

Re-Examination at the Bar

The existence of a strong and independent Bar depends upon barristers being economically self-sufficient and upon the Bar making substantial changes to provide the legal services needed by the modern community while retaining the conditions which have encouraged barristers to be strong, trusted, informed and independent advocates. This all involves a great deal of thought, work and planning.

Last year's reports on counsel's fees showed the neglect by this Bar over past years of its own economic interests. The main cause was that barristers remained oblivious to the extent to which their earnings had drifted behind the steady rise in community earnings through increased productivity, prosperity and prices. Instead of finding the facts the past tendency was to rely on "barristers' economic instinct". Upon their own economic affairs this instinct has proved a most unreliable guide. County Court fees are a case in point. The first proposal to the Bar Council was for an increase in the order of 15%. Questionnaires answered before the publication of some equivalent interstate fees favoured fee increases ranging about 25%. Questionnaires answered after the publication of the interstate fees favoured increases ranging about 50%. The investigating committee found that interstate fees justified an increase of about 96% and that average weekly earnings had increased by 77% in the 9 years since the last increase in County Court Fees. The committee and the Bar Council recommended 60% as the lowest amount of increase which could be recommended in the light of the indicators without injustice to barristers practising in the County Court. The County Court Judges granted an immediate interim increase of about the order of 40% for briefs to appear and are considering further increase over the whole range. The Bar Council has now taken steps to ensure that each year members of the Bar will be informed of the changes in factors relevant to barristers' fees. The relation between proper remuneration and an independent bar of high standing exists as directly today as it did 150 years ago when Bayley J. made the statement quoted below.

To operate affectively today the Bar, like other occupational groups, needs to have an enormous amount of work done on its behalf. Most of this work is done by voluntary committees. It is now essential to spread this work load throughout the Bar. This is important to enable the fresh ideas of a predominantly youthful Bar to influence the policy and administration of the Bar. Also the load on members of the Bar Council must be lightened. The duties of Chairman over recent years have come to occupy a time about equal to the time which the Chairman can spend on his practice. The duties of Honorary Secretary also consume a great amount of time and attention.

Within the Bar the work of law reform, reform of practice and procedures and changes in the policies and administration of the Bar is carried out by the Bar Committees and the Bar Council. The practical experience of those involved enables the fundamental principles tested over the years to be retained and adapted to modern conditions. This issue contains an invitation to members of the Bar to volunteer to serve on Bar committees and gives an indication of the extensive work which committees are doing.

Other services required by the Bar need the expenditure of money. Again County Court fees give an example. The value in a year of increases of 60% in brief fees alone for counsel



in civil causes and civil jury cases in the County Court is about \$300,000. By comparison the \$1,390 which the Bar Council spent for the statistical checking and the printing of its report was a very modest investment but was an expenditure which had to be raised from members of the Bar through their subscriptions. The Bar Council has no general typing service. At present all reports, memoranda, notices and stencils other than those issued by the Honorary Secretary (including this Bar News) are typed by the secretaries of the barristers concerned. The permanent staff of the Bar and Barristers Chambers Ltd. are fully occupied in work of day to day administration. New duplicating equipment is needed to avoid delays in reproduction. These considerations necessitated an increase in members' subscriptions to the following amounts -

Queen's Counsel	\$100
Over 10 years standing	\$60
Over 3 but under 10 years	\$40
Over 1 but under 3 years	\$20
Under 1 year	\$10
Crown Prosecutors and Parliamentary Counsel	\$20

For comparison it is worth noting that a recent newspaper article points out that the minimum subscription recommended by the A.C.T.U. for a trade union is \$20 and the standard union subscription in the U.S.A. is \$80 to \$100. It is inescapable, that if the Bar is to operate as a properly remunerated, efficient and businesslike institution, its members will be called upon to pay the modest price involved.

#### THE EDITORS

##### Bayley J. on Counsels' Fees

"It is never expected, it never has been the practice, and in many instances it would be wrong, that counsel should be gratuitously giving up their time and talents without receiving any recompense or reward. It is the recompense and reward which induce men of considerable ability, and certainly of great integrity, and with every qualification which is necessary to adorn the bar, to exert their talents. It is the emolument in the first instance to a certain degree, that induces them to bear the difficulties of their profession, and so wear away their health, which a long attendance at the bar naturally produces; and it is of advantage to the public that they should receive those emoluments which produce integrity and independence; and I know nothing more likely to destroy that independence and integrity than to deprive them of the honorable reward of their labours."

Norris v. Hunt (1819) 1 Chitty 544 at 550-1.

##### A New Approach on Counsels' Fees

##### Supreme Court

The findings and recommendations of the Supreme Court Fees Committee (Fullagar Q.C., L.S. Lazarus, McPhee Q.C. and Black) were reported to separate meetings of Queen's Counsel and of juniors practising in civil juries, civil causes and matrimonial causes. Taking into account the views of those meetings the Bar Council last year recommended standard minimum brief and conference fees in the various jurisdictions. It has since

recommended standard minimum fees for interlocutory and paper work in personal injuries cases. A committee (L.S. Lazarus, J.D. Davies, O'Sullivan, J.D. Phillips, Goldberg and Byrne) is preparing a general guide for interlocutory and paper work in Supreme Court Causes other than jury and matrimonial causes. This guide will include recommendations as to fees to counsel in Masters' chambers, the low level of which has been the subject of recent complaint. Fees in matrimonial causes have been discussed with the Law Institute and a committee (Spence, Asche and Kingston) has made recommendations to the Bar Council which have been the subject of further discussions with the Institute.

#### County Court

Upon receipt of the Bar Council recommendations the County Court Judges granted an interim increase of 40% in brief and conference fees and 30% in some other selected items. Solicitors' costs were increased by 40% on an interim basis. A joint press statement was made by the Chairman of the Bar and the President of the Institute explaining the interim increases. A committee of Judges is conducting an overall review of counsels' fees in the County Court. It is considering all the submissions made by the Bar Council and will recommend the final adjustment to be allowed upon the applications by the Bar for 60% increase and by the Institute for 50%.

