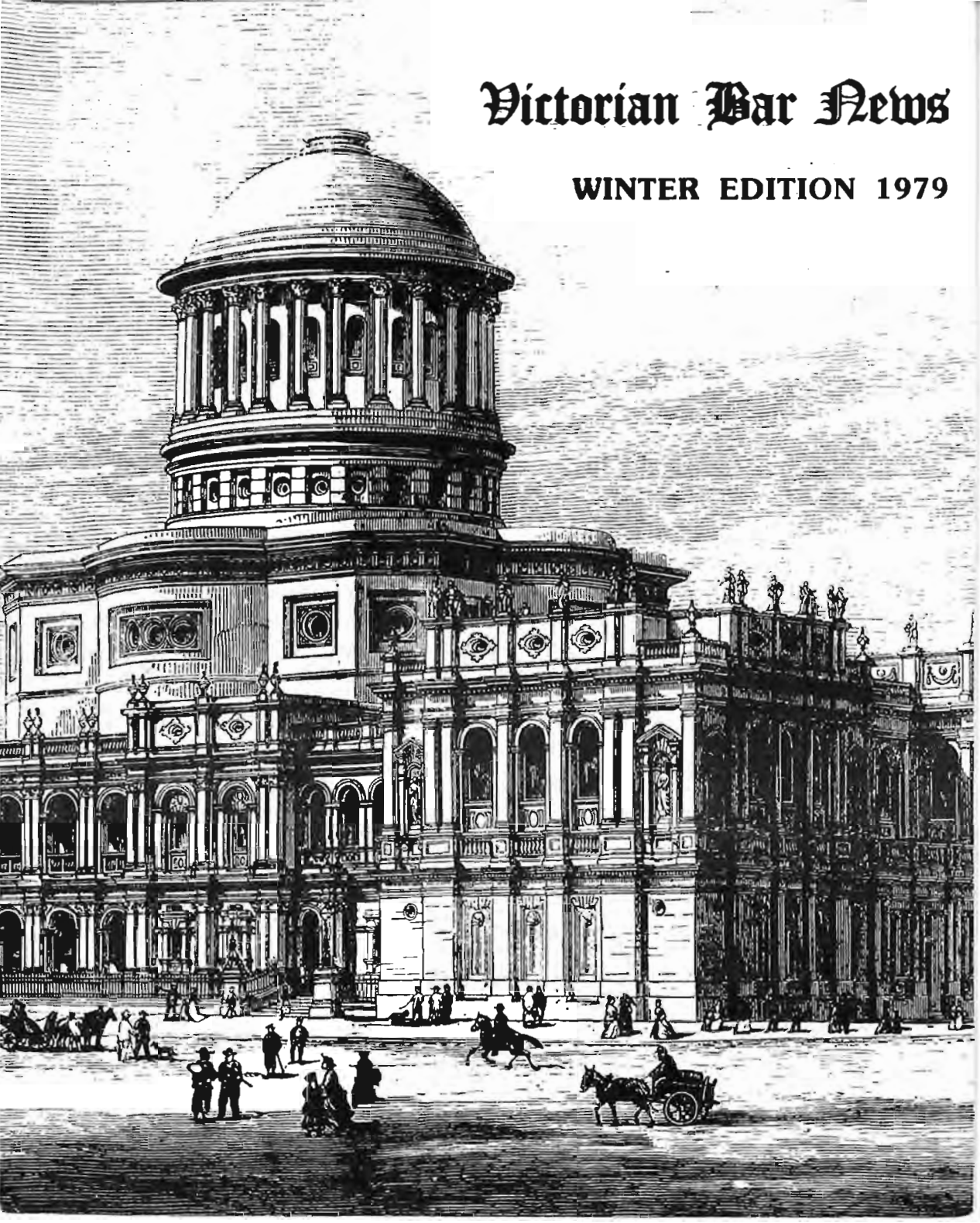
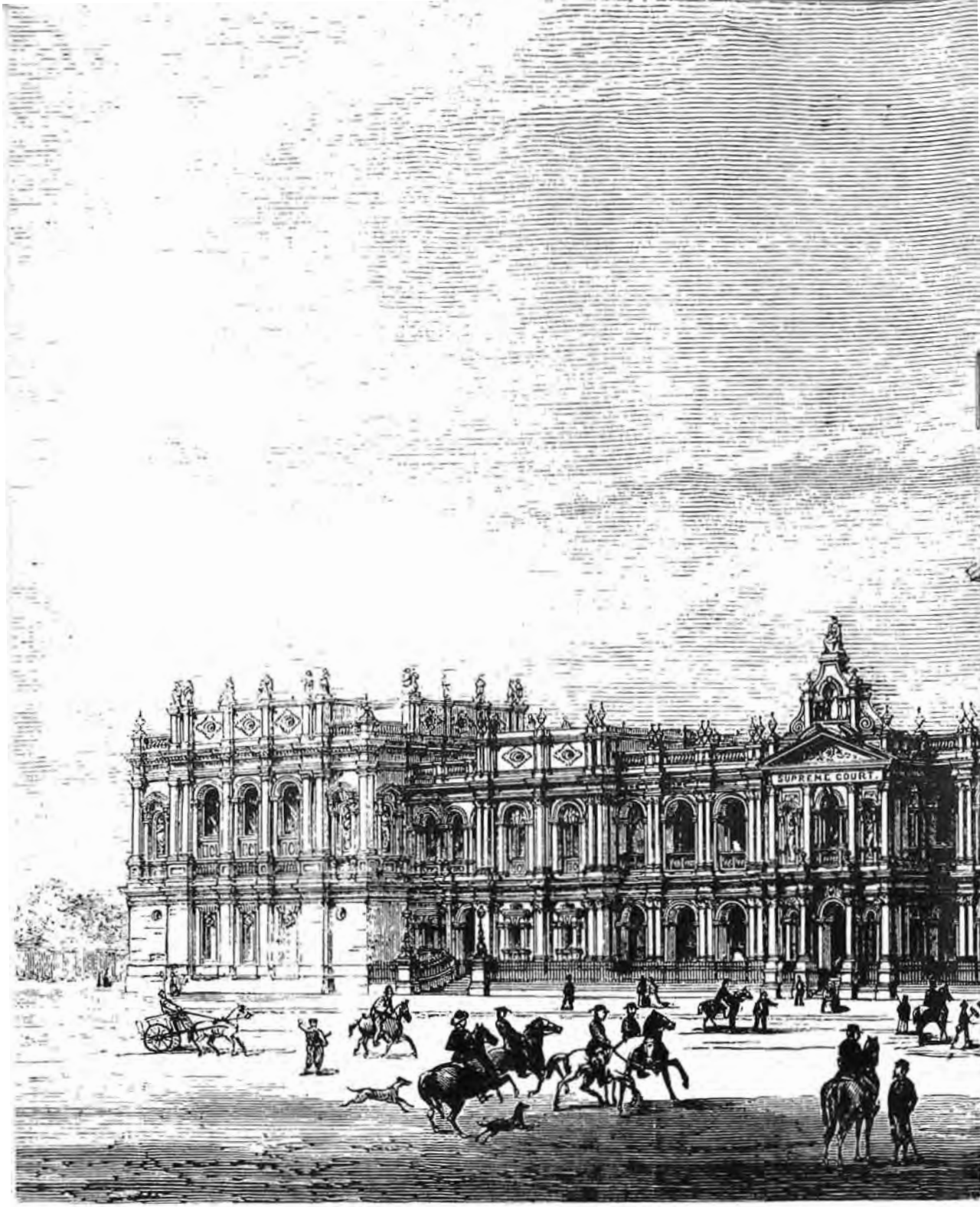
Victorian Bar News

WINTER EDITION 1979




SUPREME COURT

THE COVER:

For the first cover on our new and beautiful "Bar News" we have chosen a picture of a place we all know, if not love. It appeared in "The Illustrated London News" of September 1st, 1877. The contract for the building had been signed on April 18th of that year. Foundations in bluestone had then already been put in by day labour. It took almost another seven years to complete (some things never change). From this illustration remarkably little modification was made to the design of the exterior in the course of building. The statues? Well perhaps we lacked a local Bernini; perhaps there weren't enough local dignitaries to depict; perhaps they went the way of Parliament's dome or the north wing to the Museum. Or perhaps, like the immensely wide roads and the prancing horses, they were a figment of the engraver's imagination.

CONTENTS

Page

BAR COUNCIL REPORT

Since the last publication of the Bar News, the Bar Council has dealt with a wide range of matters, most of which concerned the administration of the Bar, including the Barristers' Disciplinary Bill and its implementation, the relationship of the Victorian Bar and the Law Council of Australia, Legal Aid, the delays in the Family Court, the publication of Sir Gregory Gowans' book on Rulings on Conduct and Practice at the Victorian Bar and the questions raised by the Law Institute at its annual general meeting concerning the responsibility for and the collection and payment of barristers' fees. More specifically, the following matters were dealt with by the Bar Council.

(1) **Consideration of requirements for new members of the Bar.**
The Bar Council has resolved to meet on Saturday 23rd June, 1979 at 9.30 a.m. to discuss fully what requirements, if any, should be imposed on new members of the Bar and whether any and if so what, qualifications should apply to persons wishing to sign the Roll. These matters arose for discussion and deliberation because of recent suggestions that the growth in the membership of this Bar has brought about a corresponding decline in its general standards. Members are no doubt aware that the Bar Council has sought the views of counsel on this question. In response, it received a large number of constructive suggestions which will be taken into consideration when the Council meets to deal with this matter on 23rd June 1979. The Bar Council has also asked and received from Judges and Magistrates, their respective views as to the standard of practice of members of this Bar.

(2) **Rent subsidies**
The Bar Council has requested the Board of Barristers Chambers Limited not to grant a rent subsidy to any new tenant and that all existing subsidies be terminated by the end of March 1980.

(3) **Bar fees**
An enquiry made by the Bar Council has revealed that to a large extent, junior counsel practising in the Supreme Court, are still marking fees that were recommended over 2 years ago. In the light of this and following an examination of the rise in the cost of living and other relevant events that have taken place over the past 2 years or so, the Bar Council was of the view that it would be appropriate for junior counsel practising in the Supreme Court to raise the level of fees charged by them by approximately 20%. The matter has been discussed with members of the Law Institute and it is hoped that it will be possible to implement this decision shortly.

(4) **Farewell drinks for Mr. Calnin**
The Bar Council organized a function to wish Mr. Calnin well on his retirement. A large number of counsel and former counsel attended the party, including Sir John Minogue, Mr. Justice Jenkinson, Mr. Justice Keely, Judge Leckie, Judge Shillito, Judge O'Shea, Judge Ravech and former Judge Adams. Apologies were also received from Sir Richard Eggleston, Sir John Nimmo, Mr. Justice Sweeney, Chief Judge Whelan, Judge Gorman and the Honourable T.W. Smith Q.C. Frizzell Q.C. proposed the toast to Mr. Calnin and on behalf of the Bar and in particular, the present and past members of the Calnin List wished him all the best on his retirement. The highlight of the evening came when Mr. Calnin named each counsel who occupied Selborne Chambers in 1927 and described in detail the location of each counsel's chambers. Mr. Calnin also told a number of amusing stories about life at the Bar when it was housed in Selborne Chambers.

Industrial Property Seminar. The International Association for the Protection of Industrial Proberty (Australian Group) in conjunction with the Trade Law Committee of Law Council of Australia and Australian Patent Office is holding a seminar on industrial Property at Windsor Hotel, Melbourne on Sunday 11th November to Wednesday 14th November. On Thursday 15th November, there will be a visit to the Patent Office in Canberra.

Enquiries to Law Council of Australia, 155 Queen Street.

Third Daniel Mannix Memorial Lecture will be delivered by Sir Paul Hasluck, former Governor-General, at Wilson Hall, Melbourne University on Thursday 28th June 1979 at 8 p.m. The subject of this year's lecture will be Sir Robert Menzies. Admission is free and tickets may be obtained by sending a stamped self-addressed envelope to: The Secretary, Daniel Mannix Memorial Lecture, Newman College, 887 Swanston Street Parkville 3051.

ELECTION RESULTS

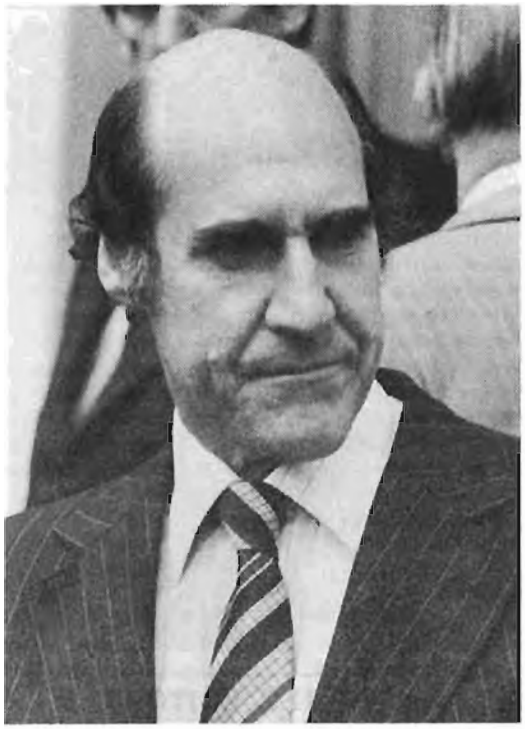


Photo Courtesy "The Age"

Congratulations to:

Haddon Storey Q.C., A. - G., upon his appointment as leader of the Government in the Legislative Council.

R. H. Miller, new elected A.L.P. member for Prahran.

● ● ●

Commiserations to:

C. H. Francis Q.C., who stood unsuccessfully for re-election, this time as an independent liberal, for the Assembly seat of Caulfield.

M. R. Shatin, who missed out by a whisker as A.L.P. candidate for Mitcham and who nearly denied the Liberals a majority in the Lower House.

M. B. Kellam who went down fighting as a Liberal candidate for Ascot Vale.

LETTER TO THE EDITORS

Dear Sir,
Fred James remarked on one occasion that Barristers were suckers for dictating machine salesmen because they belong to a profession having an overwhelming desire to hear the sound of its own voice.The innovation of one speaker only in reply to Mr. Junior Silk at the Bar Dinner may be an indication that we do not have an overwhelming desire to hear the sound of each other's voices, with the possible exception of the situation when it is an hour or so to the next refresher. It is also true that when you get a room full of Barristers together you are lucky to get them to agree about the time of day; a fact which incidentally, has contributed greatly to our inefficiency in fee collection. Allthat being so, there are probably as many different views as barristers (possibly more) concerning whether the principle "once is enough" extends to the speech in reply on behalf of honoured guests at the Bar Dinner

One may agree that the Governor-in-Council is unlikely, when considering candidates for judicial office, to take account of whether he is providing the Bar Dinner with speakers of wit and brevity. He has not always done so in the past. Some have been mundane and lengthy to the point of tedium. It may be unwise, therefore, to return to a system whereby we place ourselves at the mercy of the Executive and offer a forum to all-comers. No doubt also a process of selection implies some criticism of those not selected. But, with a little tact and discrimination, it ought to be possible to strike the happy medium between too little and too much.

The ritual trading of insults is surely what, in large part, gives the evening its special flavour. Last year's Bar Dinner, for example, with the accused, one after another, vying to outdo Kelly and the previous speakers, had a sparkle which this year's affair lacked. In saying that, no criticism is intended of the quality of the speakers we had, rather it is a plea for more of the same. We are a competitive breed. To know that others will speak and will do it well, even brilliantly, must surely put an edge on one's own performance.

