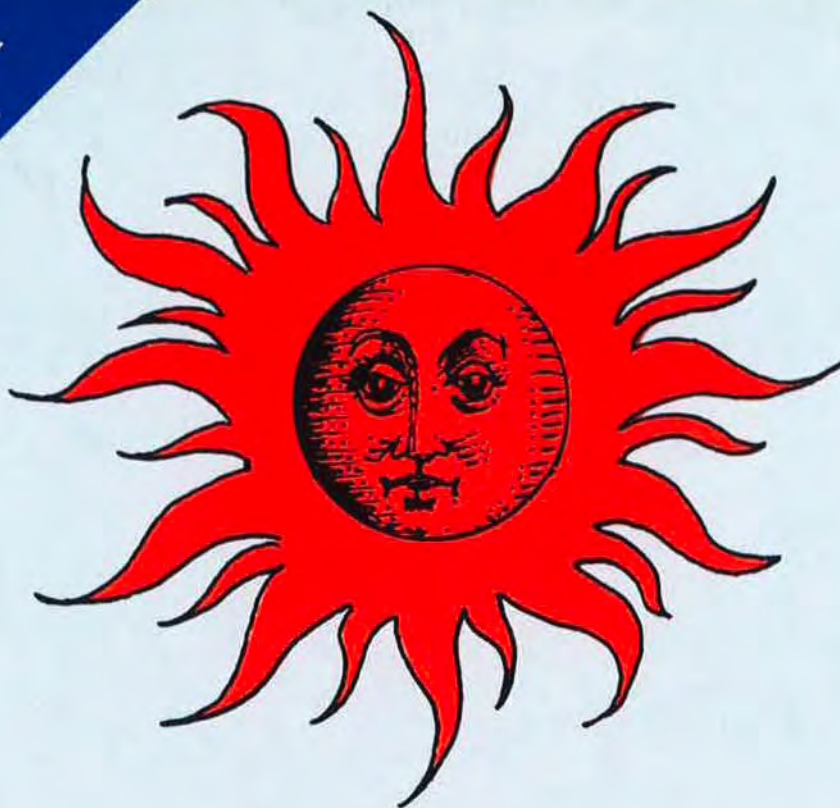


SUMMER
1981



Victorian Bar News

VICTORIAN BAR NEWS

SUMMER EDITION 1981

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BAR COUNCIL REPORT

ANNUAL ELECTIONS

At the poll which closed on 28th September 1981 the following members of counsel were elected to the Bar Council for 1981-2.

Counsel of not less than 12 years standing:

G. R. D. Waldron Q.C.
J. E. Barnard Q.C.
P. A. Liddell Q.C.
B. J. Shaw Q.C.
J. H. Phillips Q.C.
G. Hampel Q.C.
F. Walsh Q.C.
P. D. Cummins Q.C.
M. J. L. Dowling Q.C.
A. B. Nicholson Q.C.
A. Chernov Q.C.

Counsel of not less than 6 and not more than 15 years standing

H. R. Hansen
J. D. McArdle
B. A. Murphy
M. A. Adams

Counsel of not more than 6 years standing:

J. L. Bannister
J. T. Rush
C. Gunst

Shaw was elected Chairman, Hampel Vice-Chairman, Walsh Treasurer, Chernov Assistant Treasurer, Harper Hon. Secretary and Habersberger Assistant Hon. Secretary.

CHRISTMAS COCKTAIL PARTY

This function is set for Friday, 18th December in the Essoign Club.



Chairman - Brian Shaw

RECEPTIONS

Successful receptions were held in the Essoign Club for the metropolitan Magistrates, and for the County Court judges. The latter function was held during the Jewish New Year, and it was resolved by the Chairman to avoid that in the future.

DEBENTURES

A committee has been established to approach the recalcitrant few who have not yet paid their \$2,000 debenture. Motions to publish the names of the defaulters, and to strike them off the Roll, were adjourned.

FEES

- (a) Supreme Court fees are to be increased by 15% as and from 1st January 1982. An approach is being made to the Attorney-General for like increases in County Court and Magistrates' Court fees. The issue of Family Court fees is presently under discussion by those practising in that jurisdiction.

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- (b) A report from the Fees Committee was received, which disclosed that as at 30 June 1981, fees outstanding to Counsel were \$18,051,678. Of this:
60% was overdue in excess of 90 days
40% was overdue in excess of 6 months
20% was overdue in excess of 12 months.
These figures may be contrasted with a figure of some \$4.5 million calculated as outstanding in 1976.
- (c) A 30 day payment requirement has been adopted for all fees to Counsel in all matters, in place of the previous 90 day period. This policy takes effect in respect of briefs delivered on or after 1st March 1982 and clerks have been advised accordingly.

READERS' DINNER

A successful dinner was held for those who had just signed the Bar Roll, in the Essoign Club on 19th November 1981.

CLERKING

In October the 24 readers were allocated 1 each to Dever, Hyland, Foley and Spurr's lists; and 5 each to Stone, Duncan, Muir and Howell's lists.

A report has been received on Clerking from an ad hoc committee chaired by Hampel Q.C. The Bar Council is presently considering this report.



YOUNG BARRISTERS COMMITTEE

As well as the usual general matters which have occupied monthly meetings of the committee, there have been some subcommittee meetings which have produced specific recommendations to the Bar Council and other bodies.

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The vexed question of accommodation has been debated at length and ultimately, a list was presented to the Bar Council setting out those buildings which would be preferred by the Junior Bar for any future expansion of chambers. The question of costs, accessibility to the Courts and style of chambers were all matters considered to be important. In accordance with the policy which resulted from our accommodation survey, it was stressed that any new building should be let to barristers in such a manner as would encourage the formation of suites for people of mixed seniority.

It was felt that for any new accommodation, any building should be capable of containing substantial numbers of the Bar so as to avoid further "satellite chambers". It was recommended that in the interim period sharing of chambers should be permitted in appropriate circumstances.

There has been a fruitful exchange between the Courts sub-committee and the co-ordinators of various Magistrates Courts on such matters as listing and the inadequacy of telephone facilities. Both parties have become more aware of each other's problems. Moreover, it has meant a much more expeditious transmission of views. No doubt, even more could be achieved if there was more input from the Junior Bar to this and other subcommittees established by the committee.

For some time the Fees and Clerking subcommittee has been working on two main areas, the reform of the present clerking system and the general introduction of computers. Reports have been submitted to the Bar Council on both issues. Replies are expected shortly. Progress has been made on the vexed question of payment of fees, as the Bar Council has approved and adopted the policy that in the Magistrates Courts, jurisdiction fees are to be paid within 30 days. A request in these terms has been forwarded to the Law Institute.

The Practice Advisory sub-committee continues to handle problems encountered in the everyday practice of our profession. Members of the Junior Bar should feel free to approach the members of this sub-committee (Curtain, Bannister and Kellam) or any other members of the Young Barristers Committee should they desire assistance in this or any other regard.

KELLAM

NEW SILKS

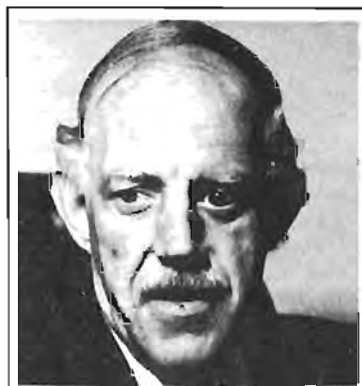
On 24th November 1981, the Governor in Council approved the appointment of six new silks for the State of Victoria.

Name: JOSEPH RUPERT BALFE
Signed Roll: 1st Feb. 1961
Read with: Ball
Readers: Toal, Wray-McCann, J.P. McNamara, Mangan, Hinckley.



Name: GAVAN GRIFFITH
Signed Roll: 25th May 1964
Read with: Hulme
Readers: Lewisohn, Karkar, Santamaria, McMillan.

Name: ANTHONY EDWARD HOOPER
Signed Roll: 27th July 1961
Read with: Anderson J.
Readers: Boaden, Titshall



Name: LEONARD SERGIUSZ OSTROWSKI
Signed Roll: 13th April 1967
Read with: R. G. DeB. Griffiths
Readers: Hocking, Derham.

And from New South Wales:
CHARLES JOSEPH BANNON
JOHN DANIEL CUMMINS

Mouthpiece



"Gray and Marks JJ. have just started wearing the Jabot. Obviously they have been reading about it in the **Bar News**. And I'm told that, not to be outdone, the County Court Judges are expected to follow suit". Whitewig's words tumbled out in his excitement.

The company greeted the news with enthusiasm. Certainly the jabot was to be the latest thing.

"You can count me out," thundered the Waistcoat. "I won't go along with it. Its all part of a conspiracy to undermine our heritage. Nothing less than a socialist plot"

A deathly silence greeted this outburst. Not a whisper could be heard as his trembling hands groped for the Angidine. A searing gulp of cappuccino and he was off again.

"It all started with those South Africans. And we all know that they're half Dutch anyway. What business had Lady Aickin, a clean living Australian gel, to truckle to their fashions? Eh? Eh?"

Flossie smiled helpfully and suggested that perhaps the jabot was more comfortable.

"More comfortable! That's not the point. Bands demonstrate our clerical origins. Next thing they'll abandon the oath. Make affirmations compulsory. You, young feller, you are witnessing the breakdown of civilisation as we know it. The High Court should be preserving what we hold most dear. Yes, in my day Judges were concerned about standards, about things that really counted – Wouldn't put up with striped shirts, brown shoes, pale suits. . . ."

"At least you're not likely to find a striped jabot", laughed Whitewig.

The Waistcoat was beginning to foam at the mouth again, and he was not to be put off.

"It all comes from appointing these youngsters. It's been years since they selected someone over fifty . . ."

BYRNE & ROSS D.D.

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THE PROCEDURAL RULES OF THE SUPREME COURT OF THE STATE OF VICTORIA

The Chief Justice has supplied the following explanatory paper upon the present state of the Rules.

Preliminary

Since shortly before 1975 the Judges of the Supreme Court have been undertaking the re-arrangement and revision of the procedural Rules of Court. At the same time there have been carried out the revocation of obsolete Rules and the making of new Rules pursuant to specific legislative rule-making powers that in the past had been neglected or which had only recently been bestowed upon the Judges. The purpose of this explanatory paper is to set out very briefly in the context of the history of the Rules an explanation of what has been done, what is presently being done and what remains to be done.

Background

Prior to 1916 each set of Rules and any amendments thereto were to be found published only in the Government Gazette as a statutory rule publication.

In 1916 for the first time the Rules were published in a bound volume. The Rules were arranged in nine Chapters. Those Chapters were:

Chapter I	– Civil Rules
Chapter II	– Divorce Rules
Chapter III	– Probate Rules
Chapter IV	– Lunacy Rules
Chapter V	– Inebriates Rules
Chapter VI	– Insolvency Rules
Chapter VII	– Companies Rules
Chapter VIII	– Criminal Appeal Rules
Chapter IX	– Admiralty Rules

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In 1938 the first three Chapters were published in one volume incorporating amendments made up to that year. Those Chapters have since been republished in the years 1951 and 1957 in each case incorporating earlier made amendments. Since 1957 Chapter I has been reprinted under *Subordinate Legislation Act* 1962 in 1969, 1972, 1974 and 1979. In 1975 a major re-arrangement was effected by the Supreme Court (Revision and Re-arrangement) Rules. This was a first major step in a programme to modernise and rationalise the Rules.

