

ISSUE 162 SUMMER 2017

VICTORIAN BAR NEWS

Slow boat to Shanghai

Ingrid Braun

Teaching advocacy far away

Campbell Thomson

Everything is orange: my year in Amsterdam

Morgan Brown

The Travel Issue

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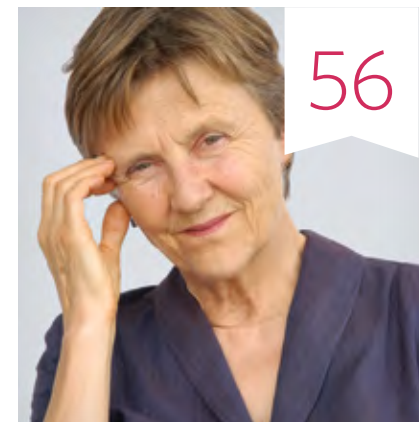
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Editorial



Big shoes to fill

NATALIE HICKEY & JUSTIN WHEELAHAN, EDITORS

Taking over as editors from Georgina Schoff QC and Georgina Costello is a daunting task. Gina and Georgie have been *Bar News*' fearless leaders for a number of years. They have an eye for a story and an endless capacity to know the right person to tell it. As committee members, we have always looked forward to our meetings during their time at the helm.

Gina and Georgie have presided over numerous debates about the content of the next edition (which have from time to time been serious) with good humour and in an inclusive manner. The Victorian Bar is a broad church, and the *Bar News* tries to reflect the views of its diverse membership. Sometimes, these debates have been less serious but no less intense.

Gina and Georgie have been fun and they have made *Bar News* relevant and interesting. Their approach has been symbiotic. They have been so in harmony with each other that they would sometimes finish each other's sentences. They have also excelled at looking after the dark arts of the publication process. We are very grateful to Gina and Georgie for their efforts, and for their continuing mentorship and patience as we take our first faltering steps down our own editorial path. We hope to live up to their editorial legacy. Particular thanks are also due to the Editorial Committee, to Guy Shield, to Peter Barrett and to members of our Bar Office such as Denise Bennett, Amanda Utt, Sarah Harrison-Gordon and Ross Nankivell.

We have called this edition 'The Travel Issue' because we appreciate that the January court vacation is a time for reflection as we recalibrate and consider the road ahead, personally and professionally. There is perhaps an enduring assumption that, by our membership of the Victorian Bar,

we are more tied to the jurisdiction than those in other professions. One can look wistfully at friends who say, “my job involves a lot of travel”, or with envy at those who mention the travails of travelling to New York, London or Paris.

However, is the road less travelled really the lot of the 21st century barrister? After all, barristers have a great deal of autonomy. In our feature, ‘Is a change as good as a holiday?’ we have brought together the stories of five barristers who have pursued personal odysseys in far flung places, taken a mid career break, or moved interstate for work for family or personal reasons. Our objective is to promote reflection and inspiration over the holiday season. The year ahead can be geographically adventurous, if you so wish.

Many barristers, of course, also travel on an ad hoc basis for work, or to give back to the community. Appearing in court in Melbourne’s CBD on one day, and appearing in Broome the next, might be daunting to some. As John Kelly SC suggests, acting for Aboriginal accused in remote areas is as challenging and rewarding as it gets. He explains his own experience and invites interested barristers to contact him. Separately, Campbell Thomson provides an insight into the experience of teaching

advocacy in places such as Vanuatu. Plainly, it is a pursuit that is confronting and fulfilling in equal measure.

The last six months have been significant for the legal profession in Victoria. In a milestone moment, we said farewell to one Chief Justice of the Supreme Court of Victoria and welcomed the next. The retirement of the Hon. Marilyn Warren AC as Chief Justice was celebrated at a number of farewell functions hosted by the legal profession and by the Victorian Bar in an event at the National Gallery of Victoria which is covered in this edition. We congratulate her successor, Chief Justice Anne Ferguson, and look forward to providing insights from our new Chief Justice in future editions of Bar News.

