VICTORIAN BAR NEWS

No. 61 Winter 1987

VICTORIAN BAR NEWS

No. 61 **WINTER 1987**

ISSN-0150-3285

CONTENTS

Articles

Handy Hints for Barristers

Cultural

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

Opinions expressed are not necessarily those of the Bar Council or the Bar.

Phototypset and Printed by Printeam Pty. Ltd., 53 Elizabeth Street, Melbourne 3000
Phone 614 5244

This publication may be cited as (1987) 61 Vic B.N.

The Editors' Backsheet

Double Jeopardy

Barristers and judges are usually not reticent when it comes to criticising others for lack of reasonable foresight. Recently however on two occasions the boot was on the other foot - which was well and truly in the mouth.

The County Court Judges' dinner dance coincided with the opening of Owen Dixon Chambers West. But worse was to come. Members of the Criminal Bar Association turned up for their annual dinner only to find the restaurant had been double booked, the competing organisation being the Road Construction Authority Social Club.

'Counsel'

Bar News has arranged with 'Counsel', the Journal of the Bar of England and Wales, for the mutual right to republish items of interest. The piece 'Courtly Language' appearing at page 30 of this issue was published in 'Counsel' in its Hilary/Winter issue, accompanied, we are proud to note, by the cartoon which appeared in Spring 86 Bar News (p18).

Ravensdale

Since time immemorial Bar News has set its face against the wiles of commerce. The honourable exception of the Kalgoorlie Juridical Quarterly apart, Bar News is the only Australian legal professional publication which does not carry advertising. It must therefore be clearly understood that what follows is not advertising; news or current affairs perhaps, but advertising, certainly not.

In July a new enterprise under the name **'Ravensdale'** will commence trading from Owen Dixon Chambers West. It will sell robes, wigs, bibs, jabots and other barristers' gear together with high class general clothing, both bespoke and off the hook, for men and women. Bar stationery will also be available.

The proprietors will be **Henry Jolson** and **Bruce Walmsley** who will of course continue in practice at the Bar. As if the sartorial elegance, panache and savoir faire of these two were not enough, two other gentlemen of note will also be involved.

Ron Ravensdale has for many years carried on the business of J. Ravensdale & Son, commenced by his father in 1908. Generations of barristers and judges have patronised the business, confident not only in the excellence of the work done but in the discretion of its proprietor. This was particularly so in the days when a book, quite illegal but widely patronised, was run by a member of the Bar on appointments to judicial office and silk. As that gentleman, now a distinguished member of the County Court bench, remarked on the occasion of his welcome, some appointments got up at embarrassingly long odds. The opportunity for Ron Ravensdale to frame a false market, or even organise a judicial Fine Cotton, must have been tempting indeed. But the confidence of these about to be appointed judges and silks as they posed self-consciously in their new finery before the Ravensdale mirror was never betrayed.

Also engaged will be **Eugene Notermans,** the proprietor of the well known establishment Hemdens in High Street, Armadale and the City.

It was 20 years ago today ...

Inspired by Sgt. Pepper, Bar News dredged up a 1967 Law Institute Diary.

The complete Bar was covered in two pages. Sir James Tait Q.C., Maurice Ashkanasy Q.C., and Eugene Gorman Q.C. appeared as silks, along with promising juniors J.A. Gobbo, R. Brooking, W.E. Paterson and C. Francis.

A fee book of the same era disclosed the following:

Drawing Interrogatories (County Court)	$11
Brief to appear on trial (General Sessions)	$42
Refresher	$28
Brief to Prosecute (General Sessions)	$45
Settling Statement of Claim (Junior's 2/3 of leading silk's fee)	$20

A Tenant Mix

While on commercial matters, we thought that the Ravensdale venture might lead to other enterprises, such as

- Fabulous Phil's Shakespearean Singing Telegram Service - amaze (and educate) your guests.

- Sam & Charlie's Real Estate & Finance Consultancy Service - your very own skyscraper, planned in just an afternoon.

- 'Bones' Wilson's Cuisine Minceur Fast Food & Gourmet Takeaway - for that quiche getaway.

1987 Bar Dinner

The 1987 Bar Dinner at Leonda on 30th May was accounted one of the most successful of recent years. Honoured guests were **Mr. Justice Crockett** A.O., **Mr. Justice Ryan, Mr. Justice Kay** and **Deputy President Lawrence.**

A memorable feature of the night was a witty speech by **Lord Roskill,** former Law Lord, who is presently chairing an arbitration in Melbourne over Bass Strait oil and gas royalties. We were disappointed that the Chairman of the Bar missed a golden opportunity to refer to the

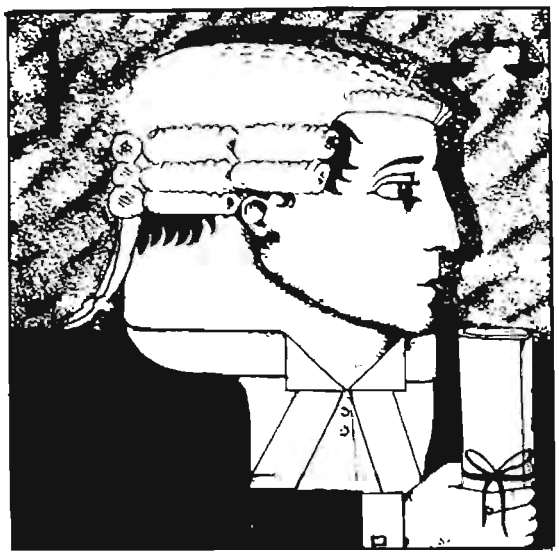
> '.. chronicles as rich with praise
> As is the ooze and bottom of the sea
> With sunlit wrack and sumless treasury'.

Our favourite story of the night was that of Mr. Junior Silk, **Mark Weinberg** Q.C. His first brief as a leader was an application in the City Court to set aside a subpoena. His junior was his wife Rose. As the talented duo (with Mark carrying both sets of papers) entered the precincts of the Court they encountered **Dyson Hore-Lacy,** who could scarcely conceal his delight at this scene.

'How lovely! Are mum and dad coming too?' enquired Dyson.

The Editors

Bar Council Report



ETHICS COMMITTEE

John Barnard Q.C. has resigned as Chairman of the Ethics Committee and been thanked for his outstanding work during his term of office. His is replaced as Chairman by Peter Liddell Q.C.

HIGH COURT

The Bar Council was represented by the Chairman, Philip Cummins Q.C. on the 5th and 6th February, 1987 at ceremonies in the High Court to farewell the then Chief Justice Sir Harry Gibbs and to welcome the Chief Justice Sir Anthony Mason and Justices Toohey and Gaudron.

BARRISTERS DISCIPLINARY TRIBUNAL

An ad hoc committee comprising Peter Liddell Q.C. and David Harper Q.C. has been constituted to report to the Bar Council on a suggested form of machinery to deal with barristers who are unfit to practice for reasons other than disciplinary matters.

ESSOIGN CLUB

The Essoign Club Committee is satisfied with the operation of the Club over the last six months and catering is to continue in its present form. $30,000 has been spent on upgrading the catering and further upgrading of the kitchen is contemplated.

LAW COUNCIL OF AUSTRALIA

The Bar Council has resolved, subject to compliance with certain formalities, to withdraw its notice of withdrawal from the Law Council of Australia.

LISTING PROCEDURES - COUNTY COURT JURY CASES

It has been resolved that Barry Dove Q.C. and Murray Kellam attend upon Chief Judge Waldron to discuss listing procedures in county court jury cases. Further the Personal Injuries Bar Association has been asked to survey its members in relation to listings for jury cases in both the County and Supreme Courts.

NEGOTITATIONS WITH LEGAL AID COMMISSION

Briefs in criminal cases in the Supreme Court will be marked in line with fees paid to Senior Counsel in civil cases but on the express understanding that there will be no consequent increase in fees payable to Junior Counsel.

MONASH UNIVERSITY - SIR OWN DIXON AND SIR JOHN BARRY CHAIRS OF LAW

David Byrne Q.C. has been appointed the Bar's representative on the selection committee of these Chairs of Law.

OPENING OF OWEN DIXON CHAMBERS WEST

On 1st May, 1987 the Chief Justice Sir Anthony Mason officially opened the new building. The occasion was recorded by a plaque inscribed with the names of those members of the Bar who have been responsible for the achievement of the new building.

Susan Crennan

THE Attorney General's COLUMN

Since my last column the following developments have taken place.

Night Court Hearings

On July 8 at the Prahran Magistrates' Court night sittings will commence on a trial basis. Initially, these will be mainly confined to guilty pleas in fresh arrests and bail cases although some guilty pleas adjourned from the Prahran Mention Court may also be heard. This initiative is a product of the Courts Management Change Program which is aimed at making Victorian courts more accessible to all court users. There will be no reduction in normal court sittings as a result of Magistrates being required to preside at night sittings. In fact I consider that this should assist in further reducing court delays by making more day-time available for the hearing of lengthy and more complex matters. Under the trial scheme the Prahran Court will be open between the hours of 6.00 p.m. and 9.00 p.m. with court sittings between the hours of 6.30 p.m. and 8.30 p.m. In the longer term, the night court system should provide major benefits to working people who will be able to avoid time off work and consequent loss of pay by exercising their option to appear at night courts.

Standing Committee of Attorneys-General - Sydney Meeting - May 1987

The Ministerial Council and Standing Committees of Attorneys-General met in Sydney in May. As a result of an agreement reached at the Standing Committee all jurisdictions will be amending their TFM legislation to introduce explicitly the principle of contribution as one of the matters which should be taken into account in dealing with TFM claims. The Commonwealth has agreed to give up its after death family law property jurisdiction and have claims by ex-spouses handled under State TFM law provided that principle is introduced. Victoria expects to legislate on this item in the budget session.

The Commonwealth also reported at the meeting that it will be enacting legislation to take up the reference of powers given by several states (Victoria, South Australia, New South Wales and Tasmania) to the Commonwealth to enable it to exercise family law jurisdiction over disputes relating to custody and access involving ex-nuptial children. This initiative will lead to greater consistency in the handling of disputes involving children, regardless of whether they are children of a marriage or children born ex-nuptially.

At the meeting the Ministers also considered the booklet produced by the Australian Institute of Criminology entitled, 'The Size of the Crime Problem in Australia'. It is noteworthy that one of the recent findings based on the extensive surveys made by the Institute is that in comparison with similar Western democracies, 'Australia does not have an unusually serious crime problem'. For those interested in developing an informed position on the debate in relation to police powers the papers produced by the Institute will repay close examination.

The meeting also agreed to continue funding until the end of 1988 of the Australian Institute of Judicial Administration. This Institute which is now established on a full-time basis at Melbourne University under its first Executive Director, Professor Peter Sallmann, is undertaking a wide range of projects which I believe will be a direct benefit in the improvement of judicial administration in Australia. Its research projects include examination and procedures in Magistrates' Courts in Victoria and New South Wales as well as issues concerning the financing and resourcing of the judicial system.

Plain English Takeovers Code

I recently released a Plain English draft of the Companies (Acquisition of Shares) Code prepared by a Working Party convened during last year. The Working Party comprised of the Law Reform Commissioner, Mr. David Kelly, Plain English Consultant, Mr. Robert Eagleson, former N.C.S.C.

Chairman, Mr. Leigh Masel and a number of lawyers and stockbrokers.

The Plain English draft simplifies the way in which the provisions of the Takeover Code are currently expressed. It does not alter the structure of the Code or the policy which underlies it.

The Plain English draft is approximately half the length of the existing Code. A number of provisions in the Draft are substantially shorter than current provisions. For instance, section 25B which deals with the treatment of odd lots of shares where a proportional offer is accepted covers three lines in the Plain English draft. The section covers thirty-one lines in the Code as presently drafted.

I believe that the Plain English draft of the Code provides a very good example of how legislation can and should be drafted. It also shows that difficult concepts can be and should be expressed simply in legislation.

Legislation passed during the Autumn Session

The main items of Attorney-General's legislation passed during the Autumn Session were the Crimes (Family Violence) Act, the Evidence (Neighbourhood Mediation Centre) Act, the Jurisdiction of Courts (Cross-Vesting) Act, the Planning Appeals (Amendment) Act and the Sale of Goods (Vienna Convention) Act. None of these have yet been proclaimed. In the case of the new system of the intervention orders in respect of family violence a number of preliminary steps are presently being undertaken to establish the new scheme. The Victoria Police is producing a special training package for its officers and once that is completed the new legislation will be brought into effect.

The Neighbourhood Mediation Centre legislation will be proclaimed shortly. The new scheme of Neighbourhood Mediation Centres comes into operation in July.

J.H. Kennan

Ethics Committee Report

Since the last report the Committee has received six complaints. There are at present thirteen matters under investigation. The Committee has during the period covered by the report concluded investigations of twenty-two complaints.

Four summary hearings have been held.

In three instances the Committee determined that the barristers concerned had breached Rule 14 of the Basic Rulings of the Bar in that they were not present in court ready to represent their clients when the case was called on. Two of these instances involved circumstances where Counsel was holding more than one brief to appear at the relevant time.

The Committee has advised the Bar Countil on the following issues:

1. That the engagement of a barrister by an administration company established to administer that barrister's practice does not constitute a breach of any ethical rule.

2. That the rules of practice inhibiting participation by members of Counsel in Moot Courts should be relaxed.

3. That in the opinion of the Committee it is appropriate that members of Counsel who are prepared to act as Arbitrators be permitted to supply relevant professional information to the Institute of Arbitrators, Australia for inclusion in the List of Arbitrators maintained by that body.