The 1975 Re-arrangement

The principal results achieved by this re-arrangement were as follows:

- (a) Chapter I was retained for what had hitherto been known as the "Civil" Rules but which were thereafter more accurately to be described as "General Rules of Procedure in Civil Proceedings". Consistent with this description procedural rules that related to some specific or particular type of proceeding were considered not appropriate for retention in Chapter I.

Accordingly, Orders 73-81 of the previous Chapter I were re-numbered as Orders 1-9 of a new Chapter II. This process was completed by the Supreme Court (Re-arrangement and Revision) Rules 1979. By those Rules Order 41(B) (Applications for Registration of Judgments under Section 5 of the *Foreign Judgments Act* 1962), Order 54(B) (Application to make Infants Wards of Court under Section 177 of the *Supreme Court Act* 1958) and Order 54(C) (Applications under Part IV of the *Administration and Probate Act* 1958) of the previous Chapter I were transferred to Chapter II as Orders 19, 20 and 21 respectively.

- (b) Because proceedings in Divorce and Matrimonial Causes had come to be governed by the *Matrimonial Causes Act* 1959 of the Commonwealth and the Rules thereunder, Chapter II, which had last been republished in 1956, was revoked in 1972 when the Supreme Court (Marriage Act) Rules 1972 were made. The new Chapter II created in 1975 and printed as such in that year was entitled "Rules of Procedure in Miscellaneous Civil Proceedings". As already indicated, the new Chapter II was constituted by the transfer to it as Orders 1-9 of the orders which had formerly been Orders 73-81 of Chapter I. The 1975 re-arrangement also caused to be placed in Chapter II as Orders 10, 11 and 12 three sets of rules that had earlier been made but which had not been subject to any Chapter arrangement. These were the Supreme Court (Marriage Act) Rules 1972, Supreme Court (Service of Execution and Process) Rules 1968 and Jury Civil Appeals Rules 1968 respectively.

Then, as also has already been mentioned, Orders 41(B), 54(B) and 54(C) were in 1979 transferred from Chapter I to become Orders 19, 20 and 21 respectively of Chapter II. Since 1975 there have been added to Chapter II orders that prescribe procedures with respect to process in the Court for which an enactment makes a particular provision or where a particular procedure has been thought necessary for a special class of case: e.g. Order 14 which relates to Commercial Causes. Chapter II has been reprinted once under the *Subordinate Legislation Act* 1962 in 1981. Since that reprint two new Orders, Nos. 27 and 28 – the Legal Education Rules and the Victorian Economic Development Corporation Rules respectively – have been added by the Supreme Court (Miscellaneous) Rules 1981. Also since the 1981 reprint the enactment of the *Planning Appeals Board Act* 1980 has required the making of the Supreme Court (Planning Appeals) Rules 1981 which revoke Orders 2 and 9 of Chapter II and provide a new Order 2 known as the Planning Appeals Rules.

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- (c) Chapter III was retained for the Administration and Probate Rules. The 1956 Rules had been subject to a number of amendments between 1957 and 1978. In anticipation of a reprint of Chapter II being about to be undertaken, some revision and re-arrangement of the Rules into Orders were undertaken in 1978 and 1979. The work was not extensive and together with the earlier amendments was incorporated in the first reprint of Chapter III which was published in 1979.
- (d) The Supreme Court (Public Trustee Act) Rules 1973, which were a completely new set of Rules, revoked and superseded the Lunacy Rules 1916 (Chapter IV of the 1916 Rules). Accordingly in 1975 the Public Trustee Act Rules formed Chapter IV under the re-arrangement. Subsequent to the 1975 re-arrangement it was considered that the Adoption of Children Rules should be brought within the Chapter. These Rules were first made in 1957. These Rules as amended were repealed by the Adoption of Children Rules 1968 which are a consolidation of the 1957 Rules and amendments made after that date. It was considered that these Rules were too extensive for inclusion as an Order in Chapter II. Moreover, as they have always been in considerable daily use, it was thought preferable that they form a separate Chapter so that they might be purchased separately from other Rules. Rather than create a new Chapter, The Public Trustee Rules (which are quite short) were transferred to Chapter II as Order 23 and the Adoption of Children Rules were then constituted as Chapter IV. At the time that this further re-arrangement was effected by the Supreme Court (Re-arrangement and Revision) Rules 1980. When reprinted they will be issued as Chapter IV of the Rules.
- (e) The current Companies Rules which are the Supreme Court (Companies) Rules 1962 made under the Companies Act 1961, form Chapter V under the re-arrangement. The first reprint of them as Chapter V of the Rules was in 1981.
- (f) The current Criminal Appeal Rules 1965 made under Part VI of the *Crimes Act* 1958 and the Prison Sentences (County Court Appeals) Appeal Rules 1974 form Chapter VI under the re-arrangement. These Rules were by the Supreme Court (Re-arrangement and Revision) Rules 1979 arranged into Orders 1 and 2 respectively. These Rules, when reprinted, will be known as the Criminal Appeal Rules and be issued as Chapter VI of the Rules.
- (g) The Admiralty Rules 1975 were made following a complete revision. They revoked and superseded the Admiralty Rules 1916 (Chapter IX of the 1916 Rules) and form Chapter VII under the re-arrangement. When reprinted they will be issued as Chapter VII of the Rules.
- (h) Two sets of Rules which had become obsolete were revoked. The Inebriates Act 1958 was repealed by the *Alcoholics and Drug-Dependent Persons Act* 1968. The Inebriates Rules (Chapter V of the 1916 Rules) were therefore no longer necessary and were revoked by the 1975 Revision and Re-arrangement Rules.

The Rules made in 1975 under the *Alcoholics and Drug-Dependent Persons Act* 1968 were not of sufficient length to justify the allocation to them of a separate Chapter. Accordingly, they became Order 13 of Chapter II. Following the passing of the Bankruptcy Act of the Commonwealth in 1924 the Insolvency Act of the Victorian Parliament and the Rules made thereunder (Chapter VI of the 1916 Rules) continued in force to cover transitory situations which by 1975 were considered to have passed. The Insolvency Rules accordingly were also revoked by the 1975 Revision and Re-arrangement Rules.

The Present State of the Rules

The position at present so far as the Rules reform programme is concerned is as follows:

Since the 1975 re-arrangement was implemented and certain additional necessary adjustments effected, to which reference has already been made, the enactment of the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1979* of the Commonwealth bestowing upon the Supreme Court original jurisdiction in proceedings involving industrial property required the making of Industrial Property Rules. This was done by the Supreme Court (Industrial Property) Rules 1981 and, as they were too extensive for accommodation within one Order of Chapter II, the Industrial Property Rules, upon their making, formed a new Chapter. Accordingly, when reprinted these Rules will be issued as Chapter VIII of the Rules.

Subject to the enactment of legislation that might require some change to the present structure of the Rules, no further re-arrangement – at least of a major nature – is contemplated. The opportunity may be taken upon the occasion of a reprint not only to correct printing and other errors but also to make some minor adjustments to the arrangement which may allow for a somewhat more felicitous collation or numbering of Rules than presently exists. It is believed that all procedural Rules of Court have now been brought together and can be found within the eight Chapters. It should be noted that this arrangement covers only the *procedural* Rules of the Court. The programme has not been concerned with non-procedural Rules made by the Judges, e.g. Supreme Court (Admission Fees) Rules 1964 and the Supreme Court Library Fund (Investment) Rules made in 1976. Nor has it involved procedural Rules which the Chief Justice alone is empowered either to make or to recommend the making of, e.g. Melbourne Supreme Court Civil Jury Pool Rules 1975, Melbourne County Court Civil Jury Pool Rules 1975, and County Court (Criminal Jury Pools) Rules 1975. Although it is to be noted that since their making the Chief Justice's (Evidence by Commission) Rules 1970 made under the Imperial Commission Acts 1859 and 1885 have been printed as a supplement to reprints Nos. 4 and 5 of Chapter I. It is intended in the future to continue so to print these Rules as a supplement.

It is intended, as has been done in the past, in the case of a special procedure demanded by a particular Act to make the Rules concerning that procedure an Order of Chapter II unless, as is the case with the Rules in Chapters III – VIII, the nature and extent of such Rules makes this impracticable. In addition to making Rules for inclusion in Chapter II which a series of statutes enacted in recent years has required because of their setting up inferior tribunals in conjunction with a right of appeal or a power to state a case on a question of law to the Supreme Court, older legislation has been examined with a view to determining whether, where a rule-making power has been bestowed on the Judges, Rules, if not already made, should be made. As a result of this exercise all the Rules which it is thought should be drafted have now been made, and, accordingly, the programme of "legislative" action of the Judges as rule-makers is now complete having regard to the present state of the statute law. That is not to say that every rule-making power has been exercised. For example it has not been thought necessary to make rules under Section 7 of the *Settled Land Act 1958*, Section 233 of the *Property Law Act 1958*, Section 79 of the *Administration and Probate Act 1958* (relating to small estates) or Section 19 of the *Crown Proceedings Act 1958* although each of those sections creates a power to make Rules with respect to the subject matter identified in each such section.

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Revision of the Rules (apart from the production of reprints of unissued Chapters – a function beyond the control of the Judges) remains the major task. The foregoing observations will have revealed that, because of their recent drafting or because active revision of them has been undertaken, Chapters II (Miscellaneous Civil Proceedings), III (Probate and Administration), IV (Adoption of Children), VII (Admiralty) and VIII (Industrial Property) can be considered to be up to date and complete.

Chapter I

General Rules of Procedure in Civil Proceedings which are based on the English Rules made after and in consequence of the Judicature Acts has now served the Court in a basically unaltered form for almost one hundred years having come into operation on 1st July 1884. Many of the Rules are now obsolete. A number of provisions are archaic and fail effectively to meet modern requirements. A number of piecemeal amendments has been made over the years and these changes, often ad hoc, have to some extent disturbed the balance both in substance and in form of the Rules as a whole. Much of the language of the Rules no longer accords with modern-day usage. Recognising the urgent need for Chapter I to be completely re-written, a comprehensive “root and branch” revision was commenced in 1980. The task is demanding and extensive. It is not thought that it would be completed for at least another two or three years.

Chapter V

The **Companies Rules** will shortly require a substantial degree of amendment as a result of the recently enacted series of statutes dealing with uniform companies legislation and the setting up of a National Securities Commission. New Rules will have to be made and certain existing Rules amended. This work is currently in hand but, as rule-making is being undertaken on a national basis, progress is determined by the rate at which work proceeds in other States.

Chapter VI

Order 1 of the Criminal Appeal Rules has proved unsatisfactory in recent years and the need for particular amendments has been resisted as a full revision, if not a complete re-writing of these Rules, is a fairly urgent requirement. It is hoped that this task might be commenced in 1982.

Access to the Modern Rules

The rationalisation and revision of the Court's procedural Rules over recent years has not been solely for the purpose of equipping the Court with effective Rules that are readily understood, efficient in their operation and designed to cover every procedural contingency. It has also been the aim to make such Rules readily accessible to the legal profession. Since 1956, apart from the availability of Chapter I in periodic reprints, and annotated references in text books to particular Rules, access to Rules has been restricted to the Government Gazette until 1962 and thereafter to their availability as Statutory Rules. Amendments to the older Rules and the making of new Rules meant that the current state of a set of Rules at any given time had to be determined by the time-consuming process of tracing changes in Rules through the indexes of Annual Volumes of the Statutory Rules – a series to which very few practitioners subscribe. Accordingly, as was said in the explanatory paper to Reprint No. 4 of Chapter I (1975):

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"... the Judges have arranged the whole Rules of Court into Chapters again for facilitating reprinting."

