VICTORIAN BAR NEWS

No. 65 Winter 1988

VICTORIAN BAR NEWS

No. 65 **Winter 1988**

ISSN-0150-3285

CONTENTS **Page**

The Editors' Backsheet

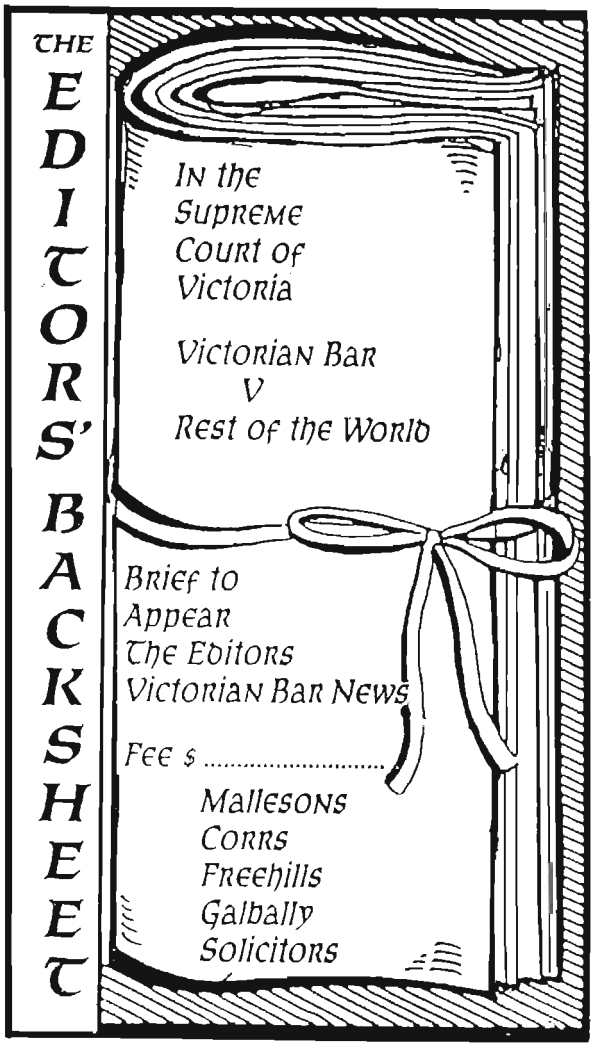
Chairman's Message

Report Resort — Attorney-General's Column
— Law Reform Committee
— Criminal Bar Association
— Common Law Bar Association
— Law Council of Australia

Welcome — Mr. Justice McDonald
— Mr. Justice Rowlands
— Judge Smith
— Judge Higgins
— Judge Hardham

Farewell — Mr. Justice Murray
— Mr. Justice Emery

Articles	—	The Commercial List - Where Now?	*The Editors*
	—	Bar Dinner Report	
	—	Mr. Junior Silk's Toast 1988	*Christopher Jessup Q.C.*
	—	Caseflow Management	*Carl Baar*
	—	Advocacy in the USA	*Douglas Salek*
News and Views	—	Miss M'Allistairs' Silver Jubilee	*Douglas Graham*
	—	Initial Statement	*George Watkins*
	—	CGT on Settlements	*Jonathan Beach*
	—	Fees Factoring and Provisional Tax	
	—	Law Council Convention	
	—	Renovating the Old Palace	*Maurice Phipps*
	—	The Reader's Life	*Anon*
Sporting	—	Fishing Expedition	*Chris Finkelstein*
	—	The Great Khancoban Fishing Caper	*Sally Graham*
	—	Tennis, Bar v Law Institute	
	—	Cricket, Bar v NSW Bar	
Cultural	—	Verbatim	
	—	A Day in the Life of Clive Penman	
	—	Readers Course	
	—	Captain's Cryptic No. 62	
	—	Lawyers Bookshelf	
	—	Mouthpiece	*Graham Devries*
	—	Lunch	*S.K. Wilson*
	—	Solution to Captain's Cryptic	
	—	Competition No. 8	
	—	Winner of Competition	



Vox Populi

Leading Silk **Cliff Pannam** Q.C., well known to members of the Bar and readers of the Age Saturday Extra, commutes from his home at Mt Macedon in his sumptuous Rolls Royce. Affable and generous bloke that he is, Cliff regularly gives a lift to **Phil Dunn**, fellow Mt Macedon resident and stalwart of the Criminal Bar.

Recently Phil's wife **Penny** was at the Mt Macedon hairdressing salon. The hairdressing lady commented 'Mrs. Dunn, I must say I really admire your husband for being so democratic.'
'Why's that?' asked Penny.
'He always sits up next to his driver.'

Jessup Cup

The Jessup Cup is not a trophy for the best speech at the Bar Dinner, appropriate as that might seem.

It is a competition run each year in the USA in which teams from law schools all over the world compete in a mooting competition.

On 23rd April this year the team from Melbourne University pulled off a major coup by defeating the University of Singapore in the final held in Washington DC. The team consisted of **Jonathan Gill**, **Fiona Hodgson**, **Susanna Lobez**, **Rosemary Martin** and **Daryl Williams**. Truly an outstanding achievement.

At a recent celebration team members thanked supporters who had made the venture possible. The Bar through its academic committee was a donor as were also many individual members of the Bar.

Bar Dinner

The Annual Bar Dinner was held on 29th May at Leonda. The fall-off in attendances in recent years, coupled with a bumper crop of judicial appointees, for a time sparked fears that guests might outnumber hosts. But fortunately there was an extremely good roll-up, especially from the junior end of the Bar.

Those who attended were rewarded with the best Mr. Junior Silk speech for a very long time. **Chris Jessup** Q.C. faced a formidable task in dealing with a guest list that resembled at least in numbers, if not completely in style, the hordes of Genghis Khan. He (Chris that is) delivered a witty and polished performance that must have been as penetrating in research as it was elegant in delivery.

For some reason, Bar News has rarely, if ever, published speeches made at Bar Dinners. That is not a matter of any conscious policy, but rather a lack of any, or any reliable, reports, coupled no doubt in some instances with the thought that the speeches were best forgotten anyway.

But fortunately we have the text of Chris Jessup's speech, which will be found elsewhere in this issue.

Judicial Liability

Whatever is thought of the response of the Victorian Government to the Bar Council's statement on 'The Sorry State of the Judiciary in Victoria', the State's judiciary should be grateful that there is, at least on the surface, no plan to introduce legislation along the lines of a recent Italian law which makes judges personally liable in civil damage suits. According to the International Herald Tribune (16th April 1988)

'The measure makes the state responsible for paying damages to citizens in case of wrongful convictions due to major mistakes or malice by judges. The state will be allowed to reclaim up to a third of a judge's annual salary. A judicial court will decide whether damage claims against judges are legitimate.'

An intriguing idea. Does the one third limit apply to each and every claim or to all claims in one year? If the former, we might see the novel concept of negative judicial salary. But what happens when the 'judicial court' gets it wrong?

Cherchez la femme

From the South Australian Sunday Mail comes this report of a dress code issued by an Adelaide legal firm. The code, in part, reads:

'A female lawyer who projects herself in a way that causes a client to identify in her any of the conventional/traditional expectations of women as wife, mother or lover is inconsistent with her projecting herself as a professional. A female lawyer must project herself in a way which de-emphasises her sexuality (as distinct from her femininity) and emphasises her skills as a talented and expert human being.'

Even such a fearless publication as Bar News must decline any comment, save to suggest that a Fashion Column might be introduced as a regular feature.

Telephones in Courts

Those who designed the courts obviously believed that barristers and solicitors did not have any need for telephones. Those who presently administer the courts still appear to harbour the same view.

The number, and state of repair of telephones in the majority of courts in this state is a disgrace. The County Court was designed with one telephone on alternate floors. These are continually out of order. The Supreme Court of course was designed without telephones in mind at all. But today a few have been stuck in obscure corners. Country courts are lucky to have one operational pay phone for the use of the profession. The Attorney-General's Department should bear the cost of free phones for circuit courts. Otherwise it is almost impossible to settle cases with solicitors in Melbourne and thereby clear up the very large lists of circuit cases. Melbourne Magistrates Court and its phones, or lack of same have been a standing joke for years. Somebody up there must realise that if the back-log of cases is to have some chance of being cleared, and if cases are to be run properly, then access to telephones is essential to all members of the profession. Money must be spent on new telephones and the up-keep of existing systems. This is the responsibility of the Attorney-General's Department. Come back Alexander Graham Bell - all is forgiven.

Plain English Award

The Solicitor-General for Western Australia, **Kevin Parker** Q.C., in the recent High Court appeal **Cole v Whitfield**:

'And because of, the affects of those two effects, or aspects, of the presently received doctrine there has, of course, been necessity to arrive at some view about those sorts of laws that are readily conceded in the decisions of the Court somehow have to be allowed and the concept of reasonable regulation as an exception, therefore, has emerged as a means of enabling such laws to exist despite the absolute freedom in the senses that I have been suggesting in the received doctrine would otherwise mean.'

The Glassbox

For many years the geographical point of contact between the legal profession and the judges of the Supreme Court in their off the bench mode was a small cubicle on the first floor at the south western corner of the Supreme Court building.

Had it been erected today, doubtless the architect's

plans would have designated it as a bi-lateral communication reference location for informal inter-facing. But early on somebody coined a title which combined concise structural description with a catchy name tag. The glassbox it was.

The glassbox, manned by a tipstaff and in later years a police officer, was the place where orders were left and collected, messages left for judges and associates came to escort visitors to their judges' chambers. Like all the best human systems, it was never designed or planned. It was not, as far as is known, the child of reports, committees, memoranda, surveys, or the like. It just grew.

The late Mr. Justice Gillard, who made something of a minor hobby out of inventing delightfully individual pronunciations, would tell Counsel that they could 'collect the ahrda from the glazbux'. Alas, the glassbox is no more. Outside the glass doors at the top of the stairs there is a kind of high counter behind which a police officer sits, looking, understandably, pretty cold and bored. It is bereft of that pleasantly jumbled collage of notes, calendars, and other bits and pieces that made the glassbox look like a Parisien concierge's den. The taking and leaving of messages is greatly restricted because, it seems, the police task is now seen as being confined to security.

National Trust treasure it never was. Still, the passing of the glassbox will excite the occasional nostalgic pang.

Oscar Wilde and Gavan Duffy

Richard Ellman's recent and widely acclaimed biography of Oscar Wilde touches on a link with the famous Irish Australian Gavan Duffy clan.

Wilde's mother (nee Elgee), although a member of the Protestant Ascendancy, was a keen supporter of Irish nationalism. Charles Gavan Duffy was the editor of the Nationalist journal 'Nation' and published a number of her patriotic poems written under the nom de plume 'La Speranza'.

In 1849 the British authorities charged Gavan Duffy with sedition. While he was in jail awaiting trial, Jane Elgee helped out by writing some spirited editorials which, in Ellman's words, 'said outright what Gavan Duffy had put circumspectly'. The Crown had the two editorials added to the indictment, even though Miss Elgee went to the Solicitor-General and revealed herself as the author.

At the trial, the prosecutor was addressing the jury about the editorials when Miss Elgee arose in the gallery and announced 'I, and I alone, am the culprit, if culprit there be'. This intervention earned a stern rebuke from the presiding judge, but the prosecutor steered well away from any further discussion on the topic.

Gavan Duffy was tried four times but no jury could agree to convict him. He gave up his seat in the House of Commons and emigrated to Victoria in 1855 where he embarked on a fresh political career with notable success. He became Premier in 1871. His son Frank Gavan Duffy sat on the High Court bench from 1912 to 1935, and for the last five years was Chief Justice. His grandson Charles became a member of the Supreme Court of Victoria.

Sir Hayden Starke, the father of Sir John, married Frank's neice, a granddaughter of the original Charles Gavan Duffy.

Mr. Tony Smith – IBA Secretary-General

Well known Melbourne solicitor Mr. Tony Smith has been elected as Secretary-General of the International Bar Association for the two year period commencing September 1988.

This will be the first time an Australian has held a position as office bearer of this prestigious body. In a recent letter to the Chairman of the Bar Council, Mr. Smith expressed his appreciation for the support given his nomination by the Australian Legal Profession and the Victorian Bar in particular.

Mr. Smith's many friends at the Bar will welcome his achievement of this high honour and wish him a successful term of office.

The Editors

Chairman's Message

There was brief mention only in the Autumn Bar News of the Committee under the Chairmanship of Stephen Charles which was established to devise a specified programme to improve the present unsatisfactory situation of our judicial system. However, only a few days later, the leakage of its first memorandum "The Sorry State of the Judicial System in Victoria" soon made this Committee one of the Bar's bast known bodies.

Most members of the Bar Council had not even seen a copy of this memorandum when, on the afternoon of the 15th April, I was advised that "The Age" had somehow procured a copy of it and intended to publicise much of its contents on Monday 18th April. How "The Age" secured its copy of the memorandum remains a mystery, but when your Executive received news of the leakage we decided that we had no real choice other than to print the memorandum and make it available to the judiciary and all members of the Bar. Happily this decision seems to have received almost unanimous support from the Bar, but it was inevitable a few people would accuse the Bar Council and myself of playing politics.

Very few lawyers familiar with the present situation would, however, disagree with the opening words of the Committee' Report namely that "Victoria's legal system is decaying because certain parts of it are not adequately funded" and that this was a criticism directed at both major political parties". The state of the judicial system is not simply a political matter on which the Bar Council has no right to speak publicly.

The Bar Council has always exercised the right in appropriate circumstances to speak on behalf of the Bar. As lawyers practising in a democratic state we are very much concerned that the judiciary in this State should continue to be strong and independent and that the status of the judiciary and the judicial system itself should not in any way be eroded. One would be confident this is an almost unanimous view of the Bar.

In England the Thatcher Government recently announced substantial increases in salaries for Britain's top Civil Servants including judges, who were awarded a 7.4% increase. On the exchange rate as at 6th May 1988 Lord Justices of Appeal (whose work is equivalent to that performed by our Supreme Court Judges when sitting in the Full Court) receive an annual salary of $183,602.00 (75,000 UK pounds) and High Court Judges receive $166,130.00 (68,500 UK pounds). It is interesting to note that the English Review Body on Salaries, in recommending increases for judicial salaries which exceeded the rate of inflation, gave as one of its reasons the difficulty in recruiting Circuit and High Court judges.

Whilst the level of judicial salaries in Victoria continues to be a very important question, the lack of many other court facilities perhaps requires to be stressed even more. The report of the Stephen Charles Committee did in particular perform a very valuable service in drawing attention to the inadequate facilities and staffing of our Supreme Court.

In its current discussions with the Attorney-General and in its public statements the ultimate objective of the Bar Council has always been the improvement of the Victorian judicial system. The Attorney-General has indicated the ready availability of the officers of his Department and of himself to discuss matters of mutual interest, but the present situation continues to be grave. The judicial system is failing in that it is not now providing the service to society that is necessary to preserve our way of life. It is important to emphasise that in no sense is this the fault of the judges themselves. In the past we have been

fortunate that many barristers with outstanding talents have continued to accept appointments to the Bench, and that most of our judges, especially in the Supreme Court not only work very long hours but also accept the burden of many other State and community duties for which little, if any, recognition is given.

It is now clear, however, that conditions on the Bench are no longer attractive to those members of the Bar whose qualities and capabilities render them best suited to judicial office. Furthermore, the Government is not providing adequate numbers of judges. Matters are not being heard within reasonable times and much time of barristers, solicitors and clients is wasted attending court and not being heard. These are matters critical to the well-being of our society. Justice delayed has always tended to be justice denied and now that interest cannot be awarded on judgments in personal injury cases a further added injustice is done to many successful plaintiffs.

The Government has recently made available additional funds for the judicial system and is appointing more County Court judges primarily for the purpose of reducing the backlog in criminal trials. The provision of transcripts in all County Court criminal trials is also a welcome improvement, and will help to speed up the actual hearing of these trials and of any appeals. Whilst we congratulate the Government on these particular initiatives, major problems continue to remain in the Supreme Court and in the County Court civil jurisdictions.

Most of these problems cannot be redressed without an even greater injection of funds. This is, of course, a matter for the Government in the ordering of its priorities but it is a sad fact that those priorities tend to be ordered in accordance with current public perception of need. In the totality of the State Budget the cost of our judicial system represents a very small percentage only. The Bar may therefore need from time to time to speak publicly if its objectives are to be achieved.

An effective and efficient judicial system lies at the very heart of a democracy and, working as we do within the system, means that our Bar is peculiarly well situated not only to appreciate the real benefit to the community of the judicial system, but also to assess what needs to be done to improve the system. In this we have the fullest co-operation of the Law Institute which has itself made very valuable contributions to the current debate.

Whenever the faults of the judicial system are made known it is inevitable that the Government may feel itself under attack. Members of the legal profession will however appreciate that criticisms are not made by the Bar Council for the purpose of advocating one political party over another, but rather in an attempt to re-establish the fine legal system that once existed in this State.

* * * * *

In the current economic climate the long-standing problem of outstanding fees has become an increasing burden for the Bar and, in particular, for the more junior barristers. The result of the referendum conducted early this year was significant. It established beyond argument the overwhelming desire of the Bar for a Default List procedure. Both Queensland and New South Wales have "blacklist" systems which work effcctively and in some overseas countries where there is a separatc Bar similar systems are in successful operation. Our previous system which was introduced in the 60's (but subsequently abandoned) was workable and effective, but did involve a very considerable amount of time for those involved in its operation.

A lot of thought has been directed to the best means of achieving our own objectives but it is also important to endeavour to ensure that the scheme does not work any injustice against individual solicitors. The Committee which will operate the pilot scheme is chaired by Uren Q.C., but in its early stages will also be monitored by E.W. Gillard P.C. and Kirkham Q.C., who will confer with representatives of the Law Institute in order to minimise possible problems.

When the Bar's Exccutive Officer communicates with our clerks to obtain information concerning outstanding fees owing by a particular solicitor to other barristers, members of the Bar will retain the right to indicate to their clerks that information in relation to their own outstanding fees is not to be provided. Whenever a barrister has an agreement with a solicitor that accounts need not be paid within the specified period, the barrister should take appropriate steps to ensure that this account is not included in any list of outstanding fees supplied by the Executive Officer. Apart from these circumstances it is desirable that there be

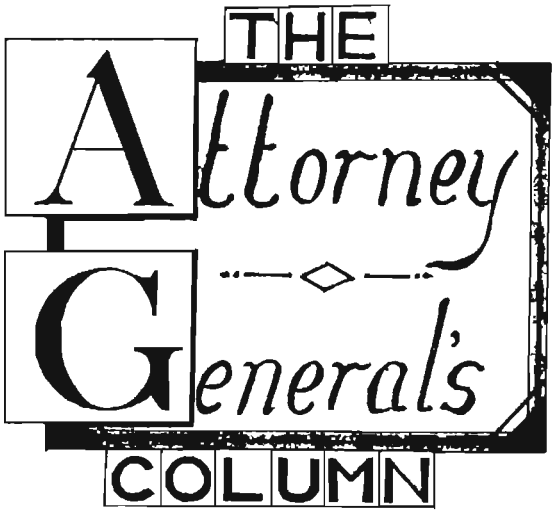
wide support for the scheme amongst members of the Bar.

Our proposed pilot scheme has met with some opposition from the Law Institute and we are still in the process of ironing out the proposed scheme with the Institute. Obviously if our scheme can go into effect with the cooperation of the Law Institute it is more likely to be successful. We believe that any solicitor who is reasonably businesslike to attending to the payment of counsel's fees has nothing to fear from the implementation of the proposed default scheme and we welcome any suggestions to ensure that the scheme will bc fair to solicitors also. On the other hand where, for example, fees have been obtained by a solicitor from a client and are then held by the solicitor for a lengthy period (and sometimes not even, as it should be, in his trust account) decisive action needs to be taken.

Charles Francis

"A Court Administrator at Work"

"A Judge at Work"



Reducing Criminal Case Delays

Since my appointment as Attorney-General I have been most concerned to improve the flow of criminal cases in Victoria's courts.

Delays in the hearing of criminal cases in the Magistrates Court have in fact been reduced. This is despite the fact that more criminal cases are coming before the courts. This has been achieved because of better caseflow management and in particular introduction of the mention system.

However delays in hearing criminal cases remain in the County and Supreme Court. Extra judges (2 in the Supreme Court, 10 in the County Court) have been appointed and the courts have taken action to improve caseflow management. As a result the County Court has increased its disposal of criminal cases from 1,307 in 1985 to 1,742 in 1987. Unfortunately however, over the same period the number of cases received has increased from 1,484 in 1985 to 1,803 in 1987. The problem has been exacerbated by the increasing number of long and complex trials.

I believe that there needs to be both short term measures and a longer term strategy to reduce delays in criminal cases.

The Government has agreed immediately to provide:

- 2 additional County Court judges plus support staff.
- Additional transcript facilities for criminal cases in the County Court.
- Additional staff for the Criminal Trial Listing Directorate.

As part of a longer term strategy, a Steering Committee is to be established to be chaired by the Chief Justice to identify and address causes of delays in the courts.

The aim of the Committee is not to produce a report which will then gather dust. Rather the Committee will be able to actually implement change in the system as it proceeds.

The Chief Judge of the County Court will be a member of the Committee as will the Chief Magistrate, representatives of the Bar Council, the Law Institute, the DPP and others. The Committee will be supported by a core team which will work full time.

I believe it is important to recognise that any improvement in caseflow can only be achieved through co-operation between all the groups involved in the criminal justice process. These include police, the Director of Public Prosecutions, solicitors, barristers, the judiciary, court administrators, the Legal Aid Commission and the Office of Corrections. The Steering Committee will seek the views of these groups.

The cost of these measures recently announced will be approximately $2,600,000 annually. In times when there are severe financial constraints on State Government Budgets, the Government has a responsibility to ensure that any additional resources supplied to the Courts System are responsibly and effectively used. One of the Steering Committee's tasks will be to oversee the most effective use of these additional resources.

Many helpful suggestions for reducing criminal court delays have already come from members of the judiciary, the Bar and the Law Institute. These suggestions include:

- The introduction of a Mention System to operate before the trial date.
- Statutory encouragement for an accused person to plead guilty at an early stage by allowing a sentencing judge to take into account the time at which the plea was made.

- Statutory encouragement for an accused person to plead guilty at an early stage by guaranteeing an early hearing date.

- Dual sittings for courts to make more effective use of existing court buildings.