The Committee has received a number of requests from members of Counsel for permission to attend solicitors offices. Counsel are reminded that permission to do so will be granted only in exceptional circumstances. This does not, of course, apply to the attendance of Counsel at 'irregular' social functions which may be arranged at solicitors offices.

Michael Colbran

Law Reform Committee Report

The Law Reform Committee under the Chairmanship of Allan McDonald Q.C. has been active in responding to requests for comment on various law reform proposals over the past three months. The following matters give an indication of the items that have been referred to the Committee for comment.

Law Reform Commission of Victoria - Discussion Paper No. 5 - Rape and Allied Offences: Procedure and Evidence

The Discussion Paper makes the following tentative proposals:

(a) Committal Proceedings
- (i) Committal hearings for sexual cases should not be abolished;
- (ii) The complainant should not be subject to cross-examination at the committal hearing unless the magistrate decides that there are special reasons for requiring it;
- (iii) Magistrates should be given legislative guidance on circumstances which constitute 'special reasons';
- (iv) The accused's interests should be protected by requiring discovery for the committal hearing of all statements made by the complainant to the police;
- (v) The special rules should not be restricted to cases of rape but should apply to all sexual offences.

(b) Time-Limits
- (i) The present pre-committal and pre-trial time-limits should apply to all sexual cases;
- (ii) The doubt as to when time commences to run should be resolved;
- (iii) A judge of the trial court should have power to extend time between committal and trial.

This Discussion Paper has been forwarded to the Criminal Bar Association for comment and report.

De Facto Relationships Bill

The Committee is in favour of the proposed legislation regarding it as a step, albeit belated, in the right direction in regard to the regulation of the property rights of de factos. The inadequacies of the existing system of utilising a constructive or resulting trust are well knwon.

The Bill is currently stalled in the Upper House of State Parliament.

Crimes (Domestic Violence) Bill

The Committee formed a sub-committee to make a study of the proposed legislation. The sub-committee reported that it was in favour of the legislation with two main reservations. The first that the power to issue a summons should not be given to a Clerk of the Magistrates' Court. Secondly, that the definition of 'harrassment' was too wide.

The sub-committee was of the view that Magistrates should be rostered and available to made orders after hours. It appears that most domestic violence occurs on Friday and Saturday nights.

The sub-committee was of the view that the issue of a warrant under this legislation was a judicial act that should be performed by a judicial officer. The sub-committee is concerned about the wide definition of the term 'harrassment' as it is on the basis of this term that a family member, spouse or child may obtain an order barring the other spouse from the matrimonial home.

A member of the Commmittee, Boris Kayser, illustrated the problem of the wide definition of the term 'harrassment' in the following way. It appears that Boris has experienced some problem at home in regard to the volume of a stero record player used by his daughter. Boris raised the question:

> 'Could a law-abiding, peaceful, home-loving, family-oriented person like me be the subject of an order made by a Clerk of a Magistrates' Court for 'harrassment' of my daughter over the volume that she wishes to set the stero record player?'

Members of the Committee assured Boris that any such judicial decision would be given very careful consideration in all the circumstances of the case before any such order was made late on a Saturday night by a Clerk of the Magistrates' Court.

Notwithstanding the above defects the Committee was in favour of the proposal to legislate in regard to domestic violence. The Committee indicated that if a Magistrate was not available to make the order then it would be preferable to have the order made by a police officer of the rank of Sergeant or above.

Companies (Acquisition of Shares) (Victoria) Plain English Code

The Attorney-General forwarded the Committee a copy of the above Code. After discussing this matter with several senior members of the Commercial Bar a letter was forwarded to the Attorney-General supporting this bold initiative. In the letter it was indicated that it would be a pity if this initiative was confined to the **Companies (Acquisition of Shares) Act** 1980. It was hoped that the 'Plain English Code' would spread to the other components of the Companies Securities Codes. The letter also indicated that the Bar would support the spread of this initiative to Commonwealth legislation. If the Commonwealth adopted the Plain English Code then it is possible that we may even live to see a smaller **Income Tax Assessment Act** 1936 (Cth).

J. Hockley
Hon. Secretary

Personal Injuries Bar Association Report

Following the passage and commencement of operation of the Accident Compensation Act 1985, and the Transport Accident Act 1985, the Committee of the Association has been studying the effect of this legislation on the jurisdictions concerned with the operation of this legislation. More recently the Committee has undertaken a review of the functioning of the Association and the continuing role which the Association is to play.

As a consequence of observations made by members of the Association, on an informal basis, the Association Committee is continuing to monitor the listing of personal injuries litigation in both the County Court and the Supreme Court, to enable the Association, where appropriate, to make recommendations and submissions relevant to listing procedures.

The Annual General Meeting of the Association is scheduled for 26th May 1987.

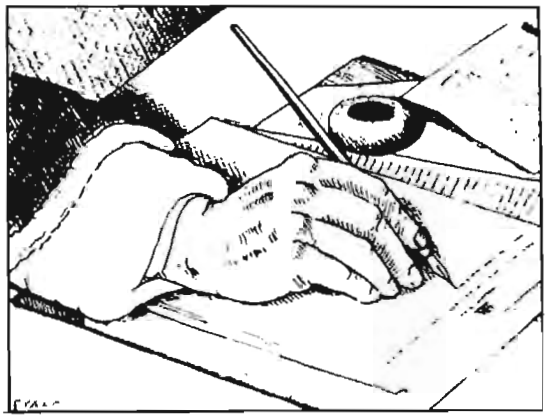
Tom Wodak

Opening of Owen Dixon Chambers West

Friday 1st May 1987

The Chief Justice of Australia, **Sir Anthony Mason,** opens Owen Dixon Chambers West. In the background (L to R) Mrs. Philip Cummins, the Premier of Victoria, Mr. John Cain, and Lady Mason. Other speakers at the ceremony were the Chairman of the Bar Council, Philip Cummins Q.C., the Chief Justice of Victoria, Sir John Young and S.E.K. Hulme Q.C. A reception attended by many members of the Bar was held in the forecourt of the new building.

Welcome



IN SEARCH OF SALLY BROWN

In the bear-pits, funnel-webs and fly-papers that pass for the work places of Bar and Bench, Sally Brown has a formidable reputation. The cynical resignation indulged by Rodriguez -

'It's a hassle, it's an educated guess;
well frankly I couldn't care less'[1]

may have been espoused by some barristers more storm-trooping than brain-storming; it never has been, is the antithesis of, Sally's slogan. Sang-froid,[2] calculation, and steadfast commitment characterised her ample and wide-ranging practice at the Bar. Join those qualities to vinegary efficiency, acid wit, and quite unnerving auditory sense,[3] and you will apprehend the knee-knocking and digit-twitching of some that accompanied the promulgation of her appointment as a Deputy Chief Magistrate.

Practitioners of spongy spleen, and Magistrates of feeble fibre have, or reasonably ought to have, elevated their pastime, while those honestly grappling their puny resources to the problems of penalties and procedures, burgeoning jurisdiction, constipated lists, and arbitration rampant, have found a heroine in whom tenacity and prowess have defeated mere physical dimension. 'Defeated', perhaps, is not so much the word, as 'complemented', for in the legal market place the name of Sally Brown has inspired an image something like a hybrid of a tiny, rare, exotic flower, and a nuclear-powered washing detergent. That combination, in the appointment of a Deputy Chief Magistrate, has been applauded by all who know Sally and the Magistrates' Courts, as a fitting farrago, calculated to bring distinction to the Magistracy, comfort to the Magistrates, and consolation to those who fail before her. In her new appointment we wish her satisfaction in the pragmatism of administration, and continuing success in leadership and judicial creativity.

Rowan McIndoe

Footnotes

1. 'The Establishment Blues', **Cold Fact,** disseminated under the beguiling Blue Goose label.

2. See Roget's Thesaurus, 823n., but excluding 'frigidity'.

3. This faculty in both the primary and secondary (grape-vinous) senses.

Applications for Silk

The Chief Justice, ***Sir John Young,*** *has asked us to publish the following article which it is hoped will remove some misunderstandings relating to applications for silk.*

The regulations governing the appointment of Her Majesty's Counsel for Victoria provide that no barrister, other than a barrister who holds or has held the office of Attorney-General, shall be appointed to be one of Her Majesty's Counsel except on the recommendation of the Attorney-General to the Governor in Council made on the nomination of the Chief Justice of Victoria.

The Chief Justice now requires applications for silk to be made to him in the month of August. Experience has shown the necessity of having a definite closing time and applications must therefore be received in the Chief Justice's chambers before 5.00 p.m. on the last week day in August. An application received after that time cannot be considered save in the most exceptional circumstances. No advantage accrues to an applicant from the date on which the application is lodged. The list of applicants for consideration is not compiled until after the closing date.

Application should be made in writing by letter addressed to the Chief Justice and giving the following particulars:

A. **Formal Particulars:**
   (a) Applicant's full name.
   (b) Date of birth.
   (c) Legal education and academic record.
   (d) Name of firm with whom articles served (if any).
   (e) Date of admission in each jurisdiction in which the applicant is admitted to practice.
   (f) Date of signing the Roll of Counsel.
   (g) Name of Counsel in whose chambers applicant was a pupil.
   (h) Residential address for reply (not essential).

B. **Practice Particulars:**
   (a) Experience in practice since admission.
   (b) Type of cases in which the applicant usually practices, indicating the predominant area of practice (if any).
   (c) In the case of applicants making an application subsequent to a first application, details of any changes in the area of practice since the previous application.

C. **Referees:**
   The names of two Judges of Superior Courts (State or Federal) to whom the Chief Justice may make confidential reference. (It is not intended that applicants should approach the judges whom they propose to name before doing so. The Chief Justice will explain to the judges nominated the circumstances and the purpose of the nomination.) The judges so named are asked by the Chief Justice to give their opinion upon the question whether the applicant's work in Court justifies advancement; they are not asked to act as advocate for the applicant.

D. **Any Other Information Considered Relevant:**
   An applicant should include any other information which he considers relevant and may, if he wishes, support his application by letters of support from judges or others. This facility is chiefly designed for the unusual applicant whose principal area of practice lies outside the superior courts. Any such letters, which may not be from either of the judges

named as referees, must accompany the application.

[NOTE: The instructions to applicants have varied slightly over the years and a copy of the current instructions may be obtained from about June onwards from Barrister's Clerks or upon application to the Chief Justice's chambers.]

Some explanation of the particulars sought from applicants may be helpful.

The particulars sought under 'A. Formal Particulars' are principally for identification purposes. Occasionally, however, it may be necessary to refer to the barrister with whom the applicant has read as a pupil. In the case of some applicants who for a variety of reasons have interrupted practice at the Bar to pursue other activities it is necessary to be able to ascertain for exactly how long the applicant has been engaged in full time practice.

The suggestion that a residential address may be given for reply is made simply so that any applicant who wishes to keep confidential the fact that he has made application will be assisted in doing so.

The Practice Particulars sought under B. are important. Although the Victorian Bar is not as divided into specialists as is the case in some other jurisdictions, there seems to be more and more of a tendency for counsel to confine their practices to particular areas of work. It is important that the Chief Justice should be informed as fully as possible as to the area or areas in which an applicant principally practises. A relevant matter for the Chief Justice to take into account is the number of silks already practising in the area.

Under C. an applicant is asked to nominate two judges of Superior Courts (State or Federal) to whom the Chief Justice may make confidential reference. These judges should not be approached beforehand as they are asked, not to act as advocates for the applicant, but to give their opinions upon the application and in particular upon the question whether the applicant's work in Court justifies advancement. It is therefore desirable, where possible, that the names of judges before whom the applicant has appeared recently or in substantial matters should be given. Where a judge named as referee is compelled to reply that he has not seen the applicant in Court for some years it is obvious that the application will not be assisted. More than two judges should not be named and if they are the applicant will be asked to delete one name.

The particulars mentioned under D. are only included so that no applicant should feel that he is prevented from putting forward information that he considers relevant and persuasive. The facility to attach letters of support is not designed to encourage general testimonials of good character, which can necessarily carry little weight, but rather to enable an applicant whose practice may lie predominantly in a specialised jurisdiction outside the ordinary courts to put forward an opinion by someone familiar with the specialised area of practice. It is obvious that such an opinion, although bespoken by the applicant, will carry more weight if it attempts an objective assessment of the question whether the applicant's work justifies advancement, than if it is merely a general testimonial of good character.

It is obviously helpful if applicants give full information, particularly about the predominant area of practice. No applicant has however been refused a recommendation simply upon the ground that insufficient information has been supplied.Where insufficient information is supplied however an applicant may be asked to supplement his application.

The procedure adopted upon receipt of an application

When the Chief Justice receives an application he asks one of his Associates to acknowledge it on his behalf to the address nominated for reply. The Chief Justice then writes himself to the two judges named as referees asking for an expression of opinion upon the application and upon the question whether the applicant's work in Court justifies advancement. The judges so named as referees are not given any information as to other applicants and are asked to express their opinions regardless of the number of appointments that may ultimately be made.