The object of the arrangement is that eventually each Chapter may be purchased separately from the Government Printer in the same size as the Reprinted Acts, with a soft cover of distinctive colour, and punched with holes to match standard pillar-type binders in common use. Practitioners will therefore have the option of purchasing the complete Rules or so many only of the Chapters as they consider appropriate to their needs."

The current position with regard to the Rules may therefore be summarized in tabular form as follows:

Chapter I	General Rules of Procedure in Civil Proceedings. Orders 1-72	Reprint (No. 5). Yellow cover. Now available.	Revision – in progress.
Chapter II	Rules in Miscellaneous Civil Proceedings. Orders 1-28	Reprint (No. 2). Blue cover. Now available.	Revision – completed.
Chapter III	Probate and Administration Rules. Orders 1 and 2.	Reprint (No. 1). Red cover. Now available.	Revision – completed.
Chapter IV	Adoption of Children Rules.	1st Reprint expected late 1981. Cover colour not yet selected.	Revision – completed.
Chapter V	Companies Rules.	Reprint (No. 1). Green cover. Now available.	Revision – in progress.
Chapter VI	Criminal Appeal Rules. Orders 1 and 2.	1st Reprint expected in 1982. Cover colour not yet selected.	Revision – Order 1 yet to be commenced.
Chapter VII	Admiralty Rules.	1st Reprint expected in 1982. Cover colour not yet selected.	Revision – completed.
Chapter VIII	Industrial Property Rules. Orders 1-7.	1st Reprint expected in 1982. Cover colour not yet selected.	Revision – completed.

Concluding Comment

Reprints which are now on sale are available from the State Publications Offices or from law publishing firms. Any practitioner or firm whose work does or may involve litigation in the Supreme Court ought, it is considered, acquire at least the Reprints of Chapters I and II. The remaining Chapters are relatively inexpensive and consequently, even though those Chapters deal with Rules of a more specialised nature, many practitioners may think it expedient to subscribe to the full set of Reprints. The greater the number of subscribers, the easier it should be to have further Reprints made. As stocks of each Reprint become depleted, or as the weight of amendments demands, further Reprints of each Chapter will be published. This will ensure that, as far as practicable, the Rules will be kept up-to-date and always be readily accessible in a convenient form. Many cases have recently occurred in which practitioners have displayed ignorance of the provisions of the Rules. It cannot be too strongly emphasized that it is the prime responsibility of any practitioner having a case in the Court to ensure that the relevant Rules are complied with and to be familiar with the latest amendments.

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BAR NEWS ANNIVERSARY

1981 marks the 10th year of the publication of **Victorian Bar News**. Its life commenced rather uncertainly as a weakling babe nurtured by the then Chairman of the Bar Council, Kaye, Q.C. The earlier editions were a roneod broadsheet. They gave the Chairman a chance to communicate with the Bar at the time when the growth in numbers prevented the exchange of information around the village pump. There were about 400 in practice at that time.

When Kaye Q.C. was appointed to the Supreme Court bench in 1972 McGarvie, Q.C. was elected Chairman. The broadsheet was expanded, Publication depended on the amount of news. In 1973 **Bar News** began to be printed, and the plan was to bring out four editions each year. McGarvie Q.C. saw the news to its 7th edition in September 1973. It was then decided that editorship reside in a member of

the Bar Council appointed to the **Bar News** for that purpose. This policy prevailed until edition 9 in September 1974. Thereafter the present editors were appointed. They had previously been on the editorial committee for two years.

Bar News serves a number of purposes. It provides information about the law and practice. It can show how the Bar is being administered. It gives members a chance to air their views. It can provide some entertainment.

Formally, it is the publication of the Bar Council. In practice, it is the organ of the whole Bar. Everything sought to be published is published unless it is defamatory, obscene, tasteless, or boring.

We can be justly proud that **Bar News** is the envy of the other Bars in Australia.



BYRNE & ROSS DD

Victorian Bar News

SUMMER POEM

"Of course we must keep up tradition"
I'm sure you'll all say loud and clear
But we are rather far
From the London-based Bar
And things could be changed a bit here.

I am really referring to climate
And the heat of the South Hemisphere
Bar clothes weren't designed
With the Aussies in mind
And the sticky first months of the year.

Let's have a concession to summer,
Let's bring a new look to our Courts.
So show off your knees
When it's 40 degrees
In crisp black and grey pinstripe shorts.

A tee-shirt instead of a Bar shirt,
I am sure you will see it makes sense
Which states front and back
Boldly printed in black
"Prosecution" – conversely – "Defence".

The wig could be half size for summer
And robes made of gauze, feather light,
And so thus attired
You'll feel airy, inspired,
A confident, cool, courtly sight.

And the man of the silken persuasion,
Could let us know where he belongs,
And lest we forget
He could wear a rosette
Neatly stitched to the front of his thongs.

So make this a comfortable summer,
Do not break, rather bend, the Court rule,
And by dressing this way,
There'll be no-one can say
That the Vic Bar did not keep its cool.

SUSAN MORRIS



// ... BUT I'D FEEL UNDRESSED
WITHOUT A WIG!! "

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MILESTONES

During the year past the following milestones were attained:

45 Years

E. A. H. Laurie Q.C.	admitted	1/5/36
Bradshaw	signed	6/5/36
S. H. Collie (Master Ret.)	signed	20/6/36

35 Years

Opas Q.C.	signed	4/2/46
Judge Harris	signed	10/4/46
E. A. H. Laurie Q.C.	signed	6/6/46
King J.	signed	1/8/46
Judge Stabey	signed	16/8/46
Kaye J.	signed	4/10/46

30 Years

Gray J.	signed	31/1/51
F. G. Fitzgerald Q.C.	signed	16/2/51
Judge Ravech	signed	6/4/51
Southwell J.	signed	4/5/51
Judge Vickery	signed	1/6/51
Judge Spence	signed	14/9/51
Sir Zelman Cowen	signed	9/11/51
A. E. Woodward J.	signed	7/12/51

25 Years

Davies J.	signed	10/2/56
Frederico J.	signed	10/2/56
Barnard Q.C.	signed	10/2/56
Judge Rendit	signed	10/2/56
Fogarty J.	signed	10/2/56
Judge Dixon	signed	8/3/56
McGavin	signed	28/6/56
Judge Bland	signed	18/9/56
Gobbo J.	signed	1/10/56
Searby Q.C.	signed	3/12/56
Monester Q.C.	signed	13/12/56
Judge Leckie	signed	18/12/56

PLEA BARGAINING

The subject of plea bargaining continues to attract attention. The Law Reform Commission's Report on the Sentencing of Federal Offenders (Report No. 15) asserts that "among the practices affecting criminal punishment most shrouded in obscurity and secrecy, is the practice of plea bargaining after prosecution and in association with the criminal trial." More recently the same sort of suggestion was made at a Victimology Symposium in Adelaide. References to plea bargaining receive a ready press. One of the most popular texts in university law school libraries has for some time been *Baldwin and McConville*, "Conviction by Consent".

Notwithstanding the Law Reform Commission's comments, any plea bargaining which takes place in Victoria is within clear guidelines which are neither obscure nor secret. The Law Reform Commission Report identifies two types of plea bargaining: charge bargaining and sentence bargaining. *Marshall's Case* (1981) V.R. 725, has made it plain that in this State sentence bargaining (where a sentencing judge indicates in open court or in chambers the likely nature of the punishment should the accused plead guilty) is no longer permissible. The practice was never widespread and had all but ceased after *Bruce's Case* (High Court, unreported 21st May, 1976). Now it is not permitted at all.

Charge bargaining is the term the Law Reform Commission uses to refer to the process whereby the Crown, in an appropriate case, accepts a plea of guilty to a count or counts in satisfaction of a whole presentment. This does occur although the number of offers to plead guilty has markedly declined in recent years. This may be the result of increased legal aid; it certainly coincides with it.

The basis upon which the Crown determines whether to accept a plea in satisfaction of a whole presentment is that the count or counts should adequately, in all the circumstances, reflect the accused's criminal behaviour and give to the sentencing judge an adequate range of sentence. The relevant circumstances involve, on occasions, the strength of the Crown case. Where appropriate, the victim or the police, or both, are consulted before accepting a plea but the ultimate decision remains with the Crown. In some cases it is either unnecessary or inappropriate to obtain the views of the victim or the police.

There are strict procedures laid down for the consideration of offers to plead to a particular count or counts in satisfaction of a presentment. A plea may not be accepted by a permanent prosecutor unless that course is authorized by the Solicitor-General. The

only exceptions are when a prosecutor is on circuit and it is not possible to communicate with the Solicitor-General or when, for other reasons, he cannot be contacted. In the latter case there are alternative arrangements to ensure that the acceptance of a plea is not the decision of one person alone. So far as prosecutors from the Bar are concerned, they have instructions not to accept a plea unless they have obtained the authority of the permanent prosecutor in chambers for the relevant month. At the end of the month, the chambers prosecutor sends to the Solicitor-General details of any cases in which he has authorized the acceptance of a plea.

The Law Reform Commission based its conclusions upon "unstructured interviews" with barristers, judicial officers, prosecutors and offenders. So far as the interviews with barristers are concerned, the extracts printed indicate that they were less than well-informed, at all events if they were talking about Victoria. The judicial officers would, in Victoria, have not included a large number of judges because they declined to answer the Commission's questions and, moreover, judges would have, at the most, only incidental knowledge of the Crown practice in this area because, as was pointed out in *Marshall's Case*, it is not their concern. The only prosecutors whose views were sought were, it seems, Commonwealth prosecutors and the Commonwealth has a limited involvement in serious crime. Offenders tend to be an unreliable source of information upon the matters with which the Commission was concerned. Had the Commission sought its information in Victoria from those acquainted with the practice here, it may have found the position to be less obscure than it apparently did.

Whilst the limited form of plea bargaining which occurs in Victoria requires careful supervision (as do most of the processes of the criminal law), it is a

desirable and useful practice, saving, as it does, unnecessary public expense and inconvenience and aiding in the efficient disposal of cases.

Dawson, Q.C.



Daryl Dawson Q.C.

D.P.P. FOR VICTORIA?

The Victorian Labour Opposition has adopted as its policy the establishment of the office of Director of Public Prosecutions. The Opposition Leader and Shadow Attorney-General, Mr. Cain, was asked by **Bar News** to write about the proposal. He has kindly provided the following:



John Cain

A Victorian Labour Government will establish a Director of Public Prosecutions to be responsible for the preparation and conduct of all prosecutions in indictable offences, including the more serious committal proceedings where appropriate, and also the more serious prosecutions heard summarily in Magistrates' Courts. The Director of Public Prosecutions will have an independent statutory face but will ultimately be responsible to the Attorney-General.

There are two broad reasons why I think that it is desirable for the office of Director of Public Prosecutions to be established.

The first reason is that it is desirable to have in a democratic society the prosecuting authority as independent as is reasonably possible from the Government of the day. Prosecutions ought to be and be seen to be fair, impartial and independent from political considerations. Inevitably, there will be in any society, cases which have a political colour about them, at least insofar as the prosecution or the failure to prosecute a particular person may have political ramifications for the Government of the day. In particular, prosecutions arising out of Royal Commissions very often have political consequences for both the Government and Opposition parties.