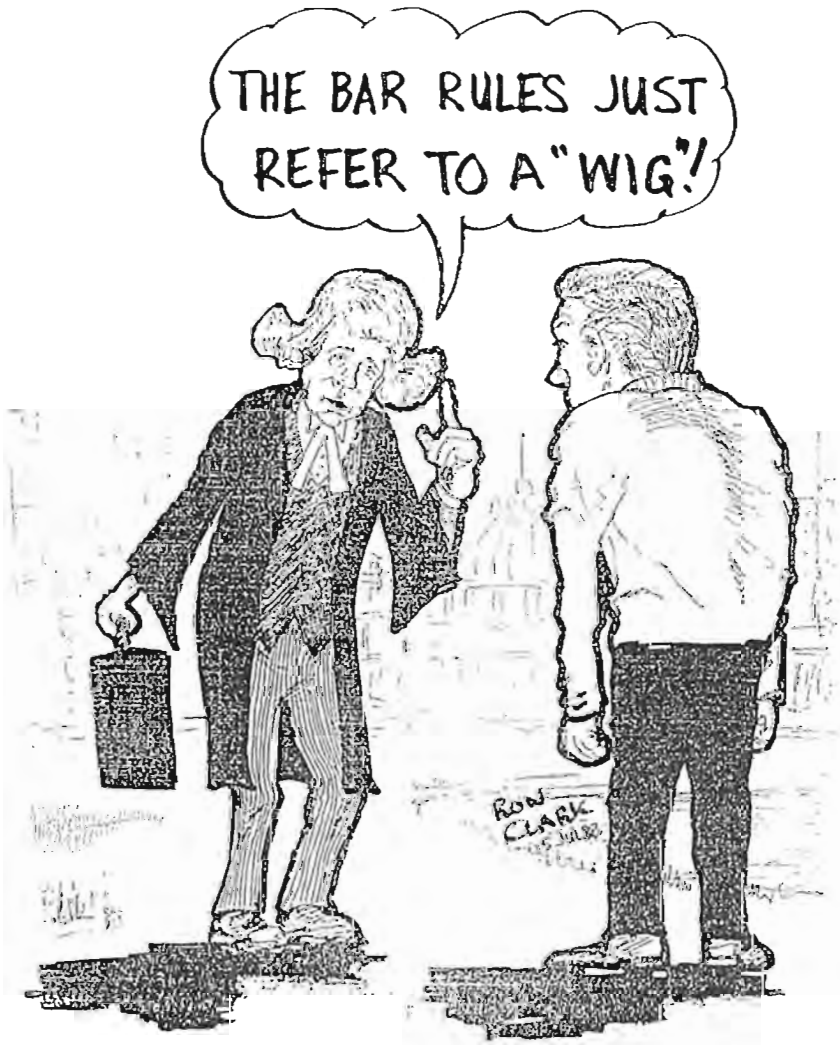
- Encouraging police and accused persons to have minor matters which may be heard summarily disposed of in a Magistrates Court.

- Introduction of Recorders and the use of acting judges in some circumstances.

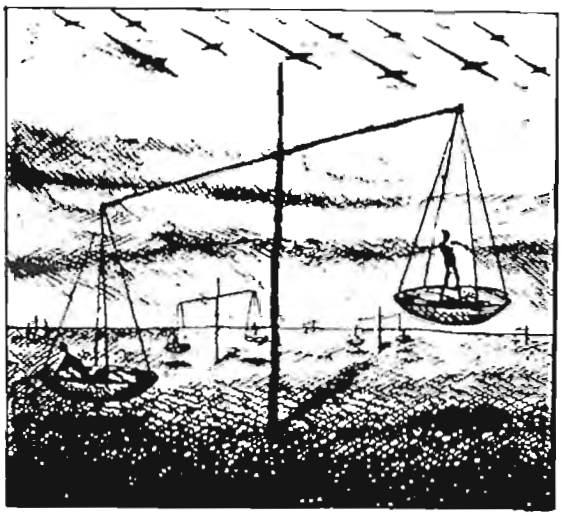
Some other suggestions including additional transcripts and pre-trial conferences in criminal matters are already being implemented.

I look forward to further suggestions and proposals being made by members of the Bar. These proposals will, I am sure, be carefully considered by the Steering Committee.

Finally I should say that the Government has recently introduced legislation to implement one of the major recommendations of the Shorter Trials Committee. The Crimes (Custody and Investigation) Act passed in the last session of Parliament provides that all records of interview in indictable matters are to be tape-recorded. As well as being an important safeguard for accused persons, this initiative should lead to shorter trials.



Law Reform Committee of the Victorian Bar



In 1988 when State Parliament has been sitting the Law Reform Committee has been kept very busy. Some of the matters that have been considered by the Committee include:

Magistrates' Court Bill

A sub-committee chaired by Tim Smith Q.C. studied in detail the reforms proposed by this Bill. The sub-committee consisted of members of the Bar who practice in the Magistrates' Court. Members of the Bar specialising in criminal and civil work in the Magistrates' Court were consulted. A voluminous report was prepared and forwarded to the Magistrates and to the Attorney-General's Department. The delegation went and discussed the matter with the then Attorney-General, Mr. J.H. Kennan Q.C. As a result of these representations the State Government has agreed to restrict the Arbitration Limit to claims of less than $3,000. Conspiracy has been removed from list of indictable offences which can be tried in a summary way. Further detailed submissions concerning the Magistrates' Court Rules have been forwarded to the Magistrates for consideration.

Medical Treatment Bill 1987

The Medical Treatment Bill proved to be somewhat controversial. A member of the Committee Mr. T.H. Smith Q.C. studied the Bill in detail and prepared a comprehensive analysis of it with suggestions for improvement. This report was mentioned when the matter was vigorously debated in the Upper House. After considerable discussion and amendments, some in accordance with Mr. Smith's suggestions, the Bill was passed.

Charitable Trusts

A member of the Bar (John Batt Q.C.) alerted the Bar Council and hence the Committee to a reference that had been given to the Legal and Constitutional Committee for State Parliament to inquire into the reform of the law in relation to Charitable Trusts. Commentary and suggestions on the proposed reforms to this area of the law were obtained from members of the Bar and forwarded to the Legal and Constitutional Committee.

Defamatory matter in Petitions to Parliament

The Australian Senate Committee of Privileges asked the Committee for assistance in regard to Defamatory Matter contained in petitions to Parliament. It appears that some allegedly defamatory material was contained in petitions submitted to the Australian Senate upon the retirement of the former Premier of Western Australia. The Committee asked Graeme Uren Q.C. to consider the matters raised by the Senate Committee. The Committee has circulated the opinion to its members and is considering the matters raised by it.

Appointment of Tim Smith to the County Court

The Law Reform Committee and the Bar will miss the efforts of Tim Smith Q.C. Tim has a great interest in the area of law reform and was a tireless worker on behalf of the Bar for many years. All members of the Law Reform Committee wish Tim well in his new position as a County Court Judge. We all look forward to reading his next submission on the law of evidence as it will contain a perspective from the Bench and not only from the Bar table.

John Hockley
Hon. Secretary

Criminal Bar Association Report

A report compiled and delivered to the Committee of the Criminal Bar Association reveals that as at the 29th March 1988 there were 37 trials outstanding and 57 accused persons awaiting trial in the Supreme Court. these figures relate to State prosecutions and do not take into account outstanding Commonwealth matters. There were 746 trials outstanding and 965 accused persons awaiting trial in the County Court. During the sittings of the County Court in 1987 the average number of judges dealing with criminal matters ranged between 11 and 12 per month. Committals for trial in 1987 compared with those in 1986 revealed an increase of approximately 20% to 25%. The average time from committal to trial is approximately nine months.

As at the 31st January 1988 there were 57 trials listed in the County Court at Geelong. As at the 29th March 1988 that number had increased to approximately 66 trials. The 57 trials listed in January involved some 70 accused persons. The Association's advice is that there are 152 sitting days per annum in 1988. This would indicate that if no new trials were to come into the list the Crown would have enough work to fulfil the current year.

Although the Association sees the appointment of two additional County Court judges as an inadequate measure to deal with the current problem, the Association acknowledges that the current moves constitute an attempt by the Government to set in train actions which begin to address the ever increasing problem. It is questionably argued that the current economic climate is such as to prohibit the expenditure of funds on both the appointment of more judges and creation of capital items such as additional courts. The dilemma is that at present there are only 14 courts suitable for criminal jury trials in the County Court. This must be resolved in the future by the construction of a central criminal court.

The traditional belief of the judiciary and the Bar has always been opposed to the appointment of Recorders and acting judges. Numerous arguments against such appointments ultimately revolve around one point, namely, that the appointment of such persons represent a real and substantial attack upon the independence of the judiciary. To diminish that independence is totally unacceptable in any free society.

If the reality is that there will be no appointment of additional judges in the foreseeable future (such appointments being the preferred solution) to deal with the ever growing problem of a burgeoning criminal list and if the Steering Committee despite its best efforts in fine tuning the system achieves no real redress of the backlog, the question may then be asked whether the time has come for the appointment of Recorders to take and maintain full advantage of the courts and the system as we now have it.

The Magistrates Court Bill referred to in the Victorian Bar News No. 63 Summer 1987 has not as yet been introduced. It proposes an increase in the monetary jurisdiction in criminal matters from $10,000 to $40,000 and an increase in the number of indictable offences which may be heard and determined summarily to 61 categories. The implementation of such legislation may have the effect of reducing the number of persons awaiting trial but, apart from creating an obviously increased backlog in the Magistrates Court with its attendant difficulties, the real question is whether trial by jury has come under attack.

There is little doubt that the backlog of criminal cases has reached a point where both the prosecution and defence suffer real detriment thereby bringing the criminal justice system of the State into disrepute. However trite be the

comment, the fact remains that justice delayed is justice denied.

The Association believes that the Attorney-General and Government of the State are concerned by the present state of affairs and the Government has agreed immediately to provide for two additional County Court judges plus supporting staff, additional transcript facilities for criminal cases in the County Court and additional staff for the criminal trial listing directorate.

A Steering Committee is to be established under the chairmanship of the Chief Justice which will identify and address causes of delays in the courts. The Chief Judge of the County Court will be a member of the Committee as will be the Chief Magistrate and there will be representatives of the Bar Council and Law Institute as well as the Director of Public Prosecutions and others. The Committee will be supported by a Core Team which will work full time. The advantage of this Committee will be that it will be able to actually implement change in the system on an ongoing basis and not merely report.

The combination of a shortage of funds and our concern for judicial independence, may, paradoxically be supporting a restriction upon the fundamental right of trial by jury. Surely as a matter of balance every effort must be made to ensure that within the constraints of financial feasibility every trial court in this State is used to its fullest capacity.

Have we now reached the point where circumstance and necessity require the creation of night courts, appointment of Recorders, sentencing based upon agreed statements of facts and year round sittings of courts? These are but some of the issues that have arised for discussion in Committee. The Association invites comment and discussion from the whole Bar.

We must now take time to consider.

Preparation Fees

Counsel should note and bear in mind guideline 11 of the Commission's guidelines provides that a preparation fee must be agreed upon either before or immediately following the delivery of the brief to counsel when counsel has assessed the amount of work involved and before formal acceptance of the brief. Adherence to the guideline is essential in order to avoid difficulties as to payment of fees.

Indictable Trials Guidelines and new Pre-trial Procedures

The Legal Aid Commission of Victoria has advised the Criminal Bar Association in relation to the queries concerning pre-trial procedures in the County Court as follows:

1. As a general rule the Criminal Law Division does not intend to brief counsel in relation to pre-trial hearings. Divisional solicitors will appear unless by reason of complexity of the case or other factors (such as the unavailability of a solicitor) it is appropriate for counsel to be briefed. A similar practice will be adopted in relation to privately assigned matters.

2. Where counsel is briefed an appropriate brief fee will be paid. The present scale does not provide a fee for pre-trial hearings.

3. The Commission does not ordinarily provide assistance for counsel to be briefed to advise on the prospects of acquittal unless the nature of the matter warrants obtaining a formal written opinion. In the ordinary run of cases the Commission expects that counsel will be in a position to provide informal advice after receiving a brief to appear and consulting with a client. The Commission should be informed of counsel's views as early as possible so that a decision can be made before any pre-trial hearing, about the extent of assistance to be provided. Decisions about legal assistance are sometimes delayed because of late lodgment of applications for assistance. The Bar can help to ensure decisions are made at an appropriate time by encouraging instructing solicitors to apply as early as possible when it is anticipated that assistance will be required.

A. Shwartz
Hon. Secretary

Common Law Bar Association

Earlier this year, a Workers' Compensation Bar Association was formed. Representatives of the new Association were invited to attend a meeting of the Common Law Bar Association at which it was agreed that the Workers' Compensation Bar Association would become part of the Common Law Bar Association.

Submissions were then made to the WorkCare Parliamentary Enquiry, on behalf of the Workers' Compensation Bar Association in conjunction with the Law Institute Workers' Compensation Practice Committee.

The Common Law Bar Association has continued to devote attention to the listing of personal injuries juries and causes in the Supreme Court and County Court.

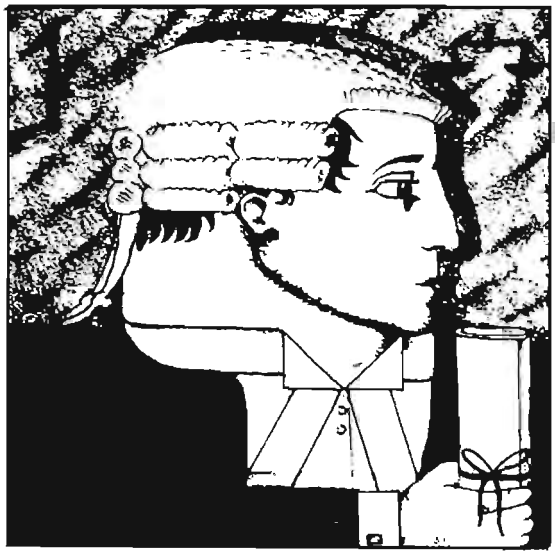
The Common Law Bar Association has also considered a proposal for the introduction of mediators into County Court litigation. After discussion, the Committee resolved not to agree to seek volunteers to act as mediators, as it was not considered that mediation is an ideal form of dispute resolution

The Committee has also been involved in a consideration of and the formulation of submissions relating to proposed amendments to transport accident legislation and regulations.

Tom Wodak

Seen on Holidays

Law Council of Australia Report



Policy Advisory Group

The PAG, at its third meeting on 3 June, discussed several matters and formulated advice to the LCA Executive.

The topics included

- The future of Australian Law News and how it could better serve the legal profession
- The cost of litigation and possible reform of litigation practices
- The national companies and securities legislation
- The further development of Law Council Sections
- The development and implementation of LCA policy on legal education
- The development of closer legal links with Asia.

The Executive, at its meeting the following day, acted on several of the PAG's recommendations. It will give further detailed consideration to others and bring forward some matters to the Council.

It decided to set up a committee of two barristers and two solicitors to consider how interlocutory procedures that lead to delays in litigation and to increased costs might be reformed. The committee will liaise closely with constituent bodies.

Bicentennial Australian Legal Convention

A reception in the Great Hall of Australia's new Parliament House will be a highlight of the Bicentennial Australian Legal Convention which begins on 28 August. The reception will be hosted by the Deputy Prime Minister and Attorney-General, Mr. Lionel Bowen.

Planing for the Convention is complete, and it promises to be a major event of the nation's bicentennial year.

Retrospective legislation

The Law Council is to continue strongly its efforts to persuade the Government against use of retrospective legislation of 'legislation by media release'.

In response to earlier efforts the Government has written into the Cabinet Handbook directions to Ministers and officials which, in the LCA's view, fall far short of what is required.

The Council is making this known directly to the Government and to the wider community through the media. It is publishing guidelines which it believes should be adopted by the Government so that the highly undesirable practice of announcing and implementing new laws long before they are enacted by Parliament can be stopped.

Common law rights

Despite a strenuous campaign by the legal profession to preserve the full common law rights of federal employees, Parliament has passed legislation that, while maintaining common law rights in relation to non-economic loss and death claims, places a cap of $110,000 on non-economic loss claims under a new workers compensation scheme.

Given the commitment of the Government to abolition of common law rights according to Labor Party policy, the retention of some rights is a significant achievement.

The LCA and its constituent bodies now are examining proposals for a no-fault approach in the area of medical misadventure. Health ministers have commissioned a task force to examine the matter, and the view of the legal profession has been sought.

Criminal Law Section

A new Section Executive is being appointed following the decision to move away from the complicated joint administrative arrangements with the Criminal Lawyers Association of Australia. Some of the most eminent lawyers in the criminal field have accepted invitations to join the new Executive, and will begin work on some urgent tasks forthwith.

Submissions update

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

Export development

Export Market Development Grants should again be made available in relation to export of legal services.

Anti-dumping law

The whole of the Anti-Dumping Authority Bill is opposed because it should, but does not, establish a Tribunal and should, but does not, provide that Tribunal with powers similar to those provided to the Administrative Appeals Tribunal; the whole package of legislation should be referred to a parliamentary committee and close consideration should be given to redrafting the entire package rather than dealing with the matter by piecemeal amendment.

Industrial relations

The Industrial Relations Bill should make clearer the intention not to exclude common law remedies; any party or intervener before the Commission should have the entitlement to legal representation (this being the preferred course) or the special preferred position of officer and employees of peak councils should be removed; various other matters should be examined.

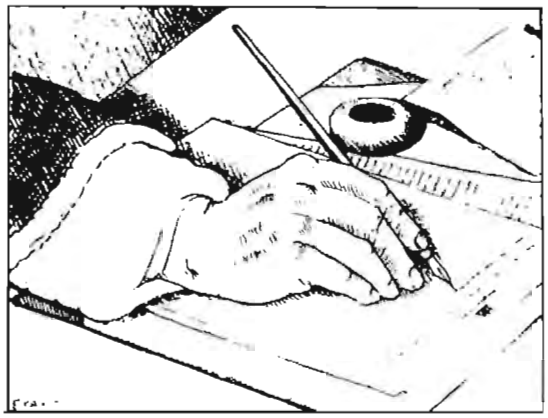
Telephone tapping

The LCA opposes giving the National Crime Authority the right to use listening devices in the investigation of drug offences.

Higher education

Detailed planning, taking account of regional differences and requirements and the need for particular professionals and tradespersons, should be undertaken to achieve the Government's objective of a substantial increase in the number of persons in the higher education system and a higher proportion of qualified persons entering the workforce.

Welcome



Mr. Justice McDonald

His Honour comes from a family which had a long association with the law and community service. His grandfather, who was later Mayor of the City of Geelong, had gone into practice with a Mr. Wighton in that city at the end of the last century. His father, a former member of the Legislative Council and Minister of the Crown (to whom Beach J was articled) continued that practice. It is therefore not surprising that his Honour studied law (at Melbourne University) and is now serving the community as a justice of the highest court in this state.

An education at Geelong College and Melbourne University, good performances over hurdles at distances up to two furlongs, at metropolitan and inter-varsity meetings, and cantering over a hundred yards in 9.9 seconds, then a Melbourne University record, were ideal qualifications to make frenzied dashes to and between courts behind Mr. W.C. Crockett. Having read in his chambers in 1961 and being the only member of counsel to have read in those chambers, his Honour after a distinguished career at the Bar now joins his former master on the Bench.

His Honour was a keen competitor in sport, an attribute which marked his work as a barrister. Whilst he rowed and played football with distinction both at school and university, it was in athletics he achieved excellence. In 1954 he won the Geelong College School Athletic Cup. For performances for MUAC at club and inter-varsity level he was awarded a half blue in 1955 which was re-awarded in 1956, a full blue in 1957 which was re-awarded in 1958, in which year he captained the inter-varsity and inter-club teams.

His Honour's contribution to sports administration has been outstanding. That contribution began in 1957 when he became honorary secretary of the MUAC and a member of the Beaurepaire Centre House Committee. It included membership and chairmanship of the Melbourne University Blues Advisory Board (1958-1960). In 1962 he succeeded Judge O'Driscoll as chairman of the council of the Victorian Amateur Athletics Association, a position which he filled with distinction until 1976, when he was succeeded by Sir Murray McInerney. From 1978 to 1983 he was president of the Australian Athletic Union. His untiring efforts in this area were unselfishly directed to benefiting the athletes and the sport at the expense of securing for himself, as he could have done, an international career in officialdom.

He contributed to community service in other ways. He served on the Youth Council of Victoria and the Lauriston School Council. It is hoped that his Honour's elevation will give added flavour to the barbequed sausages which he dispenses at fund raisers for the Point Lonsdale Surf Life Saving Club. He freely made time to serve the Bar on internal committees and represented it on court practice committees. As a representative of the Bar he chaired a committee reporting to the Attorney-General, whose report led to reform of the law relating to criminal compensation. From 1985 to 1987 he was a member of the Bar Council.

His Honour's practice at the Bar was always busy, being centred on personal injury and divorce work in earlier years and becoming a general common law practice in later years, when much of his work involved claims arising out of bushfires and

medical negligence, insurance law and aviation law. His Honour developed a general appellate practice, both in the Full Court and the High Court, particularly after taking silk in 1977. He appeared in the landmark High Court appeal **Todorovic v Waller**.

Having appeared as a junior to Marks Q.C. (as he then was) for the SECV before the Board of Inquiry into the 1977 bushfires, his Honour has thereafter represented that Authority in nearly all proceedings arising out of bushfires in relation to which it was involved (or alleged to have been so).

In 1983 he obtained an ad hoc admission to Lincoln's Inn to enable him to appear with Johan Steyn Q.C. (now on the English High Court bench) in proceedings relating to the liability of underwriters to indemnify the SECV against liability arising out of the Ash Wednesday bushfires. His Honour's vigorous cross-examinations, in the style of some of our common law Bar, introduced a new element into the proceedings. In answer to a morning comment 'It's a grey day' one of his opponents was heard to reply 'McDonald is cross-examining today so the sun has decided not to come out'.

His wide experience as a barrister equipped his Honour in more recent times to shoulder the burden of long and protracted proceedings for the de-registration of the BLF and proceedings in the South Australian Supreme Court arising out of the Ash Wednesday bushfires. His Honour was always punctilious and reliable in his dealings with solicitors and the size and breadth of his practice was testimony to his capacity and industry.

The Bar has great confidence in this appointment which it sees as a timely elevation to the Bench of an experienced and industrious civil lawyer. It expects that his Honour's contribution to the work of the court will be valuable and important. His Honour is a good family man and a gregarious companion. His many friends both inside and outside the legal profession wish that he continue to enjoy the pleasure of those qualities in the future.

Mr. Justice Rowlands

On 21st April 1988 the Bar joined in welcoming Alwynne Richard Owen Rowlands as a judge of the Family Court. His Honour was born on the 22nd September 1937 and educated at Grimwade House and Melbourne Grammar School. He graduated in law at Melbourne University and served articles at Whiting & Byrne. He was admitted to practice on 1st March 1963 and signed the Bar Roll five days later. He read in the chambers of Haddon Storey and took silk in 1982. On 4th November 1983 his Honour was appointed a judge of the County Court. On his welcome to the County Court it was prophesied that his Honour would have a compassionate, tolerant and learned approach to the Bench fortified with a rich experience of life and that all those attributes would be bought to bear on the difficulties of judicial office. His Honour's consequent appointment as President of the Administrative Appeals Tribunal brought these prophesies to happy fulfilment.

The Family Court is fortunate that his Honour has come to its bench as his proven capacity will be an enhancement to the Court. The matrimonial jurisdiction demands particular qualities from its judges, qualities which his Honour has amply demonstrated his ability to fulfill.

The Bar congratulates his Honour and wishes him well.

Judge Smith

The appointment on 11 July, 1988 of Tim Smith Q.C. as Judge of the County Court has been warmly welcomed by the Bar and by others who are connected with the administration of the law. The bench was the obvious place for his Honour having regard to his sense of public duty, his temperament and wide range of experience and interests within and outside the law.

His Honour was born in Melbourne, the only son of Mr (later Mr Justice) and Mrs Smith. He did, however, have four sisters, who, together with their mother, ensured that his Honour had little opportunity to develop into a male chauvinist.

Young smith was educated at Scotch College where he received a sound education, completing his Matriculation with first class honours in Latin and Economics. Not all realise that his Honour's physical strength which he has used from time to time to great advantage in surfing at places as far apart as Bell's Beach and Noosa Heads, was developed during his school days when he trained hard to become its leading shot putter. It is in this context that he displayed his tolerance of people whose political and social views differed from his. A good example of this is Smith teaming up with Tony Staley to create an unbeatable duo in school's shot putting team.