The Chief Justice obtains from the Bar Council's Administrative Officer a 'State of the Bar' composed as follows (for example):

	1984	1985	1986
Total number in practice as at 1st August (excluding Government employees)	900	936	959
Silks in practice at 1st August (excluding Government employees)	70	75	82
Juniors of ten years standing or more (i.e. who signed the Roll ten years before 1st August) (excluding Government employees)	219	258	321
Number who signed Roll during year	95	69	59
Silks who have left practice since 1st August of preceding year	8	9	2
Juniors who have left practice since 1st August of preceding year	25	28	43

Having collected all of the foregoing information the Chief Justice then begins his consultations. It is obvious that the size of the Bar is now such that the Chief Justice cannot know all applicants personally; far less can he expect to know the standing of all applicants or the quality of their work. He must accordingly act to a very large extent upon advice and he seeks that advice from as wide a range of consultants, judges, counsel and occasionally others, as possible. Over the last ten or twelve years the processes of consultation have developed and will continue to develop so that the Chief Justice obtains the best possible advice. The general procedure adopted is very similar to that adopted by the Lord Chancellor in dealing with applications in England, altered only to suit local conditions.In a pamphlet recently published by the Lord Chancellor's Department the following paragraph appears under the heading 'Consultations':

> 'After the closing date for applications, the Lord Chancellor arranges for extensive consultations to take place, first with the Leaders of the various sections of the Bar concerned, and then with the presiding and equivalent judges with special knowledge and authority, all of whose opinions and views are studied by the Lord Chancellor. Before reaching final decisions about whom to recommend for Silk, the Lord Chancellor consults the Law Officers and the four heads of Divisions.'

In the same pamphlet it is said, under the heading 'Qualifications':

> 'The Lord Chancellor will recommend the grant of Silk only to barristers of sufficient standing (normally at least ten years or more) whom he is satisfied have reached an appropriate level of professional eminence and distinction.'

In Victoria a list is prepared of all applicants in order of seniority and giving the following details: Name, Number of Applications, Number on Roll of Counsel, Age, Date of Admission and Date of Signing Roll.

Those whom the Chief Justice decides to consult generally are then sent a copy of the State of the Bar and a copy of the list of applicants. They are not sent copies of the applications, nor of the referees' letters. They are asked basically to advise the Chief Justice the total number of applications that should be recommended and the applicants who should receive the recommendations if possible in order of preference. The consultants are also asked to list the next half dozen or so names (again in order of preference) whom the particular consultant considers might be recommended if any of the consultant's first selection are rejected. The consultants are asked to bear in mind the area in which it is thought that a demand for silk exists.

Not all the consultants answer the questions asked in detail.Some prefer to answer in their own way for example by placing the applicants in groups or by commenting on particular applications. Invariably, however, the consultants have made helpful comments.

Among the people whom the Chief Justice always consults in this way are the Solicitor-General, the Director of Public Prosecutions and the Chairman and Vice-Chairmen of the Victorian Bar Council, but in addition he has consulted many others, mainly judges and senior counsel, in the same way, i.e. by showing them the whole list. He has also consulted others about particular applications. Naturally all such consultations are conducted in the strictest confidence.

In addition to receiving advice in writing from the consultants the Chief Justice may discuss the applications with them. He invariably discusses the whole list at a meeting with the Chairman and Vic-Chairmen of the Bar Council.

When all these opinions have been received and collected, the Chief Justice invites the three senior judges of the Court (who will already have been asked to make a selection from the list of applicants) to attend a meeting at which all the views, information and advice received are considered and discussed.It is only after that meeting that the Chief Justice makes up his own mind as to what recommendations should be made. Those recommendations are based upon all the advice received as to the standing of the competing applicants, the area in which each applicant practises, the area of practice in which a demand for silk exists and the relative number of silks and juniors at the Bar. Although seniority is taken into account, it is not necessarily given great weight.

The procedure outlined is not applied to applicants for silk in Victoria who have already been granted silk in another jurisdiction. Such applicants are required to apply in August and to show that they have been appointed silk in another jurisdiction and have signed the Roll of Counsel kept by the Victorian Bar Council, but they are not generally required to give any other information. Provided that the jurisdiction in which such an applicant obtained silk grants silk automatically to a Victorian silk the applicant is automatically recommended for appointment in Victoria. An applicant who has obtained silk in another jurisdiction which does not grant reciprocal rights to Victorian silks (e.g. England) is judged upon his standing as a Victorian barrister and is required to give the same information as any other Victorian applicant.

The Chief Justice's recommendations are forwarded to the Attorney-General in order of seniority. They are forwarded in time for the last Executive Council meeting before the first day of the December sittings of the Court so that the new silks can attend on the first day of those sittings when the announcement of the appointments is made to the Court by the Attorney-General or his deputy.

"Operandus Liftus Oven Dixonus Vestus"
(The Operating Owen Dixon West Lift)
An Endangered Species

A Court of Appeal for Victoria?

***Stephen Charles** Q.C. argues the case for a permanent Court of Appeal in Victoria. A Silk since 1975, Stephen has had substantial experience in appellate work before the Full Court, High Court and Privy Council. He is a former Chairman of the Victorian Bar Council and President of the Australian Bar Association.*

The May edition of the Australian Law News carries the interesting information that the first steps have been taken towards the establishment of a Court of Appeal for Queensland. The Queensland Cabinet has approved the introduction of legislation increasing the maximum number of Supreme Court judges from 20 to 22. The Attorney-General is reported to have said he was giving close attention to recommendations from the Law Reform Commission of Queensland in relation to the establishment of a Court of Appeal. There is no present suggestion that Victoria proposes to follow any such course. New Zealand and every Canadian Province now have permanent Courts of Appeal.

In 1985 the High Court dealt with 39 Applications for Special Leave in civil cases from New South Wales and only 15 from Victoria. In that year the Court of Appeal in New South Wales disposed of 227 appeals and 468 motions. The Victorian Full Court disposed of 76 appeals and 62 motions. The Queensland Full Court disposed of 192 appeals, including motions.

In 1986 the trend was repeated. Figures supplied by the Registrar of the High Court show the following, for Applications for Leave in civil cases disposed of by that court -

New South Wales	32
South Australia	19
Queensland	15
Victoria	10
Western Australia	8

An analysis of the number of civil appeals disposed of in 1986, published by the New South Wales Court of Appeal very recently, shows the following:

Appellate Jurisdiction	**Number of Appeals**	**Number of Motions**
N.S.W. Court of Appeal	266	459
Vic. Full Court	80	50
Qld. Full Court	198	Not available
S.A. Full Court	148	Not available
W.A. Full Court	91	Not available

Victoria has a population 50% larger than Queensland, and three times that of South Australia.

So little appellate work is now coming from Victoria to the High Court that Victoria has actually lost motion days. The sour joke in the High Court registry is that Victorian barristers get so little opportunity to appear in the High Court that they will actually pay for the privilege.

The statistics become even more surprising when it is remembered that Victoria now has over 1,000 barristers including more than 90 Silks. There are about 1,200 barristers in New South Wales with roughly 100 Silks in active practice. Queensland in 1986 had 360 barristers, and 35 Silks. One might add that the increase in the number of Queensland's Supreme Court judges will result in that bench equalling the size of the Victorian Supreme Court. New South Wales has (including the Court of Appeal) 38 Supreme Court judges.

The Court of Appeal was established in New South Wales in 1966. From the viewpoint of the profession, the results have been most satisfactory.

The figures demonstrate the volume of work disposed of by the court. It is possible to examine in detail the procedures of the court since it now publishes an annual review of its activities. There is a well-established appellate bar in New South Wales and a number of senior barristers specialise in appellate work. Their experience is that the Court of Appeal functions most efficiently. Cases are fixed well beforehand and are heard almost invariably on the day fixed. The judges of appeal, by virtue of their experience, are well-prepared, have read the appeal books before the appeal commences, are quick and to the point in argument, and deliver their judgments with despatch. The court is able to deal with urgent appeals and frequently does so in practice; if urgency requires it, in the week following the decision at first instance.

By contrast, the situation in Victoria is a rather melancholy one. No complaint can possibly be made of the system for hearing criminal appeals. They are, as one would expect, given priority, and the Victorian criminal appellate jurisdiction is the envy of many other parts of the world. Of course, no complaint whatever is made of the individual judges, who have the respect and admiration of the entire profession. They are recognised as very hard-working and competent.

But the workings of our civil Full Court do not present a happy picture. There is no appellate bar in Victoria - any barrister who tried to specialise solely in civil appellate work would rapidly starve. Those who practise occasionally in the Full Court find it difficult to get appeals on. Cases rarely start on the appointed day and frequently are adjourned out of the list to the next month's list. It is for practical purposes almost impossible to obtain an urgent hearing on short notice. The Commercial List has demonstrated that it is possible to provide a fast track for the hearing of commercial disputes in the Supreme Court, to the great satisfaction of the business community in this State. But many commercial disputes are effectively resolved by the grant or refusal of an interlocutory injunction obtained on short notice. It is only with the greatest difficulty that one can obtain an expeditious review of such decisions and many litigants are forced to a reluctant commercial settlement because of their inability to obtain appellate review of such matters in the short term. Practitioners who are asked by disappointed litigants whether an appeal can be brought and when it will be heard are usually forced to say that the appeal will not be heard for twelve to eighteen months, and possibly considerably longer. The reaction is not infrequently an exasperated 'forget it!;. And such litigants complain with some justification that they are effectively being denied a right of appeal in Victorian litigation.

One can illustrate these complaints by examples.

(a) One matter in which I was involved was first listed in November when it was, I think, the third case in the civil list. It was a case of substance for which a week was required to be set aside for argument. It had taken over a week to prepare the argument. The matter was not reached, the criminal list being taken first. Thereafter the case was second in the civil list for a number of months, finally being reached and heard in April of the next year. In that month I was engaged elsewhere.

(b) A target of potential takeover offer took proceedings to frustrate that offer. To obtain discovery of evidence it issued subpoenas duces tecum against a number of persons including third parties to the proceedings. One of them made application to have its subpoena set aside on grounds including jurisdictional grounds. The trial judge dismissed the motion to set aside the subpoena and ordered the documents to be produced within five days pending a further application for inspection. A request for a stay of the order pending appeal was refused. Two days later a request for a stay until motion day in the Full Court (approximately eight days hence) was also refused. When the matter came before the Full Court on motion day (by which time the documents had been produced), the Full Court initially refused to hear an application that the documents remain in the custody of the court and not be inspected until the appeal had been heard. After appellant's counsel had begged for some time, the Full Court set aside a day to hear the application. In this very urgent appeal, the first question raised by the Full Court was why had the appeal papers been issued on the preceding Wednesday (one day late) - the point being that the judge's reasons for judgment had only become available on that day. The second point the Court wanted argued was whether the appellant had waived its rights in the matter when it produced the documents to the Court.

(c) In a third case (a complicated company matter, which had taken five weeks to hear) judgment was delivered on 5 March 1984. The appeal

against this decision was finally listed for hearing in November 1986, by which time the parties had settled the matter.

(d) In a fourth matter, an application to dismiss an action for want of prosecution, the application was initially dismissed by the Master in December 1984. The appeal to a judge in chambers was disposed of in September 1985. The appeal to the Full Court, resulting in the dismissal of the action, was not heard until November 1986.

The profession's complaints about Victoria's civil appeals are basically these. A system which requires the court to change its membership each month makes it impossible to offer the parties a fixed or realistic date for the hearing of appeals. The court will usually not take cases of substance in the last week of the month. Since appeals cannot be given a fixed date, briefs are often returned before the appeal, causing acute dissatisfaction to the litigant and the appeal to be argued by someone who did not appear below, which may reduce the quality of the arguments offered. The delay in hearing appeals is a matter of despair to practitioners - and I am told the number of pending appeals is now increasing dramatically. The Full Court is already overburdened with work and the profession believes it does not respond adequately to the demands of urgent litigation.

Many practitioners believe that the only solution is the creation of a Court of Appeal for Victoria. Unfortunately there is no doubt that any such proposal would meet much opposition within the court. The arguments usually advanced against a Court of Appeal are that —

(a) the present system improves the performance of judges both at nisi prius and on appeal. The opportunity for judges to sit on the Full Court is said to provide invaluable experience and, likewise, that appellate judges without the knowledge of nisi prius work cannot perform adequately;

(b) Victoria's judges are general practitioners and well qualified to handle civil appellate work;

(c) judges enjoy the opportunity to sit on the Full Court. They have a lonely and austere existence and removal of the appellate work would be a severe blow to their quality of life;

(d) problems of status.

As to the first of these, one might question whether a system which consistently staffs appellate courts with judges of varying experience is entirely desirable for the litigant. One possible consequence is that those with greater seniority or experience might carry such influence in the court that the litigant is effectively denied an appellate court of three members.

As to the others, a general comment may be made that they simply do not address the interests of litigants.

The arguments in favour of the establishment of a Court of Appeal were advanced in detail in 1951 in an address by Sir Raymond Evershed at Melbourne University. They are said to have plainly influenced thinking in Australia about appellate courts, and the establishment of the New South Wales Court of Appeal. These arguments were repeated and added to in the 1986 Annual Review of that court in the following terms -

'(1) Appellate work involves functions and skills different in kind from those performed by trial judges. By inference, repeated performance of these different functions should enhance the quality of the performance of the judges of appeal.

(2) A permanent court of appeal is also likely to result in an improved quality of judicial performance, by attracting and permitting the appointment of judges of appeal of the highest ability to perform the special duties of an appellate court.