In view of the increase of jurisdiction in the County Court since the Bar Council made its recommendations to the Judges last year, the Bar Council has recommended the addition of another scale with a brief fee of \$152 to cover claims over \$8,000.

#### Magistrates' Courts

The Magistrates' Courts Fees Committee (E.W. Gillard, Byrne, Stanley, Meldrum, Keon-Cohen and Duggan with two members of the Bar Council) made its report on counsels' fees upon special complaints early in December 1971. The Bar Council made detailed submissions in support of an increase.

The Bar Council made detailed submissions in support of an increase of 50% in combined brief and conference fees pointing out that these fees had not been increased since 1965 and that in that time average weekly earnings had increased by 57%. The submission analysed the history of counsels' fees in Magistrates Courts, drew attention to increases in the salaries of Magistrates and compared Victorian fees with the fees in comparable courts in other states.

Later in December the Bar and the Law Institute made a joint submission to the Secretary of the Law Department and the Chief Stipendiary Magistrate each seeking a 50% increase in fees and costs. On 17th December McGarvie Q.C. and Mr. I. Maughan of the Institute joined in making submissions to the delegate of the Chief Stipendiary Magistrate in support of the increases.

The Attorney General has now notified the Bar Council that a new scale prescribing higher fees will come into operation upon the commencement of the Magistrates' Courts Act 1971 on or about 1st June 1972.

The following table compares the existing fees to counsel, those recommended by the Bar Council and the new fees.



Item		\$100 & under	Over \$100 to \$200	Over \$200 to \$400	Over \$400 to \$600	Over \$600 to \$10,00
		\$	\$	\$	\$	\$
Settle Documents	Existing			4.50	6.50	8.75
	Recommended	5.00	5.00	7.00	10.00	13.00
	New			6.50	9.50	12.50
Brief	Existing	15.25	17.25	22.00	30.50	34.50
	Recommended	25.00	28.00	35.00	48.00	53.00
	New	21.50	24.50	31.00	43.00	48.50
Conference	Existing	4.75	4.75	4.75	4.75	4.75
	Recommended	5.00	5.00	5.00	5.00	6.00
	New	7.00	7.00	7.00	7.00	7.00

The following table compares the new Victorian fees for combined brief and conference with those fixed in comparable courts in other states at various points.

Amount Claimed	Victoria 1972	Queensland 1971	S.A. 1970	Tasmania 1968
\$	\$	\$	\$	\$
49	21.50	15.60	18.00	12.60
99	21.50	15.60	18.00	29.40
199	31.50	19.00	24.00	33.60
399	38.00	47.00	37.50	37.80
599	50.00	56.70	47.00	52.50
999	55.50	56.70	61.50	52.50

#### Hourly Rates

The recommendations on counsels' fees in each of the above courts relate fees charged to the time spent by counsel on items of work. Each adopts the broad test that the rate for an hour's work should be equal to about one ninth of the brief fee. This is a convenient method for assessing the fees to be charged for special conferences necessary to be held in the preparation of a case, beside the normal conference.

#### Regular Reviews

The Bar Council will recommend that the next annual meeting of the Bar set up a standing committee to circulate members of the Bar annually informing them of changes in factors relevant to adjustments in counsels' fees. The standing committee will be required, at least in each third year to recommend to the Bar Council adjustments to fees in the Supreme, County and Magistrates' Courts.

#### Criminal Cases

Inquiries amongst the clerks have shown that brief fees in criminal cases have increased to a level which corresponds with the fees being charged in the various courts in civil cases.

Public Solicitor

Last year a committee (Ogden Q.C., (now Judge Ogden) J. Lazarus, Kelly, Hampel, McLeod and Cummins) reported on counsels' fees in cases for the Public Solicitor. Acting on the report the Bar Council has made submissions that fees for -

- (1) Committal proceedings or inquests
- (2) County Court
- (3) Supreme Court
- (4) Capital cases
- (5) Queen's Counsel

be paid at 80% of the fees currently charged upon briefs in criminal cases from other solicitors. Submissions were made about the desirability for there being a gaol conference fee, a reading fee in appropriate cases and about circuit fees. On 16th March last the Chairman (Harris Q.C.) and Vice-Chairman (McGarvie Q.C.) spent about two hours conferring with the Secretary of the Law Department, the Public Solicitor and another officer of the Law Department and made recommendations which the Bar Council adopted.

The Bar Council has now been informed by the Attorney-General that as from 1st June 1972 fees on briefs from the Public Solicitor will be marked as follows:

Brief Fees

Pleas \$30 (with first refresher after 2 hours and thereupon after each 5 hours.)

Committal Proceedings on Inquests \$60

County Court \$81-\$102

Supreme Court \$102-\$126

Capital Cases \$126

Queens' Counsel \$200

Most indictable offences are now tried by the County Court. The new scale may be compared with the existing one which was fixed in 1966 by comparing the new County Court range with the former classifications.

<u>Brief Fees</u>	<u>Minimum</u>	<u>Maximum</u>
Small trials	\$30	\$42
Average trials	\$45	\$54
Major trials	\$57	\$69

The new scale may also be compared with the brief fees recommended last year by the Bar Council for civil cases in the County Court above the jurisdiction of Magistrates' Courts. Those recommended brief fees range from \$85 to \$120 and 80% of that range is \$68 to \$102. It has to be borne in mind that there is no fee for the ordinary conference on a brief from the Public Solicitor and also that the Bar Council has now recommended to the Judges a brief fee of \$152 for civil cases in the County Court above \$8,000.

Fees paid by the Public Solicitor will be reviewed in February of each year and appropriate adjustments made.