The education of Smith progressed at Melbourne University where he studied law whilst a resident at Ormond College. That he completed an LL.B. (Hons.) is well known and probably not surprising. What is perhaps less known is that he also maintained his interest in shot putting, winning in 1962 the inter-collegiate competition. At the same time, he developed his prowess in golf, squash and billiards.

Articles were served by His Honour at the firm of Home Wilkinson & Lowry. Shortly after that he went to the Bar where he rapidly built up a practice in Commercial and Equity fields.

While at the Bar, Smith lectured in the law of evidence at the Article Clerks' course where his interest in that difficult and important area of the law developed.

It was not surprising, therefore, that he was appointed in 1980 as Commissioner of the Australian Law Reform Commission in charge of the reference relating to the Law of Evidence. Under his unassuming but firm leadership, the law of evidence was analysed in depth for over four years, involving his Honour in extensive consultation with the profession throughout Australia. The discussion papers and reports produced by him constitute a valuable source of reference on this topic. So highly is his work regarded, that many judges make frequent references to it on the basis that it contains an accurate summary of the law of evidence.

His Honour returned to the Bar in 1984 and took Silk in the following year. As Senior Counsel, he became involved in many complex cases, particularly those dealing with building and engineering contracts, applications under the Freedom of Information legislation and administrative law.

His thorough understanding of the basic principles of law, his ability to marshal facts and to construct a logical and appealing argument in support of his case, made him a formidable opponent in court. His quiet, but firm, concentration on the principal issues in the case without engaging in personal attacks on his opponents were the hallmark of his advocacy.

While at the Bar, he gave much of his time to serve on many of its committees, in particular, those dealing with law reform. For many years he was a member and then Chairman of the Law Reform Committee and was involved in preparing many submissions to government on important pieces of legislation. More recently, His Honour was appointed to head up with Stephen Charles Q.C.

the Legal Systems Committee which is concerned with preparing for the Bar Council submissions for improving the functioning and facilities of superior courts. The time so generously given by his Honour typifies his approach to matters which he considers are of importance to the community.

His Honour will be a great asset to the major trial court of which he is now a member and the community is fortunate to have a man on that bench with his temperament, ability and experience.

His Honour is a committed train traveller and it is thought that what finally made him accept the appointment was the gold (or is not plastic?) pass for free train travel tha goes with the job.

The Bar wishes Judge Smith all the best in his new life.

Judge Higgins

All those lawyers who have steadfastly maintained that judges should be chosen according to criteria somewhat akin to pedigree, have had their theories dashed over the last few years.

There is no more outstanding example of the new breed of judge than forty four year old Michael Higgins, the most recent appointment to the County Court Bench. His meteoric rise to the top of his profession should serve as an inspiration to all the 'battlers' of this world, for his is the real life example of how hard work, persistence and sheer ability can overcome the most overwhelming odds.

While his contemporaries were spending their teen years at school doing all the things that youngsters do in their formative years, Michael was out in the workforce trying to make ends meet for his large poverty stricken family. By the age of fourteen he was working for the Singer Sewing Machine Company by day and attending Austral Coaching College by night.

He did his law course at the University of Melbourne while working for the Department of Agriculture but still graduated with First Class Honours just missing out on the Supreme Court Prize. At the same time he was continuing to bear the brunt of supporting and nurturing his seven brothers and sisters. His early life was dedicated to helping others and he has carried this admirable quality into his adult life.

After doing his articles at Ellison Hewison and Whitehead he joined Slater and Gordon in 1970 and in a career there spanning eighteen years he became the doyen of common law plaintiff's solicitors. He combined his compassion and respect for his clients with an awesome ability to hone in on the real issues of a case. He was a daunting opponent. Michael's appointment to the County Court is a fitting tribute to a man who has had nothing easy in life but has still got to the top. Even his clients have at times added to his woes.

Michael enjoys recounting the story about how the Irishman, Paddy gave him his most embarrassing moment in court. Paddy lived at the Salvation Army Hostel and had the misfortune to fall under a tram. His memory is extremely poor - Michael suspects from drinking too many flagons of sherry. The problem was to get Paddy to be able to remember the facts sufficiently so that he could give evidence.

While counsel opened the case to the jury Michael took Paddy out and told him that he could forget what all the barrister had told him about medical treatment and hospitals and so forth but there were two critical facts which he had to recall if he was to win the case. They were two critical facts which he had instructed Michael on when he first saw him some years earlier. The first one was that he had placed his foot on the running board of the tram and the second one was that as he did so the tram moved off.

Michael recalls saying to Paddy, 'Now do you recall those two facts?' and Paddy saying to him 'Yes, I placed my foot on the running board of the tram and, ah, what was the second one, Mike?' And Michael said, 'The tram moved off'. So Michael

said to Paddy, 'They are two essential facts which are necessary to win your case and that is what you told me in the first place and that's what you have got to remember'.

So Michael left Paddy standing like a guardsman outside the court concentrating on this mammoth intellectual task. It wasn't very long before Paddy was called to give evidence and Paddy marched into court, straight into the witness box, held the Bible upright like a policeman in the Magistrates Court indicating to all and sundry that these were not unfamiliar circumstances to him, took the oath, placed the Bible down and much to Mike's horror said 'I put my foot on the running board and the tram moved off'.

There was a stunned silence in court and Michael took a sideways look at Paddy and there was Paddy smiling from ear to ear giving this triumphant grin. Despite all that they still won the case.

He didn't lose many!

No wonder Michael's wife Toni, herself a solicitor at Slater and Gordon, and his four children, are so proud of his mighty achievements.

Chairman of the Motor Accident Board from 1983, Deputy President of the Accident Compensation Tribunal in 1985, President of the Compensation Division in 1987, Deputy President of the Administrative Appeals Tribunal, and now judge of the County Court.

Judge Hardham

For Judge Peter Barry Hardham, who was welcomed to the Bench of the Accident Compensation Tribunal as a Deputy President on 7th April, matriculation at Melbourne High School was the springboard into the law's deep waters.

His first work encounter with the law was as a bench clerk at Carlton Court and subsequently at the City Court where his Honour witnessed the impact of the law on people's everyday lives. There is little doubt that this early experience gave him a sound grasp of procedure and an easy familiarity with the system of the courts, an excellent starting point for the 21 years in practice as a solicitor which was to follow. From the City Court he made the transition to the Crown Solicitor's Office and undertook part-time study of law at Melbourne University. His initial work with the Crown Solicitor's Office was in the 'old' Motor Car Section. This was followed by a sustained period in the workers compensation area under Tom Mornane as Crown Solicitor. Like many of his clerical contemporaries in the Crown Solicitor's Office (Frank Wheelahan, Russell Lewis and Ron Meldrum) the transition to private practice soon followed after graduation and admission. They departed armed with negotiation skills honed by the almost compulsory card games which occupied most lunch hours. Judge Hardham went into partnership with Bill Carew in 1967 under the name W. Carew, Hardham & Co. after a short period of employment. From 1981 until his retirement, prior to taking up his position on the Accident Compensation Tribunal, he was a partner of the city firm of Hardham, Dalton & Sundberg.

His practice was primarily litigation but focused on the field of personal injuries of a motor and industrial nature. He had a significant practice in family law and took a particular interest in the role of the solicitor in the development of services more related to counselling and mediation. His approach to his practice was a blend of meticulous preparation of files and an aggressive handling of the same. At a time when solicitors like himself are more likely to achieve positions of a judicial character he can particularly offer to the Accident Compensation Tribunal a personal experience of the human side of personal injuries and the problems of clients from the initial instructions to the handing down of judgment.

His private interests range from counselling at the Augustine Centre in Hawthorn, to debating, golf and tennis. His Honour is a very keen student of

the modern theatre and has written many plays, the first of which to be produced will be offered to the public late in June 1988.

In common with many of his former partners (and his brother on the Accident Compensation Tribunal Bench, Judge Bowman), he is a keen Collingwood supporter and that obsession in itself is a good pointer to his optimistic outlook on the law and its development over his years of involvement.

The Bar welcomes Judge Hardham on his appointment.

Farewell
Mr. Justice Murray

Basil Lathrop Murray retired as a judge of the Supreme Court on the 11th May 1988, having served the State as a judge since 5th September 1974. His career in the law spanned 42 years. He was admitted to practice in May of 1946 and signed the Bar Roll in October of the same year. His Honour read with Mr. Sholl as he then was and became a Q.C. after only 13 years at the Bar. His Honour was appointed Solicitor-General in 1964 and regarded as a distinguished advocate for the State in many fields. He was involved in important constitutional and criminal cases before the High Court and Privy Council. His Honour came to the Bench having been awarded the C.B.E. for his services as Solicitor-General.

Mr. Justice Murray was a courteous, correct and tolerant judge. His court always ran with ease and a free flowing style. On occasions his Honour's manner was lightened by impish humour. On one occasion when presiding in the Full Court one of his Honour's brother judges had disqualified himself from sitting as he knew one of the parties. His Honour remarked 'I don't want to suggest we were scraping the bottom of the barrel but it was difficult enough to constitute this court in the first place!'

The affection and respect in which his Honour was held by the profession was demonstrated at his farewell in the warmth of the speeches and by the large numbers in attendance to hear them. The Bar will greatly miss him as a judge as no doubt will his colleagues on the Bench.

Mr. Justice Emery

It is almost 30 years ago since Henry Charles Emery signed the Roll of Counsel on 29th August 1957. He read with Nubert Stabey (as he then was) and entered into the arena of general litigation particularly in matrimonial causes, commercial law and taxation. His undoubted forensic skills, his understanding of the law together with his unfailing good humour earned him a reputation of a fair, yet formidable, opponent.

His Honour was born at Colac on the 9th July 1923 and was educated at St. Patrick's College in Sale. In 1941 he enlisted in the AIF, joined the 2nd 4th Commando Squadron and served his country with singular distinction and bravery. His Honour was discharged in 1946, studied law at Melbourne University being admitted to practice on the 2nd October 1950. He then went into partnership as a solicitor in the firm of Pippey & Emery where he enjoyed a general practice that prepared him well for his life at the Bar and on the Bench.

His Honour took Silk in November 1974 and was appointed to the Family Court Bench as a senior judge in February 1976. He saw the Court through its developing years and as a judge at first instance and otherwise as a member of the Full Court he was involved in many leading decisions through a difficult decade that stabilised the practice of Family Law in Australia.

His Honour was an astute, knowledgeable and hard working judge. He was fair. His capacity for work was legendary among those that practiced within the jurisdiction. Yet above all, he 'gave satisfaction as a judge'. His wisdom, his dignity and his common touch will be sadly missed.

The Bar wishes his Honour a long and satisfying retirement.

The Commercial List - Where Now?

The Commercial List is no longer a novelty. How is it satisfying the commercial criteria of supply and demand? The editors called on ***Mr. Justice Beach****, the judge in charge of the List, for a progress report.*

It's 1.30 p.m. on a Melbourne winter day. Mr. Justice Beach is in his chambers during the luncheon adjournment of a heavy commercial cause which has some days to go and doesn't look like settling. His Honour is just completing some notes for a late afternoon meeting of the Council of Law Reporting of which he is Chairman. He is also Chairman of the Works and Buildings Committee of the Supreme Court which has responsibility for the Court's physical facilities (or lack thereof). His Honour is also joint consulting editor of Civil Pleadings Actions and Precedents. The thought crosses our mind that although we hope his Honour is a regular reader of the Lunch column of Bar News, it seems unlikely that he gets much opportunity to try those delicious venues.

His Honour provided some statistics which demonstrate the rapid growth of the Commercial List. These appear at the end of this article: However of most significance is the figures for total disposals which in 1985, 1986 and 1987 were 54, 217 and 322 respectively.

Along with other areas of the Supreme Court's work, the Commercial List suffers from a severe shortage of judge power. For most of the time, only two judges can be spared. His Honour told us that this forces judges to exercise strict control on the type of cases admitted to the List. The general policy has been to keep out cases which, although having a commercial flavour, do not fall within any of the specific descriptions referred to Order 14 Rule 1(a). For example, 'one-off' cases such as negligence actions against professional advisers and actions over the sale or purchase of real estate or businesses will often be rejected, as will partnership disputes and claims arising out of employment contracts. However his Honour stressed that these are only general guidelines and judges remain open to persuasion that a particular case deserves the expeditious treatment the Commercial List can provide. One example his Honour mentioned was a recent case where a woman had purchased a flat and shortly before settlement her bank reneged on a promise to provide finance.

Another practical limitation that has to be provided is that if a case is likely to take more than three weeks and there is not a possibility of getting a third judge, it will usually go out of the Commercial List. His Honour was hopeful that there could be three judges available for the rest of this year, but he appreciates only too well that there are demands made because of other areas of the Supreme Court's work.

What resources does the Commercial List really need to work effectively? His Honour had no hesitation. 'Four judges, a separate Registry and a Commercial List Master.' With these resources, the Commercial List would not have to make the somewhat artificial exclusions from the List already referred to. There is no doubt that there is the work available. The cases admitted to the List up to the end of May 1988 numbered 220. Four judges are much more than twice as productive as two. When only two judges sit in the Commercial List and both get bogged down in long cases, other cases which come up day by day with no realistic prospect of getting a start are much less likely to be settled. There is no substitute for the imminence of an actual hearing as a facilitator of settlements.

The lack of judicial resources is as much a question of physical accommodation as finance. There is a Grand Design, which will involve a central Criminal Court in Lonsdale Street for Supreme Court and County Court criminal trials with the present Supreme Court building and the old High Court building being used for Supreme Court civil work. Amongst other things, such a project is complicated by the Federal Government's planning for Federal Court and Family Court accommodation.

We must say that if the Federal and State Court facilities in the second city of a nation of 16,000,000 are as plainly inadequate as they are, the time is long overdue for Federal and State Governments to plan such an essential facility with the same vision that produced the new Parliament House. At the very least, in the short term it is essential that the High Court building be returned

to the State to enable it to be used by the Supreme Court.

Returning to a more mundane level, we asked his Honour about the reaction of the legal profession to the Commercial List, its sometimes unfamiliar and greatly accelerated procedures coupled with Draconian sanctions. His Honour spoke highly of the competence and co-operation of solicitors and counsel who are regularly engaged in the List. He said there was a general understanding of the need to make these procedures work and generally it was working well.

On that encouraging note we left his Honour to return to his afternoon's work.

The Editors

STATISTICS 1985-1987

	1985	**1986**	**1987**
1. Total Disposals	54	217	322
2. Settled before Trial	24	55	98
3. Settled at Trial	11	68	89
4. Dismissed at Trial	1	12	19
5. Discontinued	13	22	41
6. Tried to Judgment	5	49	59
7. Judgment entered in default of appearance or defence or upon return of Summons for Final Judgment	-	11	16
8. Removed from List	24	101	187

Bar Dinner Report

Well what an event!
19 judges being welcomed at Leonda. It has to be some sort of a record. The biggest problem was how to seat them all at the high table. There was a proposal to have them seated in a type of mini-grandstand with the Supreme and Family on the top tier going down to the Accident Compensation Tribunal at the bottom. However the powers that be thought that too impractical and costly - and scattered most of them around Leonda. In any case the high table was absolutely groaning with celebraties. There seemed to be so many judges and VIP's separating Mr. Justice Teague at one end, and Ian Spry Q.C. at the other.

And what a grand social occasion it was. One of the biggest turn-ups for years. To quote Mr. Justice Cummins, 'It's good to see how the number of females at the Bar have increased over the years'. There were quite a few present. And it seems that sequins are de rigeur at the Bar. There were black sequins, blue sequins, red sequins, all on various plunging neck lines. Even ex-Lord Mayor Tommy (Lord Lunch) Lynch was wearing a daring purple dinner jacket with sequins on the lapels. He explained that it was the only one available from the formal hire shop - the rest having been snapped up by other members.

The dinner is a marvellous opportunity for catching up on things. Most spend the first hour looking around the other tables to see who is there, the next two hours listening or trying to listen to the speeches, and the final hour wandering around the room for a good gossip over the odd glass of port.

Young Michelle Quigley looked to be having a popular night. Michelle is a former Miss Victoria but is perhaps better known for being Tony Southall's reader. In any case she must have a truly incisive legal mind, as she seemed permanently surrounded by lots of Supreme Court judges, eminent QC's and members of the Bar Council. She too was wearing sequins.

Many had trepidations about Mr. Junior Silk's speech. How on earth could he cover 19 judges in the allotted time? Some doubters said he was a rather dry industrial chap. All these fears were quickly allayed as the good Doctor Jessup did a superb job. So good that we have decided to print his speech, for those not present. This does not necessarily set a precedent.

The replies were fabulous. Mr. Justice Cummins interfaced in an extremely ongoing philosophical scenario. Judge 'Scotty' McLeod's speech was a veritable gold mine of legal anecdotes.

Even the food was an improvement on previous years. Surrounding a large wad of stuffing with a very small chicken and putting one on each plate was a novel bit of nouvelle. Well done Leonda - keep it up!

And so the evening came to a rather premature end. Just as many were settling in, the port disappeared and the lights went off. Many frantically ran around the room finding suitable companions to trot the light fandango at places like Silvers, the Metro and Madisons (Lazars now being considered to be very non-u in the light of recent events). Others simply went straight home looking forward to a good cup of cocoa and a jolly good read of the latest Australian Law Journal before lights out. Such is the Bar Dinner.

Mr. Junior Silk's Toast - 1988

Mr. Chairman, distinguished guests, fellow members of the Bar. Some months ago, when I heard of the appointment of a large number of judges, many of whom were not members of the Bar, to the Accident Compensation Tribunal, and realising that I had this pleasant task ahead of me, I contacted the Chairman and asked him:

'Will all the judges who have been appointed to the Accident Compensation Tribunal be guests at the Bar Dinner this year?'

He replied rather cautiously: 'This will have to be discussed at the Bar Council - it's a situation we haven't encountered before'.

No doubt it was discussed at the Bar Council, and you have before you the results of that discussion. But before coming to the members of the Tribunal, I should turn to the recent appointments to the Supreme Court, the Family Court and the County Court.

Nicholson

His Honour Mr. Justice Nicholson is the first of two of this evening's guests who have taken to heart the Bar Council's recent revelation of the penury faced by the Victorian judiciary. So his Honour has moved to greener fields.

His Honour's appointment to the Family Court is a commendable example of affirmative action at work - he is the first male person ever to have been appointed as Chief Judge of the Court. It is to be hoped that, as with every such exercise in affirmative action, once the old prejudices have broken down there will be no further need for positive discrimination.

The appointment gives his Honour the opportunity to add to his already long list of chiefly positions. In the Air Force Reserve his Honour is Chief of just about everything. He is thought to be awaiting the retirement of the Solicitor-General to become the Patron of the Red Faces Club. He has long been Chief Cook and Bottle Washer at a floating establishment on the Thompson River at Bairnsdale and Maitre d' at a little eating place at Seaspray, not far from Sale, where his Honour regularly sat on circuit. Indeed, the Gippsland Lakes have been the scene of many of his Honour's chiefly exploits. Real leadership was shown on day by his Honour who, when the boat upon which he was standing was plainly afloat, even to the sober aboard, plotted the vessel's position as 1.5 miles inland. So too did his Honour show admirable initiative when, noticing a large group of rather doubtful looking locals closely observing the early morning victualling of his Honour's yacht, he instructed his associate to stand guard on the yacht until his Honour's return in the evening. Needless to say, there were no exhibits called for or tendered in court that day.

One minor logistic difficulty with these chiefly sort of activities is that they keep one away from home a great deal. As a result, and for his sins, his Honour has been required by they who must be obeyed to absent himself from these festivities and to give substantial attendance at this daughter's 21st birthday party this evening. With this fine sense of priorities, his Honour is ideally suited to take his position on the Family Court.

Graham

In accepting an appointment to the Family Court, his Honour Mr. Justice Graham has turned his back on those challenging pleadings and searching interrogatories for which he was justly famous, such as the interrogatory suggested in his thought-provoking work which asks the plaintiff whether, at the time of the accident, he was walking in a hurry backwards or sideways downstairs.

Since joining the Family Court, however, a whole new life has opened up to his Honour. His Honour regards it as inappropriate for a Family Court Judge to spend all his time away from the real

world, in his chambers for instance researching the law or writing judgments. It is essential for a judge to experience real contacts with every day people, as his Honour does every morning for about two hours on the golf course - the every day people contacted being such people as the members of the Bar then appearing before him. It is a pity that his Honour's Chief Judge is not here tonight to be told of such industry.

Neither has his Honour eschewed other equally important contacts with real people - such as the good residents of Maui, where his Honour is the visiting tennis coach emeritus, a position whose demands he is barely able to satisfy, given the heavy international commitments which fall upon a judge in his position.

Turning to more mundane matters of court administration, his Honour has performed something of the role of the adjutant at the Family Court. It has apparently been suggested that the court could make greater use of computers. His Honour has been in the vanguard of this development, installing in his chambers some borrowed hardware. Software was not so readily available, but his Honour was able to obtain a disc entitled 'Empire Raiders' and can often be found in his chambers trying to improve on his previous best score of 14,987,603. It is thought that a property settlement programme along the same lines could be developed - to be used in court by opposing counsel, whereby items of property move from left to right across the screen, counsel having to snare the property with little nets or, failing that, to blow the property us lest it be snared by opposing counsel.

Also in his role as Adjutant, his Honour is in charge of outfitting the court in their new robes, now that the statutory embargo on robing has been removed. This has involved decisions as to what to wear, and whence to obtain it. Other members of the court have been invited into his Honour's chambers to view the contents of a wardrobe specially stocked for the purpose with items as varied as secondhand waiters' jackets, full-length gowns trimmed in ermine and leopard-skin leotards. His Honour, however, is thought to favour a form of dress which would be consistent with the twin objectives of the removal of the embargo on robing, namely, that judges of the court should appear to have more authority, and that the judges should be more anonymous-looking. With these objectives in mind, his Honour is believed to favour a simple, all-covering black gown reaching from the neck to the ankles, and, for headgear, a black plastic mask of the kind worn by Darth Vader.

Teague

Over the years, his Honour Mr. Justice Teague has built up a reputation for enormous industry. He is undoubtedly the worker on this evening's panel.

His Honour gave a great deal to the profession, selflessly toiling through night and day, and catching the now notorious first tram in Riversdale Road each morning - a tram, incidentally, which used to wait for him if he were late, the conductor occasionally ringing his Honour's doorbell. With the hours that his Honour kept, it is a wonder that he managed to father so many children. No doubt his long suffering wife had to ensure that there was an appropriate entry in his Honour's diary some six weeks ahead.

At an early stage in his Honour's legal career he realised that advancement in the profession was impossible without a solid sporting foundation, and so his Honour became expert at tennis, playing forehands on either side. It is said that his Honour perfected this technique in anticipation of being appointed to judicial office, so as to avoid having to make those unseemly backhand comments to counsel in the course of a case. His Honour's forehand comments to counsel are, of course, well known.

In the knowledge of his Honour's propensity to try anything once, those who attended his Honour's welcome were startled to hear his Honour announce 'I can fly higher than the eagle - with your wind beneath my wings'. The Chief Justice is reported to have no intention of placing his wind beneath his Honour's wings, but on the contrary has considered sending his Honour on circuit to all manner of flat places lacking in tall buildings and mountainous cliffs which might by their presence prove too tempting for the new sporting endeavour in which his Honour seems to have taken an interest.

Cummins

Of the many members of the Bar here tonight, there must be very few whom I have not consulted in the course of preparing this toast. On the subject of his Honour Mr. Justice Cummins, I have

universally encountered the very helpful comment: 'Oh, there is so much to be said about him, but you wouldn't be able to repeat it'. I rather suspect that his Honour, having been both Mr. Junior and Mr. Junior Silk in his time, may have something coming to him.

