VICTORIAN BAR NEWS

No. 64 Autumn 1988

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Cover: The new insignia of the Wigs and Gowns Squadron. If you thought the New York Yacht Club got up to some dirty tricks, turn to p.46 for the adventures of 'Seldom Seen' Mc Phee, 'Moore Booze' Monteith et al.

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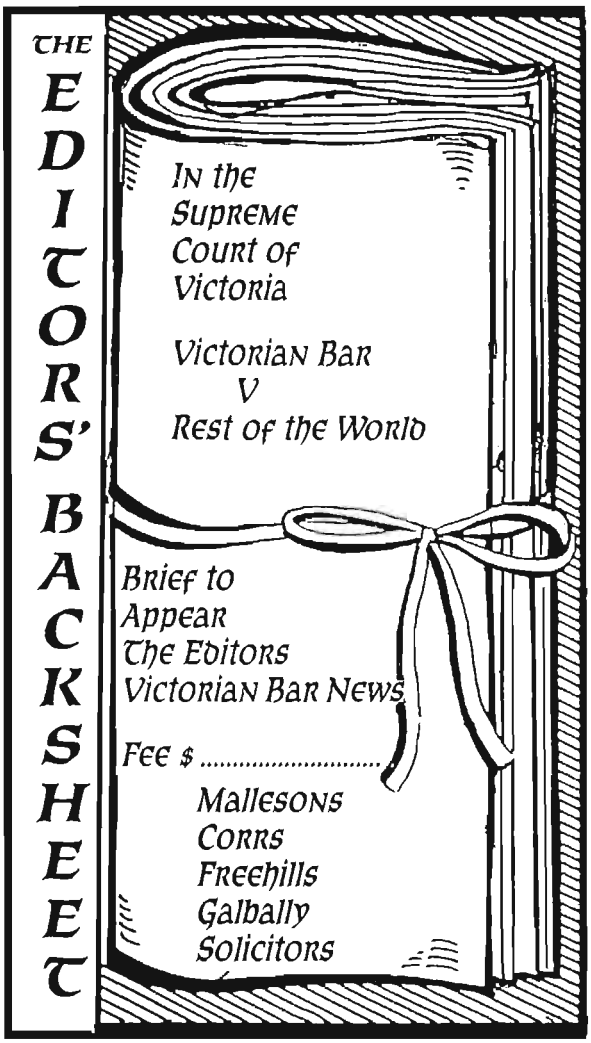


Personalia

This edition features pen pictures of the recent bumper crop of judicial appointees. But sadly it also includes obituaries of two very notable members of the Bar, **Ted Hill** and **Richard Evans.** While different in so many ways, both these men were as one in the admiration and affection with which they were regarded by all their colleagues.

Social Notes

A new qualification for judicial appointment has emerged. At one of the glittering functions in Melbourne attended by the Prince and Princess of Wales, Her Royal Highness was seen to be whirled around the dance floor in the arms of a distinguished member of the Supreme Court bench. On a less edifying note, our network of touts, spies and informers has revealed that a certain upmarket, not to say pretentious, restaurant at Queenscliff was visited over the holidays by a large party including two leading members of the Inner Bar. At a fairly early stage of the proceedings a fundamental disagreement arose between the proprietors and members of the party as to the noise level emanating from the latter. Whether it was suggested, requested, or demanded that the party leave forthwith is really only a question of semantics, with which we need not trouble our readers. Suffice it to say that the local fish and chip shop (a very good one, by all accounts) did a roaring trade that night.

Jim Kennan

The ink on his commission as silk barely dry, the **Hon. Jim Kennan Q.C.** vacated the office of Attorney-General and assumed the mantle of Minister for Transport, the political equivalent of coaching Collingwood.

Not everybody would agree with everything that Jim Kennan said and did while he was Attorney-General. But that is hardly to be expected. He certainly brought to the office an energy and enthusiasm which made him one of the most effective law officers in recent memory.

History records that it can be an important step along the path of political achievement to make the trains run on time.

The Commercial List

We received the following letter from Ray Johnstone:

> 'In the Summer 1987 edition of Victorian Bar News, you commented editorially: 'We think Ray Johnstone was being a bit hard on the Commercial List in his article ...'.
>
> All I know is that, after the earlier publication of my article, a number of people, Counsel, spoke to me about it.
>
> Each of them agreed with the thrust of the article.
>
> You are the first to have disagreed with it in any way.
>
> I would be interested to learn whether your views were formed as a result of cross-sectional input from the Bar.
>
> Sincerely,
>
> Raymond Johnstone'

The answer is, no, not a scrap. The plural pronoun was intended as a reference to us, ourselves, the editors, personally. Were it otherwise, we would have said 'We, the people' or something like that.

But we welcomed Ray's views on this important subject, and were only too happy to publish them. We would hope that more members of the Bar were prepared to take the trouble to get their views on paper to promote discussion rather than waste their sweetness on the desert air of the Essoign Club.

Sek Hulme Q.C. and BCL

A stranger in the vicinity of William and Lonsdale Streets enquiring after a barrister called Sam Hulme would surely be met with polite bewilderment at every turn.

In truth there is such a member of the Bar, but he is universally known as Sek - this not being a given name of some exotic ethnic origin (Korean? Finnish?) but an acronym for Samuel Edward Keith.
After a distinguished academic record, crowned with selection as Rhodes Scholar for Victoria, Sek Hulme signed the Bar Roll in 1953 and took silk in 1968.

He was a member of the Board of Barristers Chambers Limited from September 1972 to October 1987 and Chairman from December 1979.

It must be admitted that one of the less endearing qualities of barristers springs from that frequent but necessarily superficial contact with other disciplines which is often a feature of practice at the Bar. A little learning is a dangerous thing. The average common law barrister would regard himself as quite capable of performing a hip replacement. A typical member of the Commercial Bar could, he thinks, show Mr. John Elliott a thing or two about corporate financing and reconstruction.

By contrast, and fortunately for the Bar, Sek Hulme brought to his role on the BCL Board the experience gained as a director of some important public companies in the real world.

In an increasingly complex and unpredictable commercial world, the job of a public company director is an onerous one. The law now imposes obligations of care and skill as well as diligence. But with most public companies there is at least the compensation of directors' fees and often substantial financial rewards in the form of share options, service contracts, fringe benefits and the like. For Sek Hulme, and the present and past directors of BCL, what they undertake is a difficult and largely thankless task. Their only reward is the satisfaction of knowing that their work is essential to the survival and prosperity of the Bar. Sek Hulme's work over 15 years is an outstanding example of that selflessness.

Sek's name now appears on the plaque outside Owen Dixon Chambers West. In the year 2088 a couple of barristers passing by that splendid example of late Elizabethan joie de vivre, perhaps on their way to a welcome for a newly appointed Acting Co-Chairperson of the South Eastern Interpersonal Mediation and Dispute Resolution Commission (once known as the Supreme Court of Victoria), might glance at the plaque and one of them might say 'That chap Hulme must have had something to do with this building'. He would of course be right.

Sek Hulme leaves the Board of BCL with a reputation at least as enduring as bronze, and probably more so.

Chauvinism on the retreat

The Tasmanian Law Newsletter reports on a recent reception given by the Tasmanian Bar Association in honour of recently retired High Court Chief Justice Sir Harry Gibbs and Lady Gibbs. The President of the Association greeted the guests of honour and the following exchange occurred.

President: 'Sir Harry, what would you like?'
Sir. H. Gibbs: 'A beer, thanks'
President: 'Lady Gibbs?'
Lady Gibbs: 'I'll have a beer too, thanks.'
President: 'What, a 2.2? A light?'
Lady Gibbs (emphatically): 'No, a beer.'

Hong Kong news

One of our readers sent us a cutting from the South China Morning Post which records current controversies in the Colony over judicial appointments. The main thrust of the article is a claim by 'senior government officials' that no new appointments should be made because it was rare to find judges sitting in the afternoons. Also one likely candidate, the former Hong Kong DPP, had aroused judicial opposition because he had stepped down from that post after suffering heart

problems and the judiciary 'resented the bench being treated as a post for lawyers too sick for the legal department'.

Chips with everything

Members of the Essoign Club will have noticed a marked improvement in the quality of pommes frites served at lunchtime. Slim, crisp and tasty, they are every bit as delicious as those heavily promoted products of a certain nationwide fast food chain.

In general the standard of catering is excellent and has, if anything, improved since the Bar took over direct control.

Serious consideration is being given by the erection of a large golden '**M**' on the premises - nothing to do of course with that nationwide fast food chain but rather a tribute to popular hardworking Essoign Club Hon. Secretary **Michael McInerney**.

A good read

Strongly recommended is the recently published novel '**Presumed Innocent**' by Scott Turow. A gripping and skilfully plotted murder mystery and courtroom drama, it will have a special appeal to barristers. The twists and turns of a police investigation and the sublety of courtroom tactics are traced with a realism that is quite compelling.

The author is a Harvard Law School graduate and a former assistant US Attorney in Chicago. There are some great lines; a prosecutor has a '... courtroom persona ... typical of many prosecutors: humorless, relentless, blandly mean'; another one is a 'capable attorney, but ... burdened by a zealot's poverty of judgment. As a prosecutor ... he always seemed ... to be trying to make facts rather than to understand them'.

Probably our favourite is the scene where the hero, a senior prosecutor, is discussing his future with his boss:

> 'It's about time for me to head on, anyway,' I say.
>
> 'Can we get you on the bench, Rusty?'
>
> This is a golden moment for me: here at last is loyalty's reward. Do I want to be a judge? Does a bus have wheels? Do the Yankees play baseball in the Bronx? I sip my whiskey, with sudden judiciousness.

One warning. It would not be a good idea to start into 'Presumed Innocent' with any urgent paperwork on hand. It gives new meaning to the reviewer's hackneyed cliche, unputdownable.

The Editors

Chairman's Message

Charles Francis Q.C.

After five months in office the Bar Council has settled into its stride to deal with the ever increasing number of issues requiring its attention. We now receive innumerable communications from the State and Federal governments and from individual members of Parliament, from a string of public bodies such as the Legal Aid Commission, the Law Foundation, the four Universities and the Leo Cussen Institute not to mention our fairly constant communications with the Law Council of Australia, the Law Institute and the Australian Bar Association. Proper attention to these communications and deciding the matters on which we as a Bar Council should make submissions and then preparing the submissions, is, on its own, a heavy burden.

One expanding area on which the Bar's views are increasingly being sought is the difficult area of human rights. This led to the establishment in December 1987 of a Human Rights Committee. We are very fortunate that Frank Costigan Q.C. has agreed to be its Chairman. Its first task arrived on the 22nd December, a letter asking for a submission to the Senate Standing Committee on Legal and Constitutional Affairs on the War Crimes Amendment Bill 1987, the submission to be delivered by the 20th January. We did make a submission and were able to make what I believe was a useful contribution, stressing that any proposed War Crimes trials should only be conducted before Supreme Court Judges experienced in criminal law sitting with juries, and that any such trials should be conducted in accordance with the present rules relating to admissibility of evidence in criminal trials. Our contribution was favourably received and many of the views expressed in the Senate Report were generally in line with our submissions.

Court delays continue to be one of the biggest problems of the Bar. Reserve Lists and Pre-trial Conferences have not solved the problems of congested lists nor the problem for counsel in having to prepare matters, making a number of appearances and then not 'getting on'. In the Supreme Court relatively few cases are reached on their listed day.

The proposed pilot mediation scheme in the County Court seems unlikely to solve problems in that court. Whilst endorsing the Bar's co-operation in the pilot scheme, we doubt whether the scheme proposed will significantly improve the present situation. The only real solution would appear to be the appointment of a number of additional judges both in the Supreme Court and the County Court and more satisfactory listing procedures. Experience has consistently shown that if a case is to be settled the strongest incentive to all parties only occurs when a judge is ready to hear the case and presses for it to proceed.

We have recently established a Committee to devise a specific programme which we will then promote widely in appropriate areas of interest with the object of changing the present very unsatisfactory situation.

Appointment of additional judges could raise some initial problems with regard to the number of available courts. We may have to accept that some courts be used in shifts, perhaps for example with one judge sitting from 9.00 a.m. to 1.30 p.m. (with a short break in the middle of the sitting) and the other judge sitting from 1.30 p.m. to 6.00 p.m. with a similar short break. The change in times would probably be unsatisfactory for jury trials, but work such as Practice Court matters, applications before Masters, and County Court appeals could readily be accommodated to this type of arrangement.

The fact that 520 members of the Bar answered our recent survey on unpaid fees and that of those who answered 83.47% considered we should

charge interest is a very plain indication to the Bar Council that unpaid fees have become an increasingly serious problem. Because implementation of any system of charging interest has significant associated problems we have set up a Sub-committee chaired by Ian Spry Q.C. to devise and report on an appropriate scheme. The knowledge that unless payment of fees is reasonably prompt interest will accrue and will be charged appears to be the sanction most likely to produce results.

The shootings in Queen Street prompted your Bar Council to take our first serious steps on the question of security. This was deputed to junior Vice-Chairman, Andrew Kirkham Q.C. In January a report on security within chambers was obtained from the Police Crime Prevention Bureau.

A number of recommendations for improving security were made. Significant among these were the better securing of after hours access areas and the installation of a P.A. system to permit notification of an emergency such as, for example, a fire or bomb threat. Quotes have been or are being obtained on the cost of installation of:

(i) self locking doors at the William Street entrance and the garage of Owen Dixon Chambers; and
(ii) a P.A. system to operate in Owen Dixon Chambers and Owen Dixon Chambers West.

Subsequent to any installation of a P.A. system it is anticipated that emergency evacuation procedures will be devised and communicated to tenants.

Charles Francis

Ethics Committee Report

Since 1st June 1987, the date of the last report, the Ethics Committee has received 19 complaints against members of counsel. The committee is currently investigating five complaints and during the period covered by this report, 27 investigations were completed.

Of the investigations conducted and completed the committee having sought an explanation from the barrister resolved, in most instances, that the material did not demonstrate that a disciplinary offence had been committed.

Many complaints were made by clients and related to allegations of failure to return clients' documents or what may be described as negligent preparation and presentation of cases. The latter group of complaints were generally able to be resolved once the client came to appreciate the reasons why counsel acted as they did. These kind of complaints highlight the necessity for counsel to ensure, as best they are able, that the client understands the nature and issues of the case in which they are involved.

Obviously counsel must be careful when they hold original documents of a client. Generally speaking it is undesirable that counsel should be supplied with original documents. It is in the interests both of the solicitor concerned and of the barrister that the solicitor be asked to supply copies where it is at all feasible to do so.

Other complaints received during the reporting period include using insulting words of a solicitor, failing to cross-examine with sufficient vigour, failing to promptly return paper work briefs and failing to explain terms of a settlement.

The committee has held four summary hearings. In one the committee resolved to fine a barrister $500 for breach of the rules inhibiting touting and specifically for breach of the counsel ruling governing the publication of photographs. The rules are to be found at page 86 of Gowans.

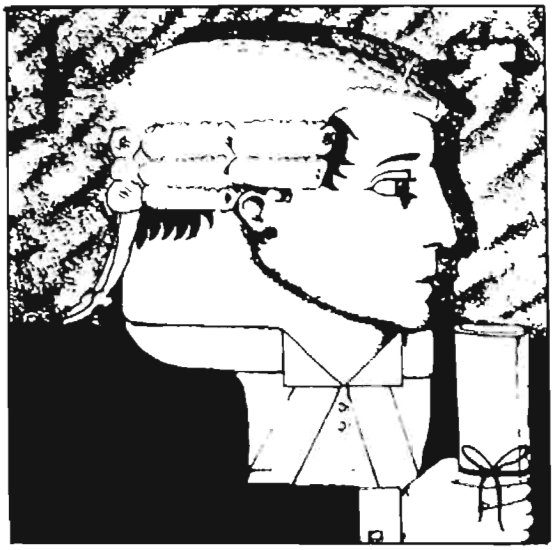
In another instance the committee resolved to proceed no further with a matter after the complainant withdrew the complaint following the agreement of counsel to pay compensation. That matter concerned an allegation by the client that because of the barrister's failure to return a brief (which contained original documents) over a very long period, the client had been put to expense in obtaining copies of the documents and to additional expense in instructing solicitors and other counsel.

In another hearing the committee resolved to fine a barrister $500 for failing to respond to correspondence from the Ethics Committee when requested to do so.

Another charge concerning the rules against touting was found not to be established after the summary hearing.

Michael Colbran
Secretary, Ethics Committee

Law Council of Australia Report



Law Council of Australia Federal Practice and Litigation Section

The Law Council's Federal Practice and Litigation Section was officially launched at the Legal Convention in Perth in September 1987. The Section is David Malcolm Q.C. (Chairman), Alex Chernov Q.C. (Vice Chairman), Justice Malcolm Lee, Anthony Whitlam Q.C., Ronald Ashton, John C. Richards (Treasurer), Pat Dalton Q.C. and Justice Trevor Morling.

At its inaugural meeting in Sydney, the Executive resolved to accept into the Section several established committees of the Law Council namely, Courts (Federal) Committee, Administrative Law Committee, Industrial Law Committee, Defamation Law Committee and Costs (Federal) Committee.

The Executive feels confident that the Section will develop in such a manner as to provide an appropriate forum where all branches of the legal profession will deal with matters relating to federal practice and litigation. It is expected that the Section will contribute to the programmes at Australian Legal Conventions and Section conferences and seminars.

The Executive will look at matters of concern that relate to rules of practice of the High Court and Federal Court; constitutional matters; appointments to the Courts and their functions; video conferencing; industrial legislation; the Administrative Decisions (Judicial Review) Act; costs; defamation and contempt laws.

The Section Executive wishes to encourage solicitors and barristers involved in federal practice and litigation to become members of the Section and to give it their support and expertise.

For further information regarding the Section, please contact the Section Administrator at the Law Council Secretariat, P.O. Box 1989, Canberra or by phone on (062) 47-3788.

Convention year is here

The year of the Bicentenary, and of the Law Council's Bicentennial Australian Legal Convention, has arrived. The Convention will not be quite as spectacular as the Australia Day events on Sydney Harbour, but will offer a most instructive and enjoyable time to all delegates who visit Canberra between August 28 and September 2.

Registration brochures will be distributed shortly.

Common law rights

Efforts are continuing to persuade the Federal Government that it should not proceed with its plan to abolish the common law rights of its employees in the workers compensation field.

The LCA has been making its views known to MP's and Senators (including the Ministers who have responsibility for the decisions on compensation arrangements), and to public servants themselves through their unions and the media. Constituent bodies have contributed to the effort in their own States and Territories.

Scales of costs

The results of the latest review by the Federal Costs Advisory Committee of scales of costs in the High Court have been announced. The Law Council made detailed submissions to the committee, which recommended an increase of 3.1 per cent. The Court implemented the increase from 4 January 1988.

FCAC reviews of all federal scales are conducted twice yearly, and it is normal for similar adjustments to be made in scales in all jurisdictions.

Policy Advisory Group

The Policy Advisory Group, which makes recommendations to the LCA Executive, met for the second time on 5 February. It discussed a

range of matters including the Law Council's role in relation to alternative dispute resolution, the Government's plans for reform of legal education, the Law Council's guidelines on lobbying, the LCA's Sections and their structure, and arrangements for the organisation of future Australian Legal Conventions.

The PAG consists of Section Chairmen and three representatives of individual members - Garry Downes Q.C. (Sydney), Michael Phelps (Canberra) and Terry Worthington (Adelaide) - meeting with the LCA Executive.

International links

The Law Council is continuing to develop its links with the legal profession internationally. Vice President Denis Byrne is on the Council of Lawasia, and Treasurer Mahla Pearlman on the Council of the International Bar Association.

The Executive has resolved to contribute $1,000 to the IBA's Educational Trust to assist in having legal bodies in developing countries represented at a seminar designed to help those bodies. The seminar will be held immediately before the IBA conference in Buenos Aires in September this year.