The Bar Council has decided to make detailed submissions that the whole approach upon pleas for persons represented by the Public Solicitor should be changed and that they should be treated as matters warranting substantial preparation and careful and comprehensive presentation.

#### Prosecution Briefs

Following discussions between the previous Chairman, Vice-Chairman and the State Crown Solicitor fees to counsel on griefs to prosecute or to appear on appeals have been increased by 40%

#### Crown Solicitors

The former Chairman (Kaye Q.C., now the Justice Kaye) and Vice-Chairman (Harris Q.C.) of the Bar Council discussed with the State Crown Solicitor and the Deputy Commonwealth Solicitor the increased fees to counsel in civil cases in the Supreme Court and the County Court.

#### The Prosperity of the Bar

To obtain an indication of the earnings of the Bar the receipts of one of the clerking groups representing about 21% of the practising list in 1971 have been taken as a sample. It is assumed that on the average a barrister's expenses equal at least 20% of his receipts. The net incomes so obtained have been compared with the net incomes shown by the sample of 15% of principal solicitors taken by the Law Institute in 1969. The percentages of principal solicitors and barristers shown by the samples to be earning net incomes in the various ranges compare as follows:

<u>Net Income</u>	<u>Solicitors 1969</u>	<u>Barristers 1971</u>
Under 6,000	10%	24.8%
\$6,000 and under \$8,000	6%	14.8%
\$8,000 and under \$10,000	15%	16.6%
\$10,000 and under \$12,000	16%	7.4%
\$12,000 and under \$14,000	15%	6.7%
\$14,000 and under \$16,000	9%	4.5%
\$16,000 and under \$18,000	8%	4.6%
\$18,000 and under \$20,000	4%	5.5%
Over \$20,000	17%	15.1%
	100%	100%
Under \$8,000	16%	40%
\$8,000 and under \$14,000	46%	31%
\$14,000 and under \$20,000	21%	15%
Over \$20,000	17%	15%
	100%	101%

(Due to rounding off at whole numbers the percentages for barristers total 101%).



In recent newspaper discussion of tax rates the income of \$10,000 has been taken as that of a junior executive and \$20,000 as that of a senior executive. Set out in terms of those incomes the position would be:

<u>Net Income</u>	<u>Solicitors 1969</u>	<u>Barristers 1971</u>
Under \$10,000	31%	56.2%
\$10,000 and under \$20,000	52%	28.7%
\$20,000 and over	17%	15.1%

A recent statement by the A.M.A. indicated that a medical practitioner employed by the Commonwealth Public Service would receive a salary of \$12,000 for working a 37 hour week.

The figures must be treated with reservations. For instance 7% of those included in the Bar sample were not in full time practice during the whole year. For obvious reasons the figures can not be treated as doing more than give a broad and approximate indication of the order of earnings.

#### No-Fault Liability

##### The Arnold Report

The Bar Council was asked by the Chief Secretary to comment on the report known as the Arnold Report. That report was made by a committee set up to consider delays and legal costs in the hearing of personal injury claims arising from motor accidents. Under the chairmanship of the Government Statist it was set up in July 1969 and comprised four representatives of insurance company groups, a former secretary of the Employers Federation and a representative of the R.A.C.V. The Bar Council made extensive comments to the Chief Secretary in which it pointed out that the examination given by the Arnold committee was a superficial one and one made mainly by those connected with insurers. It pointed out that a number of assumptions made in the report were not borne out by experience and offered the co-operation of the Bar in carrying out a detailed study.

##### The Marks Report

In October 1971 the Bar Council requested a committee (Marks Q.C., O'Bryan Q.C., Costigan, Waldron and Nicholson) to investigate schemes for the compensation for motor accident victims without proof of fault. Schemes for this type of legislation have been introduced by legislation in 5 provinces in Canada. In the last two years they have been introduced in 7 states of the U.S.A. and are expected to be considered in another 25 states during 1972. Schemes have also been proposed for New Zealand and the United Kingdom. As a result of prodigious effort and application, particularly by the chairman, Marks Q.C., the Bar Council in February received a report of 126 pages summarizing, analysing and commenting upon existing systems and proposed systems of this type. The report considers the merits and demerits of the various schemes. It emphasizes the danger from the viewpoint of the injured person of the adoption of a shallow solution to the problem of compensation. It points out that while some systems have been adopted primarily to deal with the social problems of the injured person others have been insurance orientated and designed to overcome a crisis in the insurance industry. In some cases those who have welcomed a scheme as a socially desirable reform

have come to realize that in practice the scheme has left injured persons in a much worse position than before. In the preparation of the report Marks Q.C. in January 1972 interviewed members of the bench, the practising profession and officials who were concerned with the New Zealand proposals. Members of the committee have studied the writings of and have corresponded with a member of the leading proponents of no-fault liability throughout the world and have interviewed persons with a particular interest in these schemes in Australia. The report does not seek to provide the answers to the problems raised. It does point out the pitfalls and identify the problems which is a good starting point.

The report has been accepted by the Bar Council and the Council of the Law Institute as a basis for the study of a suitable scheme of no-fault liability for road accident victims to co-exist with the right to sue for damages at common law. The Bar and the Institute jointly recommended to the Government the setting up of a consultative committee, on which both those bodies, the insurance industry, the State Government and the Commonwealth Government will be represented, to investigate and report on the feasibility of such a scheme of no-fault liability. The report of the Marks committee is in the process of being printed and published at the joint expense of the Bar Council and the Law Institute with assistance from the Victoria Law Foundation. On 18th May 1972 the Government announced that the consultative committee is to be set up.

#### Public Relations

A committee (Beach Q.C., Brusey Q.C., Rendit, Hedigan and Buchanan) is investigating the means of improving and maintaining the Bar's relations with the public and will report to the Bar Council.