But this is an occasion to recognise his Honour's enormous contribution to life at the Bar, especially the junior Bar. His Honour accurately summed up his own approach at the opening of what he described as a 'gorgeous palace', when he said 'There is a great purpose in barristers living together', although, later in his speech, he qualified that by saying 'We seek intimacy, but not incest'.

It provides an interesting insight into his Honour's psyche to observe that he places a high value on intimacy. He was, you will recall, an intimate, withdrawn, shy person at the Bar. He was well known for avoiding the bright lights, the night spots, the fast cars. He could never be mentioned in the same breath as Liberace or Geoffrey Edelsten. The producers of the Bar Revue, in other words, got it all wrong.

His Honour's strong identification with the Bar as an institution used to make him forgetful that he was still wholly or partly robed, in places where perhaps he shouldn't have been. Thus his Honour, on entering a small restaurant in Lonsdale Street one lunch time with his long silk bar jacket still on from a morning in court, found himself being hailed by one of the less decorous members of the Bar with words demanding the whereabout of the entree ordered 15 minutes previously. His Honour, placing a borrowed tea towel over his arm, did his best to assist.

His Honour was so likeable at the Bar that a group of the Hell's Angels motorcycle gang, having just been prosecuted by his Honour, sent his Honour a large greeting card expressing their affection for him. It was, of course, purely coincidental that the trial in question had not produced a conviction.

His Honour's appointment to the Supreme Court heralds a welcome return to classicism after what his Honour would regard as some prosaic appointments. There is nothing prosaic about his Honour, being both a classicist and a member of the Lonsdale Street Literati. His Honour made it clear at his welcome that a new broom would be felt in the dusty intellectual corridors of the court. Too long has the court revered the outmoded judgments of the Mansfields, the Eldons, the Dixons, the Dennings and the like - his Honour will ensure that henceforth the court moves with the times and follows the teachings of the Lockes, the Jeffersons, and the Montesquieus. Only by so doing will the court prepare itself for the 21st century.

What can we expect of his Honour on the bench? There have already been signs of great care in the wording of judgments. This is in character. I rather suspect that his Honour will find the tone and language of conventional judgments too tedious, and one can be sure that his Honour will never stoop to using plain English. How would his Honour describe his own approach to charging a jury? Perhaps thus:

> I shall survey the courtroom's diameter,
> Just to show them that I am no amateur,
> Then I shall turn to the jury,
> And, to the prosecutor's fury,
> Charge them, in Iambic Pentameter.

Rowlands

Like his new Chief Judge, his Honour Mr. Justice Rowlands was one of the boat people adrift on the open seas, refugees from the beleaguered and poverty-stricken Victorian judiciary, in search of a court with reasonable job satisfaction and the prospect of a healthy environment on the bench. Happily, his Honour's boat drifted into the tranquil lagoon of the Family Court - a lagoon ringed by lush groves of word processors, libraries, associates and secretaries. But what was it that induced him to leave his beloved AAT? It is widely believed that, when it was mooted that he might go to the Family Court, his Honour received a petition imploring him to stay and to continue his fine work at the AAT. This petition was signed in the first instance by the Premier, and then by the Chairman of Continental Airways, by the Chief Commissioner of Police, by the Chief Electoral Officer and by the Secretary of the ALP.

Lest his Honour should not be persuaded by this entreaty, however, the petition did have clipped to it a ticket on the refugee boat to which I have referred.

His Honour, while at the Bar, actually used an expression which I had thought was reserved for the vocabulary of Sydney counsel who specialise

in appellate work and which, for the Victorian Bar, was confined to the book of famous last words. I received a phone call from his Honour one day in which he informed me that, in a couple of days' time, a case in which he had advised and in which he was holding a brief was to come on for hearing and that he was jammed. His Honour assured me that the case was a strong one, and he actually said (and this is a quotable quote) 'You can't lose' - words which were ringing in my ears throughout the duration of an uncomfortable, rather clammy, submission to the court. Needless to say, the words were still ringing in my ears months later when, now as silk, his Honour led me in our client's appeal to the Full Court - an appeal which, you will have guessed, was unsuccessful.

McDonald

At the Bar, his Honour Mr. Justice McDonald had an extensive common law practice, but was particularly well known for strikes - lightning strikes and union strikes. Lightning strikes were of course invariably the cause of those embarrassing bushfires in the Western District in the aftermath of which his Honour appeared for the SEC. So effective was his Honour's presentation of various cases on behalf of the SEC that certain other counsel, whose witnesses were showing up poorly under his Honour's searching cross-examination, were forced to dip into their bags of dirty tricks in an attempt to discredit his Honour's integrity. Thus it was that his Honour arrived at his motel in Warrnambool one Monday morning, and upon entering his usual room - one of two bridal suites in the establishment - found what at first blush appeared to be a buxom young lady propped up in bed, maintaining her decorum no more than was possible by the use of a very flimsy black negligee, and with a bottle of champagne and two glasses resting nearby. The whole scene was covered in confetti. His Honour was embarrassed beyond words by this little joke, but that was nothing compared to the frustration which swept over his Honour when he discovered that the buxom item in his bed was not a young lady at all but a mannequin's dummy. The cleaning staff at the motel, who had played a central role in this cruel act of deception, refused to clean up the confetti until his Honour had posed for a photograph sitting on the bed beside his lady friend, which he did. His Honour was sent a copy of the photograph, but has shown it to no-one, reportedly because his Honour is depicted in it as looking particularly pleased with himself.

His Honour developed his practice in union strikes when he appeared for the builders in the case which led to the deregistration of the Builders' Labourers Federation two years ago. His Honour on occasions conducted the most engaging question and answer sessions with witnesses called on behalf of the union, while other counsel sat in awe at the bar table.

One example involved a scaffolder called by counsel for the union. One might expect such workers to be fairly rough around the edges. This witness was a big man, and to all appearances a strong one. But he didn't look like you average construction worker. He made a real hit with his Honour the moment he emerged from the well of the court and moved towards the witness box. The witness wore a tight fitting yellow T-shirt, tight-fitting pink silk shorts, and Nike sporting shoes. He sported an even, golden-brown, sun-tan and the whole lot was topped with thick, wavy, peroxide blonde hair. It was all his Honour could to to peer over his spectacles at the presiding judge in disbelief. Come cross-examination by his Honour, the following occurred -

HH:	At that stage you said he called you a **weak** something?
Witness:	For doing it, yes.
HH:	He called you a **weak bastard**?
Witness:	Right, that will do.
HH:	Something like that?
Witness:	Something **worse** than that - something **Like** that anyway.
HH:	How heavy are you?
Witness:	Too heavy at the moment.
HH:	How heavy?
Witness:	I should be 13 1/2 - probably about 14.
HH:	You are a **strong**man, are you not?
Witness:	You are making me blush.

HH: (Looking straight at the presiding judge) I did not ask you if you were **cute**, but **strong**?

Witness: You are still making me blush.

The Commission eventually drew down the curtain by announcing that it would take judicial notice of the fact that the witness was strong.

Campton

Life away from the Liquor Control Commission will never be quite the same for his Honour Judge Campton, for the liquor industry was his special place. As part of his duties at the Commission, he had to decide from what localities consumers of alcohol would be able to get their supplies. It was always his Honour's view that for civilised drinking it was essential that the consumer have ready access to conveniently located outlets - in his Honour's own personal case, for instance, in Bordeaux.

His Honour soon found that the discharge of his statutory functions would be severely hampered if he were unable to examine at first hand the conditions under which all alcoholic beverages available to the public in Victoria were made. This no doubt explains his Honour's passion for international law. His Honour was a leading Australian delegate to the International Law Association conference in 1984 held in Paris. His Honour is to be commended for selflessly accepting a nomination to the Australian committee of the Association with all the onerous travelling requirements which that must involve.

His Honour, however, was never neglectful of his more mundane duties at the Commission. Often cases before him had to be determined by recourse not so much to decisions of the International Court of Justice as to a Melway Street Directory. His Honour once became quite impatient with senior counsel appearing before him who, in the course of cross-examining a lady whom we shall know as 'Mrs. X', was paying more attention to the Melway than to either his Honour or the witness. Counsel was apparently testing the veracity of Mrs. X's testimony as to the course she would have to follow to drive from her home to the retail premises proposed to be licensed. Answering his Honour's enquiry as to what he was doing wasting time, counsel replied 'I'm sorry your Honour, I was just trying to route Mrs. X'. The dreaded noun to verb transmogrification strikes again!

Kimm

Unlike his brother Camtpon, his Honour Judge Kimm, while on the Liquor Control Commission, found no need for close familiarity with the consumer end of the hospitality industry. That is not to say, however, that his Honour did not thoroughly understand the licensee's point of view. He was, indeed, always very helpful. For instance, it had not occurred to certain very traditional golf clubs in Melbourne's sand belt that they should grant their lady associate members full participation on the same footing as men, but they were absolutely delighted when his Honour suggested such a course, particularly in the knowledge that they were seeking from his Honour a renewal of their liquor licenses.

His Honour also well understood the needs of the BYO licensee. A group of his former readers took him to a BYO restaurant on the occasion of his appointment to the Commission. His Honour's induction into the ways of the industry got off to a flying start when the unsuspecting restauranteur produced port all round at the end of the meal. For a brief moment his Honour looked even more inscrutable than usual.

His Honour's background as a champion wrestler is of course notorious. His skills in the martial arts came in very handy one evening at his home in Balwyn when, having previously had his letterbox damaged by a neighbourhood vandal, his Honour lay in wait after dark to the vandal, having nothing more to protect him (at his vantage point inside the rhododendron) than an Eveready flashlight. The unfortunate and unsuspecting artful dodger happened along right on cue only to be caught in flagrante delicto by a real live judge from the Liquor Control Commission. It is not recorded whether the artful dodger, once he was released from an agonising half Nelson, escaped into the night or was the subject of a citizen's arrest, but it is believed that his Honour has an indelible recollection of the fellow, lest he should come before him in the County Court.

Betts

His Honour Judge Betts is particularly well suited to the Accident Compensation Tribunal and to the philosophy underlying the WorkCare legislation. Indeed, by his own example he demonstrated what was to be gained by buckling down and leading a life of industry. His clients were able to

observe his Honour's fine clothes and might occasionally have seen his Honour arriving at the Workers Compensation Board in what they would have described as his Roller. The message clearly was that you too, with hard work, can share these rewards.

If his Honour was a socialist, he was a Toorak socialist - but he was also an international socialist. Feeling the need to study the Austrian legal system at first hand, in 1984, his Honour found himself being returned to his hotel in Vienna one morning at 7.30 by two Austrian policemen, his Honour having spent the previous night in various forms of research into local customs, notwithstanding his Honour's complete lack of the local language. Commendably, his Honour suffered this indignity at the hands of the police only on condition that they transported him in their Porsche, which they sportingly did.

His Honour was also very sophisticated in his methods of negotiation with insurers and their solicitors, but even more so in negotiating with his own clients. It is said that, on one occasion when his Honour's Muslim client was offered what his Honour regarded as a most reasonable settlement, the client asked to be left alone for a while to consult Allah. His Honour and his opposite number arranged for the client to be left in a small room at the Board, the two solicitors at the same time positioning themselves in an adjoining room, from where his Honour, in a deep, ghostly voice, bellowed through the partition wall: 'Take the money'.

Bingeman

His Honour Judge Bingeman is another one of the new members of the Tribunal who seems to have had the merest touch of conviviality in his life at the Bar. He is part of the grape set amongst this evening's guests, having grown them in the Yarra Valley and sold the end product in Fitzroy. It was a good deal of the end product that his Honour had imbibed one night on the Ballarat circuit when he accepted a suggestion by a senior member of the Workers' Compensation Bar to take a sobering stroll around Lake Wendouree. This they proceeded to so, but their bearing en route cannot have been very much like that of a London stockbroker on his way to work, as they were apprehended by the police and accused of harbouring an intention to perform unnatural acts.

His Honour and his colleague were no more capable of protesting their innocence than they were of performing any unnatural (or, for that matter, natural) acts and accordingly they ended up in the lockup, to suffer the indignity of being bailed out later by one of the solicitors on circuit.

Perhaps wisely, at the Bar his Honour resisted the temptation to become a fully paid member of the Red Faces Club, no doubt recognising the risk of a conflict of interest arising as between his Honour's role as a supplier, and the potential role of cellar adviser which would undoubtedly have devolved upon him if he had become a member. However, his Honour was not altogether out of harms way, having chambers on the notorious 10th floor of ODCE, which chambers were within what might be described as the fallout radius of the club's HQ.

By an incredible coincidence, a card-carrying member of the club just happened to secure his Honour's old room on the 10th floor, when his Honour went to the Tribunal. This member, who must remain anonymous but probably is not, most unreasonably failed and refused to agree to the moderate sum suggested by his Honour as only fair for the purchase of the exquisite furniture, carpets and fittings with which his Honour had decorated his chambers. Some quite unseemly haggling took place, but the anonymous member was not his Honour's equal as a common lawyer. Before the member could obtain a Mareva injunction (having lined up Nathan J for the purpose) his Honour shipped all of the assets in question out of the jurisdiction. Thus the member had chambers which resembled a bomb shelter. His Honour, meanwhile, knowing that right was always on his side, luxuriates in his official new surroundings. Let this be a warning to any claimants who come before his Honour having refused a reasonable settlement.

Bowman

When one considers how irreverent barristers are as a class, it is surprising that more of them do not acquire nicknames from their colleagues. His Honour Judge Bowman was an exception, being commonly referred to as 'the Beast'. or, as an ockerisation of something already not greatly refined, 'Beasto'. If this latter word sounds like a brand of instant gravy mix, it may not be too far from the truth, as his Honour is believed to have acquired this endearing sobriquet as a result of his

domestic habits when living in Ballarat in his days as a solicitor. His Honour's parents, who regularly, and perhaps surprisingly in the circumstances, visited his Honour at his Ballarat home, were able to identify in detail his Honour's complete dietary regime over the preceding week by examining the contents of the kitchen sink.

Little wonder that his Honour, on commencing practice at the Bar in Melbourne, took up dining (and lunching of course) at all the better restaurants. In fact, his Honour seems to have adopted a more wholesome lifestyle in almost every respect, the only throwback to the grotty old days being his Honour's continued attachment to the Collingwood Football Club. At least this sentimental trait reveals his Honour as the supreme optimist, such as is needed in the early days of the Accident Compensation Tribunal. If his Honour, however, is looking for a sporting metaphor to guide his work on the Tribunal, it is thought that his Honour would be better advised to place his faith in the ponies, which he has habitually done and still regularly does. If, on the Tribunal, his Honour shows the same kind of judgment as he has with his horses, and not the kind of judgment that he has with his footballers, then, as they say in Guys and Dolls, 'It's a probable 12 to 7' that his Honour will be a great success on the Tribunal.

Boyes

His Honour Judge Boyes will be yet another major contributor to the varied and colourful extra-curricular programme of the Tribunal. The Tribunal has been constituted by the Government with a careful eye on balance. Thus his Honour will not be adding to the viticultural richness of community life on the Tribunal, but, with his brother Bowman, will be introducing an appropriate flavour of the turf. It is said that he has supplied his associate with a hunting horn, to be used to announce his Honour's appearance on the Bench.

Perhaps there is a touch of the Wild West in his Honour. It seems that, one day after court at Wangaratta, his Honour accepted a challenge to compete in a contest designed to see who was the fastest on the draw. The contest was called Texas shooters and, needless to say, took place in a pub. The idea was to fill a glass to within 1/2 inch of its rim with peppermint schnapps, fill the 1/2 inch with soda water, cover the glass with a hankerchief, bang the whole contraption hard down on the bar (thus inducing effervescence) and then drink the contents of the glass in one gulp. His Honour, together with another member of the Bar and a local real estate agent, blazed their way through 3 Texas shooters each. His Honour, being well ahead on points and full of bravado, demanded a fourth round. This the complaining estate agent agreed to buy, but, having done so, turned back with full glasses only to see nothing in the place where his Honour had previously been standing. It was necessary for him to lower his gaze somewhat to find his Honour, who had met the end of all brave Texans. Unlike the Texans, however, his Honour was alive, if not exactly well, next day in court.

On the more personal side, his Honour is believed to have been chosen for his important position on the Tribunal because of his gentle, caring and sympathetic approach to the question of compensation, and because of the cautious and sensitive way in which it is thought he will conduct proceedings before him. With these qualities, and with his jodhpurs and spurs never far from hand, his Honour is ideally equipped to be a part of this new social experiment.

Croyle

His Honour Judge Croyle has without doubt been appointed to the Tribunal to inject a certain sanity and maturity into its membership. His Honour's make-up is notable by the absence of that sense of the absurd which is apparent in so many of his brethren. His Honour is, by his experiences on circuit, well-equipped to deal with all manner of industrial injuries and diseases, particularly those of a psychological nature arising from unwelcome advances by members of the opposite - or, for that matter, the same - sex. I say his Honour is well equipped in this regard because of a particularly educational encounter experienced by him on one occasion at Warrnambool - which seems rather to have been the naughtiest circuit of all. His Honour, answering a knock on his motel room door one evening, was startled to see a person standing there clad only in black female foundation garments of the briefest variety - indeed, there seemed to be more lace than garment. The most effective form of bodily covering displayed by this person was constituted by the high boots being worn. This person proceeded to proposition his Honour who, of course, declined as politely as his

now dry throat could manage. The black-undied intruder, however, would not take even a polite no for an answer, and proceeded to take his Honour, in a Western District variation of the circular waltz, all around his Honour's room. Some of you may be wondering what on earth was wrong with his Honour, to look such a gift horse in the mouth. The trouble was that the caller was not your local Mata-Hari, but one of his Honour's own colleagues on circuit - and a male one at that. This colleague's attempts to fit into the borrowed undergarments of one of the lady solicitors also on circuit was not a real hit with his Honour. Neither was the fact that at that moment, all the other members of the Bar on the circuit just happened to be taking their daily constitutionals in the corridor outside his Honour's open door. With this behind him, his Honour will be well equipped to handle any industrial accident with equanimity.

Hardham

His Honour Judge Hardham, with his background with State Insurance and in the Crown Law Office, will bring a different kind of balance into the personnel of the Tribunal, with so many of the other appointees being from such places as Slater and Gordon, Maurice Blackburn, Holding Redlich and the like. The odds of the defendant Commission drawing his Honour may be about 6:1, but that is better than 7:0. His Honour, in his time as a solicitor, had a very fine record of results for the defendant insurer, a record which was marred only when his Honour ventured on circuit. Sale, which has been the undoing of many a city practitioner, did not let his Honour off easily. Students of comparable personal injury verdicts would have greeted with surprise the award by a Sale jury against his Honour's client of $850,000 for a bad back. His Honour likewise was surprised and not in the least amused, expressing his disgust by leaving Sale that night and never returning. No credit was given to the expert representation accorded the local plaintiff by the present Chief Judge of the Family Court. It is to be hoped that the good people of Sale, and for that matter Victoria, will give his Honour better treatment now that he is on the bench.

Higgins

His Honour Judge Higgins acquired something of a reputation very early in his legal career when, as an articled clerk at Ellisons, acting for the defendant in a case in which liability was fiercely contested, his Honour made a payment into court accompanied by a notice admitting liability. From this his Honour deduced that he was cut out to be a plaintiff's man. At Slater & Gordon, his Honour had a reputation for being able to produce witnesses from nowhere when most needed, and it was just such a conjuring trick which enabled his Honour to see a direct telecast of his very own Collingwood football team in their most recent Grand Final disaster. At about 1.30 p.m. on Grand Final day, a parking attendant in the grounds outside the MCG was alarmed to see his Honour gaining access to his Peugeot station wagon by means of the tailgate window. Suspecting foul play, the attendant verballed his Honour as to his intentions. This is where the conjurer in his Honour came to the fore. If the truth be known, his Honour had shortly before arrived at the ground as a first time user of his brand new MCG provisional member's medallion, but was too late, was denied entry to the ground, and was faced with the prospect of battling out through the on-coming traffic and trying to regain his home at Diamond Creek in time to see the match on television. As if that was not enough, his Honour then discovered that he had left his keys in his car, which explains the ungainly scene discovered by the parking attendant. Snatching victory out of the jaws of defeat, his Honour merely told the attendant that he had locked his keys in the car and had to get in via the tailgate window which was always left open, and that there had been a terrible emergency requiring his presence at his home immediately. Not only was his Honour's story, which was technically true, but the attendant obligingly cleared a way through the on-coming cars to get his Honour out of Yarra Park, then to transfer his Honour to the care of the police who, with sirens blazing, provided a high speed escort for his Honour along Punt Road as far as Johnston Street. Needless to say his Honour reached home in time to view most of the game on the television. Also needless to say, as a Magpie supporter, he shouldn't have bothered. It is believed to be this kind of quick thinking and initiative which led to his Honour's appointment as President of the Accident Compensation Tribunal.

MacLeod

His Honour Judge MacLeod undoubtedly owes his appointment to the Tribunal to the very great contribution which he made to efficient judicial administration even while at the Bar. Over many

years of practising before the County Court his Honour came to realise, along with other visionaries such as the Premier, Mr. Julian Disney and the occasional member of the Law Institute Council, that trials were an unnecessary and over-expensive indulgence which served only to hinder prompt dispute resolution. In fact, having studied the matter over a number of years, his Honour found trials even more unnecessary on Fridays than they were on Mondays and Tuesdays. The Premier must have noticed his Honour's passion for expedition, and, recognising that the results of his Honour's endeavours were very much in the public interest, suggested that he try his hand at achieving the same result from the other side of the Bench.

At the Bar, when appearing for plaintiffs, his Honour's technique of bringing proceedings to an early conclusion is well known. When appearing for defendants the solution was not so obvious. But again his Honour set new standards for the common law bar - such as the occasion when his Honour decided that expedition would best be served if he did not cross-examine the plaintiff, or any of the plaintiff's witnesses, at all. His Honour regarded it as the merest trifle that the jury returned a verdict three times the sum which has been offered by his Honour's client - the important thing was that the needs of efficient court administration had been satisfied. Such as the occasion when his Honour, detecting a growing scepticism in juries, decided not to address the jury at all on behalf of the defendant. The outcome of this case caused more concern for the Bar, as the verdict was thought to be somewhat less than might have been expected had the jury been addressed in the usual way - at least by his Honour.

His Honour's penchant for brevity carried over into the discharge by him of the onerous duties of treasurer of the Personal Injuries Bar Association, at the Annual General Meeting of which his Honour put it, between conferences, a cameo appearance to announce that everything was entirely in order - there were just sufficient funds in hand to permit the holding of the usual booze-up at the end of the year.

McCarthy

You may have gathered that several of their Honour on the Tribunal could just show a slight tapering off in performance after lunch. It was to counteract that tendency that his Honour Judge McCarthy, a noted P.M. performer, was appointed. His Honour improves as the day wears on, and any member of the Bar appearing before his Honour before about 11.30 a.m. should be prepared for a rough ride. His Honour's later-hours biological clock was put to good use some years ago when his Honour, then a junior partner at Rennick & Gaynor, had to travel to Young in country NSW to view the scene of a motor accident. Taking with him a young man who had recently commenced articles, his Honour proceeded up the highway to Wagga, in his Morris Minor. In the ornate dining room of the Hotel that evening, his Honour sought to impress the articled clerk by asserting that they were in such a high-class establishment that, if they were to order steak dianne, it would be cooked at the table. So they did, and so it was, by an elegant, smooth-talking head waiter of about 6'4' in height. The articled clerk was much impressed by the smooth-talking waiter, and by the small chemistry laboratory wheeled out in order to cook the steak. They soon struck up a friendship. His Honour, however, had some doubts about the waiter; but it took him a good deal of wine and several whiskies before finding just the right words to convey to the tyro in his charge that his virginity might be in some danger. By the time his Honour had had sufficient fuel for the purpose, the waiter had become the - entertainer in the next room, crooning, to his own piano accompaniment, a great many songs requested by the articled clerk. Eventually his Honour managed to blurt out in sufficiently authoritative tones that it was time to go to bed, but that, alas, was his Honour's last authoritative act for the evening, as his preparation for the showdown with the waiter had finally caught up with him, and it was the articled clerk who manoeuvred his Honour up the stairs to his room.

