

Victorian Bar News No.5

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READING AT THE BAR

"Advocacy in even the simplest of cases is a skilled and highly responsible matter, and it is not to the credit of the English Bar that the law accepts as qualified to practise as advocates those who are not, in substance so qualified. Regarded from the client's point of view, the present position is indefensible; and it is from his point of view that the position ought to be considered.

Is not the remedy simple? Why not prohibit practice at the Bar until the completion of twelve months pupillage?"

Megarry, Law and Litigant in England (1962).

In 1872 a General Meeting of the Victorian Bar resolved –

"that qualification for admission should be the degree of bachelor of laws and that there should be a requirement of one year's reading."

The comment of the Australian Jurist on the resolution was:

"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."

The Bar Council has reconsidered the objects and requirements of reading and its new rulings are published in this issue. Reading should give a new barrister basic knowledge and training in professional skills and in the professional standards and ethics of a barrister. There has been a lot of evidence that the reading system in many cases has not been doing this. Disciplinary hearings have been told that the barrister concerned was unaware of the existence of some basic principle applicable to the conduct of barristers. Evidence has been called to show that he was so busy in his own practice during his reading period that he hardly saw his master and learnt practically nothing from him. The amount of work available to very junior barristers has meant that in many cases the only benefit received from reading has been the 6 months' free accommodation in chambers..

It has long been the policy of the Victorian Bar that there should be no economic barrier to prevent the Bar being open to all qualified persons who desire to sign its Roll. A successful career at the Bar should depend wholly on ability. Class or economic position should play no part.

The new rulings mean that in the usual case the period of reading will remain at 6 months, but a reader will not be allowed to sign the Roll or accept briefs until he has completed a period of 2 months attendance in his master's chambers. During the two months he will see at close hand the way in which his master conducts his practice in chambers and in court. The Bar Council policy is in line with what was said by Cox many years ago:

"It is while reading thus in the chambers of one who is himself an Advocate that the Student should attend with him the courts, at the trial of the cases that have come before him in Chambers. There he will witness to practical application of the rules he has learned; he will understand more thoroughly the purpose of the tactics that had been recommended or resolved upon; he will comprehend the meaning of much that appeared obscure, and, having been behind the scenes, he will trace the skill and tact with which the case is conducted, and which are apparent only to those who are acquainted with its difficulties."

The Advocate (1852).

It is recognised that hardship is involved in spending two months without income. To ameliorate this to some extent the reading fee of \$100 will be abolished. Accommodation will still be provided free during reading. If the new system does work a significant improvement in the quality of instruction received by a reader, the value derived during a career at the Bar should more than outweigh the initial financial hardship. It is pertinent to remember that there are few professions which can be entered with less capital than the Victorian Bar.

Readers will continue to be required to attend lectures on the workmanlike conduct of a barrister's practice and upon professional ethics. The new system should mean that commencement of practice at the bar means commencing the pursuit of a profession rather than commencing to learn a profession by trial and error at the expense of clients.

Basically the respect which the Bar has from the community depends upon the competence and honesty with which individual barristers perform their professional work. The new reading system should benefit the new barrister, the Bar as a whole, and the public.

The Editors.

APPOINTMENT OF HONORARY SECRETARY AND HONORARY ASSISTANT SECRETARY

In its report in July 1972 the Committee under the Chairmanship of Young Q.C. which was appointed to review the structure of the Bar Council recommended that neither the Honorary Secretary or the Assistant Honorary Secretary should be members of the Bar Council.

The Bar Council agreed with this recommendation, taking the view that those representing the more junior members of the Bar should be freed from the considerable administrative duties involved in the offices of honorary secretary and assistant honorary secretary so as fully to represent the younger barristers.

The Bar Council called for volunteers from these positions and from the volunteers on 8th March 1973 made the following appointments. Honorary Secretary: Hartley R. Hanson, who was admitted in 1966, signed the Roll of Counsel in 1967, read with Dawson (Q.C.) and has his chambers in Owen Dixon Chambers.

The Assistant Honorary Secretary: Maurice Beaumont Phipps who was admitted in 1971, signed the Roll of Counsel in 1972, read with John V. Kaufman, and has his chambers in Tait Chambers.

The Bar Council expressed its appreciation to Heerey and Chernov for their services as Honorary Secretary and Honorary Assistant Secretary.

THE CHANGING BAR

In the eighteen months since the Annual General Meeting in September 1971 the Victorian Bar has planned, introduced and brought into operation changes without precedent in its history.

In a number of areas of law reform the Bar has been in a leading position. It was the primary initiative and work of the Bar Committee under Marks Q.C. which led the Victorian Government to set up the committee to recommend a practical system of no fault liability compensation. As a result Victoria seems likely to lead Australia in the introduction of no fault liability compensation for victims of motor accidents. This will greatly improve the position of the injured person. Members of this Bar played a leading part in the comprehensive report by the committee of the Australian Law Council on "Fair Consumer Credit Laws" which is likely to have a strong influence on extensive legislative reforms in Australia. The Whelan Committee set up by the Bar has considered submissions and made basic investigations and recommendations into important aspects of prisoners' legal rights which have been neglected by law reformers for half a century and more. This Bar has appointed Asche Q.C. to represent it on the Law Council Committee to recommend appropriate new rules for matrimonial causes. The Bar Council has been represented by

Lazarus Q.C. on the Advisory Committee on Road User Performance of Traffic Codes.

Conscious of the need and the social utility of a voluntary scheme such as the Fitzroy Legal Service the Bar Council has brought into operation a set of rules which enable barristers to participate fully in these schemes. The rules are published in this issue.

The Bar Council passed onto the authorities criticisms made by three silks at the request of a crown prosecutor in relation to the representation of poor persons in murder trials. Everyone agrees that these persons are now being adequately represented and defended.

When money was needed to finance the legal representation for prisoners involved in the inquiry before Jenkinson Q.C. almost half of the members of the Bar made voluntary contributions amounting to \$3544.

In November the Bar Council adopted the policy that each clerking group should have a clerking committee to supervise the clerk. Most of the groups now have a committee and soon all will. The new rules introduce a limit of 75 barristers in each clerking group. For the first time in a period free of crisis the Bar Council, acting in the interests of those to come to the Bar in future, has established a new clerking group with Mr. Muir as clerk.

The Bar Council took a new step in calling for volunteers to serve on Bar committees and has since been making appointments from the many volunteers. Volunteers were also called for the position of honorary secretary and honorary assistant secretary and two junior men have been appointed from the volunteers.

The rules have been changed to enable disciplinary charges to be heard by consent by the Ethics Committee thus avoiding the previous cumbersome procedure where all charges had to be heard by the Bar Council. New appeal procedures giving the appellant optional methods of appeal have been adopted.

Old restrictions which precluded counsel from giving their views on public issues in public lectures, addresses and broadcasts were extensively modified on 8th November, 1972.

The rules governing reading are to be changed to ensure that new members of the Bar spend at least two months in the company of their masters learning to be barristers.

The representation on the Bar Council of counsel of not more than 6 years' standing has been increased by one and the two other representatives of this group who were previously the honorary secretary and the honorary assistant secretary have been freed of those administrative duties which limited their other Bar Council activities. This year a vigorous Young Barristers' Committee has commenced to operate and is likely to greatly improve communication between the more junior barristers and the Bar Council. A committee on the organisation and methods of operation of the Bar Council is considering methods of improving the committee work of the Bar Council; the appointment of a full time administrative secretary; the establishment of an administrative secretariat and the reduction of the workload at present borne by Chairmen of the Bar Council.

Over the last 18 months the Bar Council has for the first time taken responsibility for maintaining the level of counsels' fees in this rapidly changing economy. It restored fees to a reasonable level from their previously depressed position.