#### Meetings of the Bar Council

The meetings held by the Bar Council this year with the number present and the time spent are:

3rd February (15) 2 hours 20 minutes; 17th February (13) 2 hours 15 minutes; 2nd March (14) 2 hours; 9th March (13) 5 hours 25 minutes; 15th March (19) 30 minutes; 27th March (8) 10 minutes; 28th March (13) 2 hours 25 minutes; 13th April (15) 5 hours 30 minutes; 27th April (12) 2 hours 30 minutes; 4th May (13) 2 hours 25 minutes; 11th May (12) 2 hours 25 minutes.

#### Volunteers to Serve on Committees

At almost every meeting the Bar Council sets up new committees to do some part of the work of the Bar. With a busy Council there is a tendency to appoint barristers who have shown their willingness and ability to serve. In this way many are unintentionally overlooked. Any member of the Bar who is willing to serve on a Bar Committee is requested to inform the Editors, Victorian Bar News, Room 506 Owen Dixon Chambers and this information will be placed before the Bar Council. Volunteers are asked to state:

Name:

Date of Admission:

Date of signing the Roll of Counsel:

Type of practice:



Any specialist qualification or experience apart from the law (e.g. accountancy, science, business etc.):

Any particular interest within the law:

Any type of committee work preferred:

#### BARRISTERS' CHAMBERS LIMITED

With the continuing increase in the number of those practising at the Bar and the Crown Law Department's approaching vacation of the first floor of Owen Dixon Chambers (now expected to be about the end of May 1972), the planning and financing of conversion of the first floor to chambers has been the principal concern of the directors over the last nine months. Semi-final plans for the design of the whole floor (with several "A" size rooms) have been received and a detailed planning of air-conditioning is about to proceed. The rents announced (\$6.50 (per sq.ft. p.a.) for William Street frontage, \$6.00 for Guest's lane frontage, and \$5.00 for artificially-lit areas) were fixed after a careful balancing of the resources of likely tenants against proper rents (for barristers) for air-conditioned accommodation in the respective areas. It was felt that not all the cost of servicing capital raised for the alterations or of operating the floor should fairly be borne by its tenants. To obtain the Bar's necessary contribution of capital for the project and also for meeting the company's obligation to redeem shares and debentures, the rules as to "share" qualification for future tenancies in the building were revised as announced, and like rules affecting current tenants were made. To assist in paying interest and operational expenses for the first floor and in meeting the steeply rising costs (e.g. cleaning, rates) of operating the company as a whole, the rent for floors 2 to 11 in the building was increased from 1st July 1972 to \$4.00 per sq.ft. p.a.. It was also considered that counsel who had been in Tait Chambers more than a year should contribute to the working capital of the company and, accordingly, the above rules as to tenancies were made applicable to such counsel from 1st July 1972. At the same time, because Tait Chambers was not "paying its way", rents there were increased from that date by 15%. The relative expense for junior counsel of chambers in the first floor in Owen Dixon Chambers was appreciated. It was felt that the last mentioned and other decisions and the granting to them of priority in applications for tenancies elsewhere in the building would considerably assist junior counsel taking rooms on the first floor. The alterations to the floor are expected to take about 8 weeks.

The Board has also given some preliminary consideration to the accommodation position in 1973 and later years.

#### Taxation of Counsel

The report of the Law Council Committee under the Chairmanship of D.L. Mahoney Q.C. "Taxation and the Self-Employed Person" was considered by a committee consisting of Webb Q.C., Brusey Q.C., Dawson Q.C., J.D. Davies and Castan. The comments of the Victorian committee were sent to the Law Council to be used in its representations. The Mahoney Report is tabled in the library in Owen Dixon Chambers.

### Undertakings by Counsel in Personal Injury Claims

Beach Q.C., Barnard and Waldron have been appointed to confer with representatives of the Law Institute and to make recommendations to the Bar Council to overcome difficulties which have arisen from undertakings given by counsel as to payments to be made from the proceeds of settlement of personal injury claims.

### Assistant Treasurer

The Bar Council has appointed Walsh to the new post of assistant to the Honorary Treasurer of the Bar Council.

### Williamstown Courthouse

Radford wrote to the Bar Council drawing attention to the appalling conditions in which the courts sat in the temporary Williamstown courthouse. The Bar Council wrote to the Secretary of the Law Department who replied that a new courthouse was being planned and building would commence as soon as funds became available.

### International Business Law Seminar by Professor Honnold

Members of the Bar are invited to attend a lecture given on 17th July and a seminar conducted on 18th July 1972 in Melbourne by Professor Honnold on legal aspects of international business. The visit of Professor Honnold has been sponsored by the Law Council of Australia with support from the Commonwealth Government. The subject of the lecture and seminar will be "A Uniform Law with regard to International Sales". Professor Honnold of the University of Pennsylvania Law School is a member of the UNICTRAL working committee on that subject.

The time and place of the lecture and seminar will be posted on the notice board in Owen Dixon Chambers.

### Road Safety Committee

A committee (Dawson Q.C., L.S. Lazarus, Murdoch and Smithers) has been appointed to consider aspects of road safety and to report to the Bar Council.

L.S. Lazarus has been appointed a delegate of the Law Council of Australia to the meeting of the Advisory Committee on Road User Performance and Traffic Codes in Melbourne on 22nd and 23rd May 1972.

### The Wine Cupboard

Tolhurst, Dawson Q.C., O'Sullivan, and Crossley constitute the Wine Cupboard Committee which controls, manages, purchases, stores and distributes wine, spirits and beverages on behalf of the Bar.

### Town Planning and Local Government

The Bar Council appointed Gifford Q.C., Goobo Q.C., Neesham, Buckner, Porter and Rowlands to a standing committee for town planning and local government. The Committee reported on delays and expenses occasioned by technical failures to comply



with procedural requirements. The Bar Council has written to the Minister for Local Government recommending that the Town & Country Planning Act be amended to enable the Appeals Tribunal to grant relief from non-compliance with procedural requirements and to hear and determine proceedings notwithstanding procedural defects. A provision along these lines is to be included in the forthcoming amendments to the Act.