A number of matters in the human rights field, particularly in the Asian-Pacific region, are under consideration by the Executive.

Legal aid discussions

The Law Council put views on a number of legal aid matters to the National Legal Aid Advisory Committee at the committee's meeting in Melbourne early in February.

Several members of the LCA Legal Aid Advisory Committee attended, and discussion centred on a number of topics placed on the agenda by the LCA at the invitation of the NLAAC's Chairman, Justice Alan Barblett. One of the proposed topics was legal expenses insurance, which LCA President John Faulks suggested recently might be a matter which the NLAAC could examine following the difficulties encountered by the LCA in having a legal expenses insurance scheme launched.

Submissions update

In recent submissions to the Federal Government and other authorities the Law Council has said that -

it declines to make further submissions to the Child Support Consultative Group on the proposed formula approach to maintenance assessment because the LCA opposes assessment by the Tax Office according to a formula that cannot provide justice for parents and children; if there is to be a formula, however, there should be opportunity for all parties to appeal to the Family Court against assessments made under it the 'legislative quirk' under which persons already in Australia can be granted entry permits is symptomatic of the piecemeal development of immigration legislation over the years; such matters should be reviewed in the current consideration of immigration policy

it is disappointing that the Commonwealth Government, in the face of serious problems with WorkCare in Victoria, continues to say that it believes its own compensation plans are 'appropriate' and 'fair'; the Government has a responsibility to look much more closely at these matters than it appears to have done so far and before it commits itself irrevocably to a new approach to compensation for its employees.

Australian Young Lawyers Section Bicentennial Young Lawyer of the Year Award

Following the excellent response to the 1987 Awards, the Australian Young Lawyers Section of the Law Council of Australia is conducting the Bicentennial Young Lawyer of the Year Awards.

The objectives of the Awards are to encourage and foster young lawyers sections/associations/ committees, and individual young lawyers throughout Australia to establish and institute programmes for the benefit and assistance of the profession and/or the community, and to provide recognition of the programmes initiated.

This year the Award has been extended to include recognition of an individual's contribution over a number of years to the profession and/or the community.

Application forms and the rules governing the Awards are available from the Section Administrator, AYLS, Law Council of Australia, G.P.O. Box 1989 Canberra ACT 2601 or DX 5719 Canberra.

Nominations will close on 30 July 1988 and the winners will be announced on 30 August 1988 at the Bicentennial Australian Legal Convention in Canberra.

STOP PRESS: David Malcolm Q.C. has just been appointed Chief Justice of Western Australia.

The Late Ted Hill

Photo Courtesy Melbourne Herald

Edward Fowler Hill died on 1st February 1988 aged 72 years. He signed the Roll of Counsel first on 2nd September 1940, and re-signed on 16th July 1948. He never took silk. He never obtained judicial appointment. He left surviving him his wife for 47 years, two children and four grandchildren.

Such a summary of Ted Hill's life, accurate in itself, says nothing of his rare skill as a barrister nor of the respect and affection given him by successive generations of barristers and judges.

Of Ted much has been written. The son of a secondary school headmaster, he was brought up around country Victoria before concluding his schooling at Essendon High School. He undertook the Articles Clerk's Course at Melbourne University. He was principally articled to William Slater (of what is now Slater & Gordon). During the 1930's he became a committed Communist. Throughout the uneasy truce of the wartime alliance, the era of the Cold War and the long period of internal dissension within world communism after 1956, he never abandoned or hid his political beliefs, even though, for a long period, they made him a man who was popularly feared or reviled.

Ted's professional career was to a significant extent influenced by his political viewpoint. He appeared for the Communist Party at the Petrov Commission, and in the enquiry conducted by Sir Charles Lowe, into the Sharpley affair.

These enquiries were long and bitter. They were conducted at a time of popular anti-Communist fervour. It required a fearless advocate to put the unpopular cause.

These matters apart, Ted's approach to life led him to represent, at trial and on appeal, very many injured workers and their dependants in claims for workers compensation. Together with Judge Leonard Stretton he shaped workers compensation in this State. His experience stretched back to the days of uncertainty before there was a specialist Workers Compensation Board. It encompassed the 1940's and early 1950's, when cases were generally fought rather than settled. It stretched into the 1960's and 1970's, when tinkering with the Workers Compensation Act created new problems of interpretation. And it culminated in recent attempts to solve some of the 'WorkCare' legislative mish-mash.

Over many years Ted appeared in most of this State's important workers compensation appeals to the Full Court, High Court and Privy Council. He argued, most often successfully, the differing concepts of 'worker' and 'contractor', the limits of the 'course of employment', the extent of extraterritorial operation of the Workers Compensation Act, the liability of unincorporated respondents, the time of crystallization of entitlement in dependants' claims, the quantification of compensation for industrial deafness. Appeals on such matters commonly resolved the fate of large numbers of workers' claims.

Over the years Ted appeared against a succession of high quality counsel - Menhennitt, Lush, Gowans, Murphy, Griffith and McPhee to name but some. He was an intelligent and fearless advocate with a highly-developed tactical sense, and the reports show that he more than held his own with such opponents.

Equally importantly, Ted was universally respected by his opponents not only as an

advocate of quality, but as a man whose professional integrity was beyond approach. If he said that, should a case proceed, evidence would be called to a certain effect, one could be sure that such evidence would, precisely and not merely generally, be to such effect.
His integrity was revealed also by his not taking silk. I am certain that he never applied. To do so would have been inconsistent with his political standpoint. Had he applied, his pre-eminence must surely have guaranteed a successful outcome.

I said that others respected his integrity. An instance comes to mind. Sir Victor Windeyer was an opponent in one of the bitter politico-legal battles of the 1950's to which I have referred. Yet Sir Victor, with some apparent enthusiasm, wrote the foreward to **Hill & Bingeman 'Principles of Workers' Compensation' in 1981.**

The Bar has, by Ted Hill's death, lost a fine barrister and a man of high professional repute.

David Ashley

The Late Richard Evans

I first crossed swords with Richard Evans in the Magistrates' Court at Frankston. We were both relatively new to the Bar. In cross-examination he persuaded my client to concede that she had deliberately fed his client's dinner to the family dog as he entered the matrimonial home five minutes late for dinner. He had been working a second shift to buy my client a modest winter wardrobe. Within minutes I became only the second person at the Victorian Bar to lose a legally aided maintenance case for a wife.

Unfortunately, he became an even more formidable adversary as the years passed. His cross-examinations were conducted with a detached clinical precision that left many a hapless expert witness lamenting the deficiencies of his preparation. He never raised his voice. He always faced the Judge or Tribunal until the coup de grace when he finally turned to the witness to observe the results of his surgery. Life was always so much easier when he was on the same side.

The hallmarks of his advocacy were courtesy and calm. Calamities that would drive lesser men to distraction were met with a characteristic shrug of the shoulders and a barely detectable movement of the eyes towards the heavens. He would always accommodate an opponent, but never past the point where his client's interest might be affected. He did not berate his opponent with the virtues of his case in an endeavour to achieve settlement.

He was possessed of an impish sense of humour that they say is a characteristic of the Welsh. Life at the Bar table was made bearable during many late and tedious hearings by a humorous written note, or a whispered challenge to include in one's submission a particular phrase known to be idiosyncratic to the Chairman of the Board or Panel. His repeated use of the Phrase 'chacun a son gout' before one particular arbitrator was less a display of cultural mastery than a sheer money-making exercise at the expense of his colleagues.

If he was irritable you knew it must be Lent. Lent was the occasion of his annual self-denial of alcohol. Whatever beneficial affect it may have had on his body and soul, it proved something of a trial for his friends.

Richard came to the Bar in 1971. He bought with him degrees in Law, Science and Arts, majoring in mathematics, from Melbourne University. He read with Gobbo J and Douglas Graham after his Honour took silk. He frequently appeared as junior with both his former masters.

He quickly mastered the many and varied facets of the local government and town planning jurisdiction, that curious amalgam of specialties related only by tradition. However, his real forte was land valuation, in which he was undoubtedly the leading junior and probably the leading practitioner at this Bar. It was an area that provided fertile ground for his combination of mathematical flair and dexterity of conceptual thinking.

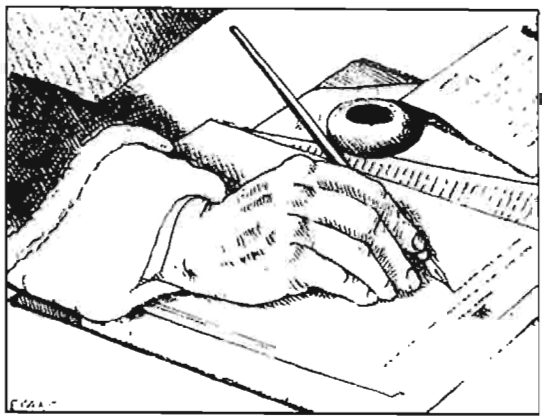
He appeared in almost every major valuation case during the last ten years, and played a major role in the Royal Commission into land dealings by the Housing Commission and other public authorities.

His death on 8th January 1988 as the result of a diving accident was a terrible shock. The attendance at his funeral was tribute to the esteem and affection with which he was regarded by friends, colleagues and clients. Alex Chernov spoke eloquently and movingly of Richard's love of family, and of his contribution to his local Church and community.

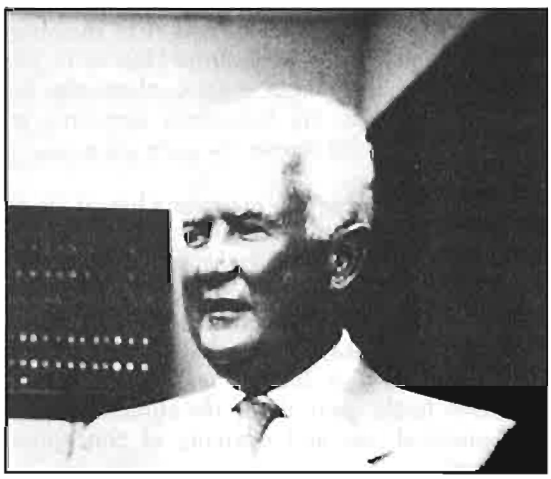
His loss is deeply felt. Our sympathies go to his wife, Deidre, and his children, Catherine and Andrew.

Michael Wright

Welcome



NICHOLSON C.J.



On 1st February 1988, The Honourable Alistair Bothwick Nicholson took the oath of office as Chief Judge of the Family Court of Australia and as a Justice of the Federal Court of Australia. Nearly six years earlier, on the occasion of his Honour's appointment in November 1982 as a Judge of the Supreme Court of Victoria, a commentator in the Summer edition of the Victorian Bar News of that year concluded 'Welcome: Nicholson J.' by saying:

> 'His Honour brings to the Bench qualities of great all-round legal ability, human understanding, and a fierce desire for truth and impartiality. His elevation is to be applauded.'

His Honour's distinguished service to the Supreme Court and as Deputy Chairman, and later as Chairman, of the Adult Parole Board amply justify the prediction inherent in those remarks.

His Honour's career at the Bar is outlined in the Summer 1982 Victorian Bar News and need not be repeated here; his great capacities as a Supreme Court Judge, and his unfailing courtesy, are fresh in the minds of the Bar.

Less well known is his Honour's service to the Victorian community and to the nation in other capacities.

His Honour and Mrs. Nicholson were for many years members of a group providing emergency foster care to children and on many occasions acted as foster parents for such children.

Since 1984 his Honour has been the Chairman of the Epistle Centre, a charitable organisation providing care, accommodation and counselling to former prisoners.

His Honour has held a RAAF Reserve Commission since 1959 and became a member of the Legal Panel of the RAAF Reserve in 1965. He later appeared in RAAF court martials in Australia, Vietnam and Malaysia. His Honour was the last Judge Advocate General of the RAAF and, upon the abolition of that office, was appointed Judge Marshal of the RAAF with the rank of Air Vice Marshal. In 1987 his Honour was appointed as the first Judge Advocate General of the Australian Defence Force, an office that he still holds.

Nicholson CJ has always been unimpressed by the 'it has always been done that way' approach to life. As a Judge of the Supreme Court one of his Honour's less important, but still beneficial, innovations was in the matter of judicial lodgings on circuit. Declining the Golden Sands Motor Inn, and similar establishments, traditionally thought appropriate for judges in provincial cities, his Honour's preferred lodgings included a vessel on the Thompson River at Sale and a house boat on the Murray at Mildura. Whilst on circuit at Geelong he frequently lodged by the sea, at Queenscliff. It is fortunate that this interest in waterborne craft did not induce his Honour to serve the RAN instead of the RAAF because, to the despair of those charged with getting the Judge to court on time and with security, his Honour's ability to avoid the metaphorical shoals of professional life was not matched by his ability to avoid the real thing.

Happily for us, Nicholson CJ will have his principal chambers in Melbourne and will, no doubt, as he did when a Judge of the Supreme Court, maintain his contacts with the Bar and solicitors to the extent that his onerous duties will allow.

His Honour's appointment as Chief Judge comes at a time of challenge and change to the Family Court. That court - central at some stage to the lives of nearly one third of Australians - will meet those changes and challenges with an outstanding leader and a formidable champion. His Honour assumes his new offices with the warm good wishes of the Victorian Bar.

MR. JUSTICE CUMMINS

His Honour and daughter Kate.

Philip Damien Cummins Q.C. was appointed a Justice of the Supreme Court of Victoria on 18th February 1988. His Honour was born on the 9th November 1939 and received his education at Xavier College before graduating in Arts and Law with many high honours from Melbourne University. After graduating from the Law Faculty his Honour subsequently obtained a Post-graduate Diploma in Criminology and a Master of Laws with First Class Honours in all fields. His Honour was admitted to practice on the 2nd March 1964 and articled to Francis Patrick Mannix of the firm Cleary Ross & Doherty. He signed the Bar Roll the following year on the 22nd April 1965 and read in the chambers of Abe Monester. Letters Patent were granted to his Honour on the 28th November 1978.

Four years ago his Honour was unofficially invested with an equally illustrious and much heralded title - 'Fabulous Phil'. On that occasion 'Fabulous Phil' was potrayed as the central character in a skit as the host of 'Clerk Lotto' in the 1984 Centenary Bar Revue. There was a memorable sequence of dialogue after the lights came up at the commencement of the scene with 'Fabulous Phil' and his co-host Debbie.

Debbie: Hi Phil, well how are we tonight?
Fabulous Phil: Fabulous, fabulous, just fabulous, wonderfully fabulous.

Philip Cummins' unofficial and enduring title is an apt description of his extremely active and distinguished career in the law. Initially he had a general practice but in time specialised in the field of criminal law where his academic background in psychology assisted his success as an accomplished trial and appellate advocate. Vigorous cross-examination of witnesses, literary asides and seductive candour when addressing a jury earned him a reputation as a leading member of the criminal bar. His Honour's talents were widely sought after in both Victoria and interstate. He was also involved in important company investigations and in later years was appointed counsel assisting the National Crime Authority.

Philip Cummins' service to the Bar has been equalled by very few and surpassed by none. He served on the Bar Council for over 10 years and became Chairman of the Bar in 1986 and since 1987 has been Vice Chairman of the Australian Bar Association. It is interesting to note that it has been a decade since a Chairman of the Bar Council has been appointed to judicial office.

His Honour's interests and involvement in legal education has extended over many years. He has been the Bar representative on the Faculty of Law at Melbourne University and joint lecturer in professional conduct. He has been very active in the promotion of the Readers Practice Course Committee since its inception. His Honour will always be remembered for the good counsel and guidance he gave to junior members of the Bar while occupying chambers in Four Courts. He consciously chose to have his own chambers there for many years because he believed that ready access to more senior colleagues was critically important for junior barristers. This was a typical example of his willingness to lead by example.

On the Bar Council he was an untiring advocate of the interests of the Junior Bar.

At the welcome given by the legal profession on the 19th February his Honour's qualities of learning, hard work, enthusiasm and independence were publicly acknowledged. The great pleasure of the Bar and the solicitors of this State at his appointment was apparent. The Bar congratulates his Honour and wishes him every success and satisfaction in judicial office.

JUDGE MACLEOD

Upon extracting oaths of office and allegiance 'en masse' from recent appointees to the Bench of the Accident Compensation Commission, Crockett J. remarked that there would appear to be more chiefs than Indians operating in that jurisdiction. One of the chiefs was his Honour Judge Macleod, whose appointment was enthusiastically endorsed by his colleagues at the Victorian Bar.

The fact that he was one of the outstanding characters around Owen Dixon Chambers was amply demonstrated by the anecdotes that surfaced at his recent official welcome. However, one classic feat of derring-do which occurred some years ago and which involved a camel near his cherished holiday resort of Point Lonsdale, was surprisingly overlooked. It seems that Scottie and a friend were minded to borrow a camel which was in town with a travelling circus. After unsuccessfully trying all of the conventional means of persuading a stubborn camel to move, methods with which all those who practise in the personal injuries field will be familiar, his Honour hit upon the idea of applying a pin to the unfortunate animal's testicles. The ploy succeeded, and the camel henceforth responded to his Honour's bidding. Many of his opponents in latter years will be aware that a combination of that subtlety and ingenuity typified Scottie's approach to the courtly art of persuasion.

He was a brilliant user of the weaponry of the payment into Court, particularly on his own plaintiffs, when he considered the interests of all concerned would be best served by bludgeoning the client into a settlement. No advocate more graphically described the terrible consequences of a failure to beat the payment in, and many an ethnic plaintiff left the precincts of the Court with a completely different conception of what in fact constituted a Greek tragedy. It comes as no surprise that one of the Judges of the County Court has put on record that 'the place won't be the same without him'.

The law was not his Honour's first choice of vocation. It is not generally known that upon completion of his secondary education at Assumption College, Kilmore, he made overtures to enter Holy Orders. His Honour's Catholic ancestry traces back to those renegade tribes found in the Outer Hebrides. At the time of his application to commence study for the priesthood, that Church had a decided preference for young men of Irish extraction and to this day his Honour believes that his unacceptable lineage was the reason for his rejection. Whatever be the true position, subsequent events have clearly established that celibacy was right out of the question, and the judgment of the Church has been vindicated. However, by a strange twist of fate, his Honour may yet be able to practise one facet of the priestly craft. Those practitioners at the Accident Compensation Commission can be assured that if there is a way to grant redemption, Scottie will find it!

The appointment recognises the fact that his Honour was possessed of the qualities requisite for a successful career at our Bar. With this background, the community can confidently expect that his Honour will discharge his new responsibilities with distinction.

Judge Bingeman

John Bingeman left Melbourne Grammar School aged 14 years following his father's illness and worked first for the Myer Emporium and then for stockbroking firms for several years. He later obtained his Adult Matriculation Certificate through Taylor's College and studied law at the University of Melbourne, during his first year also working full time as Night Manager of the stockbroking firm L.G. May. Very good results at the end of an extremely trying first year won him a Commonwealth Scholarship which enabled him to complete his excellent degree in relatively peaceful circumstances. After serving his Articles with Bill Carew in 1964 he signed the Bar Roll in March 1965, immediately upon his admission to practice, and read with Robert Brooking, now a judge of the Supreme Court.

The means by which John Bingeman entered the legal profession says much about the way in which he was to subsequently approach his practice and perform as a barrister. Whilst his intellectual capacity was never in doubt, he had shown that he was not afraid of very hard work. He believed in thorough preparation and paying great attention to detail. He swiftly grasped the issues central to a case and did not waste his time on irrelevant considerations. These qualities, together with his courage and versatility, led to a wide ranging practice at the Bar which will stand him in good stead on the Bench.

Whilst a bold and courageous advocate, his thorough and detailed preparation led to him not always making swift decisions. He tended to agonize long and hard over how cases should best be put. Indeed solicitors who briefed him to do paper work would be only too well aware of the lengthy consideration he gave to his pleadings and opinions.