The legal profession and the Australian public also saluted Sir Ninian Stephen KG, AK, GCMG, GCVO, KBE, QC, who passed away on 29 October 2017. Sir Ninian was a former member of our Bar who, amongst his many achievements, was a Justice of the High Court of Australia from 1982 to 1989 who then served as the 20th Governor-General of Australia from 1972 to 1982. The next edition of Bar News will mark the occasion appropriately.

We do hope you enjoy this edition of Bar News, and wish everyone a restful and enjoyable summer vacation. ■



VBN COMMITTEE: (Standing L-R) Georgina Costello, Annette Charak (Deputy Editor), Sarah Harrison-Gordon, Jesse Rudd, Campbell Thomson, Amanda Utt, Georgie Coleman, (Seated L-R) Denise Bennett, Justin Wheelahan (Editor), Natalie Hickey (Editor), Brad Barr; (Absent) Georgina Schoff QC, Maree Norton (Deputy Editor), Catherine Pierce, Justin Hooper.

An Apology to Cisco

In the last edition of *Victorian Bar News* (VBN 161), in Silence All Stand, reference was made to the height of a certain horse called Cisco (majestic image attached).

Cisco is owned by the Honourable Justice David O’Callaghan, and gained special mention in his Honour’s welcome as one of his ‘fast horses’.

The article falsely reported that Cisco is a mere 14 hands when, in fact, he is a lofty 17.3 hands. The publishers reluctantly accept that egregious imputations have been cast upon Cisco’s manhood (even though he is a gelding).

Accordingly, *Victorian Bar News* offers its sincere apologies to Cisco for any hurt, distress and embarrassment he has suffered. Victorian Bar News is otherwise ‘sorry not sorry’ to Justice O’Callaghan and Jennifer Batrouney QC, who brought this matter to its attention.

VBN

Kids IN Wigs



Jennifer Batrouney’s son, Mark, circa 1995. Noting that the photograph was happily volunteered by Mark’s mother, Mark should be aware that he has a right of reply, at any time!

Have your Say *Victorian Bar News* encourages letters to the Editors on topics ranging from the meaningful to the mundane. The reader who submits the best letter for the next edition (judged on a basis unlikely to be rational) will receive **two free tickets to a production of the Bell Shakespeare Theatre Company**. Write to the Editors at *Victorian Bar News*, Owen Dixon Chambers, 222 William Street, Melbourne, VIC 3000 or email vbneditors@vicbar.com.au



“What a pleasure it has been to experience the broad collegiality of the Bar.”

recommendations following the Bar’s governance review: a Bar Council Charter has been developed; a review of the Bar’s Constitution conducted; and an induction process for new Bar Council members developed. A review of the Bar’s Committees is well underway with Charters for Bar Committees created.

Defending the rule of law

The Bar’s Strategic Plan specified that the Bar will “work collaboratively to safeguard the rule of law”. I have issued two press releases to defend the independence of the judiciary and the role of barristers. One concerned inappropriate comments made by federal politicians about criminal sentences, while an appeal on sentence in a terrorism case was before the Victorian Supreme Court. The other press release defended the legal profession from criticism that they were “unAustralian” for taking on pro bono work for offshore asylum seekers.

Celebrating our history & looking to the future

Two highlights of the Bar’s year were the establishment of the Peter O’Callaghan QC Gallery foundation and the start of the Bar’s second Reconciliation Action Plan.

The Peter O’Callaghan Gallery is an important community place for our Bar, providing a visual tribute to the Bar’s history, and honouring champions of our Bar. The Foundation was created to support the continuing growth and preservation of the Gallery. Several outstanding additions to the Peter O’Callaghan QC Gallery were unveiled this year. First there was the nuanced and masterful Bill Henson photographic portrait of the Honourable Ken Hayne AC QC, an extraordinary work that dominates the space. More recently, the Gallery acquired a wonderful painting

of its namesake, by renowned Australian painter, printmaker and sculptor Rick Amor. I thank Peter Jopling AM QC, the Chair of the Art & Collections Committee for his passion and tireless commitment to the Gallery. I also extend my thanks to the new Gallery Board and to the Arts & Collection Committee members who have worked to secure each commission. The Bar is also indebted to Peter for taking on the role of Chair of the Board. The Bar is fortunate indeed to have the Honourable Justice Gordon as Gallery Patron.