This period has been notable for the good relations between the Law Institute and the Bar. The chairman and vice chairman of the Bar Council frequently meet the president and chairman of the Law Institute to iron out mutual problems and to arrange joint action. Joint committees between the two bodies have operated with success on no fault liability, fees and costs, County Court practice and procedure and compulsory blood alcohol tests.

Toffler points out that in the modern world change and an accelerating rate of change are becoming permanent conditions of life. The Bar is no exception. The basic nature of the services provided by the Bar do not change. It exists to provide representation before courts and tribunals and advice to clients upon the instructions of solicitors. But if it is to maintain its essential strengths it must have the readiness and foresight

to make the changes necessary to ensure that its organisation, the services it provides and the law which it assists to administer, all satisfactorily meet the needs of the modern community.

An enormous amount remains to be done; but good progress has been made.

PARTICIPATION BY BARRISTERS IN CITIZENS' LEGAL SERVICES

Following a meeting in December 1972 the Fitzroy Legal Service commenced to operate in premises provided by the City of Fitzroy. Included amongst those who took the initiative for the establishment of this service, were Mr. P. Hollingworth of the Brotherhood of St. Laurence, Mr. John Finlayson the Fitzroy Council Youth Worker, members of the Junior Bar and Solicitors. Amongst the members of the Bar who have been at the forefront in initiating this scheme and in providing extensive voluntary assistance themselves are Faris, Kennan, Eames, Lawrence and Richter.

Two very well attended public meetings were held in order to get the scheme off the ground. Application has been made at the suggestion of the Commonwealth for Federal financial assistance and if this is forthcoming the organizers hope to provide the scheme with a permanent paid organizer.

At present the organization of the scheme is somewhat fluid. Members of the Bar, solicitors and social workers make their services available on the evenings upon which the scheme operates. There is at least one lawyer (either barrister or solicitor) present each evening. This is achieved upon a type of roster system. The numbers are such that, without help from the Bar, it would not be possible to provide sufficient lawyers to continue the scheme in its present form. Over 50 members of the junior Bar have already indicated their willingness to participate in the scheme. They represent a fair cross-section of the junior Bar.

A great deal of the work done involves sorting out problems many of which turn out not to be legal. If a particular problem can, in the view of the lawyer present, be handled by the statutory Legal Aid Scheme or by the Public Solicitor, the person concerned is referred there. Barristers are briefed in some cases, they act

without fee and the backsheet of one of the solicitors taking part in the scheme is always delivered.

Those concerned with the scheme are feeling their way somewhat at the moment, but the number of persons seeking aid is substantial and indicates that the scheme is answering a real community need.

The Bar Council adopted a recommendation of the Ethics Committee and made the following ruling on 8th March 1973.

"Rules for the participation of counsel in Legal Aid Schemes other than under the Legal Aid Act 1969.

1. For the purpose of these rules "a centre" means any place (other than chambers) where legal advice is habitually given without fee or for a nominal fee and "legal aid scheme" means a scheme under which a centre is conducted provided however, that nothing in these rules shall apply to the scheme for providing legal assistance established pursuant to the Legal Aid Act 1969.
2. A barrister may participate in the legal aid scheme by providing his services without fee but remains bound by the etiquette of the Bar. He must not act in such a way as to give rise to any suspicion that he is giving his services in order to obtain introductions to solicitors or for financial gain.
3. A barrister may attend a centre in the presence or absence of a solicitor or solicitor's clerk and may without fee interview a lay client without the presence of an instructing solicitor or a solicitor's clerk.
4. A barrister may act in proceedings as counsel for a lay client whom he has himself advised at a centre, but only if: (i) he is instructed by a solicitor (who may be a solicitor working at the same centre); and (ii) he himself acts without a fee.
5. A barrister may act in proceedings as counsel for a lay client, with or without fee, who is participating in a legal aid scheme and whom the barrister has not himself advised at a centre provided he is instructed by a solicitor who may be a solicitor attending the same centre. A barrister must in no circumstances accept a fee direct from the lay client.

6. Unless and until instructed by a solicitor a barrister must interview clients participating in a legal aid scheme only at a centre and must not represent himself to be more than a legal adviser at the centre concerned.

7. A barrister may draft letters on behalf of clients participating in a legal aid scheme for signature by them or on behalf of the legal aid scheme and, in the latter case, may sign such letters in the name of an on behalf of the legal aid scheme.

8. A barrister may not negotiate orally with third parties with the object of arranging a settlement with a client participating in a legal aid scheme save where he is acting as counsel for such client.

9. A barrister may allow his name to be included on a list of barristers willing to advise at a centre or to act as counsel without fee pursuant to instructions given by a solicitor participating in a legal aid scheme.

10. A barrister may show to a client participating in a legal aid scheme a list of solicitors participating in the same scheme provided that the client is left to choose his solicitor from those on the list who deal with the type of work in question.

11. A barrister must not participate in a legal aid scheme unless there is in charge of the scheme a responsible person other than a barrister or a group of responsible persons which includes persons other than barristers.

12. A non-practising barrister may advise at a centre but must not represent clients in the event of litigation."

THE YOUNG BARRISTERS' COMMITTEE

The Young Barristers' Committee was established by the Bar Council pursuant to the recommendations of a committee appointed following the annual general meeting of the Bar in September 1971, to review the structure of the Bar Council. This committee in its report of the 17th July 1972, recommended that the Young Barristers' Committee be established "with a view chiefly to improving communications between the Bar Council and the junior Bar and to increase the involvement of the junior Bar in the affairs of the Bar and of the Bar Council". The members elected to

the Committee by their fellow members of the Bar under 6 years' call are Phillip Mandie, George Beaumont, Bob Johnston, Tony Radford, Richard Read and Graeme Anderson. Alex Chernov, Peter Heerey and Chester Keon-Cohen, as members of the Bar Council representing those under 6 years' call were appointed to this Committee and Dick McGarvie Q.C. as vice-chairman of the Bar Council was appointed Chairman.

The Committee's first meeting was held on the 12th February 1973. Phillip Mandie was elected vice-chairman and Graeme Anderson was elected secretary. At the first meeting the committee considered possible subjects for consideration and resolved that a forum of junior barristers should be held. The forum was held in the Bar Common Room on the 14th March, and was well attended by more than 50 vocal and enthusiastic junior barristers. Many of those present voiced their ideas on what the committee should be considering. Topics such as delays in the Magistrates' Courts increases in the number of Stipendiary Magistrates, the extension of the legal aid system in Magistrates' Courts in criminal cases, contributions to Barristers' Chambers Limited, improvements in the reading system and methods of improving communications between junior members of the Bar and the Bar Council were considered.

Following this forum the Young Barristers' Committee met on the 15th March and considered the suggestions raised at the forum. It was decided that another forum would be held in the near future but this time there will be an agenda of items for discussion. It has been decided by the Young Barristers' Committee that each member of the committee is at liberty to disclose the proceedings, considerations and discussions of the committee, except proceedings, considerations and discussions where the committee decides that the members of the committee shall not have this privilege in any particular case as the circumstances require. At each meeting of the Young Barristers' Committee a report is given by the Chairman outlining the previous Bar Council meeting and members of the Young Barristers' Committee will be provided with a copy of this report excluding

ethics or other confidential matters. The committee will be at liberty to disclose to any interested member of the Bar, precisely what the Bar Council is considering or has done. It is hoped that in this way that the committee will be able to provide a better communications link with the junior Bar.

The committee will be seeking the help and support of interested members of the junior Bar in the various projects that the committee will be undertaking. One matter of particular interest to those junior members of the Bar practicing in the Magistrates' Court, is that the Young Barristers' Committee has recommended to the Bar Council the Law Institute and the Bar Council to set up a joint standing committee on Magistrates' Courts. This committee will initially be particularly concerned with the delays in the Magistrates' Courts and the Young Barristers' Committee has recommended that 3 of its members be appointed to that joint committee.