Under the proposal for the establishment of the office of Director of Public Prosecutions, it is envisaged that the position of the Crown Prosecutors would remain intact and that they would work under the overall supervision of the Director of Public Prosecutions. The present powers of the Crown Prosecutors given by Sections 352 and 353 of the Crimes Act, would remain. They would thereby retain their statutory power to sign presentments and their discretion to refuse to sign presentments in circumstances where they think appropriate, as they

presently do. The Director of Public Prosecutions himself, of course, would also have the power to sign presentments.

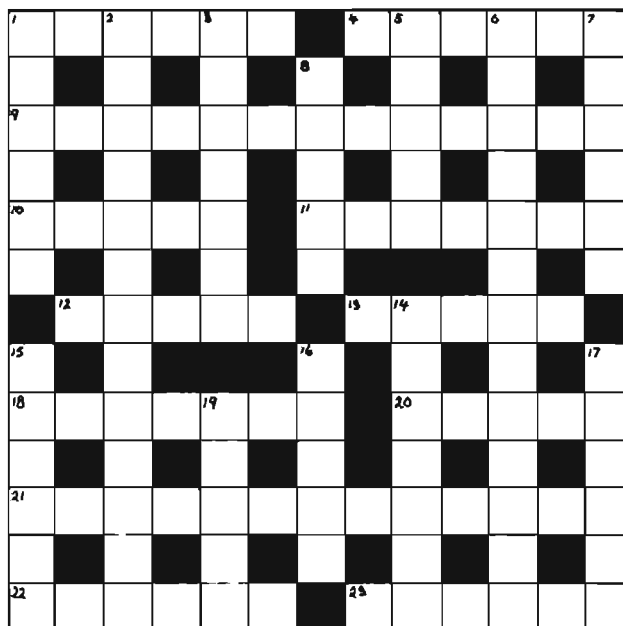
Another reason for the establishment of an office of Director of Public Prosecutions is to enable a major overhaul of the machinery of the preparation of prosecutions in this State. It is widely recognised that there are deficiencies in the existing system of preparation, both at the Magistrates' Court level and at the County and Supreme Court levels. It would be my desire to see that the office of Director of Public Prosecutions and the Crown Prosecutors can be given the appropriate assistance in preparing prosecutions. It is hoped that by starting with a clean slate, as it were, the office of the Director of Public Prosecutions will have the opportunity to establish an adequately staffed and efficient system for the preparation of prosecutions.

The Director of Public Prosecutions would be as independent as is reasonably possible, but would ultimately report to Parliament. In the first instance, he would be responsible to the Attorney-General.

I should conclude by saying that I recognise that there are a number of present problems in the administration of criminal justice in Victoria and that the inadequacy of the system of preparation of prosecutions is only one of them. I would emphasise that a Victorian Labour Government will implement the proposals set out in the report made by the Criminal Bar Association and endorsed by the Victorian Bar Council in relation to criminal listing; i.e. it will appoint at least two more County Court judges to deal with the backlog in criminal trials and will take the other steps in relation to the appointment of a Listing Officer with the appropriate staff to deal with the scandalous position which exists at the moment where only a third of the trials listed each month in the County Court is dealt with.



CAPTAIN'S CRYPTIC No. 38.



Across

1. indict (6)
2. caper (6)
9. formerly daytime burglary (13)
10. levied by local council (5)
11. faux pas rings a bell (7)
12. alight (5)
13. paces in a progression (5)
18. dogs' paradise in Fino-Scandia (7)
20. once the executor of Crimes Act .472 (5)
21. members of main church in Scotland (13)
22. salt money (6)
23. rise (6)

Down

1. on land (6)
2. subject of article Spring 81 p.16 (5, 2, 6)
3. slim (7)
5. The solution is abaya, an Arab robe (5)
6. make contemporary (5, 2, 2, 4)
7. beers (6)
8. a false verbal building block (5)
14. land holdings (7)
15. inclines (6)
16. entrances to mines (5)
17. rented land (6)
19. yellow resin from a changed fish (5)

(Solution Page 42)

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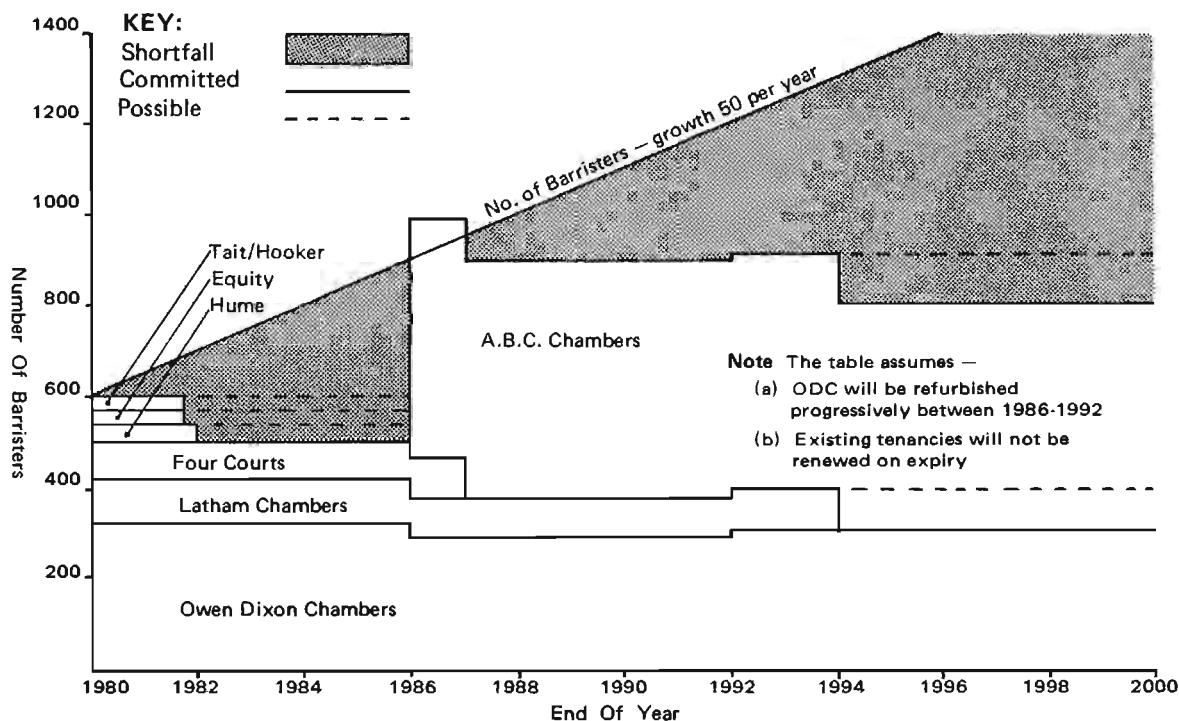
STILL MORE ON ACCOMMODATION

In August, an independent firm of management consultants, The McLachlan Group was retained by the Bar to advise upon the current short term accommodation needs of the Bar and upon the feasibility and appropriate methods for developing the ABC site. Their report has recently come to hand. It is presently under consideration by the Bar Council. This article is intended to summarise the

principal themes and recommendations of a report which runs to more than 100 pages.

The Report examines the present tenancies of Barristers Chambers Ltd. and assesses the future needs of the Bar on the assumption of a net increase of 50 per annum. Unless new tenancies can be secured now, or upon the termination of existing terms, the shortfall can be seen from Table 1.

TABLE 1



It should be noted that the figure assumes that two floors of Owen Dixon Chambers will be vacant for some time, as yet to be determined, as renovations are progressively carried out to 2 floors per year.

The Victorian Bar Council, through Barristers' Chambers Limited, aims to:

- Provide suitable accommodation in the vicinity of the main law courts for all Victorian Bar Council members
- Accommodate barristers in such a way that:
 - There is efficient communication between all members of the Victorian Bar
 - The long run cost of accommodation is at a minimum, commensurate with the above
 - There are minimal barriers to entry for junior barristers, i.e. junior barristers should be able to take up rooms without a prohibitively large capital outlay
 - Members are accommodated in rooms with services commensurate with their professional standing.

LONG TERM OPTIONS

The options of the Bar were seen to be these:

- A maintain the present situation and lease additional space as and when needed.
- B develop a new building of approximately 16,000 m² on the ABC site. This would be equivalent to a building of about 10 floors.
- C lease up to 16,000 m² in 200 Queen Street.

Option A was rejected as it would inevitably lead to a multiplicity of small sets of chambers of varying quality. It was seen as inconsistent with the maintenance and fostering of a Bar community.

Option B was favoured, subject to overcoming the financial obstacles involved. This option would achieve three desirable objectives: a close integration with Owen Dixon Chambers; close proximity to the major courts, accommodation tailored to the Bar's requirements.

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Option C can be satisfied only by taking a lease of 200 Queen Street. No other available building could provide such a large area. This option would achieve the desirable objectives above, except that of an integration with O.D.C. Since the building is presently under construction, it is likely that such a major tenant as the Bar could dictate some of the services and amenities needed to meet the requirements of barristers. The further advantage of this option would be the sale of the ABC site and the release of funds for the necessary refurbishment of O.D.C.

Recommendation:

The Report strongly recommends the adoption of Option B. It is argued that the overall cost of this option is no greater than the other options. The development of the ABC site to its maximum potential would best meet the long term accommodation requirements of the Bar.

The report recommends that the ABC site be developed to provide accommodation for at least 500 barristers. This project should have a target completion date of 1986. The project is seen as urgent in view of the present needs for accommodation and the unsuitability of the Bar being housed in many buildings. Furthermore, delay is adding about \$200,000 per month to the overall project cost.

THE PRESENT PROPOSALS FOR ABC SITE

The Bar has received development proposals from Lend Lease, Hooker, Hansen & Yuncken, Silverton and Costain. Certain of these proposals have already been displayed in the Common Room.

The Report enters upon a detailed comparison of these proposals on the following criteria:

- project management
- suitability of design consultants
- benefits of the design solutions offered
- financial proposals
- extent to which the proposals are divisible into separate design construction, financing and management clients.

The recommendations based on these criteria are based upon a comparison of the proposals submitted. They are not intended to reflect on the competence of the parties involved.

The Report advises that the Costain design was the least attractive design, but had the lowest overall cost. The Hooker proposals were relatively expensive but merited further consideration. The Lendlease design proposal, the Hansen & Yuncken design proposals and the Silverton design proposal, although relatively basic, merit consideration.

The Report recommends that the choice facing the Bar is not one between the proposal packages submitted. It advises the Bar to consider and reach a decision upon each of the four distinct elements:

- choice of project manager and design consultants
- the preferred design or designs which should be selected for further study and refinement
- financing
- choice of builder or construction manager.

In summary, the Report reaches the following conclusions in respect of the stipulated criteria:

Project Management—Silverton and Hooker, with a preference for Hooker.

Design Consultants—Godfrey & Spowers, Architects.

Design Solutions—Silverton. This proposal achieves a high overall efficiency. It meets, but does not exceed, the requirements for external windows (65% of rooms). It provides maximum site potential without resorting to high rise construction (13 floors), thus avoiding the substantial cost penalties attending high rise constructions. Its estimated cost is \$17m (Nov. 1981). It has been presented in sufficient detail to render cost estimates reliable.

Financing Proposals—None of the proposals met the Bar's financing objectives and constraints. But a financing recommendation is made in the Report.