(3) The creation of a permanent court of appeal also recognises the fact that such a body will, in practice, be the final resort for more than 95% of the cases coming to it. Any further appeal to a higher tier will, of practical necessity, be limited to a very small number of cases. Hence the importance of so organising the appellate arrangements of a jurisdiction as to ensure that the results command the highest acceptance and respect in the legal profession and the community.

(4) Just as in the highest tier, a permanent appellate court is necessary, so in that tier which disposes of the overwhelming majority of appeals it is desirable that a permanent court of appellate judges should be established.

Only in this way can the primacy of the appeal court be assured. Evershed suggested that there was 'no obvious primacy' in a court comprised of a rotating membership of judges, all of equal status.

(5) The necessary attention to the principled development of the law in an appeal court could better be secured by a comparatively small court of judges operating in repeated interaction with each other. Especially because the work load would typically require a significant proportion of appellate judgments to be delivered immediately upon the close of argument by ex tempore judgment, efficient despatch of the appeal court's business could best be achieved by regular experience in the obligation of immediate ex tempore judgments and by awareness, borne by repeated interaction, of the approaches likely to be taken by colleagues in the collegiate court. In this way, the establishment of a permanent appeal court would contribute to expedition and efficiency in the handling of the appellate case load and the prompt disposal of appeals.

(6) Evershed also pointed to the need to avoid the appearance (or still worse the actuality) of appellate judges tempering their decisions concerning the judgments of their colleagues by the prospect that, some time later, their colleagues might be sitting in review of their judicial performance. Whilst indicating that this consideration need not be given 'great weight', it was nonetheless mentioned by Evershed. It is a reason of principle frequently advanced for the establishment of a permanent appeal court. Only by its separation from trial courts could the reality and appearance of complete independence on the part of appellate judges be secured. So long as trial judges review each other's work, the risk exists that the public and the legal profession will believe that, occasionally, appellate review may have been influenced, even unconsciously, by the pressures of comity and collegiality with brethren. This is a risk which the creation of a separate appeal can diminish or avoid.

To the above reasons, a number of additional reasons were offered in the New South Wales Parliamentary Debates of 1965 which preceded the establishment of the Court of Appeal. They included -

(7) The mechanical and practical problems which arise, from having a rotation of judges especially in a court with a heavy workload. Judges who depart from the appellate tribunal and return to trial work, including sometimes trials at centres distant from the court of appeal may find the task of writing judgments, often without the availability of adequate research resources, a burdensome interruption to their duty of presiding at trials. Opportunities for consultation and discussion with appellate colleagues are necessarily reduced by dispersal of the bench when it is constituted by rotation to hear appeals. The coherent development of legal principle and the avoidance of unnecessary differences may be secured by the opportunity, to sit together daily, to discuss issues involved in reserved judgments. The application of peer pressure to ensure the prompt delivery of judgments, is enhanced in a permanent appeal court and reduced by rotational arrangements.

(8) Connected with the foregoing is the greater likelihood that a permanent appeal court will be in a superior position to develop consistent legal principles to secure consistency between appellate decisions even when delivered by the Court differently constituted. Where it is appropriate, an appeal court is also better able to develop the common law in a principled manner than will be a court of constantly varying composition. In the Parliamentary Debates, it was suggested that this contribution to consistency, uniformity and high standards would reduce the number of appeals to the High Court or the Judicial Committee of the Privy Council from the Court of Appeal, out of respect for the stature of and guidance offered by the appeal court. Scepticism was expressed about this 'pious hope'. Certainly, the New South Wales Court of Appeal has a heavy and fast growing work load, as is demonstrated by the statistics attached to this review. By comparison to the next most populous State, the statistics in the most recently available Annual Report of the Judges of the Supreme Court of Victoria (May 1985) disclose that the Full Court of that Court disposed of 52 civil appeals in 1984 (compared with 61 in the preceding year) and 49 motions (compared with 45 in the preceding year). These figures contrast with the number of appeals disposed of in the Court of Appeal in 1986 (244) and the number of motions disposed of in the same year (459). However, New South Wales has

long been, for reasons that are not entirely clear, much more litigious than any other State or Territory in Australia. Other considerations clearly affect the growth of the work of the Court of Appeal of New South Wales.'

Some of the opposition that will inevitably be attracted by a proposal to establish a Court of Appeal might be reduced by the following suggestions:

1. It would be possible to establish a Court of Appeal, of five permanent members, in a separate division of the Supreme Court, and of equivalent status. One would expect those members to be drawn largely, if not wholly, from the present bench.

2. To provide for the permanent availability of two courts, two additional members of the court could sit as members of the Court of Appeal for (say) periods of three months at a time. In each year eight additional members of the court would therefore carry out civil appellate duties.

3. A bench of seven appellate judges would be able to provide two courts consistently, giving one member at any time the opportunity to write judgments and, one would hope, permitting all members to sit for not more than four days in each week.

4. The Court of Appeal could fix cases well in advance and insist upon accurate estimates of the length of hearing. Such estimates would be more likely to attain improved accuracy if the consequence of error were that the appeal was adjourned to a later date, rather than intrude on the next day's case. I am told that this is the practice in New South Wales, unless argument is almost complete.

5. One would hope that in these circumstances it would be possible at any time to find three judges for the hearing of urgent applications - which, again I am told, is the position in New South Wales.

6. The figures already quoted suggest that our Supreme Court is surprisingly small in numbers when compared with other States. The profession has often urged that it should be substantially enlarged. One aspect of the present suggestions is, however, that a comparatively small enlargement of the court would be required.

In preparing this article I have spoken with a large number of barristers and solicitors. I should say that it is by no means the unanimous view that Victoria's problems would be solved by the creation of a Court of Appeal. A large majority of those I spoke with did take that view. There was, however, unanimity on one question - I could not find any person prepared to express satisfaction with the present workings of our civil appellate system.

Building Cases Sydney Style

This summary of an address given at Melbourne on 4th December 1986 to the Building Dispute Practitioners Society by ***Mr. Justice Smart*** *of the Supreme Court of New South Wales is published with the kind permission of the Society.*

At any one time the N.S.W. Supreme Court's Building and Engineering List has between 100 and 120 cases, many of which will be major ones involving large sums of money.

In approaching this work the basic premise is that most of it should be dealt with expeditiously. Contractors and sub-contractors need their money to be able to carry on their businesses in the normal way and stalling has to be discouraged. It is highly undesirable that small sub-contractors should be forced into bankruptcy or liquidation as a result of delays. Similar problems face consultants.

The Standard Suit

Upon the issue of the statement of claim the matter is entered in the Building and Engineering List by the party issuing the statement of claim. A date about two to three weeks distant is fixed for directions. During this time the defendant is required to enter an appearance and acquaint himself with the matter. On the date fixed for directions a timetable for the future conduct of the matter is set. This usually extends to the exchange of lists of documents and inspection. If at the first directions hearing there is a problem requiring initial attention, for example, as to the correct parties, leave may be given to issue subpoenas returnable at that stage of the proceedings. This can happen where there is a group of companies or documents have been mislaid.

If on the first directions hearing documents are produced which indicate that there is no valid defence or cross claim a defendant, in addition to filing any defence or cross claim within ten or fourteen days, may be required to file detailed affidavits showing he has a defence or cross claim of substance. The matter comes back before the judge at the expiration of the period for further consideration. It may appear that, at best, a party has a cross claim to be offset against part of the claim. In such circumstances judgment may be entered on the claim. Whether a stay of execution is granted and, if so, in what amounts, is determined having regard to the circumstances.

Interrogatories are not allowed as of course. When permitted they must go to the important issues and be limited in number. They must be short, pithy and useful. If it is decided that the case should proceed on affidavit evidence, and this is being done increasingly, interrogatories are usually not allowed unless there is some good reason.

There are special rules as to discovery designed to cope with the large volume of documents. The list of documents does not have to itemise each document. Documents may be included in folders in categories, e.g., Variation Orders, Notices of Claim, Correspondence. Where folders are used each page has to be numbered and the page numbers stated in the list. This has proved satisfactory and very useful with routine documents. It has been the experience that parties tend to discover more documents and the client and solicitor vetting is not quite so careful. The discovery is therefore franker. So far people have not tried to change documents. It is too late once inspection has been had and photocopies ordered.

Pleading arguments and interlocutory skirmishes are discouraged. Applications to strike out are rare. However, preliminary points are argued when their effect will be to resolve the dispute if decided one way or to shorten the hearing. So far the court has dealt with limitation points, whether the plaintiff has a title to sue, whether a particular defence is available at law, whether a particular deed operates as a plea in bar, e.g., a release. Unashamedly the Court concentrates on the merits. It is not noted for its enthusiasm for technical points.

The Hearing

It is critical that the hearing time be controlled. To this end the parties are required to exchange experts' reports well prior to the hearing. While this helped to avoid adjournments and cries of surprise, it was not enough. The Court is now requiring the parties to put all their evidence in chief in affidavits and thereby avoid a witness spending 2-3 days in chief. It also alerts the parties to the evidence to be met and it tends to narrow the issues.

The Court frequently directs the experts to confer to limit the areas of disagreement. Agreement is often reached on a surprisingly wide area.

The Court also directs the parties to prepare bundles of agreed documents. In respect of those not agreed, it directs each party to advise the other of the documents it proposes to tender and the recipient to advise which of the documents admissibility is objected to and the reasons therefor. Formal objections can often be cured.

On occasions the Court has limited the time permitted for cross examination. This is done at the start of the cross examination after counsel has indicated the time he is likely to take. If during the cross examination it is apparent that more time is needed, it is allowed. We do not sufficiently allow for the exhausting effect of cross examination upon witnesses.In construction cases it is possible to cross examine at great length but not to much point. The court's approach helps counsel to concentrate on the important matters and often results in better cross examination.

Urgent Applications

Many and varied urgent applications come before the Court where an injunction or some other interim order is sought. These include preventing a party calling up a bank guarantee, preventing work being covered up before both sides have had an opportunity to inspect and test, directing what tests are to be carried out, preventing owners from disposing of assets pending the hearing, restraining arbitration proceedings, enforcement of payment of architects' certificates, restraining trespasses, nuisances, interferences with a builder's equipment, restraining proprietors from inducing sub-contractors to commit breaches of their sub-contracts and thereby place the contractors in an invidious position.

The Court is asked to give practical solutions to difficult problems on very short notice. For example, on some large jobs there can be major disputes as to who is entitled to the scaffolding, what should be done about its return, what use and what hiring charges are appropriate. Interim orders are made and, if necessary, the legal rights are resolved at a later stage. If a practical course is taken the parties often accept this and the legal problems never have to be dealt with. Section 23 of our **Supreme Court Act** gives a Judge power to do what is necessary for the administration of justice. This has been interpreted in a liberal way.

The Short Cases

The Court has to deal with a series of one day cases which need to be heard within two or three weeks, e.g., leave to appeal from an arbitrator, construction of a clause in the contract, etc. Fridays are set aside for matters lasting from one to five hours (assuming the Court has read the papers beforehand).

Directions and Administration

The Court sits every Wednesday at 9.30 a.m. to give directions and hear matters not lasting more than half an hour. Fifteen to twenty matters are listed each Wednesday to resolve any interlocutory problems, to make orders for references to referees, to deal with dilatory parties, to direct the exchange of experts' reports, conferences of experts and the use of affidavit evidence, etc. The Wednesday hearings usually last from 9.30 a.m. to 11.00 a.m. when the Court moves on to hear the substantive cause for the day. Every party has liberty to apply to the Court on two days' notice and this is usually given by telephone to my Associate and the other parties. Parties are encouraged to resolve matters promptly and decisively rather than let them drag. As required the Court sits at 9.30 a.m. on other days to resolve outstanding matters.

There is Court intervention and control of proceedings but is is exercised in a gentle but firm fashion. Sometimes matters do not progress until there is some encouragement. Any tendency to fight all issues instead of the real ones or to spend an undue amount of time on some inconsequential matter is discouraged. Parties have to be helped to prepare well in advance rather than at the last moment. The latter leads to cases being unduly prolonged.

References

In an endeavour to ensure that construction cases are disposed of promptly and that a suitable tribunal hears them, the Court refers some matters to a referee. The Court has the power, on the application of one or more parties or of its own motion, to refer the whole or any part of proceedings to one or more referees for determination or report. A judge may sit as a sole referee or he may be one of two or more referees. This is unusual and the Court usually refers matters to either a Master or an outside referee. Mostly, but not always, it refers matters not exceeding $100,000 or a little more or matters involving

accounts or a series of minor disputes to a Master for determination unless the parties prefer an outside referee.

If the case involves technical issues, matters of contract administration, quality of work, costs, extension of time and like matters, a referee experienced in the field may be better than a judge who does not have the same depth of experience. The Court discusses with counsel for the parties in court whether there should be a reference and who would be a suitable referee. The Court regards it as important to know the referees it uses and bears in mind the particular gifts of particular referees. While one party may prefer a hearing before a referee and the other party a hearing in court, if it is indicated that the issues would be:

(a) as well or possibly better determined by a referee, or

(b) are suitable for determination by a referee and that it will be a substantial period, that is, over nine months, before the Court can commence to hear the matter, it is accepted that a referee will be appointed.

If the parties agree upon a referee, that person is usually appointed. There is a large measure of consultation between the parties and the Court as to the referee to be appointed. It is desired that the parties be moderately happy. To date there have been no strong disagreements as to the referee to be appointed. The court watches for any particular counsel or firm favouring a particular referee and ensures that nothing unhealthy occurs.