#### Reform of the Law of Domicile

A committee (McGarvie Q.C., Asche and Goldberg) on behalf of the Law Council and the Bar Council has considered and reported upon proposals by Mr. Davis of the A.M.U. for reform of the law of domicile. The effect of the report is that no distinction be made between the domicile of origin and the domicile of choice so that the domicile of origin shall not revive after it has been abandoned nor shall it require a higher standard of proof to show that a domicile of origin has been abandoned than to show the abandonment of the domicile of choice. The new domicile must still be found by fact and intention before the old one ceases. A wife should be presumed to acquire the domicile which is her husband's domicile at the time of marriage and to retain that domicile during marriage unless a contrary intention on her part is shown. The domicile of an infant should be that of the person who has legal custody of the infant by judicial order or statutory provision and otherwise the common law position should continue.

#### Law Council Newsletter

After debate the Bar Council decided against discontinuance of the Law Council newsletter. It has been a useful vehicle for the publication of Law Council recommendations on law reform.

#### Rights of Prisoners - Pentridge

The Bar Council has received a number of complaints and submissions about the rights of persons in custody and in particular prisoners in Pentridge.

It decided that the most appropriate course was for the Bar to concentrate on six subjects of complaint which it was in a position to investigate and speak upon with authority. These subjects of complaint are that some accused persons are needlessly refused bail or bail of a reasonable amount pending trial; that some convicted persons likely to be released on probation or a bond are remanded in custody before sentence; that hearings of charges by the visiting Magistrate are inadequate and that unrepresented prisoners are not in a proper position to defend themselves; that there are doubts about the right to appeal from a penalty imposed by a visiting Magistrate; that facilities for interviews between prisoners and their legal advisors are inadequate; and that prisoners entitled to be considered for release on parole lack means of knowing whether their position is being considered or of making submissions to the Parole Board.

The Bar Council has requested a Prisoners' Legal Rights Committee (Whelan Q.C., Mullaly, B. Bourke, E. O'Keefe, G. Hampel and M. Gurvich) to investigate these subjects and report to the Bar Council upon what happens in practice, whether injustices occur and whether changes are necessary to prevent injustice. The committee will invite information and suggestions from members of the Bar and will receive information in confidence from other persons who can provide it.

### Parliamentary Privilege

After considering the recommendations of Stabey Q.C., Beach Q.C. Hulme Q.C. and McPhee Q.C. the Bar Council has supported the report of the N.S.W. Bar that the Commonwealth Parliament pass an Act declaring the powers, privileges and immunities of its houses and committees including a definition of contempt of Parliament; providing for punishment of contempt by a court of law; providing for the circumstances in which a person may refuse to answer a question or produce a document; providing that a person summoned should have a right to the services of his legal adviser; providing for closed hearings when appropriate and protecting individuals from investigation of matters substantially involving their reputation or issues likely to be the subject of civil or criminal proceedings.

The Law Council of Australia has forwarded to the Commonwealth a report supporting the proposals of the Bar of N.S.W.

### Submissions to Committees

All members of the Bar are both entitled and welcome to make written submissions or suggestions to any Bar Committee. Submissions should be sent to the chairman of the committee who is the counsel first named when the members of the committee are set out. The members of the standing committees were set out in a circular to the Bar after the last annual elections. Many of the committees appointed to do a particular item of work for the Bar are mentioned in this issue.

### The Deteriorating Standard of Pleadings

Drastic observations were made in court on Wednesday on the style of pleading now prevalent. The Judge said that "pleadings were drawn, in which the senseless sinuosities of the statement of claim gave rise to redundant denials in the defence, and the result was that there were several pages of printed matter where a few paragraphs would have sufficed."

These comments were not made in the Supreme Court last Wednesday but by the Lord Chief Justice of England, Lord Russell of Killowen, in the Queen's Bench Division on a Wednesday in 1897. (41 Sol. Jo. 249).

### Court Delays

The Bar Council has requested the Bar's representations on the joint standing committee (Harris Q.C. and McGarvie Q.C.) to confer with the representatives of the Law Institute with a view to recommending action to be taken to expedite hearings in the courts and the first of these conferences has been held and there has been a joint deputation to the Chief Justice.

### Letters to the Editors

Victorian Bar News has insufficient space to publish lengthy letters or contributions. It would gladly publish terse letters or contributions containing comment, criticism or suggestion not exceeding 75 words on any topic of interest to the Bar. Letters or contributions should be signed by a member of the Bar and sent to the Editors, Victorian Bar News, Room 506, Owen Dixon Chambers.



#### Welcomes to Judges

The Chairman (Harris Q.C.) has developed an extensive welcoming practice with the appointments of Mr. Justice Stephen (High Court), Mr. Justice Kaye (Supreme Court) Mr. Justice Connor (Supreme Court A.C.T.) Judge Byrne (County Court) Judge Ogden (County Court) and Mr. Justice Woodward (Industrial Court).

#### New Disciplinary Procedures

When the committee set up to redraft and recast Counsel Rules presented its report in 1962 it recommended new procedures with regard to appeals. The Bar Council accepted the report except for the proposed new appeal procedures. It decided that it would for the time being retain the procedures which had existed since 1900 but would investigate an alternative appeal procedure. The new rules retaining the appeal procedures of 1900 came into operation on 21st February 1963. The Bar Council expects to be in a position to recommend to the next annual general meeting of the Bar new appeal procedures to cover any matters arising after the rules are amended. It also intends to give consideration to procedures for the hearing of charges which would be less cumbersome than the present procedures and would operate with fairness in a Bar many times larger than the Bar for which the original procedures were devised.