FINANCING & OWNERSHIP OF ABC PROJECT

The options for financing the ABC project are seen as the following:

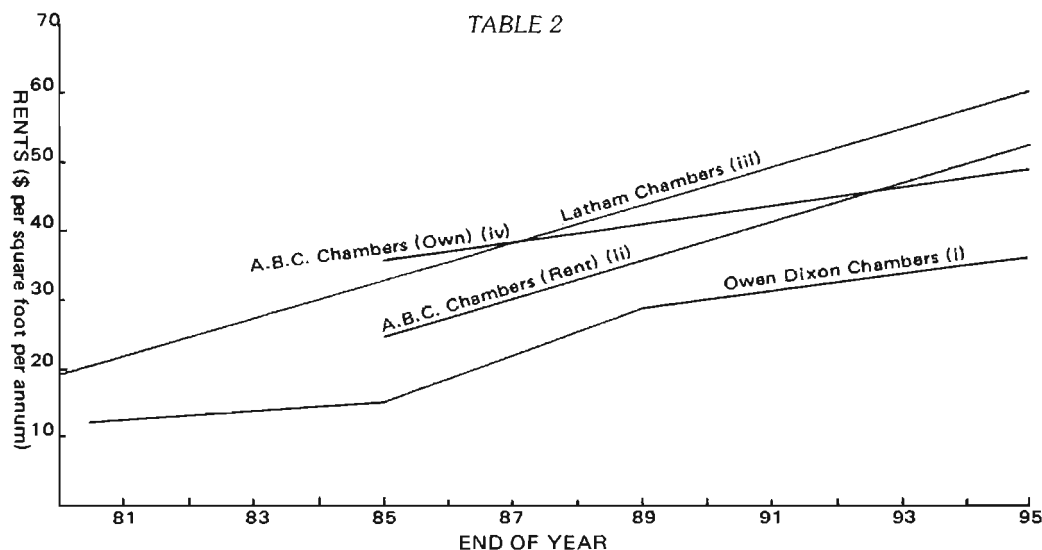
- A Outright ownership by the Bar
- B Sale and Lease Back
- C Strata Titling
- D Joint Venture
- E Property Trusts

Outright ownership by the Bar:

The estimated overall cost is seen to be in the order of \$24m. Assuming that a conventional first mortgage of 65% could be raised, the remaining \$8m would have to be raised from the Bar. This represents a subscription of \$10,000 from each member. This would be raised by unsecured note, as was the case with the \$2000 for the purchase.

The interest costs of such mortgage finance would mean that rents in the new building in 1986 would be in the order of \$38 per ft² per annum. From this should be deducted interest on the loan. This compares with current rentals of \$12 for O.D.C. and \$22 for Latham Chambers. In 1986 rentals are predicted to be \$22 for ODC and \$36 for Latham Chambers. The rental projections appear in Table 2.

TABLE 2

**Table 2**

It will be seen from the Table that, in the long term, rentals charged to members would become less than commercial office rentals.

Sale and Lease Back:

This course would involve the sale of the site before, during or after construction to a financial institution. The Bar would then take a long lease back.

The advantage of this course is that the project can be developed with no financial outlay by the Bar. The funds from the sale of the freehold would be available for the refurbishment of O.D.C. Furthermore the building can be designed and constructed broadly in line with the Bar's special requirements.

The disadvantages are, of course, the loss of equity in the building and the imposition upon the tenant of normal market fluctuations. The impact of this latter consideration upon an individual tenant must be seen in the light of the present policy of Barristers' Chambers Limited which is to charge its tenants market rental. Estimated market rental in the new building in 1986 is \$28 per foot per annum.

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Joint Venture:

The advantage of this course is that it is midway between the two preceding options. The interest burden and equity subscription would be less than for outright ownership. The Bar would enjoy a share in the equity in the building. Subject to the terms of the joint venture agreement the Bar would retain long-term control of the building.

The disadvantage is that many finance institutions are legally unable or commercially reluctant to embark on joint ventures. These are seen as involving substantial financial investment without the normal control that an investor would wish to exercise.

Strata Titling:

This option would involve the sale of individual portions of the Building. Such a course would require a decision as to the areas involved at an early planning stage. This is because the area of each unit must be defined on the title. The consequence is a loss of flexibility in floor layout and partitioning. There may be a saving in construction costs.

A decision to adopt this option could be made only if a firm commitment to purchase could be obtained by a sufficient number of barristers before construction of the building. This may involve a delay in the commencement of the project with the consequent cost penalty.

Property Trusts:

A unit trust to own the property could be established at an earlier stage than is possible under a strata titling scheme. Furthermore, the interest paid by a unit holder upon sums borrowed to meet calls is thought to be deductible so long as the property trust is said to be carrying on a business.

This course enjoys taxation advantages and is more flexible than strata titling. The Hansen & Yuncken proposal includes such a scheme.

Recommendations:

After weighing up the competing considerations, the Report recommends that the Bar adopt the sale and lease back proposal as the appropriate means of financing the project.

This is because it is thought that the Bar would not be prepared to assume the burdens of financing the building from its own resources. Option C, though appealing from many points of view for many barristers, is not thought likely to attract a suitable investor.

SHORT TERM ACCOMMODATION

It appears from Table 1 that there will be a likely shortfall of accommodation prior to 1985 when ABC building might be available. This shortfall is as follows:

January 1982 - 50
January 1983 - 100
January 1984 - 150
January 1985 - 200

The Report sets out a detailed analysis of four possible sites which are or will be available for letting shortly:

	Capacity	Available
Goldsborough Mort	150-170	2nd quarter 1982
Flotto Lauro	220	3rd quarter 1982
200 Queen Street	630	4th quarter 1982
179 Queen Street	200	1st quarter 1982

In addition, the Salzer Development at 480 Little Bourke Street was considered, but rejected because of its deferred availability.

Of the four sites considered, the Report recommends the Flotto Lauro Building as that most nearly meeting the relevant criteria for short term accommodation.

200 Queen Street would provide better overall standard of accommodation, but it is not geographically convenient. It is significantly higher in cost, and will not be available as early as the others.

179 Queen Street did not rate well for location and office standards.

The Goldsborough Mort Building rates high for its location. But the Report is very critical of its internal standard. These include significant lay-out problems, poor access through corridors, the high proportion of internal rooms, poor lighting and lower standard air conditioning. It was recognised that the building may have an appeal to some upon other, non-physical, criteria, but no opinion was expressed on this.

Recommendations:

The Report recommended that no more than 100 chambers be leased at present with a review of requirements in mid 1983.

This recommendation highlights another short-coming of the Goldsborough Mort building. It is not available on a partial occupation basis. There would therefore be a substantial short term surplus of rooms which might be difficult to sub-let until they might be required.

The Report is a most interesting one and repays careful reading. Doubtless the Bar Council will provide a forum for the discussion of the options it proposes for the ABC site. In the meantime members are urged to inspect a copy which is available in the Library and to answer the questionnaire which has been distributed.

BYRNE, D.

Victorian Bar News

REFLECTIONS IN AMBER

He was holding court in the saloon bar but he was neither a judge nor sober.

"Ah, lad", he murmured, (deceived by my youthful appearance induced by 39 years of clean living and failing to grow), "It's summer again! Summer, why my thoughts turn to scantily clad women – just like they do in the other three seasons. Ah, lad, I could've been a real artist – paint and canvas, not bullshit like at the Bar – but I was expelled from Art School. I kept dribbling on my sketch pad during Life classes. Mind you, I'm no male chauvinist pig, I defend women! It's the least one can do for the weaker sex. And it's wonderful having women at the Bar. If they haven't added lustre to the institution at least they've added lust. Must have taken a lot of pressure off the secretaries if I'm any judge, which I'm not, but I've met a few judges at that Bar Cocktail Party over the years. I've seen them sidle in from their sheltered workshops and try to be human for an hour or two. Some of them damn near succeeded! And I've seen one or two having trouble holding themselves steady let alone the scales of justice. But there's not too many of the old breed left. Those fellows really knew how to temper justice with sadism. You know it's been said that every time a barrister goes from the Bar to the Bench, the Bar is the poorer for it. I've heard the judges say the same thing about the Bench. Ah, lad, I've done a lot of cases, but they all fall into two categories – those I won and those that

were unwinable. I've done pleas that have made Judges weep. Of course, I've improved a bit since those days. I've written unsworn statements that you'd swear were the prisoners' own words! That's the advantage of a High School education. Once I even created a reasonable doubt in a Magistrate's mind. It was touch and go. I guess I was just lucky the informant didn't turn up.

I've never wanted to be a Crown Prosecutor. I'm told they get more than \$47,000 a year. You can't tell me crime doesn't pay. It just shows you what rampant inflation has done to thirty pieces of silver. On the other hand, I've never involved myself in fancy movements for penal reform and rehabilitation. They're far too dangerous. After all recidivism is the lifeblood of the Criminal Law. I've appeared for lots of professional criminals. I was fortunate they were amateur performers. I've cross-examined hundreds of coppers. The secret is to pick their weakest point and go for it. I always attack their minds.

One unfortunate aspect of the Bar is that there are too many Dr. Johnsons and a distinct shortage of perceptive Boswells. At least there was lad, until you came along. Allow me to buy you another beer . . .

COLDREY

(Process Servers and others will be interested to learn that the author has taken up a position for two years in the Northern Territory handling Aboriginal Land Claims. We wish him well and hope that he will find time to make further contributions to Bar News during his absence. Eds.)

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REPORT TO SHAREHOLDERS

YOUNG BARRISTER PTY. LTD.

(formerly trading as The Young Solicitor Corporation)

At this time, when directors present their annual report to shareholders, certain observations should be made by your chairman. As all members of the company are doubtless aware, profits have fallen markedly this year. There have been complaints from the single largest shareholder, the Deputy Commissioner of Taxation, as to this year's failure to declare a dividend. Shareholders are respectfully reminded of the excellent returns previously produced by the company. Certain churlish shareholders have remarked that these excellent results were produced when the company engaged itself more in genuine business activities and rather less in its present expensive and initially unprofitable business. Those of little faith are reminded of the repository of legal talent embodied in the company.

This disenchantment has been reflected in the company's share price which has fallen by 50%. At current prices, your directors believe the company is substantially undervalued and might well repay further investment. In fact to encourage this wise course, your directors have formulated an extremely complicated plan involving revaluation of current shares, an illusory bonus issue, issue of new shares, an entitlement to options at par etc. We will not bore members with details, except to say that the scheme is watertight, with the result that all members will be required to re-subscribe in the company to the extent of their original par value. Members will recall that the Articles provide that the shareholding of those who are not prepared to go along with the decision of your directors are converted to Class W shares.

These shares do not participate in dividends (if any) and do not carry voting rights. In short, they are worthless, which is a little less than their present worth. There have been proceedings instituted in the Family Court by one shareholder, Mrs. A. Spouse to

attempt to release her equity capital in the venture, but relying upon legal advice received and the decision in *Ascot Nominees*, your directors are confident that the result will be satisfactory to the company. Accordingly, a special contingent liability for one punnet of raspberries has been provided for in the books of account.

Although dividend payments have been omitted this year, it should be noted that steps have been taken to apply the most stringent economies, and outgoings are accordingly considerably less than in previous years. Major expenditure on books, vehicles, apparel, travel agents, jewellers, gambling hells, and food have been either reduced or deferred. New accommodation has been found for the company in more downmarket buildings in William Street known as Owen Dixon Chambers. Critics have suggested that rentals for this class of accommodation are well in excess of market rentals. And they would be right, but as the company is lurking under "the reader exclusion clause", it is suggested that such critical shareholders keep their mouths shut. The reader exclusion clause is imposed by the Bar Council which, blind as the statue of Justice, dispenses generosity on the one scale while impaling us with a sword on the other. Shareholders will also notice under Extraordinary Items, a payment of \$500.00 to this Bar Council. Extraordinary is the only characterisation possible for this payment which is akin to an entry price for a pyramid selling scheme. However, as it was a fairly minor amount, your directors felt it should be paid with demur.