A great many construction cases settle. One object of the Court's list management is to give cases an early hearing date so that they will settle at an earlier rather than a later day. One side product of references has been the settlement of many of those cases either just before the hearing on the reference has started or shortly thereafter.

The Court, in appointing a referee, sometimes tells the parties of the experience and standing of the referee and their wide experience in contracts. Some junior barristers can be dismissive of the skills and experience of referees whilst extolling the virtues of lawyers and judges. The Court tries to redress these excesses and reassure the parties. The skill, experience and legal knowledge of referees is critical. This is why the Court usually selects senior and experienced people as referees and has taken such an active interest in the training of arbitrators.

To fully utilise the skills of the referees the Court encourages the parties to limit the amount of evidence called. Quality and not quantity should be the touchstone. An astute observer might be pardoned for thinking that if good quality evidence is given on both sides, a referee skilled in the field will be able to form a judgment, and that nothing will be gained by calling much evidence to substantially the same effect. All evidence must be adduced before the referee. Both the parties and the referees are aware that if a problem arises during the reference the matter can be listed before the Court the same day or early the following day. The terms of reference may need amendment or some legal issues may arise. I deal with the matter at 9.30 a.m. and the reference resumes at 10.15 a.m.

As I see the future, the Court will be hard pressed to hear promptly many of the ordinary cases between proprietor and contractor and contractor and sub-contractor.Indeed, I encourage the parties to put an arbitration clause in their contracts.

Multi-party Suits

The striking feature about the Court's work is the multi-party suit. When buildings or civil works are defective, it is not unusual to have as parties in the one action the proprietor, the contractor, the architects, the engineers, the specialist engineers, e.g., the geotechnical engineer, one or more specialist contractors, suppliers, an alleged insurer and the local Council. In some cases there have been fifteen separate parties. Seven or eight parties is quite usual. In one case there were some thirty cross claims. These cases are hard to handle and hard to settle. One obstinate or unrealistic person can cause problems.

In multi-party cases it is sometimes necessary to divide up the issues and take the evidence on some issues and then release the parties who are not interested in the other issues from further attendance. Multi-party hearings are more expensive than hearings between two parties but overall the expense of a multi-party hearing is less than the expense of a series of hearings. You avoid the possibility of inconsistent findings of fact and the parties in a two-party hearing finessing over who is to call a witness, e.g., the architect and unsatisfactory evidence from such a witness who

has his eye on possible proceedings against him. The object is to decide cases correctly on full factual material.

In complex construction cases it is important not to chase minor discrepancies, engage in semantic exercises and useless detail. The parties and their advisers must keep the cost of what they are doing in mind. We need to remind ourselves to be well prepared, concise and cost effective.

In some cases the court takes all the evidence from all the parties and their witnesses which the experts will need to express their opinions. All the facts are then available for the experts and you do not waste time on the plaintiff's expert expressing views on assumptions subsequently shown to be unsound.

Sometimes the experts are sworn at the same time and the views of each of them are taken on issue one and then on issue two etc. This can be useful and reduce the area of dispute. An expert may be reluctant to express a view which is going to be demolished by the next expert in five minutes time. Each issue is dealt with in turn. This method can result in the areas of disagreement being much reduced. it is a method to be used with care.

Much of what I have said applied to the two party suit but it has been the multi-party suit which has directed attention to the need to develop and refine our techniques sufficiently in this area to manage this litigation efficiently. There is still a considerable distance to go. Costs penalties are not enough. If a case goes for too long a party may run out of funds. Too many people can be affected.

It is necessary to attack the problems causing the multi-party suit at a more fundamental level. Many specialist contractors have design responsibilities. It is sometimes not clear where their responsibilities end and those of the architect/engineer begin. What is needed is a clear definition of the areas of responsibility. Because of the large numbers of matters which come before the Court, it is able to analyse problems and discern trends. The Court, in this List, has an educative role, and at the various industry and professional Associations attention is directed to these matters. Comments are made about difficulties in the various standard forms of contract. With its overview, the Court encourages steps being taken to prevent disputes arising.

Court Expert

The Court has the power to appoint a Court expert to assist the judge. This would be handy in difficult technical areas, costs areas and where the experts called have been advocates and not reasonably objective. It was envisaged that mostly the expert would sit with the judge. While there has been considerable support for such experts from the construction industry and the various professional associations, their use has been strongly resisted by the legal profession, especially the bar. They fear that the expert will pour poison into the judge's ear and they will not be given a full opportunity to supply the antidote. While I believe these fears are groundless, the result has been that no such experts have been appointed.

Evidence by Telephone and Audio/Visual Methods

The Court has power to take evidence and conduct the hearing by telephone. This is a useful power in appropriate cases. So far it has been used in interlocutory applications. On one occasion it was possible to avoid bringing a witness from Western Australia. This saved the parties considerable costs and it avoided depriving the business of an employee for three days. On another occasion it enabled evidence to be obtained from both sides in the country on an urgent interlocutory application and a solution to some urgent on site problems to be worked out within a couple of hours. While you cannot see the witness, the amplification in the telephone highlights changes in the voice and any uncertainty. If during the cross examination it becomes apparent that there are other documents or information needed the witness can be asked to leave the telephone and obtain these materials. This was very useful in one case. If the witness had been giving evidence in court the materials would not have been available as their existence would not have occurred to counsel and no subpoena would have issued.

As the Court has a substantial amount of country and interstate work, this is a necessary facility. The telephone is set up in the Court room. The judge sits on one side of the bar table, counsel on the other and all relatively close to the microphone and loudspeaker unit. The device permits a three way conversation. We could have the judge and counsel in Sydney, one group of solicitors and witnesses in Coffs Harbour and another in Adelaide. It can also be used to take evidence overseas.

We are finding that State and national boundaries

matter less and less and that the parties are looking for adequate and practical ways of resolving disputes. Cost considerations prevent perfection. A balance has to be struck.

The Court will be concentrating on:

(a) hearing multi-party cases,
(b) hearing those cases or parts of cases raising substantive questions of law,
(c) supervising arbitrators,
(d) deciding which cases should proceed by way of arbitration or in the courts - the frequent use of referees has reduced the number of these arguments,
(e) interlocutory or urgent matters,
(f) considering reports of Court appointed referees.

I envisage that concurrently a substantial number of arbitrations and references will be proceeding. While there are some complaints about the extra expense, e.g., the fees of the arbitrator and transcript fees, these usually pale into insignificance alongside the fees paid to the legal advisers and consultants. In technical fields etc. the hearing before an arbitrator or referee may be quicker. In retrospect, despite possible extra expense, the parties prefer to have their disputes resolved rather than wait in the Court lists for a lengthy period. The high rate of settlement, either immediately before or shortly after the hearing of the reference starts, supports this view. It exemplifies the truth in New South Wales that it is the arrival of the hearing date which enables reality to prevail.

It is becoming evident that hearing cases is only part of the judge's job. Good litigation management techniques are essential. If we are able to bring matters on for hearing on a regular basis in six to nine months the rate of settlement will probably increase and parties will not regard it as useful to engage in delaying tactics.

Referees are expected to make a full report setting out their findings and giving reasons for their views. The reasons have to be appropriate to the subject matter. In quality disputes the reasons may be quite short. So far the referees appointed have furnished full reports and exposed their reasoning. Mistakes have been made, but judges make mistakes too.

Arbitrator's Reasons

I encourage arbitrators acting under the **Commercial Arbitration Act** 1984 to give full reasons. I am unhappy with skimpy reasons which prejudice the appeal rights of parties or do not tell the parties what the arbitrator has done. It is important that comprehensive findings of fact be made. Full reasons simply set down the processes which the arbitrator adopted (or should have adopted) in coming to his conclusion. The need to give reasons and think carefully helps you to arrive at the correct conclusion. Some of the better arbitrators in Sydney gave reasons long before they were required to do so. They took the view that the parties should be able to correct their errors and that they losing party was entitled to know why he had lost. A well run and fair hearing and good quality reasons induce parties to accept referees and arbitrators.

Alternative Dispute Resolution

Over the last twelve months much interest has been shown in Sydney in the various methods of alternative dispute resolution (ADR). The Australian Commercial Disputes Centre in Sydney promotes these methods and, if requested by the parties, takes over the management of disputes and their resolution.

The resort to ADR in commercial areas has arisen out of the mounting dissatisfaction with both court proceedings and arbitration. Complaints have been that both are too lengthy, too costly, too slow and consume too much executive time. Businessmen are concerned that a vigorously contested court case or arbitration will sour ongoing relationships.

Over recent years there has been increasing resort to ADR in the United States and it is now being taught and practised there extensively. In many ways ADR is a development of inter-party negotiations with the parties utilising the services of an independent person.

In commercial and construction matters there are many kinds of ADR and I will illustrate some of these:

(a) Expert appraisal - an acknowledged expert is given the documents and the submissions of both sides and produces a binding solution, for example, rental redeterminations, valuations of shares, fixing of hiring charges for building equipment such as formwork.

(b) Both parties come before an independent person. After obtaining the documents from

both sides, he may approach the matter in one of two ways. He may invite the parties to a conference and give each party the opportunity to fully explain his case. He takes them through the issues one by one and endeavours to ensure that the parties see the strengths and weaknesses of their cases. The general experience in New South Wales has been that the parties want a respected, experienced and fair-minded man who has been through all the documents beforehand and discusses the matter with the parties. In some cases the parties want his views as to the likely outcome if the matter proceeds to arbitration or a court hearing. In others they prefer to form their own views based upon the discussion and analysis and their own assessment. After such discussions the parties frequently settle the matter between themselves.

Alternatively, the independent person may see each side separately and go through their claims and defences with them, probing, questioning and commenting. As a result of this process each party becomes aware of the strengths and weaknesses in each case and they will go away and settle the matter. The independent person does not tell one side what he has said to the other. This method has worked well in some recent disputes where there was a genuine desire on the part of both parties to settle their disputes and the independent person was widely respected.

(c) Both parties come before an independent mediator who plays a less active role, essentially acts as a chairman and leaves matters to the parties, guiding them back to the point when they start to stray. He may adjourn for the parties to negotiate directly.

(d) Mini Trial - in the United States this is used where there is likely to be a long hearing. Two days will be set aside and the attorneys of the parties and possibly the major witness will present the major facts to a panel constituted by a senior executive of each company with a neutral chairman, often a retired judge or senior attorney. He may indicate a view of some matters to the senior executives and they will spend a day or so trying to settle the matter. It is a method which has met with a measure of success.

Valuable time can be lost in extensive conciliation discussions and, if a plaintiff has a pressing need for his money, it may be best to commence the arbitration proceedings to avoid losing time, while concurrently participating in conciliation. We have been encouraged by the success of a goodly number of conciliations and the expense they have saved the parties. In some cases lawyers have participated with their clients. They can be of great help in bringing home to a client the realities of the situation and what should be done.

Editors' Note: Members of the Bar interested in joining the Building Disputes Practitioners Society should contact George Golvan (Clerk S).

Professional Negligence

There are now 1,000 Barristers in active practice at the Victorian Bar. Each Barrister is required to have professional indemnity insurance. Considering the amount of advice and number of Court appearances per day in this State, the complaints made against Barristers of negligent conduct are few, and the Bar can justifiably be proud of the level of competence exercised by members of this Bar.

The premiums for insurance have steadily increased over the last few years. The premium is fixed by reference, inter alia, to the claims experience. It is therefore in the interests of each member of this Bar that high standards be maintained otherwise, in the end, all pay.

The purpose of this article is to inform Barristers of the types of complaints that are made from time to time which sometimes end up in litigation.

Some complaints that have been made are:

- Failing to consider a brief within time so that a Statement of Claim is not drafted within the limitation period.
- Settling cases without proper instructions.
- Advising a client to settle a case at a figure which is too low.
- Failing to attend to a brief over a long period which forms part of a period of a delay for an application to strike out for want of prosecution.
- Causing a trial to abort because of the discharge of a jury brought about by Counsel's conduct.
- Incorrect advice.
- Failing to call an essential witness in a trial.
- Drafting Statement of Claim with incorrect cause of action, and then expiry of limitation period.
- Failing to seek costs, certificates or interest at the conclusion of the proceedings.

The Bar Council is also considering a number of questions relating to professional insurance. It has approached the brokers to ascertain whether it would be possible for Counsel say under 3 years to pay a lesser premium. In addition it is seeking information concerning a lesser premium for those who obtain leave of absence from the Bar. Those who leave the Bar should take out run-down cover. Those who do obtain leave of absence from the Bar are required to take out insurance during their absence.

E.W.G.

Notable Cross-Examinations

The following is an excerpt from a Canadian work, ***Court Jesters*** *by Peter MacDonald, which we publish by kind permission of Tasmanian Law Newsletter. Doreen Johnson, a Court reporter in Edmonton, has made a hobby of preserving gems of the cross- examiner's art.*

The following is one of Doreen's all-time favourites. The veteran court reporter who donated it to a grateful public says it is the highlight of his long career:

Q. Now isn't it true that when a person dies in his sleep, in most cases he just passes quietly away and doesn't know anything about it until the next morning? (When, presumably, he reads about it in the paper.)

That's definitely a major-league Stupid Question and in my view it should be considered the standard against which all others are measured. Any interrogator who can match or surpass that doozie should be waived straight into the Hall of Shame, with no waiting period. But there are some truly great contenders, such as this one:

The twenty-fourth of December - was that the day before Christmas?

And you would have to give a big hand to this hot prospect:

Q. Were you aquainted with the deceased?
A. Yes.
Q. Before or after he died?

Only someone like MacKenzie King could have thought of a question like that.