The Bar’s second Reconciliation Action Plan (RAP) was launched in March by Magistrate Rose Falla and her father, Uncle Kevin Coombs, an esteemed leader of the Victorian Aboriginal community. Among those who spoke at the launch were the Honourable Justice Kaye AM, the Honourable Justice Bromberg and two of the clerks from this year’s indigenous clerkship program, which is run by the Bar, the Supreme Court and the Federal Court. This year also marked the tenth anniversary of the indigenous clerkship program.

Having been a member of the Bar’s Indigenous Justice Committee when the Bar’s first RAP was launched, I am particularly pleased to see the second RAP come to fruition, demonstrating the Bar’s ongoing commitment to reconciliation.

I look forward to seeing the Bar achieve the RAP’s vision of providing real access to justice, encouraging meaningful participation, and valuing and respecting Aboriginal and Torres Strait Islander barristers and people in the legal system. I congratulate Tom Keely SC and the Committee and thank them for their ongoing commitment to this important work.

Equitable briefing

In 2017, the Court of Appeal released shocking statistics as to appearances ▶

PRESIDENT’S REPORT

Not too taxing

JENNIFER BATROUNEY



Moose and Minnie

As a tax barrister, I live a somewhat cloistered life: often preparing carefully written opinions on fine points of statutory interpretation and evidence from my ivory tower and appearing in court to make studied submissions. So it has been something of a rodeo ride to be the Bar President with all its unpredictable and urgent tasks. Looking back on the year, the taxing moments were plentifully outweighed by the fun and interest of leading our Bar. But my family is pleased that

my Presidency has drawn to a close, and I will now have more time to play with my miniature Dachshund puppies, Moose and Minnie.

What a pleasure it has been to experience the broad collegiality of the Bar, form relationships among barristers from different areas of work and be called to speak on short notice on various significant topics.

My presidency swiftly followed the inception of the Bar’s strategic plan, and I’m happy to say we have achieved solid milestones in carrying out the plan. We launched the Bar’s new website. We opened the refurbished Level 1, Owen Dixon Chambers East. We continued to implement

“Perhaps more strikingly, women barristers had a speaking role in only six per cent of matters.”

by women and men in the criminal and civil jurisdictions of the Court. Women appeared in only 15 per cent of matters in civil appeals. Perhaps more strikingly, women barristers had a speaking role in only six per cent of matters. The figures in the Court of Appeal Criminal Division were better in so far as women barristers appeared in 22 per cent of matters and had a speaking role in just under 20 per cent of cases. These statistics evidence an abundant need to address gender equality in our profession.

A theme of my presidency has been progressing the Bar’s commitment to equality and diversity in briefing practices. This year the Bar Council resolved to support and facilitate the adoption of the Law Council of Australia’s national model gender equitable briefing policy by members of our Bar. The policy is designed to level the playing field for all members of the profession and aims to see women briefed in proportion to their representation at the Bar, in terms of both the number and, importantly, the value of briefs, by 2020. The Bar’s Equality and Diversity Committee – lead with distinction by Michelle Quigley QC as Chair – has established a working group to develop an implementation plan to assist members to report upon adopting the policy.

To date, a relatively modest number of our members have formally adopted the policy and are recognised on the LCA’s website for having done so. While it is probably true that solicitors have the greatest influence on who will be briefed in the vast majority of matters, barristers, and particularly senior counsel, do play a significant part in providing recommendations and referrals. Consistently, we are told by law firms that they rely on word of mouth referrals, and that fellow

barristers and senior counsel are a key point of enquiry.