A further point of contention between directors and members, including the major shareholder, has been substantial payments for entertainment by your directors. That this money has been largely dissipated on liquor, restaurants, slow horses and fast women is

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not denied. Your directors have chosen to view these payments as being in the nature of allowable outgoings incurred in the expectation of future profits. We should remind shareholders that the bulk of this expenditure has been on the parched throats, starving stomachs and insatiable lusts of solicitors. This policy of creating obligations and memorable

compromising moments is already producing results.

Thus, despite adverse trading conditions, your directors are confident of an improved result in the coming years. The creative policies already mentioned, when combined with assiduous watching of Petrolcell re-runs to polish technique, should continue to bear fruit, which hopefully will include fewer lemons.

C. W. R. Harrison
(Director)



"MERRY CHRISTMAS!"

JUDICIAL STATISTICS CONSOLIDATED

Victorian Bar News last published a consolidated judicial statistics in June 1978. Since then, 278 have signed the Bar Roll. For these, and for those few who have not kept the last consolidation up to date, we provide the following information:

HIGH COURT

No maximum number of Justices

Age for retirement 70 (appointees after July 1977)

Average age at 1/1/82 – 60 years

Average age on appointment – 53 years.

	Age at 1.1.82	Date of Birth	Year of App'tmt	Year of Ret'mt
Aickin J.	65	1 2.1916	1976	-
Gibbs C.J. (1970)*	64	7 2 1917	1981	1987
Jacobs J.	64	5.10.1917	1974	-
Murphy J.	59	30 8.1922	1975	-
Stephen J.	58	15 6 1923	1972	-
Mason J.	56	21 4.1925	1972	-
Brennan J.	53	22 5 1928	1981	1998

*Date of first appointment.

FEDERAL COURT OF AUSTRALIA

(Judges of the Court resident and keeping chambers in Melbourne.)

- No maximum number of Judges.
- Age for retirement 70 (appointees after July 1977)
- Average age 1.1.82 – 60 years.
- Average age on first appointment – 54 years.

	Age at 1.1.82	Date of Birth	Year of App'tmt	Year of Ret'mt
R. Smithers J. (1965)*	78	3 2.1903	1977	-
C.A. Sweeney J. (1963)*	65	27 4.1915	1977	-
Northrop J. (1976)*	55	10.8.1925	1977	-
Keely J. (1976)*	55	2.10 1925	1977	-

* Date of first appointment

FAMILY COURT OF AUSTRALIA

(Judges of the Court resident and keeping chambers in Melbourne.)

- No maximum number of Judges.
- Ages for retirement 70 (appointees after July 1977).
- Average age 1.1.82 – 57 years.
- Average age on first appointment – 54 years.

	Age at 1.1.82	Date of Birth	Year of App'tmt	Year of Ret'mt
Principal Registry (Sydney)				
E. Evatt C.J.	48	11.11.1933	1975	-
Melbourne Registry				
Strauss J.	60	3 9 1921	1976	-
Lusink J.	59	27.5.1922	1976	-
Emery S.J.	58	9.7.1923	1976	1994
Asche S.J.	56	28.11.1925	1975	-
Walsh J.	56	31.12.1925	1977	-
Treyvaud J.	52	8.7 1929	1977	1999
Frederico J.	50	1.10.1931	1976	-
Hase J.	49	22.8.1932	1976	-
T. R. Joske J.	49	22.8.1932	1976	-
Fogarty J.	48	9.6.1933	1976	-
A. A. Smithers J.	47	14.4.1934	1977	-

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VICTORIA SUPREME COURT JUDGES

- Maximum number of Judges - 21.
- Age for retirement - 72 years.
- Average age at 1.1.82 - 58 years.
- Average age on appointment - 51 years.

	Age at 1.1.82	Date of Birth	Year of App'tmt	Year of Ret'mt
McInerney J	70	11.2.1911	1965	1983
Anderson J	69	4.9.1912	1969	1984
Lush J	69	5.10.1912	1966	1984
Starke J.	68	1.12.1913	1964	1985
Murray J.	64	2.5.1917	1974	1989
Kaye J.	62	8.2.1919	1972	1991
King J.	62	13.2.1919	1977	1991
Young C.J.	62	17.12.1919	1974	1991
Murphy J.	58	5.5.1923	1973	1995
Crockett J.	57	16.4.1924	1969	1996
Marks J.	57	10.9.1925	1977	1996
Gray J. (1968)*	55	6.3.1926	1977	1998
McGarvie J.	55	21.5.1926	1976	1998
Fullagar J.	55	14.7.1926	1975	1998
Southwell J. (1969)*	55	1.11.1926	1979	1998
Jenkinson J	54	14.11.1927	1975	1999
Brooking J	51	7.3.1930	1977	2002
O'Bryan J.	51	5.10.1930	1977	2002
Beach J.	50	16.2.1931	1978	2002
Gobbo J.	50	23.3.1931	1978	2002
Tadgell J	47	15.3.1934	1980	2006

*Date of first appointment

COUNTY COURT

- No maximum number of Judges.
- Age of retirement - 72 years.
- Average age at 1.1.82 - 57 years.
- Average age on appointment - 49 years.

	Age at 1.1.82	Date of Birth	Year of App'tmt	Year of Ret'mt
Wright	69	5.8.1912	1971	1984
Corson	66	24.8.1925	1963	1987
Ogden	65	27.12.1916	1972	1988
Vickery	64	28.7.1917	1962	1989
Hewitt	64	4.11.1917	1964	1989
Leckie	64	30.12.1917	1965	1989
Gorman	63	4.1.1918	1971	1990
Forrest	63	28.1.1918	1964	1990
Franich	63	14.6.1918	1966	1990
Harris	63	13.11.1918	1964	1990
Stabey	61	5.9.1920	1972	1992
Hogg	61	3.5.1921	1975	1993
Martin	60	11.10.1921	1968	1993
Ravech	59	6.1.1922	1975	1994
Lazarus	59	20.5.1922	1976	1994
Shillito	59	25.12.1922	1967	1994
Just	57	4.8.1924	1965	1996
Howse	56	24.4.1925	1976	1997
McNab	56	2.6.1925	1972	1997
Byrne	56	22.10.1925	1975	1997
Whelan (Chief Judge)	56	13.11.1925	1975	1997
O'Shea	54	4.4.1927	1969	1999
Spence	54	3.8.1927	1973	1999
Bland	54	13.8.1927	1978	1999
Cullity	53	10.2.1928	1977	2000
Dixon	53	13.11.1928	1980	2000
Rendit	52	11.6.1929	1977	2001
Mullaly	52	9.7.1929	1979	2001
Read	50	22.10.1931	1977	2003
Murdoch	49	28.6.1932	1979	2004
Tolhurst	49	6.9.1932	1981	2004
Dyett	48	6.4.1933	1978	2005
Kelly	47	14.5.1934	1980	2006
Nixon	46	18.7.1935	1980	2007

MASTERS OF THE SUPREME COURT

- No maximum number of Masters.
- Age for retirement - 72 years.
- Average age on appointment - 48 years.

	Age at 1.1.82	Date of Birth	Year of App'tmt	Year of Ret'mt
Jacobs (Senior Master)	70	3.9.1911	1960	1983
Bergere	66	9.2.1915	1963	1987
Brett	65	16.9.1916	1967	1988
Gawne	55	19.6.1926	1977	1989
Barker	54	15.11.1927	1977	1989
Bruce	47	7.3.1934	1974	2007

MISLEADING CASE NOTE NO. 16

FEDERAL BANK v. FABIAN

The Full Supreme Court recently gave its judgment.

This is a case stated by His Honour Judge Packard for the consideration of this court, the facts as stated being as follows.

Some months ago the Defendant, Mark Fabian, a man well known in these courts for his novel defences and technical arguments, bought a boat. The boat was a large and impressive ocean-going yacht, well built and fitted out, although slightly damaged. The damage was said by the vendor, a dockyard employee, to have been caused by the boat falling off the back of a container, and because of that, the purchase price was reduced from the otherwise market-price of \$120,000 to \$5,000. The sale was sealed upon the Melbourne Docks, and the Defendant's cheque for \$5,000 was paid over at the Waterside Workers Hotel.

The first difficulty in this case arose because of the way in which the Defendant filled up his cheque, and it is important to describe it. The cheque was made out to "CASH", that being the vendor's name according to the passport he showed to the Defendant. A gap was left between the words "Amount in words" and "Five Thousand Dollars", and this gap enabled Mr. Cash, the vendor, to insert the word "Twenty". The Plaintiff, which is the bank upon which the Defendant drew his cheque, duly paid out \$25,000 to Mr. Cash, who has since disappeared.

When the trial of the action commenced before Judge Packard, Counsel appeared for the bank and Mr. Fabian appeared for himself. After elevenses the Defendant was called upon to state his defences, and after late-mid-morning tea he did so. The defences raised by the Defendant were many and varied, ranging from a simple denial of the debt to the constitutional inability of the Federal Parliament to create a bank. They included a jurisdictional argument, that since the cheque was drawn upon premises being part of, or intimately connected with,

a dockyard, Victorian law did not apply, and the action should have been brought in the United Kingdom.

After lunch His Honour retired to his chambers to consider the jurisdictional argument, and after afternoon tea decided to state a case to this court upon that question. His Honour then adjourned his court sine die, pending our decision in this matter, and went to Queensland for a holiday.

As it was argued before us, Mr. Fabian's case is this.

In 1828 British law was received into New South Wales, which then included what is now Victoria. Victoria was created a separate colony in 1851, and then became entitled to pass laws, or to repeal British laws, other than those of paramount force (see *Colonial Laws Validity Act* 1865). Notwithstanding the *Statute of Westminster* 1931, adopted in 1942 (retrospective to 1939) by the Federal Parliament and which is applicable only to Commonwealth laws, the State of Victoria is still subject to the effect of paramount British laws, even if those laws have been repealed in the United Kingdom.

One such law is the *Dockyards etc. Protection Act* 1772, which, until its repeal in the United Kingdom, invested British Courts with jurisdiction over dockyards in all British territories and dominions. Mr. Fabian has submitted that Victorian courts have no jurisdiction over acts committed on Victorian docks by reason of the paramount force of that Act. Indeed he goes further: he says that neither do British courts have jurisdiction, by reason of the repeal of the Act in the United Kingdom.

The Plaintiff debited the Defendant's account with the sum of \$25,000, and since this reduced the balance of that account to a debit balance of \$20,000 the Plaintiff exercised its right to amalgamate all of the Defendant's accounts, which amounted to some \$8,000. The net debit balance in the Defendants

Victorian Bar News

cheque account was then \$12,000, and the bank's solicitors, Messrs. Grendel and Grendel, wrote to the Defendant demanding payment of that sum. The Defendant refused to pay, and the bank commenced the present action in the County Court.

The state of the law with regard to customer negligence in the drawing of cheques is now the same in both Australia and the United Kingdom – see *Federal Bank v. Sydney Wide Stores* (Full High Court, unreported, 18 August, 1981); but the effect

of Mr. Fabian's argument would be to render the boundary of Victoria's docks a latter-day Pale, a line beyond which the Queen's peace does not extend. It would prevent actions being taken in any court for any wrong committed upon the docks, a fact which any society bound together by the rule of law must find abhorrent.