Let's take a closer look at the Doreen Johnson Collection. What follows (unless otherwise indicated) is an anthology of asinine questions she compiled from transcripts that have crossed her desk. These lulus all come from the courts of Alberta, but this does not mean that Albertans are more stupid than others, let me assure you. It's just that Alberta appears to be the only province where this sort of research has been done. When it is done elsewhere, I hope someone will send me the details in a plain brown wrapper.

Q. The land in Portugal; is it still there?

Q. How many children - she had three? Right?
A. Yes,
Q. How many were boys?
A. None.
Q. Were there girls?
A. Three girls.

Q. You remember that no one was touching her.
A. That's right.
Q. Who is that no one that wasn't touching her?
A. I don't know.

Q. Who were these trucks that you had discussions with?

Q. How did you know the policeman wasn't a dog?

Secretaries will love this one:

Q. You remember the person who was there. Was there a person or was it simply some sort of secretary that you were signing these in front of?

This lawyer has a very short memory:

Q. When I am asking you questions, I expect from you what you know yourself personally. All right? I don't want you giving us what somebody else might have told you or, like you say 'I have an idea'. Don't give us these ideas unless you know personally. Okay?
A. Okay.
Q. All right. Can you give me an idea ..?

In another case reported by Ms. Johnson, we're treated to a whole bunch of Stupid Questions from a lawyer who examined a farmer who was distressed in more ways than one:

Q. What has the property been used for over the last three years?
A. The previous two years farming, and this year, nothing. They were droughted out so we never realised anything. The payments were being made out of the farm until the drought hit us.
Q. When is the drought you are talking about?
A. 1982.
Q. The spring of 1982.
A. Spring, summer and fall. Peace River County was 90 percent wiped out because of lack of rain.
Q. When did you last work?
A. Last fall when I put the crop in.
Q. How could you put the crop in if there was a flood?
A. Do I have to answer that.
Q. Yes.
A. I don't think it deserves answering.
Q. Why?
A. Because we didn't have a flood. I told you we had a drought.
Q. Drought. Sorry.
A. That's right, and you put your crops in in the spring. Do I have to explain the farming procedures to you?
Q. I'm sorry. You mentioned to me that you put in a crop last fall.
A. You don't put in a crop in the fall. You put it in in the spring and it grows in the summer.
Q. Do you own any farm equipment?
A. I have my name on a tractor.
Q. What kind of tractor?
A. A white tractor - and a Case 1030.
Q. That is a Case 1030 white tractor?
A. Yes.
Q. How much is owed on that?
A. $21,000 on the two of them.
Q. I only heard you describe one tractor.
A. I said I own two tractors, a White tractor and a Case. White is the name of the tractor.
Q. I'm sorry. I don't know much about tractors.

Through her newsmagazine, Doreen Johnson encourages other Alberta court reporters to rescue court humour from oblivion. Some of her collegues have come up with sparkling gems, such as this one, snared by Cristie Stone in Provincial Court in Edmonton:

Q. 'And you are how old a woman, sir'?

Karen Swartzenberger preserved this dandy:

A. And then I read the demand to the accused.
Q. Did you read it from a card or from the top of your head?
(That cop must be a contortionist.)

Thanks to another Alberta court reporter, Rosemary Aitken, we can admire the handiwork of this scintillating cross-examiner:

Q. Who else was with you in your van?
A. There was no one else.
Q. Were you alone, then.
A. Yeah.
Q. And you were the driver? Is that right?
A. Yeah.

"Tax problems . . . . you need an extension on your overdraft . . . . I think that can be arranged . . . . but first beg a little . . . . I just love the sight of a begging barrister."

Kerry and Tipperary Alibis

In Summer 86 Bar News, reference was made to the Tipperary Alibi. Maurice Healy's classic ***'The Old Munster Circuit'*** *gives this account of both Tipperary and Kerry version.*

A Kerry alibi was a phrase, something like a Ruy Lopez game in chess; just as it did not call for an Iberian to play the one, so a Kerry alibi might be produced in another county. Its essence was that the story was true in every respect except one: the date. The events sworn as having happened on the Tuesday were all true; but they had happened on the Wednesday, or on the Monday.

Now, people go to Mass on a Sunday; or the fair day in such a town is a Monday; or Thomas O'Flaherty's funeral took place on a Tuesday; the attending Mass or a fair or a funeral is a fact, and one rather apt to get mixed up the most carefully prepared story. So that wonderful body, the Royal Irish Constabulary, used to keep careful record of the exact dates and times of such functions as might well come into the story of an alibi witness; and Crown counsel were always able to show an uncanny acquaintance with the daily routine of the rural population.

Once a Kerry alibi succeeded at the Cork Assizes in circumstances that enshrine a lesson. The prisoner was a car-driver, accused of an agrarian outrage which had been committed on, let us say, October 4th. Identification was weak; the culprit had been masked and disguised; Richard Adams who defended, had greatly shaken the witnesses for the prosecution; but William O'Brien was the Judge, and he had no intention of letting the prisoner escape. 'My Lord,' said Adams, 'I have only one witness for the defence - Mr. Townsend, the well-known land agent.' 'What!' cried the Judge; 'Mister Adams, do you mean to say that you are in a position to call that respectable gentleman to assist your client? There must be some mistake in this case. Let Mr. Townsend be called.' The witness was duly sworn, and Adams examined him. 'Mr. Townsend, do you remember Tuesday, October 4th last?' 'I do, very well.' 'Where were you that day?' 'I had to drive out to the neighbourhood of Macroom; I was in that part of the country all day,

from nine in the morning until about half-past six in the evening.' 'Who drove you?' 'The accused.' 'Could he have been anywhere near Riverstown that day at two o'clock?' 'Absolutely impossible.'

'Oh-h-h, oh-h-h!' cried the Judge, 'Mister Adams, there must have been some mistake on the part of the police. Gentlemen of the Jury, you had better find this prisoner Not Guilty; let him be discharged. When a respectable gentleman like Mr. Townsend comes here and swears to the absence of the prisoner from the scene of the crime he obviously cannot be mistaken. We're all very much obliged to you, Mr. Townsend, for preventing a miscarriage of justice.'

Adams was puzzled, for he had his own views about the prisoner's guilt; and yet Townsend was a pillar of law and order, and quite incapable of lending himself to a conspiracy to defeat justice. But Adams suddenly remembered that his solicitor, not the most particular of mortals, had impressed upon him that his first question to Townsend must take the form: 'Do you remember Tuesday, the 4th October last?' He got out his diary, and turned back to the date. October 4th was a Wednesday!

A Tipperary alibi was a more elaborate affair than the Kerry kind. When the Crown witnesses had told their story at petty sessions, a mass of evidence was prepared in respect of each one of them to prove that he, the Crown witness, was somewhere else than the place he had sworn to on the day of the crime. This was a more difficult alibi to break down, as it did not even hint its appearance until the case for the Crown was being presented before the jury, which left no time for investigation and contradiction. The elder Mr. Weller would have greatly approved of the strategy and tactics of the defence in Irish criminal cases.

Editors' Note: Would a Tipperary alibi be caught by s.399A of the Crimes Act 1958?

Courtly Language

With the kind permission of 'Counsel', the Journal of the English Bar, we publish the following article by ***Mr. Justice Staughton*** *of the English Commercial Court.*

Here are three New Year's resolutions for those who draft affidavits:

- Avoid the word 'verily', which has been obsolete in ordinary speech almost since the Authorised Version of the Bible. Why should a deponent 'verily' believe something, and not just believe it?

- Do not 'crave' leave to do anything, but just ask it - assuming, of course, that leave is necessary in the first place. Is it, in fact, necessary to ask 'leave' to refer to a previous affidavit of the deponent or some other person, rather than just referring to it?

- The words 'humbly' and 'respectfully' are as unnecessary in affidavits, and generally as untruthful, as they are in oral argument.

I proposed those rules on a Friday in October when the Commercial Court was hearing summonses and was gratified to learn that one eminent firm of solicitors had circulated them to all its litigators, although the effect is not yet apparent.

But let us not abolish the phrase 'with respect' in oral argument. There is high authority for the view that it means 'You are wrong' (thus serving an essential purpose), just as 'with great respect' means 'You are utterly wrong' and 'with the utmost respect' equals 'Send for the men in white coats'.

While on the subject of language in court, I am surprised how often it is necessary to remind Counsel that, as the **Code of Conduct** provides, that should not state their own 'opinion' of the facts or the law to the court. The rule is seldom if ever infringed by those in criminal practice. Presumably they are taught early that they must not tell a jury that they 'think' their client is innocent. In a civil case it might be said that it is of little consequence whether Counsel 'thinks' something or 'submits' it. But anyone who has

listened to American advocates, as I have in an international arbitration, saying repeatedly that they 'believe' or 'firmly believe', the evidence shows, will appreciate the point. Either the English language is devalued by this usage, or the integrity of the advocate is exposed to doubt. Lord Simmonds in the House of Lords once rebuked a senior silk in plain terms:

> 'Their Lordships are not interested in what you 'think', Mr. ...'

The barrister who submits something 'with confidence' also infringes the rule and what is more, makes an ineffective effort to conceal that he is doing so.

There is one curious exception. An affidavit for leave to serve process out of the jurisdiction must state the 'belief' of the deponent that there is a good cause of action, under RSC O.11. One in which the deponent 'submits' that there is a good cause of action is liable to be rejected.

On another topic, there is a growing practice at the Bar of using the phrase 'My Lord' not as a mode of address but as an integral part of a sentence. For example:

> 'My Lord will see in the pleadings that...'
> 'I ask My Lord to look at the pleadings...'
> 'In My Lord's bundle of pleadings...'

That is harmless, perhaps, and has a respectable precedent in the Spanish word 'Usted ('Your Honour', or in effect 'You'). But it is an unnecessary archaism, which should be avoided if courts of law are not to appear even more strange and intimidating to litigants and witnesses than they do already.

Could 1987 be the year in which advocates in court and those who swear affidavits say what they mean, in language which ordinary people can understand and without conscious archaism? For a start one might abandon the phrase 'this 'Honourable' Court' and substitute 'the Court'. But I write, of course, only of the Commercial Court. Anyone who fears that these proposals will not be welcome elsewhere will, of course, not adopt them.

Counsel: With respect, Your Honour, I would have thought that, in conceptual terms, what has fallen from your Honour is a not inappropriate resolution of the dilemma.
Client to co-accused: I think he means "Yes".

TALES OF THE OPENING

It was the afternoon of the Grand Opening. The ODCW lift was full of barristers expectant and eager for fabulous speeches and free drinks.

A cynic's voice rang out amidst the assembled throng:
'I think it looks like a Cairo brothel.'

Stunned silence.

The cynic continued his one-sided conversation.

'All those pot plants and fake grass leading to a big tent - you'd think we were in the desert.'

A member of the building committee, crushed against the corner of the glistening new lift, could take this spry knave of an upstart no more.

'Only you would know what the inside of a Cairo brothel would look like' he retorted.

Laughter filled the silence. The doubting Thomas had been ably vanquished. But, as if on cue, alarm bells began to ring. The lift shuddered to a halt.

Panic rose in the throats of those on board. Would they be stranded between floors in this proud pink edifice? Would they miss the scintillating speeches of Chairman Cummins, the two Chiefs, and S.E.K.? Would they miss that rarest of occasions - free drinks on the Bar? Murmers of apprehension arose. What could be done!!!!

A bold building barrister applied years of hard-edged common sense to the problem, 'Just get on that emergency telephone and we'll be out of here in a wink'.

His practical experience soon located the telephone hidden behind a shiny enclosure bereft of words but full of symbols. A senior silk reached for the hand piece but recoiled!!!! Who would speak? Who would confess? to this unspeakable crime in whose tangled web they were all sickeningly emmeshed. You see they were marooned between the ground floor and the first - between the lofty marble entrance hall and the lush completed first floor foyer - they were trapped in the INVALID LIFT...

Rumour has it that a lost lift mechanic, blown well off course, found their bleached bones - the telephone left dangling in a vertical spin.

It was later. Heads were spinning with Shakespeare. King Phillipe had addressed his troops. Alas, alak, gremlins attacked the sophisticated speakers and his recitation could not be heard in the marquee on the field of battle.

Undaunted our chivalrous Chairman, took his prompt, and re-charged into the fray. Eschewing Freud he dug deep into the chest of Shakespeare. The masses approved.

Then the High Chief and the Higher Chief addressed the clans. Talk of achievement and retaining the standards of the Bar again met with the approval of all.

Finally S.E.K. spoke of Selborne, God and a lot of hard work. Spines were ready for the spirits. The ribbon was cut. Owen Dixon Chambers West was officially opened!! To the tables, to the tables was the call.

It was much, much later. The celebrations had divided. In a glass enclosed chamber were those who had been invited - sipping politely on Perrier and orange juice. In a canvas enclosed marquee were the rest - the milling throng eagerly swilling malmsy, ale and porter.

Suddenly the reflecting glass window which separated this throng waivered, bent and shuddered. The sound of flesh on glass silenced the gathered mass. Lovitt had walked into the

glass!!! A moment's hesitation - and then the cry went up. Typical! How much has he had?!? Sue him for trespass to the building!! What hard creatures barristers can be!