After building an early practice in crime, he developed a very large practice before the then Workers' Compensation Board representing both applicants and respondents. He fought many cases alongside and against the late Ted Hill, a close friend and great influence, with whom he wrote the most practical and useful text used regularly by practitioners in the jurisdiction, 'The Principles of Workers' Compensation'. The work is perhaps a reflection of his academic interests and prowess as well as his practical abilities.

When one of the most senior and busy barristers in the workers' compensation jurisdiction in the early 1980s he took the bold step of telling his Clerk, Jack Hyland, that he no longer wished to appear before the Workers' Compensation Board. He swiftly developed a busy commercial, insurance, common law and defamation practice. Although not taking silk, he has in recent years appeared regularly before the High Court and the Full Court, and before the Accident Compensation Tribunal as senior counsel. He has been regularly briefed by large city commercial firms and by small suburban and country firms. He has represented large insurers, Victoria's rural workers and Derryn Hinch. That he leaves such a wide ranging practice is a reflection of his versatility, ability to grasp and master issues, and capacity for hard work.

Life at the Bar, however, was not a case of all work and no play. He did a lot of circuit work, and whilst illness, real or imagined, often prevented him from enjoying the more energetic pursuits of tennis and golf, his close friend and now brother Judge, Lyn Boyes, found time to tempt him with some less demanding (and unsuccessful) fishing whilst on the Bendigo circuits. Judge Boyes, Campbell and Blackburn vouch for his competence as an ocean yachtsman, and for many weeks each year, health permitting, he was one of the first on the Buller ski slopes in the early mornings.

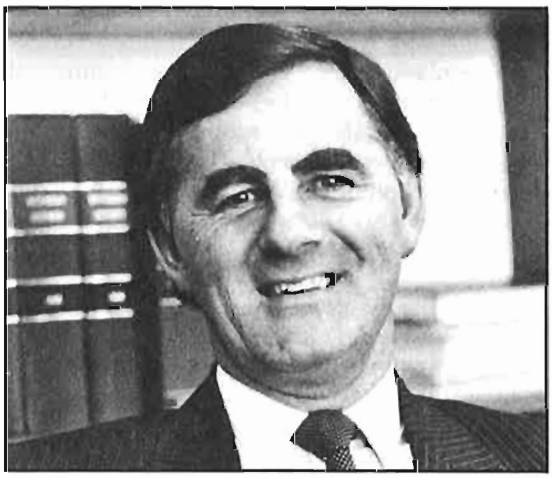
His love of fine wine is legendary, and now he produces it in much the same quantities as he has in the past devoured it. Chateau Yarra Edge, on

the banks of the Yarra Valley near Lilydale, provides him with both a form of extra curricular relaxation and a challenge outside the law. He hopes his new life will allow him more time at his vineyard, but one suspects the vagaries of the Accident Compensation Act may prevent that.

His academic interests extend to the matrimonial - he married the daughter of two of the University of Melbourne's best loved philosophers. Susan is now his Associate and thus she will hear, and perhaps see, far more of him than she ever did whilst he was at the Bar.

Whilst at the Bar John Bingeman demonstrated a boldness, a versatility, an ability to grasp the nettle and deal with it, and a capacity for both an academic and a very practical approach to a wide range of legal problems, all of which make him admirably qualified for a life on the Bench, and dealing with, initially, the Accident Compensation Act. The Bar has great confidence in him and wishes both him and Susan well.

Judge Boyes



On 1st February 1988, Lyn Boyes was sworn in as a judge of the Victorian Accident Compensation Tribunal. He matriculated from Trinity Grammar School in 1960, and was admitted to practise in April 1968, having completed the articled clerks' course at RMIT. It is worth mentioning that Lyn Boyes was the first graduate of the RMIT course, and is the first of all RMIT graduates to take judicial office. He was articled to the Late James Frederick Hill of Slater & Gordon, a solicitor without peer amongst those who practised workers compensation. Many of Jim Hill's pupils were to practise in that area. After two years at Lander & Rogers, L.R. Boyes signed the Roll of Counsel on 9th April 1970. He read with P.U. Rendit, now Judge Rendit of the County Court, of whom Judge Boyes is now, if not a brother judge, then at least a half-brother.

During most of the interval from 1970 to 1988, L.R. Boyes was a name associated with workers compensation. He practised as counsel before the former Workers Compensation Board and the present Tribunal, with occasional forays to the Supreme Court and High Court on appeal. For many years, he was a co-author (with Michael O'Loghlen) of a standard textbook, Anderson & Rendit's **Workers Compensation Victoria.**

Judge Boyes has always held a keen interest in things sporting. His earlier days were occupied with football, athletics, swimming and surfing. More recently, he has turned his attention and that of his family to things equine. The horses he has bred include Belle Fleur, Cresteena and Paysan. In various partnerships, he has raced many horses, notably Diwali which won the Grand National Steeple, Irish Lord which won the Navy Day Handicap beating What A Nuisance in that horse's Melbourne Cup year, and Old Currency. He is currently Secretary of the Yarra Glen Lilydale Hunt Club.

His Honour had two readers, Margo Brenton and Fred Davis.

Judge Boyes brings to the Accident Compensation Tribunal much experience, and an ability to seek quickly what is relevant and, equally important, what is not. Although, as Judge Boyes suggested at his welcome, a judge should 'shut up and be nice', there will probably be occasions when irrelevancies will test his resolve.

The Bar welcomes Judge Boyes, and wishes him well.

Judge Bowman

It was with a great deal of surprise that the Bar learned late in 1987 that John Robert Bowman had been appointed a judge of the Accident Compensation Tribunal.

It seemed that the Government had departed dramatically from tradition on several grounds: here was an appointee who was legally qualified, a barrister even; male; suffering from no known physical deformities or sexual deviations and an Australian to boot. Has tokenism been lost to us? Could this be the thin edge of the wedge? Surely not, maybe if we consult Hansard we will find that this is part of a Government led drive to create community acceptance of miniature folk by establishing a mosquito fleet of token tinies, judicial rovers in the great footy game of life.

Judge Bowman grew up in Albert Park (before it was trendy) and was educated at Parade College (which is still waiting to be trendy) and Melbourne University where he graduated in 1966 with LLB (Hons.). Subsequently he served Articles of Clerkship with I.P. Bricknell at the offices of H.B.V. Dimelow.

After demonstrating his talents far and wide with McGillivray & Helligan in Brisbane and Byrne Jones & Tarney in Ballarat, he signed the Roll of Counsel on 29th October 1970.

Under the guidance of the late P.R. Dever, his clerk, and B.R. Dove Q.C., his master, he developed a busy practice in workers compensation after an apprenticeship in the Magistrates Courts. Although he was inundated with work he was never one for the organisational side of practice and one would find his chambers littered with literature on American football, horse racing, country music, faded yellowing briefs, demanding letters from a multitude of irate solicitors and a fortune in ancient unpresented cheques. Such was the aura of depression created by the foregoing that he was more or less forced to take time off for long lunches, skiing holidays and international law conferences. His other main interests are horse racing and waiting for Collingwood to win a premiership.

Now that his Honour is in a more structured environment with an Associate and the Accident Compensation Commission's infamous computer to assist him, he is able to much better organise his long lunches, skiing holidays and international law conferences which unfortunately his judicial salary prevents him from attending.

The Bar as a whole (and the Compensation Bar in particular) welcome his appointment as his keen mind, quick wit and practical common sense will assist everybody involved in the administration of justice in this field.

Judge Croyle

On Tuesday, 16th February 1988, His Honour Judge Croyle was welcomed by the profession as a Judge of the Accident Compensation Tribunal.

His Honour was born on 13th February 1945. He was educated at Xavier College, Melbourne. He studied law at the University of Melbourne where he graduated in 1967. He was President of the Law Students' Society in 1965 and 1966.

Upon graduation, he was articled to Mr. Cliff Wilson of Messrs. Abbott Stillman & Wilson. He was admitted to practice in 1968. Thereafter, he practised as a solicitor until he signed the Bar Roll on 31st August 1972, when he commenced reading in the Chambers of John Hanlon, now a Judge of the County Court. In the meantime, he also continued with his studies and obtained the degree of Master of Laws in 1978.

This capacity for work and achievement was soon reflected in his practice. His Honour developed a wide ranging general practice and in the late 1970's there was a particular emphasis in the field of Workers Compensation. He had one reader, Joseph Ferwerda.

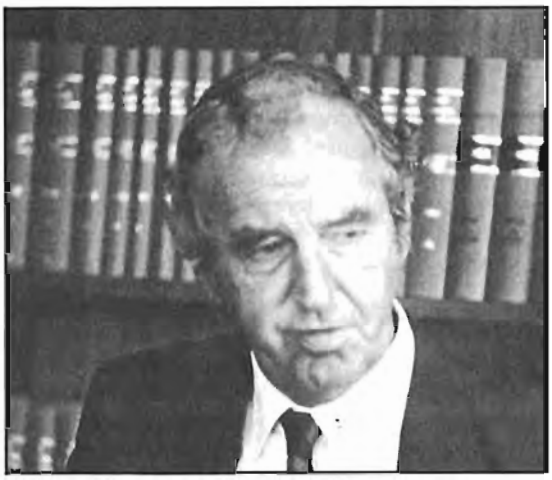
His activities and interests have extended beyond the law. He is a golfer of considerable renown and a very capable tennis player.

The construing of the provisions of the Accident Compensation Act will certainly test many Deputy Presidents to the limit and perhaps beyond to a state of despair and fury. Having looked into the 'crystal ball' the Bar cannot see this happening with his Honour. In his work at the Bar he has displayed much patience, courtesy and diligence and those qualities will make him well suited for the task ahead.

His Honour will prove to be a valuable addition to the Bench of the Accident Compensation Tribunal.

The Bar wishes him well.

Judge McCarthy



Judge Brian Patrick McCarthy was appointed as a Deputy President of the Accident Compensation Tribunal effective from 1st February 1988. His Honour was formerly Senior Partner in the firm of Rennick & Gaynor, Solicitors.

Judge McCarthy was educated at Xavier College and graduated LI.B from the University of Melbourne. He served his articles with Frank Galbally and subsequently joined the firm of the late Gordon Rennick and the late Bernard Gaynor.

His Honour commenced to specialise in the personal injury jurisdiction and early in the 1960's had built up a substantial practice in workers compensation and in the motor vehicle and industrial accident jurisdictions. His practice extended from Geelong to Mildura and to the Latrobe Valley and Sale. Many and varied were the acts, facts, matters and circumstances with which he became familiar in the development of the practice. At all times he was a courageous and vigorous practitioner for his clients' interests and worked exhaustively for their benefit. In latter days his major cases included Jetson's case which was the first Victorian personal injury with a verdict in excess of one million dollars. The case also led to the enactment of legislation to fix the interest rate applicable to future economic loss claims.

In addition his Honour found time to serve the profession at its highest level. He was for several years a member of various committees of the Law Institute including Supreme Court Practice and Rules Committees. Later he was elected Treasurer and then President in 1976-77.

His Honour's year as President was marked by considerable additional responsibilities brought about by a major defalcation by a practitioner and by the occurrence of a fire which destroyed the Law Institute of Victoria premises. Indeed it was his Honour who safely led the deliberating Council to safety when the fire occurred. During this term his Honour was called on frequently to meet the demands of the media as representative for the solicitors and many and varied were the interviews which he was required to conduct live on radio.

After representing the Institute for a further period of time on the Law Council of Australia, his Honour gradually relinquished his work load with the Institute and after a long interruption resumed his favourite sport of golf. This appeared to provide a more satisfactory outlet than supporting his favourite VFL Club, Footscray. His Honour also took on a post as member of the VFA Tribunal which enabled him to avoid a conflict of interest with the representatives of the Bulldogs.

In latter years his practice remained heavily orientated to the personal injury jurisdiction and more particularly in acting for the State Insurance Office (Transport Accident Commission). His Honour was appointed as an initial Solicitor Member of the Administrative Appeals Tribunal and remained in that appointment on a part time basis until his appointment as Deputy President of the Accident Compensation Tribunal.

Thus his Honour will bring to the Bench of the Accident Compensation Tribunal a wide experience of the litigious personal injury aspects of law. His reputation for acquiring an early grasp of the relevant facts and issues and disputes and his understanding of both proponents' of points of view in the types of cases to be litigated before him will lead him to carry out his duties efficiently and with great dispatch.

Judge Mulvany

Judge Paul Mulvany joins the Bench of the Accident Compensation Tribunal in a unique position.

Having been a very active participant in the reform of this jurisdiction he now has the opportunity to interpret and administer the new legislation. Judge Mulvany has practised in the Workers' Compensation field for 15 years, and has become a widely acknowledged expert. Over the last three years one of his tasks was to act as the principal legal adviser to the Trades Hall Council. In that role he was instrumental in the drafting of the new Act.

Judge Mulvany was educated at Channel College in Geelong and at Monash University. Whilst at Monash he also found time to work at the Titles Office, the Army Administrative Centre, and to be an active law student politician.

On graduation, Judge Mulvany commenced his articles at Maurice Blackburn & Co. and worked in the areas of industrial law, common law and workers compensation. His Honour became a partner within four years, and then specialised exclusively in workers compensation matters. In this jurisdiction he established the respect of his fellow practitioners, the Trade Union movement and employers. Representatives from these groups were prominent at this welcome. On this occasion, his Honour acknowledged the influence of many people. Two stood out: his wife Julie, who introduced him to many sociological writings and research of which he would have otherwise remained ignorant; and the late Ted Hill, who inspired for over four decades those with whom he worked.

Judge Mulvany brings to the Bench many skills and interests. His intelligence, knowledge and wit are well known. Not so well known, but just as informative, are his interests in the arts, especially opera and china porcelain, and his enjoyment in improving his skiing, tennis and gardening.

Judge Travers

Kevin Travers was a partner at Maurice Blackburn & Co. from 1st January 1966 to 30th June 1982 and for the last eight of those years was the senior partner. He later joined the staff of the Corporate Affairs Office.

His Honour was renowned for the emphasis he placed on preparing cases thoroughly and rapidly and for his negotiating skills. Many plaintiffs had much to thank Kevin for as he managed to 'convince' the defendant's solicitor to find that extra five or ten thousand dollars.

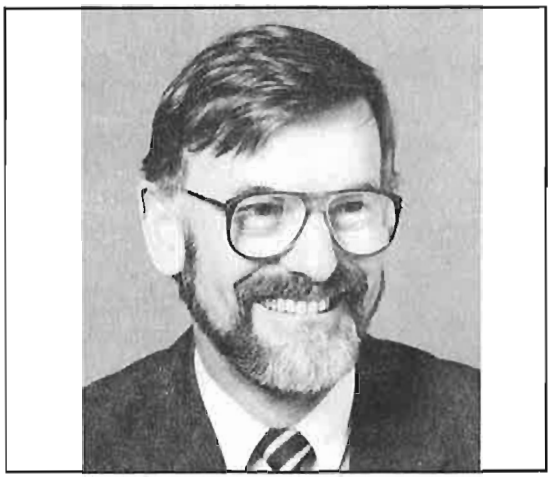
His skills were no less apparent during the Abortion Inquiry, where he so impressed the Police Association that it soon was seeking his services. Together with the now Mr. Justice Phillips and John Walker Q.C., he acted for the Police Association and its members in the Beach Inquiry and the subsequent prosecutions with total success.

Work seemed to consume most of his Honour's waking hours and thus he did not engage in racehorse breeding, wine growing, skiing and other pursuits popular amongst workers compensation practitioners. However, for many years, his Honour was actively engaged in the Australian-Indonesian Association.

The Bar welcomes him on his appointment to the Banch of the Accident Compensation Tribunal.

That's why I love Practice Court briefs — no bloody robes.

Bar News meets The Attorney-General



As Ms. Jana Wendt has not yet responded to our invitation to join the Bar News staff, the editors had to take on the unfamiliar role of in-depth investigative reporters in interviewing the new Attorney-General, ***Hon Andrew McCutcheon****. The following is a record of the interview (unsigned).*

Bar News: Congratulations, Mr. Attorney. How do you like your new job?

Attorney-General: Politicians need to be able to adapt to fresh fields. I like that. It is certainly a very interesting portfolio, very wide ranging and very good issues and a lot of initiatives in moves that have been generated from the portfolio. A lot of things started by my predecessors.

BN: What struck you as some of the most important issues since you started the job?

A-G: Well, I have come in in the middle of a general concern with Courts and case flow and probably what is a fairly significant revolution in the whole approach to Court management and case flow management. We are asking the profession to look at managing resources and new management techniques to ensure the process flows. That does mean changes in the way these parts of the organisation see their tasks, and that's been going on for some time - the pressure of the build up of cases and the type of resources we have in terms of handling cases and keeping the flow of cases and not letting people wait around too long to be dealt with by the Court.

BN: Specifically, are there any particular things which you think the profession and more particularly the Bar can do in this area?

A-G: Well, I guess I take a fairly fresh look at the whole thing. I've never sat around in the past and worried about Court delay, but when you come and look at the thing it's a question of whether that part of the system is properly resourced, whether there are processes there that can be improved. I think there have been significant shifts and changes in the responsibility of the legal profession to making that system work better and more efficiently, trying to keep the average waiting times down to a reasonable level, recognising that there certainly are necessary times to prepare cases and handle cases. I find that an interesting management problem to get all the various actors to co-operate to make it work effectively.

BN: Do you think you've had enough contact so far with the profession to focus on particular things the profession and particularly the Bar might do, or should do?

A-G: I think I am probably in the middle of that process. And I think it is a two way process. As representing executive government, I am concerned when I find that there are still cases that have been waiting two years to be dealt with, to know the sort of reasons why and to try and keep the average and the mean down to reasonable levels. That is a

conversation with various parts of the profession which I think must continue. I don't think the situation will ever be fixed because there are changes in the sorts of cases that are coming up, the length of cases. It is a long term on-going process. There is no simple solution just to create a whole lot more judges because there won't be Courts to handle them. There's no use having Courts and judges if the cases aren't coming up and adequately prepared in time ahead. I think there has been a lot of work done on the actual listing arrangements and management of the listing side so you don't have Courts and judges and officials waiting around with dead time. Now all those things are contributing to a much more effective and efficient Court process.

BN: And what about judicial appointment - do you have any thoughts about criteria that are important?

A-G: Well I've had a letter from Charles Francis which I am considering my response to at the moment. I might have more to say on that later.

BN: Are there any consultation processes in place, formal or informal, in relation to judicial appointment and do you think there should be any?

A-G: Oh, I think this government has taken the view that it makes those appointments. I referred to the letter from Charles Francis - he's setting out suggested criteria and I'm considering those now. I have had, obviously, conversations with the Chief Justice on his views in the matter of appointments and I would be interested in those views. As a layman I have my community view on the judicial system and I am also very interested in the profession's view and I will balance those things out and make my recommendations to the government in due course, as the need arises. So I am interested in the views that have been put to me and certainly I am taking them in - but I haven't finally finished that process of course. It will go on for a long time.

BN: What do you see as the community view of the legal profession?

A-G: There are a number of things the community sees about the legal profession. I think they recognise the skill and expertise the profession has in an area - I guess that's a view you have of the medical profession, engineers and architects and lawyers - they have important skills and training which lets them in to the esoteric world of the law. I think the community is very often confused as to why so much resource is used in the legal argument. It seems to be a diversion from their problem or the issue at hand. That seems to be a luxury in many ways that the legal profession and the legal system has built down through time. I think the community also has a view that it's a very expensive process, that a lot of people feel they could not afford to take legal action, it's just too expensive. I think that is a very serious issue. The law is there to serve people, not people to serve the law and if it's too expensive or remote from them, it's not much use to them and if they are excluded in getting what they believe are their rights because of that I think that is a very serious issue. We have legal aid and very large amounts of public resources are put into the legal aid system in order to ensure that people can have access to processes and be properly represented. It's a tightening noose around the legal aid purse.