Fortunately, in our view the cheque was not presented upon the docks, and it is at that point that Mr. Fabian's argument fails. Accordingly we will return this case to His Honour Judge Packard for hearing.

GUNST.

A WHOLLY INADEQUATE SUBSTITUTION:

"3. In Order 36, Rule 2, of the Principal Rules for the words 'breach of promise of marriage' there shall be substituted the words 'for damages for or arising out of bodily injury including any disease or impairment of mental condition'."

*Supreme Court (Mode of Trial)
Rules 1981
S.R. 1981 No. 252)*

NEW PROSECUTOR

On 10 November 1981 Michael John Strong was appointed a Prosecutor for the Queen. The Bar congratulates him and wishes him well.

FEES FOR LEGAL AID

Prior to the establishment of the Legal Aid Commission, it is believed that some practitioners accepted money from assisted persons to supplement the costs and Counsels' fees paid by A.L.A.O.

A member of the Bar, of course, may not accept a fee otherwise than from his instructing solicitor or the Commission. Furthermore, Section 32(1) of the Legal Aid Commission Act provides:

"Where a private practitioner performs or has performed legal services on behalf of an assisted person he shall not demand, take or accept any payment for performing those services other than the payment of payments to which he is entitled under this Act."

CRIME NOTES

AMENDMENTS TO CRIMINAL LEGISLATION STATUTES

Penalties and Sentences Act 1981 (No. 9554)
Received Royal Assent 19/5/81 (G.G. 20/5/81, p.1566);
Sections 1 and 36-46 (inclusive) to operate from 3/6/81 (G.G. 3/6/81, p.1778);
Section 44 deemed to have operated from 26/9/80 (See s.1(3) of Act);
Remaining provisions operate from 1/9/81 (G.G. 26/8/81, p.2799).

Crimes (Classification of Offences) Act 1981 (No. 9576)
Received Royal Assent 26/5/81 (G.G. 27/5/81, p.1665);
To operate from 1/8/81 (G.G. 26/8/81, p.2799).

Firearms (Shooters Licences) Act 1981 (No. 9556)
Received Royal Assent 19/5/81 (G.G. 20/5/81, p.1566);
To operate from day to be proclaimed;
S.2(2) to operate 1/10/81 (G.G. 9/9/81, p.2939).

Statute Law Revision Act 1981 (No. 9549)
Various provisions deemed to have come into operation on various dates.

Police Offences (Restricted Publications) Act 1981 (No. 9521)
Operates from date of Assent - 24/3/81.

Magistrates (Summary Proceedings) Act 1981 (No. 9520)
Operates from date of assent - 24/3/81.
Provisions as to service of notice of trial and extension of alternative procedure to a range of offences.

Road Traffic (Amendment) Act 1980 (No. 9503)
S.9 to operate 1/5/81 (G.G. 15/4/81, p.1198).

Legal Aid Commission Act 1978 (No. 9245)
Remaining provisions to operate 1/9/81 (G.G. 15/7/81, p.2307).

REGULATIONS

Road Traffic (Speed Limit Amendment) Regulations 1981. S.R. 433/1981.

Legal Aid Commission Act 1978. Legal Aid Commission (Form of Application for Legal Assistance) Regulations 1981. S.R. 383/1981.

Road Traffic Act 1958. Road Traffic (Amendment) Regulations 1981. S.R. 359/1981.

Police Offences Act 1958. Police Offences (Restricted Publications) (Amendment) Regulations 1981. S.R. 159/1981.

Road Traffic Act 1958.
Road Traffic (Penalties) Regulations 1981 S.R. 103/1981.
Road Traffic (Infringements) (Penalties) Regulations 1981 S.R. 104/1981.

Community Welfare Services Act 1970. Community Welfare Services (Prisons) Regulations 1981 S.R. 25/1981.

Road Traffic Act 1958.
Road Traffic (Dipping of Headlamps) Regulations 1981 S.R. 34/1981.
Road Traffic (Terminating Intersections) Regulations 1981 S.R. 33/1981.

Hassett

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SPORTING NEWS

Motor racing enthusiasts will be pleased to know that we have a ready made replacement for Alan Jones. Lasry has been running his Triumph GT6 this year in the Australian Sports Car Championship and his success may prompt an offer from a large International consortium which would rival the \$3m offered to Lauda to make a comeback. Although the final results are not yet clarified, Lasry has finished second or third in his class (cars of two litres or less capacity). He finished fourth outright for the year behind a Porsche Turbo 934, a Porsche RSR and a Lotus. The fields generally consisted of between 16 and 20 cars and the series was held over four rounds in Victoria and Tasmania. Absence of mechanical trouble resulted in his most consistent year. His appearance as Junior in a recent long murder trial might result in sufficient funds being accumulated to enable the purchase of a vehicle to win at Bathurst.



Collis and Roland Williams have been seconded to act as Chairmen on the V.F.A. Tribunal. It has been unkindly suggested to Williams that this will be the closest he will ever get to sitting on the Bench. One of the cases that he had involved a player charged with using indecent language to the umpire. His "Counsel" claimed that he knew the player personally and was aware that the player was a teacher and insisted that he would never use bad language under any circumstances whatsoever. When Williams ultimately announced that they found the charge proven and then proceeded to suspend the player, the player let forth a loud expletive as he left the tribunal!



The expression "permanent Prosecutor" seems strangely out of place when attributed to "Genial Jim" Morrissey. It might take some believing but we have it on good authority that he was a champion schoolboy sprinter during the 1940's and set several records. In those days, the sylph like figure could be seen training on the roads of Kew and pounding the pavement in an old pair of runners. The responsibilities of being a Prosecutor and incipient arthritis have restricted his athleticism to a weekly game of tennis with Jenkinson, J.



Arthur Adams made short work of the large field which contested the annual Mount Hotham to Falls Creek Ski Race held in September for the Veterans' Class. Wearing his famous collar and tie and despite slow snow conditions, he completed the journey in three hours and nine minutes and proceeded to the "Frying Pan" for liquid refreshments where a record of a different sort was then set. Incidentally, in sporting circles his unusual attire is receiving similar notoriety to Bruce Doull's head band.



Several members of the Bar have been seen on their "Malvern Stars" heading for chambers. They include Lally, Davey and Peter Robinson. The latter, wearing his red and white "stack hat" and red shorts has been riding in from his home in Glen Iris for over three years. Recently he was appearing in a trial and was cycling home when the presiding Judge, appearing suddenly from behind some foliage, summoned him to attend his home for liquid refreshments. Several hours later he was deemed unfit to ride and was driven home by the Judges son.



FOUR EYES

Summer 1981

VERBATIM

Last edition we mentioned the tradition of taking tea with the Magistrates in New South Wales. At a resumed hearing at the Murwillumbah Court House, the following exchange was overheard in the kitchen

Prosecutor: "Geeze . . . this tea's so strong it'd give a man half an erection!"

Faris: "Have two cups . . ."

26th October 1981

• • •

Juror seeking to be excused.

Judge Murdoch: "What is your reason?"

Juror: "I'm 73, I live by myself, I've got a very bad heart and I can't hear too well . . ."

Judge: "On the combination of all those factors you've convinced me."

Juror, (upon leaving the witness box) sotto voice: "I shouldn't have been here in the first place . . ."

R.v. Dillon & Ors
County Court
24th August 1981

• • •

E.C.S. Campbell, to de facto husband of custody applicant:

"Have you had any experience raising a 15 year old girl?"

Husband: "Are you out of your mind?"

His Honour: "I take that answer as being 'No'."

Campbell: "To both questions, Your Honour."

Cor Frederico J.
September 1981

• • •

At the end of a policeman's evidence:

Defendant: "Can I ask the policeman some questions?"

J.P.: "No, you pleaded guilty".

Cor 2 J.P.'s,
Werribee Magistrates' Court
23rd November 1981

• • •

At the end of a prosecution case:

Defendant: "Can I call a character witness?"

J.P.: "No, this is a charge against you, not against your character."

Cor same J.P.'s
Same day

• • •

Victorian Bar News

Clothier S.M. after returning from a short adjournment to consider a special complaint:

"The reason for the adjournment was, 'If the Complainant's case is well founded, how come I haven't come across it before?' and I don't know what the latin for that is!"

Dandenong Court
10th November 1981

Scully S.M. responding to a submission that the prosecution evidence had not proved the charge beyond reasonable doubt:

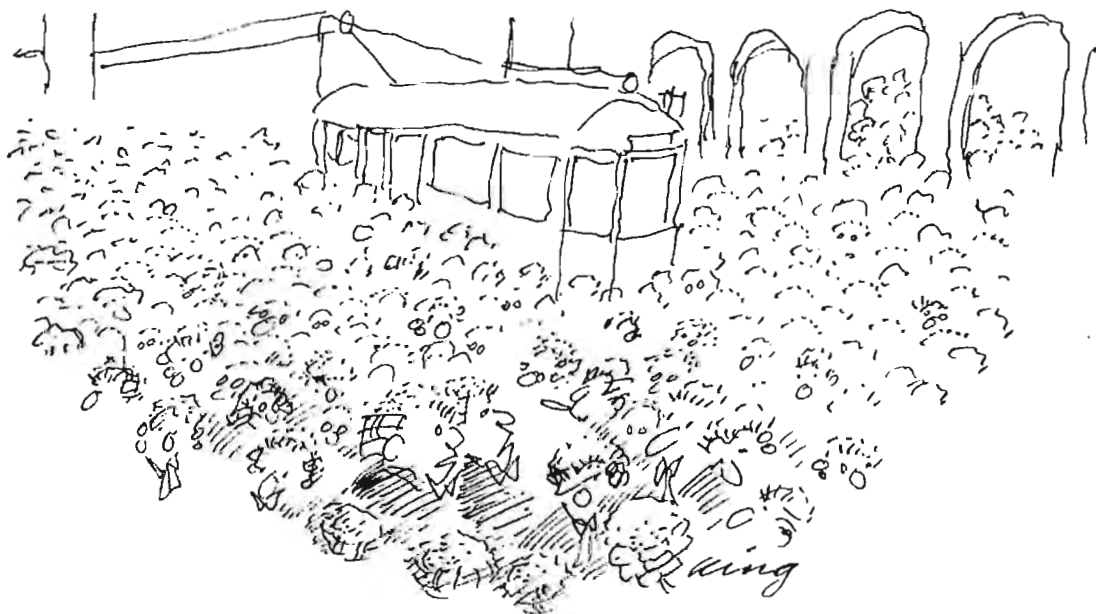
"That might be right in a strict civil balance-of-

probabilities situation, but here the standard of proof is only beyond reasonable doubt."

South Melbourne Court
27th October 1981

Queensland police are cracking down on hitch-hikers. Two youths who were recently arrested complained of their treatment at the hands of the police. The press quoted a Superintendent as saying that the Police Department took "a very serious view" of officers passing "highly offensive remarks" towards persons they arrest.

October 1981



" GOD, THE BAR'S GETTING CROWDED!! "

Summer 1981

LEGGE'S LAW LEXICON

"G"

Gage: A pledge or promise of real or personal property (e.g. mortgage); cf. Wed. a pledge or promise of the person (e.g. wedding).

Game. A barrister asks Judge Mullaly for leave to interrogate after a Summons for Final Judgment. His colleagues consider him game. His Honour considers him fair game.

Gaol. Gray's Inn for the Bush Lawyers.

Gargarism. Disease affecting certain Crown witnesses.

Geld. A tax, payment, tribute or pecuniary penalty often exacted by means of Debenture or Unsecured note (see Barristers' Chambers Limited).