The Young Barristers' Committee will be considering the desirability or otherwise of robing and the members of the committee would be most interested to hear the views of members of the Bar on this subject. It is anticipated that this will be a subject on the agenda for discussion at a future forum of young barristers. The Young Barristers' Committee meets every other Thursday and the committee would be grateful if any members of the Bar wishing to raise any subject for discussion at the committee meetings, would forward their suggestions in writing to one of the members of the committee prior to these meetings. It is hoped that any members of the junior Bar who have any particular queries will contact one of the members of their committee who will be only too happy to pass on their problem to the committee.

Richard M. Read,
Young Barristers' Committee.

THE TESTAMENTARY MEDICINE

This was an application for probate of the Will of James Coughlin deceased, "Hodges J. in the course of his Judgment said that what he had to determine was whether at the time the will was made, the testator was of

sound testamentary capacity . . . The evidence (of Dr. Black) was that,

"on the day before the will was made, assuming it was made on the 1st February, this doctor found the deceased in bed suffering from acute and chronic alcoholism, and gave him an injection of strychnine. Then the doctor ordered him to be given eight tablespoonfuls of whisky a day with his food, and as much beer was prescribed as those attending him thought fit to give him, with the direction that this allowance was to be cut down, while port wine was allowed without limit; and that was the prescription for a man who was 80 years old. The fact that he suggested that a clergyman should be sent for strongly indicated that, in the doctor's opinion, there was very little to be hoped for in the attempt to galvanise the old man into life. Then it appeared that the clergyman who came could get nothing reasonable out of him, and did not think him fit to receive the sacrament, but advised those in attendance to reduce the amount of alcohol, though so far as His Honour could see, that had not been done. His Honour had felt that the executor's case was hopeless, even before evidence for the will had closed, and now he had not the slightest doubt that he must decide against the will." The Court refused the application and ordered costs of all parties against the executor.

Re: Coughlin deceased 1904 10 Argus Law Reports (C.N.) 57).

THE BAR DINNER

The Bar Dinner is to be held on Saturday the 5th May 1973. Following the practice of last year the toasts to the guests of honour will be proposed by "Mr. Junior Silk" Berkley Q.C.

BARRISTERS' CLERKS

The establishment of the new list of Mr. H.D. Muir has occupied a great proportion of the time of the Bar Council. A number of special meetings were held and members of the recruiting sub-committee undertook the thankless task of approaching personally each member of the Bar of more than approximately 4 years

standing.

Mr. Muir commenced as clerk on 1st March 1973 acting for 5 silks and 33 juniors, a total of 38. Included in the initial list were seven members of the Bar Council. Since 1st March the number for whom he acts has risen to 46.

As from 1st March 1973 the previous designations of the clerking groups A, B, C, D and E were discontinued and instead the first letter of each clerk's surname is used. The necessary modifications to signs in chambers are being made at the expense of the Bar.

For the information of members of the Bar the members of the clerking committees established by the clerking groups are set out below.

(C) Calnin, Webb Q.C., Whelan Q.C., Douglas, Evans, Gray, Murphy, and Wikrama.

(D) Dever, Beach, Q.C., McPhee, Q.C., Barnard, Waldron and Keon-Cohen.

(F) Foley, Gobbo Q.C., Storey Q.C., Emery, Tinney, Gurvich and Lowenstein.

(H) Hyland, Keely Q.C. Thomson Q.C., Dalton, Robinson and O'Dwyer.

(M) Muir, (interim) Marks Q.C., Dowling and Castan.

(S) Spurr, Paterson, Q.C., Jenkinson Q.C., Kelly, Crossley, Hansen, Beaumont, Archibald, and Barnett.

BAR COUNCIL STATEMENT ON CLERKING (24/11/72)

Members of the Bar will be aware that the question of clerking arrangements at the Bar has been under active review by the Bar Council for several months. Whilst the Council recognizes that changing circumstances may require modification of any proposed course with respect to Clerking, the Bar Council wishes to inform members of the Bar of the following statement of present policy on Clerking which has been adopted by the Council:

1. The Bar Council is of the opinion that henceforth there should be at least six viable clerking lists and will support the establishment of a new clerk or clerks to achieve that situation.
2. The desirable maximum number of counsel in active practice for whom any clerk should act is 75.
3. No counsel should be compelled to change his clerk.

4. Until the 1st September 1973, Messrs. Dever, Foley, Hyland and Spurr may not act for any counsel not presently on their lists.

5. Until the 1st September 1973, any person signing the Roll may engage either Calnin or Muir as his clerk and no other.

6. As from the 1st September 1973, each of Messrs. Dever, Foley, Hyland and Spurr (at such times as he acts for more than 75 counsel in active practice) may commence to act for additional counsel as follows:

(a) as from the 1st September 1973, if in any year commencing 1st September more than 5 counsel in active practice leave any such list, such counsel may in that or the next following year be replaced at the rate of one for every two so leaving;

(b) in any other case, each such clerk may act for two additional counsel in active practice in each year commencing 1st September.

7. No counsel may (except with the permission of the Bar Council) change his clerk so as to engage Messrs. Dever, Foley, Hyland or Spurr at any time when 75 or more counsel in active practice employ such clerk.

8. A Bar Clerking Committee will be appointed to administer the Bar Council's policy and to report to the Bar Council on the operation of the clerking system.

9. The attached plan for supervision of the clerks by clerking committees will be implemented.

10. As from the 1st January 1973, the name or style under which any clerk may act should be the name or style for the time being approved by the Bar Council.

11. Without affecting any approval already given, the Bar Council will not in future give approval to any persons to act as clerks in partnership.

12. As from the 1st March 1973, the present use of the letters A, B, C, D. and E as short designations of the clerks should be discontinued, and in lieu thereof the first letter of each clerk's surname should be used.

SUPERVISION OF CLERKS THROUGH CLERKING COMMITTEES

A. Clerking Committees for each clerk will be elected at least once a year by those employing such clerk.

- B. (a) Each Clerking Committee shall where practicable be composed of two silks and four juniors, two of such juniors to be chosen by and selected from the barristers on the list called under seven years. The remaining two juniors shall be selected from the barristers called seven years or upwards.
- (b) One silk, one junior representing barristers called under seven years and one junior representing barristers called seven years or upwards are to retire each year and will not be eligible for re-election in that year. The barrister in each category to retire each year shall be the one with the longest current service on the committee or in the event of an equality of current service the barrister chosen by the committee. No barrister who has been a member of the committee for two consecutive years shall be eligible for election in the following year.
- (c) The chairman of the committee shall be the silk with the longer period of current service on the committee and the secretary of the committee shall be the barrister with the shorter period of current service on the committee of those representing barristers called under seven years. In the event of an equality of current service the committee shall choose its chairman or secretary as the case may be.
- (d) Unless both silks on the Committee are members of the Bar Council, the chairman of the Clerking Committee shall not be a member of the Bar Council.
- C. To enable the Bar Council to maintain and assist the effective operation of the clerking system, the Bar Council may from time to time require any clerking committee to inform it as to:
- the number and identity of Counsel on a clerk's list;
 - any of such counsel who are temporarily absent from practice or who are not in full-time active private practice (e.g. Crown Prosecutors, academics, etc.);
 - clerking services or methods provided or maintained by clerk;
 - any other matter of common concern to the clerking committee and the Bar Council.
- D. Where as a result of information provided to it by clerking committees and any reports made thereon by the Bar Clerking Commit-

tee the Bar Council considers that any modification or amendment in the operation of the clerking system or of any clerking group is desirable the Bar Council will as far as practicable (but without affecting its power to deal directly with the clerks) co-operate with the clerking committees to effect such modification or amendment.