Accordingly, I encourage all members of our bar, women and men, to adopt the equitable briefing policy in the year ahead. I would very much like to see the Victorian Bar continue to lead the way in respect of gender diversity as it has done since 2001 when our Equality Before the Law Committee, as it was then known, released the first major report on this topic and initiated the first equitable briefing policy. I look forward to seeing the number of Victorian Bar signatories grow in the weeks and months ahead.

One of the most thought-provoking CPD seminars I attended this year was by Kate Eastman SC of the NSW Bar, who visited in August to deliver her renowned training on unconscious bias. While many who attended were expecting the session to be about discrimination, the seminar usefully addressed managing relationships with colleagues, briefing firms and clients. I encourage members who were unable to attend Kate’s session to take the time to watch the video recording of the session which is available for all members to watch via the members’ CPD section of the website.

Equally, the first reporting by the founding signatories to the Commercial Bar Association’s 2015 Equitable Briefing Initiative demonstrates that the adoption of equitable briefing targets and reporting to those targets leads to positive change. I commend each of the law firms, government regulators and corporate organisations that signed up to the EBI for their outstanding leadership and commitment to change in this important area.

Glittering events

The Bar enjoyed a number of fine and joyous events this year. The

Bar dinner in May was a wonderful night enjoyed by 460 members. Her Excellency the Honourable Linda Dessau AC delivered an inspiring speech; warm, funny, erudite and engaging. Kathleen Foley, as junior speaker, also did a brilliant job. Her speech took a tongue-in-cheek look at the future of barristers and our sometimes conflicted move into the modern world. All this against a backdrop of a beautiful view over the night lights of Olympic Park, the Lex Pistols’ terrific performance and the constant hum of social interaction between old friends and new. My thanks to all who put in the hard yards behind the scenes to make the evening happen, in particular Courtney Bow and Denise Bennett.

In September 2017 the Bar joined with the Law Institute of Victoria to host a dinner at the National Gallery of Victoria for the profession to join together to celebrate the significant contribution that the Chief Justice The Honourable Marilyn Warren AC made to the profession and her commitment to justice in this State. There was a lovely sense of warmth from the legal community in the room. A highlight was a comedic roasting of Her Honour in the format of a meeting of the ‘Judicial Appointments, Development, Enterprise and Decommissioning (JADED)’ Committee with Jeremy Ruskin QC, Michelle Quigley QC and Dr Matt Collins QC, synced with pre-recorded special appearances by Rachel Doyle SC via New York. I was delighted to speak on behalf of the Bar to toast the Chief Justice on her retirement. I thank all members of the Bar who attended to join with us to honour and acknowledge the Chief Justice on her retirement.

Also in September, the Bar hosted its now-legendary Bar Legends Dinner. This year, we inducted 11 more ‘greats’ into the hall of fame: Ross Macaw QC, John Karkar QC, Julian Burnside AO QC, David Curtain QC, Jeremy Ruskin QC, William Houghton QC, Ian Hill

QC, Patrick Tehan QC, Peter Hanks QC, Michele Williams QC and Julian McMahon AC. The awards were the brainchild of Hartog Berkeley QC and Peter Jopling AM QC, and were designed to ensure the Bar celebrates members who have made a significant contribution to the Bar and the integrity of our profession, but who have not taken up any judicial or equivalent office. This year’s dinner was a thoroughly enjoyable and memorable evening. His Honour Justice Jack Forrest delighted us with a terrific speech together with Powerpoint presentation. Jeremy Ruskin QC gave a brilliant, dry as a bone, witty response on behalf of the Legends. I thank Peter Jopling AM QC and the Legends Committee for their work in ensuring that this tradition continues. I also thank Amanda Utt for all her work in producing a seamless event.

Passing the baton

The Bar’s aims, and mine as its president this year, have been to advance professional excellence and performance by giving members support they need, promoting the distinctive skills of barristers amongst clients, solicitors and the broader community and ensuring that the Bar continues to be a strong, independent, authoritative voice to promote and safeguard the rule of law.