Mulvany

His Honour Judge Mulvany, whose name is spelt without an 'e' except where the 'e' comes after the letters 'P-O-P' - has one outstanding qualification for judicial office, shared only, I believe, by his brother Betts. His Honour was educated at Monash University. At a recent quiz night I attended hosted by the multi-media personalities Donohue and Stevenson, one of the questions, as read out, was as follows: 'A Monash graduate has recently been appointed a judge . . .' to which Stevenson interrupted 'Oh Christ!'. Then the question continued '. . . of the Accident

Compensation Tribunal', to which Stevenson rejoined 'Thank Heavens for that'. [I though such banter was in extremely bad taste, and I repeat it only to give the Melbourne graduates here tonight a few cheap giggles.]

His Honour, however, is no trivial lawyer. He was at Monash something of a leader of a group of students intent on - and eventually succeeding in - redirecting the energies of young law students away from sports cars and sports coats to be more concerned with the real needs for political and social reform. His Honour's reforming zeal remained with him - and indeed was nurtured to maturity - when he joined Maurice Blackburn. He soon found himself heavily involved in reforming the law of accident compensation or, as his Honour saw it, reforming the working lives of 50% of the Victorian Bar. He is widely recognised as having had a great deal to do with the drafting of the Act which he and his brethren are struggling to administer. For this reason if for not other he has our best wishes.

Travers

His Honour Judge Travers has emerged from the mysterious mists of the underworld of quasi-judicial administrative tribunals to take his place on this judicial administrative tribunal. In the process he has lost his quasi. Peering back through the half-light, one finds that his Honour has wandered over four separate playing fields since leaving Maurice Blackburn and Co. As he sits here this evening, as he surveys the sea of smug faces lusting after details of former indiscretions, he must be asking himself: 'Why wasn't I subjected to this when I was appointed to the Commonwealth Social Security Appeals Tribunal? How did I escape this when I was appointed to the Crimes Compensation Tribunal? What did I do wrong to have been overlooked when I became Acting Master of the County Court?' The answer, your Honour, is 'I don't know, and I don't think the Bar Council does either'.

Of one thing we can be sure, however, and that is that his Honour has laid the groundwork well for his future biographer to say 'He devoted his life to public service' - indeed, he might even go so far as to say, 'He devoted his life to **the** public service'. It says something about the life his Honour must have led at Maurice Blackburn that he preferred to it the Corporate Affairs Office and this bewildering and mystifying succession of tribunals - not including his Honour's present appointment, of course, which is quite high up on the greasy pole. We look forward to his Honour's next move, pending which, we wish him well.

Conclusion

The Bar extends its congratulations and best wishes to all the appointees to judicial office who are guests here this evening.

Would you now charge your glasses for the toast to our honoured guests.

Our honoured guests.

Caseflow Management Policy Options for Victorian Courts

The following is an edited summary report on court management of Carl Baar's, prepared by J.M.E. Sutton, as Secretary of the Courts Advisory Council

Background

Under the auspices of the Courts Advisory Council of Victoria, and with the financial assistance of the Victoria Law Foundation, Professor Baar spent four weeks in Melbourne examining caseflow management practices in the various courts in the metropolitan area 'to identify appropriate policies for dealing with the caseflow management problems of the courts in Victoria'. the underlying agenda can be understood by placing the consultancy within the context of ongoing court reform efforts in Victoria, in particular the reports of the Civil Justice Committee and the Shorter Trials Committee.

The Victorian Law Department was a co-sponsor of the Civil Justice Committee project. The Attorney-General received the report and his officials intensified their efforts to reform the organisation and operation of the courts. Pursuant to a Civil Justice Committee recommendation, the Courts Advisory Council was established under the chairmanship of the Chief Justice.

Professor Baar found the greatest attention had thus far focused on efforts to computerise the courts. Plans suggested that Melbourne courthouses would leap across the centuries to the twenty-first century prospect of a paperless courthouse with documents filed electronically. Close examination reveals more modest claims for computerisation.

Jurisdictional change and computerisation can contribute to reducing court delay and making the adjudication process more efficient. However, only by linking these changes to the development of caseflow management can these benefits be achieved.

The complexities of caseflow management are already recognised. The Civil Justice Committee report dealt with a wide range of problems that come under that heading. The Shorter Trials Committee did not cover the listing function, a critical part of caseflow management, but did examine pre-trial procedures, an important aspect of the process by which cases move through the courts. The sponsors of Professor Baar's study felt that an examination of caseflow management policy options at that time would allow the Victorian courts to build on these previous studies, gain a sense of direction, and implement further changes before and during the computerisation process.

Summary of report

Chapter One sets out caseflow management policy options within a three-stage framework. Stage One is termed 'non-management', and characterises courts in which no judicial or official responsibility is taken for co-ordinating and monitoring any case events. In that system, responsibility is left entirely to lawyers to proceed or not at their own choosing. That system can work only in a court with very little business since a busy court would be able to accommodate lawyers only if they sought to put off a hearing, not if they sought to obtain one. Thus while courts often display examples of non-management, few approximate this policy in practice.

Stage Two is termed 'calendar management' and refers to the policy of allowing lawyers to control the movement of cases prior to those cases being declared ready for trial, and shifting to court control of those cases once they are calendared, or put on a trial list. This bifurcation characterises caseflow management policy in both Supreme and County Courts in Melbourne, and would likely characterise most Australian and Canadian courts today. Calendar management tends to lack effective co-ordination and monitoring, so that it results in frustrated judges facing collapsed lists and frustrated counsel whose cases may not be reached on schedule or whose requests for adjournment are refused.

Stage Three is identified as true caseflow management in which the adjudicatory process is taken as a whole, and methods for expeditiously moving cases through the process are evolved through the co-ordinated efforts of judges, lawyers and court officials. Stage Three usually involves

the establishment of time standards, monitoring whether the standards are met, leadership of the judiciary combined with accommodation of practitioner needs, the ability to estimate accurately both the time a case will take to try and the likelihood of its settlement prior to trial, and the ability to schedule cases and allocate resources in a way that enhances the capacity of the court to do its work. By facilitating the exchange of information about a case in its early stages, Stage Three caseflow management gives trial co-ordinators the information they need to schedule cases more effectively as well as giving the parties information necessary to proceed (or not to proceed) to trial. Because of its more comprehensive scope, Stage Three can involve the creation, revamping and perfecting of a wide variety of procedures and practices in the court and among the community of practitioners. These changes in the local legal culture are a necessary step in developing and adjusting to more effective caseflow management policies.

Chapter Two begins consideration of the County Court's criminal work by presenting data on delays and case processing in an effort to pinpoint the problems. Available data suggest that delay is extensive and serious, far greater than any comparable Canadian court and growing each year. However, while delay (measured as the elapsed time from committal by the Magistrates Court to the start of trial in the County Court) has been growing, the number of cases coming into the court has not. And while dispositions have generally been keeping up with the receipts, dispositions are lower in recent years than in the past, in spite of the fact that the court is devoting more judge days to crime than in the past. In short, increased delays cannot be attributed to a litigation explosion.

One view is that trials are growing longer than in the past; that view already led to the creation of the Shorter Trials Committee. Available data support the belief that trials have grown longer, although not as long as some participants perceive them to be.

Chapter Three suggests possible means to apply the Stage Three model to criminal cases in the Melbourne County Court. Among the recommendations:

- Designate a presiding judge to be responsible for criminal caseflow management.
- That judges should bring key participants together to plan the changes in caseflow management required to reduce delay.
- Non-statutory time standards should be established for the number of days it should normally take for cases to move from one step to another.
- Implement the new framework for new cases so that they can be dealt with independently from the existing backlog.
- Monitor cases and ensure that each participant is notified early so that early preparation and exchange of information is possible.
- Place DPP solicitors at committal hearings to ensure that prosecutorial officials have early knowledge of the case.
- Use a pre-trial information form to obtain basic facts needed for accurate scheduling, supplemented when necessary and appropriate by a pre-trial conference.
- Schedule events so that they are within 28 days of one another.
- Assign judges to criminal cases for longer periods of time, and give them one unscheduled week at the end of their rotation.
- Consider a wheel assignment system so that assignments to crime are staggered (only one new judge begins each week) and each judge is responsible for a particular cluster of cases.
- To cope with the heavy initial demand created by the new cases under the new system being handled alongside the existing backlog, seek out personnel and space on a temporary basis, and use some of the new techniques (e.g. pre-trial information form) for the old cases.
- Continually monitor how well the new policy and procedures are working, and whether any undesirable side effects are visible.
- Be prepared to make continual adjustments when certain procedures work well while others prove ineffective.

- In light of the new caseflow management system, key participants (for example, the DPP and the Criminal Trial Listing Directorate) should review their internal operations to ensure their efficiency and effectiveness.
- Appropriate court lists should be linked in order to increase the capacity of the court to deal with pending cases.

These recommendations are not exhaustive, nor do they represent the only (or necessarily best) way to achieve an effective system of caseflow management.

Chapter Four shifts to the Supreme Court's civil cases. The style of presentation also changes as quantitative data are less plentiful. The chapter argues that two contrasting caseflow management policies currently characterise the Supreme Court's civil work. The dominant approach is Stage Two calendar management used for the Causes List and the Jury and Personal Injury List, both under the supervision of the Listing Master. The relatively newer and much smaller Commercial List operates on Stage Three principles. In practice, the Stage Two approach has broken down, because long delays in reaching trial have led parties to evade the central control of the Listing Master by seeking orders for priority fixtures and by overloading the Practice Court with matters that could be handled by regular procedures if delays were substantially reduced. The Commercial List has been much more effective, but it is impossible to tell whether its success has been abetted by allowing parties to withdraw from its regimen and move over to the Causes List when they prefer to be free from court control.

The chapter then examines how to extend the Stage Three approach to a broader number of cases. One approach would allow the plaintiff to bring the case under the early intervention (Stage Three) approach regardless of subject matter, what would be termed a 'fast track' method. Second, cases now on special lists because of the complexity of pre-trial proceedings (e.g. Industrial Property and Building Cases) could feed into the Commercial List rather than the Causes List. Third, a more comprehensive effort could be made to classify cases by subject matter so that the Stage Three approach could be extended to those case types most likely to proceed to certificate of readiness and/or trial.

Chapter Five shifts to the Magistrates Courts which present an entirely different set of problems and possibilities. While Magistrates Courts are dispersed and varied, unlike the centralised Supreme and County Courts, they generally experience far higher volume but far less delay. One would expect caseflow management policy to be far more interventionist than in the Supreme and County Courts, yet the problems of inadequate information and co-ordination - and the resulting collapsed lists and numerous adjournments - are all too familiar.

Quantitative data for the Magistrates Courts are significantly more comprehensive and detailed than for other Victorian courts. But those data still reflect a Stage Two rather than a Stage Three approach. Thus data are available by region (including in most cases all eight regions - four in the Melbourne metropolitan area and four in country areas) for the number of days before the next matter can be scheduled, and for the number and rate of adjournments. While one can infer from these data which are the fastest and slowest court regions, no elapsed time data are available to confirm these inferences, suggesting that monitoring of cases is not normally done before a party asks for a trial date.

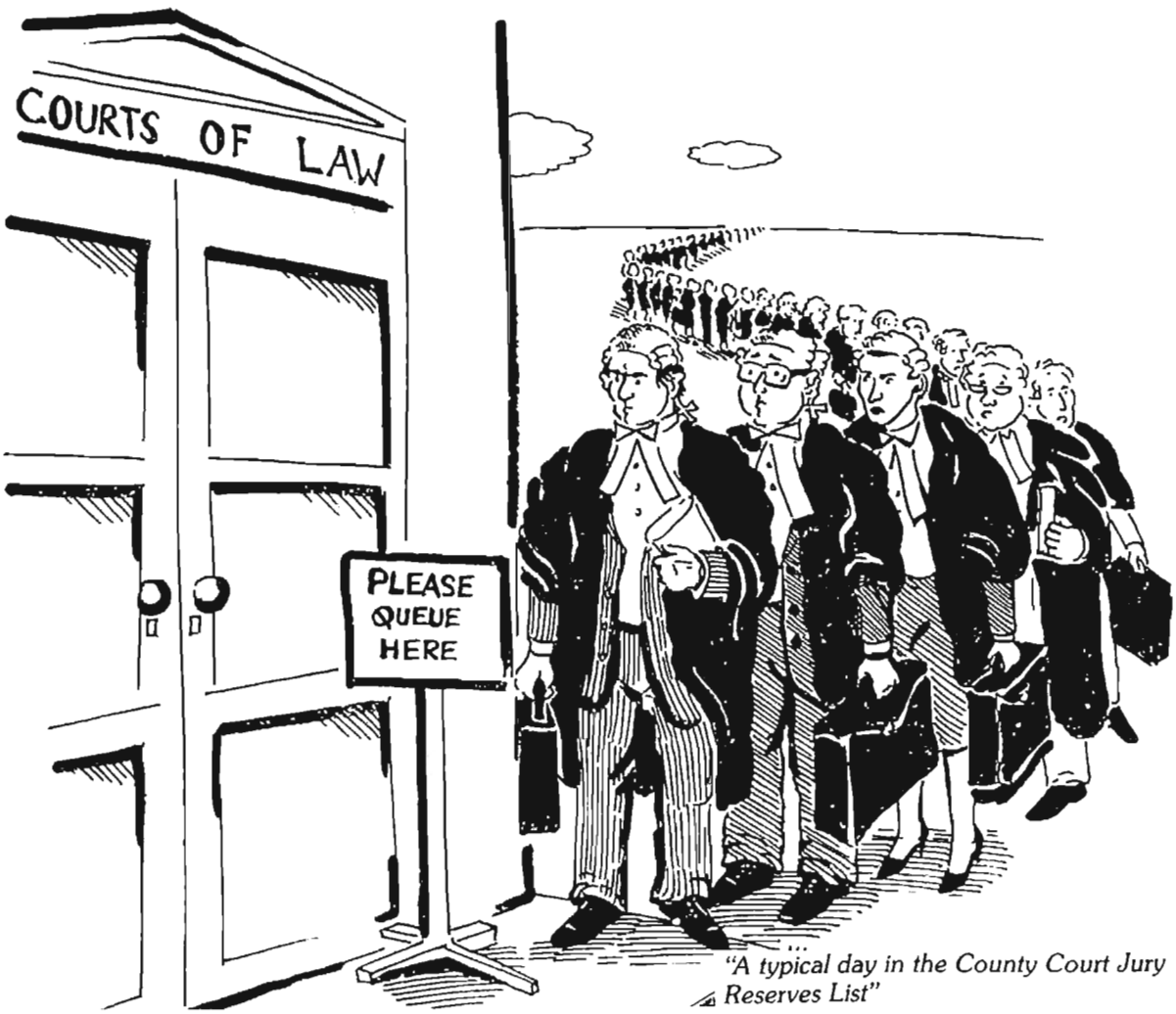
Chapter six considers the principal Victorian approach to providing management information and streamlining management practices and court procedures: the introduction of computers. Computerisation has been a major thrust in caseflow management as well. However, lessons from computer applications in other courts and organisations suggest that the approach must be handled with proper timing and emphasis. Computerisation is only useful when it facilitates redesign and improvement of administrative systems, not when it reproduces inadequate systems. Time and effort will be wasted if spent reproducing on the computer the same poor practices that have led to existing difficulties.

An adequate planning period is essential for the effective introduction of automation. Chapter Six argues that caseflow management is perhaps the most complex of the court systems Victoria plans to computerise, and that as a result it is more important to be deliberate in that area. Observations during the winter 1986 consultancy reinforced that view. A draft 'Management Information Requirements' report completed at that time contains basic errors that would have

rendered useless large parts of the data it recommended collecting. The adoption of computer-aided transcription for producing running transcripts from court reporters' stenotype machine record allows Victorian courts to maintain traditional court reporters when jurisdictions throughout the world have been shifting to tape recording technologies to achieve far greater cost savings for the great majority of their cases. Computerisation of Victorian courts shows examples of choosing to reproduce rather than redesign data requirements and automated systems, and when redesign has occurred unanticipated consequences of the change have not been emphasised.

A number of alternative steps are recommended both for computerisation and for pre-automation improvements.

Chapter Seven concludes with some brief observations about the new Victorian Administrative Appeals Tribunal. Without an accumulated backlog or a large caseload, the Tribunal has an enviable record of expeditious dispositions of cases. A single trial co-ordinator has been able to handle scheduling and co-ordination effectively. As the AAT's caseload increases the Tribunal will need to expand its trial co-ordination system so that a small number of co-ordinators can effectively handle the caseload in particular areas. The Tribunal President and the Chief Administrator will need to work as a team monitoring the effectiveness of the various divisions of the Tribunal, and will need systematic data to do so. In this way, potential problems can be anticipated quickly and the backlogs that can undermine caseflow management can be prevented.



"A typical day in the County Court Jury Reserves List"

Advocacy in the USA

NITA®

January 1988: I decided to turn summer into winter, and holidays into work by travelling to the other side of the world, and the other side of the calendar. I attended as an observer at the National Institute for Trial Advocacy (N.I.T.A.) held at Berkeley University, California.

The N.I.T.A. programme is run in a similar manner to the advanced workshops at Leo Cussen. Programmes are held throughout the States on a regular basis at different venues. Faculty staff are comprised of practising lawyers who give lectures and video reviews of workshop exercises.

The January programme at Berkeley was held at the Boalt School of Law from Sunday January 3rd to Friday January 8th. Faculty staff included the Honourable Manuel Real, a judge of the United States District Court in Los Angeles, Jo-Anne Wolfson ("The Murder Queen") of West Wacker Drive, Chicago, and Gordon Zimmerman of the Department of Speech and Theatre, University of Nevada, Reno, Nevada. The entire week was devoted to one case: **Farell v. Strongline Inc. et al**, a medical negligence action by a widow against a surgeon, and suture company. The workshops included all aspects of advocacy concerned with the case from opening to final addresses.

The participants in the programme numbered about thirty and were from all over the States from differing sized firms and different types of practices. There was a prosecutor, Greg Biehler. from the Vernalillo County Courthouse in Albuaueraue. New Mexico, and a corporate lawyer, Seth Aronson, from a large firm on Wilshire Boulevard, Beverly Hills, California. Other participants came from Memphis, Houston, New York, and North Kansas City. For the most part they were of about 10 years experience in practice.

The week was extremely intensive. The day would usually begin at 8.30 am with a lecture to the entire group, followed by smaller groups going into break-out rooms to lead evidence in chief and cross-examine. This would be followed by a critique, and video-reviews. The day would usually finish with a lecture from 5 pm to 6 pm. At that time most people would resort to Henry's Bar and Grill at the Hotel Durant and discuss the day's work over martinis (up, with a twist) and charcoal grilled potato skins with sour cream.

I spent many hours with Jo-Anne wolfson's break-out groups. An immense bundle of energy, she is a small woman with a close cropped crew cut applied to her silver hair. Her nickname derived from the many murder trials she had conducted in her home town of Chicago. Her most consistent criticism of the participants was their over-use of legalise when addressing either judge or jury. "Talk people-talk!" was her exhortation, and when the participants followed her advice they sounded much more persuasive. She was keen to find out about the practice of law "down-under", as were many others. She told me one day very blandly that her only knowledge about Australia came from when she led a kangaroo around the ring when she was in the circus. Asked about that she replied "That's another story, honey" as she bolted down the corridor.

Gordon Zimmerman lectures judges, lawyers, and businessmen about the art of communication. He gave an over-view lecture and video-reviews at the programme. His fascinating lecture touched upon para language (vocal inflexion), body language and object language in the courtroom. Drawing upon the wealth of jury research that exists in the States he demonstrated the importance of object language. He told of a trial in Nevada where the prosecution team on the first day of a lengthy fraud trial wheeled three large filing cabinets into court. The cabinets were not opened during the trial. The jury acquitted. Folled afterwards a number of jurors commented that they believed the prosecuting team were "showboating" (our equivalent of "grandstanding") by the presence of the filing cabinets and that this coloured their view of the merits of the prosecution case.

He urged advocates to be high self-monitors of their non-verbal actions, and to use vivid, powerful language and not powerless language. He told of an interesting experiment in this regard.

Two groups of mock jurors were given two differently written transcripts based on the same set of facts. One transcript used powerless language, such as "the defendant was observed to be intoxicated and stumbled into a table causing it to be upset". The other transcript used powerful language: "the defendant was seen drunk, he stumbled into a table causing the avacado dip on the table to be splattered all over the white carpet". The group given the powerful language transcript was overwhelmingly in favour of conviction and vice-versa.

There were, of course, many differences both procedural and substantive between the practice of law in this State and the States in the U.S.A..

Cultural differences also abound. The final afternoon was on a Friday and devoted to a farewell drinks party. The large room was strewn with crates of beer and Californian wines. By 3 pm, however, most participants had left for the airport to get flights back to their home States so they could drop in to their offices before the weekend. The beer, wine, and afternoon were only half-demolished. I told them that where I come from such an uncompleted Friday afternoon would be a rarity.

At the end of the day, however, the essential purpose of the advocate, whether he is in Bendigo, Victoria, or Des Moines, Illinois, is to persuade people. It is that purpose which N.I.T.A. is all about and which provides invaluable help in seeking to attain.

Douglas M. Salek

Miss M'Alister's Silver Jubilee

The town of Paisley lies some seven miles west of Glasgow. It is an unprepossessing place, famous however for the manufacture of sewing thread. Wellmeadow Cafe in Wellmeadow Place would never have found a place in Ronay's Guide, although the proprietor, Francis Minchella, was once reputed to run a reasonable establishment.

One warm evening in August 1928, the 28th to be exact, Miss M'Alister and a friend repaired to this cafe for refreshment. Her friend ordered iced drinks for the two of them - ginger beer and ice cream - and a pear and ice for himself as well.

What followed is, of course, known to every law student. Miss M'Alister pursued the unfortunate manufacturer, one Stevenson, through the Courts of Scotland and on to the House of Lords. There, suing in forma pauperis, she succeeded on the preliminary point of law and the case was remitted for trial on the facts.

When one pauses to consider what the decision in the case has brought forth, the avalanche of litigation which it has spawned over the ensuing decades and the frontiers of liability which it has opened up, any lawyer should salute the persistent Miss M'Alister and also her counsel who, appearing without fee, secured the momentous 3 - 2 decision in her favour.

How little we know of Miss M'Alister! She married a Mr. Donoghue following the incident in the Wellmeadow Cafe. Perhaps it was he who purchased that historic bottle of ginger beer. It is sometimes said that the case went to trial and the existence of the decomposed snail was not proved. However the better view is that Mr. Stevenson died before trial and the action was not pressed against his estate.

We, as a profession, should celebrate the 28th August, the anniversary of that momentous event which took place 60 years ago.

Douglas Graham Q.C.