NO-FAULT LIABILITY

Victoria

In 1972 with the assistance of a grant from the Victoria Law Foundation the Victorian Bar Council and the Law Institute of Victoria jointly published the study on the issues concerning compensation of road accident victims, "No-Fault Liability". Then the Victorian Government set up a consultative committee to make recommendations to it upon a practical scheme to provide compensation for victims of motor accidents without regard to fault.

The representatives of the Victorian legal profession Marks Q.C. and Mr. John Richards took a very active part in the deliberations of that committee and in the formulation of its recommendations. The Committee has now made its recommendations to the Government and a Bill is being prepared for introduction to the Victorian Parliament. It is understood that the scheme will provide a system for the compensation of road accident victims against loss of earnings and medical and the like expenses which will operate as ancillary to the existing system of compensation based on tort liability.

NATIONAL COMPENSATION SCHEME - COMMONWEALTH COMMITTEE OF INQUIRY

A committee consisting of Mr. Justice Woodhouse of the Supreme Court of New Zealand Professor Atiyah, Dean of the Faculty of Law at the Australian National University and Mr. Justice Meares of the Supreme Court of New South Wales and Chairman of the New South Wales Law Reform Commission have been appointed to make recommendations on a scheme of national compensation.

The terms of reference of the Committee are:

"To enquire into and report on the scope and form of, and the manner of instituting and

administering, a National Rehabilitation and Compensation Scheme appropriate to Australia, and which in principle the Australian Government has decided to establish, for the purpose of rehabilitating and compensating every person who at any time or in any place suffers a personal injury (including pre-natal injury) and whether the injury be sustained on the road, at work, in the home, in the school or elsewhere or is an industrial disease with particular reference to:

- (a) the circumstances in which an injury should be covered;
- (b) the application of the scheme where death results from the injury;
- (c) the nature and extent of the benefits that should be provided;
- (d) how the scheme should be financed;
- (e) the relationship between benefits under the scheme and other social service benefits;
- (f) whether rights under the scheme should be in substitution for all or any rights now existing;
- (g) the encouragement of precautions against accident;
- (h) the provision of rehabilitation facilities; and
- (i) the manner of administering the scheme.

In a joint letter to the Minister for Social Security (Mr. Hayden) the Chairman of the Bar Council (W.O. Harris Q.C.) and the President of the Law Institute (Mr. John Cain) said that the legal profession in Victoria desired to give the committee such assistance as it could in its enquiries. The letter drew attention to the initiative which had been taken in Victoria by the legal profession concerning compensation to road accident victims. It stressed that the legal profession from their day to day experience had practical knowledge of the difficulties involved in compensating injured persons, and pointed out that there is no organised group to represent the inchoate mass of potentially injured persons. The letter drew attention to the aspect which is stressed in "No-Fault Liability", that schemes for compensation which have been introduced overseas have resulted in injured persons receiving totally inadequate compensation for the serious disabilities which they bear. The Minister replied expressing his thanks for the offer of assistance and stating that the proposed scheme was now the responsibility of the Commonwealth

Attorney-General (Senator Murphy Q.C.) and the profession would receive a reply from him upon the matters raised.

Marks Q.C. has been asked to provide information to the committee and has agreed to do so.

FEES FOR LEGAL REPRESENTATION AT THE JENKINSON INQUIRY

In July 1972 and again later in this year an appeal was made to members of the Bar by L. Lazarus Q.C., J. Lazarus and Dowling asking for contributions from members of the Bar for the purpose of defraying the fees of counsel to be instructed on behalf of prisoners involved in the Inquiry being conducted by Jenkinson Q.C.

As a result some 225 members of the Bar contributed a total of \$3,544. Through solicitors appointed by the Law Institute and paid out of funds prescribed by solicitors D. Ross was briefed and appeared in the Inquiry for various prisoners. This representation provided valuable assistance to those prisoners and also to the conduct of the Inquiry as a whole.

CLERKING AT THE ENGLISH BAR (Extract from "The Sunday Times" 4/2/73)

A critical shortage of space in London's four inns of court is causing some anxiety. There has been a huge increase in legal work and the Bar will certainly have to expand — yet there is limited room for more chambers.

A notice on the subject has been posted in the Inner Temple, Middle Temple, Gray's Inn and Lincoln's Inn. In it, the outgoing treasurer of the Middle Temple, Lord Salmon, emphasises a most difficult and important side issue — finding enough of that indispensable legal species, the barrister's clerk. Salmon suggests starting a list of junior clerks ripe for senior posts.

The senior clerks run chambers. Combine the qualities of theatrical agent, business manager, accountant and trainer and you have the inner anatomy of a barrister's senior clerk.

Cyril Batchelor, in our picture, chairman of the Barristers' Clerks' Association, started in the Temple at 16 and got five bob a week making tea, humping law books and answering the phone. As senior clerk of a flourishing set of Common Law chambers he now administers the professional lives of six Queen's Counsel, 13 juniors and seven pupils. He negotiates their fees,

organises their timetables, bookkeeping and secretarial work, chases up solicitors for money and acts as unofficial nursemaid.

"Good judgment and an understanding of human nature are the most important requirements," says Batchelor, an ex-Intelligence officer of 52.

A clerk is always addressed by his first name, but never calls barristers anything except "Mr" or "Sir". Many adopt the Bar's uniform of black jacket, striped trousers and gold watch-chain, occasionally looking so grand they get mistaken for Head of Chambers.

Recently the president of the BCA urged junior clerks to dress smartly and try to emulate their principal's diction. ("Many of us were born Cockneys, but it's not necessary to thrust this fact down everybody's ears.")

No barrister can practise without a clerk, and as an incentive, the clerk generally shares financially in the chamber's prosperity. Before decimalisation they received as of right the "clerk's fee" (approximately 5 per cent) and often the "shillings on the guineas" from each brief. Today each chambers has its own arrangements. Some Clerks take a straight 10 per cent of gross receipts or a salary plus a smaller percentage, others receive 15 per cent but have to pay junior clerks, typists and cleaners.

Most clerks earn between \$5,000 and \$10,000, probably more in busy commercial, tax or patent chambers. One veteran is rumoured in the Temple to take home \$25,000.

A BIRD IN THE HAND

A Barrister has just been summoned before the Benchers of his Inn charged with the serious offence of accepting a fee of half-a-guinea when his brief was marked with a guinea. The offender was severely reprimanded and informed that he had departed from "the best traditions of the bar." He respectfully urged that he had imagined that he was following "the best traditions of the Bar," inasmuch as he had taken all he could get. So struck were the Benchers, either with the force of this observation, or the forensic ability displayed by the cuprit in his own defence, that they let him off without further remark. — *Home News*, 1888.

(*Australian Law Times* 4/8/1888 p.22)

NEW DIRECTOR — BARRISTERS' CHAMBERS LTD.

Webb Q.C. has resigned as a Director of Barristers' Chambers Ltd. and Forsyth has been appointed by the Bar Council in his place. The Directors now are Sir James Tait Q.C. (Chairman) W.O. Harris Q.C., McGarvie Q.C., Hulme Q.C. Batt and Forsyth.

HEALTH ACT S.291

Last year the Government introduced a Bill to amend the Health Act by repealing S.291 (the "reasonable precautions" defence). At the request of the Bar Council and the Law Institute, the Government referred the matter to the Statute Law Revision Committee so that interested bodies including the Bar Council could make representations.