Cummins with his references to Canterbury Tales provided a framework which surely would have set

(Continued on Page 6)

WELCOME: JUDGE MULLALY

On the 10th April 1977, Paul Richard Mullaly, Q.C., was appointed a Judge of the County Court. His Honour was educated at De La Salle College, Malvern and Melbourne University, prior to being admitted to practice in March 1952 and signing the Roll of Counsel in August of that year. His later great interest in the criminal law is not surprising when one learns that he served his Articles under the legendary Raymond Hudson Dunn. This is a distinction he shares with his newly-acquired brothers, Forrest and Byrne. He was deeply fortunate in his choice of a Master, having read with Benjamin J. Dunn who was later to become a Judge of the County Court and thereafter a Judge of the Supreme Court. He remained in those chambers for 18 months, a time of which he still speaks with unconcealed pleasure. Thereafter, his talents and capacity for hard work were quickly recognised and he developed a busy mixed practice which, as the years passed, increasingly included briefs in the criminal courts. In October 1961, he accepted appointment as a Prosecutor for the Queen and was appointed one of Her Majesty's Counsel in November 1976. His standing in the law was further recognised when, in April of 1977, he was appointed Crown Counsel for the State of Victoria. This last appointment gave His Honour great satisfaction. The functions of that office extended well beyond the criminal field into other areas of the law and so enabled him to give vent to his great love of legal research and history.

In addition to his practice at the Bar, His Honour has found the time to engage in a wide range of interests. He has served in the Army Legal Corps, attaining the rank of Major, and between 1971 and 1973, as President of the Forensic Science Society of Victoria. He has been a member of the Attorney-General's Special Advisory Committee on the criminal law, and been active in the field of criminal law reform. For over 10 years he has also lectured successive classes of the Detective Training School.

Retaining strong links with his old school, where the name Mullaly is a household word, he served as Chairman of the College Council for a number of years and is still an active member of it. A dedicated family man, he has 4 sons and 2 daughters of whose scholastic and sporting prowess he not infrequently boasts.

As the Chairman of the Bar Counsel, remarked in his welcoming speech on behalf of the Bar "His Honour brings to this court, which is the major criminal court of this State, over a quarter of a century of experience in all areas of the criminal law, an experience which has been honed by an interest in law reform and involvement at a high level with general questions of civil and constitutional law".

The Bar wishes him satisfaction and success in his new position.

FOR THE NOTER UP

County Court

Add:

Judge Mullaly	49	2.7.29	1979	2001

LETTER TO THE EDITORS

(Continued from Page 5)

resourceful minds working. Perhaps the comments would not have been quite as pungent as Nicholas's response to Absalom nor as heated as Absalom's rejoinder, but there are plenty of incidents in the Tales which might have been turned against the "Young Squyer". Having paid out our money and met the annual reproach of the waist band on our dinner suits, would we not have enjoyed hearing one or two more of the "honoured guests" sing for their suppers?

"MASOCHIST"

BUILDING DISPUTE PRACTITIONERS' SOCIETY

On Wednesday 27th June 1979 at 6 p.m. the Society will be holding a Discussion Night and Buffet Dinner at the Conference Room/Housing Industry Association House 70 Jolimont Street Jolimont. The function is primarily for members but guests are welcome.

The Topic:	Determination of a Building Contract following a contractor's failure to proceed with due diligence.
Speakers:	Goldberg Q.C. and Donald Brown, Arbitrator.
Enquiries:	D. Byrne (Px.199), Furness, Patkin (PX.218).

THE SOLICITOR-GENERAL

Photo Courtesy "The Herald"

The origins of the office of Solicitor-General date back to the beginning of the sixteenth century.

In England today the Solicitor-General is a Minister of the Crown and goes out of office when his party goes out of power. The Attorney-General and Solicitor-General are the Law Officers of the Crown.

The English Solicitor-General is in effect the Attorney's deputy and departmental responsibilities are divided between them very much as they choose.

In Victoria the English practice was followed at first and the Solicitor-General was a Minister of the Crown. During the earlier years of the Victorian Parliament many members were leaders of both Attorney-General and Solicitor-General. Many well-known barristers were at one time Victorian Solicitor-General including Barry, Deakin, Isaacs and Menzies.

From 1900 onwards members of the Bar ceased to play such a prominent part in politics and it became rare for the Attorney-General or the Solicitor-General to be appointed from the Bar. Frequently the two offices were held by the one person and the significance of the position of Solicitor-General declined.

A need was felt in Victoria for the Attorney-General to have available to him a permanent, skilled legal adviser, apart from officers of the Law Department or the Crown Solicitor's Office. In 1951, the State followed the example which the Commonwealth had set in 1916 by appointing a full-time lawyer as Solicitor-General. The office of Solicitor-General was created in Victoria by the **Solicitor-General Act** 1951. The Solicitor-General henceforth was to be one of Her Majesty's Counsel, was not to be a Minister of the Crown and was to give full-time service to the Crown. Winneke, Q.C., was the first appointment to the new office and, upon his appointment as Chief Justice in 1964, he was succeeded by Murray, Q.C. Dawson, Q.C., succeeded Murray when he was appointed to the Supreme Court in 1974 and currently holds the office.

The Solicitor-General remains a member of the Bar and, after the Attorney-General, has precedence over all other practitioners. **Legal Profession Practice Act** 1958, section 7.

The office of Solicitor-General is now governed by the **Attorney-General and Solicitor-General Act** 1972, and his functions are to act as counsel for the Crown and perform such other duties of counsel as the Attorney-General directs.

The Solicitor-General is remunerated at the same rate as a Judge of the Supreme Court and has the same pension rights. If he is appointed to the Supreme Court bench, any period served as Solicitor-General is taken into account in computing service as a Judge.

In fact the Solicitor-General appears for and advises the Crown (and instrumentalities of the Crown) in matters of special difficulty or importance. His functions differ in emphasis according to the problems of the day but in two broad areas he has constant responsibility.

The first is the criminal law. Under section 353 of the **Crimes Act** 1958, either the Attorney-General or the Solicitor-General (or a Prosecutor for the Queen in the name of the Attorney-General) can make presentment for an indictable offence. The Solicitor-General has been formally given the task of supervising the allocation of briefs amongst the prosecutors. In practice, the Senior Prosecutor deals with

routine administration involving the prosecutors, and the supervisory role of the Solicitor-General is concerned more with matters of broad policy. His functions in the criminal law include authorizing the acceptance by Prosecutors for the Queen of pleas of guilty to a lesser count on a presentment in satisfaction (on the advice of a prosecutor) of the entry of a nolle prosequi. He, of course, appears in the Court of Criminal Appeal in cases involving important points of law and in appeals against sentence by the Attorney-General. In the High Court he appears in applications for special leave to appeal and any appeals pursuant to leave given. If he has sufficient time (which is rarely, of recent years) he will appear to prosecute in significant trials. Tradition has it that he or the Attorney shall prosecute in trials of murder by poisoning, but there has been no such trials in Victoria for some time so that it is not clear whether the tradition is maintained.

The other broad area in which the Solicitor-General is constantly engaged is that of constitutional law. Litigation in this area varies in frequency but during the last five years a number of constitutional cases of major significance have involved the appearance of the Solicitor-General for the State in the High Court. In addition, with his counterparts in other States and the Commonwealth, he is involved in negotiations in the federal area, more notably in recent years arising out of the decision of the High Court in the **Seas and Submerged Lands Case. (New South Wales v The Commonwealth** (1975) 135CLR337)

But the criminal law and constitutional law by no means occupy the whole of the Solicitor-General's time. As a principal legal adviser to the Crown, his work is unique in its breadth in these days of specialization. At one time or another, it touches most areas of the law. Outside the strict routine of court appearances and formal advice, the Solicitor-General is a member of numerous standing committes concerned with legal education, law reform and general administration of the law and is frequently called upon, either as a member or as chairman, to act on other special committees making recommendations on a variety of subjects.

Recently, Lord Hailsham (17 Alberta Law Review 133) said:—

> "From the seventeenth century onwards Law Officers of the Crown have been seriously overworked, and, compared with other leading members of the Bar fantastically underpaid".

Members of the Bar can judge for themselves whether the comments apply equally in Victoria.

VERBATIM

This issue's redundancy award —

Guy S.M. (to applicant for restoration of licence)

> "Do you know what will happen if you re-offend again in the future?"

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"Round up the usual suspects".
— Police Chief in the film "Casablanca".

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"Being at the Bar is like picking mushrooms — you can walk for days through a field and find nothing and then all of a sudden you come upon a fairy ring."

— R.N.J. Young
April 1979.

● ● ●

John Cantwell to allegedly promiscous custody applicant —

> "And you then went to Station Pier to pick up some seamen".

Fogarty J. to shorthand writer (without batting eyelid)

> "Spell that s.e.a.m.e.m.".

— J.V. Kay
April 1979.

● ● ●

This issue's Metaphor Award

Kirkham: ". . . He pulled himself up by his bookstraps away from the brink of destruction".

— R. v Cleland
25th May 1979
Plea coram Judge Leckie

● ● ●

Witness (freelance lighting technician) claiming costs of $110 per day with an average salary of $540 states he pays only 25% tax.

Clothier S.M. "Just leave the name and address of your accountant with the clerk before you go . . ."

— Oakleigh Magistrates Court
23rd May 1979

● ● ●

"I don't respect a law just because its a law. There are good laws, bad laws and indifferent laws."

— Disbarred N.S.W. Counsel
Peter Clyne
Interview in "Playboy"
June 1979

REPORT FROM THE ETHICS COMMITTEE

Since the last publication of the Bar News, the Ethics Committee met on six occasions and dealt with a wide range of matters, including those which are summarised below and which, it isthought, are of interest to the members of the bar.

(a) **Counsel speaking to opposite party**

In the course of resolving a complaint made by one counsel against another, the Committee confirmed the rule that it is improper for counsel who has been briefed to appear for a litigant, to approach another party in the same action or to countenance some other person approaching that other party without first obtaining the consent from that party's counsel.

(b) **Counsels' participation in commercial legal education seminars.**

It has been brought to the Committee's attention that some members of counsel may not have complied with the relevant provisions of the Broadcasting Rules which were made in November 1972. Rule (c) (1) of those Rules provides that "a Barrister who proposes to broadcast, lecture or address as provided by these rules shall, before making such a broadcast or giving such a lecture or address give to the Secretary of the Council such details of the broadcast, lecture or address as the Council may from time to time require, provided that if it is not practicable to give such details beforehand, the Barrister shall give details to the Secretary as soon as possible after the broadcast, lecture or address."

On 8th June 1978 the Bar Council determined that the following details are to be provided by counsel pursuant to paragraph (c) (1) of the abovementioned Rules, namely —

> "The place of the broadcast, lecture of address, its proposed date, its title, its sponsors, its intended audience, its proposed publicity, the substance thereof, the nature of counsel's participation therein and the number of broadcasts, lectures or addresses given by such counsel since the 1st January last preceding, save that the Ethics Committee may, on the application of any counsel, waive compliance with this rule".

Therefore, before delivering a lecture or giving a paper other than in his or her capacity a teacher at an institution such as a university or the Leo Cussen Institute, counsel should give to the Honorary Secretary the information required by the abovementioned resolution of the Bar Council.

(c) **Complaints by lay clients against counsel**

The Ethics Committee has, from time to time, received complaints from members of the public about the allegedly improper conduct by counsel who acted for them. The Committee has found that on most occasions, such complaints have been based on a misunderstanding on the part of the complaint as to the legal process generally, and in particular, as to the role and function of counsel in proceedings. In some instances, complaints have been made to the effect that counsel has failed to comply strictly with all the instructions given to him by the client. For instance, complaints have been received that counsel did not call a witness whom the former client wanted called or that in cross-examination, counsel did not ask some of the questions he was "told" to ask.

There is no doubt that it is for counsel, and counsel alone, to determine how his client's case is to be presented to the court, so that it is within his complete discretion what witnesses he will call and what questions he will put in cross-examination. It is important that counsel should take steps to ensure that, as far as possible, the lay client understands the relevant procedure; nonetheless the final decision in this area rests with counsel. A barrister owes a duty to the court and subject to that, a duty to his client to present his case to the best of his ability. He is, however, an independent practitioner and not a "mouth piece" of his client or of his instructing solicitor.

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A QUESTION OF STANDARDS

In his recent circular, the Chairman has sought from members some expression of their views upon the important questions which presently face the Bar Council, and the Bar as a whole. The Bar Council has taken the unusual step of convening an all-day meeting on 23rd June to consider what course should be adopted to ensure that the traditional standards of practice of which the Victorian Bar is proud can be maintained, and even raised in the unusual circumstances which now exist. These circumstances are twofold, and may well be interrelated -

(a) the very large increase in the numbers seeking admission to the Bar.
(b) the number of adverse comments from various quarters which give rise to the feeling that standards have not been maintained especially among the very junior members.

The first of these circumstances is well documented. The annual reports disclose that the numbers in active practice not including prosecutors has risen dramatically in the past five years.

The consequence of this increase in numbers has already been the subject of an article in **Bar News** (June 1976) We have seen the recurrent problems attending the expansion of existing lists and the establishment of new clerks. Accommodation is a perennial topic of conversation. The difficulties, both present and to come, brought about by the disturbance of the numerical balance between junior members and the more senior have led to the establishment of the Young Barristers' Committee and the increased representation of this group on the Bar Council.

The second of these circumstances, the alleged decline in standards, is more difficult to establish. Old Barristers, like many members of the community, tend to make adverse comparisons with life as it was in their youth as against present circumstances. The fact is that more senior Barristers have very little experience of the performance of the younger practitioners. Critical comments received from Solicitors, and even from lay clients, may be coloured by tensions that exist between the two branches of the profession or by the present critical attitude of the community generally towards all professions be they doctors, lawyers or whatever. Nevertheless, enquiries made by members of the Bar Council do suggest that there is room for improvement.

More difficult, however, is the task of relating the two phenomena. As a matter of logic it seems difficult to conclude that an increase in number, of itself, should lead to a decline in standards. Rather the contrary. We have all heard of the lean times experienced in the 1920's and 1930's by those who have subsequently risen to great eminence in the law. For these, a scarcity of briefs was a challenge – an opportunity to spend more time in mastering the few cases that came their way, and a chance to deepen their knowledge of the law by study and reflection.

The current argument is that, previously, the decision to undertake the difficult and uncertain life at the Bar was one that deterred all but the most dedicated and highly motivated. Today, it is said, life as a Solicitor is increasingly difficult, so that young graduates choose the Bar, as it were, by default.

It should be recognised that the courses which now face the Bar Council accept the justice of these criticisms of professional competence and also, to some extent, the accuracy of this assumption that the Bar is being used as a last resort by persons who in better times would not for a moment entertain it as a career. And it is no more than an assumption, for nobody, perhaps not even the applicant for membership himself, can know his true motive for seeking to sign the Bar roll.

The writers would venture two further observations of a personal nature which also bear upon this problem -

(a) As a matter of policy, it is very difficult for a body which has an effective monopoly over any lucrative area of activity, to refuse any person admission to that body solely on the grounds of overcrowding. If a person is suitably qualified he should be given the opportunity to make his way or not, depending upon his own endeavours.

(b) It is our impression that modern law graduates leave the universities with a more comprehensive and sophisticated understanding of the principles of substantive law than was the case a decade ago. It may be said that they lack skills in forensic craft or an understanding of procedural law. But are they any different from their forebears in these respects?

Given the problem, the following broad solutions suggest themselves -

(a) do nothing – the problem will resolve itself as it has in the past;

(b) restrict the number of persons who might sign the Bar roll in any year so as to maintain an optimum number in practice.

(c) impose a fee upon applicants so as to deter those with little motivation.