Editors' Note: According to our sources Miss M'Alister received one hundred pounds for all her troubles. We are unsure whether this was by way of settlement or judgment. It appears that her future husband did buy her that ill fated snail infested bottle. What is certain is that the poor Miss M'Alister died a lunatic in an asylumn. The cause of her insanity is unknown. Perhaps it was just terminal functional overlay. Those with more clues as to the life and times of this famous plaintiff please write in.

Initial Statement

The Editors,
Bar News

Gentlemen,

I write to request your assistance in encouraging the powers that be to slow the pace of the changes being wrought upon the Victorian legal system by adverturous administrators and over zealous politicians.

Members of this Bar have for too long remained silent on matters that affect the administration of justice in this State.

I hasten to assure you that I do not advocate the retention of obsolete practices or systems that have been proved inadequate, but enough is enough. The instances of incursion into what was a comfortable (as in pair of slippers), professional life style are too numerous to recall. Suffice it to say that we are all compulsorily insured with P.I.L. Insurance, Creditors of B.C.L., ensconced in the main in salubrious surroundings in O.D.C., O.D.C.W., L.C., A.C. or F.C., connected to P.A.B.X. telephonic systems few can operate, creating legal verbiage at greater speed and volume than ever imagined prior to the V.D.U. or the I.B.M. P.C. or W.P., encouraged by fear of negligence suits to

subscribe to C.L.I.R.S. to research our C.L.R.'s V.R.'s and the like.

Litigation is now conducted in various courts, both State and Federal. From the M.C. to the C.C. and the S.C.V. to the F.C. of the S.C.V., in Little Bourke Street the F.C. and the F.C. of the F.C. (that is not repetitious) and for some the H.C. with the pinnacle as the F.C. of the H.C., (no more P.C. alas). Matrimonially we also have the F.C. and the F.C. of the F.C. and Nicholson C.J. of the F.C. is Nicholson J. of another F.C.

Peripherally, we now have the A.A.T. (both Federal and State), and the A.C.C. (previously hearing W.C. cases but changed for obvious reasons). The revenue lawyers revel in argument with the D.C.T. at the T.B.R. no doubt about F.B.T. and C.G.T.

Litigation in the Supreme Court is now conducted in various lists. Many a reputation is made under headings such as C.L., the C.C.L., the B.C.L., the I.P.L. Thank goodness crime is still crime.

My lament is occasioned by the appearance, (unannounced and uncalled for), of a desk opposite the entrances to Judges' Chambers in the S.C.V. Until now I have always felt a certain smugness in being privy to a code revealed to me in the first week of articles. One of my first instructions read as follows:

> G.A.W. please deliver ASAP to MIGB (signed) P.C.T.

This instruction was attached to a court document. Of course this acronym is obvious to any practitioner who has had the advantage of a decade or two of deciphering the codes of the profession, although it was not (and I doubt that it is now), a skill taught in law school as part of the preparation for professional life. That particular document was delivered, after numerous enquiries, and as stated above, to this day, I have been somewhat smug about my knowledge of the fact behine the cryptology. It appears however that the Constable stationed at the desk referred to above has replaced the MIGB. Shame!

But then again we may be in for a surprise, could it be that we will soon have JIGB or even CJIGB?

Is there an end?

George Watkins

CGT on Settlements - Continuing Debate

The Editors
Victorian Bar News

Gentlemen,

I read with interest the article written by Neil Forsyth QC and Peter Searle entitled **Capital Gains Tax on Compensation or Damages** which was published in the Autumn edition of the Bar News. The provisions of Part IIIA of the Income Tax Assessment Act 1936 ('the Act') and their application to litigation resolution have been and continue to be a source of contention and it was advantageous to read the views of others on the application of these provisions in that context. However, in my opinion, the article either misconstrues or does not take into account the effect of Section 160M(7) of the Act.

The article states that an actionable claim is an asset, the consideration for the disposal of which may be subject to capital gains tax under Part IIIA of the Act ('CGT'). It then states that the recovery of judgment or rights under a compromise in relation to such a claim may attract CGT on the 'amount of relevant profit'. Further, the article then states that '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 should 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'.

I do not dispute that an actionable claim in contract, tort or otherwise is an asset, the consideration for the disposal of which may be subject to CGT, although the matter is not beyond doubt in relation to tortious or other non-contractual causes of action which are not assignable. It can be argued that Section 160A(a)

of the Act and the expression 'any other right' should be construed eiusdem generis with the previous categories of rights and that the decision of **O'Brien v Bensons' Hoisery (Holdings) Limited** [1980] AC 562 is distinguishable on the basis of the different legislative language used.

However, the article assumes that where an actionable claim is settled or proceeds to judgment, the substantive cost base of the actionable claim, if capable of ascertainment or if there is one, is taken into account in determining the 'relevant profit' and hence the amount assessable to CGT. In my opinion, Section 160M(7) states the opposite where an actionable claim is settled.

Section 160M(7) provides as follows:

> 'Without limiting the generality of sub-section (2) but subject to the other provisions of this Part, where -
>
> (a) an act or transaction has taken place in relation to an asset or an event affecting an asset has occurred; and
>
> (b) a person has received, or is entitled to receive, an amount of money or other consideration by reason of the act, transaction or event (whether or not any asset was or will be acquired by the person paying the money or giving the other consideration) including, but not limited to, an amount of money or other consideration -
>
> (i) in the case of an asset being a right - in return for forfeiture or surrender of the right or for refraining from exercising the right; or
>
> (ii) for use or exploitation of the asset,
>
> the act, transaction or event constitutes a disposal by the person who received, or is entitled to receive, the money or other consideration of an asset created by the disposal and, for the purposes of the application of this Part in relation to that disposal -
>
> (c) the money or other consideration constitutes the consideration in respect of the disposal; and
>
> (d) the person shall be deemed not to have paid or given any consideration, or incurred any costs or expenditure, referred to in paragraph 160ZH(1)(a), (b), (c) or (d), (2)(a), (b), (c) or (d) or (3)(a), (b), (c) or (d) in respect of the asset.'

The effect of Section 160M(7) in relation to an asset which is a right is that if the person who owns the right receives or is entitled to receive an amount of money or other consideration 'in return for forfeiture or surrender of the right or for refraining from exercising the right' then there is deemed to be a disposal 'of an asset created by the disposal' and there is deemed to be no cost base, except for incidental costs associated with the disposal. Therefore, in practical terms, all the consideration received is taken to be taxable. Applying Section 160M(7) to causes of action, if a cause of action is settled for the payment of a monetary sum or other consideration, that settlement would constitute a 'forfeiture or surrender of the right' or the 'refraining from exercising the right' and therefore, in practical terms, all the consideration received would be assessable. I note that there is a tenuous argument to the effect that the obtaining of a judgment may not necessarily constitute a 'forfeiture or surrender' or the 'refraining from exercising the right' within the meaning of Section 160M(7) and therefore my comments are directed to settlements and not judgments.

The consequence that there is deemed to be no cost case is anomalous and in some circumstances harsh, particularly in the situation where the subject matter of an action is the exercise of a chose in action rather than the exercise of a tortious or other non-contractual cause of action. However, the plain wording of Section 160M(7), to the extent that any provision of Part IIIA of the Act can be said to contain plain wording, has the effect that any substantive cost of acquisition of the cause of action is ignored.

There are three further matters relating to the interpretation of Section 160M(7) which for the sake of completeness should be addressed. First, Section 160M(7) refers to the deeming of a disposal of an asset created by the disposal and in one sense is arguably ambiguous in that it is arguable whether the sub-section deems only that a disposal has taken place or deems both that a disposal has taken place and that the disposal is of something which is deemed to be 'an asset created

by the disposal'. In my opinion, the second interpretation is the proper construction. If the first interpretation was correct, Section 160M(7) would be nonsensical as Section 160M(7) predicates the existence of an asset prior to the relevant act, transaction or event. Further, the expression 'an asset created by the disposal' uses the indefinite article rather than the definite article. It is clear that the asset referred to in Section 160M(7)(a) is not the same asset referred to in the expression 'an asset created by the disposal' since, for example, Section 160M(7)(b)(ii) predicates the continuance of the asset referred to in Section 160M(7)(a). Second, the opening words of Section 160M(7) 'subject to the other provisions of this Part' take the matter no further. These words are directed to provisions such as Section 160ZB of the Act dealing with the treatment of specific assets. Third, the provisions of Sections 15AA and 15AB of the **Acts Interpretation Act** 1901 (Cth) are of little assistance. The purpose or scope of section 160M(7) is not clearly ascertainable from 'extrinsic aids'. Further, it can be argued that Sections 15AA and 15AB only apply where there is ambiguity and it is arguable that this is not the case here if the words 'an asset created by the disposal' are read in context.

Certainly, the statements contained in the cited extract from the article in relation to the cost base accord with the commonly accepted notion of fairness in this context. However, it would appear that the provisions of Section 160M(7) are not directed to such matters.

Yours faithfully,
Jonathan Beach

Editor's Note: A comment by Neil Forsyth QC and Peter Searle will appear in the next issue.

Fees, Factoring and Provisional Tax

Editors' Note: *The following information and comment is provided by Ficon Corporation Pty. Ltd. who operate a factoring service through Esanda.*

For any further information, members of the Bar should contact Mr. Finney (03) 3267 3588.

There seems to be some concern as to how the Esanda Early Release Scheme effects provisional tax.

As you know, under the Early Release Scheme funds can be raised against outstanding fees. Say we take an example of one off arrangement that was entered into in say, June 1987. In this example say $100,000 of outstanding fees due to be received over the 1987/88 year was released to you under Esanda's Early Release Scheme for say $95,000 (net receipt after adjustment of costs).

In the tax return for the 1986/87 year if you are using a cash receipt basis you would have to include as income the $95,000. It is important to remember that provisional tax for the 1987/88 year would have been based on the 1986/87 year's income as returned.

However if you feel your income is not going to be as high as the previous year, you can apply for a variation of provisional tax.

This is because the $95,000 was a one off occurrence so when your provisional tax assessment is received including the $95,000, and assuming your normal level of income continues through the 1987/88 year, you will be able to apply for a variation of provisional tax by excising the $95,000 from expected income for the 1987/88 year.

An application for variation of provisional tax is a simple procedure performed regularly by professional taxation agents. And in fact the variation provisions of the tax legislation were specifically designed for one off situations.

So if you are considering Esanda's Early Release Scheme as a means of obtaining income, it should not cause any increase in provisional tax payments.

As each barrister's financial circumstances could vary, the views expressed are to be regarded as a general guide only. You should seek opinions from your professional advisors, who can tailor their advice to your specific requirements and circumstances.

Bicentennial Australian Legal Convention

The legal profession's big contribution to Australia's bicentennial celebrations - the Bicentennial Australian Legal Convention in Canberra - is shaping up as a major event for 1988.

Some of the highlights of the convention, to run from 28 August to 2 September, include -

- a reception for delegates in the Great Hall of Australia's new Parliament House, hosted by the Attorney-General, Mr. Lionel Bowen
- official opening by the Governor-General, followed by a presentation by the Band of the Royal Military College and 'Austral Skies' titled 'Two Hundred Years of Australian Song'
- a debate on union between Australia and New Zealand, led by former NZ Prime Minister Sir Robert Muldoon and former Australian Deputy Prime Minister Mr. Doug Anthony
- a convention church service in the Anzac Memorial Chapel of St. Paul at the Royal Military College, Duntroon
- addresses by Chief Justice Rehnquist of the US Supreme Court, Lord Justice Mustill of the UK Court of Appeal and President Ren Jianxin of the Supreme People's Court of China
- participation by Australia's Chief Justice (Sir Anthony Mason) and many other eminent legal people.

Convention registration brochures have now been circulated throughout Australia, and registrations are expected to be heavy. Tight accommodation in Canberra during the Bicentenary makes early registration very important.

Delegates will be able to take part in a wide variety of business sessions, following a stream of topics of specialised interest, or choosing from as many streams as they like.

Overseas guests will include Mr. Sydney Freedman of European Community head-quarters, Brussels; Professor Roger Fisher of Harvard University, and Mr. John Salter, Chairman of the International Bar Association's Section on Business Law.

IBA President Kumar Shankardass will attend, as will the Presidents of a number of overseas legal professional bodies from England, the US, Ireland, Scotland and New Zealand.

The Convention Planning Committee chaired by David Crossin OBE has prepared a programme that will be of great practical benefit to lawyers, as well as being entertaining.

Convention Papers Available

The Law Council still has some copies of the published papers given at the 24th Australian Legal Convention in Perth last year.

Thirty-seven of the papers, covering a wide range of issues, have been published in a book which is now available at a nominal cost of $10 (including postage).

Copies are available from:

Convention Officer, Law Council of Australia, GPO Box 1989 Canberra City ACT 2601, or DX 5719 Canberra. Tel. (062) 473 788.

The Editors,
Victorian Bar News

Gentlemen,

Renovating The Old Palace

Property Consultants say that potential lessees of city office space are interested in two things in a building - its outside appearance and its main entrance.

Their interest is commmercial. They want their clients to be impressed by the building in which they are housed. They know that it is up to them to make their particular space inside the building attractive, so that in deciding to let they concentrate their interest on the areas they can't control, the outside and the entrance.

A barristers' building is no different, even if we like to pretend we are not commercial. We need to impress our clients, and our solicitors, in the commercial sense our clients just as much as the clients themselves, need to impress their clients.

We know this ourselves. Evidence:- criticism of the Lonsdale Street entrance to O.D.C.W. Intended in the design to be a secondary entrance (with the major entrance being from William Street through O.D.C.E. into the O.D.C.W. foyer) it has become a major entrance and, as such, it has short-comings. The renovation of O.D.C.E., now being embarked upon by B.C.L., is a daunting task. There are no false ceilings through which to run services, the heating system is now so archaic it is in danger of being registered under the Historic Buildings Act and rejuvenation of the lifts needs transplants not just major surgery. Minor irritations like leaking windows, faulty toilets and eccentric lights abound.

However, the appearance of the building can be improved dramatically. The 10th floor and the rear of the ground floor show what can be done to the inside. The outside appearance is a problem, but the building can be given a new entrance.

The planning for O.D.C.W. included an arcade through the ground floor of O.D.C.E. to William Street. The rear section has been done. The front section goes through the State Bank area, and figured in the debate about rents leading up to last years Bar Council elections, the argument being that putting in the arcade necessarily meant loss of the area for commercial letting.

Insofar as the arguments against the arcade saw it as benefiting O.D.C.W. only, they were misconceived. The major beneficiary will be O.D.C.E.

A necessary part of the arcade will be a new entrance to William Street with the old entrance being closed off and becoming the lift lobby only. Thus, O.D.C.E. will get a new entrance which can be made modern and impressive. Apart from anything else it can have a proper ramp for disabled access, something impossible to instal in the space available at the present entrance. There is a peculiar irony in a barristers' building in the 1980s not having adequate disabled access.

Barristers Chambers Limited has now decided that the front section of the arcade will be constructed once the State Bank lease expires. A decent sized foyer, comfortably furnished is possible. The O.D.C.W. foyer is used by clients both solicitor and lay. An O.D.C.E. foyer would be just as useful. "Have a seat in the foyer" is much better than "Wait on the steps but don't get knocked over by the mobs rushing off to court".

It is to be hoped that the chance for a good entrance is not sacrificed to the desire to maximise commercially lettable space. The commercial benefits to the Bar (otherwise known as briefs or money) of a good entrance are more important.

Maurice Phipps

The Reader's Life

One of the exquisite pleasures of life at the bar is helping a reader through his highs and lows. Was I ever so enthusiastic?

My reader had a traffic offence to grapple with. His defence carefully conceived and polished until it shone depended in part on his attack upon police evidence. The other major part was careful evidence to be lead from an anxious client.

I was told at the end of the day of the hearing that Preston Court had been overcrowded, and a special fixture was arranged.

Come the end of the day of the special fixture I was a little perplexed when mv reader returned to our chambers. Usually there was no need to ask the result - it was obvious without words. Not so this day.

He explained thus: there had been confusion on the first hearing day about the special fixture date, and the hearing had taken place without him or his client two days earlier. A whole range of responses from "look to your insurance policy" to "it happens to everybody" came to mind.

He continued. The informations had been dismissed as the police could not prove identity.

Anon

Fishing Expedition

It's rare that everything is perfect. The temperature 30 degrees, the sky a cloudless blue, wine flowing, fish jumping, excellent company. A mountain holiday is bliss but three days spent learning to fly fish for trout with several barristers and one Mallesons solicitor, is legal utopia.

Jenny and Stephen Charles orchestrated a fly fishing trip to Khancoban from Thursday March 17 to Sunday 20. They were joined by Alex and Elizabeth Chernov, Michael and Valmai Dowling, Chris and Ray Finkelstein and their sons Joel and Michael, Doug and Sally Graham, Mary and Peter Hayes, and David and Margaret Walsh.

The group stayed at the Khancoban Alpine Inn, run by Andrew Laycock, and was instructed in fly fishing by Mike Spry, who runs a Fly Fishing School, in conjunction with the Inn.

The three day school, a compression of the usual 5 day version, comprised classroom theory, casting practise on the lawn, practise on water without flies, then the real thing.

The school was conducted in premises near the motel and Mike transported the group to local water holes for the live performances.

Mid-morning Friday saw a line of enthusiasts, stretched the length of the school lawn casting as though the next brief depended on it. At dusk the 16 marched crocodile file (some wit remarked it was Snow Spry and the 16 dwarfs) through the bushes along the edge of Khancoban Pondage to an open spot and spent an hour casting a flyless leader (a fishing line with a red marker on the end of a casting line, not a Q.C. exposing himself) onto the mirror surface of the lake.

Two men in a tup -
Peter Hayes and Alex Chernov

There was more theory on Saturday morning, then a scenic drive up the mountains to the Geehi River. Mike Spry and his wife Margaret cooked a delicious barbeque on the river bank then Mike led the fishing expedition. It was great fun, wearing thigh length wading boots and casting live hooks into the freezing mountain water. Chernov caught the only fish. Michael Finkelstein identified it as a brown trout. It was a little below regulation size, but it was bonked on the head and carried home in ceremonial style. Chernov was in favour of leaving it in the motel freezer, but the group felt it should be made a perpetual trophy; either cast in bronze,

like you do you babies first shoes, or stuffed and mounted.

Jenny Charles lovingly transported it home and its future is in her hands.

Sunday's expedition was the highlight of the trip. The group was broken into two - the early leavers (those with a plane or conference to catch) and the stayers (those on the rafts with the Esky). Four rubber rafts carried the groups 12 miles down river to waiting cars.

The early leavers had a bit of navagational trouble. Mike's assistant, Reg Layton, captained a five-man raft containing Elizabeth Chernov, the Grahams and Mary Hayes, which negotiated the river trouble-free. But the two-man raft, piloted by the combined efforts of Hayes and Chernov, careered hilariously down and across the river, in and out of control. The two were overturned twice, lost their glasses and cameras but laughed all the way. Both rafts had to forego the one hour lunch and fishing stop but had great fun.

The stayers were accommodated on two five-man rafts; one captained and navigated by Mike Spry and one under the command of Charles. Both groups had an event-free paddle down stream, a leisurely lunch and a spot of fishing. They caught no fist, much to the Finkelstein boys' disappointment, but had great fun casting into the fast flowing Swampy Plains River.

The raft trip ended a couple of miles past the point where the Swampy Plains River joins the Murray. The landing at the Bringebrong Bridge was not without its excitment. The raft carrying the Charleses, Finkelstein and David and Margaret Walsh spun the current under the willow trees and upended its passengers into the Murray. There was quite a panic on the bank about the precedent for the order in which the drowned lawyers should be rescued but all were pulled out in order of urgency. Stephen stoically came out of the river last, feeling that the Captain should go down, or at least stay in with the ship.

A bit of equipment was lost, the passengers lost their hats and sunglasses, but all kept hold of precious cameras. It was a rare sight; near drowned rats first passing up their sodden cameras for rescue. One person came out with a tube of sun cream between his teeth. It had floated by and he grabbed it as a reflex action.

And talking of reflex action; the legal reflex is never sluggish. Despite the shock of the immersion, once on the bank there was an animated discussion about salvage rights, the jurisdiction at the spot of the mishap, (N.S.W. water or Victorian river bank) and the potential of the loss of earnings claim if, God forbid, the lawyers had been lost. One person was heard to comment that the overturning of the two man craft, and the upending of the larger vessel was part of a plot to create more room at the top end of the bar.

Alex Chernov, fish and admirers

Despite the riotous finale, and several minor incidents, the group decreed that the trip was a success. There had been murmurings during the three days about who the group's learned leader actually was; several applied to the only solicitor for the brief. There was a ripple of jealousy when it was learned that the Charleses had the honeymoon suite, complete with spa bath. And this ripple became a roar when invitations to partake of the suite's watery pleasures were sent out. Charles created a disturbance by ordering the bartender to scour the area for all available bottles of Chardonnay and Mary Hayes decimated the area's newspaper supplies in a single purchase. The local telephone exchange blew a fuse a lunchtime Friday, due to an unprecedented demand for the same Melbourne telephone area, and Mike Spry was called upon to give a brief account of the fishing and gaming laws to end a lunchtime sitting.

But a good time was certainly had by all. Mike Spry, despite predilection, found the group easy to instruct, quick to learn, co-operative and cohesive. Andrew Laycock was a generous and attentive host, and Mike Spry was a gentle, courteous, confident and competent guide. A return trip is a certainty. The Finkelstein boys have

already ordered fishing rods for their next birthdays.

(All names in this article appear in alphabetical order of surnames, followed by alphabetical order of first names.)

Chris Finkelstein

The Great Khancoban Fishing Caper

While brooding on things editorial,
It's nice to hear of piscatorial
Ventures on the Murray's tributary
Which nearly caused a long obituary,
But had at end a fine result -
One fish, for many to exult
In boastful tones, as fisherpersons
Are wont to show in their diversions.

Without a fib, or trumped-up feat
No angler could be quite compleat.

*But **Sally Graham**'s epic ode*
Will dignify this episode.

They were the cream of our Victorian Bar
Who came by air and some indeed by car.

At fishing they were going to have a try
Under instruction from the mild Mike Spry
In the true interests of diplomacy,
I'll have to list them alphabetically:
Steven Charles and Chernov, Dowling,
they were there
Four Finkelsteins and Douglas Graham too
Plus Hayes, Dave Walsh and their assorted wives
Gathered to frighten all the fish for miles.

At Lake Khancoban this event occurred
And many were the curious oaths we heard
From sixteen people struggling to master
The complicated art of skilful casting.

Among such stare, as you might well imagine,
There were no shortage of comedians.

We learned how trout lurk under favorite stones -
The air was thick with quite appalling puns
On flies undone and leaders in confusion
And why good spots went to the biggest fish.

We practised casting for the video
And so were treated to a splendid show
When Graham deplored the smart hat worn
by Charles
Who then jumped on it to much loud appaluse.

We went out next to try it on the river -
First-time in waders does feel most peculiar -
But I will spare you Mrs Hayes' remark
As we trudged upstream in the falling dark.

A Saga was arranged for our last day -
Rough-water trips and then we were away.

Into the morning, sunny, calm and quest,
Swampy Plains Drifters set most bravely out.

All went well in the leading rubber boat
Where expert Reg kept us all safe afloat.

But in raft number two Chernov and Hayes
Could have sold tickets to a crowd for days.

All down the river their guffaws were heard
Above the startled flaps of fleeing birds.

A zig one way trapped them beneath a tree
With quite a fight before they struggled free.

A zag cross-current to the other bank
And in the willows once again they snagged.

Some horses galloped for a better view
The cattle were much too surprised to moo.

They managed then alas, to overturn
And lunch and cameras all sank like a stone.