#### Publication of Lectures on Conduct and Etiquette at the Victorian Bar

Two lectures given by the Chairman of the Ethics Committee, Young Q.C. to new members of the Bar in August 1971 have been printed and made available to all members of the Bar.

#### Proposals for Law Reform

The Law Reform Committee of the Bar would welcome suggestions from members of the Bar as to areas where the law is deficient and requires reform. If any barrister has suggestions or would like to do work in a particular field he should communicate with L.S. Lazarus.

#### Lectures to the Bar

The Lectures Committee (Storey Q.C., Costigan, Charles and Heerey) has arranged a programme of lectures for all members of the Bar but which readers will be required to attend. The subjects dates & lectures are:

1. ETHICS  
J. McI. Young Q.C. 15.5.72
2. ETHICS  
J. McI. Young Q.C. 29.5.72
3. RELATIONS BETWEEN BARRISTERS AND SOLICITORS  
P. Murphy Q.C. 19.6.72
4. PROCEDURE - PRACTICAL ASPECTS OF ORIGINATING AND OTHER PROCESS  
J. M. Batt 24.7.72

5. PROCEDURE - PLEADINGS

D. Dawson Q.C. 7.8.72

6. PROCEDURE - PRACTICAL ASPECTS OF INTERROGATORIES  
ANSWERS TO INTERROGATORIES AND ADVICE  
ON EVIDENCE

J. A. Gobbo Q.C. 21.8.72

7. TRIAL - OPENING, FINAL ADDRESS, MAKING A SUBMISSION

E. D. Lloyd Q.C. 4.9.72

8. TRIAL - EXAMINATION AND CROSS EXAMINATION

N. R. McPhee Q.C. 18.9.72

9. CRIMINAL TRIALS

J. M. Lazarus 2.10.72

Dr. Coppel Returns

At the invitation of the Chairman, Dr. E.G. Coppel C.M.G., Q.C., re-signed the Roll of Counsel retaining the seniority which he had before his name was removed at his own request.

Legal Studies - Secondary Schools

The Victorian Commercial Teachers Association has advised that this year a new subject "Leaving Commercial and Legal Studies" has been introduced into Victorian secondary schools and is being taught in at least 150 schools this year. Any member of the Bar interested may obtain a copy of the syllabus of this course from the Honorary Secretary.

Leo Cussen Institute for Continuing Legal Education

The Act for the incorporation of the Continuing Legal Education Board under the name of the above Institute has now become law. The Board under the Chairmanship of Ogden Q.C. (now Judge Ogden) took attractive premises overlooking the Flagstaff Gardens at 497 La Trobe Street and appointed Mrs. R.A. Balmford as Executive Director. This year it will conduct four full-time three-week pilot courses for graduate articulated clerks in May, August, September and October. The 30 students in each course will devote a week to each of the three subjects, conveyancing practice, litigation practice and company practice.

The objects of the Leo Cussen Institute are to provide continuing education for legal practitioners, to conduct schools and courses of training in the law, to carry out legal studies and research, to communicate legal information to the profession and to promote the efficient practice of the law.

The Institute consists of eight members. Two are to be appointed by each of the Melbourne University, Monash University, the Bar Council and the Law Institute.

Since his appointment to the Bench Judge Ogden has indicated his readiness to continue to serve on the Institute.



### Review of Bar Council Structure

In accordance with the resolution of the last annual general meeting of the Bar, the Bar Council appointed a committee to review the structure of the Bar Council. The members of the committee are: Young Q.C., Marks Q.C., Hedigan, Ormiston, Winneke, Black, Graham, Shore, Gurvich and Walls. Connor Q.C. (now Mr. Justice Connor) was a member until his appointment to the Bench. Subjects being considered by the committee include: the invitation of members of the Bar to volunteer to serve on sub-committees; a review of the Bar Council's organization and method of operation; alternations in representation upon the Bar Council; limits upon the period of service upon the Bar Council; the method of the filling of casual vacancies; whether the Honorary Secretary and Assistant Honorary Secretary should be members of the Bar Council; the membership and operation of sub-committees; and the establishment of a Young Barristers' Committee.

### Doctor of Laws

For the first time for many years a member of the Bar, Spry, has been admitted to the degree of LL.D by the University of Melbourne in recognition for his work on "Equitable Remedies".

### Clerking System

In October 1971 the Bar Council appointed a committee (Jenkinson Q.C., Fullager Q.C., L.S. Lazarus, Costigan and Walsh). to investigate the present clerking system and recommend whether any steps should be taken in connection with it. The position has now been reached where the number of barristers in active practice on each list is Clerk A - 100, Clerk B - 91, Clerk C - 92, Clerk D - 95, and Clerk E - 14. The first four lists are closed or virtually closed to newcomers. Clerk E is prepared to act for any new members of the Bar. The Bar Council has requested the committee as a matter of urgency to investigate short term and long term solutions to the clerking problems. The Bar Council has not yet made any final decisions on these questions.

### Police Powers over Persons in Custody

The Bar Council adopted in principle the report from its Crime Sub-Committee (J.M. Lazarus, Hampel, Kelly and J.H. Phillips) opposing the statutory powers proposed to be conferred on police to search, fingerprint, make medical tests and conduct identification parades in respect of persons in custody. The Vice-Chairman (McGarvie Q.C.) and J.M. Lazarus on 9th May spent about two hours making these submissions to the Statute Law Revision Committee and recommending the retention of the common law position.

### One Hundred Years Ago

In July 1872 the admission of a Victorian solicitor Mr. Allingham to practise as a solicitor in N.S.W. was opposed by the Attorney-General on behalf of the Law Society of N.S.W. The ground was a lack of reciprocity between the states. The Attorney-General said that in Victoria "they have the most stringent rules to prevent attorneys of this court from being admitted. They require residence and other qualifications with which there is no possibility of complying." The Full Court of N.S.W. followed its usual practice and admitted the applicant (3 Australian Jurist 19)

In the same month the Chief Justice of N.S.W. remarked upon the narrow restrictions of the Victorian court in absolutely repressing admission to barristers belonging only to the bar of N.S.W.