(d) impose a standard of competence upon would be applicants and enforce this by examination or other form of assessment.

(e) require that applicants first serve a stipulated period in practice as a Solicitor as a prerequisite.

(f) accept all-comers, but provide improved training for readers.

Do Nothing

The first solution would have little appeal to any member of our modern society, other than a lawyer who is by nature and training a conservative creature. He would say that the Darwinian principle of survival of the fittest will operate to weed out the failures. Only the competent will continue to receive work. Only the motivated will have the stamina to endure the hard times.

The difficulty with this argument is both factual and theoretical. The hard times for the junior bar have been about for some years now. Yet there is little sign of any general exodus from among the ranks of the dissatisfied. See the analysis contained in **Bar News** (Christmas 1977). Second, it may be said in some cases that it is survival of the lucky rather than of the fittest. For it is by lottery that the clerks are allocated to new members, and the difference in the fortunes of those in differing lists is notorious. Finally, it may be that the fitness we are here speaking about is financial rather than intellectual. For the pressures upon the unsuccessful Barrister to try his hand elsewhere are essentially financial. A single man or a married man supported by a working wife is therefore fitter than a member with dependents.

Limitation of Numbers

This solution would operate rather like an application to become a member of the Stock Exchange or, closer to home, like entry to one of the established clerking lists. An optimum number of Barristers would be established. In any year, applicants would compete by lottery or otherwise for the available places.

There are practical difficulties of administering such a scheme. How is the optimum number to be fixed? If entry is by lot, the scheme must contend with the policy problem referred to already. The alternative of entry by competitive examination would have to contend with the practical aspects of conducting such examinations referred to later. It is thought that the auctioning of places would be unacceptable.

Fee upon entry

Historically, a reader at the Bar was obliged to pay to his Master a reading fee. This was fixed at 50 guineas in 1930. Upon decimalisation in 1966, the reader paid $100 until the abolition of the fee in 1974 with the introduction of the two month briefless period.

Originally, this fee would have operated as a deterent to applicants, although inflation eroded its impact over the years. Furthermore many Masters accepted payment by instalments or even waived it altogether.

It has been suggested that the fee be re-introduced and that it be fixed in a sum that reflects in present day values the original 50 guineas. This would amount to $750 or thereabouts. It is suggested that the Master be not permitted to waive it.

This course, as a solution to the basic problem of declining standards has little to recommend it. Accepting, for

the moment, that there are incompetents among present-day readers, the imposition of a reading fee would presumably deter all but those incompetants who are able to lay their hands on $750. It would incidentally, also operate to deter the impecunious among the competents. The fundamental objection to this course is that it has nothing to do with the improvement of standards of practice.

Furthermore, the day of the reading fee is gone – like the days when articled clerks paid a fee for their tuition. It is thought that many Masters would feel an embarrassment in exacting such a sum from a reader who could be ill able to afford it, particularly as its receipt would bring him little benefit having regard to his marginal rate of tax. Many would feel the prohibition against its waiver an unwarranted intrusion upon the relationship which should exist between master and pupil.

A variant upon this solution is that the fee be payable to the Bar library or to some other Bar fund. In this respect it would resemble the present obligation to contribute to the superannuation fund or to buy shares in Barristers Chambers Ltd., an obligation which does not seem to have acted as a deterrent to date.

Assessment of Competence

This course has the obvious advantage that it seeks to tackle the real problem – the alleged decline in standards. The particular question that must be most carefully answered before this solution is evaluated, is what standards?Is it a matter of legal knowledge, skill in presentation of an argument, demeanour in court including the handling of witnesses, the knowledge and acceptance of ethical standards, or some combination of these, or what?

The difficulty of talking about "standards" without analysing these matters is that some of these standards can be taught and assessed, some cannot and some can only be learnt by practice. Experience at the Leo Cussen Institute and elsewhere has demonstrated that a truly effective course must be designed to achieve a specific objective. Likewise, it is futile to attempt to assess competence without a precise understanding of what competence is the subject of assessment. It is thought that much of the present discussion concerning standards at the Bar betrays a failure to grasp this important matter. It is hoped that any enquiry which is now being made to determine the basic question as to whether "standards" have in fact declined, takes account of the essential vagueness of this word.

If illustration be necessary, it is obvious that it is not possible to teach or to assess the integrity of an applicant. Likewise it is difficult to require an applicant to demonstrate competence in court craft when he is unable to obtain much experience in this art until his application is accepted.

If this solution is to be seriously entertained, it must be recognised that the Bar must accept the task of assessing applicants and, possibly, of preparing them for assessment by conducting classes. The administrative burden of these tasks is considerable. It may be beyond the persuasive powers of the Bar Council to entice a senior practitioner away from his busy practice once or twice a year to undertake the work of tuition or of assessment. Again, experience at the Leo Cussen demonstrates this fact.

It may, of course, be possible to adopt some external standard, such as a postgraduate degree in law, as a qualification. This might be achieved in much the same way as the specialist medico is required to pursue postgraduate studies. The Universities might welcome the fillip that such a decision would give to their LLM courses.

Post Admission Experience

The basic concept behind this solution is that an applicant should, as a prerequisite to signing the Bar Roll, have a stipulated experience in a legal office since graduation. The extent and nature of this experience is a matter to be worked out. Let us assume that the requirement is not less than twelve months' post-graduate experience in a Solicitor's office or some equivalent. It is likely that, as a matter of administration, it would be necessary to make provision for interstate and foreign practitioners and also for academics and the like, who have been traditionally accepted as Barristers.

The advantage of this solution is that it tackles both of the problems. The first, that of standards, is met by the valuable experience which applicants would bring to their earliest years at the Bar. This would include the ability

to deal with clients, presumably some understanding of the problems of instructing Solicitors and a greater maturity and understanding of the operation of the law in practice. The second problem is likely to be resolved indirectly. The need for the graduate to have obtained employment as a Solicitor will exclude those who come to the Bar by default. Furthermore, it is likely that many will discover a fulfilling occupation during the qualifying period which will have the effect that only those who are really determined to make a career as a Barrister will take the step of leaving employment for that life.

It is thought that he imposition of such a prerequisite would not be seen by Solicitors as an attempt by the Bar to set itself up as a superior race. Indeed the rule at present is for the Law Institute to prohibit young admittees from practising on their own account until they have one year's experience as employee Solicitors.

Improved Training forReaders

Accept all-comers but offer to them a more systematic and comprehensive course of training in the special skills required of a Barrister.

Adherents of this view place the blame for any decline in standards upon the training which readers receive. In short, this is at present a series of lectures which they are obliged to attend plus the learning which is imparted by the Master during the six months' pupillage. It is difficult to have any confidence in the adequacy of a series of lectures which seek to cover an enormous field. The quality of education given by the Master must depend upon him and the enthusiasm of the pupil.

In 1977 a committee was set up under the chairmanship of J. D. Davies Q.C. to plan a curriculum along the lines of the Leo Cussen Course for graduates without articles:**Bar News** (Winter 1977). This committee has prepared a series of objectives and sketched out a course which was to be given over some two weeks full time. It has not been implemented.

Again, there is the administrative problems of setting up, accommodating and staffing such a course. The cost might be met by contribution by the students butwhat is the likely response from the Bar to a call for teachers? Presumably, the students would be required to achieve a pass standard, but what is to be the fate of those who do not?

An alternative which might bear consideration is to establish a course for Masters so as to ensure that the quality of the present pupillage is maintained and improved.

Disclaimer and Disclosure

This article is not intended to represent the views of the Bar Council. Indeed, it is to be supposed that until 23rd June, it has not yet formed any view. Nor does the article represent any known views of any individual members of that body.

It is intended as a personal contribution towards the discussion which is taking place at all levels in an effort to formulate Bar policy in a very difficult area.

To those who have persevered this far, the writers wish to make a disclosure. We have sought to put forward as objectively as possible the considerations which appear to bear upon various aspects of the problem. In the expectation that this attempt at objectivity has been successful, we make say as follows. We favour the introduction of a requirement that, in the absence of special circumstances, applicants to sign the Bar Roll should first have spent two post-admission years in employment in a law office or law faculty or in some associated pursuit.

And by way of Conclusion

The Chairman has sought the assistance of the Bar for the deliberations of the Bar Council on 23rd June. The decisions to be made at this meeting will be far reaching and will affect us all. Some submissions have already been received. Any member with any views on the subject is urged to set them out for the consideration of the Bar Council. Otherwise, how can he later be heard to complain about decisions made in this name?

BYRNE & ROSS D.D.

SOME ASPECTS OF THE LEGAL AID COMMISSION ACT 1978

The Legal Aid Commission Act was passed on 19th December, 1978. It has not yet been proclaimed. The policy of the legislation as expressed by the Attorney General was that "Legal Aid should encompass more than subsidising legal assistance" and "should not only be readily available to people who require assistance but should actively reach out to, and involve the community."

In February, the Lord Chancellor announced improvements to the U.K. Legal Aid Scheme and estimated that if such changes were implemented, about 70% of people in average households would become eligible for legal aid and advice and assistance. Victorian lawyers could echo the sentiments of Lord Foot who, in speaking to those proposals, asked that for what we hope our clients are about to receive the Lord may make us provisionally thankful.

The duty of the Commission to establish offices as it considers appropriate, to make reciprocal arrangements with other Legal Aid Commissions and with professional bodies and other bodies engaged or interested in the provision of legal aid, to liaise with professional bodies, to make maximum use of voluntary services provided by private practitioners, to secure services of interpreters, marriage counsellors, welfare officers and other appropriate persons, to inform the public of the services it provides and to ensure legal aid is provided in a manner which dispels fear and distrust and enables the Commission to achieve a social purpose. However, s.10 (4) requires that in the performance of its functions the Commission shall have regard to the amount of moneys for the time being standing to the credit of the Legal Aid Fund and of any moneys likely to be received for the purposes of such Fund.

The Commission

The Commission will be a body corporate and independent of the Government. However, the Legal Aid Fund will be dependent on moneys being made available to it by the State and Commonwealth except that there shall be paid into the fund -

- All moneys payable to the Treasurer of Victoria pursuant to the provisions of s.53 of the Legal Profession Practice Act 1958 (interest on Solicitors' trust funds);

- Any moneys paid to the Commission pursuant to the provisions of the Appeal Costs Fund Act 1964;

- All moneys paid to the Commission by assisted persons;

- Income derived from the investment of the fund; and

- Costs payable to the Commission under section 46 (legal costs recovered). s:41(2).

The Commission will take over the work of the Legal Aid Committee, the Australian Legal Aid Office and the Public Solicitor's Office with the aim of providing "one stop" centres for all persons requiring legal aid.

Obviously, to meet the demand of the Commonwealth to exercise control over the funds, the Act provides that the Commission in carrying out its functions shall -

"10. (1) (c) subject to and in accordance with agreements and arrangements made between the Commonwealth and the State from time to time in that behalf-

(i)determine or vary priorities in the provision of legal aid as between classes of persons and classes of matters or both;

(ii)have regard to the recommendations of the Commonwealth Commission coconcerning the provision of legal aid by the Commission-

in or in connexion with a claim, right or proceeding involving a matter arising under a law of the Commonwealth;

in a proceeding in a federal court or in a State court exercising federal jurisdiction;

or

in respect of persons who are agreed by the Attorney-General and the Attorney-General of the Commonwealth to be persons in respect of whom the Commonwealth has a special responsibility;

(iii) liaise and co-operate with the Commonwealth Commission in the performance by that Commission of its functions and, in particular, provide to the Commonwealth Commission such statistics and other information as that Commission may reasonably require;"

Because the legal profession will contribute to the provision of legal aid through the Commission by accepting "80% of the fees ordinarily payable in respect of similar services provided to a person who is not an assisted person" and will provide voluntary assistance for the administration of the scheme the co-operation by the Commission with the profession is essential. To ensure such co-operation the Bar Council and the Law Institute argued for a majority of the Commission to be practising lawyers. The argument was not accepted.

The nine members of the Commission will be (s.4.)

- The Chairman, a person who has been in **private** legal practice for a least seven years;

- Three members appointed on the nomination of the State Attorney General (Storey Q.C.) of whom, one, not being a practitioner, will represent the interest of assisted persons and another will be a person experienced in voluntary legal aid;

- One member nominated by the Law Institute of Victoria;

- One member nominated by the Bar Council;

- One member nominated by the Commonwealth Attorney General (Senator Durack);

- One member selected from a panel of three names submitted by the Victorian Council of Social Services to the Minister for Social Welfare (now the Minister for Community Welfare Services, Mr. Jona);

- TheDirector of Legal Aid, a practitioner, of not less than five years standing, appointed by the Governor in Council on the recommendation of the Commission, be responsible for administering the scheme of legal aid established by the Act.

The Delivery of Legal Aid

"Legal aid may be provided by the Commission -

(a) by making available the services of the Director and officers of the Commission;

(b) by arranging for the services of private practitioners to be made available wholly or partly at the expense of the Commission; or

(c) by making available and by arranging the services mentioned both in paragraph (a) and paragraph (b)". s.9(2)

Of importance to the profession is the fact that it is the Commission which must determine the guidelines for the allocation of the work between officers of the Commission and private practitioners and it must do so have regard to -

"(i) the need for legal assistance services to be readily available and easily accessible to disadvantaged people;

(ii) the desirability of an assisted person being entitled to select a practitioner whom he wishes to act for him;

(iii) the desirability of enabling officers of the Commission to utilize and develop their expertise, and maintain their professional standards by conducting litigation and doing other kinds of professional legal work;

(iv) the desirability of a salaried legal service being used where appropriate in the provision of legal assistance services; and

(v) the importance of maintaining the independence of the private legal profession;"(s.10(e)).

Legal Aid Committees

The Commission may establish such Legal Aid Committees as it considers necessary (s.18) and can accordingly establish such Committees on a regional or other basis. The members of a Legal Aid Committee shall be not less than five, two of whom shall not be practitioners and shall be representative of the public in the area concerned. Where the total number of members exceeds five, the number of non-practitioners shall as near as practicable represent two-fifths of the total number (s.19(1)).

Although the day to day decisions concerning the granting of applications for and delivery of legal aid may be made by the Director and his delegates the making of these decisions may be delegated by the Commission to Legal Aid Committees. Such delegations could be in respect of specified classes of matters or specified areas where the Commission feels the determination should be made by a Legal Aid Committee. Legal Aid Committees are to review decisions of the Director and officers of the Commission (s.20(1)(b)) and to consider complaints by assisted persons (s.20(i)(c)). They are themselves subject to review by a Review Committee (s.36). Strangely, where a Legal Aid Committee reviews a decision of the Commission, the Director or an officer of the Commission its decision is final and conclusive (s.35).

Legal Aid

Legal aid provided by way of duty lawyer services and legal advice which is not of a substantial or continuing nature is to be provided without charge (s.26). The application for the provision of these services and for the provision of legal assistance of other classes which may be so prescribed, is not required to be in writing (s.23). Applications for the provision of all other types of legal assistance are required to be in writing.

The Commission may provide legal assistance to a person, either without charge or on condition that a person makes a contribution to the cost of such services, as a general rule-

(a) if in its opinion the person is unable to afford the full cost of obtaining such legal service from a private practitioner;

(b) it is reasonable having regard to all relevant matters to provide legal assistance (s.24(1)).

The question of reasonableness involves such criteria as whether the proceeding in respect of which aid is sought is likely to terminate in a manner favourable to the applicant. The question of reasonableness is not to be considered if the applicant is a person charged with -

"(a) an indictable offence;

(b) a summary offence in circumstances where the person could have been proceeded against for the same offence by indictment; or

(c) an indictable offence which by consent has ceased to be indictable -"

and the Commission is of opinion that it is desirable in the interests of justice that the person should have legal representation.