The rowlock was jammed and their specs were lost
And the pair were covered with weeds and mud
When the voice of a wife came on the breeze,
'Darling, don't tell me you've lost the keys!'
At last, however, they staggered ashore.

'Land! Land!' they cried, as we looked on in awe.

In spite of everything we caught a fish -
Well, Chernov did but we all felt it ours.

Six inches long was teamwork's great triumph
We'll have it mounted for the Essoign Club.

Sally Graham

Tennis

BAR v LAW INSTITUTE

The 1987 annual match against the Law Institute was narrowly won by the Institute after an even struggle all day.

That the Bar was beaten in a close contest is a surprise. The circumstances were very different from 1985. That year Thomson and Hampel J incorrectly added the scores to claim victory for the Bar and it was Teague (as he then was) who provided the arithmetic to get the Institute up. And of course Teague J wasn't available to the Institute in 1987 to bail it out.

Stars for the Bar were Francom/Ham who for the second successive year won their five sets in the A section. Francom has an old fashioned approach to the game which is truly inspirational. His preparation consists of dragging on a fag during the warm up and steadfastly refusing to run. During a match he has a habit of hitting the ball where his opponents are not while still refusing to run. He gives the impression that the only reason he doesn't have a racing guide down his sock is that there is no scoreboard to check the results.

Others to stand out in an even team were the Collis/Jolson combination. Anything within arms length was dealt with firmly and with conviction. Much of solicitors' time and effort was spent in keeping the ball out of reach and such efforts were frequently well rewarded.

Would it surprise Family Law practitioners to learn that Hase J brings to the tennis court an earnest and thorough approach to the game? His Honour performed very creditably all day, and was competing as strongly in the last set as he was in the first.

Our skipper 'Tommo' Thomson led Rose very capably from various positions at the net. Rose was heard to say over refreshments that in future as junior counsel he would be slow to complain about not having enough to do.

Tommo has of course skippered the team from time immemorial, and all who enjoyed this magnificent tennis day thank him yet again.

But where are the young tennis players at the Bar? Does the drive towards academic excellence in legal education preclude excellence in the gentlemanly sport of tennis? Do the aging players amongst us have to front up unaided again in 1988? When will we ever win a bloody match???

Graham Thomas

Bar Cricket

VICTORIAN BAR v NEW SOUTH WALES BAR

As holders of the 'sub-standard trophy' the Bar team was looking forward to the annual match against the New South Wales Bar.

Thanks to Tony Magee, Vice President of the Fitzroy-Doncaster Cricket Club, the game was played at the Club's lovely ground in Doncaster on the 20th March. The day was yet another beautiful day in a summer of magnificent weather. 25 degrees celsius and not a breath of wind. add to this, a soft outfield, a reasonably paced wicket and a lovely setting, and you have the recipe for a magical day.

The New South Wales captain Stirling Hamman won the toss and elected to bat. After the tired lack lustre display by the bowlers during the Bar's last outing against the solicitors, it was with trepidation that the skipper threw the ball to Chris Connor. Had Connor been practising? Had he consumed the elixir of youth? A rejuvenated Connor took 1/10 off 9 very tight overs. Add to this Harper's 1/8 off his first 6 overs, and the pressure was really on the opposition. Tony Cavanough who has been missing the last few years from the team (too busy is the excuse!) bowled well and managed to get the prize wicket. Stirling Hamman caught Chris Connor, bowled Cavanough for 6 - and what a catch. A full blooded square-cut into the gully where Connor took a blinder. Cavanough finished with 3/28. His great return was marred by dropping a 'sitter' in slips. However he got his just desserts, off to hospital; diagnosis, one dislocated finger. Of the other bowlers, Ross Middleton managed, despite age and creaking limbs, to obtain 1/16 off 5 overs, and Ian Dallas 1/23. Steven Mathews bowled well but without luck. N.S.W. Bar all out 150 runs.

The premier bowler of the side (based on past performance), Geoff Chancellor, failed to take his place on the field. In fact he did not arrive at the ground until the innings was nearly completed. Evidently his bride-to-be put her foot down: 'I'm not going to marry a man with a crook back!' Oh boy, Chancellor, you will have to get your priorities in proper order!

Our innings got away to a great start. An opening partnership of 128. We know Ian Dallas can bat. We have him and Gobbo to thank for our win against the solicitors 2 years ago. But Ross Middleton? Used to be good (as a school boy). Now prematurely old, overweight and unbelievably unfit. Nevertheless Middleton showed that if he had disciplined himself over the past 10 years, he could have made the grade as a cricketer. Ross made a very well compiled 53 before being caught when tiredness, booze and cigarettes caught up with him. Rumour has it, he took a week to recover. Next man in, Andrew Ramsey, in the interest of team harmony and to keep the skipper happy, departed the scene rather quickly. The skipper joined Dallas, who very sportingly (and very wisely) allowed him to hit the winning run. The Victorian Bar passed NSW with 2 wickets down. Ian Dallas made an unconquered 88 runs. He batted superbly and his running between wickets is something to behold - especially when he lapped Ross Middleton by the length of the pitch, each time they ran 2 runs. Thank goodness we have one young star at the Bar.

We entertained the visitors at a dinner held in the Essoign Club. We thank Michael Adams and his helpers for providing a wonderful meal. We would also like to thank Tony Magee and the Fitzroy-Doncaster Cricket Club for staging what was a very memorable day.

E.W.G.

The Victorian Bar Team was -
E.W. Gillard, Q.C. (Capt), D. Harper Q.C., Bruce McTaggart, Chris Connor, Andrew Ramsey, Ross Middleton, Phillip Trigar, Tony Cavanough, Steven Mathews, Peter Elliott and Ian Dallas. (Geoff Chancellor chosen, A.W.O.L.) E.W.G.

Seen around Town

Balla v Moxin & Ors.

Coram Teague J
9.5.88

(Pedestrian plaintiff claiming damages against driver of motor vehicle and doctor who allegedly failed to apply traction to her right leg to reduce a pelvic fracture, resulting in permanent leg shortening.)

H. Ball for driver in cross-examination of plaintiff: 'I want you to have a look at this . . . photograph'.

Plaintiff: 'What is that?'

H. Ball: 'You are pulling my leg, are you not?'

Family Court

18.4.88
N. Ackman leading client's evidence in chief.

Mr. Ackman: Now, 24 July, according to the tape you had been down at Flinders, do you agree you had been down at Flinders? - Yes, I had.

What, if anything, was the significance of Flinders? - It was a holiday spot I have visited before with friends.

Did you drive down there by yourself? - Yes, I did.

And was it fair to say that you were depressed at the time? - Yes.

How depressed would you say you were? - Very depressed.

And what if anything did you do? - I drove to the beach and I stood on the waterfront.

Why? - Contemplated swimming into the water.

Killing yourself? - Yes.

You did not do it? - No.

Police v Brock & Others

Coram H Adams Coroner
Cross-examination of Paymaster of Board of Works
8.12.86

Did you know that John Douglas was well thought of at work? - I didn't know that. I also didn't know - like, I've never heard anything bad against him either.

Well, you got along with him well? - Yes.

Always a friendly smiling face? - Yes.

Always the same over a long period of time? - Since I have known him yes. He has always said, 'hello' and yes, no troubles at all.

A classic example of an Australian working man?

Mr. Howard:
Because he gets on well with the paymaster.

R v Henricus

Coram Judge Duggan
Hender prosecuting
G. Thomas for accused
10.6.88
(Record of Interview tendered in evidence)

Q. 'It is one of your duties with this company to do the daily reconciliations for the service division. Is this right?'

A. 'Yes.'

Q. 'What do you believe the word reconciliation means?'

A. 'To see that everything balances.'

Q. 'In the dictionary the word reconciliation means 'Harmonize, make compatible, show compatibility of by argument or in practice, (apparently conflicting facts, statements, qualities, actions, or one such with or and another). Did you also know it means these things?'

A. 'Yes, I do.'

Interview interrupted at 8.50 p.m. for refreshments
Interview recommenced at 9.05 p.m.

D.P.P. v Pektas & Ors

Coram Judge Hanlon 17.8.88
Day 29

Witness: This is the point where we have that. Mr. Suleyman says (Turkish words) 'For $2' two, for $2. (Tape played.) Your question.

Mr. Bey: So you say that it's not 'Look' but it's 'For $2?' - No, its $2, 'For $2'. 'To $2', he says.

'To $2?' - In Turkish we say, 'Not for $2', we say 'To $2, t-o. Which actually means, 'For $2.' Do you want me to carry on or -

No thank you.

His Honour:

Just so we can get this in context for posterity. Could I read into the transcript that we have spent the last 20 minutes on an agrument about whether or not Mr. Cagatay can hear the Turkish equivalent of the phrase, 'If you add them all up they don't make 6', in a conversation, the context of which is this: Mr. Suleyman is alleged by Mr. Cagatay to say in Turkish, 'Yeah; we came to Australia. I didn't drink water for exactly four years, believe me.' Male, 'H'uh, but ask him/her (garbled).' Male, 'If you add them all up - I am sorry - that is where 'If you add them all up' is supposed by Mr. Bey, to occur. Mr. Cagatay says, he says in Turkish, 'Let Australia collect all (garbled).' 'For instance I go to the coffee lounge there.' Mr. Suleyman, 'For $2.' Male, 'Well, plain, U'm, well, coffee with milk. I can't drink it either. I prepare coffee with water; Nescafe I don't add much coffee in it. I drink that much. I can't eat yoghurt either. If it's Tszdyki then I eat it. I eat yoghurt if it's prepared as Tszdyki. I drink buttermilk.' Mr. Suleyman, 'Shit; giggle.' That is what we have been arguing about.

Same Trial (Day 37)

Mr. Ray Perry:

Can you finally tell the jurors how does the dog react? What does the dog do when he sniffs out heroin, cannabis or cocaine? - Okay. The dog responds in a very frantic hyperactive way.

Most of the dogs, Scooter in particular, will paw very strongly at an area where there's a narcotic coming from, and he'll bite and try and get into that area if it's in a box or behind a wall or inside a car panel, or similar, and he has been known on occasions to bark occasionally; but usually it's a very strong pawing and biting action to try and get into the area where the drug is.

The reaction he does to a drug, does he simulate that in any other way

without anything else; for instance, a bone? - No, he does not. That's just a pure drug response, and he won't do that for any other thing.

Scooter was a male; is that so? - Yes, he is.

Supposing a female dog who is in season had urinated in a spot in a nature strip, how would he react? The same? Get excited, the same as drugs? - No, no, he'd do a completely different thing. Like most male dogs, for want of a better word they're like perverts, if you like, and Scooter will slow down and stop and he'll take an extra sniff or a long sniff, and I have seen him on occasions the tongue will just fall out and he'll just drool over that, and that's certainly a different type of reaction to a drug response.

For instance, a bone buried in the ground? - No, he'll probably - that again will just be like a casual sort of a pass.

McKiterick v Dovey

Coram Moon M.
Box Hill M.C.
10.5.88
Repairer's affidavit Tenered

BRIAN McKITERICK Complainant

and

MS. J. DOVEY Defendant

AFFIDAVIT OF LOSS

I, JOHN DINSTONE DECEASED of 10 KOOKABURRA AVE DONCASTER in the State of Victoria MAKE OATH AND SAY as follows:-

1. THAT I am a Loss Assessor and my duties include the assessing of repairs to damaged motor vehicles.

2. THAT on or about the 27/5/87 I saw a damaged motor vehicle registered number AZP 020 belonging to the Complainant.

3. THAT the damage referred to in paragraph 2 was fresh and consistent with impact.

4. THAT I assessed the cost of repairs to the abovementioned vehicle at $4723:60.

5. THAT the sum of $4723:60 was a fair and reasonable charge for the repairs requiring to be effected.

SWORN at ELTHAM)
in the State of Victoria)
this 16th day of OCTOBER)
19 87)

BEFORE ME:

.....
Commissioner for taking Affidavits
...W..R..CHISHOLM.....
A JUSTICE OF THE PEACE

A Day in the Life of Clive Penman

Readers will remember a recent 'Age' Saturday Extra article entitled 'All in a Day's Work' which followed a number of persons through a normal day in their working lives. Unfortunately, space did not permit 'The Age' to include all of the workers it had interviewed. By kind permission we print one of the biographies omitted.

JUNIOR BARRISTER, MR. CLIVE PENMAN. ESTIMATED DAY'S PAY: $102 (GROSS) COURT APPEARANCE $56, CONFERENCE $23 AND PAPERWORK $23.

8.00-8.30: By winter's early light he is perusing the morning paper. Having checked the training notes of his favourite Australian Rules team he browses through the Law List. He does not have a matter in today's list but it provides good company for his usual breakfast of tea and unbuttered toast.

8.30-9.00: Having endured vegemite kisses from the twins and received a cut lunch from an obviously doting wife he strolls briskly through the biting wind and drizzle of a typical Melbourne winter's day to his station. After an unplanned wait of a little more than half an hour he squeezes into the blue Harris coach for the hour long bumpy trip into the city. It will be standing room only for the whole of the journey again today, three peak hour trains have been cancelled due to shortages of staff. There is a little light relief at Richmond Station when the bulk of the passengers have to scurry across the platform when their train converts instantly from 'City Loop' to 'Flinders Street'.

9.30: Mr. Penman arrives in his sixth floor Four Court Chambers. It is furnished rather austerely; a simple desk, three wooden chairs Carringbush Op Shop circa 1979, carpet squares, neo-Elizabethan fluorescent lights, a small pile of

Clive Penman's Chambers

legal texts in the corner, an ash tray on the desk still full and the all important telephone. Obviously the room of an uncluttered mind. The sounds of an animated conference can be heard drifting through the partitions. The telephone doesn't ring.

9.45: A quick dash across the road, against the lights and through the driving rain to the Clerk's office. The pigeon hole is bare and telephone message slot is bereft. Hiding despair Mr. Penman grits his teeth and mutters 'Ah well a good chance to catch up on a bit of research, maybe copyright or even taxation' and starts out of the Clerk's office. The Clerk calls out, Mr. Penman stops in his tracks. A flicker of hope crosses his face. 'Would you mind popping next door. The solicitors are good supporters of the list. The brief is on its way. It's only Scale 'A'. It's better than sitting in chambers earning nothing, eh?'

11.00: With a borrowed Jacobs 'County Court Practice' and an obviously hastily prepared brief he goes to County Court Chambers to seek an adjournment so that his instructing solicitors can take instructions from the client and prepare the answering affidavit. It is going to be opposed. It is not reached before lunch.

1.00: Back at chambers his cut lunch awaits. It is washed down with a

cup of take away capuccino, skin and all, while he bones up a bit further on the Rules. 'Lunch is a good chance to marshall one's thoughts, reassess one's case and prepare for the afternoon's battle' he comments.

2.15: Back in the rather oddly shaped County Court Chambers Court. It is not so crowded now. The adjournment application is still opposed. After another hour they are sent out to another judge. He is obviously less than happy to be helping out in Chambers. He tersely asks Mr. Penman's opponent: 'And why shouldn't I grant the week's adjournment with the appropriate orders on costs?' Another five minutes and Mr. Penman is out of court, not having had to display his obvious forensic skills. Often it's a matter of knowing when to say nothing.

3.45: Back in chambers, having called into the Clerk's office to face another empty pigeon hole and message slot. Enters up the backsheet and his fee book. 'Scale A: $56, not bad considering I originally had nothing for the day'.

4.15: The telephone remains silent. A Rumpolesque colleague pops in and they exchange a few yarns about recent cases. It amuses and relaxes them both.

4.45: Mr. Penman is about to leave and the telephone rings. It is his Clerk. Hope flashes across his face, 'No, it is all right, I'm free now . . . Yes I can see him straight away . . . I should be able to get the answers off by the end of the week'.

4.55-5.55: A rather ebullient taxi driver comes to confer with Mr. Penman about a recent motor vehicle accident. Complex issues about the colour of traffic lights and the speed of vehicles are discussed. Mr. Penman obviously delights in talking with the client about his taxing occupation. There are difficulties in preparing the answers to questions about loss of earnings, but with a deal of rapid cross-fire questioning the answers come forth. The taxi driver leaves and Mr. Penman leans back, obviously pleased with a job well done.

5.55: Time for a quick take away capuccino which has grown rather cold during the conference before the quick dash to Flagstaff Station. Breathlessly he arrives with seconds to spare, not even having had time to quickly grab a Herald from the vendor as he dashes by. He has time to gather his breath as the train is 25 minutes late. Patiently he waits on the crowded platform, not joining in the growing frustration at the lack of information about the train delay.

7.15: Take away fish and chips which have grown rather cold and claggy. The kids are in bed. Mr. Penman engages in light hearted banter with his wife about the irregular income he receives and the difficulties she had over the previous month in paying their bills. 'I am owed heaps' he reassures her. 'It will all come in soon'.

8.30-9.45: Laboriously Mr. Penman drafts the answers to interrogatories so that he can get them to the typist the next day, 'That's $23 for the conference and another $23 for the answers, less the $8 for the typing of the answers. Will be a while before I see the money though.'

'A barrister's job is one of the last occupations where one faces the harsh reality of uncertainty each day. Which court will I be in, who will be on the bench, will I have an opponent, who will my opponent be, will he find a fatal flaw in my case, how much will I receive this week, will I be able to pay the bills? You see people, but basically you're on your own, and so much of it is assimilating such a diverse amount of material.'

Readers Course Autumn 1988 - Unquotable Quotes

Earnest reader to eminent family law barrister:

'We had some fellow by the name of Guest talking to us the other day . . .'

* * *

Another earnest reader to the fellow named Guest:

'. . . I was only trying to draw you out'.

Guest: 'Thank you for your modest contribution!'

* * *

H.B. - the Solicitor-General

'I'm really a barrister . . .'

'Hands up those who want to be the Chief Justice in 25 years?'

This question was followed by an embarrassed silence.

Note: Everybody wanted to put their hands up Then from an experienced campaigner:

'I want to be alive in 25 years!'

* * *

Following discussion of tax deductability of the readers course fee:

An impoverished reader -

'Can we get a refund?'

* * *

A learned friend eminent type barrister of some repute on why we need barristers -

'It's because judges are irascible, humourless, stupid or just bums . . .'

* * *

A parented family barrister -

'Having children . . . it's a duty'.

* * *

One judicial mind to another -

'. . . it is rather slow . . . and stupid . . .'.

* * *

Some fatherly advice -

'Any time a witness says 'To tell you the truth Mr. . . ..' you know you've got them by the short and curlies'.

* * *

A fanatical observer of judges talking to the readers about 'A Plonko Judge', a reader responding indignantly -

'He was my best man!'

* * *

Reader's question to Q.C. -

'Do you take juniors to the High Court?'

Reply: 'Yes . . . what's your name?'

* * *

Notes found crumpled in the corner of the common room

Reader: 'What is a negative traverse?'

Learned reply:

'Well that's where we have an implied denial of confidentiality followed by an overt positive suggestion of it being in the public domain multiplied by double overlay positive suggestion which translates into a genuflected Holy Mary Mother of God . . . pray for me . . .'.

* * *

Scene: Older member of the group expressing concern about the 'computerization' of the legal profession. Retort by younger member:

'You can't sort it out with an abacus any more . . .'.

* * *

Advice tendered as to popularity:

'We're about as popular as a Turkish bouncer at a Greek Cypriot wedding'.

* * *

Advice given as to negligence:

'We're getting to the point where clergyman will be sued for not saving souls!'

* * *

On wigs and gowns:

'Perhaps the wig could be replaced with a balaclava!'

* * *

Serene reader to eminent Q.C.:

'Don't take me seriously, I'm only trying to excite you'.

* * *

Unconfirmed slip:

'I'd put the Ethics Committee over Anna Whitney!'

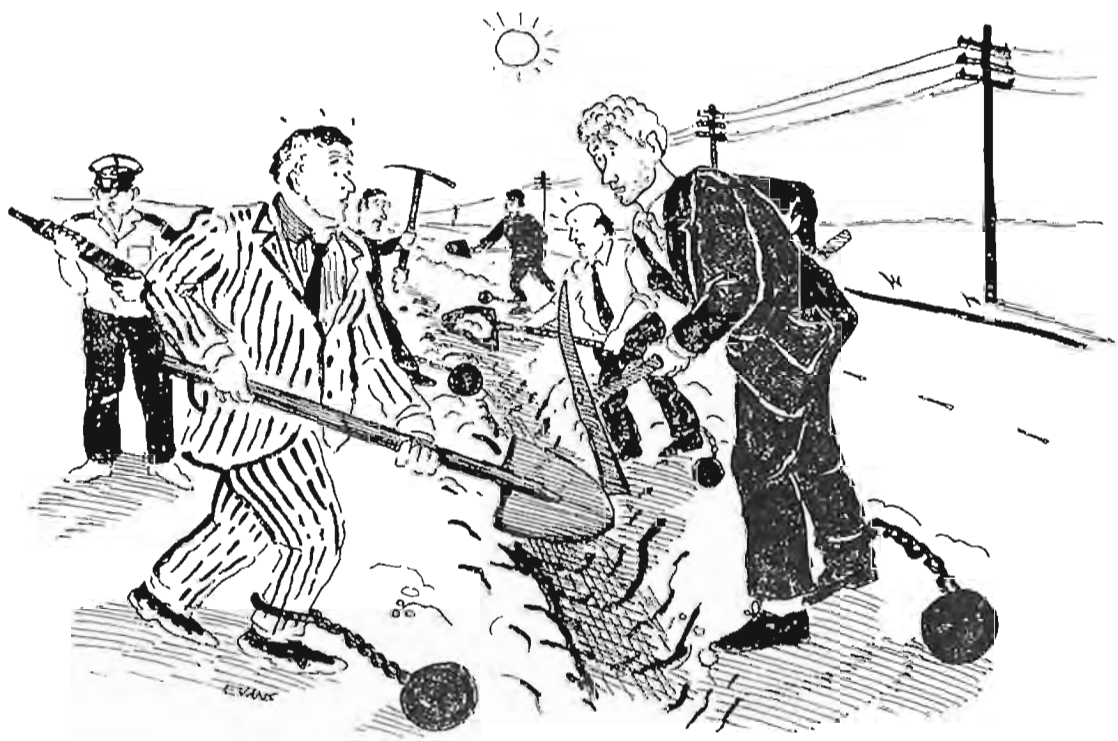
Tax expert to readers:

'Double bass players could claim 'travelling' expenses for transport of their instrument'

* * *

Reader: 'What about double briefs?'

Peter Condliffe

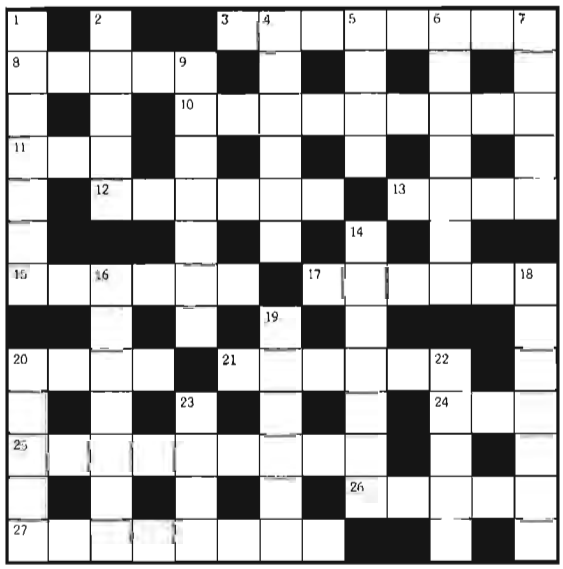


"I know the convention Programme said Labour Law Seminar - but this is ridiculous."