BN: Well, we are all aware of that, specifically the problems which very long criminal trials create in the legal aid system. That's led to some rethinking about the test which should be applied in legal aid - not the financial means of the applicant but whether the applicant has got a reasonable prospect of acquittal, that it shouldn't just be a case of saying, 'Let the Crown prove their case (in a

very expensive way) and if I'm lucky I might beat it'. Have you got any thoughts about those sorts of issues?

A-G: Well, I can understand the other side to that - where there is someone making a judgment before the thing goes to Court. That seems to me to raise a problem. You are making a decision whether they've got a case before it's even been heard and you decide whether they should have legal aid and be represented. Now I guess there is a reasonable basis for that, there are some issues which clearly don't stand a chance but nevertheless if we are trying to ensure a system which has access to everyone that seems to me to be a delicate line - it could be drawn different ways and create some problems because we are trying to manage a scarce resource and with the legal aid purse.

I guess there is another question - that is the fees charged by the Bar and that varies very greatly and top barristers can charge very high fees. There again it means that for the ordinary people access to that sort of representation is harder to achieve and I understand that that flows through legal aid fees and top barristers have been inclined to knock back legal aid cases because legal aid is trying to negotiate fees that are lower than they can earn in other circumstances. I also understand that that means that less experienced barristers can be largely taking legal aid cases and they may not have the experience or the skill of some of the top barristers and therefore the cases are argued over longer periods of time and in fact the cost of that case could be extended. Now that's a view that has been put to me; that maybe legal aid should be prepared to pay the top fees and get the top barristers for some cases because they will in fact with their skill and experience be able to put the arguments and conduct the case over a much shorter period of time.

BN: We think a lot of people would agree with that. We certainly know some of the people at the Criminal Bar, even the more middle range people, because of the fees of legal aid are perhaps more willing to do private committals or things of that nature, where with less responsibility they earn more money. There are people doing trials who don't have the experience. They don't know what they are doing so they are frightened of not asking the right questions so they ask too many.

A-G: Yes it takes a lot of skill and experience and maturity to make a judgment that it is better not to cross-examine the witness at all. That leads me to say that I believe there is an area that needs some closer scrutiny. I mean I'd like to see that issue examined and I think what we're doing with the limited resource we have got in legal aid are - and I can understand, I've had conversations with Julian Gardner on how do you hold the fees down so that we can achieve the maximum number of cases being represented. But these other aspects obviously have got to be taken into account.

Another suggestion has been made on that other matter of the amount of time a case might take is whether legal aid should negotiate lump sum fees which means that the time then is not the essence of the fee. A fee is struck and if the barrister can conduct the case efficiently and well in a shorter time he has no incentive to drag it out and the case doesn't cost anymore if the barrister does in fact drag it out, for the reasons you mentioned. That's a fairly contentious theory too.

BN: But another thing is the civil cases, which perhaps doesn't get as much publicity, in the County Court here there is a lot of discontent amongst barristers at the way that civil juries and causes are being listed. In any one day you can go over to the Court and there will be 32 barristers standing there in the reserve list and there are only five judges with part

heard cases. Now those 32 barristers and their clients and interpreters and doctors on standby, the majority of them are not going to do anything because the Transport Accident Commission has taken a stand on a lot of the personal injuries cases and saying, 'Look, once it gets to Court we are not offering any more money'. There is no opportunity of the cases settling now so the barrister goes to Court, doesn't get a fee, all the other people take time off work and it gets rolled over into the next day and you have two days and you can keep going back there and not earning any money. That aspect of listing is certainly causing a great deal of discontent, is there any discussion about getting around that?

A-G: Well, we are discussing all the various problems in listing and I did that with the Chief Judge. I think that sort of issue certainly needs to be examined.

BN: Is any thought currently being given to major restructuring of the Courts, in particular a permanent Court of Appeal, with perhaps a larger trial Court which would combine part of the Supreme Court and County Court? There is a quite strong body of thought which is represented in the recent article in Bar News by Stephen Charles, that we ought to go the way of New South Wales and New Zealand and England and the Canadian provinces, with a permanent Court of Appeal. We appreciate that it is a big thing to think about.

A-G: I'll obviously have to get stuck into it but I haven't really faced that issue yet.

BN: How did you feel when you were asked to be Attorney-General, not having a legal background, did that cause you any concern?

A-G: Well, I better be careful what I say - you'll write it all down - I could say it was a shock, but in politics you get asked to do all sorts of things and -

BN: It's a bit like being a barrister?

A-G: Well, yes, I suppose it is in some ways - in one sense the Premier picks his team and puts you into a particular task and you say, 'Right oh, here we go'. He did make it very clear that he thought I had the sort of mind and personality that would tackle those issues well, so I thanked him for his confidence. When I thought about it I realised I had come from a legal family. In the middle of this year it's a hundred years since my grandfather was admitted to practice, which is rather nice and I'll take part in a small ceremony to acknowledge that fact. Also my daughter is married to a solicitor, so I've had that contact with the profession and having been in another profession, architecture, I have had parallel interests. I guess the challenge to a politician is more the issues and the logic of them and their impact on the community and what are our priorities as a government and I think I have been talking about those in our earlier discussion. Our concern is that the system works, that people aren't waiting around for it to get the results that they need, whether it's good news or bad news, that they can feel that they have access to the system. I think the Government's whole emphasis of the Magistrates' Court and the Bill we have before the Parliament to both expand its jurisdiction and make it a much more efficient Court is an example, because that is the Court that's closest to the people and the least forbidding Court, so, then below that we have arbitration and those neighbourhood dispute resolutions processes. Now I think that reflects perhaps what the Government has been interested in: the simplest possible way resolving disputes, the more complicated disputes needing an effective Court system to deal with it.

BN: Well, some of the recent appointments of Magistrates have been people from the public service who haven't had the experience and

they are now sitting on the Bench with an experienced Magistrate seeing what goes on. Now, there has been some criticism from members of the profession that that's not the way that people should be appointed.

A-G: Well I can appreciate that argument. I have not yet gone through the process of selecting new Magistrates but I am setting up a process to do that and obviously one of the considerations is some knowledge of the Court process, or some training process that is available if they are to be selected as Magistrates.

BN: Going to the other end of the scale, the commercial jurisdiction in the Supreme Court, there is a school of thought that an efficient commercial litigation service is clearly an important part of the infrastructure which Victoria can provide for commercial and industrial development. Do you have any thoughts along those lines?

A-G: I would be interested to consider that, yes, it sounds a logical way to go but I haven't had a proposition put and I think probably it is something that ought to be looked at.

BN: To take one thing, the quite major improvement in the last few years in the Commercial List in the Supreme Court basically hasn't depended on legislation. Rather it's been part of the Court's own internal administrative arrangements which have resulted in commercial cases getting on very much quicker. There is an argument that perhaps commercial users of the Court like BHP and other commercial litigators should pay for the privilege of getting very quick service, and not just by filing fees which are minimal compared to the amounts involved.

AG: That might be appropriate if it's necessary for them to unravel some problem, certainly if it's done efficiently and quickly it saves them a lot of money.

BN: Do you see your role as an Attorney-General as having some sort of separation from being a member of Cabinet? Do you see it as having some independence as a legal function, separate from being a politician?

A-G: That creates very great difficulty. We have a Cabinet system of government; you can't afford to stand outside that. A government only works by that Cabinet making decisions and then abiding by those decisions. To have someone standing outside that and saying, 'Can I talk to the Attorney-General?' would be, I think, unworkable.

BN: If that situation were forced on you - there is a particular instance in which it might arise and that is when somebody wants to challenge a law and they haven't got sufficient legal standing, if they can get the Attorney-General to bring the action, that would solve any problem of standing, so that there is an obvious potential for conflict between the Attorney-General giving his name to an action and giving the plaintiff standing which on the other hand might result in a judgment contrary to a political policy of the government.

A-G: It's very hard to give you an answer on that - on a theoretical basis, I think if and when that situation arises you have to balance up - the issue and what the circumstances.

BN: In terms of the profession do you have any views on the fact that there is a separate Bar here or the independence of that Bar?

A-G: No, I don't have a view on it, that's how it is and that's how the system is operating. I am not here to revolutionise the profession, I'm here to get the judicial system operating efficiently for the community. I don't think my task is to reorganise the Bar.

Plain English — A Challenge to The Bar

In this conceptualised overview ***Loane Skene****, Senior Law Reform Officer with the Victorian Law Reform Commission, interfaces in a meaningful way with the ongoing implementation of the Plain English programme in a barristerial scenario.*

The Victorian Law Reform Commission has been very successful in its crusade for plain English legislation. In the last edition of Bar News, it received a glowing tribute from the Bar Council's Law Reform Committee for its 'translation' of the Victorian Takeovers Code. The Attorney-General has not only acclaimed the Commission's work on plain English on many occasions, but also has directed that all his Department's Bills be drafted in plain English. In the spring session of Parliament, the Subdivision Bill and the Magistrates' Court Bill with its prescribed forms are examples of plain English legislative drafting.

However, some members of counsel are apparently not fully persuaded of the merits of plain English and are sceptical particularly about its use in drafting and pleading. There are two main grounds for their concern:

- Plain English **cannot mean the same** because it replaces technical legal words with more commonly understood words; and
- Plain English must involve a **loss of accuracy and precision** if legal documents on complex matters are not written in technical terms with a complete exposition of possible contingencies.

This note seeks to allay the doubts and fears of those barristers and to persuade them of the advantages of plain English in all aspects of their work. For those who are still not convinced that plain English 'means the same' or can be used without loss of accuracy or precision, it concludes with a challenge: if you will send a technical or complex piece of legal language to the Law Reform Commission, we will translate it into a form that is not only readily understood but, more importantly, means the same.

What is plain English?

Plain English is better communication. It has three aspects:

- **Language.** Plain English is not a special simplified language. It is ordinary English which expresses its message directly and efficiently. It is not pompous or verbose. It avoids repetition, circumlocution, archaisms and legal jargon. But it does not require that technical terms be rejected or that accuracy and precision be sacrificed.
- **Organisation.** Plain English documents present material in a sequence based on the needs of the reader and not the writer. They commence with the points that are of greatest interest to the reader and put minor or contingent matters later.
- **Format.** Plain English documents are well designed. They have headings as reference points for the reader. They may also have cross-references and indexes. Their type-face is clear and they are well spaced. They may use tables, charts, graphs and formulas to present complex subjects simply. Graphic devices such as boxes and colour-highlighting may be appropriate in printed documents.

To adopt a plain English style, writers should:

1. Identify the needs and abilities of potential readers. A document addressed solely to a legal colleague may be written in more technical and complex language than a contract or will drafted for someone with no legal knowledge and perhaps poor reading or comprehension skills.
2. Decide the substance of the message to be communicated. Include provisions which are really necessary and omit those that are repeated only by habit, precedent or excessive caution to cover situations that never arise in practice.
3. Arrange the material in a logical sequence. What would prospective readers want to know? What is most important to readers? Start with these points and leave less important or contingent items for later.

   How should the document be designed to highlight principal points and to indicate how it is arranged? State at the beginning what you intend to say and the order in which it will appear. Is the structure logical? Are there any

gaps in information, jumps in reasoning, duplication, overlap or omissions? Would headings help readers follow the argument or locate material on later reading?

4. Use a simple grammatical structure. Generally, this means that you should put the main clause first. Do not separate an auxiliary and the main verb, or the subject and the verb. Place the adverbial at the end of its clause so that it receives the normal end-stress associated with the final position in English sentences. Use the active rather than the passive voice of verbs. This not only makes a sentence simpler and shorter but it also makes it clear who is to do what to whom. Express ideas positively rather than negatively. Split up long sentences and use linking words like 'alternatively', 'however', 'in addition', 'instead', 'moreover', 'nevertheless' and 'similarly' to show the connection between sentences. (Examples of these grammatical rules are given in the **Drafting Manual**, Appendix 1 to the Law Reform Commission's Report, **Plain English and the Law**, 1987.)

5. Write in simple language. Consider substituting a more common or familiar word for one that is obscure or not readily understood. Replace compound prepositions with simpler equivalents, for example say 'by' instead of 'in accordance with' and 'about' instead of 'in connection with'. Do not be pompous. Say 'her death' rather than 'the fact that she died' and 'there the court ...' rather than 'that was an instance in which the court ...'. Technical terms which have a precise meaning may of course be used. These include words such as 'affidavit', 'habeas corpus', 'hearsay', 'hereditaments', 'easement' and 'mandamus'. Many words traditionally used in legal documents can be omitted without changing the meaning. These would include 'hereto', 'hereinafter', 'hereby', 'aforesaid' and 'said'. Omit unnecessary, tautologous synonyms in doublets and triplets, such as 'null and void', 'terms and conditions', 'force and effect' and 'give devise and bequeath'. Use a familiar form of address. Instead of 'the company will pay the insured', say 'we will pay you'. Avoid surplusage such as 'it is important to add that ...', and 'in this regard it is of significance that ...'. Avoid writing in the negative, and especially avoid double negatives.

Why barristers should use plain English

From this brief summary of the principles of plain English, the reasons why barristers should use it are self-evident. Consider some aspects of barristers' work:

- advising solicitors and clients;
- examining witnesses and presenting clients' cases in court;
- drawing contracts, wills and other legal documents;
- and, if the Law Reform Commission's recommendations are adopted, assisting in the preparation of draft legislation.

In all of these tasks, a clear logical style of speech or writing is obviously an advantage. Plain English presentation makes the argument clear to the reader or listener. It also provides an internal check for the writer on the consistency and coherence of the argument. Indeed, plain English can only be properly used by people who have organised their own thoughts as a prelude to communicating them to someone else.

Precision and accuracy are preserved

Although barristers may be persuaded of the virtues of plain English in oral and written advice, or in their court arguments, they may baulk at using it in legal documents such as contracts and pleadings. There are various reasons for this. First, drafting of documents like these may be seen as 'imagin[ing] every possible combination of circumstances to which [their] words might apply, and every conceivable misinterpretation that might be put on them, and tak[ing] precautions accordingly' (Sir Ernest Gowers, quoted para 63, **Report on Plain English and the Law**). Also the rules and practice of pleading may require some circumlocution, for example the statement of each allegation in a separate paragraph. Barristers therefore hesitate to depart from a precedent which has been established by experience and time as an acceptable means of stating rights, duties, benefits and burdens or of conducting legal proceedings.

Commercial agreements

However, experience, both overseas and in Australia, shows that commercial agreements can

be written in plain English without changing their meaning. In Britain, Canada and the United States, insurance companies, banks, finance companies, gas and electricity utilities, manufacturers and retailers have used plain English contracts for many years. In Australia, the legal wording of the NRMA plain English insurance policy, which has been used for 10 years, has never been successfully challenged in court.

The Law Reform Commission's Report, **Plain English and the Law**, included plain English forms of agreement and covenant under sections 47 and 41 of the Historic Buildings Act 1981 (Vic) and the Law Institute's Mortgage Over Business which was prepared at the request of the Law Institute. These forms have been well received and are already in use. The Federal Government has adopted plain English in some of its taxation returns and many private institutions, such as insurance companies, are using plain English in their commercial documents.

Melbourne Planning Scheme Ordinance

An example is clause 5AAA(1) of the Melbourne Metropolitan Planning Scheme Ordinance which the Ministry for Planning and Environment is currently rewriting in plain English with the assistance of the Commission. The present clause 5AAA(1) reads:

> (1) Where the activities carried on or proposed to be carried on on land include activities which fall within or are directed to two or more of the purposes specified or included in any column of the Table to Clause 7 of this Ordinance those activities shall, for the purpose of the Planning Scheme, comprise the use of the land for the dominant or primary purpose of those activities unless those activities are directed towards more than one separate and distinct purpose neither of which is ancillary or incidental to the other.
>
> (2) Nothing in this Clause shall be construed as permitting as part of the purpose for which the land is used an activity expressly excluded from the definition of that purpose.

The plain English version reads:

> If the land is used for more than one purpose and one is not ancillary to the other then each purpose must comply with the Scheme.

Pleadings

In the foreword to **Victorian Pleading Precedents** (Tony Graham, Law Book Co., Sydney 1982), Mr. Justice O'Bryan said 'The skill of a pleader depends to a large degree upon the use of clear and precise language'. He went on:

> "We would regard it as a quaint use of language today to plead a running down case in the following form:
>
> "That the defendant so negligently and unskilfully managed and drove a motor vehicle along a public highway that the said motor vehicle was forced and driven against the plaintiff, whereby the plaintiff was thrown down and wounded, and for a long time was sick and was prevented from attending to his affairs, and is permanently disabled, and incurred expenses for medical attendance".

Mr. Graham (now Mr. Justice Graham of the Family Court) has generally used clear and precise language in the forms suggested in his book (and he tells me they will be even better in the forthcoming second edition). However, some of his modern precedents could be improved even further if they adopted the plain English approach outlined above. Consider this Third Party Notice (document no. 16 on page 15):

THIRD PARTY NOTICE

> Take notice that this Action has been brought by the Plaintiff against the Defendant claiming, against the Defendant, damages in respect of personal injuries and loss alleged to have been suffered by her, by reason of negligence on the part of the Defendant, in the circumstances set out in the Statement of Claim in the Writ herein, a copy of which is delivered herewith.
>
> The Defendant claims to be entitled to indemnity or contribution from you in respect of the said claim to the extent of the total amount that the Plaintiff may recover against him, or as such part thereof as may be found to be just, having regard to you responsibility for the said injuries and damage on the grounds that the said injuries and damage were caused or contributed to by your

negligence. And take notice that if you wish to dispute the Plaintiff's claim in this Action as against the Defendant, or your liability as [against] the Defendant, you must cause an Appearance to be entered for you within eight (8) days of the service of this Notice upon you. In default of your so appearing, you will be deemed to admit the validity of any Judgment obtained herein against the Defendant and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you, pursuant to the Rules of the Supreme Court.

DATED THIS day of 19 .

People on whom this document is served are probably ordinary citizens with little knowledge of the law and little experience of court cases. They may well be confused by language such as 'this Action has been brought' and 'entitled to indemnity or contribution from you'. They will not know how to 'cause an Appearance to be entered' in default of which 'Judgment .. may be summarily enforced against [them]'. In short, this document imposes obligations on recipients yet, without taking formal advice, they may not understand the nature of those obligations and the consequences of not fulfilling them.

The document would serve its purpose better if it read:

NOTICE OF CLAIM AGAINST THIRD PARTY

To .....(the Third Party)
of .....(address)
.(defendant) has made a claim against you.

Details of this claim

..... (plaintiff) has sued .....
..... (defendant) claiming compensation for personal injuries and loss which he/she says he/she has suffered as a result of the defendant's negligence. The circumstances of the plaintiff's claim are described in the Statement of Claim in the Writ, a copy of which is delivered with this notice. The defendant says that you were responsible or partly responsible for the plaintiff's injuries and loss and, if the court orders the defendant to pay damages or costs to the plaintiff, you should pay the defendant all or part of the damages or costs that the defendant is ordered to pay.

What you must do to dispute the claim

If you wish to dispute the plaintiff's claim against the defendant, or the defendant's claim against you, you must tell the court, the plaintiff and the defendant within 8 days of receiving this notice. To do this, you must go to the court whose address is noted above and fill in a form called an 'Appearance'. This must be handed to the court clerk. A copy must also be personally delivered or posted to

.....
(plaintiff or plaintiff's solicitor) and .....
(defendant or defendant's solicitor)
.....

If you do nothing

If you do not notify the court, the plaintiff and the defendant (or their solicitors) that you dispute the claim, the court will assume that you admit that the plaintiff's claim against the defendant and the defendant's claim against you are each valid. The court may then order that you pay to the defendant all or part of the amount that the court orders the defendant to pay to the plaintiff. The order that you pay money to the defendant can be enforced by the court.