General Damages. Those which depend upon the eloquence of Counsel (cf "Special Damages").

General Sessions. A mythical court where judges were kind and considerate and the listing system worked efficiently.

Genius. Miraculous mental condition not possessed by lawyers before they sit on the Bench, or after they retire.

Gentleman. Unemployed deponent. Does not include barrister: *Messor v. Molyneux* (1741) C.B., or an attorney or an attorney's clerk: *Tutor v. Sanoner* (1858) 3 H & N 280.

Gentleman's Agreement. "An agreement which is not an agreement, made between two persons, neither of whom is a gentleman, whereby each expects the other to be strictly bound without himself being bound at all." *Bloom v. Kinder* (1958) T.R. 91. per Vaisey

Gestation. Period during which a child is supported, not by the father. This period may be short as 291 days: *Anon* (1394) Co. Litt. 123b n.1, or as long as 349 days: *Hadlum v. Hadlum* (1948) p. 147.

Gift. A gratuitous transfer of property (see Grant)

Good Behaviour. An unenforceable promise by a person in an untenable position to perform the impossible in order to avoid the inevitable (see "gaol").

Victorian Bar News

Goodwill. A fiction, by Accountant out of Businessman's Self-delusion.

Government Gazette. A magazine which everyone is presumed to read.

Grand Jury. A group of men and women of character and intelligence selected by oneself. Cf. "Lousy jury".

Grand Assize. Range of Kingsize furniture sold by Franco Cozzo of Footscray.

Grand mal. An illness causing loss of balance, usually to the right.

Grant. The assurance or transfer of the ownership of property (see Barristers' Chambers Limited Debenture).

Grass. Plant enjoyed by herbivores too.

Gratis dictum. A charge of indecent exposure where there is no defence of involuntariness.

Great Cases. Those which make – (a) Headlines. (b) Bad law: *Glanzer v. Shepard* (1921) 233 N.Y. 236 at 241. (c) a silk's reputation.

Ground rent. Tribute exacted with difficulty from impecunious tenant.

Guarantor. Former friend.

Guaranty. A written promise by a former friend, worth the paper it is written on. See also "Certificate under Appeals Cost Fund Act".

Guillotine. A machine which makes a Frenchman shrug his shoulders.

Guilty. The second rubber-stamp owned by a Justice of the Peace. See also "Date Stamp".

"It has been said before, but obviously requires to be said again. The purpose of a direction to a jury is not best achieved by a disquisition on jurisprudence or philosophy or a universally applicable circular tour round the area of law affected by the case. The search for universally applicable definitions is often productive of more obscurity than light. A direction is seldom improved and may be considerably damaged by copious recitations from the total content of a judge's notebook. A direction to a jury should be custom-built to make the jury understand their task in relation to a particular case."

**Lord Hailsham L.C.
R.v Lawrence (1981)**

"One of the unfortunate feature of the NSW criminal justice system, compared with Victoria for example, is that most criminal work is done nowadays by barristers employed by the government either as public defenders or crown prosecutors. As a result the Bar at large isn't as experienced in criminal work as it ought to be and the judges drawn from that Bar often go to the bench with no, or little, experience of criminal trials, the supervision of which will be, in many cases, their most substantial area of work."

**Mr John Hogan
Clerk of the Peace, NSW**

Summer 1981

MOVEMENT AT THE BAR

Members who have signed the Roll since the Spring 1981 Edition.

William Harry MORGAN-PAYLER	(re-signed) Clerk W.
Brian Andrew KEON-COHEN	G. McP. Gibson/Muir
Richard John Haylock MAIDMENT	D.R. McLennan/Stone
Robert Ramsay DOUGLAS (Qld.)	
Patrick John MORAN	(re-signed) Clerk R.
Francis Elizabeth HOGAN	Mahony/Muir
Margaret Gill HARDING	Kennan/Stone
Richard Leslie BREAR	Cooney/Howells
William Thackray HOUGHTON	J.G. Larkins/Muir
Peter John DAVIS	Lopez/Stone
Mark Neville WILSON	Ramsden/Duncan
Mark Hedley TAYLOR	Hansen/Howells
Shane Raymond MARSHALL	P.R.A. Gray/Howells
John Russell DIXON	Shatlin/Stone
John Anthony Hugh FOXCROFT	McCurdy/Duncan
Simon Paul WHELAN	L.C. Ross/Muir
Kevin Patrick O'CONNOR	Porter/Spurr
Christopher John McLENNAN	G.A. Lewis/Stone
Susan Michele COHEN	R.C. Gillard/Stone

Francis James John TIERNAN	Shannon/Muir
Gary James FOSTER	W.J. Martin/Howells
William Guy GILBERT	Harper/Foley
John Simon CORKER	Morrish/Duncan
Michael James DODSON	Coldrey/Duncan
Michael Patrick BOURKE	McGrath/Howells
Paul Steven KOURIS	J.R. Perry/Dever
Graeme Rees JONES	Neesham/Hyland
Judith Mary MIDDLETON	(Parliamentary Counsel)

Members who have had their names removed from the Roll of Counsel at their own request

B.H. Davis
L.A. Marks (Mrs.)

Number in active practice – 748

SOLUTION TO CAPTAIN'S CRYPTIC NO. 38

1	A	C	C	U	S	E		9	G	A	M	B	O	L			
	S		O		L		6	B		B		R		A			
4	H	O	U	S	E	B		R	E	A	K	I	N	G			
	O		R		N			I		Y		N		E			
10	R	A	T	E	D			11	C	L	A	N	G	E	R		
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		12	A	F	I	R	E		13	S	14	T	E	P	S		
15	S		A					16	A		E		T		17	L	
18	L	A	P	L		19	A	N	D		20	N	O	O	S	E	
	O		P		M			I		U		D		A			
21	P	R	E	S	B	Y	T	E	R	I	A	N	S				
	E		A		E		S		E		T		E				
22	S	A	L	A	R	Y		23	A	S	C	E	N	D			

ENVIRONMENTAL LAW SEMINAR

International Bar Association Committee on Environmental Law is holding a seminar in Washington D.C., U.S.A. 4-8 April 1982.

Speakers presenting papers are from Australia, Canada, France, Germany, Holland, Mexico, New Zealand, South America, Spain, United Kingdom and U.S.A. The seminar will place particular emphasis on mining, quarrying, environmental impact statements and environmental impact analyses.

Enquire – International Bar Association
Byron House, 7/9 St. James's Street,
London. SW1A 1EE

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Summer 1981

**UNREPORTED JUDGMENTS
OF
THE COURT OF CRIMINAL APPEAL**

**(Available from Redlich
ODC Room 151)**

CHARGE,

CIRCUMSTANTIAL EVIDENCE

Circumstances in which it is necessary for the Judge to charge the jury in a circumstantial evidence case that they can only convict if they exclude every hypothesis consistent with innocence considered – no such rule of law or practice.

R. v. Wright & Haigh – 27th April 1981

IDENTIFICATION

Nature of warning depend on circumstances of case.
R. v. Dickson – 26th June 1981.

The absence of a proper warning on identification will not necessarily vitiate a trial if the evidence of identification is being led to corroborate the circumstantial evidence which does not amount to an identification of the accused in incriminating circumstances.

R. v. Wright & Haigh – 27th April 1981.

Adequacy of warning – victim already acquainted with accused.

R. v. Houching – 6th August 1981.

Inadequacy of warning given – matters to which trial Judge should refer to in summing up considered – accused identified whilst in custody and unwilling to participate in identification parade – whether evidence of identification should have been admitted as it was unfairly obtained.

R. v. Clune – 26th June 1981.

Summing Up

Extent of obligation to review evidence or repeat arguments of the parties considered.

R. v. Kolarich – 6th April 1981.

CORROBORATION

Corroboration might be found in a chain of circumstances – concept of cumulative corroboration considered.

R. v. Nanette – 29th May 1981.

CULPABLE DRIVING

Attorney General's appeal – minimum sentence imposed by trial Judge increased – deterrents and question of public safety considered.

R. v. Woolnough – 4th June 1981.

DEFENCE

Defence of alibi – alternative defence of intoxication open on the evidence – defect in charge on intoxication – miscarriage proviso applied.

R. v. Houching – 6th August 1981.

EVIDENCE

Circumstantial evidence – no necessity to prove each fact beyond reasonable doubt – distinction between proof of an element of the offence beyond reasonable doubt and proof of a fact in support of an element considered – evidence of flight.

R. v. Dickson – 26th June 1981.

Corroborative evidence which tends to make prosecutrix's account more probable – requirements of consideration considered – evidence of flight.

R. v. Nanette – 29th May 1981.

Identification evidence obtained improperly – discretion to exclude considered – right of Crown to lead evidence that accused refused to participate in identification parade.

R. v. Clune – 26th June 1981.

IDENTIFICATION

R. v. Clune (Evidence), (Charge)

R. v. Dickson (Charge)

R. v. Wright & Haigh (Charge)

R. v. Houching (Charge)

MURDER

Insanity – Ability of accused to reason that what he was doing was wrong – adequacy of direction considered.

R. v. Kraja – 7th August 1981

Provocation – intoxication not relevant to the characteristics of an ordinary man and not to be taken into account.

R. v. O'Neill – 16th June 1981.

PLEA

Accused desires to change plea from "guilty" to "not guilty" – circumstances in which such a course is permitted considered.

R. v. Bragge – 20th July 1981.

PRESENTMENT

Murder –

Presentment containing a number of counts of murder – appropriate to consider series of counts together as similar both in law and fact – nexus between them sufficient to comply with the Presentment Rules.

R. v. Wright & Haigh – 27th April 1981.

Theft

Alternative counts of burglary or receiving on presentment – accused acquitted on burglary and convicted on receiving – necessity of proof beyond reasonable doubt that the goods were handled otherwise than in the course of stealing considered – Section 99(1) Crimes Act.

R. v. Koene – 20th July 1981.

RAPE, INJUNCTION

Husband rapes wife – non-molestation order made by Family Court – Section 62 Crimes Act 1958 as amended by Sexual Offences Act 1980 – Section 5 considered.

R. v. McMinn – 26th June 1981.

SENTENCE

Grounds for distinguishing between male and female offender – prospects of rehabilitation considered.

R. v. Stokes – 29th May 1981.

Disparity between co-offenders – Disparity must be manifestly excessive before court will interfere.

R. v. Reid – 25th February 1981.

Considerations in fixing maximum and minimum sentence considered.

R. v. Richards – 2nd April 1981.

Judge wrongly accepting statement from Prosecutor from bar table that victim still in fear of prisoner – discretion miscarried.

R. v. Richards – 6th August 1981.

Escape from custody – considerations relevant to sentencing for such an offence.

R. v. Courtney – 2nd September 1981.

Drug Trafficking – Accused addicted to drugs to be distinguished from accused selling purely for profit.

R. v. Hawke – 7th September 1981.

Rape of Prostitute – Attorney General's appeal – adequacy of sentence considered.

R. v. Harris – 11th August 1981.

Life sentence followed by a sentence for a term of years – whether permissible for a Judge to so order – parole procedure on life sentences considered.

R. v. Jolly – 14th August 1981.

Assault with intent to rape

Amendment to legislation after offence committed reducing the maximum sentence for such an offence – amendment of legislation should be considered as a relevant factor consistent with the general aim of parity of sentence.

R. v. Stankov – 15th July 1981.

STATUTE

R. v. Stankov (Sentence)

VERDICT, JURY

Inconsistent verdicts – principles to be applied in determining whether inconsistent considered.

R. v. Nanette – 29th May 1981.