COUNSEL APPEARING BEFORE MUNICIPAL COUNCILS

At the recommendation of the Ethics Committee the Bar Council has requested the Town Planning and Local Government Committee to provide the Ethics Committee with:

- "(a) a comprehensive report as to the circumstances in which Counsel is usually briefed to attend a meeting of a municipal council to advise the council and the course which is usually followed at the meetings;
- (b) instances of embarrassment which have or are likely to arise in such cases; and
- (c) a recommendation as to whether Counsel should be permitted to accept such briefs and if so whether any conditions should be imposed on such acceptance."

CONSOLIDATION OF COUNSEL RULES

Following the recent substantial amendments of Counsel Rules the Chairman (W.O. Harris Q.C.) has commenced the steps necessary to have them consolidated and re-issued. The Vice-Chairman (McGarvie Q.C.) has indicated to the Bar Council that some amendments of a machinery nature are necessary.

When these amendments are prepared and put to a general meeting of the Bar the rules will be reprinted.

LAW COUNCIL OF AUSTRALIA

The Executive of the Law Council met in Melbourne on 16th and 17th March 1973. Its business included:

Public Inquiry on Fees and Costs.

There is to be a public inquiry in Canberra to be held by the judges of the Supreme Court of the A.C.T., respecting an application by the Law Society of the A.C.T. for an increase in costs in litigious matters. The Executive decided to support the Law Society in the presentation of its application.

Perth Convention July 1973

The programme for the 17th Australian Legal Convention, to be held in Perth between the 4th and 10th July 1973, was discussed. The theme of the Convention is "The Profession under Assault". There will be a Plenary Session called "Friday Conference" at which the Moderator will be Professor E. K. Braybrooke, Foundation Professor of Legal Studies at the La Trobe University. There is a strong panel, which includes Mr. T. Molomby from Victoria.

It is also expected that there will be a "Monday Conference" T.V. programme based on the "Friday Conference", at which Roger Moore will be the Moderator and the Panel will be some of the seven from the "Friday Conference" panel.

Paper writers and discussion leaders from the Victorian Bar are The Hon. H. Storey, Q.C., I.D. Douglas and N.H.M. Forsyth. The Chairman will take the chair at one of the "Workshop" sessions.

The Governor-General will open the Convention. The official Convention visitors will be Lord Widgery, Lord Chief Justice of England and Judge Alfred Murrah, Director of the U.S. Judicial Centre. Other guests will include a Singapore judge, a Japanese judge, an Irish judge, Lord Roskill, Mr. R. W. Meserve, President of the American Bar Association and Mr. Tong, President of the Law Society of New Zealand.

After the Convention, Lord and Lady Widgery will be in Melbourne from the 13th to 16th July, 1973.

FEES ON BRIEFS FROM PUBLIC SOLICITOR

It was agreed last year that the fees on briefs from the Public Solicitor would be reviewed and adjusted annually.

A Committee consisting of J. Lazarus (Chairman) Hampel, Cummins, C. McLeod and Hart has made a report to the Bar Council upon desirable adjustments to Public Solicitors' fees.

The report has been adopted by the Bar Council and negotiations with the relevant authorities will commence shortly.

TRAPS IN PRIVATE STREET CONSTRUCTION

A memorandum to the Bar Council from Heerey was referred to the Town Planning and Local Government Committee (Gifford Q.C. (Chairman), Porter (Convenor), Gobbo Q.C., and Rowlands).

The Committee reported that a great number of objectors to private street construction schemes must have been denied the opportunity of the court hearing their objections because of formal defects in their notices. The Committee endorsed Heerey's proposals that clearer warning should be set out on the notice to owners and that the Court should be empowered to amend a notice of objection. The Committee also recommended that the Local Government Act should be amended to provide that a municipality is not entitled to recover costs of street construction from owners who have not been given their statutory notice informing them of their right to object.

The Bar Council took the view that on this issue it was desirable that the Bar and the Law Institute should act jointly. It has requested the Law Institute to join with it in setting up a committee to consider the matters raised by the Town Planning and Local Government Committee in its report and it nominated Heerey and Porter to represent the Bar on the joint committee.

RELIEF TO MASTERS

The Bar Council has decided that no subscriptions to the Bar should be required from Masters of the Supreme Court. Masters are now placed in the same position in this respect as Judges.

FAIR CONSUMER CREDIT LAWS

The Report of the Committee of the Law Council of Australia

The Committee consisted of Mr. T. Molomby (Chairman) Solicitor; Miss R. M. Armstrong,

Parliamentary Counsel; Mr. S. W. Begg, Solicitor; Mr. J. L. Swyer, Barrister; Mr. R. E. McGarvie, Barrister; Mr. A. J. Myers, Tutor in Law, University of Melbourne; The Hon. H. Storey, Q.C., M.L.C., Barrister; Prof. E. I. Sykes, Professor of Public Law, University of Melbourne; and Mr. J. Walter, Solicitor)

On "Fair Consumer Credit Laws" was the main subject of discussion and analysis in a Seminar organized by the Australian Finance Conference in conjunction with the Faculty of Law, Monash University in Melbourne on 23rd - 25th March 1973. The Report which has become known as "The Molomby Report" has been reprinted and was distributed to 248 persons who attended the Seminar.

Experts on Consumer Credit Law from the United Kingdom and the United States took part in the Seminar. Consumer Credit Reform has become a live issue in Australia and all Australian Attorneys-General's Department of each State sent representatives to the Seminar. A number of the Committee's reforms were enacted in legislation passed in South Australia in late 1972. The members of the Law Council Committee took part in the Seminar.

In the interests of achieving uniformity the Seminar invited the Standing Committee of Attorneys-General meeting during the subsequent week to appoint a working committee of parliamentary counsel together with representatives of interested groups including the Molomby Committee to draft model Bills on consumer credit.

A LEGISLATIVE CURIOSITY

A curiosity of legislation is to be found in a luxurious edition of the Statutes of Queensland, published by the Government at Brisbane, under the superintendence of Mr. F. A. Cooper, barrister-at-law. By section 29 of the Small Debts Courts Act of 1867 (33 Vic., No.4) it is enacted:

The rules of evidence observed in the Supreme Court shall be applicable to and observed in the trial of all questions of fact in the Small Debts Courts, except in cases under ten pounds, which shall be heard and determined according to equity and good conscience.

This recalls the will of a satirical testator who directed his children to be brought up in the

Christian faith until they attained the age of seven years, when they were to be taught the difference between right and wrong. Does the Supreme Court deserve the sarcasm? If so, the Legislature should reform it and the other Courts together, instead of providing equity and good conscience as a standard for little cases while sternly denying them to the rest. — *Law Journal*.

(*Australian Law Times* 16/4/1887 p. 150).

COMPULSORY BLOOD ALCOHOL TESTS

The Royal Australasian College of Surgeons recently made submissions to the Chief Secretary of Victoria in support of its request that legislation be introduced in Victoria making the taking of blood alcohol tests compulsory in the case of all road accident casualties treated at hospitals. The Chief Secretary desired to know the attitude of the Law Institute Council and the Bar Council before proceeding further.

The Victorian profession set up a joint committee on which the Institute representatives were Messrs. A. Norster, R. Window, and Miss D. Moriarty and the Bar representatives are L. Lazarus Q.C., G. Hampel and T. H. Smith. Several meetings took place and one meeting was held with the Road Trauma Committee of the Royal Australasian College of Surgeons on 7th February, 1973.

The joint committee recommended that such blood tests be made compulsory by statute. The majority of the committee recommended that the results of these blood tests be available only for the purpose of diagnosis, treatment and management of casualties and for the purpose of collecting statistics. The majority took the view that the result of such a blood test should not be admissible in evidence against the person who is subject of the test.