In making the decision as to the reasonableness of providing assistance the Commission may have regard to the fact that the proceeding is a "a test case" (s.24(4)(a)).

In making an assessment of the capacity of an applicant to afford the costs of legal services the value of the interest of the person in the dwelling house in which he resides is not to be taken into account (2.24(3)).

Fees

The requirement that practitioners will accept "such amount as is equal to 80% of the fees ordinarily payable in respect of similar services provided to a person who is not an assisted person" (s.32) will probably not create a problem in the jurisdictions such as the Magistrates' and County Courts where fees are set by regulation or in the Supreme Court where minimum fees are to be recommended by the Bar Council Because so much of the work of the Bar in the criminal jurisdiction is presently briefed from

the Public Solicitor's Office, it is hard to determine the fees ordinarily payable in criminal matters. Certainly fees paid by the Public Solicitor are not to be viewed as paid in respect of services provided to a person who is not an assisted person.The Criminal Bar Association is carrying out investigation to establish a schedule of fees ordinarily paid in criminal matters by clients who do not enjoy any form of governmental assistance.

Selection of Practitioners

Subject to the requirement to ensure that legal aid is provided in the most effective efficient and economical manner (s.10(1)(a)) and to the provisions of s.10 (1) (e) (cited above) the means of selection of private practitioners is referred to in s.30 -

> "(1) Where legal services are to be performed on behalf of an assisted person by a private practitioner, the assisted person is entitled to select the private practitioner from a panel of names of private practitioners prepared by the Commission pursuant to this section.
>
> (2) Where an assisted person does not wish to exercise his right to select a private practitioner pursuant to sub-section (1), the Commission shall, on his behalf, select a private practitioner from a panel of names prepared pursuant to this section.
>
> (3) In selecting a private practitioner pursuant to sub-section (2) the paramount consideration shall be the interests of the assisted person but, subject to that consideration, the Commission shall allocate work equitably amongst private practitioners named on panels prepared pursuant to this section.
>
> (4) The Commission shall, out of the private practitioners who have notified it of their willingness to act for persons receiving legal assistance, prepare and maintain panels of names of private practitioners for the purposes of this section.
>
> (5) Subject to sub-section (6), the Commission may exclude or remove the name of a private practitioner from the panels of names prepared pursuant to this section.
>
> (6) Before making any exclusion or removal referred to in sub-section (5) in relation to a private practitioner, the Commission shall-
>
> (a)give written notice to the private practitioner setting out its reasons for the proposed exclusion or removal; and
>
> (b)afford the private practitioner a reasonable opportunity to be heard and to show cause why the exclusion or removal should not be made.
>
> (7) A private practitioner aggrieved by any such exclusion or removal may, within six months after the receipt of notice of the exclusion or removal, apply to the Supreme Court for an order setting aside the exclusion or removal and the Supreme Court may, as it thinks fit, grant the application subject to conditions or unconditionally or postpone the making of an order or dismiss the application."

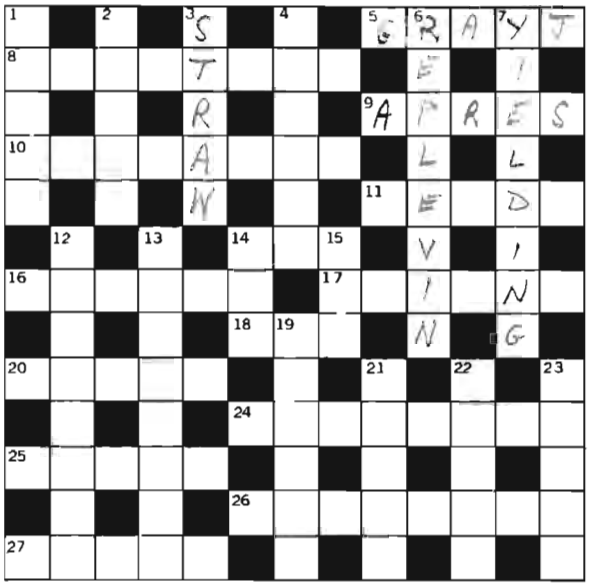
Professional Privilege

The relationship and any privilege arising out of the relationship between counsel and solicitor and client, is preserved where the practitioner is providing his services in pursuance of the Act (s.31(1)). Professional privilege also arises between the applicant or assisted person and the Director or a practitioner who is an officer of the Commissioner when he performs the functions of a solicitor (s.31(2)). However, documents or information received in relation to an application for legal assistance can be produced or disclosed, but only with the consent of the Commission (s.43(1)). The purpose of the latter provision is to enable the Commission to protect itself against applicants who obtain assistance by providing false information as to their financial circumstances.

To Avoid Injustice

Where the Commission has provided assistance to a person who institutes proceedings and the assisted person is ordered to pay the costs of the other party of those proceedings, if the other party or the assisted person will suffer substantial hardship if such costs are not paid, the Commission is required to contribute to or pay such costs. (s.48)

CAPTAIN'S CRYPTIC No. 28



ACROSS:

5. Up a rung but a judge just the sam' (4.1)
8. Bestowal (8)
9. After French (5)
10. Convenient for carrying (8)
11. Fixes right up (5)
14. Step into the waters (3)
16. Discover like a god (6)
17. Bending easily (6)
18. A small erection for shelter (3)
20. Even less corrupt (5)
24. Aggressively active (8)
25. "In shape no bigger than an . . stone" S'peare (5)
26. Inferring (8)
27. Furnish with ornaments as does bar to bench (5)

DOWN:

1. Skilled performer (5)
2. Come into operation as a law (5)
3. Never sue a man of this type (5)
4. Shapeless lump of food (6)
6. Recovery of distrained goods on security (8)
7. Conceding a point in argument (8)
12. Disclosed as on discovery (8)
13. Company controller (8)
14. Shortened secant (3)
15. A stroke becomes appropriate (3)
19. Serving no practical purpose (6)
21. Vespasian (5)
22. Insipid (5)
23. All the world is one of these (5)

TIDBITS

Victorian Council of Professions, on which the Victorian Bar is represented, is organizing a Seminar to be conducted at Clunies Ross House in the evening of August 14, 1979. The topic is "Should Professionals Advertise?" The Seminar will open with an informal dinner at 6 p.m. and the first paper will start at 7.15 p.m. It is expected that the Seminar will be addressed by representatives of the various professions and the advertising industry, and will last about 3 hours. Details of the Seminar and a registration form may be obtained from O'Sullivan Q.C.

● ● ●

Australian Council of Professions is holding a Seminar in Sydney on 19th and 20th October 1979. The topic: "Accountability and Control of the Professions". For further information enquire Law Council of Australia, 155 Queen Street.

Local Police are pursuing two quite distinct leads following the recent theft of Lenczner's motor car. The first involves a check of his disappointed clients. And the second involves ascertaining whether the Chief Justice has any particular enemies. The latter theory is being considered in the light of the fact that Lenczner had left his 1963 E.H. Holden (allegedly kept in mint condition) parked in the area reserved for the Chief Justice — directly outside the hallowed portals of the Supreme Court. Lenczner wishes two points to be made in particular. Firstly, he has parked his vehicle in that sacred area at a time when he was permitted to do so — he maintains that he had a conference which finished at 11.00 p.m. The second by way of warning to the miscreant is that he is now involved in almost full time study of the law relating to contempt, and also assignment of debt, as the car contained an unpaid parking ticket.

MISLEADING CASE NOTE No. 6

F.C.T. v Butcher

Grubbo J. said:

The Defendant is a medical practitioner, who for some years has engaged in the subsidiary occupation of beef cattle grazing. From the evidence before me it is apparent that over those years he has successfully, and legitimately reduced the incidence of income taxation applicable to him to zero by the simple expedient of purchasing cattle with the intention of resale (and thereby gaining a deduction from the considerable income derived from his medical practice) but then failing to resell them. This practice came to the notice of the Commissioner of Taxation not, the Commissioner assured me, as a result of the Age "Insight" investigation which exposed the Defendant to several days of page one coverage, but rather as the result of seven months of intensive field work and computer print-outs on animal progeny and their whereabouts within Australia. Be that as it may, the Commissioner announced his intention to disallow any such purchases in the future, leaving the Defendant with a potentially huge provisional tax problem. The Defendant then took what seems to me to be the only course left open to him in these days of reduced Probate and Estate Duties — he arranged for himself to be murdered. It is from those matters that thise case arises.

The Commissioner seeks to have the Defendant's death set aside as an arrangement for the avoidance of taxation under Section 260 of the Income Tax Assessment Act, and having heard all of the evidence I can come to no other conclusion than that it was such an arrangement. Accordingly I must hold that the Defendant's death is void and of no effect.

The question for consideration thus becomes this: what is the effect of the avoidance of the Defendant's death. Mr. Jest and Miss Jamtin appeared to argue that, since the Defendant was no longer dead he must still be married, and that, accordingly, the Family Court was properly satisfied of this dispute. I am pleased to be able to hold that this matter involves questions of law, and that accordingly the Family Court is not the "forum conveniens".

An application was made to dispose of the Defendant's property by way of will, but since the Defendant cannot now be said to be dead he cannot be said to have died testate. On the other hand since section 260 only avoids arrangements on the application of the Commissioner and not otherwise, the Defendant's death was not void ab initio but rather in futuro, and valid for some period of time which it is not necessary for me to specify. Accordingly therefore the Defendant must have died neither testate, since his will cannot apply now that he is alive, nor intestate since he had a valid will on the date of his death. There must be therefore a third state of condition, atestacy, into which the Defendant falls. An atestate person must clearly be one created by the Commissioner and arising at his suit or by his action, and gives a new meaning to the expression "thing in action".

Apart from the philosophical implications, there are obvious practicalities which affect atestate persons. Such a person is liable to pay income tax — so much is clear from Section 260, for if that section did not exist, atestacy would have to invent it. And vice versa, as we have seen. Any taxpayer is of course entitled to minimise the incidence of taxation applicable to him, and to appear by counsel to contest any assessment made by the commissioner against him. Those rights are perfectly general and apply as much to atestate taxpayers as to any others.

In this case the Defendant, though atestate, has appeared by counsel to argue the right of the Commissioner to make assessments against him, and has raised the "attainder of felony" rule.

It is clear that the law has always forbidden convicted felons to sue in civil courts, because such persons were dead; usually in fact and always in theory. The modern distinction between a convicted felon and a guilty but as yet unconvicted one has always seemed to be an absurdly fine distinction to me, and I can see no reason for it. The recent High Court decision in **Dugan v Mirror Newspaper Ltd.** shows the lengths to which some will go to avoid such distinctions and the trouble they have in so doing. The felony alleged against the Commissioner is of course robbery — the demanding of money with

(Continued on Page 23)

THE RETAINER RULES AND OTHER THINGS

Whilst reading over the retainer Rules the other day in between the commercial breaks on the telly, I was rather struck by the notion of rules which allow one to appear on an appeal on the opposite side to that on which one appeared below (rule 14) or to appear at the hearing having drawn the pleadings for the other side (rule 16), whilst enjoining one to do so only without embarrassment (rule 15). Such rules (if widely known) may only confirm in the reasonable man the view of lawyers which it is understood that he has held since time immemorial.

These thoughts take one's mind immediately to standards, and ethics, and to the standards of the bar as a whole. Have they slipped? Or has life always been thus? One is of course familiar with those apparently modern diatribes concerning the poor behaviour of the young, which turn out to have been said by Socrates or someone of that ilk. The law has them too. Thus in 1586:

> "I find that there are now more at the barre in one howse than was in all the Innes of the Courte when I was a younge man. And I finde theis places are bestowed manye times upon unmeete men verie rawe and younge men which are negligent and careless."

although in justice it appears that the local Silks in 1577 were told:

> "not to embrace more matters than you can well and troughlie consider of which thinge I note doth oftenest happen unto those which trust to moche to the presentnes of there wittes and thereby answers theire clientes causes upon a sodayne to the losse and otherthrowe (as yt often happenethe) of theire clientes causes."

Not that the above have any application at the present day.

Perhaps it may be that the rules previously mentioned are an attempt to retain for the members of the bar the freedom of action exhibited by a leading practitioner of the day, reference to which I found when browsing through Holdsworth some time ago (actually all of the following references come from Holdsworth), which should give some confidence in the notion that I haven't invented them). The later Lord Westbury apparently drew a bill against a client for whom he held a general retainer:

> "At the hearing of the suit his services were claimed by the defendant, and it was Bethell's painful duty to demolish his own handiwork. "Your Honour", he said, "of all the cobwebs that were ever spun in a Court this is the flimsiest: it will dissolve at a touch". And it did. By way of reparation and consolidation, he whispered as he went out of Court, in the ear of the solicitor who had first instructed him, "the bill is as good a bill as was ever filed".

One suspects that neither client nor solicitor were overjoyed, in the event. Yet clients have been happy with counsel's work. It is related that one client was so happy with the endeavours of his counsel, that he left him in his will a life interest in a considerable fortune and manor property, thus allowing the fortunate pleader to leave the bar and to live the life of a gentleman thenceforth. In these present times, we take tickets in Tattslotto and hope to be rescued by a 1st Division prize. I myself was once offered a present of a shirt after a particularly good win (it didn't actually eventuate). Another person privately offered me more money "to do a good job". Perhaps he had read the following passage from Pepy's diary (of Pemberton J.), said by Holdsworth to have "proved himself to be too honest a lawyer to be wholly trustworthy" (I think as a judge):

> "It was pretty here to see the heaps of money upon this lawyer's table; and more to see how he had not since last night spent any time upon our business, but begun with telling us that we were not at all concerned in that Act: which was a total mistake, by his not having read over the Act at all".

Digression

To digress shortly, but still having some relevance to standards, the following gems are recorded in Holdsworth. The first is of a barrister who later became Chief Justice of the King's Bench (it was said

that there were fears that his appointment would cause "popular apprehension"). In the early 1670's:

> "Only yesterday there was so great an alarm in Westminster Hall that the gates were commanded to be shut. The King's Bench rose up in great disorder; but when they understood it was only a mad cow, they sat down again. But the fright in Westminster Hall hath furnished the whole town with discourse; for she, having tossed several persons in King's Street, and coming into the Palace Yard towards the Hall gate, several persons drew their swords; others endeavoured to seize upon the officers' staves at the door to defend themselves with. Those in the hall, who saw the bustle and swords drawn, were affrighted, and some cried out the fifth monarchy men were up and come to cut the throats of the lawyers who were the great plague of the land. Some flung away their swords that they might not seem to make any defence; others their periwigs, that they might appear to be meaner persons; the lawyers their gowns; and your friend Serjeant Scroggs, who of late hath had a fit of the gout, was perfectly cured, stript himself of his gown and coif, and with great activity vaulted over the bar, and was presently followed by the rest of his brethren."