As I write, the Bar Council elections are underway and I am preparing to pass the baton to a new president. I am pleased to report that the Bar is on a sound financial footing. The Bar’s most significant investment is its shareholding in Barristers’ Chambers Limited. This year BCL has delivered a substantial profit and, having confirmed that it has achieved its financial targets, will pay a financial dividend to the Bar. It is pleasing to see the Bar for the first time receiving a direct financial return from its investment in BCL that can be applied for the benefit of all members.



Fiona McLeod SC, Angela Lee, Kat Brazenor, Minal Vohra SC, Fiona Ryan, Sally Flynn SC, Jennifer Batrouney QC.

A note of thanks

It has been an honour to represent the Victorian Bar over the past year. I thank the members of our Bar and of the broader legal community for support throughout my term which has been sincerely appreciated.

I would like to extend particular thanks to my outstanding executive: Dr Matt Collins QC, Wendy Harris QC and Dan Crennan QC. I believe that we have operated as a truly collaborative leadership team. Our Bar Council this year has been a harmonious and hard working group. I thank them, our EA Denise Bennett and the Honorary

Secretaries for their devotion to the governance of our Bar.

I thank the Bar’s CEO, Sarah Fregon, and her team for their dedication and all of the excellent work they do. In particular, I thank Elizabeth Ingham for her support in relation to the President’s message and our Bar speech writer, Ross Nankivell.

I finish this year as President of the Victorian Bar in the knowledge that our Bar will be in good hands for the future, as it has been since its inception. I look forward to continuing to represent our Bar in my new role as Vice President of the Australian Bar Association. ■



CEO REPORT

Becoming a 'virtual world' at the Victorian Bar – A year in review

SARAH FREGON

Building Change

'Building' and 'change' are the first two words that come to mind when I think about the work of the VicBar team over the last year. We have changed our virtual world through what has been the major project of building the Bar's new website.

Complementary to that has been the building of our communications through increased media engagement with a particular focus on the Bar's social media engagement.

And then there has been physical change in the refurbishment of our facilities on level 1 at Owen Dixon Chambers East.

Each of these initiatives has been a major project for the Victorian Bar team. Each is aligned with our core strategic objectives as set out in the Strategic Plan 2017-2020 (a) to maintain and expand market share, (b) to provide services to members to support and enhance their practices, (c) to foster excellence and enhance the performance of Victorian Barristers and (d) to enable the Bar to be a strong, independent and authoritative voice.

The New VicBar Website

The Bar's new website was launched in May this year after what was a year-long project from initial scoping to launch. We now have a new 'virtual' home which provides a fresh modern 'look and feel'. Importantly, the site is significantly improved in respect of its design architecture and functionality.

Just some of the features include the enhanced search and navigation functions, improved barrister profile pages, the new member dashboard homepage with personalised links to resources, relevant committee documents and Bar Association pages, new homes for our Bar Associations in the form of micro-sites for each one with dedicated member resources sections, and a new learning management system for our CPD library, ICC resources and Readers' Course content.

I am incredibly grateful to the whole VicBar team who all contributed to this project and thank Amanda Utt, General Manager Corporate Services, in particular for her leadership in managing what was a complex development and integration project through to delivery. I would also

