



President's Report



CommBar held its annual cocktail party at the Federal Court of Australia on 8 October 2015. Chief Justice Allsop and Philip Solomon QC made speeches. The function was attended by the Commonwealth Attorney-General Senator the Hon George Brandis QC, many judges, barristers, solicitors and corporate counsel and has been adjudged a great success. Thanks are due to the organising committee: Wendy Harris QC, Anna Robertson and Georgia Douglas, Sally Bodman and Courtney Bow in the Bar Office and Sia Lagos and Melissa Charles of the Federal Court.

On 11 November 2015, the CommBar Equitable Briefing Initiative was launched at the Federal Court of Australia in Melbourne. The launch was the culmination of work over an 18-month period involving collaboration between CommBar, the Victorian Equal Opportunity and Human Rights Commission and the judiciary.

As part of the initiative, members of the judiciary met with senior members of the profession from private law firms, the government sector and the corporate sector in two private workshops - to discuss the underrepresentation of women barristers in commercial litigation and what might be done to address the inequity. Kate Jenkins, Victoria's Equal Opportunity and Human Rights Commissioner, facilitated the workshops that involved judges from the High Court of Australia, the Federal Court of Australia, the Supreme Court of Victoria (including the Court of Appeal) and the County Court of Victoria.

As a result of the workshops, a Charter of Commitment was formulated. Signatories to the Charter commit, over a three-year period, to six concrete actions aimed at achieving gender equality in commercial briefing. The Charter includes a target to brief in approximately equal proportion to the percentage of women practising in commercial work, both in terms of number of briefs and value of briefs. It includes a commitment to ensure that shortlists for clients include suitably qualified and experienced women barristers. There is also a commitment to collect and report relevant data on briefing to the Commission, every six months.

The founding signatories to the Charter of Commitment are:

- Arnold Bloch Leibler
- Australian Securities & Investments Commission
- Corrs Chambers Westgarth
- Gilbert & Tobin
- K & L Gates
- Lander and Rogers
- Maddocks
- Norton Rose Fulbright
- Slater and Gordon
- Telstra
- Victorian Government Solicitors Office

Speaking at the launch, Chief Justice Warren, noted the gender imbalance of advocates appearing in courts and made specific reference to the number of women judges in these courts. Her Honour said that if firms want to do the best by their clients and maximise their clients' interests, it would make sense to include women advocates. Justice Maxwell, President of the Court of Appeal, encouraged men in the profession to take action in relation to the issues facing women. He asked men to "*push a little bit harder, and ... make ourselves a bit unpopular by saying 'as senior counsel or junior litigator, I want that woman'.*" Describing the charter as remarkable, he urged every firm in Victoria to get out in front in relation to equitable briefing. Chief Justice Allsop of the Federal Court of Australia also spoke at the launch. His Honour addressed the reasons for the difficulties faced by women in the profession and suggested including women advocates in their briefing pool and, in inter alia noted the blokey and sometimes aggressive atmosphere in courtrooms. The Chief Justice said it was the responsibility of everyone to drive this kind of mindset out of the courtroom.

The equitable briefing initiative and the Charter, is ground-breaking. CommBar is incredibly proud to have been a part of this initiative and, with the support of the Victorian Bar, we look forward to other firms signing up to the Charter in coming months. Particular thanks go to the working group who developed the project and continue to work on it: Justice Mortimer of the Federal Court of Australia, Justice Hollingworth of the Supreme Court of Victoria, Kate Jenkins, Philip Crutchfield QC, Anna Robertson and Kathleen Foley.

On 16 November 2015 CommBar held the annual general meeting and election.

Following the election, the membership of the Executive is as follows:

Philip Crutchfield QC – President
Stewart Anderson QC - Senior Vice President
Wendy Harris QC – Junior Vice President/Convenor
Ian Percy – Treasurer
Committee members:
Caroline Kenny QC
Albert Monichino QC
Anna Robertson
Andrew Downie
Kathleen Foley
Dr Elizabeth Boros
Caryn Van Proctor

Particular thanks are due to David Levin QC and Stephen Holland at the Bar Office for overseeing the voting process.

I thank all those who nominated for positions and thank Dr Josh Wilson (now Judge Wilson of the Federal Circuit Court) for his excellent contribution on the Executive of CommBar. We congratulate Josh on his appointment and wish him well.

The official launch of the London 2016 International Commercial Law Conference took place on 24 November 2015 at the Essoign Club. It is a joint undertaking by the Commercial Bar Association (CommBar) and the Commercial Bar Association of England and Wales (Combar). As places are limited – a reminder that registration opens on Monday 30 November 2015. [Click here](#) to download the flyer.

On Wednesday 11 November 2015 the new members of the Bar Council were elected. Congratulations to Paul Anastassiou QC on his appointment as President of the Bar. CommBar looks forward to working closely with the CEO Sarah Fregon, the President and the Bar Council in the year ahead.

Finally, on behalf of CommBar, I record my thanks to Jim Peters QC for his tireless work during his term as President of the Bar. Jim's unfailing energy and hard work was deeply appreciated by all of us.

Philip Crutchfield QC | President



Commercial Bar Association of Victoria
www.commbar.com.au

Quotes of Note

Example is not the main thing in influencing others. It is the only thing. Albert Schweitzer

As a general rule, the most successful man in life is the man who has the best information. Benjamin Disraeli

Music in the soul can be heard by the universe . Lao Tzu

If you can't explain it simply, you don't understand it well enough. Albert Einstein

One dog barks because it sees something; a hundred dogs bark because they heard the first dog bark .
Chinese proverb

Publius

FAMOUS SAYINGS

Recently Publius read of a shrewd comment by Clive James. It was to the effect that famous sayings tend to “float upwards” until they become attached to somebody famous.