They took the view that otherwise it would be possible to use against an accused person, evidence which was obtained from him while unconscious and which he would be unable to challenge by his own evidence and in addition that such a law may deter people who need hospital treatment from seeking that treatment. The majority took the view that at some time in the future when satisfactory statistics were available the community would be in a position properly to assess the desirability or otherwise of allowing such evidence to be used in legal proceedings.

At its meeting on 8th March 1973 the Bar Council adopted the majority report which has been forwarded to the Chief Secretary as the recommendation of the Bar Council.

JOINT COMMITTEE ON FEES AND COSTS

In October 1972 a standing consultative committee on fees and costs was established. The three members of that committee appointed by the Law Institute Council are Messrs. A. D. Norster, P. Brusey, and D. A. T. Jones. The representatives appointed by the Bar Council are McGarvie Q.C., F. Walsh and J. Sher. The function of the committee is —

(a) to give information, consult and make reports to the respective councils on all steps which either council contemplates taking in respect of counsels' fees or solicitors' costs and

(b) to consult and make recommendations to the respective councils upon any question of mutual concern to counsel and solicitors in this area referred to it by either of the councils.

The main subject discussed so far has been the marking and recovering of counsels fees. Recently questions have been raised as to the entitlement of counsel for the plaintiff in the County Court to recover a fee higher than the scale fee appropriate to the amount actually recovered. In New South Wales there have been discussions about the practice under which in personal injuries cases counsel marked fees in the District Court appropriate to the amount claimed as distinct from the amount likely to be recovered. As a result of these discussions the Bar Council of New South Wales in June 1972 altered the practice in that state. The position now in New South Wales is that it is a breach of etiquette for a counsel habitually to mark on his brief a fee less than is appropriate to the lowest amount which might reasonably be recovered by the plaintiff in the action.

Questions have also been raised about the position where counsel desire to mark more than the usual or standard minimum fee.. It is accepted that it is undesirable for a number of reasons to introduce any practice of counsel charging on a contingent fee basis.

The joint consultative committee has proposed to both councils that as an experiment for one year practices along the following lines should be followed:

1. It is not a breach of the rules of conduct applicable to counsel for counsel to mark a fee below that appropriate to the amount claimed in the action provided that the fee marked bears reasonable relationship to the amount which might be expected to be recovered in the action.
2. Where a solicitor delivers an unmarked brief, if counsel proposes to charge more than the recommended standard minimum fee in the Supreme Court or the scale fee in the County Court appropriate to the amount claimed he should so advise the solicitors before accepting the brief.
3. In the absence of agreement upon fee before acceptance of the brief counsel is expected to mark the recommended standard minimum fee in the Supreme Court or the scale fee in the County Court appropriate to the amount claimed.
4. Where there is agreement on the fee the amount to be paid to counsel by the solicitor is such fee notwithstanding that such fee may be higher or lower than the recommended standard minimum fee in the Supreme Court or than the fee appropriate to the amount claimed in the County Court.
5. Counsel is under a duty to ensure that his brief is marked before the hearing of the case commences.
6. Where no fee is agreed prior to hearing counsel who, after the amount in fact recovered is known, marks his brief with a fee based on that amount is in breach of the rules of conduct applicable to counsel.

The Bar Council has not yet made a decision on these proposals.

The other main subject which has been discussed by the joint consultative committee is upon methods which could be adopted to avoid the large amounts of fees outstanding to counsel for more than the 90 days in which those fees should be paid.

MATRIMONIAL CAUSES RULES

Early in the year the Matrimonial Causes Committee under the chairmanship of Asche Q.C. reported upon the new Matrimonial Causes Rules. This report was received early in February. It has been adopted by the Bar Council for submission to the Senate. The Law Council of Australia offered to the Commonwealth Attorney-General (Senator Murphy

Q.C.) the assistance of the legal profession in investigating and reporting upon appropriate Matrimonial Causes Rules. The Bar Council appointed Asche Q.C. as its representative on the Committee set up by the Law Council of Australia to carry out this investigation and report. The Committee is to have its report to the Attorney-General by 31st March 1973.

OVERDUE FEES

The Bar Council has constituted a committee under the chairmanship of Storey Q.C. to report to the Bar Council the following matters in relation to overdue fees —

- “(a) Is it appropriate or desirable for the Bar Council to take any action (other than that already taken) to secure prompt payment of fees presently due to Counsel which have been outstanding for more than 90 days?
- (b) If yes to (a), what such action should be taken?
- (c) Is it appropriate or desirable for the Bar Council to take any action (other than that already taken) to endeavour to ensure that some or all of Counsel's fees are paid within a given time of accounts being rendered?
- (d) If yes to (c):
 - (i) to what classes of Counsel's fees should such steps relate?
 - (ii) what time limit should be imposed?
 - (iii) what such action should be taken?

NEW READING RULES

On 8th March 1973 the Bar Council passed the following resolution:

1. that as from 1st January 1974 —
 - (a) the ruling of the Bar Council made on the 16th July 1972 with respect to reading be revoked;
 - (b) the present practice whereby an applicant to sign the Roll of Counsel is permitted to commence practice as counsel as soon as he has made application to sign the Roll be discontinued;
 - (c) the following rules with respect to reading be adopted as rulings of the Bar Council:
 1. Subject to Rule 2 of these Rules an applicant to sign the Roll of Counsel will not be permitted to sign the Roll of Counsel unless —

- (i) he has made application to the Bar Council has resolved that he be permitted to commence attendance as a pupil in the chambers of a member of Counsel on the Roll of not less than seven years' standing;
- (ii) he has thereafter been in daily attendance as a pupil in such chambers for not less than two months during which period he has not undertaken any legal work other than as a pupil to his master and has not engaged in any activity which a member of Counsel on the Roll would not be at liberty to engage in;
- (iii) he has undertaken to read as a pupil in the chambers of his master for a period of at least four months from the date on which he shall sign the Roll;
- (iv) he declares that he has read such material as the Bar Council shall for the time being have prescribed; and
- (v) he has undertaken to attend a course of lectures as prescribed by the Bar Council.

2. The Bar Council may dispense with all or any of the requirements of Rule 1 of these Rules —

- (i) if the applicant has practised exclusively as Counsel in any other State or Territory of the Commonwealth for a period of more than one year;
- (ii) if the Council is of the opinion that the applicant is unable to arrange for such pupillage; or
- (iii) if the Council for any other reason thinks it proper in the circumstances to make such dispensation.

3. No fee shall be payable by any pupil to his master in respect of pupillage.

(2) That the substance of resolution (1) be communicated to the Bar and to the Clerks and to the Law Institute of Victoria with a request that it be published by the Law Institute in the Law Institute Journal.

(3) That a Reading Committee be established by the Bar Council as a standing committee for the purpose of:

- (a) compiling and distributing instructional material concerning reading;
- (b) arranging for the conduct of lectures to

- be attended by readers; and
- (c) generally supervising the practice of reading in chambers.

COUNSEL BROADCASTING OR GIVING LECTURES AND ADDRESSES

The new rules giving counsel extensive rights to give lectures and addresses and to appear on radio and television came into operation on 8th November 1972. The new rules which are set out on page 9 of the Annual Report of the Victorian Bar Council of 1971-1972 are republished here for convenience:

(a) Broadcasting

- (i) This paragraph applies, where the context so admits, to both radio and television broadcasting.
- (ii) A barrister may broadcast either anonymously or under his own name, and without the consent of the Bar Council, on any topic. He may, if he deems it necessary, disclose that he is a barrister. Only exceptionally should he find it necessary to reveal that he is a Practising member of the Bar.
- (iii) Whenever a barrister is requested to broadcast on any matter directly touching the organization or administration of the Bar, he should consult with the members of the Bar Council before taking part in the broadcast.
- (iv) A barrister may not appear in court robes, save only where he is a non-practising barrister and is a professional actor and does not disclose that he is a barrister.
- (v) A barrister may not broadcast concerning:

A. any matter in which he has been engaged as counsel unless he can do so without disclosing information imparted to him in confidence and still confidential and without giving publicity either to his own appearance in the matter or to the part which he played in it.