The second is of a barrister who later rose to the eminence of Lord Chancellor:

> "Mr. Thurlow was at that time just rising into eminence as a lawyer. My father who considered him as possessing abilities greatly superior to any of his contemporaries, was anxious as far as lay in his power, to bring him forward. Mr. Thurlow, though indefatigable in his attentions to whatever he conce undertook, was by no means a laborious man in general, especially during the early part of his life, when he avowed his disinclination to going to his desk, or looking into a book in the evening. Consequently, he never, except on particular occasions, was to be found in his Chambers after five o'clock in the afternoon, and in order to avoid being interrupted in his hours of recreation by Attorneys or their Clerks, it was a rule with him never to dine two following days at the same house, but to use various taverns and coffee houses (in the neighbourhood of the Temple where he lived), indiscriminately, and wherever he went the waiters had a general and positive order, if enquired for to deny his being there, and this usually succeeded.
>
> A business was transacting in our office, whereon my father was extremely desirous of consulting Mr. Thurlow. The matter pressed in point of time, not an hour was to be lost, and as two of the clerks who were sent in search of him had failed in their object, my father bid me try what I could do, and if I succeeded he would give me a guinea. Out I set, and as I had at the commencement of my clerkship made friends with most of the head waiters in the taverns and coffee houses in Chancery Lane, Fleet Street, and that part of the town, I felt confident I should obtain the promised reward, and did so, though after more difficulty than I expected. After going the usual round in vain, I called upon the Bar-maid at Nando's which whom I was a favourite, and entreated her to tell me where Mr. Thurlow was. At first she protested she knew not, but by a little coaxing I got the secret, and proceeded to the Rolls tavern, where I had already been, but there happening to be two new waiters who were of course unacquainted with me, they were faithful to their orders, and denied his being there. Upon my second visit I went into the Bar, where addressing the landlord, I told him I had ascertained Mr. Thurlow was in the house, and see him I must. The host was inflexible, and would not peach, but in a few minutes after I entered, he called out — "Charles carry up half a dozen of red sealed port into No. 3".
>
> It instantly struck me that must be the apartment my man was in, and as the waiter passed with the basket of wine I pushed by him, ran up to No. 3, boldly opened the door, and there sat Mr. Thurlow and four other gentlemen at a table with bottles and glasses before them Upon seeing me he exclaimed: "Well, you young rascal, damn your blood. What do you want? How the devil did you find me out? Take away your papers, for I'll be damned if I look at one of them. Come, Come you scoundrel I know what you came for; you take after your father and are a damned drunken dog, so here drink of this", filling a tumbler of wine which I had not the smallest objection to, and drank to the health of the company. "But how did you find me out?" asked Mr. Thurlow. "Why, Sir," answered I, "I heard the master of the house order six bottles of port for number three, and I was certain there you must be, so up I ran and entered without ceremony."
>
> This made a great laugh, putting Mr. Thurlow into high good humour who swore I was a damned

clever fellow, and should do, and turning to his companions he said — "This is a wicked dog, who does with me as he pleases, a son of Joe Hickey". I was thereupon particularly noticed by them all, and pulling out my papers Mr. Thurlow looked them over and immediately wrote a note to my father upon the subject, which I carried home, thereby gaining not only the promised guinea, but credit for the manner in which I had effected the business."

It is however recorded that Thurlow got his big start in the law from a solicitor who heard him at Nando's so perhaps some verities are still of eternal application.

Law and Liquor

Actually, for some reason the law and liquor appear to have a connection (not entirely due to Irish influence in both), as the following snippet shows, from a case concerning the excise duty payable upon brandy:

"The specimens were handed about, and the judges tasted, the jury tasted, and Saunders, seeing the phials moving, took one, and set it to his mouth and drank it all off. The court observing a pause and some mirriment at the bar about Mr. Saunders, called to Jeffries to go on with his evidence. My Lord, said he, we are at a full stop and can go no further. What's the matter? said the Chief. Jeffries replied, Mr. Saunders has drunk up all our evidence."

Saunders later became Chief Justice of the King's Bench. It will probably not be lost on the diligent reader that all of the above excerpts concern persons who rose to high office. Why was this? Were they in fact better behaved than the rest, or doesn't it really matter? Whilst courses are being considered for new members of the bar, should the Ethics Committee be required to read Holdsworth as a condition of taking office?

Whilst the bar and liquor seem to be connected, it is also of interest to note the apparent connection between the bench and sleep, although perhaps the description of sleep as "the balm that knits the ravelled sleeve of care" indicates why this is so. The connection is of ancient origin. For instance, Holdsworth relates that —

"I was told by an uncle that he was conducting a case before Coleridge, and had got to a crucial point in the examination of a witness; it was essential that the judge should hear the witness's answers; but the judge was asleep' he asked his opponent what he should do; his opponent said, "I will object to your next question perhaps the change of voice will wake him" — it did, and all was well."

and as far back as the 1700's —

"Lord King became so far advanced in years . . . that he often dozed over his causes when upon the bench; a circumstance which I myself well remember was the case; but it was no prejudice to the suitors; for Sir Philip Yourke and Mr. Talbot were both men of such good principles and strict integrity, and had always so good an understanding with one another, that, although they were frequently, and almost always, concerned for opposite parties in the same cause, yet the merits of the cause were no sooner fully stated to the court, but they were sensible on which side the right lay; and, accordingly, the one or other of these two great men took occasion to state the matter briefly to his Lordship, and instruct the Registrar in what manner to minute the heads of the decree."

I am not sure that Sir Philip Yourke or Mr. Talbot have any successors at today's bar — perhaps just as well, although on the other hand, if one can settle a case out of Court, why not in Court?

Uren

MISLEADING CASE NOTE No. 6

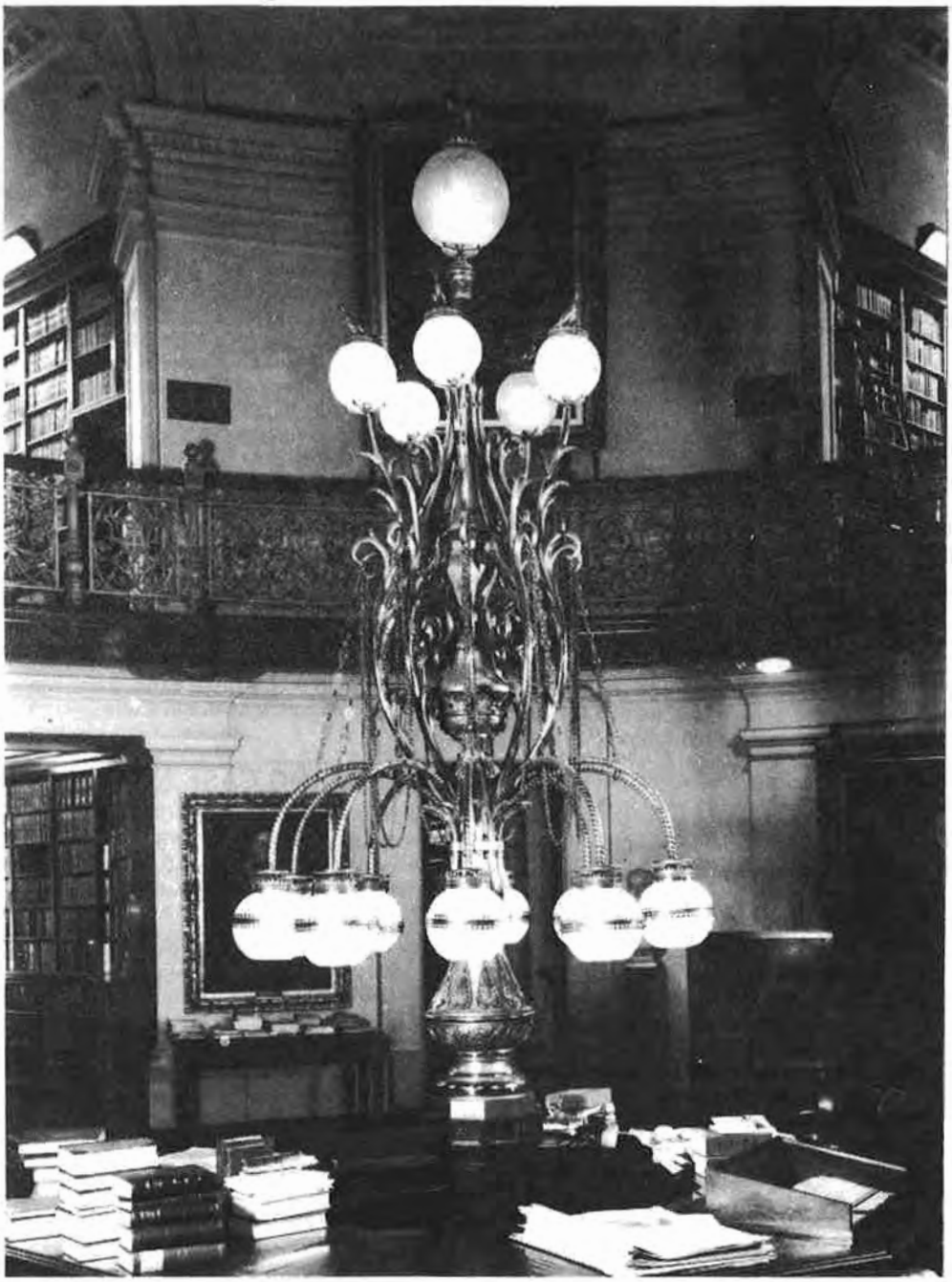
(Continued from Page 20)

threats and menaces, and although it is true that he has not yet been convicted I can see no exculpation for him in that. The Commissioner must be a felon and incapable of suing.

In summary therefore, the position is simple. The Commissioner has the power to bring alive the Defendant, and to assess him for income tax. The assessment is bad because it is made with threats of the application or otherwise of Section 260, and hence constitute a felony. The Commissioner is therefore attained and incapable of suing. Such incapability of course affects the right to make the application under Section 260, which would of course affect the Commissioner's attainder, and the existence of the Defendant.

I will leave this matter where it lies and make no order as to costs.

Gunst



MONTEZUMA'S PALACE

(a) Of what building was it said:
"All that was wanted was a plain and substantial structure, not a Palace of Montezuma"?

(b) Where were the following the first official words spoken:
"Bring William George Clamp to the Bar"
(following which the wrong prisoner was put up)?

(c) What is Number 210 William Street?

The answer to all the questions is the same:— The Supreme Court Building. The first statement was made by one John Curtin, a Parliamentarian, as the costs of construction soared. The street number is over the central doorway in the William Street facade. The events concerning William George Clamp were recorded in the Melbourne "Argus" and occurred on opening day, 15th of February, 1884. It appears there was no official opening ceremony, although the "Central Criminal Court" at the north-east corner of the building was packed with spectators. The report is as follows:

> "At 10 minutes past 10 o'clock amidst a silence which the voice of the crier was not needed to produce, His Honour (Mr. Justice Edward Holroyd) entered the Bench from a little door at the back. The Bar rose, and a compact row of wigged heads bowed deferentially, the Judge responding in like manner to the salute. A moment's pause occurred, while expectation was on tip-toe to hear the first official words which should agitate the yet unsanctified air of the Court. His Honour made no sign, and the Bar had no nerve to speak. The Associate was the only man equal to the occasion, and his first memorable words were, 'Bring William George Clamp to the Bar!' An officer in the dock dived down into the bowels of the earth by way of the stone staircase (leading down from the dock), and presently brought up from the underground dungeon, a prisoner. But his name was not William George Clamp, and he was ignominiously dismissed to the regions below, amidst the unchecked titter of the spectators. The real William George forthwith appeared, and the business proceeded as smoothly as if the first event in the Court had not been a bungle."

This must all have been a considerable anti-climax, particularly as the place had been years in the building and there had been years of discussion about its site, design, and so on before that. Further, the public was less than delighted with the building, complaining about what the Australasian Sketcher called "the dark ways and doubtful windings of the courts". That sentiment is obviously shared by the many bewildered litigants who seek directions from a man in robes on the not unreasonable (but sometimes incorrect) assumption that he will know his way around. And not only the public was dissatisfied. Mr. Justice Edward Holroyd rejected the elaborately carved throne provided for him. He chose instead to use his own old oval-backed chair. "The Argus" reported "The new and uncomfortable piece of granduer was relegated to one side, where it looked magnificently insulted."

Nevertheless the building was a substantial improvement on the old Supreme Court, which had stood at the present site of the City Court. A stone two-storey section facing La Trobe Street had been designed in Sydney in the office of the Colonial architect, Mortimer Lewis, and was erected in 1842-3 by the District Clerk of Works, James Rattenbury. There was a single ground floor courtroom flanked by four rooms for barristers, witnèsses, prisoners and library. The wooden extension facing Russell Street, which was called "The New Courthouse" was added in 1853. The whole complex was demolished in about 1910.

Opposite: The electrified gaselier and the writing table of which Kozminsky's valuer stated in 1974 "(They) combine to form a unified composition — apparently designed as part of the original furniture for the library . . .; the standard is a most important focal point for the magnificent domed chamber and reflects high Victorian taste with the decorative addition of Australian fauna, a noteworthy local touch."
Photo by Rifter Jeppesen Pty Ltd

It is sometimes said that the present Supreme Court building was modelled, at least in part, on the Four Courts in Dublin. Certainly the dome of the library is strikingly similar. And having regard to our Bar's early connection with the Irish Bar, this rumour seems quite probable. It is interesting that our building is almost a contemporary of the High court of Justice in the Strand, London. The design competition for the London Law Courts was held in 1866 and they were built between 1871 and 1882. The public competition in Melbourne for the design was launched in January 1873 and the building was open and ready for use, as noted above, on 15th February, 1884. The Gothic Revival never seems to have caught on in Melbourne, at least not for secular buildings, and whereas the London Courts are in Gothic style, the Melbourne Supreme Court is Neo-Classical (called at the time "Modern Italian"). In the pictorial volume "The Queen's Empire" Cassell and Co., London 1899 (which excellent and improving work is in the library of one of your learned editors) the following appears:

> "The Law Courts at Melbourne are copied too closely from the more unfortunate examples to be found in the Old Country to be classed as a first rate architectural effort. The group however is an imposing one, and the effect is increased by the ample open space around the Courts."

An old photograph shows a number of urns and other decorative features around the top of the building which must have been removed long since, as the writer has no recollection of them. The Tasmanian freestone has proved unequal to the climate and perhaps they were early removed as being unsafe.

The Four Courts Dublin, on which our Supreme Court Building, or at least the library, are said to be modelled. From on old postcard.

In fact the competition for the design caused a public scandal. The design submitted by Alfred Louis Smith was selected as winner in May 1873. It then emerged that it had been prepared with some collaboration from Arthur Ebden Johnson, the officer of the Public Works Department who had judged the competition! However a board of enquiry later found that Johnson had not been motivated by any "corrupt or pecuniary interest" but by friendship and academic professional interest in the architectural problems posed. He was allowed to resign from the Public Works Department and joined Smith in a long and apparently fruitful partnership. Perhaps one should not be too cynical about this episode. As Smith later pointed out, the Law Courts project was "the largest work ever required in the Colony". Further the problem of concentrating all the apparatus of justice in one building was exercising architectural minds all over the world at that time. Johnson's interest is therefore understandable.

Judging by the cars this picture of the Courts is pre-second world war. The decorative urns referred to in the article are no longer in place.

The original design of an open courtyard has suffered by the later addition of the Courts in the north-east and south-east corners and by the totally unsympathetic staircase outside the library. The best that can be said for the staircase is that it can be demolished without leaving any permanent damage to the building. But despite such official vandalism, and despite its draughty corridors and smelly toilets, there are many curious, delightful and indeed beautiful aspects of the complex. Why are there boot-scrapers at most of the doors but not the main entrance? Where was the mud? The old flagstone pavement which used to be around the building seemed to be as old as the Courts. The writer has been told that such flagstones came out as ballast in

(Continued on Page 31)

VIEWS OF ENGLISH JUDGES

The following is an article appearing in "The Listener" on 17th August 1978 published by the BBC. It is an abridged text of interviews broadcast on BBC 4. The article is reproduced for the information of members in the expectation that they are unlikely to hear similar from our own radio stations.