A meeting of the Victorian Bar was held at the chambers of the Victorian Attorney-General (J.W. Stephen) on 12th September 1872. The meeting proposed that qualification for admission should be the degree of bachelor of laws and that there should be a requirement of one year's reading. It proposed that a barrister from any other British possession should be admitted in Victoria if that possession gave a reciprocal right to Victorian barristers and maintained a similar standard of qualification.

On the reading proposal the Australian Jurist commented: "The condition which the meeting desired to impose, as to the attendance for at least a year in the chambers of a practising barrister, is an undoubted improvement. No man, however well read, can be competent to practise at the Bar, without a training in the actual transaction of business; and if he has to get it after his admission, he will most likely get it at the expense of his clients and his own reputation". (3 Australian Jurist 43)

#### Long Vacations - Too Long or Not Long Enough?

At the last meeting of the Executive of the Law Council the constituent bodies were asked to give their views whether the present long vacation should be retained or changed.

#### Lands Tribunal Bill

The present bill proposes that arbitration under the Sale of Land Act, Valuation of Land Act hearings and applications respecting restrictive covenants under S. 84 of the Property Law Act be heard by a Tribunal constituted by a Judge who would be placed in status between the Supreme Court and the County Court but would belong to neither court. The Bar Council has recommended that the legislation be recast to confer the whole of this jurisdiction on the Supreme Court. Gobbo Q.C. made these submissions on behalf of the Bar to the Statute Law Revision Committee.

#### Defence of Murder Charges

In October 1971 the Bar Council sent to the Secretary of the Law Department and the Public Solicitor a letter received from three Queen's Counsel. The three silks were approached by one of the Crown Prosecutors during 1970 about the representation being provided in some cases for persons on trial for murder. The letter said that in some cases the Public Solicitor's office had briefed junior and inexperienced counsel in murder trials. It emphasized the difficulty and importance of these cases and the need for experienced counsel. The Public Solicitor in a letter in reply agreed upon the importance of murder charges being defended by experienced counsel, listed the counsel briefed in murder cases since his appointment and advised that on the information before him there was no substance in the suggestion that the defence of persons facing murder charges had been deficient. A letter was also received from the Secretary of the Law Department. The Chief Crown Prosecutor (Bidstrup Q.C.) wrote to the Bar Council advising that he could find no justification for the allegations made by the three Queen's Counsel and the Crown Prosecutor. As it was common ground between all concerned that murder charges should



be defended by experienced counsel the Bar Council adopted the further recommendation of the three silks and the Crown Prosecutor that it take no action other than expressing its appreciation for the letters received.

#### Whelan is here

Whelan Q.C. was elected to fill the vacancy on the Bar Council caused by the appointment of Mr. Justice Kaye.

#### Bar Dinner

This year the toast to the guests of honour was moved by Mr. Junior Silk (McPhee Q.C.) Instead of being seated in order of seniority, seniors, juniors and judges sat together. The guests of Honour were The Honourable Sir Ninian Stephen, The Honourable Mr. Justice Kaye, The Honourable Mr. Justice Connor, The Honourable Mr. Justice Woodward, His Honour Judge Wright, His Honour Judge Byrne, His Honour Judge Ogden and Dr. I.F.C. Spry. There were present two chief justices Sir Garfield Barwick and Sir Henry Winneke and one former chief justice Sir Edmund Herring. It was a night of good speakers, good food, good wine and good company.

#### Reading

A meeting of about 20 masters of readers was held last August to consider the operation of the reading system. A committee (Young Q.C., Storey Q.C., Gobbo Q.C., Berkeley and J.D. Phillips) as appointed to examine the reading system and recommend alterations and improvements. In response to suggestions from the committee the Bar Council has indicated that it is interested to consider whether barristers signing the Roll of Counsel should be required to attend a prescribed course of lectures; whether an applicant should be precluded from accepting a brief until he has signed the Roll and should not be permitted to sign the Roll until he has been in daily attendance in chambers or with his master at court for a month; whether the reading fee should be retained; whether the minimum standing for a master be increased to 7 years and whether a master be required to introduce his pupil to those on his own floor.

#### Organization and Practices of Victorian Bar

A Committee (Aickin Q.C., Storey Q.C., Pannam and Keon-Cohen) is investigating and will report to the Bar Council on factors relevant to a separate Bar and desirable changes to be made in the present organization and practices of the Victorian Bar. Until his appointment to the bench Woodward Q.C., now Mr. Justice Woodward was a member of the committee. Subjects being considered include:

The basis of a separate bar, partnership or group practices, the institution of Queen's Council and the two-thirds rule; representation for accused persons facing imprisonment; and direct dealings by members of the Bar with clients.

#### Justices Act Rule Changes

In October 1971 the Magistrates' Courts Committee and the Bar Council considered the consolidation of the Justices Act Rules. Recommendations were forwarded to the Secretary of the Law Department.

The main submissions made were that the Rules should be redrafted using the format and working of the Supreme Court Rules as far as possible and that the Rules (as distinct from the Act) should not distinguish between the Ordinary and Special Jurisdictions, save only that Interrogatories and Discovery should not be available in the Ordinary Jurisdiction.