B. his practice at the Bar.

(b) Lectures and Addresses

- (i) A barrister may give lectures or addresses on legal or non-legal subjects and may, if he deems it necessary, disclose that he is a barrister.

- (ii) It is a matter of the barrister's discretion to accept or decline a particular invitation but he may not give any lecture or address concerning:

A. any matters in which he has been engaged as counsel unless he can do so without disclosing information imparted to him in confidence and still confidential and without giving publicity either to his own appearance in the matter or to the part which he played in it.

B. his practice at the Bar.

(c) General

- (i) A barrister who proposes to broadcast, lecture or address as provided for by these rules shall, before making such broadcast or giving such address give to the Secretary of the Council such details of the broadcast, lecture or address as the Council may from time to time require provided that if it is not practicable to give to such details beforehand, the barrister shall give the details to the Secretary as soon as possible after the broadcast, lecture or address.
- (ii) If the Council is of the opinion that a member's participation or repeated or continuous participation in broadcasting, lecturing or giving addresses constitutes advertising or touting or involves a departure from the aforesaid statement of principles the Council may, after calling upon the member concerned to show cause and after hearing him in relation thereto, direct that such member shall not broadcast or deliver any lecture or make any address on any subject or matter (legal or non legal) for such period as the Council thinks fit without the permission of the Bar Council which shall have absolute discretion to withhold such permission or to grant it with or without such conditions as it thinks fit. The Bar Council may rescind or vary any such direction upon such terms (if any) as it thinks fit.
- (iii) Nothing in these rules shall authorise a member of the Bar to:

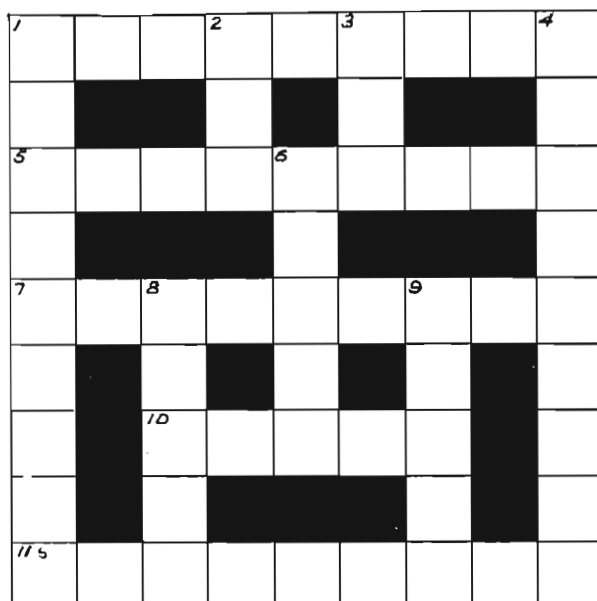
A. take part in any mock or moot Court except such as may be conducted

in a University or other Law School.
B. appear robed in any film broadcast
or stage performance or act the part
of Counsel therein.

LETTERS TO THE PRESS

The Ethics Committee is considering whether the rules should be relaxed in a similar way in relation to Counsel writing letters to the press as barristers under their own names.

CROSSWORD



Across:

1. Let this thing off your land at your peril (9).
5. of Claim (9).
7. Negotiates (9).
10.dite (5).
11. Withdrawn by Judge before verdict (9).

Down:

1. Wrongful ejectment of a possessor (9).
2. Obtained (3).
3. Export animal? (3)
4. Extinguished an obligation (9).
6. Legislate (5).
8. The sorts of names liked by Equity (5).
9. Allocation of a Crown Right (5).

THE RESPONSIBILITY OF COUNSEL

The responsibility of counsel, or we should rather say their irresponsibility, for neglect and similar misconduct is being taken up in earnest. The prevailing belief of counsel appears to be that they exist entirely for their own benefit. They may take all they can get, hold on to it as long as they can, and then abandon the least remunerative at the latest moment, regardless of the convenience of solicitors and the interest of clients. For the existence of such a state of things in an honourable profession the public and solicitors are, of course, largely responsible. For reasons not at once apparent particular counsel are made the objects of extended favour. Briefs are pressed upon them far in excess of their powers to attend to them. To return briefs is irritating, and is to waste the gifts of the gods. Not to attend consultations is a venial sin; not to be present at the trial is a gross offence; not to return the brief and keep the fee constitute a crime. To retain the briefs till the last moment, and then to return it, is to lay a snare for the client. Impunity, however, encourages the gravest irregularities. The counsel who do these things would cease their evil courses if their business suffered, but a deluded public and a foolish Profession continue their patronage, and thus encourage vice. Both Profession and public can take care of themselves if they like, and we won't know why it should be anybody's business to interfere. If your butcher doesn't send your meat home in time for dinner, or your cook doesn't get up until you are ready for breakfast, you withdraw your custom from the one, and show the other the door. And if barristers will not attend to their work they should not be employed. The result of the outcry will be nothing, but possibly, if counsel go on as some of them are doing, they will furnish a strong argument for getting rid of the Bar as a separate institution, should it not die of inanition, which does not appear altogether impossible. — *Law Times*. (Australian Law Times 1/10/1887 p.53).

CHANGE OF COURT VACATIONS

During 1972 the Law Institute of Victoria recommended to the Law Council of Australia that the legal vacations should be shorter.

The Bar Council set up a committee consisting of Lloyd Q.C. (Chairman), G. W. Colman, Ormiston, J. C. Walker, and D. Graham to report to it.

Having considered its report the Bar Council has resolved:

1. That the prescribed vacations in the Supreme and County Courts in Victoria be not changed.
2. That sufficient Judges be made available to deal with all cases ready to be heard for the trial of persons who are charged with criminal offences but are not able to obtain bail or who cannot afford bail.
3. That a Supreme Court Judge, a Master of the Supreme Court and a County Court Judge, be available to hear all applications presently regarded as urgent and also all applications of an urgent nature referred to in the committee report, and that a Supreme Court Judge, Master and County Court Judge sit during normal Court hours during the vacations except in the period 24th December to the 3rd January."

The Bar Council informed the Law Council of Australia and the Law Institute of its resolutions and provided copies of the report. It also provided copies of the report to the Acting Chief Justice of the Supreme Court and the Chairman of County Court Judges.

ASSISTANT HONORARY TREASURER

The Bar Council decided that the financial responsibilities of the Bar have become so great that it was desirable that the Honorary Treasurer, Sir James Tait, should have an assistant, and it appointed F. Walsh as Assistant Honorary Treasurer.

VOLUNTEERS TO SERVE ON COMMITTEE

The invitation to members of the Bar to volunteer to serve on Bar Committees produced an encouraging response. Sixty-two members of the Bar of all ranges of seniority volunteered. Since then almost every committee set up by the Bar Council has included a substantial number or those who volunteered.

COUNTY COURT PRACTICE AND PROCEDURE

Last year the Bar Council joined with the Law Institute Council in setting up a joint standing committee on County Court Procedure and Practice to make recommendations to the respective councils on these subjects. Bar Council representatives are Rendit, Fagan and Heerey. Current topics under consideration include recording of evidence — listing of criminal trials, pleadings and notices of defence, dismissal of appeals upon non-appearance by appellant and the equitable jurisdiction of the County Court.

The County Court Judges have informed the Bar Council that it is intended to set up a County Court Rules Committee on which there would be representatives of the Bar Council and the Law Institute Council.