Hugo Young: *What is it like to be a judge, dishing out prison sentences with one hand and declaring or even making law with the other? Are judges stuffy, remote and secluded from life? If not, what do they see as the pitfalls of their profession? For the first time in radio–or, indeed, in any other medium–a number of High Court judges have broken silence to discuss controversial questions about the legal service, and especially, to talk about their own job. Judges learn their work by watching other people do it during a professional life as a barrister, although they will have briefly sat as a part-time recorder. One day, usually around their early 50s, they are suddenly invited to step from the well of the court, where they have always argued one side of a case, up on to the bench to be the referee. I asked a fairly new judge, Sir Gordon Slynn, whether this was an awkward transition.*

Sir Gordon Slynn:Professionally, there are obviously changes in one's life which are fairly substantial. If one has a court practice, and most silks inevitably do, one spends a long period of one's working life training to be an advocate and trying to speak well and usually rather a lot. But the minute you are put on the bench, the great quality is silence, and if you try to talk too much, you immediately find yourself subject to criticism.

Sir Sydney Templeman, a judge of the High Court of Chancery, made a similar point.

Sir Sydney Templeman: First of all, there is the great peace which descends upon you when you realise for the first time that you have only got to make up your own mind, and haven't got to make up somebody else's mind for him. But, secondly, you get the great jarring realisation that you have got to keep your mouth shut, largely.

Gordon Slynn also emphasised the purely physical aspects of the change.

Slynn:One transition that I found not entirely easy was having to sit still for periods of two-and-a-half hours every morning, and not far short of that in the afternoon. I am afraid that there were times, in the early days, when I seized the slightest opportunity to adjourn for ten minutes, just so that I could walk to my room and walk back again.

Silence, however, seems to be the first golden rule. All the judges emphasise it. James Miskin, the recorder of London, is the top judge at the Old Bailey. In his room stands a notice carved in wood by his former clerk, which says: 'You are paid to keep quieter. He explains why.

James Miskin: I would have thought that, whereas at one time judges were able to both say and do in court pretty much what they wanted, without publicity or criticism, nowadays, and rightly–particularly in this building, which is a sort of goldfish bowl–everything that we say and do is publicly seen and very often publicly quoted. That is a good thing, because it makes one pay greater attention to the importance of not pontificating or expressing views unless they are necessary to the case one is trying.

How, then, are these paragons of tact, wisdom and silence discovered? As I said, they all come from the bar. The real process of selection is a secret locked in the recesses of the lord chancellor's department, and I was able to get the present lord chancellor, Lord Elwyn-Jones, to open the door only a crack.

Lord Elwyn-Jones: It is very much a personal appointment of the lord chancellor, but, of course, on the strength of a multitude of sources of advice that one has from colleagues on the bench, heads of divisions, the law officers, a wide range of people that one can talk to. Partly, it is based on one's own knowledge of the men concerned. We are now talking about the High Court judges. I was a busy practitioner at the bar, and most of the lord chancellors since the war have had large practices, and have known the people, so the combination of all those sources of information enables one to pick out pretty well the best people that are available.

The commonest criticism of this procedure is not actually the way it is done, so much as the social pattern it seems to produce on the bench. A great deal of academic sweat has been worked up to show that the judges tend to be middle-aged and middle-class. Surprise, surprise. But one man who seriously objects to it is Peter Kandler, an experienced solicitor who now runs the Balham Law Centre.

Peter Kandler: They go mostly to public schools, and they they go to Oxbridge, and then they go on to the bar, and then they go to the bench, and they live really very sheltered lives, most of them. I think the kind of sheltered lives they live produces immaturity on a number of their parts when they get into court, and it also produces a failure to understand the problems of ordinary people, and the pressures on ordinary people. Unless you have actually lived or worked consistently in deprived areas, and really understand and feel the oppression from bad housing, bad schooling, lack of amenities, heavy police forces, then you cannot understand a lot of the dialogue that goes on and is reported to you in court in terms of evidence, whether that is dialogue between the police and the defendants, or between landlords and tenants.

The normal humdrum realities of life, like rehousing or the social security queue, are certainly not likely to part of the traditional judge's daily round. I put this to Lord Elwyn-Jones. He is, after all, a Labour lord chancellor. When he took the job, did he set out to change the pattern?

Elwyn-Jones: Well, one has to take the material that one has, and the class that barristers come from it, broadly speaking, middle-class, but, of course, there are many distinguished exceptions. I won't speak of myself, though my father was a tinplate rollerman, from Llanelli in South Wales, and there are several distinguished judges from equally modest social origins. But one really picks the best, and sometimes they come from modest origins, sometimes they don't.

When I mentioned seclusion to Sir Sydney Templeman, he offered a characteristically graphic rebuttal.

Templeman: The last time this accusation was made to me was by a young man in a neighbourhood law centre who was doing very good work with some Pakistani immigrants. He was just down from one of the polytechnics, and he said he thought that judges were too secluded and remote. He said he had to go to see two Pakistani immigrants who were quarrelling about a restaurant, and I said, 'Well, as that is the sort of case which may come in front of me, you may like to know that, although I am going back to my secluded villa in Surrey, I have spent a week in a village near Rawalpindi, and I have served in the company of a Punjabi regiment, and I have probably seen and talked with more Pakistanis in their own language and in English than you will see in the course of your training with the neighbourhood law centre.'

This is a common but not a universal view in the legal profession. One dissenter is Lord Gifford, a busy barrister much in demand among poor and disadvantaged citisens. He does not have a high opinion of the average High Court judge.

Lord Gifford: Judges have two main roles. Their first role is as interpreters and moulders of the law, and there the record of the English judiciary has, I think, been very, very bad. They are very good at analysing the law of property and trusts and charter parties and that kind of thing, but when it comes to civil rights, the rights of minorities, the right to a fair hearing, their record is of being not just conservative, but illiberal to the extent of being repressive. They are selective in the way that they apply the standards of so-called principles of justice. We have rent acts which very clearly seek to give tenants protection and security of tenure, but there have been many cases where those rights have been eroded and whittled down by judicial decision. Various principles get enunciated, particularly in the case of people being deprived of property. When you try to apply them to prisoners, to immigrants, to students, to any kind of not so popular or not so politically important group, you find the same principles being rejected, and none of the good tradition of upholding civil rights, irrespective of the consequences, that you find in the United States Supreme Court.

That is a case which could certainly be explored in detail. I think there is something in it. But, contrary to some people's impression, judges are capable of self-criticism. Wasn't it Lord Jessel who said:'I may be wrong, but I am never in doubt'. Judges are aware that they may make mistakes.

Miskin: It would be quite ridiculour to think that on every occasion one makes a legal decision, one is doing more at the time than thinking that what one is doing is right. Human nature being what it is, one sometimes wonders, in retrospect, whether it was right. On one occasion, I found that I couldn't get out of my mind the worry that what I had done was wrong, and that worry lasted for 48 hours, and so I had the accused back, and reversed that which I had done. When I did it, I was unable precisely to see where I had gone wrong, or why I was correcting it, but it seemed to me that a long-term residual worry was enough.

I asked Sydney Templeman whether he, too, agonised about being wrong.

Templeman: There are two classes of cases about being wrong. One class of case is when you read the Court of Appeal judgement which has found you wrong, and you say to yourself:'Well, I missed that, and I am very cross with myself for having missed it. I ought to have seen it.'In the other type of case, one says: 'This ia a complicated field, and I reached an answer which I thought was full of common sense, and if the Court of Appeal, for reasons best known to themselves, reach some complicated conclusion which I don't think is consistent with common sense, well, it has got nothing to do with me.'

Sydney Templeman enumerated some of the alternative temptations which he has experienced.

Templeman: I have never had any difficulty in keeping awake. The clerk doesn't have to drop a book on the floor at three o'clock in the afternoon to make sure I am still with it. But there are temptations for judges–again, I stress these are temptations which I myself have found. I dare say my brethren either don't have temptations, or they resist them much more easily. But the temptations I have found are these. First of all, as you have probably seen already, I am in great danger of being complacent. I feel like going round and saying: 'I am a judge and a good judge, too,' in the words of Gilbert.The second temptation I find after a certain time is the danger of irritability. You can sit there, sometimes for hours, listening to a long-winded counsel or a rather obtuse witness, or perhaps reading a file of correspondence in which a solicitor has said something silly, and the tendency to become irritable after a time is one which I find quite strong. The third illusion, I think, is probably one which one attains only after a number of years, and that is the illusion of infallibility. Well, there are certain checks to these pitfalls. It is a very salutary check for a judge to realise that if he does say something silly, it is liable to get in the papers.

Peter Kandler thinks judges have deeper flaws to worry about, especially when dealing with crime.

Kandler: There are one or two judges who are quite obviously emotionally distirbed and shouldn't be sitting. Therefore, I think we have to look very seriously at the way judges are appointed, and at the ways in which it should be possible to remove judges, who–especially from those backgrounds–seem really to carry out excesses in court, in the way they behave, the way they shout at people, and the way they refuse to listen to defence evidence–the way, especially, some of those who have been prosecuting all their lives, and are appointed judges as a reward for these prosecutions, still seem to think it their duty to get a conviction.

It seems to me that the unsackability of judges, at least at the High Court level does pose a genuine problem. There are occasionally bad ones, who persistently say or do silly things: yet once they are chosen, they remain on the bench until they are 75. However, any change would undoubtedly raise acute and sensitive issues, as the lord chancellor explains.

Elwyn-Jones: Well this is a very dangerous road. One of the first things that dictatorships do is, of course, to remove the independence of the judges–appoint them for a limited period, so they can be more easily sacked. We have, in effect, the immovability of High Court judges–that is why one has got to be jolly careful in finding the best ones to take the job on. No, I wouldn't welcome any move either to limit the period of their appointment, or to make it easier for ministers, for the executive, even the lord chancellor, to get rid of them.

It may well be that this security of tenure contributes mightily to the characteristic which has most often struck me among these and other judges I have met. It is a human rather than a professional one. Whatever else they are, judges seem to be the happiest and most contented of men. They positively exude a healthy fulfilment in their work.

'Talking Law' (Radio 4)

MOUTHPIECE

A member of the Bar reputed to be in favour of continuing legal education for barristers as a means of improving standards has suggested the following test paper to separate the persons from the young persons:

Question 1: (Honours Students and Applicants for Silk only) — Attempt the Captain's Cryptic Crossword No. 28. (20 marks)

Question 2: (All Candidates)
Read the passage set out below, and answer the following questions —

For some years now the pressures of greatly increased numbers coming to the Bar has produced some concern as to whether the requirements for signing the Bar roll are adequate to ensure that the traditionally high standards of the Bar are not likely to be eroded. The Bar Council has been giving consideration to this question over a period and, indeed, it is now some two years since the Standards of Practice Committee was first established.

It is clearly of importance to every member of the Bar that standards are maintained, if not improved, and in a climate of increasing sophistication of legal developments and of the plethora of new legislation and administrative and other tribunals there seems to be a clear need for establishing new systems for ensuring that lawyers are properly qualified prior to coming to the Bar and that their competence is maintained through continuing legal education whilst they are at the Bar.

The Bar Council has determined to hold a special all day meeting on Saturday, 23rd June to discuss the methods by which these objects can be obtained.

(i) what objects to you think the writer is referring to? (10 marks)

(ii) summarise the arguments (if any) presented for the holding of the special meeting. (20 marks)

(iii) why do you think the writer makes reference to the Standards of Practice Committee in the way he does? Do you think he achieves this objective? Give reasons. (15 marks)

(iv) Do you think the writer intends the readers to believe that standards at the Bar are now lower than previously? Set out the ways which he uses to lead to this conclusion. (10 marks)

(v) Set out five examples of coloured terms which you found in the passage. (5 marks)

(vi) write notes on any two of the following, giving illustrations —
  (a) begging the question.
  (b) coloured expression.
  (c) emotive argument. (10 marks)

Question 3: (Ethics candidates only)
Attempt question 1 without looking at the solution on page 41. (10 marks)

Candidates unable to obtain a pass on this test should be required to transfer voluntarily to the non-practicising list.

Byrne & Ross DD.

"In my opinion, your Honour . . ."

"(A barrister). . . . .should refrain from expressing his personal view or opinion of the case in court or from becoming personally involved in any way."

> Halsbury's Laws of England, 4th Edition, Volume 3, Paragraph 1137, citing **Ryves v.A-G (1866)** Annual Register page 255; and Lord Herschell's **Rights and Duties of an Advocate,** Page 10

"The submission should be in accordance with the legal representative's own objective understanding of the child's interests."

> **In the marriage of Lyons and Boseley** (1978) Family Law Cases 90-423;77,133 at 137. (Full Court of the Family Court of Australia).

Section 65 of the Family Law Act gives the court the power to order separate representation for the children in custody proceedings. The expressed views of the Full Court of the Family Court on the role and duty of such separate representative raise disturbing questions for the Bar as a whole. In **Lyons and Boseley** (above) the Court expressed views which "should be seen as no more than tentative" but must be taken as highly persuasive until clarified or until and unless a different view is expressed. It is submitted that the guidelines laid down by the Court misunderstand the historical role of counsel, and constitute an undesirable extension of that role. The judgment of the Chief Judge and Mr. Justice Pawley was that the legal representative should make submissions as to the placement of the children:-

> "In the case of a child old enough to state his or her wishes, . . .submissions should be in accordance with those wishes unless he considers that this would not be in the child's best interests. In the latter case or where the child is too young to state his or her wishes, the submission should be in accordance with the legal representative's own objective understanding of the child's interest." (Page 77,137)

In the course of agreeing with this judgment Mr. Justice Wood puts the matter even more bluntly:-

> "Should counsel consider that those wishes are not in the child's best interests. . . . counsel has the duty to say so and present argument to support his view."(Page 77,140)

It is submitted that it is for the Court to decide what is in the child's best interests, and that counsel should refrain from expressing his personal view or opinion. It would seem proper for counsel to address the Court on matters that counsel feels may assist the Court in deciding the question of custody, either by drawing the Court's attention to particular facets of the evidence or to relevant points of law or authorities. To go further, and not only express a personal opinion but to attempt to persuade the Court to decide the question in accordance with such personal opinion, would appear to border on unethical behaviour.

McIVOR

MONTEZUMA'S PALACE

(Continued from Page 26)

the Clippers. Consider the craftsmanship of the spiral staircases in the library, the central table and gaselier, the wood-carving and plaster work throughout the building. Consider the standard lamps with their bosomy creatures at the William Street entrances and "Gertie" (of whom perhaps more later) seated at ease and without blindfold above the main entrance. Consider the high arched gateway in the eastern facade and the "dungeons" below. Imagine the Judges arriving in horse-drawn carriages to deal with the affairs of the citizenry waiting honestly above or dishonestly below ground. Montezuma's Palace it is not. A funny, inconvenient, decrepit old building it may be in places. But the people who regard it as Montezuma's revenge are being unfair.

Fossicker.

(No original Scholarship is claimed for the above. The information has, for the most part, been shamelessly lifted from secondary sources in the Supreme Court library.)

RENOVATIONS AT TURANA

There appeared in "The Herald" of 26th April 1979 an announcement of a $3 million State development programme for Turana Youth Training Centre. Not a surprising event, you might say, given the pendency of the State election and also the electoral needs of the then Minister for Community Services, Mr. Dixon. The proposed works include redeveloping two sections to provide a new trade workshop and crafts wing costing $1 million.