The general form of Third Party Notices is of course prescribed by court rules so barristers may understandably hesitate before adopting a plain English version of the form. They will wait for the prescribed forms to be amended. However, with other pleadings and interrogatories, there may be more scope for an immediate plain English approach. Consider the common interrogatory concerning an agreement:

... and as to such agreement, state whether it was in writing, oral or by implication and:

(i) insofar as in writing, identify the document or documents said to comprise the same and state in whose possession each such document now is and where the same may be inspected.

(ii) insofar as oral, specify each conversation said to constitute the same, and state when, where and between what actual persons the same took place and give the substance thereof.

(iii) insofar as by implication, specify the acts, facts, matters, omissions and circumstances whereby the same arose and state what are the implications drawn therefrom.

To those well versed in litigation, this interrogatory seems clear, precise and easily comprehended. But what if the recipient is a legal novice? The words 'insofar', 'said to comprise', 'the same', 'thereof' and so on may be unfamiliar and off-putting. The meaning of the questions would be the same if the appeared in a document headed 'Questions to be Answered by the Defendant', instead of 'Interrogatories', and read:

(i) was the agreement in writing? If so, describe the document in which the agreement was made. Who has that document or those documents now and where may they be inspected?

(ii) was the agreement oral? If so, describe each conversation in which the agreement was made, stating when, where and between whom the conversation took place and what it was.

(iii) was the agreement implied? If so, describe the circumstances from which the agreement was implied and state what the agreement was.

You may think that the suggested plain English version of the interrogatory is little different from the original version. If so, that is no doubt because modern interrogatories are simpler and more straightforward than their nineteenth century counterparts. However, there is still scope for improvement, especially in making the documents more accessible to its intended audience, most of whom are non-lawyers.

Conclusion

The Law Reform Commission believes that the support and co-operation of counsel is essential if its work on plain English is to be effective in the long term. It is keen to dispel lingering doubts that you may have in respect of its use in all aspects of legal practice. If you are still unconvinced, the Commission would like to hear from you. Answer its challenge and send us your specimen of legal language which you believe cannot be expressed in plain English without loss of meaning. Perhaps we will surprise you!

Editors' Note: The suggested plain English form of interrogatory may render many treasured precedents useless, but it would also have a benefit additional to that mentioned in the article. When the time comes to cross-examine a party on an answer to an interrogatory, especially where the trial is before a jury, the whole point tends to get lost if the interrogatory which is read to the witness is couched in complex language unfamiliar to the layman.

Capital Gains Tax on Compensation or Damages

Is nothing sacred? The possibility that damages verdicts or settlements may attract the tax man's beady eye is discussed by ***Neil Forsyth*** *Q.C. and* ***Peter Searle.***

One facet of the Tax 'Reforms' of recent years which has particular importance for barristers is the impact of capital gains tax on damages or compensation payments. If a cause of action arose on or after 20th September 1985 the proceeds may well be assessable pursuant to the provisions of Part IIIA of the Income Tax Assessment Act 1936 ('the Act'). Accordingly, the impact or possible impact of tax is very relevant to the amount claimed and the amount accepted in settlement or obtained in damages. From a defendant's point of view, there is also the possibility of realising a capital loss.

Broadly speaking Capital Gains Tax (CGT) applies where:

(i) there has been a disposal or deemed disposal of an asset;

(ii) the asset was acquired or deemed to have been acquired on or after 20th September 1985; and

(iii) the disposal of the asset occurs on or after 20th September 1985.

For the purposes of CGT, 'asset' is defined in s.160A to mean -

> 'any form of property and includes:
>
> (a) an option, a debt, a chose in action, any other right, goodwill and any other form of incorporeal property ...'

Rights which one acquires pursuant to the provisions of a contract are 'property' and therefore assets for the purposes of Part IIIA of the Act. In **O'Brien v Benson's Hosiery (Holdings) Limited** [1980] AC 562 the House of Lords held that the rights of an employer company under a contract of employment were property and therefore an asset even though they were not assignable and did not have a market value. The sum of 50,000 pounds received by the company in return for the surrender of its rights under the service agreement was held to have been for the disposal of an asset and therefore assessable as a capital gain.

Further, in **Zim Properties Limited v Proctor** (1984) 58 TC 371 Warner J was required to determine the issue whether a sum received by a plaintiff in settlement of an action against his former solicitors in negligence was a capital sum derived from an asset and therefore assessable to capital gains tax pursuant to the provisions of the Finance Act 1965 (UK). The definition of 'asset' there was drafted broadly along the lines of s.160A of our Act. Warner J held, following **O'Brien v Benson's Hosiery**, that the sum received by the plaintiff in settlement of such an action was a capital sum derived from an asset (being the plaintiff's claim in negligence against his former solicitors) and therefore assessable.

Given that an actionable claim is an asset subject to CGT, one must determine with some accuracy both the time at which the asset was acquired and the cost base (if any) of that asset. Many actions before the courts will be based on acts of alleged negligence which occurred prior to 20th September 1985, but where much of the damage has been suffered (and the writ issued) after that date. It is beyond the scope of this paper to provide examples which illustrate the difficulty in ascertaining the time a particular cause of action was complete. All the complicated law concerning the time when a cause of action accrues for the purpose of the Limitations of Actions Act appears to be equally applicable for the purposes of CGT. An asset may be acquired not only by the entering into of a transaction, etc ... but also by 'the occurrence of any event': para 160M (21(f)).

Paragraph 160M(3)(b) provides that a change of ownership (disposal) shall be taken to have occurred by 'the cancellation, release, discharge, satisfaction, surrender, forfeiture, expiry or abandonment' of an asset being a debt chose in action or any other right. Thus, the recovery of judgment, or rights under a compromise, in relation to a cause of action which was acquired (or deemed to have been acquired) before 20th September 1985 may attract tax. In ascertaining the amount of relevant profit, there is to be deducted, from the consideration receivable, the 'indexed cost base' (if any).

In some instances the cost base of the asset to the plaintiff is likely to be the market value at the time

the damage was suffered and that sum would in turn probably equal the damages awarded. Accordingly, no capital gain would arise. However, the cost base of the asset is often likely to be nil, and unless the gain is specifically exempt, the judgment debt (or settlement figure) would be included in the assessable income of the successful plaintiff.

Exemption of damages for personal injuries

Sub-section 160AB(1) contains an important exemption:

> 'A capital gain shall not be taken to have accrued to a taxpayer by reason of the taxpayer having obtained a sum by way of compensation or damages for any wrong or injury suffered by the taxpayer to his or her person or in his or her profession or vocation and no such wrong or injury, or proceeding instituted or other act done or transaction entered into by the taxpayer in respect of such wrong or injury, shall be taken to have resulted in the taxpayer having incurred a capital loss.'

In the Explanatory Memorandum accompanying the CGT legislation the Treasurer stated that 'damages for personal injuries or for libel, slander or defamation and insurance monies under personal accident policies' fall within this exemption of 'any wrong or injury suffered by a taxpayer to his or her person or in his or her profession or vocation'. Any cause of action not within the exemption is prima facie subject to the CGT regime.

It should be noted that sub-section 160ZB(1) specifically excludes the claim for a capital loss in respect of the personal wrong or injury claims specified therein. It is implicit that capital losses may be claimed by taxpayers in respect of other damages or settlement payments. Note, however, that capital losses are not deductible against assessable income generally, but only against assessable capital gains.

Mixed capital/income claims

In revenue cases, the courts have traditionally refused to dissect an 'undissected lump sum' which includes both capital and income components (**Allsop v FC of T** (1965) 113 CLR 341 and **McLaurin v FC of T** (1961) 104 CLR 381, recently applied in **FC of T v Spedley Securities Ltd** 88 ATC 4126).

Thus, taxpayers have traditionally been able to obtain a financial advantage by settling a case for one undissected lump sum which includes compensation for various heads such as loss of earnings, loss of goodwill and loss of capital assets. Although there may still be an advantage in such a technique as far as revenue items are concerned, it should be noted that Part IIIA of the Act specifically allows for apportionment. Sub-section 160ZD(4) provides:

> 'Where any consideration ... relates in part only to the disposal of a particular asset, so much of that consideration as may be reasonably attributed to the disposal of the asset shall be taken to relate to the disposal of the asset.'

Counsel should give consideration to assisting the Commissioner of Taxation in 'reasonably attributing' a portion of the lump sum settlement figure to the disposal of particular assets.

Family Law Act transfers

Finally, it should be mentioned that Part IIIA specifically provides for roll-over relief from CGT where there is a court sanctioned or court directed transfer of assets between spouses under the Family Law Act. As from 28th January 1988 the roll-over relief is extended to court directed or court sanctioned transfers of assets between a company or trust and one of the spouses to the arrangement. As is often the case concerning income tax amendments in modern times, this extension of the roll-over relief provisions is contained in an announcement made by the Treasurer on 28th January 1988 and will not be embodied in legislation until the draftsman gets back from holidays.

Conclusion

This brief comment should illustrate that there are vast opportunities as well as pitfalls for members of the Bar in relation to the impact of CGT on damages claims. A plaintiff who settles a claim for $100,000 might be very angry if he finds that the Commissioner of Taxation is entitled to take almost half of that amount. On the other hand a defendant who refuses to settle a claim for $100,000 might be more than willing to settle a claim for $175,000 if he can be assured that the full $175,000 will be a claimable capital loss. In either event, both sides should be quite certain as to the type of asset they are dealing with, because the Commissioner is likely to be resistant to the idea of allowing a capital loss on the payment of an amount by way of compensation or damages if he cannot have the corresponding sum included in the plaintiff's assessable income.

Acting Appointments

Traditionally the Victorian Bar has received the concept of acting appointments with suspicion. The issue has re-emerged recently so Bar News thought the topic was worth a further look. We asked the former Attorney-General, now Minister for Transport, the ***Hon. Jim Kennan Q.C.****, to put the case for and* ***Bernard Bongiorno Q.C.*** *the case against.*

The Case for

Hon. Jim Kennan Q.C.

It is a fundamental factor in successful judicial administration that court resources should be fully employed for as many days a year as possible. Court resources include judges, support staff including associates and tipstaffs, and court rooms. The community investment in maintaining the courts is very substantial and greatly exceeds the payment of the judge's salary alone. For instance, the cost of establishing a new criminal court with appropriate security is now in the order of $1 million per court room.

There are now 23 Supreme Court judges and 43 County Court judges (an increase of 11 judges in total in the last four years) and there has also been an expansion in available court rooms (four additional County Court jury rooms at 471 Little Bourke Street) and more court rooms will come on stream in 1988. In the meantime, three additional court rooms have been provided in Queens Road.

There are always some judges away, particularly with a total of 66 judicial positions. Illness or leave, including sabbatical leave and appropriate leave to attend conferences, means that there are always at least two or three judges out of the 66 who are not sitting on any one day. Sometimes this number is exceeded if there is a bad run of ill health. Whatever the number of permanent judges is, the fact that there will always be some judges away means that the court resources in terms of support staff and court rooms are always a little under utilized.

The most practical way to ensure that judicial strength is fully maintained and existing court resources are fully utilized is the use of temporary judges. This issue was fully debated in the Civil Justice Committee Report. The Committee recommended the use of reserve judges, i.e. judges who had retired under the retiring age and who could be used as temporary judges from time to time until they reached the ordinary retiring age. This scheme was generally well accepted and legislation was passed to enable reserve judges to be used in both the Supreme Court and County Court. It is anticipated that over a period of time there may be a small pool of reserve judges in both courts but this has not occurred as yet.

Until the reserve judge scheme can be utilized it is necessary from time to time to look at the possibility of acting judges. In the last twelve months there has been an acute problem in the personal injury lists and I have also been keen to see reductions in the criminal lists. For this reason extra permanent judges have been returned to the County Court work from the Accident Compensation Tribunal where they are being replaced by new permanent appointments. In addition to the increased number of judges available for County Court work as a result of the return of judges from the Accident Compensation Tribunal, the master of the County Court was made an acting judge and an acting master appointed. The result of these initiatives has been impressive with an increase in the disposal rate of personal injury cases of 48% and the prospect now is that by the middle of 1988 the personal injury lists will be reduced to a small proportion of their size in mid 1987. There has also been improvement in the rate of disposition of criminal cases.

The appointment of an acting master of the Supreme Court was made because a master was away on leave for six months and it was desirable

to appoint an acting master during this period to ensure that the lists were kept up to date. There was no need to make an additional permanent appointment as the ordinary complement of masters is sufficient.

While it should be a general rule that judicial appointments are permanent and whilst the use of reserve judges is the ideal way to achieve temporary additions to judicial power, it is not reasonable to stand idly by when it is necessary to make an attack on delays in the courts. The use of temporary judges is a necessary weapon in a strategy to bear down on delays in the courts. In the United Kingdom recorders have been used as temporary judges in the criminal lists on a very substantial scale for a very long time. No one has suggested that the English judiciary is any less independent than the Australian judiciary. The English experience has been that the extensive use of recorders has played a key part in minimising the delays in the criminal lists.

It is important that there is the fullest return to the community on the investment in the court system. Spending on the court system has risen by 118% in the last five years and is now in the vicinity of $88 million in the current financial year. There have been a great many changes in judicial administration in Victoria and judges and others have been at the heart of many of these changes which have seen Victoria leading the way in improved judicial administration. Many changes involve the casting aside of the traditional way of doing things and some traditional attitudes. Whilst temporary judges should always be the exception rather than the rule, there is no good reason for refraining from the use of temporary judges, and particularly so until there is a pool of reserve judges who can be called on in the way envisaged by the Civil Justice Committee.

The Case against

Bernard Bongiorno Q.C.

The traditional objection to temporary judicial appointments has been based upon the perceived danger of their appointment compromising the independence of the judiciary - a principle which the community generally, and the Bar in particular, sees as fundamental to our system of justice. By placing a person in a position where he or she might have, or appear to have, an interest in making decisions which could placate sectional interests (including Government) the independence of that person is at least theoretically compromised to some extent.
The temporary criminal court judge who has to consider the exercise of a judicial discretion to exclude prosecution evidence may feel under threat from a vociferous police lobby which he fears might try to thwart any possibility of a permanent appointment. The acting judge in a personal injuries court who has a large plaintiffs/defendants practice, and who wishes (and expects) to return to such practice when his appointment terminates, might appear to be less than independent, particularly when it is realised that the sources of such work are relatively few in number and fairly rigidly divided between solicitors who act for plaintiffs and those who act for defendants. Again, an acting judge who has to consider the grant of an injunction to stop a Government project or declare void some Government decision may appear to be less than totally independent. Even the proposed Reserve Judge system is not totally free of theoretical problems of this type.

On the other hand, of course, the Bar has always prided itself upon its own independence and

fostered the image of the fearless advocate standing between the citizen and the authorities, regardless of any possible personal consequences. It has always been assumed that those who make judicial appointments (or, for that matter, brief members of the Bar) do so without regard to what interests the appointee might have represented in the past. Is there any reason to believe that the decision of an acting judge would influence Government more than an advocate's pre-appointment activities? Each ought, except insofar as they demonstrate competence or incompetence, be equally irrelevant. It is the fear that they are not which creates the problem. Is that fear sufficient to maintain a policy of total opposition to temporary appointments? Senior members of the English Bar have, for a long time, acted as Recorders and I understand that a number of New South Wales silks have recently agreed to sit as acting District Court judges for one month each to clear long lists in that court. There are vast population differences between Victoria and the UK as well as significant differences in jurisdiction (e.g. trial by jury, and hence by Recorder, is common in many cases which are here tried by Magistrates). The same probably cannot be said of New South Wales where, as I understand it, the acting judge will not sit in the criminal jurisdiction, in any event.

It is said that temporary judges are needed in Victoria to deal with 'temporary' excesses of cases in certain lists. Experience has shown, however, that 'temporary' excesses of work in the courts usually turn out to be much more permanent than anticipated. In any event, even if the appointment of more judges enabled the backlog of cases to be reduced to a satisfactory level, the large number of judges now sitting at any one time, would enable any excess of appointments to be relatively quickly adjusted by not replacing judges who retire or die in office. It would be surprising if, whilst waiting for such a vacancy to occur, either the Supreme or County Courts found themselves with all their lists up-to-date and judges with nothing to do!! There are other problems associated with the appointment of temporary judges: their remuneration, the status of their judgments as precedents, their subsequent standing before the court of which they were temporary members, etc. There seems to be little to commend their appointment and the Bar's opposition, which is said to have been strengthened by unhappy experiences in the 1950's, appears justified on more than just a fear of interference with the judicial process.

Of course, there may be some middle position which is worth exploring. Conditions on acting appointments governing the work acting judges perform, the terms upon which they are appointed and the time for which their appointments run might eliminate some, if not all, of the present objections. If the only way of removing the present totally unacceptable delay in hearing Full Court appeals was to appoint three acting judges to release other judges to form another appeal court, the benefits might well outweigh the disadvantages. Whilst the unqualified endorsement of temporary appointments ought not to be contemplated, one could envisage appointments, provided there were adequate safeguards, as perhaps being in the public interest.

The time may have come for the Bar to re-examine its total opposition to temporary appointments and perhaps discuss with Government the conditions under which such appointments might be acceptable, if it is satisfactorily demonstrated that they are needed at all. In that way a solution to pressing problems of delay may be able to be found whilst ensuring that violence is not done to fundamental principle.

Superannuation for Barristers

It has been most encouraging that during recent years many previously unsuperannuated barristers have accepted the desirability of joining the Victorian Bar Superannuation Fund or other superannuation funds. In particular, 105 new members joined the Bar Fund in the twelve months ending on 30th June 1987.

The current financial year has been exceptional in that falls, that may be the largest falls of any year this century, have taken place in the prices of shares listed in Australian stock exchanges. As a result, all major superannuation funds, including the Bar Fund, have experienced substantial losses. The precise performance of the Fund for the current year will not, of course, be known until after 30th June, but on present figures the average annual return of the Fund for the six years up to and including the current year will be approximately 25 per cent.

For barristers, many of the difficulties that are encountered in providing for their retirement, are attributable solely to an absence of careful planning. Virtually all who practise for a substantial number of years at the Bar are in a position to make adequate provision for their retirement. Many fail to do so because they do not give proper attention to these matters until it is too late.

Retirement planning includes, inter alia, investment in real property, investment in shares, joining superannuation funds and obtaining insurance. Where practicable more than one of these avenues should be taken, since a range of investments is commonly safer and more desirable than a single investment.

Barristers ought to determine carefully each year what amount they can reasonably set aside for their retirement and ought to budget carefully so as to set aside that amount. Its actual investment will depend upon the particular preferences of the barrister in question. For these purposes barristers are advised to ensure that amounts that should preferably be devoted to superannuation and investment are not spent on expensive cars and other such items.

Barristers should obtain advice from as many sources as possible, in order to obtain a wider knowledge and understanding of many of the dangers and pitfalls of various forms of investment. The trustees of the Bar Fund (who compromise, as well as myself, Ken Hayne Q.C., David Harper Q.C. and Ross Robson) will be delighted to discuss superannuation with barristers, but they should not be regarded as an exclusive or indeed principal source of advice. Further, barristers should cross-examine advisers as to the relative performances of various funds and other investments, so as to compare annual growth rates, and account should also be taken of the relevant security or safety of the investments in question.

A sceptical attitude on the part of barristers is desirable. Bank managers, for example, are often unduly conservative in their advice, whereas stock brokers are often found to be unreliable. Insurance salesmen earn commissions if they persuade barristers to take out insurance, and those who represent equity trusts or property trusts or who advise on such investments also often earn variable commissions, according to the investment that is chosen.

Enough has been said here to show that decisions as to superannuation and investment are often very difficult and that they are given insufficient attention by all but a small number of barristers. The alternative to having sufficient investments is a need to rely, on retirement or disability, upon social welfare.

I.C.F. Spry Q.C.
Chairman of Trustees
Victorian Bar Superannuation Fund

Rents in the Pink Palace

The Editors
Victorian Bar News.

Gentlemen,

'But we are spending more than market rates - especially in the Pink Palace' said Mouthpiece 1, Bar News Summer 1987. 'It may be that the financing of the Pink Palace is adding to our problems', answered Mouthpiece 2.