COMMITTEE OF INQUIRY ON TAXATION

The Taxation Committee, Webb Q.C., Brusey Q.C., Forsyth, Spry and Castan have recommended that submissions be made on behalf of the Victorian Bar to the Committee of Inquiry into Taxation upon —

(a) Administration of the Income Tax Assessment Act. The Committee considers that submissions should be made to the Inquiry concerning —

(i) the inclusion of a power in Boards of Review and Courts to permit parties to amend the grounds set out in Notices of Objection to Assessments;

(ii) the Constitution of Boards of Review, and the method of appointment of persons to those Boards;

(iii) the methods by which Boards of Review conduct cases, and the question of the publication of a list of cases set down for hearing by the Boards.

(b) Matters concerning forms of taxation relief for Barristers. The Committee is of the view that submissions should be made concerning, *inter alia*, some provision for deductions for superannuation and retirement benefits for Barristers, in order to equate their taxation position to that of the employed executive.

The Bar Council at its meeting on 23rd March 1973 adapted the report of the Committee. In the debate on this report in the Bar Council it was suggested that a strong case could be made for amending the income tax legislation to give Barristers the advantages of averaging of income and the option to have income split between husband and wife. Also it was suggested that income from personal exertion be taxed at a lower rate. The Taxation Committee would welcome the views of any members of the Bar on submissions which should be made to the Committee of Inquiry. Those interested should communicate with Castan.

THE FUTURE OF VICTORIAN BAR NEWS

This issue of Victorian Bar News has been produced by the joint efforts of an editorial board:

McGarvie Q.C., Peter Heerey (Editors), David Ross, David Byrne, and Chester Keon-Cohen. It is planned to produce an issue in each quarter of 1973.

In issue No.3 the editors invited for publication terse letters or contributions containing comment, criticism or suggestions not exceeding 75 words on any topics of interest to the Bar. These should be signed by the member of the Bar and sent to the Editors, Victorian Bar News, Room 506, Owen Dixon Chambers. So far only one of this description has been received. This was published in the last issue.

ACCOMMODATION

If 1971 was the "Year of Fees" and 1972 the "Year of Clerking" it seems likely that accommodation will become the major concern of the Bar Council in 1973. The Victorian Bar must be a unique professional organization in that up until now it has accepted the responsibility of providing accommodation for all who wish to join its ranks. Whether this can be done in the future remains to be seen.

The Bar has received more than the share of frustration ordinarily encountered in building alterations. It now appears that the twelfth floor will not be ready for occupation by tenants until mid 1973.

The Directors of Barristers' Chambers Ltd. have provided the Bar Council with the following facts and data -

1(a) Total number of barrister tenants of Barristers' Chambers Ltd. at present is 360. Made up as follows:

| | |
|--|-----|
| Tenants in O.D.C. 2nd-11th Floors inc. | 258 |
| New tenants on 1st Floor | 43 |
| Tenants in Tait Chambers | 36 |
| Tenants in Hooker Building | 12 |
| Licensees at rear of ground floor O.D.C. | 4 |
| — Total | 360 |

Tenants and licensees paying rent to Barristers' Chambers Ltd.

(b) Other accommodation for practising

| | |
|-------------------------------|-------|
| Barristers in Equity Chambers | 15 |
| In Henderson House | 9 |
| Sub-tenants in O.D.C. | 3. |
| | 27 |
| | = 387 |

(c) Readers now finished reading or finishing in or before June next 11

| | | |
|---|----|-----|
| Signatories to the Bar Roll in February | 10 | 21 |
| | = | 408 |

2. The net increase of members who occupy chambers in Victoria during the last five years has been:

| | | |
|--------------------------|---|----|
| Year to 31st August 1968 | — | 20 |
| 1969 | — | 25 |
| 1970 | — | 16 |
| 1971 | — | 36 |
| 1972 | — | 30 |

"Net increase" means the number who sign the Roll (52 in 1972) less interstate practitioners, deaths, appointments to the bench and other retirements.

It is considered that the approximate average net increase of new members, if the present rate of increase continues, may be 30, for the purpose of planning future accommodation.

The Directors recommended that the Bar Council should appoint a strong and active sub-committee to deal with the whole matter of new and future accommodation for the Bar including the practical work of finding and negotiating such accommodation.

The Bar Council accepted that recommendation and has appointed the following sub-committee:

Berkley Q.C. (Chairman), Emery, Liddell, Forsyth, Mandie, Gurvich and Phipps.

The Chairman and Vice-Chairman of the Bar Council are ex officio members of this sub-committee.

THE WHELAN COMMITTEE REPORT

The Report of the Committee (Whelan Q.C. (Chairman), Mullaly, Bourke, Hampel, Gurvich and O'Keefe), which has investigated the legal rights of prisoners and persons in custody has been received from the Committee and was adopted by the Bar Council at its meeting on 22nd March, 1973.

BAR COUNCIL MEETINGS

(from 7th September 1972)

| 1972 | Present | Duration | |
|------------------------|---------|----------|----------|
| 7 September | 12 | 2 hrs. | 30 mins. |
| 14 September (Special) | 10 | 2 hrs. | 15 mins. |
| 19 September | 8 | 2 hrs. | 10 mins. |
| 20 September (Special) | 11 | | 40 mins. |
| 2 October | 9 | | 30 mins. |
| 5 October | 14 | 2 hrs. | 30 mins. |
| 12 October | 14 | 2 hrs. | 25 mins. |
| 26 October | 15 | 2 hrs. | |
| 2 November | 14 | 2 hrs. | 45 mins. |
| 8 November (Special) | 8 | | 50 mins. |
| 9 November | 13 | 2 hrs. | 25 mins. |

| | | |
|-----------------------|----|-----------------|
| 15 November (Special) | 13 | 2 hrs. 45 mins. |
| 23 November | 13 | 2 hrs. |
| 6 December (Special) | 9 | 1 hr. |
| 7 December | 15 | 2 hrs. 45 mins. |
| 11 December (Special) | 13 | 1 hr. 30 mins. |
| 12 December | 11 | 2 hrs. 55 mins. |
| 1973 | | |
| 8 February | 15 | 2 hrs. 40 mins. |
| 22 February | 11 | 2 hrs. 30 mins. |
| 8 March | 15 | 2 hrs. 45 mins. |
| 22 March | 17 | 2 hrs. 40 mins. |

NEW MEMBERS OF THE BAR
(from 7th September 1972)

| <u>Member</u> | <u>Master</u> | <u>Clerk</u> |
|-------------------------|----------------|--------------|
| P. R. A. Gray | Winneke | Calnin |
| K. Wheelahan | Cooney | Calnin |
| Prof. C. G. Weeramantry | | Calnin |
| P. N. Wikrama | Blackburn | Clanin |
| T. J. Casey | Fogarty | Foley |
| M. Rozenes | Hampel | Foley |
| D. E. Gray | Willshire | Calnin |
| H. R. Hallenstein | Goldberg | Calnin |
| T. Schwarz | E. Gillard | Calnin |
| R. E. Wortley | J. D. Phillips | Calnin |
| D. J. Habersberger | Charles | Muir |
| G. O. Johnstone | Smithers | Muir |
| R. McK. Robson | Merralls | Muir |
| D. B. Maguire | Ashley | Muir |
| R. C. Webster | Castam | Muir |
| D. G. Saw | D. Meagher | Muir |
| E. K. Evans | Lyons | Muir |
| M. J. O'Brien | Cullity | Calnin |
| M. Munz | New | Muir |
| J. Gullaci | J. Meagher | Muir |
| I. G. Sutherland | T. Smith | Muir |
| P. R. Hayes | Tadgell | Muir |
| R. C. Crisp | Spence | Muir |