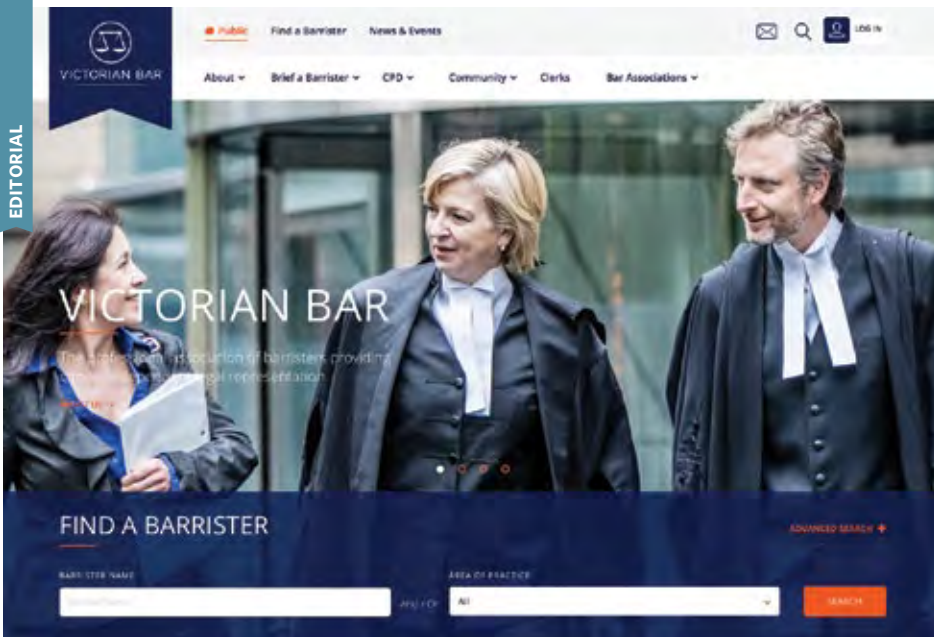


like to acknowledge and thank our website development agency, Icon, with which we worked cohesively and productively throughout the project to produce what is a first class website that projects a modern, accessible and approachable Bar.

Communications & Social Media

Over the past 12 months I have been working with our Communications Team on building the Victorian Bar's social media presence and profile. Our focus has been on the Bar's already established Twitter and LinkedIn accounts. In just 12 short months we have increased the Bar's Twitter following by a further ~1000 followers. The Bar now has over 4,000 followers on Twitter. LinkedIn has proved to be a highly effective platform from which the Bar can engage with the legal and business community. Our LinkedIn following has almost doubled to over 5,300 followers.

We have used these forums to share information about life at the Bar and our engagement with the broader profession and community through conferences, events and other initiatives such as CPD In Session. Campaigns have included a postcard series highlighting the contribution of significant members of our Bar past and present, another focusing on women at the bar to celebrate International Women's Day, and we have shared the Bar's media releases and events including the unveiling of new portraits in the Peter O'Callaghan Gallery, the 2017 Bar Legends Dinner, our involvement in the Melbourne Festival Production of 'Please, Continue



(Hamlet)', our newest readers, CPD functions, the junior Bar conference, our annual conference and more.

There has been much to share. On the events front, just this year we have held 15 dinners, 15 cocktail events, 12 external CPD events across practice areas, over 70 CPD events more generally, a junior bar conference, as well as coffee mornings for new barristers and silks.

Level 1 Owen Dixon Chambers East

The refurbishment of Level 1 at Owen Dixon Chambers East was another significant project this year. We now have the physical spaces to enable us to achieve our strategic objective to provide services to members to support their practices. Level 1 is the 'home' of the Bar's operations where Bar Council and committees meet, our Readers' Course is run, our library is located and we run our extensive CPD program. This has also been critical to ensuring we have a facility that we can be proud to invite the broader profession to and enable us to expand our external education and other events programs. These new modern spaces reflect the modern Bar that we are. Already, we are seeing them serve their purpose of further promoting collegiality at the Bar.

I thank BCL for the significant investment made and also the project

team, led by Ivana Ferguson, who worked with our VicBar working group to provide the superior facility that we have today.

Building change within the Bar

As the change in our virtual and physical environments has occurred, change can also be seen in the composition of the Bar itself, particularly the representation of women at the Bar. When I first came to the Bar, in the March 2001 Readers' Course, women represented only 17.8% of our members. Only 5.4% of silks were women. Fast forward to 2009: when I left the Bar to take on a role as General Counsel, those figures had increased to 23% and 9% respectively. Today, women now represent just under 30% of our membership and approximately 12% of silks.