#### Counsels' Common Law Right to Cry

"The right of counsel to shed tears before a jury was, says the American Cases and Comment, recently decided by the Supreme Court of Tennessee in the case of Ferguson v. Moon, which was a case for breach of promise and seduction. The Court, speaking through Judge Wilkes, said: "It is next assigned as error that counsel for Plaintiff in his closing argument, in the midst of a very eloquent and impassioned appeal to the jury, shed tears and thus unduly excited the passions and sympathies of the jury in favour of the Plaintiff, and greatly prejudiced them against Defendant. Bearing upon this assignment of error we have been referred to no direct authority and after diligent search we have been able to find none. No cast-iron rule should be laid down. To do so would result that in many cases clients would be deprived of the privilege of being heard at all by counsel. Tears have always been considered legitimate arguments before the jury and we know of no power or jurisdiction in the trial judge to check them. In this case the trial judge was not asked to check the tears, and it was, we think, a very proper occasion for their use, and we cannot reverse for this reason." (1897) 41 Sol. Jo. p. 316

#### Pressmen in Lawyers Seats

The Bar Council wrote to the Chief Stipendiary Magistrate pointing out that in criminal proceedings at the City Court pressmen had been sitting in the solicitors' seats where they could hear everything said between counsel and instructing solicitor. The letter requested that steps be taken to discontinue this practice. The Chief Stipendiary Magistrate replied that steps had been taken to discontinue this practice.

#### Coming Events

Friday 30th June Dining In Night and Bar Revue.

#### History of the Victorian Bar

The Bar today can not be understood without a knowledge of its development and an awareness of past policies and controversies. The recently published (1968) history of the Victorian Bar, A Multitude of Counsellors by Sir Arthur Dean is a valuable history and an entertaining book. A limited number of copies are still available from the Registrar at \$10.50 a copy.

#### Bar Initiatives in Aid of Injured Persons

In the two most significant reforms to benefit injured persons the pioneering work of investigating the problems and formulating the methods of reform were done by committees of this Bar.

It was a Bar committee under the chairmanship of Connor Q.C. (now Mr. Justice Connor) whose report in November 1970 initiated the setting up last year of a fund from insurance premiums for the prompt payment of hospital expenses without ascertainment of fault.



Again it was the Marks Committee, a committee of the Bar, which did the work and gave the lead which resulted in the recent announcement of the proposed committee to investigate the implementation of a feasible system of no-fault liability to supplement the tort system for motor accident cases. The Marks Committee began its investigations at the request of the Bar Council in October 1971. On 28th March 1972 the Bar Council on the recommendation of the Marks Committee decided that if the Government would set up a consultative committee including representatives of the Bar Council and the Law Institute to inquire into and report on its feasibility the Bar Council would in principle support the implementation of a no-fault liability system giving appropriate limited benefits to road accident victims and to operate alongside the present tort system. The Marks Committee's recommendations were adopted by the Council of the Law Institute. On 14th April 1972 a joint letter from the Chairman of the Bar Council and the President of the Institute informed the Attorney-General of these initiatives by the practising profession. On 9th May 1972 the Chairman of the Bar Council (Harris Q.C.) and Marks Q.C. and the President of the Institute (Mr. Cain) and Mr. J. Richards outlined and explained the proposals of the profession to the Attorney-General and the Chief Secretary. On 15th May 1972 the Chief Secretary wrote that the consultative committee would be constituted and on 18th May 1972 he announced it through the press.

It is well that members of the Bar should know that, despite the complete absence of public acknowledgement, these worthwhile reforms have come about primarily as a result of an enormous amount of voluntary work, research and thought by members of the Bar.

#### Counsel on the Roll

The following barristers have signed the Roll of Counsel:

Name	Master	Clerk
PATKIN R.	SEARBY, LATER J. LYONS	A
RUDDLE M.J.	O'BRYAN	A
SCHILLING R.	BALL	C
ZAHARA J.J.	COSTIGAN	A
RICHTER R.	CASTAN	C
COLLINS R. McD.	TOLHURST	D
LINCOLN M.A.	WALKER	C
GIBSON G. MCP.	DAWSON	D
WING P.	DAVIES	C
HAYNE T.M.	J.D. PHILLIPS	D
EVANS R.J.	GOBBO, LATER D. GRAHAM	A
MILTE K.L.	VERNON	C
LEWIS R.A.R.	MCNAB	C
KENNAN J.H.	NATHAN	D
COLEMAN C.K.	(C'WEALTH PARLIAMENTARY COUNSEL)	
MUNRO D.C.	RENDIT	C
MOORE B.J.	BLACKBURN	C
MILLER R.H.	CHARLES	D
MACAULAY B.W.	ENDREY	D
LEWIS J.L.M.	J.D. PHILLIPS	D
HURST K.P.	COONEY	D
GOLVEN G.H.	FOGARTY	D
FLATMAN G.R.	BLACK	D
BARNETT J.H.	BOURKE	D
CAPE R.A.	ASCHE	D
PHIPPS M.B.	J.V. KAUFMAN	D
MILLER I.A.	J. KAUFMAN	B
O'DWYER P.F.	HART	B

Name	Master	Clerk
CARTER P.A.	L. LAZARUS	B
ROSENBAUM M. MISS	McDONALD	C
KENT R.K.	KELLY	D
BACZYNSKI M. MISS	MURDOCH	D
ROBERTSON I.C.	WALDRON	C
BELL D.J.	FRICKE	B
STRIBLING S.	BALL	C
COPPEL E.G.		
McTAGGART B.R.	NIXON	C
SHWARTZ A.	SHER	D
MARTIN W.J.	FORSYTH	D
HOOPER B.M. MRS	PITCHER	D
DANOS T.F.	HAMPEL	D
FOLEY R.W.	BERKELEY	D
MURDOCH P.B.	CHARLES	D
PERKINS D.A.	BLAND	E
CLARKE P.H.	DUNPHY	C
PINZONE S.S.G.	MATTEI	E
BRIGLIA C.R.	DOVE	C
ODERBERG K.J.	GOLDBERG	C
CONSTABLE J.P.	SPENCE	D
A'BECKETT W.	WINNEKE	E
GRAHAM P.R.	(N.S.W. Barrister)	