Of course, Mouthpiece 1 and 2 are quintessential barristers, relying for their information on coffee lounge rumour and lift gossip, helped by an occasional quick glance at dodger or circular as it passes on route to waste paper basket.

No doubt they were thinking of a Tenants Committee Memo last year which said rents in ODCW were up to $66 a square foot, the Law Institute Journal which said rents ranged from $56 a square foot on the top floor to $43, and the Business Daily 13th August 1987 article 'Row Over Rents Sparks a Bar Split' which quoted a valuer as putting a figure on ODCW space of about $22 a square foot nett, and $38 a square foot all up (after allowing for outgoings and partitioning).

Mouthpiece 1 and 2 typify the misinformation and misconceptions which abound in relation to the construction costs and rentals charged in ODCW. It is important that the true position be stated so that barristers (particularly new members of the Bar) are not hearing only the same furphies as Mouthpiece 1 and 2.

Confusingly, the Tenants Committee Memo and the Law Institute Journal are not talking about the same square foot as the valuer. The valuer is talking about square foot nett, the useable floor space available within the four walls prior to partitioning. The Tenants Committee Memo and the Law Institute Journal were apparently referring to only the square feet inside a chamber.

A little bit of arithmetic (at which discipline the quintessential barrister has never been good) shows that the rents in ODCW per square foot nett 'all up' (to use the valuer's term) range from $32 on the lower floors to $39.75 on the 18th floor. The average is $35.50 per square foot nett, less than the valuer's market rates of $38 per square foot nett. No doubt they will go up at the first rent review in January 1989. The lease provides for an increase of at least 8% (4% per year) but not beyond market rent less 3%. This is only the lease, not the outgoings and partitioning.

Mouthpiece 2 speculates that the financing of the Pink Palace is a problem. Business Daily refers to the suggestion that borrowing on mortgage would be better.

Mouthpiece 2 might like to consider this. The building cost was $25.75 million. The Financier paid this progressively over the 2 ½ year building period and so carried the financing cost. BCL paid no rent until practical completion of the whole building in January 1987.

If the Bar had borrowed on mortgage it would have had to borrow the financing cost as well, and then pay interest on the lot. The arithmetic is a bit boring but, worked through, it shows that this alternative would mean rents in ODCW would now be at least 33% higher, which is no doubt why the decision makers in 1984 did not finance the building in that way. It was not economically feasible.

I cannot understand the criticism of the financing arrangements for ODCW. We are guaranteed market rates and long term tenure and yet none of us has any personal liability beyond the current month's rent. In addition BCL is the owner of ODCW which confers significant tax advantages, and as well, at the end of 40 years BCL can elect to buy out the lease at an amount equal to 40% of the increase in value over that 40 years and become owner in possession.

If we buy out the lease now (an option suggested in the BCL Chairman's recent report) my guess is that the + ⅓ ratio market rent/interest cost will still apply even at lower rates of interest. It is always cheaper to rent a building than buy because the purchase price is fixed by investors prepared to negatively gear as the financier of ODCW obviously did. Over a period of years capital gain makes up the difference as rent catches up to interest. Unless we adopt the Sydney system, none of us obtains any individual benefit from capital gain. In the meantime we pay the higher rent and at some stage have to repay the non tax deductible principle. We are better off putting the

difference into our own personal negatively geared investments (assuming we have the extra money available in the first place).

If we had not erected our own building we would still be spreading out across the city renting space. We would be helping property developers prepared to risk their money make capital profits just as we did with Schroder Darling, but we would not be together in our own purpose-designed building which we wholly control and of which we have guaranteed long term tenure at market rates, with the other advantages already mentioned.

Maurice Phipps

Calling Melbourne Law Graduates

The Law School at the University of Melbourne is very interested in re-establishing contact with its Graduates. Over the past three years the Alumni Office at the University has reorganised its records and is now regularly distributing its quarterly Melbourne University Gazette, free of charge to all Graduates for whom it has current addresses. If you are not receiving the Gazette and would like to, please send your name and address to **Professor Malcolm Smith,** Law School, Melbourne University, Parkville 3052, or telephone 344 6847, and he will make sure your name is added to the Graduates' list.

The Law School is very happy to assist in co-ordinating reunion functions and already the Class of 1963 and the Class of 1968 are planning their 25th and 20th Anniversary Reunions for 1988. The Law School will also be contacting Graduates from the Classes of 1978, 1958 and 1948 to see if they are interested in reunions. If you graduated in any of those years and would like to participate, please contact Professor Smith's office.

The Law School would like to trace its most senior female and most senior male Graduates. We are in contact with Graduates from the early 1930's, but would be delighted to hear from anyone who graduated in the 1920's (or earlier).

Law School 'dynasties' are also of great interest. If your family boasts three or more generations which have passed through the Law School, we would be delighted to hear from you. Again, please contact Professor Smith at the above address.

SECRETARY

to

THE BOARD OF EXAMINERS FOR BARRISTERS AND SOLICITORS

and

ADMINISTRATIVE OFFICER

to

THE COUNCIL OF LAW REPORTING IN VICTORIA

Salary approx. $26,500 p.a.

This position which will shortly become vacant combines the duties of two offices. Applications are invited from qualified legal practitioners. The position will be of interest to members of the legal profession contemplating retirement from practice yet seeking to retain a close association with the law and its administration.

Further details may be obtained from the Senior Associate to the Chief Justice to whom all written applications should be addressed or by telephoning 603-6137.

The closing date for applications is 29th April 1988.

Conferences

FIRST GREEK/AUSTRALIAN MEDICAL AND LEGAL CONFERENCE ATHENS 29TH MAY — 3RD JUNE 1988

Over the wine-dark sea to Athens and the Isles of Greece. What could be more enticing, especially when the celebrities attending include ***Sir Daryl Dawson, Sir Zelman Cowan*** *and* ***Melina Mecouri.***

Further details are contained in the letter from Conference Chairman ***Eugenia Mitrakas.***

Dear Readers,
I wish to extend to you and your families an invitation to join us in Athens in May of 1988 for the FIRST GREEK/AUSTRALIAN INTERNATIONAL MEDICAL AND LEGAL CONFERENCE.

The theme for the Conference is 'Bridging Two Cultures in Law and Medicine'.

We all recognise the legacy of ancient Greece to Medicine and its contribution to our Legal System. What better way to recognise this legacy and celebrate Australia's Bicentennial Year than to meet in this fascinating and culturally historic city of Athens?

The Conference offers the delightful combination of the traditional and the modern comfort of the Athenaeum Intercontinental Hotel in the heart of Athens.

The Conference Organising Committee has worked very hard to prepare a most exciting and stimulating Professional Programme with eminent speakers from both Greece and Australia. These include Sir Daryl Dawson, Sir Zelman Cowan, Mr. Justice Phillips, Professor Graham Burrows, Mr. Bill Moyle, Professor Koumantos and Professor Doxiadis.

It is the aim of the Organising Committee to make this first of a series of bi-annual Greek/Australian International Medical and Legal Conferences.

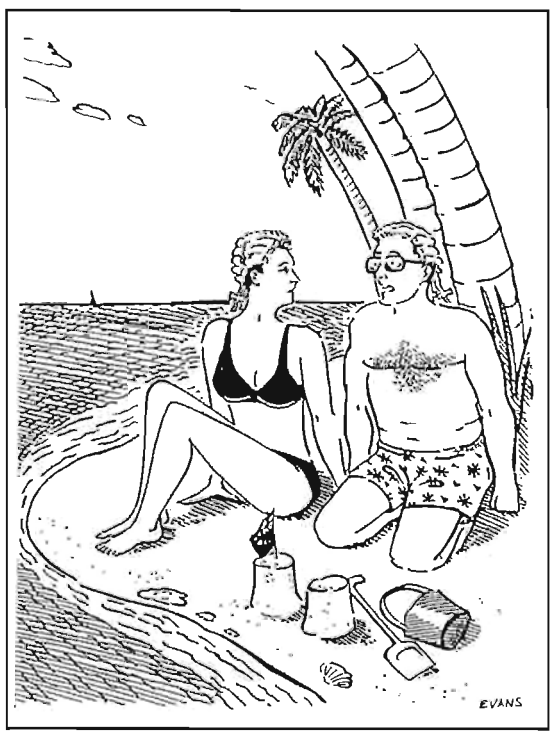
The location of this inaugural Conference is spell binding and the venue first class. There can be no more fantastic way to open the Social and Cultural Programme than in the stunning setting of the ancient Herod Atticus Theatre on the Acropolis.

This opening will be performed by the Minister for Culture in Greece, Mrs. Melina Mecouri, and will be followed by the performance of a classical Greek play.

The Social Programme is designed to introduce you to the very best of Greece and no visit would be complete without a visit to the Greek Islands. Amongst the many excursions available to you yachting is planned and you can cruise to three of the most popular Islands of Greece.

I extend to you and your families a personal invitation to attend this unique Conference and look forward to welcoming you and showing you the magnificent sights and sounds of Greece.

Eugenia Mitrakas
Chairman of the Conference Organising Committee
P.O. Box 29, Parkville, 3052
Tel: (03) 387 9955
Fax: (03) 387 3120



We might convince the tax man, but what about your husband?

Bicentennial Team Run

If you were extended an invitation to spend a weekend, up at 5.30 a.m. both days, spending many hours in a bus, lolling in the gutters of Geelong and Frankston eating lunch, sleeping Saturday night on an army stretcher, in a tent whilst the rain teemed outside, you may blanch, a little, before you accepted.

However, if you were invited to be a member of the Victorian Bar team in the official Bicentennial Doxa Team run, cover yourself in glory, run in the Australian colours, and only have to run 10 km on Saturday and again on Sunday - no doubt most would be only too eager to accept.

It's all in the packaging isn't it! What in fact occurred was the Bar team did both, it covered itself in glory by finishing 17th out of 100 and to accomplish that, went through the conditions described above, and what must be said - had a lot of fun and enjoyment doing it, believe it or not.

The race started on Saturday morning in very oppressive conditions. By 9.00 a.m. it was already 29 degrees. We led after the first 200 metres and our team captain was ready to call it off there and then, but nobody seemed interested.

Those that ran the first few legs ran under extremely trying conditions. Out the Geelong Highway, scenic and tree-lined, through some of Melbourne's most exciting vistas, in unfortunately very hot weather. The combination of these factors caused some of the runners to run themselves into hospital (reliable sources say 7 - not Bar runners - spent Saturday night there - they must have known what the beds were to be like that night at the Lord Mayors Camp Portsea). Bruce Geddes nearly went with them, his temperature reached 41°. However when told he was on his way to Western & General Hospital, his barristerial faculties returned to him, he leapt from his stretcher and advised all and sundry he had made a rapid recovery (and I thought Bruce did just Family Law cases).

Fortunately the change moved through during lunchtime and thereafter the conditions for running were much improved.

With the run organised in stages it meant we regrouped regularly and were able to keep in touch with what was happening. We also had the managers, Judge Dyett and Liz Murphy, meeting us at each leg, giving advice, taking tracksuits and generally being of comfort. Although I must say, to be told, as I was about to take off on my leg, that the runners were 'dropping like files' wasn't exactly comforting.

The end of the first stage was at Geelong where lunch was served in the Mall. The sight of Vincent J. lying on the ground in the Mall with his feet up trying to relax in preparation for his leg, or Stan Spittle wading through the fountain cooling off, were sights to behold.

The second stage concluded at Queenscliff and found us in 13th place. We received a computer printout informing us of that fact, together with our individual times. We then found out why Bruce Geddes was so exhausted; he had run his 10 km leg in 14 minutes 40 seconds (about half the time for the world record for those unfamiliar with 10 km times). Now, Vincent J. said the computer must be right for it gave his time at 33 minutes, which was approximately 5 minutes inside his previous personal best, and he was going to claim that as his correct time.

Any doubts about the computer's accuracy were cast aside when it showed that Marcus Clarke and John Higham had not run at all and the team was **averaging** 2 minutes 45 seconds per kilometre. (That's roughly world record pace for a 10 km) Saturday night must go down as a highlight. Five star luxury air-conditioned tent accommodation: endless queues for evening meals, temporary

showers, and the most comfortable army stretchers imaginable. A tent city had been established at the Lord Mayors Camp.

John Higham still managed to get room service, for at 4.00 a.m. he was heard (couldn't be seen, no-one would turn the lights on) munching on a muesli bar, and slurping Coke. You could only do that, at that time, if it was served up to you.

Now for those who were eagerly awaiting the results at the end of the first day and heard the news report that there were High Court Judges in our team should not be misled; we believe the confusion occurred with a reporter who mistook Liz Murphy for Justice Mary Gaudron.

Sunday saw a perfect day for running from Portsea to Melbourne, via Frankston. There was a strong southerly blowing which followed the runners most of the way home.

Lunch at Frankston was at the delightful and well-known picnic spot, the car park next to the railway line at the back of the shopping centre.

The concluding stage saw all the teams together again at Olympic Park, there was a march past and presentation of medals with all the pomp and ceremony of an Olympic Games - all that was missing was a few national anthems.

It would be unfair to single out any of the individual runs as everybody in the team pulled their weight. The team managers however are deserving of high praise because they 'ran' each leg, started at 5.30 each day and were the last to retire.

The team members would like to publicly acknowledge their appreciation for the effort and contribution made by both managers.

It should be acknowledged that the organisation of busing 1200+ people, feeding, bedding and looking after their creature comforts was superbly done. Even the emergency services worked well and the organisers must be congratulated most whole-heartedly.

The team members, Vincent J., Judge Duggan, Stan Spittle, Tom Danos, John Higham, Andrew Ramsey, Bruce Geddes, Kim Henderson, Joe Tsalanidis and Marcus Clarke, would like to thank the Bar and the sponsors for their most generous support. Without that support this report could not have been compiled.

Tom Danos

1984 Bar Centenary Photographs

Mounted and captioned copies of the photographs taken of members of the Bar during the centenary year will shortly be available for purchase.

Members of the Bar wishing to place advance orders for such photographs may do so by contacting G.P. Thompson on extension 7367.

Bar Cricket

FIRST XI REPORT

How often do great teams have a 'downer' after reaching the top? The Richmond Football Club in 1980 and the mighty Bombers in the year 1986. Now the Victorian Bar Cricket Team has experienced the same levelling process. After our great win in 1986, 1987 proved a disappointment.

As usual the Albert Ground looked a picture and the weather was very pleasant. We won the toss again and invited the opposition to bat. All going to plan at this stage. An early wicket had out hopes high. The opposition were 1/1. Both Dean Ross and Jeremy Gobbo bowled extremely accurately and tidily. Big Dean's 9 overs cost 25 runs and Jeremy Gobbo bowled extremely well for 2/32 off his 9 overs. Despite the early wicket, the batsmen batted intelligently and took the score to 108 before the next wicket fell. Peter Watkins (who we have now invited to join the Bar) made a brilliant 114 before we managed to run him out. Charlie Brydon made 45 and Craig Henderson (yet again) chipped in with a very brisk 44. Eventually we managed to bowl our 50 overs (at least 5 too many), and the opposition reached 7/224. Of the other bowlers, Geoff Chancellor bowled well conceding 33 runs off his 9 overs. In the interests of harmony and team unity, the less said about the other bowlers the better. One thing was clear: we needed another two (youthful) bowlers to help us out.

The heroes of yester-year, Ian Dallas and Jeremy Gobbo, had off days making 12 and 7 respectively. The team was reeling at 3/25 when Bill Gillard joined Bruce McTaggart. They took the score to 92 before McTaggart was caught by Charlie Brydon for 37. Gillard followed soon thereafter also caught by Brydon at short square leg for 34. The writer, having observed Brydon field on many occasions, can only say that both he and McTaggart were extremely stiff. The writer suspects that Charlie has not caught as many catches during the last 15 years.

The tail managed to wag a little with Chancellor and Macaw managing 15 apiece and the ageing Ross Middleton (surprisingly) managed to scrape together a reasonably presentable 20. Unfortunately, the team just did not have enough fire-power and managed only 156 runs.
It was a bitter disappointment after our success in 1986, and again the cry goes out - Where are the young cricketers at this Bar?

The team was -
E.W. Gillard Q.C. (Captain), David Harper Q.C., Ross Macaw, Rex Wild, Bruce McTaggart, Chris Connor, Ross Middleton, Dean Ross, Geoff Chancellor, Jeremy Gobbo and Ian Dallas.

E.W.G.

Editors' Note: The recently published Queensland Bar News contains a report of the 1987 ABA cricket tour of England and Ireland, including the following:

> 'More keenly looked forward to than the meeting with the English side was our

meeting with E.W. Gillard, Q.C., of the Victorian Bar. As he was one of the last to arrive, we were all 'primed' by Sterling Hamman that he was Basil Fawlty by looks and Basil Fawlty by nature. This forecast proved more than correct. During our 6 day stay at the Beaufort Hotel in Bath Gillard effected no fewer than 5 changes of rooms. It was intitally suggested (not to Gillard) that Hamman deliverately placed him in a room so tiny that he was unable to get his 6'6' frame out of his cricket pants, however this was hotly denied by Hamman if by no one else.'

LAW INSTITUTE 2ND XI — VICTORIAN BAR 2ND XI

MATCH REPORT

Sadly, the Bar 2nd XI was unable to repeat its 1986 success over the Law Institute 2nd XI when the two teams met in their annual match which last year was held on the 21st December.

Although the solicitors were strengthened by the inclusion of several talented young batsmen, the Bar was able to restrict them to a score of 182 off 40 overs. This was achieved mainly through a combination of steady bowling and excellent fielding on the part of the Bar's representatives.

Particularly outstanding in the field for the Bar were Walton and Burnett, both of whom took excellent catches and ground fielded brilliantly, and Vinga, whose leg side stumping off his captain's bowling guaranteed him future selection for years to come.

Most successful of the Bar's bowlers were Burnett 2-34, Couzens 2-30 and Dyer 2-37.

After an opening partnership of 44 between Walton and Couzens, the Bar's task of bettering the solicitors' total seemed reasonably achievable, but alas, as has so often happened in the past, the Bar's batting collapsed, with the result that the team could only total a meagre 103 runs.

Walton, with 49, was far and away the best of the Bar's batsmen, with only Couzens (16) and Burnett (14) of the others reaching double figures.

Although soundly beaten, the members of the Bar team thoroughly enjoyed the game and vowed to reverse the result in this year's encounter.

P.C.

W.A.G.S.

(Wherein our correspondent covered an event comparable to a combination of the America's Cup, the Melbourne Cup and Grand Final Day.)

Gentle readers of this austere journal will probably find the report on the latest spawning of the Bar of more prurient interest than items, such as appeared in the last edition, by humorists such as Spry, Southall, Anon and the like.

The Wigs and Gowns Squadron (W.A.G.S.), a collation rather than a collection of members of the Bar sharing a common interest in matters nautical, foregathered at Royal Victorian Yacht Club on the 21st December for an inaugural 'sail in company'. For the uninitiated, a 'sail in company' avoids insurance penalties for collisions occurring during a race where the victims have no insurance for racing activities.

The aforesaid 'spawning' was borne of the efforts of Liversidge and Klestadt in seeking a suitably bucolic alternative to effete competitions such as tennis, cricket, or paperwork on that Monday in December. They should be gratified by the result. The turnout of craft, crew and camp followers surprised your correspondent, and to his delight, tapped yet another rich vein in the workings of the Bar that will yield a worthwhile payload in defamatory material, at least until the next regatta.

The members ideas of sea going vessels perhaps provides some insight into their personalities e.g.

Wheeler's Boomaroo trailer/sailer - that never saw the water.

'Hard' Fox resplendent in silk choker in something borrowed - complete with nervous owner aboard.

Michelle Williams' Bertram 25 with (nearly) all female crew - they hired Martin 'One Engine' Bartfeld - for the day.