Well, the story starts at the beginning of April. Bennett Q.C.'s wife was visiting a boy on remand. Appalled by the conditions which confronted him in Remand Section A, he wrote to the Bar Council on her behalf relating what they had seen —

> This section usually has approximately twenty inmates, either on remand or wards of the State. It comprises a corridor, approximately the dimensions of the western wing of a floor of Owen Dixon Chambers, and has in it a day room, a series of small bedrooms and an ablution room. Its inmates range between 14 and 17 years of age.
>
> The routine of the section requires that boys leave their bedrooms about 7.30 a.m. and return to them between 8.30 and 9.00 p.m. During the day there is one and a half hours provided for exercise in a concrete courtyard. Occasionally, there are two exercise periods. During the remainder of the day the boys spend their time in what I have called (for want of a better word) the day room; it is this aspect of the conditions in that section that I write about.
>
> The day room is a narrow room seemingly about 40 feet long. It has in it a television set, a bookcase with some tattered comics, a blackboard without chalk, a table tennis table and a small pool table. There are rows of plastic chairs established in front of the television set which is high on the wall.
>
> A visitor to the section will be struck on entering it by the blare of sound from the television set which is raucous, not only in the day room itself, but throughout the corridor. Boys loll listlessly in rows before the television set and, providing the table tennis table and pool table are not required for some other purposes such as carrying laundered linen and clothing, a few boys play at the tables. There is nothing else for them to do. The dejective boredom of the boys sitting in these rows of chairs strikes one as strongly as the noise from the television set. The dimensions of the room do not allow even space for them to move about freely within it. The tables occupy a substantial part of its width.
>
> It is in this room that the boys eat. In order to arrange for that, the chairs are moved and the table tennis table moved away. Trestle tables are brought in and set up for the purposes of meals.
>
> A boy who finds himself oppressed by this situation and seeks privacy must ask permission to leave the room in order to return to his bedroom. That permission might, or might not, be given. It will not be given if the boy is not thought to be making an effort to join the group in the day room or, of course, is a security risk. It is important that a boy should not become a loner.
>
> Might I say that I have not attempted to describe in detail other neglected and dismal physical circumstances of this section, which is badly in need of repair. For example, on the occasions, which are not infrequent, that the number of inmates exceeds 20, there are not beds for all those who do not have beds. I do not raise these last matters only because if the small amounts necessary to provide craft programmes are unavailable, meeting these conditions would seem to be all the more difficult.

Representations made directly to the Minister by Bennetts' wife had given them little hope that the situation would be improved. His efforts therefore were directed to mobilising the Bar and the Law Institute to take up the cause.

The Bar Council arranged for an inspection by Thomas, formerly superintendant of this institution. His report confirmed Bennett's observations. On

(Continued on Page 34)

ADMINISTRATIVE LAW REVIEWED

The Administrative Law Act 1978 (No.9234) came into operation on May 1st, 1979. Its basic aim is to reform, at least in part, the law relating to judicial review of administrative decisions. It may be recalled that in 1963 Lord Reid was able to state, in the celebrated case of **Ridge v Baldwin** (1964) A.C. 40 at 72 that:

"We do not have a developed system of administrative law".

Such a statement no longer holds true, even if it did in 1963. **Whitmore & Aronson,** "JudicialReview of Administrative Action", observed that we have a highly developed (some would say overdeveloped) complex, and ever proliferating, body of case law pertaining to the principles of judicial reciew. In a sense the Administrative Law Act recognizes this fact by virtue of the very modest intrusion which it makes into the entire area of judicial review, confining the extent of whatever reforms it seeks to implement essentially to procedural matters.

Section 2 of the Act contains definitions of three important concepts. These are:

(i) ' "Decision" means a decision operating in law to determine a question affecting the rights of any person or to grant, deny, terminate, suspend or alter a privilege or licence and includes a refusal or failure to perform a duty or to exercise a power to make such a decision.'

(ii) ' "Person affected" in relation to a decision, means a person whether or not a party to proceedings whose interest (being an interest that is greater than the interest or other members of the public) is or will or may be affected, directly or indirectly, to a substantial degree by a decision which has been made or is to be made or ought to have been made by the tribunal.' (Cf.Magistrates' Court Act s.88)

(iii) ' "Tribunal" means a person or body of persons ... who, in arriving at the decision in question, is or are by law required, whether by express direction or not, to act in a judicial manner to the extent of observing one or more of the rule of natural justice.'

All the above definitions are singularly unhelpful, if not actually circular. However, the definitions of 'Decision' and 'Person Affected' may ultimately be construed in such a manner as to overcome some of the problems arising out of the excessively conceptual and rigid approach to be found in the case law of recent years. For example, courts have at times assumed that a refusal to import the rules of natural justice can be justified by characterizing as administrative, the impugned act or decision of the relevant tribunal or body. For example **Pearlberg v Varty** (1972) 1 WLR 534. Conversely, sometimes it has been assumed that in order to establish that the rules of natural justice apply, the function in question ought to be characterized as judicial or quasi-judicial. **Glynn v Keele University** (1971) 1WLR 487.

The definition of 'Tribunal' in section 2, fails to provide a solution to the central question, whether one or more of the rules of natural justice **ought** to apply to a particular tribunal. Instead, we are required to apply existing common law doctrine in order to determine whether a particular body **is** a 'Tribunal' for the purposes of the Act. Thus, whether disciplinary boards of purely private clubs come within the ambit of theAct **(Maloney v. N.S.W. NationalCoursing Association** (1978) NSWLR 161), and still more vexing questions, such as whether contractual arbitrators are caught by it (**Ex.p.Lain** (1967) 2 QB 864) will still have to be resolved on the basis of existing case law which is often uncertain. Such an approach to administrative law reform can scarcely be described as innovative.

Sections 4and 5 of the Act are procedural in nature. They provide that an application for review pursuant to section 3, is to be made ex parte, not later than thirty days after the giving of notification of the decision or the reasons for the decision, whichever is the later. Such application is to be supported by affidavit which must disclose a prima facie case for relief. Incidentally, the Act nowhere spells out the substantive law upon which the application for relief is to be dealt with. However, theCourt is given a broad discretion to deny the relief sought by the

applicant even if a prima facie case has been made out if:

(i) no matter of substantial importance is shown; or

(ii) the refusal of the relief sought would not impose substantial hardship on the applicant: s.4(2).

This discretionary power may well be employed by the Court to stem the tide of any possible flood of applications arising from the extended standing provision contained in section 2 of the Act.

A 'tribunal' must, if requested, provide within a 'reasonable time' a written statement of its reasons for decision.Failure to do so, or the supply of inadequate reasons, allows the Court to compel the tribunal to either supply the written statement, or to rectify the inadequate statement s.8(1). The requirement that written reasons be supplied may lead to some administrative difficulties arising out of the need to record at least a portion of proceedings before the tribunal. Alternatively it may lead to "hindsight" reasons being provided.

However, the Court has a discretion not to issue an order compelling the tribunal to provide written reasons if:

(i) the giving of such reasons would be against public policy; or

(ii) the applicant is not a person primarily concerned with the decision of the tribunal and the firnishing of reasonsby the tribunal would be against the interest of the person primarily concerned. s.8(5).

The Act provides no definition or guidance as to what is meant by the expression "person primarily concerned". Clearly the effect of this broad discretionary power may once again be to cut down the ambit of the seemingly liberal standing provisions arising out of the definition of "person affected" in section 2.

Two final procedural points may be noted. Section 9 provides that the Court may grant interim relief in order to prevent irreparable damage pending judicial review. Section 12 provides that ouster clauses contained in other Acts shall not operate to exclude the jurisdiction of the Court to grant relief pursuant to the Act.

In summary, the Act appears to be a conservative measure designed to achieve strictly limited goals. These goals may be attained through the broader standing doctrine contained in Section 2 (and arguably extended to the field of traditional prerogative remedies by section 11). However, the Act also vests the Court with a number of broad negative discretionary powers, which if exercised to the full may negate even the limited goals of this legislation.

R. WEINBERG

CONGRATULATIONS

A. X. Lyons
Newly appointed Registrar of Titles and Registrar-General. Lyons signed the Bar Roll on 23rd July, 1970 and read with J. D. Phillips. He has for many years served as Parliamentary Draftsman.

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Sundberg: upon whom Monash University has bestowed a Doctorate of Philosophy for his thesis on "the completion of the Administration of Deceaseds' estates".

RENOVATIONS AT TURANA

(Continued from Page 32)

19th April a joint letter was sent to the Minister signed by Costigan Q.C. on behalf of the Bar and Roland Ball on behalf of the Law Institute. The speed and nature of the ministerial response is now known.

Apart from the satisfaction which all must feel in the success of the exercise particularly due to the enterprise and perserverance of the Bennetts, the community will have the benefit of two further results which have not yet received publicity. It has been proposed that the Law Institute and Bar take action together to review bail and remand procedures generally. Bennett Q.C., Hampel Q.C. and Thomas have indicated a willingness to work on this project. Second, it is proposed that inspections take place of remand facilities at Pentridge and Winlayton with a view to making further representations.

A LAWYER'S BOOKSHELF

CROWN PLEAS IN VICTORIA; Criminal Procedure for Indictable Offences. Michael L.A. Antalfy. Published privately by the author 1977 and available from him. $20 — 310 pages.

This book should provide the answer to many of those fundamental questions which arise during criminal trials and which frequently plague lawyers who practice in the jurisdiction. Answers to such questions for example as to how and when a "nolle prosequ" may be entered, what is the procedure for challenging a juror for cause, or how and in what circumstances can the time and place of trial be changed. These and other basic but perplexing aspects of the law relating to criminal procedure, have hitherto not been available other than in specialized texts or in some of the more venerable commentaries of the English textbook writers. An attempt has now been made for this to be placed in a Victorian context and brought up-to-date in a single volume readily available to practitioners.

The author is a Doctor of Laws and a former solicitor of Budapest, Hungary. More to the point in so far as Victorians are concerned is that he is a retired Victorian Crown Law Officer. This background is referred to in the brief Foreword to the book by J.F. Moloney, Q.C. Senior Crown Prosecutor whose name will be, of course, well known to many if not most of the book's readers. As is noted in the Foreword, "this book is the first in the long history of this State to provide a work of reference covering the procedure as distinct from the principles and evidentiary rules of the substantive Criminal Law of Victoria."

Antalfy describes in his Preface his purpose in writing the book as "an attempt to consolidate the law relating to criminal procedure including Common Law, Statute Law, and Case Law, as they (sic) stood on the 31st December, 1973, which are of general application; that is not applicable to specific offences only". As for the title, the author explains that "In early times criminal accusations on behalf of the King were called Crown Pleas; the title emphasises that the still living roots of the present Victorian law can be traced back to Magna Carta times."

Such a book can obviously be of great importance to those practicing criminal law, provided it meets certain requirements. A tool of trade must be convenient and practicable to use. In this aspect the book is to be commended. It is reasonably well bound in hard cover, and the text is printed clearly in large type on good paper. The contents are presented in 38 Parts, the headings of which have been chosen well so that a barrister on his feet can run his eye down the Table of Contents at the front, easily finding the desired paragraphs. The Index at the back is satisfactory rather than full. In a practitioner's book, such as this sets out primarily to be, speed in being able to locate the desired passage is essential, so that the greater the detail and precision of the index the better. Nonetheless, overall, the book is well presented for convenient and speedy use.

A second but no less important requirement in such a book is that it be reasonably complete in those topics with which it purports to deal and that it be accurate. In this regard the book is limited in that it was already 4 years out of date the year in which it was published. There have been considerable changes since 1973 in the law relating to criminal procedure in this state. Thus for example the Bail Act of 1977 has made much of the Part relating to Bail of historical interest only. Similarly with the Part on Legal Aid. This, of course, is a fault which can be laid at the door of any text book, especially in a period of record change such as at present. In this case, however, the delay between completion and publication seems to have been extremely long such that a second edition is called for almost immediately. Turning to actual errors, the book has not escaped the usual crop of those such as misspelt words and lines of text printed out of order as can be presumably laid at the printer's door. Again there are others which may or may not be so attributable, such as one which occurs on page 91 where the date of Victoria's separation from N.S.W. is given as 1855 rather than 1851. In reading the book and using it for approximately 6 months, no really substantive misstatements or errors have been noted by this reviewer. On the other hand, given the somewhat encyclopaedic nature of the text, no systematic attempt was made to determine if there were in fact any.

Such criticism as is made above should not obscure the basic value of this book not only to lawyers but also to laymen of an historical bent, (to whom the section on Outlawry might appeal), or to those interested generally in the criminal law. But it is to lawyers, particularly criminal lawyers, that the book will have most use. A random glance through it can provide practitioners in the jurisdiction with answers to much that they have wondered about during their careers. For example, at page 124 under the heading of "Peremptory Challenges" there occurs this passage; "Peremptory challenges" are not allowed in any case, except upon a plea of not guilty, for no peremptory challenges are ever admitted on the trial of collateral issues." (citing Joseph Chitty Criminal Law 1826.) For those who, like this reviewer, have wondered how a jury is chosen by an accused to determine his sanity, the passage provides immediate illumination.

Again at page 173 under the heading; "When objection must be made to witness"; there occurs this paragraph; "objection to the competence of a witness should properly be made before he is sworn in chief at the trial; though it may be made at any time before conviction" (again citing Chitty). Such short concise references can only but be a source of elucidation and assistance. Such a book can very easily become the constant companion of barristers engaged in criminal trials taken with them to court as readily and routinely as their copies of the Crimes Act and Archbold.

It is illustrative of the paucity of texts on the general criminal law and the need that this book fills that the major source cited in the book is that of Joseph Chitty whose work on the criminal law was published more than 150 years ago.

The present work is thoroughly recommended and it is to be hoped that a second edition might be available soon, to bring it up to date and to take account of the numerous changes which have occurred in the last few years. Finally, it is interesting to note that, assuming the writing has submitted his manuscript to them, none of the major publishers involved in the field has apparently considered it worthwhile publishing. If in fact that is so, the writer is to be commended for his initiative and determination in privately publishing the work and making it available to the profession.

Sharp

THE LAWYER WHO LAUGHED

A. Gillespie Jones

"It has been said that Magistrates Courts are the MacDonalds of the Legal System, but I think of them as the Half Case Warehouses."

John Coldrey
April 1979

I publish this jocular (yet perceptive) gem as my entry in the disgusting verbal scramble we are presently witnessing in the 'Verbatim' column of the Bar News, as Judges and Practitioners jockey for some free publicity should there ever be a second edition of Audley Gillespie-Jones' Legal Lead Balloons.

If the Readers Digest is correct, and 'Laughter is the Best Medicine', judicial jokes must qualify as the mogadons of mirth. It is therefore fortuitous that books like 'The Wit of the Wig' and 'The Lawyer who Laughed' are not only slim volumes, but positively emaciated.

When one multiplies the number of words spoken daily by the number of English speaking courts, one can only draw the inference that legal wit is a most rare and delicate bloom choked in a jungle of boring banalities. Gil Jones' stamina and perseverence in seeking out, plucking and arranging a few specimens in therefore highly commendable.

Indeed any 'Blue chip legal anecdotes' of the Rumpole variety represent a great advance on works like 'A Multitude of Counsellors' — Sir Arthur Dean's contribution to the fight against insomnia. (The most amusing aspect of that work is the continued listing of unsold copies by the Bar Council under the heading 'Assets').

'The Lawyer who Laughed' is set principally in the criminal jurisdiction. May we anticipate sister volumes in other areas?

Victorian Bar News

What about "Was My Face Red
Were My Hands Dirty?"

Merralls' Mirthful Memories of the Equity Jurisdiction. One can but hope not.

In fact Audley's Anecdotes do not represent the first attempt at collating courtroom chuckles. In what may only be characterized as Dazzling Research, I have unearthed 'The Story of the Victorian Bar' by J.L. Forde, published some 70 years ago. Consider for example this snippet at p.71:

> "On one occasion the "Gazette" (seemingly a precursor of the Sunday Observer) published a letter addressed to the editor in which the Judge was described as impulsive egotistical, vain, conceited, penurious and miserly, and it was asked — Was this a proper person to be sent to a young Colony as its Chief Judge?"