James was speaking in particular of the comment attributed to Herman Goering: “*Whenever I hear the word ‘culture’ I reach for my revolver.*” Apparently, according to James, it originated with some minor Nazi functionary.

When starving peasants at the time of the French Revolution complained that they had no bread, Queen Marie Antoinette, the wife of Louis XVI, is supposed to have said “*Let them eat cake*” (Since she was, supposedly, speaking in French, the word would have been “brioche”, a luxury bread enriched with butter and eggs).

However, the phrase appears in Rousseau’s *Confessions*, written in 1765, long before the revolution, when Marie Antoinette was aged nine.

And Voltaire never said “*he would disagree with what you say but defend to the death your right to say it*”. It first appears in an early 20th century biography of the great man.

So perhaps some famous legal sayings, such as the one about justice being seen to be done, probably originated from some humble barrister. But barristers are probably happy enough to see their catchy phrases appropriated by publicity-seeking judges, without attribution, as long as they win.

Members of the Commercial Bar Association should be encouraged to dream up witty aphorisms which can float upwards until they attach to someone famous – like Publius.

Publius

Building & Construction Law

FORTHCOMING EVENTS

The Society of Construction Law - End of year function

The evening will commence with the Grand Final of the inaugural Charrett Moot.

Date: 9 December 2015

Time: 5.45 for 6.00 pm

Venue: Corrs Chambers Westgarth

It is envisaged that in the near future the Construction Law Division of Commbar will conduct Practice Group sessions. Rather than having two practice group sessions running in parallel, the existing construction law practice group sessions conducted by the Victorian Bar will migrate into the Commbar Practice Group sessions. Further details will be provided shortly.

[Is the existence of a reference date under Security of Payment legislation a jurisdictional fact amenable to review?](#)

Adam Rollnik · November 23, 2015

The NSW Court of Appeal determined, unanimously, that a finding by an adjudicator of an available reference date is not a jurisdictional fact and therefore is not a precondition to the making of a valid payment claim. On this basis the adjudicator's decision was not amenable to [...] [Read More](#) »

[Validity of payment claims solely for work previously performed but not claimed in an earlier payment claim in respect of an earlier reference date under the BCISOP Act](#)

David J McAndrew · November 23, 2015

Will a Payment Claim under the BCISOP Act be valid if it: only claims for work not previously claimed in an earlier payment claim made pursuant to an earlier reference date; and / or, does not contain a claim for work performed since the last reference date? [...] [Read More](#) »

[Proportionate liability meets the statute of limitations](#)

Gabi Crafti · November 9, 2015

VCAT has recently confirmed that an applicant in a building action is not entitled to make a claim against a respondent who has been joined as a concurrent wrongdoer if that claim is out of time under the Building Act 1993 [...] [Read More](#) »

[High Court clarifies when “surrounding circumstances” may be used to construe a contract](#)

Michael W Wise · October 20, 2015

In obiter remarks the High Court has now provided some clarity by unequivocally stating that “surrounding circumstances” may only be used to construe a written contract when “ambiguity” is present [...] [Read More](#) »

Competition & Consumer Law

["Bad call": Non-disclosure by franchisor of franchisee wage costs](#)

Glen Pauline · October 13, 2015

The 7-Eleven wage scandal puts the spotlight on franchisees, franchisors and the obligation to pay employees their proper wages. But whose problem is it? Is underpayment of franchisee wages solely the responsibility of the franchisee? Can a franchisor that [...] [Read More](#) »

[Federal Court warns of a ‘free range’ on ACL penalties](#)

Georgia Douglas · October 8, 2015

In ACCC v RL Adams, Justice Edelman warned future defendants of an increase in the quantum of

penalties that may be ordered for misleading or deceptive conduct in 'free range' claims. Defendants may face multiple contraventions and be subject to far greater fines to [...] [Read More](#) »

Energy

[Caught between two regulators: who pays for networks' stranded labour costs?](#)

Tom Clarke · November 26, 2015

The Australian Energy Regulator says that networks' regulated revenue should not cover inefficient EBA redundancy policies; but the Fair Work Commission rules that the networks must continue to apply those policies. Who will bear the cost: the networks, or consumers? [...] [Read More](#) »

[Sparring partners: offshore petroleum JV operator removed](#)

Tom Clarke · November 24, 2015

Rare judgment provides insight into exploration JV disputes and construction of Joint Operating Agreements. [...] [Read More](#) »

Insolvency Law

[A trustee in bankruptcy can object to discharge on grounds that go beyond those specified in the Bankruptcy Act](#)

Raini Zambelli · November 24, 2015

A bankruptcy trustee's notice objecting to discharge on one of the special grounds specified in the Bankruptcy Act 1966 can be valid even if based on additional unstated reasons, so long as those reasons are directed to the achievement of a purpose of the law of bankruptcy [...] [Read More](#) »

IP and Trade Practices

[MALTESERS' strong reputation leaves a sour taste in Mars mouth](#)

The Hon Peter C Heerey AM QC, Tom Cordiner and Alan Nash · November 26, 2015

In this decadent edition, we report on a quartet of cases dealing with champagne, cigars, green tea and chocolate. And something of a novelty – a successful [...] [Read More](#) »

[Close to trade mark infringement, but no cigar](#)

The Hon Peter C Heerey AM QC, Tom Cordiner and Alan Nash · November 26, 2015

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["Champagne" expert told to put a cork in it](#)

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