Galbally's - (and occasionally Bryant's) Couta Boat in the heavyweight division - it required the combined weight of Gal, F.R. Meldrum, Nicholson and Sharp just to get it there.

Kildea's lovely steel H28 giving a passable imitation of a half-tide rock at times.

The Rat, again in something borrowed, with 'Once is Enough' Shambles Keenan on board. Shambles didn't make the return trip to Brighton, preferring a lift home with the redoubtable Elspeth rather than another round with Ratter and Titshall (of which more anon).

These, dear readers, are only a sampling of the motley fleet that set off at an indeterminate time to round an undetermined course with the result a foregone conclusion. In 20-25 knots of south-westerly the handicappers' little mate won a worthy victory - naturally.

The camp followers and non-combatants were also well catered for. O'Dwyer (he of the all girl crew) induced his brother to provide a viewing platform for them and which was described as a 'Bass Trader'. In effect, an enormous hollowed out log in a state of recomposition. Those who couldn't or wouldn't get a sail were given a dignified view of the mayhem on the water whilst steadying their nerves with appropriate libations, without the discomfort of a soaking. 'Dark Horse' Doyle even took along his own imported Swiss camera woman. The negatives of her positives are, it is believed, quite expensive.

A BBQ on the lawns of Royals, following the race, gave vent to the usual lies. As the sun shone, the wind increased to 1000 knots and the liquid flowed, a mellowness such as often induces a state of levitation in some, descended. 'Seldom Seen McPhee' and 'More Booze' Monteith managed to scout the packs ensuring that no one felt left out of the jollities and particularly that no damsels were distressed. Truly noble stuff.

Klestadt, with modesty, presented trophies of his own manufacture. His forebearance in not awarding one to himself earned him the title of 'Commodore', over lesser claims based on spurious grounds such as 'I am the only one with a reefer jacket' and 'I actually own a boat'.

Although witnessed by few, the end of the day was damper for one than others. It seems that due to Keenan's reticence, the Rat had to borrow a certain short portly County Court Judge to help him sail the borrowed Etchell to Brighton.

Whilst docking at that Club the skipper left the ship to HH and Campbell to complete manoeuvres. Through lack of foresight or plain bad luck, HH

found himself gripping a rope with nothing but water beneath. A pitiful sight we are told. It seems HH's tactic was to adopt a sort of hanging foetal position in an endeavour to avoid a wetting. There being no other salvation, HH was obliged to plummet, still retaining the foetal tuck with a factor of 6 for difficulty, into the Bay. Ah, the joys of messing about in boats.

There is, of course, much more. It would be churlish to waste it but space compels.

The inaugural cruise of the W.A.G.S. was a great success and it is hoped will be repeated in the near future.

RESULTS

1.	Dinkum - Bluebird 22	Skipper K. Liversidge Crew B. White, M. Simon, C. Delaney
2.	Bengali - H28	Skipper M. Kildea Crew J. Saunders, Julie Spher I. McDonald, Mrs. Kildea
3.	Clipper - Etchell	Skipper P. Rattray Crew J. Coldrey, M. Titshall, J. Keenan

HOOKEY (not Hockey)

Whilst on circuit at Shepparton during February, his Honour Judge Villeneuve Smith demonstrated that he has not lost the skills which he had acquired years earlier in some of South Australia's less than reputable public houses. When his Honour learnt that the annual Goulburn Valley Hookey Championship was to be held at 'Pine Lodge', he enthusiastically submitted his entry. The locals were dismayed when his Honour, classifed by some as a 'ring in', soundly defeated last year's winner to take the Championship by a record margin. In a sporting gesture which seemed to placate community feelings, his Honour donated the prize money to a local charity.

Bridge

A team comprising Mark Weinberg Q.C., Geoff Chettle, Nathan Crafti and Engineer Andrew Halmos performed creditably in tying for second place in the Orlando New Year's Bridge Congress Swiss Teams event.

The event was contested by over 30 teams including many players of International and National Master standing, and was led right up until the last match by the 'Bar' team.

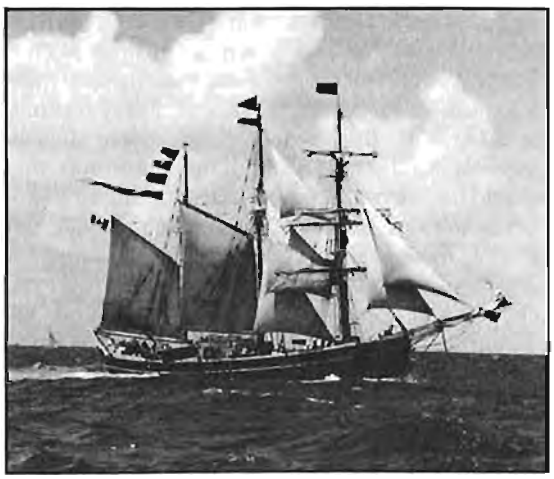
Going into the last of 7 matches with a 5 point lead over the field, they came up against an internationally rated team that proved too good. Their opponents won 25-5 and went on to take out the tournament.

In a Swiss style event leading teams play each other in a series of matches so that being up at the top at all means the Bar team had to win some very tough matches.

Earlier in the congress, Weinberg and Crafti did well to finish 9th out of 62 in a pairs event and came 2nd in their category of under 150 masterpoints.

The three players would like to know if there are any other barristers who would be interested in either playing socially or perhaps even challenging the Law Institute (who have some very good players) to a match.

Nathan Crafti



First Fleet

To the great surprise of both, Noel Magee and I met each other in Fremantle at Christmas as we joined the First Fleet.

By a further coincidence, we were both assigned to the same ship, "Tradewind". We soon reached an agreement to verify each other's stories of daring and adventure. As it happens, no exaggeration is necessary.

Neither of us had any sailing experience. It was a daunting task to learn the ropes, get our sea legs and then sail the ship to Sydney. "Tradewind" is a gaff-rigged top-masted schooner, about 100′ long. It had a permanent crew of eight, and twenty-three trainees including your two Bar representatives. For the next five weeks, we were expected to do all of the work involved in ocean sailing, from working in the rigging to cooking and cleaning.

The Full Court will never seem quite the same after working aloft in a gale. Standing precariously on a swinging footrope, clutching the yard whilst 80′ below the deck pitches and rolls violently, is a profoundly worrying experience at first, and one which puts other anxieties into perspective.

Another surprise to us as non-sailors was the tremendous motion of the boat in the large seas of the southern ocean.

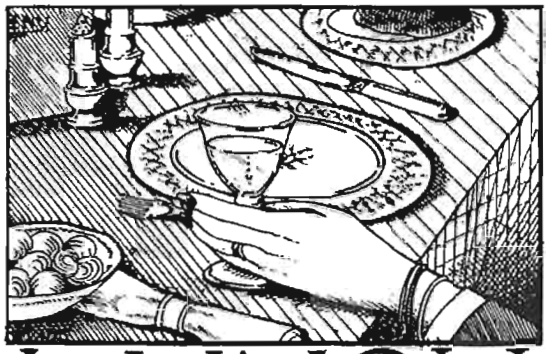
Riding on the end of the bowsprit Magee discovered that it travels through a vertical arc of about 50° as the ship pitches with every wave.

Duty as gallery slave brings humbler damages: handling large pots of boiling water in a violently pitching carries the risk of third degree burns and the anger of cook if dinner hits the deck.

But the dangers are as nothing when placed beside the joys of ocean sailing. The calm contemplation of a canopy of stars, the hiss of water passing the hull and the wind in the shrouds. The exhilaration of working at the helm in 60′ seas watching for the first smudge of dawn on an unbroken horizon.

We arrived in Sydney weary, but stronger and fitter than when we left, and with a profound sense of having been part of a great and audacious adventure - the re-enactment of the greatest maritime expedition in western history.

JULIAN BURNSIDE.



L·U·N·C·H

The Three Stars of France

As part of its brand new policy, the recently elected Bar Council unanimously proposed that an editor of the Bar News be urgently sent to France to investigage its three star restaurants as possible lunch venues. It was agreed that the local establishments were not good enough for a good old decent spot of lunch. Being the elder and most senior of editors, the Bar Council quite rightly extended the all expenses invitation to Heerey. Not surprisingly, he declined the offer. He suffers from agrophobia if he goes further afield than Tootgarook and said that he wouldn't be caught dead eating 'all that greasy garlic laden frog muck'. So then the duty fell to me. Despite the fact that I would miss the Bar Christmas party and Melbourne's summer, I was finally cajoled and persuaded to embark on a tour of France's restaurants and vineyards. It was for the good of the Bar. So clutching my pre-paid ticket and a list of hotels and restaurants prepared by the new regime, I flew off on Guy Fawke's Day for six weeks of gastronomic research, my pockets stuffed with Quik Eze. The following is the report I have prepared for the Bar Council.

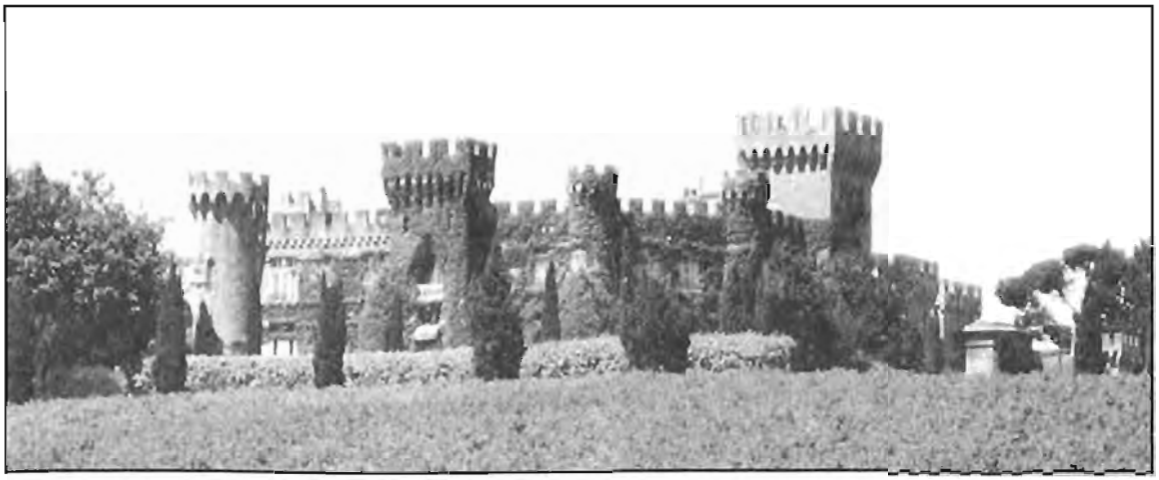
'Wee have a speciale little appetizer as a surprise. I weell tell you what it is afterwards' the white tied maitre murmured to us in half French - half English. An artistically arranged plate arrived containing something that tasted very fishy and very creamy. 'Marvellouse!' we exclaimed. 'What was it?' 'Eet was the sac of the carp's eggs covered with the man fish's white liquid.' Quelle Marmalade? We had just eaten a fish ovary covered with semen. The great chef Alain Chapel had a whole farm down the road near Lyon where the female fish would drop her sac of eggs in the sand of the pond, the male would come along and fertilise them and then a large Frenchman would scoop them out to be hungrily devoured at Chapel's restaurant in Mionnay. Such were some of the rigours I had to endure in my lunch time (and sometimes hot tea) researches.

You must be prepared if you are to tackle a Michelin three star restaurant. First you must have fasted for days if you are to devour the menu rabalais or gustation or gastronomique or whatever the special set menu is called.

The menu usually comprises three or four 'premier assiettes' or starters (not called entrees). Then there will be one or two 'deucieme assiettes' or main courses. Then, before the onslaught of the desserts, you will be surrounded by the cheese trolleys, a truly bewildering array of goats, sheep and other exotic varieties. Then one or two 'surprise' desserts arrive, delightful mounds of puff pastry or ice cream. You think that is the end? Wrong. Suddenly trolleys of desserts descend, each being pushed by a charming waiter who again insists that you must try a little of this or a little of that. You cannot refuse. Miraculously, before this event, a plate of pastries and other delicacies, known as douceurs and mignardises has been placed on the table. You think these are to go with the coffee. Wrong! These are just delicacies to pick at.

At Jacques Pic's restaurant in Valence, I toured the kitchens and he had a whole upstairs section where pastry cooks toiled away making only these miguardises for patrons to pick at. Every morning at 5.00 a.m. they would create these delicate morsels for lunch. And in the afternoon they would have to make a new batch for dinner as any left over were simply thrown away. Finally you stagger away to the salon to have your coffee and amazingly a large plate of assorted petits fours and chocolates appear. This all may sound like gluttony - but what marvellous gluttony it is!

The starters and main courses were spectacular. It was winter and wild duck or 'canard col-vent sauvage' was in season together with chevreuil or



roebuck. Cepes, or a type of wild mushroom also figured heavily on the menu. In Provence red mullet and baby lambs en croute were the feature of L'oustau de Baumaniere. In Valence, the roebuck stood out at Jaques Pic's wonderfully friendly restaurant. The whole wild duck carved at the table and served in two courses, the first being the breast, the second being the legs roasted with grapefruit, was the highlight at Alain Chapel - the carp's ovary aside.

Finally the memory of George Blanc's splendid restaurant in Vonnas in Burgundy, was the Bresse corn-fed chicken and a soup of frog legs and snails.

The second requirement is to know what you are doing. These restaurants are on a scale not known in Melbourne (despite the claims of Miettas). The number of waiters is overwhelming. There is a strict pecking order from the maitre d'hotel down to the young apprentice waiters. The wine waiter or sommelier is a daunting character. Do not let him bully you. If you want a particular wine out of the War and Peace proportioned wine list, you must insist. He will then respect you.

Otherwise the waiters are friendly and courteous to a fault. If you can read the menu it helps a great deal. They all assume that anyone who speaks English is totally ignorant of even the most fundamental concepts of food. If you have had the misfortune to overhear loud Americans in French restaurants you will understand why they attempt to explain what a pate consists of. If you show some knowledge and appreciation they will give better service and spend time chatting about the restaurant and themselves. Even the great chefs come out and chat at the end of the meal. It is like God walking on water. You expect the whole restaurant to rise to its feet applauding. Of course you must ask them to autograph the menu - they love that.

Finally you must not take any notice of the price. I was lucky in that the Bar insisted on paying. They even said that we should stay at the restaurants. The rooms and breakfast were unforgettable.

If only one star, but an absolute must for conferences is Chateau Fines Roches near the beautiful Rhone Valley Villege of Chateau Neuf Du Pape. I enclose a photograph of same for proof of evidence. The wines made here are magnificent and I thank the Bar Council for allowing me to ship a few dozen home.

My accounts have been forwarded to Mr. Fieldhouse for auditing and will be open for public inspection. Honestly though, I would have much preferred to be at the Bar Christmas party, or holidaying with Heerey in Tootgarook ---

Paul D. Elliott

The restaurants I reluctantly visited were:
L'oustau de Baumaniere, Les Baux de Provence, Raymond Thuilier proprietor.

Restaurant Jacques Pic, Valence, The Rhone Valley.

Alain Chapel, Mionnay, near Lyon.

George Blanc, Vonnas, Burgundy.

Chateau Fines Roches at Chateau Neuf du Pape. A. and H. Estevenin proprietors.

All Licensed Open lunch and dinner most days Price: Not to be remembered.

Lawyers Bookshelf

A MANUAL OF AUSTRALIAN CONSTITUTIONAL LAW

(4th Ed) P.H. Lane, The Law Book Co. Ltd.

The fourth edition of Professor P.H. Lane's Book, **A Manual of Australian Constitutional Law** (The Law Book Company Limited, 1987), the text of which is some 545 pages in length, maintains the high standard of excellence established by the three editions of this book which preceded it. The manual also maintains the formidable reputation of Professor Lane as one of the foremost writers on Australian constitutional history and law.

The manual is primarily intended as a textbook for students of constitutional law. This is reflected in the manner in which the book has been written, which is often explanatory, and indeed, didactic in places. The intention on the part of the author that the book should be used primarily as a teaching aid is also reflected in the manner in which the contents of the manual have been set out. The introduction is comprised of some 36 pages, and deals with topics such as the nature of a federation and the method of organisation of the Australian federal system in a relatively rudimentary fashion.

Much of the manual is devoted to an analysis of those specific provisions of the Commonwealth Constitution which confer power upon the Commonwealth Parliament. That section of the manual which analyses the corporations power (section 52(xx) - pages 99-109) and the external affairs power (section 51 (xxxix) - pages 139-158) are of particular interest, given the topical nature of various events which concern or are of relevance to these provisions of the Constitution. The cases of **Koowarta v Bjelke-Petersen; State of Queensland v The Commonwealth** (1982) 153 CLR 168 and **The Tasmanian Dams Case** (1983) 57 ALJR 450 come under especially close scrutiny in Professor Lane's discussion of the external affairs power.

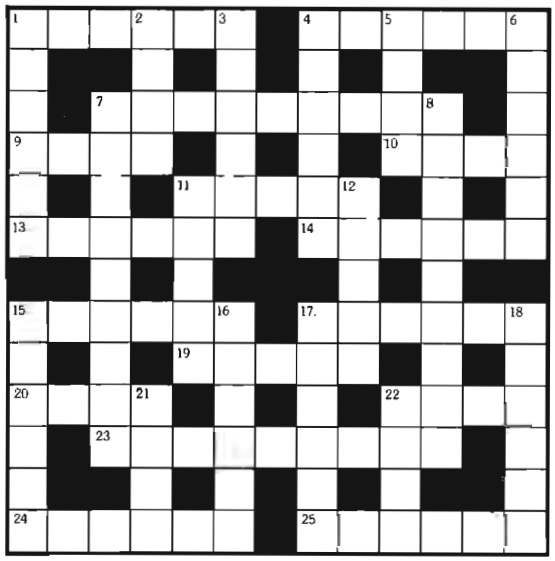
The analysis by Professor Lane of the separation of powers doctrine and various prohibitions contained in the Constitution in respect of the exercise by the Commonwealth Parliament of powers conferred upon it by the Constitution comprise the balance of the manual.

Notwithstanding its primary purpose as a textbook for students, the manual may be of assistance to barristers practising in the area of constitutional law as a companion to other texts which concern this area of law. The layout of the manual together with the easy to read style with which it has been written render it one of the more accessible texts in this difficult and at times delphic area of law.

T. Di Lallo

Captain's Cryptic No. 61

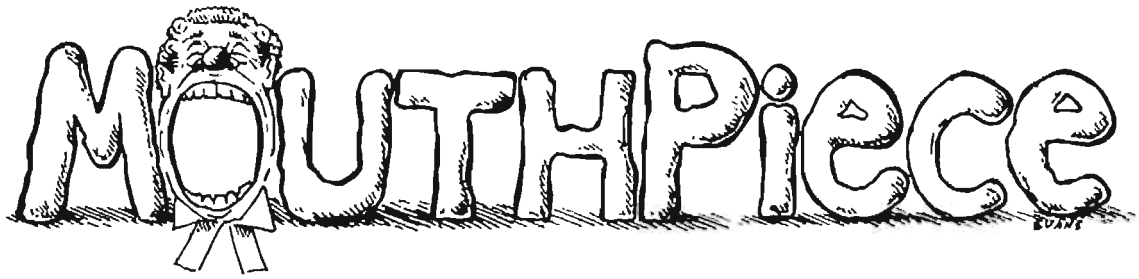
Across



1. Puts there. (6)
4. Condition of Premier Cain, and the Kennedys is not 'armful. (3,3)
7. Unreal judge! (8,1)
9. Shortly, in the same place. (4)
10. Without question this dog has rough skin. (4)
11. Without wheels they would never go round. (5)
13. You can bank on this raconteur. (6)
14. According to Twain, Tom is this feller. (6)
15. You should do this slowly. (6)
17. Zzzzzzz. (6)
19. Correct, none left. (5)
20. A shaggy creature to put up with. (4)
22. Open and shut container. (4)
23. New Head of the Family J. (9)
24. My Lord Coke would think these parts of a wheel sound scary. (6)
25. Named in days of yore. (6)

Down

1. Pathetic request in the County Court. (6)
2. Many a young man is clothed. (4)
3. Twixt cup and table. (6)
4. 20 Across sounds angry. (6)
5. Spiffing tuck! (4)
6. Midlands Englishman is right in the block-hole. (6)
7. Yokel in flannels. (9)
8. Forelady's colleague. (9)
11. Measurer. (5)
12. Sounds like I am wholly between State and Territory. (5)
15. Pride which presages catastrophe. (6)
16. Cozy little nooks. (6)
17. Percy and Mary have acquired a carapace each, I hear. (6)
18. The creditor chooses to distrain. (6)
21. Hey Richard! (4)
22. Approved by modern youngster, but without real warmth. (4)



Tucked away in a corner of the Essoign Club one midweek evening are three not-so-old, not-so-young barristers. Gloom drips all around them.