Again, thrill to this piece of verbal elan: (p.191) "Detective Jack Williams, giving evidence of investigating a burglary and finding stolen property in a house, 'On going into the back room I saw an 'ole made in the ceiling'.

C.P. Aspinall (Counsel for the Defendant):
'Bless my soul what brought her there?' "

Alas, the standard of legal levity appears immutable. The section of Gillespie-Jones' book dealing with a certain media Q.C. called Frank, is about as amusing as an epidemic of diarrhoea on a Pioneer Tour. On the other hand, unfortunate omissions from this collection are the many R.H. Dunn stories.

For example:
RHD: (cross examining a police witness) —
"Try not to keep looking at the Prosecutor before you answer, although I know you have a natural leaning that way".
Prosecutor: "I strongly object to that comment."

RHD: "I am sorry I didn't realise is was an unnatural leaning".

And when defending a group of clients charged with S.P. Betting before a devout Catholic Magistrate, Ray invoked the maxim "know your Tribunal":

RHD: "Is there any way we can indicate you're Catholic short of rattling rosary beads?" he queried.

"What about badges?" One defendant volunteered that he was a member of the Holy Name Society and that they had a badge with black and white ribbons attached. A quantity of badges was hastily procured and worn into Court. At the end of a hotly contested case the charges were dismissed. On the adjournment of the Court, the Magistrate approached Ray and declared:

"You know Mr. Dunn it can be little things that swing cases".
"In what way?" murmured the non-committal Ray.
"Well, I wasn't disposed to believe your clients, but then I noticed they were wearing Holy Name Badges. One of the pledges of the Society, you know, is to tell the truth".
"You don't say" chortled Ray, "and I thought they all barracked for Collingwood!"

Gil-Jones has also omitted any reference to the infamous Poisoned Cake episode in which he played a leading role.

If you want to (mildly) amuse your friends at dinner parties (although for God's sake wait until they've had a few), "The Lawyer who Laughed" is worth studying.

At seven odd dollars for 108 pages, you may like to gamble by waiting on a paperback edition or, alternatively, borrow Dave Ross's copy and photostat it.

One anecdote you won't find in this volume concerns the Judge who, in viewing photographs of an accident scene remarked:
"Who is that person standing in the background — the Village idiot?"
"No sir," replied Counsel "it's my instructing solicitor". As they say, there's many a true word spoken in jest.

Coldrey

BARRISTERS AS BENEFICIARIES

Every one of us will sooner or later cease to be a member of the Bar. What in that event, having regard to the rates of taxation which we must endure in the meantime, will sustain those of use who rely upon practice at the Bar for a living? The Victorian Bar Superannuation Fund was conceived by resolution of the Victorian Bar Council 20 years ago next October and it is appropriate, and perhaps useful in the light of that question, to review its development.

The original trustees of the Fund, to whom in retrospect the Bar owes a great debt for their foresight in this and other matters, were O.J. Gillard Q.C., R.A. Smithers Q.C., J.B. Tait Q.C. and J.P. Minogue Q.C. When they executed the trust deed which constituted the Fund on 27th January,1960 they envisaged that the Fund should be an integral part of the organization of the Bar, as a co-operative scheme providing benefits to its members, and so it has been.

The beginnings were modest enought by today's standards for at the end of 1960, its first year of operation, the Fund had some sixty members and net investments of barely £14,500.

The management of the Fund has always remained in the hand of the Bar itself and has accordingly been unostentatious and non-commercial. Appropriately, the Fund has never been an unduly conspicuous segment of the Bar organization but its progress, although not publicly paraded, has been steady and successful. At 30th June, 1978 the investments of the Fund at cost amounted to $676,618 and since that date further investments of some $67,000 have been made. The valuation to be made at 30th June, 1979 should therefore exceed $750,000.

The range of investments permitted by the trust deed is wide and includes public securities, bank deposits, debentures and stock of listed and unlisted Australian companies (not being no liability mining companies), listed companies (not being mining companies) in certain overseas countries and real estate.

In order that the investment income of the Fund should remain non-taxable at least 30% of its assets at cost are required by the Income Tax Assessment Act to include public securities, of which at least 20% must be Commonwealth Government securities. This so-called 30/20 ratio has always been maintained and at 30th June, 1978 the Fund's investment portfolio included public securities (30.6%), stock exchange securities (42%) and debentures in Barristers' Chambers Limited (12.8%), the last now yielding an annual return of 12% to theFund. No investment has yet been made in real estate but the stock exchange securities held by the Fund are very wide-ranging: the groups or industries include banking, finance, transport, retailing, media and other services, food drink and tobacco, textiles, chemicals, steel and engineering, builders' supplies, developers and building contractors, electrical, automotive, paper and minerals, oil and gas. These investments are spread over 100 or more companies and the benefitof bonus and rights issues (which the trustees almost invariably take up) is substantial. A considerable body of company debentures is also held, providing a good return at medium and long-term rates.

For many years the Fund was audited by a member of the Bar but in recent years the task has become more onerous and the audit is now conducted by the Bar's auditors, Messrs. Irish Young and Outhwaite. The audit fee represents virtually the only substantial recurring expense of the Fund. An annual valuation fee is incurred and brokerage and stamp duty are of course payable on purchases of shares (very few are ever sold) but, apart from that, the operation of theFund costs its members almost nothing. In particular, because the trustees are drawn from the Bar, and are honorary, the appreciable administration fees which would be charged by a trustee company or a firm of investment consultants or accountants are saved. In this connection it is right to remind all members of the Bar of the obligation which they owe to Sir James Tait Q.C. Quite apart

from the other extensive work which he has done for the Bar since his call (60 years ago next September!) Sir James has been a trustee ofthe Superannuation Fund since its inception and is now Chairman of Trustees. His broad commercial experience, and his instinctive knowledge of and fondness for the Bar's ways, are assets not described in the balance sheet of the Fund but they have been prime ingredients of its success. He has spent countless hundreds of hours upon the Fund's affairs over the years upon a variety of tasks ranging from planning and negotiating investments to writing-up (and balancing) the books of account, the last of which he did, until this year, alone and in his own hand. In all of this work he has long been assisted, far beyond the call of her ordinary duties, by Miss Dorothy Brennan, the Executive Officer of the Bar.

It would be a nice tribute to Sir James upon his Diamond Jubilee if the Bar were this year to put its considerable weight behind the Fund which he has so energetically served. It is curious that in spite of the obvious advantages which the Fund offers to each of its members individually, and to the Bar collectively, something less than a third of the eligible practising barristers are members of the Fund. The Fund is by any standard an extraordinarily good investment as it is at present constituted, the return to members last year having been 16%. That was a tax-free profit to members and was equivalent to a return on an outside investment of 32% per annum to a member whose tax rate is 50 cents in the dollar and over 42% per annum to a member who is taxed at the highest rate, as many barristers unfortunately are.

Advantages

One special advantage of the Fund over most conventional superannuation and life assurance schemes is that members need not contribute every year. This particularly suits many barristers whose income and free funds tend to vary from time totime.

The following other points are relevant:

(a) Membership of the Fund is restricted to members of the Bar.

(b) The amount a member may contribute may vary from year to year, the minimum being $50.00 and, as has been pointed out, members need not contribute every year.

(c) Maximum contributions now allowed in any year of income are:

By counsel at the beginning of the income year -

Under the age of 40	-	$1,900
Over 40 but under 55	-	3,100
Aged 55 and over	-	4,400

(A payment below the maximum in any one year may be made up in the following two years.)

(d) Contributions up to $1,200.00 each year (less any life, sickness or accident assurance premiums paid) qualify for a tax rebate in that year: Income Tax Assessment Act, Sec. 159N and Sec. 159R.

(e) The income of the Fund is exempt from tax, both in the hands of the trustees and of contributors, and the benefits from the Fund are not taxable when they are received. Benefits are payable on death, on attainment of the age of 65 (60 for women), appointment to judicial or other office of profit under the Crown or retirement from the Bar because of serious ill-health as provided in the trust deed.

(f) The income of the Fund is invested and added to the Fund. A valuation is made as at 30th June each year and any surplus between the valuation and the aggregate of all credits to contributors' accounts at that date is divided pro rata to the credit of all contributors. That surplus was credited at the rate of 16% last year.

(g) On the death of a contributor before retirement the trustees have a discretion to pay his interest in the Fund to his widow or dependants, and this has meant in the past that the total benefit to the deceased member's account has escaped all death duties levied on his estate.

The benefits of this Fund are tangible and in no sense illusory: since its establishment the Fund has paid out to members of the Bar and their dependents well over $250,000.00 much of which would have been progressively disposed of by the members to the Commissioner of Taxation had it not been invested in the Fund.

The trustees of the Fund are Sir James Tait Q.C., Tadgell Q.C., Walsh Q.C., and Hayne and the secretary is Stevenson. Any of them would be glad to provide further information on request. Contributions should be paid to the Executive Officer of the Bar, Miss Brennan, from whom forms of application for membership and copies of the trust deed may be obtained.

R.C.T.

SPORTING NEWS

A number of members of the Bar were seen at the recent Great Eastern Steeple Chase meeting at Oakbank to support Hore-Lacy's horse 'Roughneck' in the big event, which he won the previous year by 50 lengths. Whilst travelling like a winner, he fell at a steeple and Lee (hereinafter referred to as "Leapy") was heard to say that he could jump the (expletive deleted) jump himself. This utterance was made contemporaneously with the destruction of several betting tickets, which he pulled from his pocket in a fit of pique. Approximately three hours later, a wager was made in the local bar that he could not clear the jump where Roughneck had come to grief. Despite a commendable try at clearing the brush, "Leapy" was seen to walk with a noticeable limp for a considerable period of time following his unsuccessful attempt. He maintains that he was baulked by a young child who was participating in the merriment. He continues to assert that he successfully negotiated the obstacle at a previous visit to Oakbank, again well after the last race.

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Those wanting to sail a one-man boat should get in touch with Bernard Paul. He is secretary of the Impulse Class Association and attached to the Albert Sailing Club. The Impulse is a new yacht not unlike the 125's in size as it is a four metre yacht. It is a particularly fast boat and is used all year round. It can be constructed for approximately $700-$800, if one is prepared to follow an instruction kit, and can be purchased completely new for around about $1,400. It has a Burmuda sail and no jib. It has been mooted that the Bar and Bench may challenge the Law Institute to a sailing competition in the future, and the Bar will no doubt be adequately represented by both the abovenamed together with enthusiastic support from such persons as Rattray, Uren, Stott, Campbell and Rowlands.

Following the sale of his home at Hawthorn some time back, it was rumoured that Peter Galbally now lives on Flinders Island. That rumour can now be finally laid to rest although I hasten to add that he spends a considerable amount of his time on his farm which is at the northern end of the Island. The farm is approximately 2,000 to 3,000 acres in area and cattle and sheep are raised on the property. Ownership is apparently shared between Galbally and John Bryson who also has a crayboat at his disposal. Many pleasant hours are spent at the White Mark Hotel, where Guy Brown and Liddell are patrons. It is believed that Brown and Liddell also own farms on the Island and they are regularly visited on long weekends and during school holidays.

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Although the sailing season is far away, those interested in joining one of the fastest growing classes of yacht racing in Australia can contact Patkin Known as "125's" (12.5 metre), they can be purchased from between $700 and $1,300 and are of a bondwood construction with spinnaker and trapeze. Patkin, who is assisting in drafting the constitution for the 125 National Association, has sailed in all the Australian Championships relating to that class. He finished 17th out of 55 in the last Victorian State Championships and participated earlier this year in the Championships in Queensland, where he finished second in the family series. This particular class of yachting is ideal for the family man as youngsters are encouraged to participate with their parents. Notwithstanding blowy conditions at Lake Coothabra in Queensland in January this year, where three yachts suffered broken masts and two suffered broken centre boards, it is considered to be a safe form of entertainment. Patkin gives a word of warning to those driving to Queensland in hot

weather for either yachting or other pursuits, that retread tyres should not be used, as he saw countless cars broken down on the Newell Highway, as a result of defective tyres giving out in the tough conditions.

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Lasry is pessimistic about his chances of participating in the $60,000 Repco Reliability Trial in August this year, due to lack of sponsorship. He has been participating in rallying events for about 6 years and combines this with racing his Triumph Sportscar at Winton, Sandown and other circuits. In the event of sponsorships becoming available, he will be th co-driver and navigator of a turbo powered vehicle as it battles its way around the continent in a clockwise direction from Melbourne. The course involves travelling to Adelaide, Birdsville and Coober Pedy, west through inhospitable country to the trans-continental railway then south to the coast of Esperance. From Perth the course follows the coast to Geraldton, inland to Tom Price, back to Port Headland and Broome and then to Darwin. Back roads will be taken to Cairns and then south through the eastern states to Melbourne.

Four Eyes

SOLUTION TO CAPTAIN'S CRYPTIC No. 28

1. A	■	2. I	■	3. S	■	4. D	■	5. G	6. R	A	7. Y	J
8. D	O	N	A	T	I	O	N	■	E	■	I	■
E	■	U	■	R	■	L	■	9. A	P	R	E	S
10. P	O	R	T	A	B	L	E	■	L	■	L	■
T	■	E	■	W	■	O	■	11. M	E	N	D	S
■	12. D	■	13. D	■	14. S	P	15. A	■	V	■	I	■
16. D	I	V	I	N	E	■	17. P	L	I	A	N	T
■	V	■	R	■	18. C	19. O	T	■	N	■	G	■
20. P	U	R	E	R	■	T	■	21. T	■	22. V	■	23. S
■	L	■	C	■	24. M	I	L	I	T	A	N	T
25. A	G	A	T	E	■	O	■	T	■	P	■	A
■	E	■	O	■	26. A	S	S	U	M	I	N	G
27. A	D	O	R	N	■	E	■	S	■	D	■	E

MOVEMENT AT THE BAR

Members who have signed the Roll (since 1/4/79)

Member	Master
B.A. McCarthy	Hayne/C
G.J. Digby	J.G. Larkins/C
H.J. Harber	Lopes/C
F.A. Casely	Dee/C
D.A. Ross	Mattei/C
T. Gyorffy	Mahony/C
J.J. Perillo	J.C. Walker/C
P.G. Misso	E.W. Gillard/C
D. Aronson	E.F. Hill/C
W.M. Toohey (re-signed)	Dunn/M
I.E. McEachern	Hart/C
N.A. White	Bayliss/C
R.A. Brett (Parliamentary Counsel)	
A.A. Nolan	Beaumont/C
J.B. Richards	Meldrum/C
M.G. Prideaux	Nathan/M
R. Weinberg (Mrs)	Uren/M
L. Krejus (Miss)	J.L. Dwyer/C
P.A. McInerney (N.S.W. Q.C.)	
P.J. Bick	T.H. Smith/M

Members who have Transferred to the Non-Practising List

G.I.K. Bromley

Member who has transferred from the Judges' List to the Practising List

J.S. Goldstein (N.S.W.)

Members who have had their Names Removed at their own Request

M.J. Alexander (Non-Practising List)
M.C. Mangan (Miss)
M. Boral
J.L. Pilley
I.F. Turley
J.I. Langslow (Miss)
G.H. Hall

Deaths

R. Schilling
R. McD. Collins

Members in Active Private Practice

659

Published by the Victorian Bar Council
Owen Dixon Chambers,
205 William Street, Melbourne 3000

Editors:
David Byrne, David Ross

Editorial Committee:
Alex Chernov, John Coldrey, Max Cashmore, Charles Gunst, David Henshall, Tony Howard.

Cartoonists:
Crossley, D. Ross

Phototypeset and Printed by:
Active Offset Pty. Ltd.