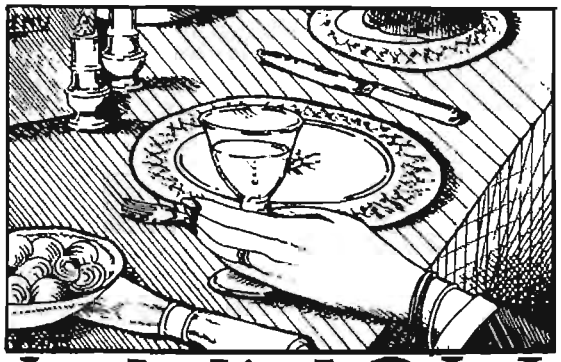
Poor Lovitt, dazed and shocked, staggered off to the toilets, and entered the LADIES amidst confusion and the laughter of his peers.

But just as he had exited, so like lemmings, were bodies thrown against this dastardly window. Learned refined judges, juniors and seniors alike all rudely ran into the offending glass. It was now clear that this window only reflected inwards and those in the marquee thought it was more open space. Poor Lovitt, wrongly accused, never did re-emerge from the LADIES but his reputation remains the same.

Much, much, much, later. The Essoign Club - an excellent celebrating dinner. Fine food and wine. More vintage stuff from Cummins and S.E.K., and O'Callaghan thanking the people who put in the long hours to make the building possible. Amongst the V.I.P.'s is the chief mandarin, the Premier has joined the bar for the joyous occasion. A busy man he must away before the end of the long day's journey into night. But not before a visit to the kitchens to thank the real workers. Philip is flummoxed. Kitchens? What are kitchens? Where are these kitchens? But our charismatic Chairman with aplomb, eventually guides the Premier and his good wife into the famous Essoign Club kitchens. The staff are thanked profusely. They decline graciously an offer of a ten percent cut in their wages. Never mind says the Premier, with such a fancy building and all this entertainment the Bar should take a ten percent cut in its fees. Much laughter, very, very, hilarious, says the Chairman- but the Premier wasn't laughing?

Much, much, much, much later, amidst much port the building committee had convinced itself that, no, they couldn't have arranged a better financial deal for the building and certainly not in an afternoon. So much for radical pamphleteers. And still the alarm bells rang out from the invalid lift .....

Paul Elliott



L·U·N·C·H

THE FLOWER DRUM

For various reasons, it is indeed a most onerous task to write a review of the Flower Drum Restaurant. Since he first opened his portals to Barristers eager to celebrate anything from an overdraft extension to a forensic victory or simply because it was Friday, Gilbert Lau has become the Bar's most infamous and accommodating Restauranteur. It is not simply that the quality of the food and service at 'the Drum' are second to none but that the place has become a part of life at the Bar that was formerly the province of places like Menzies and the Cafe Latin. The task was made even more difficult when one looks at the quality of the two previous articles. How could one compete with the quiet humility and encyclopaedic gourmet wisdom of Lovitt or the sheer rapier sharp wit and humour of Rozenes as exemplified in his article on Melbourne's answer to Tour D'Argent - Campari?

For these reasons it was necessary to enlist the aid of two giants of literature and ask them to donate a piece each in their own style which would somehow convey what the Flower Drum means to them. The first was A.B. 'Banjo' Lunchalot who composed the following poem on one of Gilbert's red serviettes during a course of Szechuan prawns in a sesame seed basket with snow peas and Singapore noodles:

The Man from Flower Drum

There were stirrings there in ODC that quiet Friday morn
For some it was the end of the assize
They were Counsellors a'plenty whose OD's were overdrawn
And from brief-gorged chambers eager to arise.

There was Spargo (Settler Alacritous) who'd knocked off three by ten
And Franich who'd lunched a lot since wedded bliss.

The Bar has many Red Faced boys and Tall Girls Clubs but then
There are many who'll give paperwork a miss.

There is Julian Zahara: 'Martini double if you please
And just to wash it down a Heineken'
And then loud Colin Lovitt, another Jury lost with ease
Said he'd never work for Legal Aid again.

Ron Meldrum couldn't make it out to lunch upon that day,
He likes to make his lunch competitive.
'I'll leave it up to my date Dove' he mused towards the fray
'He orders wine that is most expensive'.

It was a normal Friday p.m. out in William Street,
The chopstick wielders gathered for the feast.
There was Casey (Terry), Leapy Lee, Bicknell and the Beast.
The milling mob set off towards the East.

The object of the odyssey - the Famous Flower Drum
To feast on Peking duck and Sang Choi Bau
And then to kick on after lunch 'til dinner patrons come,
'No problem' (once again) says Gilbert Lau.

'Banjo' could not continue with his masterpiece as he became overcome with emotion when he spilled his Queensland mud crab steamed in black bean sauce over his R.M. Williams moleskin morning suit. Besides, he had just broken the special starvation diet prepared especially for him by Simon 'Bones' Wilson.

Stepping into the breach in such necessitous circumstances was The Immortal Bard of Albert-on-Park (sometimes known as Bowman of the Board) who saw the Drum his own way:

Gilbert IV
Scene I

The Flower Drum Restaurant. Seated: Sir Lunchalot, Sir Robert of Kent, Lord Hanlon, the Earl of Sahara and Lady Lyndawest. Enter: Gilbert with bottle.

Gilbert: Wiwwa Wiwwa Whine Weisling

Lunchalot: Good Gilbert, to our table would you bring
Roast pork, crab claw, plum sauce and chicken wing.
And multitudes of dishes from the East.

Kent: My footsteps here no bricking cop will trace,
My beatled locks no prosecutor see
In corridors of crime and Crown Appeals,
And garlic prawns my entrails will delight.

Hanlon: And civil juries also take back seat
For whiplash, real or feigned, cannot compete
With fried Dim Sim and other tabled meat
And yet I dread the sound of foreman's knock.

Lyndawest: But fie! 'tis fast approaching two fifteen
And calling of the list in number five
Though Chinese food has not my stomach reached
In panic from this place I must depart.
I fly! I fly!
[Exits hurriedly]

Lunchalot: O stupid wench to miss the quail and duck!

Sahara: Fried Rice! Fried Rice! My Kingdom for Fried Rice!
And whilst about it bring the Crayfish thrice!

Scene II

Later

Lunchalot: .. and ten or twenty further could I name
Whose courtroom style with mine would not compare
Who huff and puff and would adjournments seek
But look! The black McArdle doth approach!
[Enter Prince of Sadness]

Lunchalot: What brings you here with manner grave and grey

And visage drawn and attitude so glum?

Sadness: I bring you dreadful tidings from afar
Outside your door a conferee doth wait
With RSI, and back, and nervous state.

Lunchalot: Such conferee must sit and wait in vain.
No Moor or Turk or other infidel
From me my shell of scallops shall remove
Go tell him nine fifteen outside the Board.

[Exit Sadness]

O Woe! The Wirra Wirra hath run dry.

Hanlon: Now must the cleansing lager do its stuff
Good Hieneken, or other bottled brew
And back upon the rattler to the Club.

Sahara: Yet could I five more courses still consume
Washed down with gin and beer and wine and port
And heavy pots of Guinness at the Celts.

Lunchalot: Tis sad to say this splendid lunch is done
And vacuum cleaners around our ankles run

[Exeunt

Gilbert: Good bye, sweet lunch and flights of Fee books bring thee to my shop.

The Flower Drum Restaurant is acknowledged as the finest dining establishment of its kind in Australia. There are many clues as to why this is so in the preceding paragraphs. The prime mover and essential ingredient to this success is Gilbert. He, and the staff he has moulded to his exacting standards, can be relied upon to provide food that is of excellent quality and innovative, service that is almost overwhelming and an attitude about the place that can only be summed up by Gilbert's oft repeated: 'No problem'.

John Burns

Flower Drum Licensed Restaurant, 103 Little Bourke Street (663 2531) and 17 Market Lane (662 3655) open for lunch and dinner most days.

Lawyers Bookshelf

INTELLECTUAL PROPERTY COMMENTARY AND MATERIALS

by M.L. Blakeney and J. McKeogh (Law Book Co. Ltd.)
pp.i-xli, 1-723, index 737-741. RRP $59.50 soft cover

The term 'industrial property' is commonly used to refer to that body of rights protected by the laws relating to Patents, Trade Marks and Industrial Designs. The term 'intellectual property' was originally used in contra distinction to refer to the rights which protected literary and artistic creations. In its modern formulation the term intellectual property embraces both industrial property and literary and artistic property.

Intellectual Property by M.L. Blakeney and J. McKeough represents the first Australian attempt to present a collection of cases and materials which reveal the fundamental principles underlying the protection of rights arising from intellectual activity. The book is deliberately broad in its focus as it is directed primarily to students. However, it also provides a useful introduction for businessmen or practitioners who have little or no familiarity with this rather specialised area of the law. It provides a convenient collection of leading contemporary authorities together with references to textbooks and periodical literature. It does not purport to serve the well versed practitioner as a specialised

reference work and is not comprehensive enough to achieve that end.

In its first seven chapters the book covers Copyright, each of the three areas of Industrial Property, Business Reputation and Trade Secrets. In the final chapter the book deals with the relief that is afforded to owners of industrial and intellectual property by the general law and the often more expansive remedies afforded by statute. It also considers the ex parte orders for inspection and seizure of evidence which have developed in response to the peculiar demands of intellectual property litigation.

It is a well presented and easy to read introduction to a jurisdiction that is growing rapidly and assuming increasing commercial significance. Intellectual property is an area of the law that is at present largely esoteric. This book will commend itself and serve well the uninitiated.

Bruce N. Caine

THE LAW OF CONTRACT

by D.W. Greig and J.L.R. Davis
1987 The Law Book Company Ltd. pp. 1-1542
$69

The April 1987 catalogue of the Law Book Company Ltd. lists some 50 titles, all Australian or New Zealand publications. Add to these the publications of other publishers such as Butterworths Ltd., works from the U.K. and loose leaf services and one gets an inkling of the torrent of legal publications flooding into the general vicinity of William Street.

Not surprisingly, considerable buyer resistance has emerged in recent years amongst members of the Bar. Some of the more cynical grumble amout the combination of ambitious academics and rapacious publishers. In short, utility and value for money are becoming increasingly the criteria for selection.

The Law of Contract by D.W. Greig and J.L.R. Davis, respectively Professor and Reader in Law at the Australian National University, is, as the title suggests, a general text on the law of contract. The recommended retail price for the soft cover edition is $69, approximately the price of a couple of lunches at Slattery's.

A good text book on the law of contract would form an important part of any barrister's library, however modest. Not only do contractual problems arise frequently in practice, but many areas of commercial law - insurance, partnership, building law, landlord and tenant, vendor and purchaser etc. etc. - are but boutiques in the giant shopping centre of contract law.

There are of course standard English texts of great authority such as **Chitty**, but increasingly the law of contract in Australia is being restated and developed by the High Court. Cases such as **Legione v Hateley** (1983) 152 CLR 406, **Hospital Products** (1984) 156 CLR 41, **Meehan v Jones** (1982) 149 CLR 571 and **Codelfa** (1982) 149 CLR 337 (almost a text on contract law in itself) must be central to any useful exposition of the law of contract for Australian lawyers. A text which (understandably enough for its domestic market) relegates such authorities to the status of interesting footnoted examples from other lands cannot fill the bill.

How then does Greig and Davis measure up? Quite simply, in the present reviewer's opinion, it is a truly outstanding work. The authors are unashamedly scholarly in their approach. They set their work in a historical context which is clearly and cogently argued. Their main theme is that the 'Golden Age' of contract law in nineteenth century England with its emphasis on objective standards, freedom of contract and judicial restraint, was in truth a departure from an older regimen personified by Lord Mansfield in the eighteenth century under which the courts of equity in particular were prepared to act boldy to mould the strict contractual rights to the needs of individual justice.In such cases as **Legione v Hateley** the authors see a return to that true doctrine.

But a barrister with a waiting room full of anxious clients and a sceptical solicitor is likely to pass over a historical excursus on Lord Mansfield et al, fascinating though it may be, as he commences his research on the contractual point in question. Such a user needs a text book which is accurate, thorough, comprehensive, and, perhaps most importantly of all, easy to find one's way about in. Greig and Davis meets such practical demands supremely well.

The present reviewer, with a frankness not usually found in book reviewers of any sort, admits that, apart from a skim through the chapter 1 'History and Development' and chapter 2 'Freedom of Contract and Economic and Social Reality', he has only read chapter 6 'Contract making: Offer and Acceptance' and chapter 10 'The Implication of Contractual Terms'. But the quality of those parts of the book is sufficient to found a firm belief as to its overall excellence. The subject matter is organised in a logical and accessible fasion. Many headings and sub-headings facilitate access to that part of the work in which the reader is likely to find authorities which bear on the problem in hand. The extent of this can be gauged from the fact that the Table of Contents covers some 14 pages, yet the sub-divisions within the work itself are even more detailed. For example, chapter 10 'The Implication of Contractual Terms' is sub-divided in the Table of Contents into three divisions, one of which is 'Circumstances in which a Term Might be Implied'. Under that heading there are some five further divisions including 'Terms Implied from a Past Course of Dealing'. When one turns to the body of the work (page 575), the treatment under 'Terms Implied from a Past Course of Dealing' covers ten pages and is yet further sub-divided as follows

(a) Use of a contractual document
    (i) Implication of terms as a matter of objective intention;
    (ii) Intrusion of a subjective element
(b) The frequency of the conduct
(c) Consistency of the conduct
(d) Expectations as to the implication of terms on future occasions.