Captain's Cryptic No. 62

Across

3 A fine for bloodshed (8)
8 A court (5)
10 Moneys payable as interest (9)
11 Bind together a neckerchief (3)
12 Latin interest (6)
13 Only a lake (4)
15 First payment before insurance cuts in (6)
17 Shuts the pieces of land (6)
20 Security in Latin (4)
21 Tests the quality (6)
24 This sort of tack is fundamental (3)
25 Without win (9)
26 Recipient of a gift (5)
27 Fell back (8)



Down

1 Pay tax or 40 days in King's war (7)
2 Instructions to counsel (5)
4 Livy (6)
5 Movement intended to shock, father (4)
6 Northern Civil War soldiers (7)
7 Result from (5)
9 Hostile, as in witness (7)
14 Made a plea (7)
16 Property other than freehold (7)
18 Oral defamation (7)
19 Interest in land (6)
20 Court announcer (5)
22 American witness box (5)
23 As soon as possible (1,1,1,1)

Correction

In the Autum Issue 1988 No. 64 J.P. Hennessy was incorrectly included on the list of those members of the Bar having leave of absence. He had been granted leave of absence on 5th November 1987 but this was rescinded by the Bar Council on 17th March 1988 at his own request.

Lawyers Bookshelf

An Introduction to Company Law

4th Edition by R. Baxt, The Law Book Co. Ltd. 1987
Pages v-xxiii, 1-317, Index 319-330

Professor Baxt is well known as the author or co-author of literature in the areas of commercial law, company law and taxation and has recently been appointed Chairman of the Trade Practices Commission. The Attorney-General pointed out at the time of his appointment to the Trade Practices Commission that Professor Baxt has a unique mix of experience in business law together with academic excellence. It is these qualities as demonstrated in the previous editions of this work that make **An Introduction to Company Law** such a well regarded text today.

An Introduction to Company Law has now been updated and released as a 4th edition. Generally, the law is updated as at the end of May 1987.

Chapters 2 to 9 deal with general corporate issues such as the Memorandum and Articles of Association, Capital, Profits and Dividends. A further three chapters (10, 14 and 15) address issues pertaining more directly to shareholders and two chapters (12 and 13) concentrate on the position and responsibilities of directors.

Three final chapters deal with a miscellany of matters such as liquidation and receivership, takeovers and the securities market.

Thus this work provides an outline and guide to a wide range of issues falling within the ambit of company law.

The book has a fluent and concise style. It is easily digestible by novices in the area of company law and in addition is well footnoted to provide exposition and guidance for the expert.

The Preface notes that the move for a federal scheme of regulation of company law has gathered momentum and indeed since this work was printed that momentum has continued. If such a federal scheme does become law, it can only be hoped Professor Baxt can be prevailed upon to produce a 5th Edition of this work.

An Introduction to Company Law has become a standard text in the area and this edition should find a niche in the bookshelves of lawyers, students and businessmen alike.

Peter Lithgow

The Commercial Bill Market in Australia

by R.W. Peters,
Longman Cheshire 1987

The commercial bill market in Australia's financial system is now over 20 years old with its source being traceable to the resource project financing period of the late 1960's. Although an established part of the commercial world, little information is available about the size and composition of the market.

This book examines the commercial bill market mainly from an economic point of view. There is passing reference to the Bills of Exchange Act but the main emphasis of the book is on such matters

as the various types of bills currently in use, the relevance of those bills to the money market, the historical development of the use of bills in Australia as well as canvassing the way in which bills are priced. There is also a listing of some of the current participants in the market. The book further sets out a comprehensive table of statistics relevant to the market such as its size and the percentage by which the market share is divided.

As a book intended for background reading on the subject or to enable a reader to acquire a degree of familiarity with the overall nature of the market, the book would be useful. It is superficial, however. Its intended readers are not lawyers although the book would have a place in the general reference area of a lawyer's library.

J.D. Wilson

Criminal Fraud

by D. Lanham, M. Weinberg, K. Brown, G. Ryan, The Law Book Company Ltd. 1987, pages v-xli, 1-570 Index 571-629

The authors of this text bring a wealth of experience to the task of elucidating the law of criminal fraud. Their fields of expertise and experience range over academia, law enforcement and practice at the Bar in the criminal and appellate jurisdictions.

The range of frauds dealt with by the authors is not confined to the traditional areas of fraud - theft, obtaining property by deception and fraudulent conversion; rather these areas are an introduction to the wider range of activities falling under the rubric of criminal fraud.

Indeed, as the authors note in their Preface:

> 'Criminal fraud has for some time been a rapidly developing area of human endeavour. Widespread recognition of this fact has led to a relatively swift development in recent times of laws designed to prevent or at least reduce its incidence.'

It is this proliferation of laws dealing with fraud in a variety of contexts that provides the bulk of this work.

The area of company fraud is dealt with in two main chapters; False Accounting and Company Frauds. In addition, separate chapters deal with Securities Industry Frauds and Deceptions in Trade and Commerce. This chapter is principally concerned with offences (pursuant to s.79) against Part V of the **Trade Practices Act** (1974 Cth).

A further separate chapter concerns Revenue Frauds and concentrates on offences created by the **Crimes (Taxation Offences) Act** 1980, the **Taxation Administration Act** 1953 Part III and the 'Conspiracy' offence created in s.86 of the Commonwealth **Crimes Act**. 'Conspiracy to Defraud' in all its manifestations at common law and under various state laws is dealt with further in a later chapter.

Social Security and Medical Frauds, Forgery, Bribery and Secret Commissions and Computer-Related Crime are each covered in separate chapters. The chapter dealing with computer-related crime identifies criminal conduct manifested by use of computers and refers the reader to relevant text elsewhere in the book. No doubt in future editions considerations arising from new legislation such as the Victorian **Crimes (Computers) Bill** 1987 will be covered. Indeed the book in its recognition of computer-related crime as an area worthy of a distinct treatment has been ahead of legislation drafted to address the unique problems and possibilities of the computer and well behind the crimes perpetrated by use of that technology.

The final four chapters are of general applicability to the criminal law. As such they deal with Arrest, Powers of Search, extraterritorial (interstate and foreign) aspects of criminal law and Restitution and Compensation Orders.

This text will be a splendid addition to many libraries. It is written in a clear, lucid style, comprehensively footnoted and covers the vagaries of State and Federal legislation that constitutes the mosaic of law pertaining to criminal fraud in Australia. Where necessary diagrammatic exposition clarifies the text, and several helpful tables (regarding Trade Practices Act and taxation offences) are included. It is not just a book for the criminal lawyer. It is a work that has a niche on the shelves of lawyers and accountants, those involved in taxation, consumer affairs, social security law and corporate advice. It is sure to become a standard reference work.

P.W. Lithgow

The Judgments of Justice Lionel Murphy

(eds A.R. Blackshield, D. Brown, M. Coper, R. Krever Primavera Press Sydney, 1987)

Into 300 odd pages the editors of this book have crammed a representation of sixty of Justice Murphy's decisions together with brief notes on 22 'other important cases'. There is a usefully planned and detailed index and helpful guide notes and introductory material for the lay reader.

The material is presented by edited extracts of particular decisions arranged in subject groupings in similar form to Fred Ellinghaus' **'High Court on Contract'** together with explanatory headnotes, introducing the reasons and giving some factual background.

Professor Blackshield's stance is revealed amply in the formulation of chapter headings and sub-headings, case headnotes, and in the selection of material. Chapter headings include, 'Democracy and Fundamental Rights', Use of the Legal Sustem', 'Federalism', and 'Tax Avoidance' followed by sub-headings such as 'One Vote - One Value', 'Disputed Confessions and Police Verbal' and 'Freedom of Speech'. The chosen material displays in each case Justice Murphy's analysis of issues and concepts and his application of policy considerations to presented circumstances, propositions and precepts. As an example the extracts from the **Franklin Dam Case (Cth v Tasmania)** 46 ALR 625, at 721, 725-34, 736-8 represent Justice Murphy's observations on the doctrine of reserved State powers, the Federal balance, the concept of national government and the aboriginal question. The extracts do not themselves evidence any particular approach taken by his Honour to statutory interpretation and construction, or case analysis. What results is a picture of the consistent application of Justice Murphy's own policy approach which seeks to balance individual liberty and the demands of groups of individuals and institutions.

It is not the intention of this book to provide any direct comparison with the technique and approach of other members of the court although some general observations are made in the headnotes. It is certainly a useful collection of and guide to the breadth of Justice Murphy's dissentient opinions and in all probability a good opportunity for the lay reader to examine closely some of the fruits of Justice Murphy's career.

S.J. Howells

Outline of Companies and Securities Law

by H.A.J. Ford, Butterworths 1987

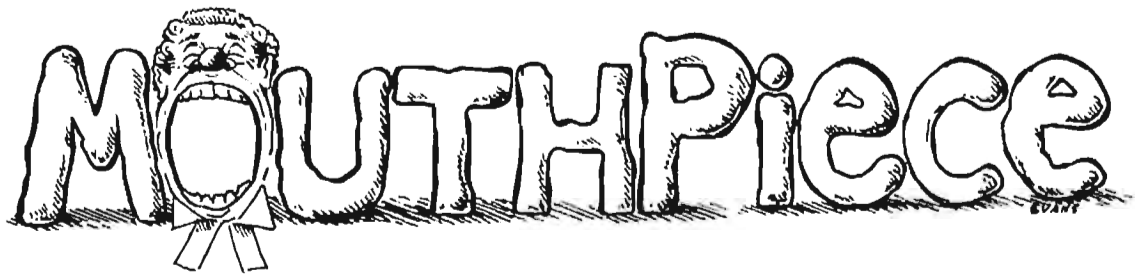
This book is both introductory in nature but very comprehensive as well.

In the book's preface, Professor Ford indicates that the book is intended for investors, business people and those who have never studied the law of companies and securities. To that end, a deliberate effort has been made by the author to keep case references to a minimum but references to the Code are plentiful.

The chronological progression of the book corresponds with the life of both an exempt proprietary company and a public company. The book's commencement is with the formation of the company then considers the operation of the company, the methods of raising finance and briefly outlines directors' duties. There is also a guide to the legislative provisions relevant to the conversion of an exempt proprietary company to a public company. The book then describes ways in which a public company operates and raises funds. In the latter portion of the book the author examines the alternatives available to a company in crisis - whether financially or as a result of internal disharmony. Windings up are considered as well. The chapter concerning takeovers is especially good. Terms such as vertical and horizontal integration, put, call and renounceable options are explained as is the way in which the Ministerial Council administers the legislation.

As an introductory book the work is of great value. Equally, as a refresher or for people whose practice involves them only periodically in matters of company and security law, the book is valuable. It has been published in soft cover only.

J.E. Wilson



5th March 1986
Messrs. Slighe, Dehling & Sleighs
Attention: S Slighe Esq.

Dear Sam,

I am informed by my clerk that my fees in the matter of Wriptof are now in excess of three years overdue. I would greatly appreciate it if you could attend to payment of those fees as soon as possible as I have to pay my Provisional Tax shortly and my bank is pressing me to reduce my level of overdrawings. I trust everything is well with you.

Best wishes
A. Barrie Stirr
Equity Chambers

15th April 1986
Attention: Mr. S. Slighe

Dear Sam,

I refer to my letter of the 5th of March 1986 and would appreciate it if you could give the matter your urgent attention.

Yours sincerely,
* * *

1st June 1986

Dear Bazza,

Your letter of the 15th of April arrived yesterday. I have had a detailed search undertaken but cannot locate your letter of the 5th of March. Perhaps it was lost in the mail. Would you pass on my very best wishes to Cheryl and the kids.

Very best wishes,
* * *

29th September 1986

Dear Bazza,

Thank you for sending a copy of your letter of the 5th of March 1986 the original of which was obviously lost by those drones in Australia Post. We cannot locate any reference to the matters you refer to. Perhaps you could be so kind as to request your charming and highly esteemed clerk to send me copies of your fee slips at his convenience. I trust that your practice is still booming.

Very best wishes,
* * *

Four Courts Chambers
24th December 1986

Dear Sam,

Thank you for your letter of the 29th day of September which arrived only yesterday. Unfortunately, my clerk will not be able to process your request for copies of the Wriptof fee slips until his office resumes in the New Year. In the meantime I can advise you that the fees were for paperwork, a pre trial and a two day Defended Custody and Property matter completed in the first two months of 1982. Wishing you and your family a Merry Christmas and a prosperous New Year.

* * *

19th February 1987

Dear Barry,

I am indebted to you for arranging for your esteemed and erstwhile clerk to send me copies of the Wriptof fee slips. It took us some time to locate

the files as they had been completed and placed in archives. Anyway, perserverance paid off and we now have them at our fingertips. It does seem that the accounts you refer to were paid off some time in 1983. Do you think that you could have made a mistake or perhaps your clerk's accounts people may have not recorded our payments to you. I hope that the New Year has been good to you so far and I assure you that I have instructed my staff to put plenty of briefs your way although I am sure they would have to book you months ahead seeing how busy you must be.

Best wishes,
* * *

Latham Chambers
31st May 1987

Dear Mr. Slighe,

Once again your letter seemed to have been held up in the mail for an inordinately lengthy period. My clerk and I have conducted exhaustive checks of all of our records and I can assure you that the fees in Wriptof remain unpaid. Would you PLEASE attend to payment FORTHWITH.

Yours faithfully,
* * *

12th October 1987

Dear Barry,

You will appreciate that it has taken me some time to search our records. It would appear that Mrs. Wriptof failed to put us in funds for your fees. I am afraid that I must ask you to be a little patient whilst we take steps to obtain payment of you fees. I am sure that you understand our position.

Very best wishes,
* * *

Owen Dixon Chambers
14th October 1987

Dear Mr. Slighe,

I am extremely concerned that I may have to wait for another five years whilst you chase up Mrs. Wriptof. PLEASE PAY THE ACCOUNT FORTHWITH or you will meave me no option but to take more drastic action.

Yours,
* * *

19th January 1988

Dear Bazza,

We are still chasing up Mrs. Wriptof, but we are having considerable problems locating her. You appreciate that until we receive your fees from her we cannot attend to your accounts. I am sure that you will be a little more patient. I have instructed my staff to ensure that all of our Family Court briefs are directed to you. I trust you and your family are still well.

Best wishes,
* * *

2nd May 1988

Dear Barry,

I have some rather unpleasant news to report to you. We finally located Mrs. Wriptof. She is adamant that she has paid all of her legal costs and in any case cannot afford to pay her gas, electricity and food bills much less anything by way of disputed legal costs. We will see what we can do. In the meantime I enclose an Office Account Cheque for a small part payment. It's the best I can do.

Best wishes,
* * *

Owen Dixon Chambers West
15th June 1988

Mr. Slighe,

Reference is made to your letter of the 2nd of May 1988 and all of our correspondence which preceded that letter. I advise you that no cheque was enclosed in that letter. Unless I receive full payment of all amounts outstanding within 7 days I will place this matter in the hands of my solicitors with instructions to issue forthwith.

* * *

23rd August 1988

Dear Mr. Stirr,

I was today served with a Summons issued by you. I would have thought that comity between legal practitioners would have dictated that you give me some warning of such precipitate action. I was deeply shocked and disappointed to receive that bolt from the blue. I am extremely disappointed that you have behaved in such a manner especially after all of our years of working together.

Yours faithfully,

* * *

12th September 1988
A.B. Stirr Esq.

Dear Mr. Stirr,

We have today received Mr. Slighe's solicitors Notice of Intention to Defend. It appears that he intends to rely on the Statute of Limitations. In addition he asserts that he has no responsibility for the debt as his firm was acting as agents for Mrs. Wriptof and that you should look to her for payment. As well he has pleaded that the debt was not his but his ex partner Mr. Sleighs who handled the file; that your fees were exhorbitant; that you were tardy in the paperwork and that you were negligent in the work that you did. I await your further instructions in this matter.

Yours faithfully,
Munn, Dayne and Ploddyn

9th December 1988
A.B. Stirr Esq.

Dear Mr. Stirr,

I am pleased to advise you that judgment was entered against Mr. Slighe in the Melbourne Magistrates Court on the 1st of December in the sum of $350.00 plus interest of $43.00 and costs of $48.00. There was no appearance by Mr. Slighe. Herewith please find our account in this matter.

Yours faithfully,
B. Keene

4th January 1989

Dear Mr. Stirr,

I regret to inform you that the Sherrif was unable to execute the Warrant on Mr. Slighe. It appears that he has retired from practice and has moved to Majorca. I enclose our further account in this matter and a copy of the Sherrif's fees.

Yours faithfully,
B. Keene

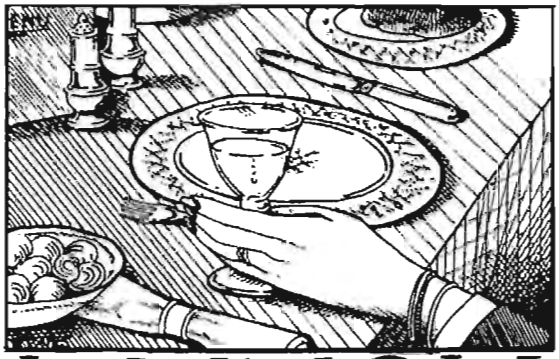
12th January 1989

Dear Mr. Stirr,

I note that your account is overdue. I remind you that our terms are seven days. If you do not attend to payment of our account by return mail we will issue proceedings without further notice.

Munn, Dayne and Ploddyn

Graham Devries



L·U·N·C·H

YUMMY DIMMY BY NAME, YUMMY DIMMY BY NATURE

For some years now, some of us have had our only real exercise in life by walking the length of Little Bourke Street to obtain the delights of Chinese cooking. Some of us even bought 'City Saver' tram tickets for that quick Bourke Street flit to Exhibition Street to enjoy the culinary delights of the Rickshaw Inn and Flower Drum Restaurants.

About 6 months ago the need for such exercise was relieved when the Yummy Dimmy opened its doors in Little Bourke Street, just down from Hardware Lane. Owned by the proprietors of the Shark Fin Inn, the Yummy Dimmy provides a wide range of dim sum (mouth sized snackies) at lunch time, as well as a limited a la carte manu. The dim sum menu contains all the traditional favourites such as shau mai, fun gwor, har gow, shark fin dim sim, war tep, wun tun and spring rolls. The food is fresh and generally well cooked. I would recommend that any indulger enjoy Chinese vinegar, chilli sauce and plum sauce with the above delights.

The a la carte menu is not as appetising as one might have hoped. The chef has a propensity to dice the meat or cut it into very fine strips which tends to diminish the reservior of natural juices and flavour that one normally expects in such delights as Peking Duck or Cantonese fillet steak. The average costs of a dim sum lunch would be approximately $20.00 per head. The restaurant is B.Y.O.

The restaurant also offers a take away service located in the front. I personally have never enjoyed eating Chinese food out of silver foil dishes with plastic forks and spoons whilst gazing into the shop fronts of Little Bourke Street, but for those whose secretaries are fleet of foot and require a lunch of substance in Chambers, it is worth remembering this facility offered by the Yummy Dimmy. The restaurant is open in the evenings, but I am obliged to advise that if one is to be bothered staying in town for dinner, the delights of the eastern end of Little Bourke Street would overshadow the prospects of an a la carte meal at the Yummy Dimmy.

I so indulge.

S.K. Wilson

Editors Note: We express our appreciation to the management of The Yummy Dimmy for making special arrangements to serve our lithe reviewer by the trolley load rather than the plate at the bulk discount.

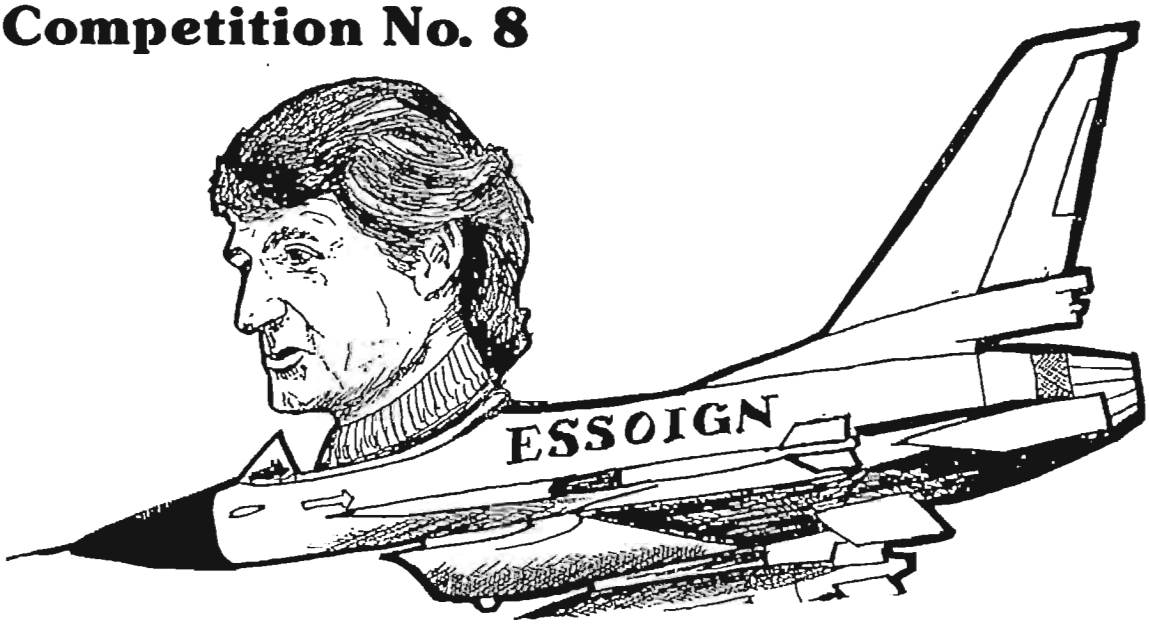
Yummy Dimmy, 373 Little Bourke Street, 670 8855

Winner of Competition

Having sifted through hundreds of entries to our competition the judges verdit is - **Simon Cooper** winner of both categories.

Yes Simon has been judged the **MOST ELIGIBLE** Bachelor *and* **PSEUDO** Bachelor at the Bar. Simon's prize is a reasonable bottle of Essoign Claret. Well done Simon!

Competition No. 8

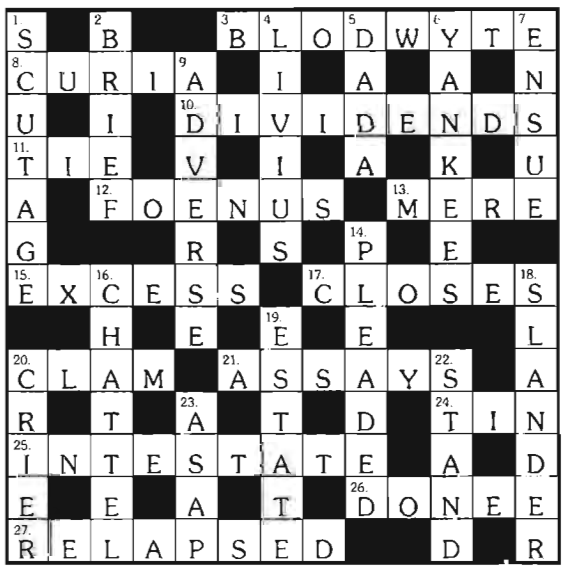


Who is this person?

What, if anything has he done?

Description in 25 words or less.

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



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

Phototypeset and printed by Printeam Pty. Ltd.
333 Flinders Lane MELBOURNE 3000
Phone 614 5244

This publication may be cited as (1988) 65 Vic B.N.