Geoffrey: 'Where were you today'?

Stephen: 'On the reserves bench. What about you.'

Geoffrey: 'Err. Um. Decided to do a bit of paperwork.'

Helen: 'I don't do a lot ... I find it a bit of a drag.'

Stephen: 'Me too. I decided to get my tax stuff sorted out. Had to see the accountant. He was full of advice. He wasn't too impressed by the Bar Superannuation Scheme. Thought it might have suffered a bit from the Stock Market crash. Suggested I get together with a couple of colleagues and we each invest about $10,000 in a commercial property, negative gear and allow the tenants to pay our superannuation. Felt like telling him to go see my bank manager. I'm going to have enough trouble trying to pay my provisional.'

Helen: 'I had to see my bank manager last week. Actually I was summoned to his presence. He lectured me about living beyond my means. Gave me the usual lecture about being tougher with solicitors. Almost ordered me to sue a few. He had a few good suggestions too! Suggested I incorporate. After I told him that was against Bar Rules he gave me a burst on barristers not wanting to enter the 20th Century. He maintained that we must be the only occupation that doesn't allow incorporation.'

Stephen: 'I get a bit tired about all the good advice we have to put up with especially from bank managers. You'd think they had the monopoly on sound investment practices and running one man businesses. You'd think it was their personal savings we were borrowing from **and** paying big interest and high bank charges on.'

Geoffrey: 'I don't know how I'm going to pay my provisional this year. It really is going to set me back. The missus will probably have to go back to night work again. I'll get stuck with looking after the kids at night. It really is a bit much.'

Helen: 'I don't really want to sue solicitors. It'd leave a bad taste in your mouth. Have you ever sued anyone?'

Stephen: 'Twice. One disappeared before I could get the Summons served on him. The other used a series of quite ingenious devices to frustrate execution - almost succeeded ...'

Geoffrey: 'I once sued a ...'

Stephen: 'But I got the money out of him eventually. Cost him a heap of extra costs mind you.'

Helen: 'Did you hear about John's efforts?'

Geoffrey: '... solicitor but ...'

Stephen: 'No what happened?'

Helen: 'You know he sued that bloke in West Patterson Downs?'

Geoffrey: '... he didn't ...'

Stephen: 'Yeah.'

Helen: 'And he had all those problems executing.'

Stephen: 'He had the Sheriff out every day for about a week, didn't he?'

Helen: 'That's right. He got his money eventually. But the solly sued him back. Claimed he overcharged. Doubled up! Should've bill legal aid!'

Stephen: A case of the biter bit eh?'

Geoffrey: 'Where are you tomorrow? I'm ...'

Stephen: 'Thought I'd take the day off. Gotta finish my tax before the end of the week. The accountant's being a bit heavy. Reckon I won't get an extension again this year. Best to get these things out of the way.'

Geoffrey: '... over the road ...'

Stephen: 'Doing admissions for Hong Kong solicitors again? ~~Giving~~ Going another free lunch?'

Helen: 'It is rather quiet again isn't it? I think I'll have to give my Clerk a bit of a jolt.'

Stephen: 'I don't know about that. He mightn't like it. Could be rather counter-productive ...'

Geoffrey: 'I once told my ...'

Stephen: 'Why don't you take a couple of sollies out to lunch. They might be a bit quiet at the moment. I mean if we are they must be too.'

Geoffrey: '... ~~a~~ clerk that he works for me and ...'

Helen: 'I thought of that. All the sollies I tried weren't available. Said they were snowed under, that it hadn't been as busy as this for years.'

Stephen: 'Not like the Bar at the moment.'

Geoffrey: 'I've got this great brief for ...'

Helen: 'I'd better go. I want to be in early tomorrow. Hang around the Clerk's office a bit. Might get a last minute brief.'

Stephen: 'I'll have to be going too.'

Geoffrey: 'Did I tell you about this brief...'

Moves to another table.

Geoffrey: 'Where were you today?'

Graham Devries

The Female Friend

Some Bi-centennial thoughts on re-reading 'The Female Friend' (Rev. Cornelius Whur 1782-1853)

'.... Constant joys the man attend
Who has a faithful female friend'.
Thus the ancient Bard, and smote the singing lyre,
The torpid soul of Man to fire,
And point a moral to th' unregenerate churl
Who'd stoop to slyly denigrate a girl.

O noble priest! O prescient Whur!
To seek the lumpkin male to stir
To finer things, abjure the bigot not to vex
The selfless members of the better sex,
Embrace the right, the chauvinist abhorr'd,
And liberate from servitude of bed and bawd
Our sisters; nor barb'rously impose the yoke of drudges
On those more fitly to be seen as Popes or Judges.

To female gods due homage render,
And thus obliterate the need for gender,
And into outer darkness thrust
Egregious Man, and his vile gaoler, lust.

Let us refrain from coarse guffaws and snubs
When ladies seek to join the racing clubs,
And in well favour'd Antipodean climes
Bestir ourselves in Bicentennial times
The tocsin thus to sound, and with kindly words
Essay to smoothe the ruffl'd plumage of the birds.

Catch we Whur's torch, in reason's swelling flood,
And damn the Synod guilty of its sister's blood;

Nor violate, by lewdness anecdotal,
The chasteness of emancipated females total.

Let the swelling, rising, anthem peal
To hail the end of sex appeal;
From chaos came he, and into chaos hurl'd
Be man, the sorriest joke in all the world -
Meantime the cry goes forth - or petticoats or britches -
All together now - let's liberate the ladies!

SAPPHO

In lieu of a prison sentence I order you to perform 262,800 hours of Community Welfare Service with your wife and family.

R. v Higgins & Ors

Melbourne Magistrates Court
9th March 1988
Coram Tobin SM
C Heliotis cross-examining of witness Lamb

In relation to this girl whose photograph I showed you, it may assist you if I add a bit more towards a definition. She had the word 'Kathy' tattooed on her right wrist? Does that ring a bell at all? --- I'm just trying to place the Kathys now.

On her left ankle she had the word 'Cherry' and on her right ankle 'Stan'? --- No.

If Mr. Redlich can quieten down, I am not going to talk about the middle ground? --- I would more likely know what that was anyhow than the others.

Nicholson v City of Camberwell & Develin

Administrative Appeals Tribunal
30th November 1987
Appeal concerning application for town planning permit for brothel in Camberwell.

A.G. Southall (for objectors): 'After all this site is in Camberwell, not Gore Street, Fitzroy.'
Tribunal Member: 'I live in Gore Street, Fiztroy.'

Administrative Appeals Tribunal (Cth)

(Extract from instructions to counsel to draw affidavit in opposition to extension of time application. The AAT had given directions as to the filing of affidavits.)

The Respondent's case for opposing the Application for Extension of Time is based upon a view that the Respondent would be prejudiced in its case given the period of time that has elapsed and the fact that various witnesses and in particular, doctors, that the Respondent would wish to call at any hearing of the Application are unavailable or dead. As such, in complying with the direction perhaps the Respondent should advise the Tribunal that the witnesses it wishes to cross examine are those witnesses which are dead or unavailable. Counsel's advice is requested in this regard.

Competition

Category 1

THE MOST ELIGIBLE BACHELOR/SPINSTER PERSON AT THE VICTORIAN BAR!!!

Category 2

THE MOST ELIGIBLE PSEUDO BACHELOR /SPINSTER PERSON AT THE VICTORIAN BAR.

(All married, de factoed and other assorteds are eligible to enter this category)

WHO DO YOU THINK IT IS? IS IT YOURSELF?

Who is the spunkiest, sexiest, wittiest, best dressed person at the Victorian Bar?

If you're married or de factoed - no matter - we have created category 2 for you!!!

We must admit that the idea for this competition came from Cleo magazine. Cleo ran a survey of Australia's 50 most eligible bachelors and lo and behold - amongst the names of these 50 hunks was none other than Barrister and Brighton City Councillor Simon Cooper!!! To give you some idea of how to draft your entry - either about yourself or someone you fancy and admire, here is Simon's entry and photograph fresh from the glossy colour pages of Cleo.

SIMON COOPER 30, BARRISTER AND BRIGHTON CITY COUNCILLOR

If you thought all lawyers were stodgy, think again, Simon is a devoted theatre-goer, witty and waxes lyrical about the pleasures of living by the sea.

Lives: Brighton, Melbourne.

Favourite toy? 'My house and the renovations I'm doing. It's an Edwardian brick home so it's a pretty big and expensive toy really.'

What makes you laugh? 'The serious things of life which are treated too seriously. I like satire and Barry Humphries-style revues because they hold up things and people who take themselves too seriously for a healthy degree of criticism.'

What makes you cry? 'Failed personal relationships.'

If you weren't you, who would you like to be? 'Not so much an individual, but someone who had a chance to travel and see the world professionally.'

Your ideal woman? 'Someone who has a healthy degree of independence and self-reliance, but whose greatest enjoyment comes from sharing the most important things with you - and someone with a very healthy sense of humour.'

What do you look like? 'Urbane. With a smile. A smiling urbanity?'

Well what you you think of that??? Could you or someone you admire measure up to Simon? Of course Simon must be way ahead in our competition at the moment, but don't be shy, get your entries and photos in soon!!

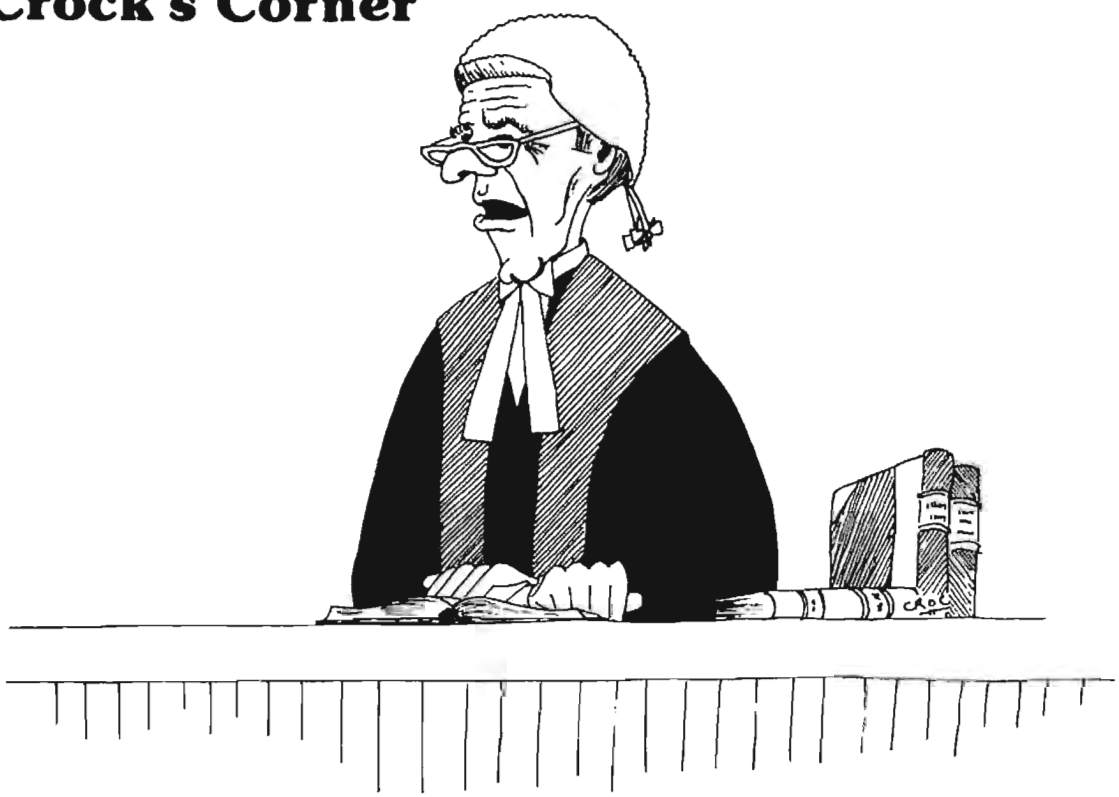
What do you look like?

What are your favourite toys?

What makes you cry?

The prize for the winner will be a weekend away with themselves or a reasonably good bottle of claret from the Essoign Club.

Crock's Corner



All right Freehill!! All right Hollingdale!! Go!! — But don't either of you come crawling back — Do you hear?

Movement at The Bar

MEMBERS WHO HAVE SIGNED THE ROLL SINCE MAY 1987

Name	Master	Clerk
Charles R. CRAIGIE (NSW)		
Deborah HANN	B.D. Lawrence	W
Joshua D. WISLON	R.McK. Robson	D
Peter G. CAWTHORN	D.J. Habersberger	D
Ian C. DALLAS	G.R. Anderson	F
Graham B. ROBERTS	A. Shwartz	M
Kevin T. ARMSTRONG	D. Ross	F
S. Peter GEBHARDT	J.V. Kaufman	P
Brian M. DENNIS	G.R. Ritter	W
Peter J. BILLINGS	R.C. Benkel	W
Susan E. PULLEN	W.R. Ray	M
Albert A. MONICHINO	F.H. Callaway	S
Ross FRAZZETTO	E.N. Magee	P
Julia A. BRUCE	C.W. Porter	H
Thracy P. VINGA	G.J. Thomas	P
Edward J. POWER	P.N. Rose	F
Sean C. McLAUGHLIN	M.J. Strong	R
Philip J. MARZELLA	S.W. Kaye	B
Michael CHALLINGER	V.A. Morfuni	R
Kerry R. CLANCY	A.W. Adams	M
Johnstone W. THWAITES	I.G. Sutherland and B. Bourke	S
Michael S. ROCHE	J.B. Bingeman	H
Gerald J. PARNCUTT	D. Shavin	D
Peter K. WALTON	A.McH. Ramsey	S
Anthony J. KELLY	J.W.K. Burnside	H
Royce G.A. DECKKER	D.B.X. Smith	P
Paul A. ANASTASSIOU	P.R. Hayes	H
Kenneth G. McGOWAN	J.P. Leckie	B
Doublas C. PULLING	J.A. Riordan	D
Geoffrey R. MARTIN	M.R. Titshall	D
Vincent RUTA	R.N.J. Young	P
Melanie SLOSS	J.H. Karkar and R.C. Macaw	D
Lucy C. STEINER	C. Gunst	W
Phillip R. SLADE	L. Lieder	M
Stephen C. SMITH	M. Lincoln	P
Russell G. MITCHELL	L. Lasry	R
John E. WILLIS	N.A. Moshinsky	R
Frances I. O'BRIEN	W.B. Strugnell	R
Janine A. PERLMAN	R.K. Kent	W
Peter McLOUGHLIN	J.M.B. Cashmore	P
John A. SULLIVAN	R. Lopez	M
John C. MYERS	C.W. Rosen	D
Herman BORENSTEIN	E.F. Hill	R
Stephen D. ROBB (NSW)		
Leslie S. KATZ (NSW)		
Peter W. ERIKSEN (SA)		
Timothy S. HARRIS (NSW)		
Geoffrey A. FLICK (NSW)		
Steven RARES (NSW)		

Name	Master	Clerk
Graham R. BARR (NSW)		
Harold D. SPERLING (NSW)		
Robert L. HUNTER (NSW)		
Brian R.M. HAYES (SA)		
David H. DENTON (re-signed)		B
Richard W. EVANS (SA)		
Bruce R. McCLINTOCK (NSW)		
Dorothy KOVACS	J.W. Ramsden	P
Stewart M. ANDERSON	S.K. Wilson	F
Glenn C. McGOWAN	R.C. Macaw	S
Donald McL. THOMSON	J.H. Barnett	P
Marcus CLARKE	I.J. Beder and W.F. Lally	F
Jonathan B.R. BEACH	R.McK. Robson	S
James W.S. PETERS	P.G. Nash	D
William C. GRAINGER	M.R. Titshall	D
Blair R. USSHER	P.R. Hayes	F
Russell L. MOORE	I.G. Sutherland	P
Timothy S. FALKINER	R. Gillard	R
Anthony G. LUPTON	J.P. Keenan	H
Irene E. LAWSON	M.R. Hickey	W
Katrina J. HOWARD	D. Shavin	D
Joseph P.M. McMAHON	T.J. Casey	F
Mark A. DREYFUS	J.W.K. Burnside and M.J. Strong	F
Andrew T. ZILINSKAS	G.R. Ritter	S
Wanda BROWNE	J. Rapke	H
Tomaso DI LALLO	J.H. Karkar	M
Andrew G. LYONS	P.F. McDermott	R
Christopher R. NORTHROP	R. Wild	H
Ian R. FEHRING	R.G. Williams	H
Wendy E. FOTHERINGHAM	A.J. Howard	W
Andrew D.L. JOHNS	P.A. Casey	P
Richard J. PITHOUSE	G.H. Garde	P
Niall F. COBURN	P.W. Collis	D
Jocelyn K. DOWNING	C.B. Malpas	P
Robert J. WILLIAMS	T.F. Danos	H
Francine V. McNIFF	J. Gullaci	P
Temi ARTEMI	D.F. Hore-Lacy	R
John J. GOODMAN (re-signed)		P
Norman S. FOWLER (re-signed)		D
Robert S. TONER (NSW)		
Malcolm F. HOLMES (NSW)		

NAMES REMOVED

G.A.V. SINGER	W.S. CAMERON	S.A. MILLER
N.M. TURNER	L.R. SAMUEL	THE HON. SIR REGINALD SMITHERS Q.C.
F.M. ROBINSON (WA)	D. ARONSON	A. KORNBLUM
P. TRIBE	P. BRENNAN	
K.A.D. NORMAN	D.D. LEVINE (NSW)	
P. ANTONOV	K. POSE	
S.B. GRANAT	J.H. NANKIVELL	
G.B. ROBERTS	J.F. LO PRESTI	
C.E. CROFT	E.K. O'DONNELL	
W.J.W. LENNON Q.C.	B.M. JAMES (NSW)	

LEAVE OF ABSENCE

J.P. BRETT
E.K. O'DONNELL
S. KENNY
M. BOURKE
T.P. KEELY
J.P. HENNESSY
I.L. GRAY
P.H. CLARK
W.B. LINDNER
B. KISSANE
I. LAWSON

NAMES TRANSFERRED

J.A. DEE (to Division A, Part I: Practising Counsel)
J.B. GAFFNEY (to Division B, Part V: Masters)
E.F. STUART (to Division C, Part III: Retired Counsel)
J.P. DUGDALE (to Division B, Part VI: Masters and Full Time Members of Statutory Tribunals)
E.C. BATT (to Division B, Part VI: Magistrates and Full Time Members of Statutory Tribunals)
R.C. WEBSTER (to Division A, Part I: Victorian Practising Counsel)
J.M. CROWE (to Division B, Part VI: Magistrates and Full Time Members of Statutory Tribunals)
S.R. MOLESWORTH (to Division A, Part I: Victorian Practising Counsel - to take effect from 6/4/1988)
B.C. CAIRNS (to Division A, Part III: Overseas and Interstate Counsel)

Solution to Captain's Cryptic No.61

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