Along the way there is a detailed, and rather convincingly critical, analysis of the decision of the Full Court in **D.J. Hill & Co. Pty. Ltd. v Walter H. Wright Pty. Ltd.** [1971] VR 749.

The writing is clear. The exposition is logical. Where there is criticsm, it is well argued, but does not obscure the distinction between the law as found in the authorities and the law which the authors think ought to obtain.

On a more mundane but nevertheless practical level, it is to be noted that citations appear in the body of the text immediately after the name of the authority and are repeated every time the authority is referred to. This system is much more convenient than footnotes which take the reader to the bottom of the page, often to meet an enigmatic 'Supra', which sends him on a frustrating search over the previous five or six pages to find the citation.

The present reviewer would be the last to dissuade anyone from lunching at Slattery's. If buying Greig and Davis still leaves enough of what Arthur Daley would call 'the readies', then so much the better. But any member of the Bar who is reduced to eating beetroot sandwiches while browsing through a newly purchased copy of Greig and Davis (perhaps from Jim Wade) will not be disappointed.

P.C.H.

PIESSE, 'THE ELEMENTS OF DRAFTING'

(7th Edition by J.K. Aitken)
The Law Book Company, 1987 ($17.50)

Piesse's 'The Elements of Drafting' (7th Ed. by J.K Aitken) is a useful little book. It discusses 'habits to be avoided' (Chapter 6) and provides a useful series of 'aids to clarity and accuracy' (Chapter 10). So it covers 'the do's' and 'the don'ts' of legal writing.

The author quotes from the Master of Rolls in **Sanford v Raikes** (1816) 1 Mer. 646; 35 E.R. 808:

> 'It is from the words, and from the context, not from the punctuation, that the sense must be collected.'

I'm not so sure. After all, the punctuation does it all to the missive 'Not getting any better come home'. I think this one falls within the 'Use of punctuation is desirable' section of the book (p.87).

There is not a section dealing with pronunciation. It, like punctuation, can be critical. An Irishman, uttering the words 'Whale oil beef hooked' could well be arrested.

The chapter on 'Problems of 'And' and 'Or'' is very useful. It warns against the use of 'and/or':

> 'And/or is best discarded. It does not significantly improve brevity. It makes a passage less easy to follow and it can, especially where there is more than one, cause doubt and confusion. It is not correct English.

The courts have not regarded the expression favourably and this is another reason for avoiding it.'

Even in its most simple and unambiguous form - 'A and / or B', it is right that 'the gain in economy of two letters over 'A or B or both' is not sufficient to justify its use' (p.81).

Chapter 11 deals with 'Expressions Relating to Time'. It is an interesting chapter. I would add the horrid expression 'not later than one month before the expiry of .. (whatever)' to the list of expressions to be avoided (see **Forster v Gododex Australia Pty. Ltd.** (1972) 127 CLR 421).

D.J. O'Callaghan

Winner of Competition No. 3

The winner was **Michael Crennan** with the following:

EXTRACT FROM THE BAR NEWS

(Incorporating STOCK GAZETTE and SOLICITORS' BLOODLINES)
1998, Summer Edition

The National Crime Authority, as part of its policy of the gradual release of confidential documents on a time-lapsed basis, recently made available to the Editors the following transcript of a telephone intercept. The provenance is obscure, but internal evidence places the call in the early part of 1987, and a stylistic analysis indicates that one of the parties is, in all likelihood, a barrister.

'Hello, Office Decorators and Refurbishers here'.

'Oh, hello. Look its (inaudible), barrister speaking. I'm ringing about Owen Dixon West - you've heard of it? You have? Well, I want to arrange some variations to the 20th floor.'

'Yes, certainly - we have done some work there - how many sets of chambers will there be in all on the floor?'

'One.'

'One!?'

'Yes, well, I **am** a member of the Inner Bar - and I propose to move a partition or two. It's the lift shaft, really.'

'What about it?'

'Well it breaks my chambers - as I, so to say, envisage them - up a little. I thought perhaps some kind of spiral staircase from the 19th?'

'Isn't that more a question for a structural engineer? What about the cables?'

'Cables - I don't know - it's years since I did a building dispute. In any event, maintaining the lift service is not of vital importance; it's the Helipad I'm more concerned with: should there be ferns, a fountain? - or something in chrome and glass?'

'We can help you there - but we need some idea of the kind of person using it - clients, or instructing solicitors?'

'Oh no, it's getting in from the farm. The traffic's quite impossible. (At this point the tape breaks up badly, and a few broken phrases are intelligible) ... Independence of the Bar ... Provisional Tax ... Lebensraum ... Highest Tradition of the Bar ... Why Pink? ...'

M. Crennan

The runner up was **Nathan Crafti** with the following:

Tenders are called for the outfitting and decoration of barristers chambers.

Included in the furnishings should be a desk (with a large flat top) in 'brown' shadings. The rest of the decor should be compatible with a nauseous shade of pink.

The chambers will have to retain an uncluttered look (so as to make them distinctive). Apart from the desk, also required is a refrigerator, lounge suite, chairs, credenza, recliner, filing cabinets, and coffee table. Will pay up to $300.

Apply by telephone on 1234567.

Competition No. 4

This distinguished group is obviously acting in concert. But where are they? Where have they come from, and what joint enterprise do they have in mind?

50-100 Words

Prize: A bottle of reasonably good wine from the Essoign Club

VERBATIM
(International Edition)

CLEAR DAYS ON THE MEXICAN JURIDICAL SCENE
(From the Mexico City News)
The new district attorney general in Mexico City, Renato Sales Gasque, was named Friday, after his predecessor, Victoria Adato de Ibarra, resigned under harsh criticism for failing to curb abuses in her agency. She was appointed a Supreme Court justice.
(New Yorker 12th May, 1987)

Conference - Canada - August 1987

INTERNATIONAL UNION OF LAWYERS

The International Union of Lawyers is holding its 32nd Congress in Quebec and Montreal commencing 28th August 1987 through to 2nd September.
The Vice-President, Ian Hunter Q.C., from the English Bar was recently in Melbourne and said the conference was an interesting and varied one and expressed the hope that Australian lawyers would attend.

The topics to be discussed cover a wide range covering most areas of law.

Any person interested in attending can contact the Executive Officer, Mrs. Joan Smith, who has a copy of the brochure and registration form.

Conference on Transnational Claims and Litigation

London 14-18 September 1987.
IBA Section Section on Business Law.
Particulars can be obtained from the Subcommittee Chairman, Peter J. Perry of Freehill Hollingdale & Page, MLC Centre, Martin Place, Sydney, 2000, Australia (telephone: 02 225 5000; telex: AA21885; fax: 02 233 6430 or 02 232 1374).

No. 3 Accident Compensation Tribunal
Coram: Judge Just
26th November 1986

P.M.E. Wischusen had asked his Honour for a little time on the grounds that he had received a brief in the matter only five minutes previously.

His Honour: 'But Mr. Wischusen, can you offer any explanation as to why you were briefed so late?'

Wischusen: 'I suppose, Your Honour, they couldn't find anyone else.'

Viscount Incorporated v Club Marine Ltd.
Coram: Marks J.

4th May 1987
J.G. Larkins Q.C. (Cross-examining shipowner whose ship had run aground on the coast of Africa)

And you had no particular instructions to Captain Miller that he was to make any particular speed to Australia? --- No, in fact the fuel stops were designed along the way, and the quantity of fuel ordered at each port, by my office in Melbourne, was designed around 10 knots.
Therefore there was no need to try and take any shortcuts across the land?

12th May 1987
N.R. McPhee Q.C. (Cross-examining expert on navigation)

Anybody can make an error, can they not? --- Anyone can make an error, yes.
I mean a barrister can make an error? --- I've ... I don't know the law that well.
You do not need to know the law, you have only got to watch me. Any barrister can make an error. It has been even known for a judge to make an error has it not? --- I have been told.

R v Craig Minogue & Ors.

Coram: Dugan C.M.
14th May 1987

Gullaci Cross-examining Witness, Kenniwell

You are known, are you not, as Animal Steve? --- No.
You are not? --- I used to be.
You used to be Animal? --- No, they call me Mudguard now.
Mudguard? --- Shiny on top and shit underneath.

Re Jusard Pastoral Company Pty. Ltd.

Coram Master Barker, 7th Court
20th May 1987

J. Hammond: 'I respectfully draw the Master's attention to a defect in the advertisement for this application published in the Government Gazette. The company's name was printed as 'Jusard **Pastor** Co. Pty. Ltd.' in lieu of 'Jusard **Pastoral** Co. Pty. Ltd.'. The Government printer obviously made a clerical error'.

Master Barker: 'Roman or Anglican?'

Movement at The Bar

Members who have signed the Roll since 1.1.1986

Name	Master	Clerk
Joseph Cleworth (NSW)		
Timothy Hancock (NSW)		
John Coombs Q.C. (NSW)		
Anthony Hewitt (NSW)		
Roger Gyles (NSW)		
Glen Miller (NSW)		
Leslie Webb	D Ross	M
Robin Margo (NSW)		
Douglas Andrew Trapnell	M. Rozenes	F
Ian Hardingham	D.L. Harper	H
Mark John Gibson	M.R. Titshall	B
Rodney James McInnes	C.S. Keon-Cohen	D
Michael Andrew Fullerton	D.G. Wraith	S
Ivan Neil Brewer	J.V. Kay	B
William Ferguson Gillies	R.J. Evans	F
Wendy Cecile Kozica	R.McK. Robson	F
Robert David Larkins	D.F. Hore-Lacy	W
David John O'Callaghan	R.A. Finkelstein	H
Phillip Wighton Riggio	D.M. O'Callaghan	M
Michael Damian Murphy	M.J. Strong	S
Simon Edward Marks	C.N. Jessup	H
Joanne Bernadette Brodie	P.C. Dane	M
Michele Muriel Williams	L. Lieder	M
Martin Bartfeld	D.L. Brustman	P
Gregory Joseph Barns	C.A. Connor	B
Mark Telford Lapirow	H.A. Aizen	P
Charles Michael Scerri	P.R. Hayes	W
Michael Alexander Strang	D.J. Habersberger	S
Anthony David Charles Miller	A. Crozier-Durham	P
Cosmas Moisidis	P.C. Golombek	S
Charles Schol Rozencwajg	R. van de Weil	W
Carmen Maureen June Osborne	G.R. Flatman	S
Amanda Mendes Da Costa	I.A. Miller	P
Selwyn Clive Newnham	J. Cantwell	R
Peter Kent Searle	P.B. Murdoch	P
Andrew McLeod Jackson	G.H. Garde	B
Neil John Clelland	S.G. Langslow	M
Margaret Ley Mandelert	E.C.S. Campbell	R
Joseph Francis Lo Presti	R. Lopez	P
Malcolm Oakes (NSW)		
Ruth McColl (NSW)		
Graeme McEwen (re-signed)		
Alexander Street (NSW)		
Elizabeth O'Reilly (QLD)		
Ian Ward (NSW)		
Noel Hutley (NSW)		
Raymond Elston (re-signed)		
Alan Robertson (NSW)		
Clifton Baker		
Peter Garling (NSW)		
John Stowe (NSW)		
Terence Higgins (ACT)		
Rodney Craigie (NSW)		
Joseph Tsalandidis	A.J. Myers	S
Justin O'Bryan	R.A. Finkelstein	M
Alyssum Verity Katie Daly	R.K. Kent	F
Paul Michael Moran	J.D. McArdle	F
Pamela Margaret Hogan	A. Shwartz	W
William Vasilios Stougiannos	L. Lieder	M
Bernard Reginald Keating	W.H. Morgan-Payler	R
Peter Terence Gerard Sullivan	J. Bowman	M
Daryl Alfred Brown	P.H. Clark	S
Barry Leigh James	A.J. Lopes	R
Mark George Klemens	I.C. Robertson	D
Jocelynne Annette Scutt	P.R. Hayes	S

Name	Master	Clerk
Mark Anthony Hird	D.F. Hore-Lacy	W
Stephen Jefferson Jones	R.J. Evans	D
Lesley Marilyn Simons	A.G. Southall	D
Anne Cecilia Thacker	D.F. McDermott	R
Grant David Holley	P.N. Wikrama	P
Bryan John Francis Mueller	C.N. Jessup	H
Christopher Arthur Spence	R.McK. Robson/ Macaw	D
Kenneth Harvey Billing	M.J. Ruddle	B
Daniel Patrick O'Dwyer	D. Morrow	M
Bernard Robert Fitzgerald	D.B. Maguire/R.McK. Robson	M
Michael Duane Cosgrave	R. Punshon/M. Hickey	R
Stephen John Howells	G.R. Anderson	H
Gerald Andrew Hardy	H. Jolson	R
John Haydon (QLD)		
Philip Condell (re-signed)		
Colin Howard		
Bryan Pape (NSW)		
Bruce Ross (re-signed)		
Robin O'Hair (QLD)		
Peter Semmler (NSW)		
John Steele (NSW)		
Michael Cranitch (NSW)		
Stephen Flett (NSW)		
Peter Deakin (NSW)		
Andrew Barrie (NSW)		
Thomas Bathurst (NSW)		

NAMES REMOVED

M Pryles
J. Cranston
J.J. Goodman

LEAVE OF ABSENCE

E.K. O'Donnell

TRANSFERRED TO THE RETIRED LIST OF COUNSEL

J. McIntosh

TRANSFERRED TO PART VI DIVISION B

B. Lawrence