The number of women at the Victorian Bar over the past 15 years has more than doubled from 266 in 2002 to over 600 in 2017. Our most recent Readers' Course has seen a further 18 women come to the Bar of the 41 readers who signed the roll. Perhaps a lesser known statistic is that today, women represent 43% of members less than 10 years at the bar and 40% of those under 15 years. These numbers have increased substantially since, dare I say it, 'back in my day' when the percentage of

women under 10 and 15 years call was only at 25%.

Meanwhile, women's representation at senior counsel level remains painfully slow. Since 2001, the percentage of women silks has increased from 7% to 12%. That said, on the raw numbers alone, the number of women silks has more than tripled since my first year at the Bar in 2001.

So what does this all tell us? Is there more to do and to be achieved in respect of gender representation, equitable briefing and then diversity more broadly? Yes. Absolutely. The statistics on demographics alone clearly don't tell the whole story in respect of gender. There is the distribution of the proportion of work and the value of work to be considered. There is most certainly more to know and, no doubt, to do in respect of diversity more broadly - cultural background, socio-economic background and disability.

What we can say, however, is that 'we are' changing as a Bar. The composition of our Bar has been changing and is continuing to change demonstrably in respect of the gender demographic and, importantly, we are also seeing change in respect of diversity more broadly.

We definitely need to get better at collecting data to monitor the changes. We do know that across our members over 37 different languages are spoken. In the last Readers' Course alone, over nine different languages are spoken. Our youngest member is 25 and our oldest is over 80 - the legendary Brian Bourke held the post of our eldest member until recently retiring at the age of 88. Many of our members have come to the Bar with other qualifications and experience; nurses, accountants, engineers, stockbrokers, scientists, psychologists, financial analysts, IT developers, musicians and more.

We are a diverse group rich in experience and within which there is an exceptional depth of talent. ■

Welcome – The Hon. Anne Ferguson

Chief Justice of the Supreme Court of Victoria

BANJO MCLACHLAN



Her Honour's singular intellect, work ethic and humility are uncontroversial, but her compassionate and unifying approach to human relations is arguably her true hallmark. She will be a distinguished Chief Justice of this State.

Chief Justice Ferguson was admitted in 1984 and began her career at JM Smith & Emmerton (now Gadens) before joining Allens Arthur Robinson. She worked on some of the most challenging commercial and insolvency litigation in the country including that stemming from the Pyramid Building Society and Opes Prime collapses, was heavily involved in the Charity Committee at Allens and was Honorary Secretary of the Council of Legal Education for two years.

Her Honour's understated nature has meant that the extent of her academic success has been concealed by her modesty. She is a Supreme Court prize winner and has a doctorate in unfair contracts from the University of

Southampton; this is now better known since the laudations of her Honour's initial appointment to the trial division of the Supreme Court of Victoria in 2010 and then her unrelenting elevations within the Court, first to the Court of Appeal in 2014 and now as the Chief Justice.

Encouraging home-baking among junior solicitors so as to facilitate regular office tea parties is not a typical trait in law firm partners, but it was one of the features of the twelfth Chief Justice of the Supreme Court of Victoria which enshrined her as one of the most treasured bosses at Allens Arthur Robinson during her Honour's time there.

In fact, her Honour's focus on the human element of the firm gave rise to a clique of young lawyers near her office who were both literally and figuratively close to her. It became known as Anne's Special Corner (ASC).

Despite being a partner, her Honour's control over the constituent members of ASC wasn't absolute. A bare Christmas tree was erected in her office one December for charity: staff could place decorations on the tree for a fee. One night, a wayward solicitor working late adorned the apex of the tree with a glittery photograph of Chief Justice Gleeson. Her Honour, understanding the apparent allegory, assessed the situation and left the sparkling deity in place which, in turn, fuelled even more generous donations to the charity.

Some 10 years later, it is her Honour at the top of the tree. ■

Warren CJ farewell dinner

MARK COSTELLO

As an organisational task, it seemed improbable. Corraling significant numbers of the Bar to attend a function on a Saturday night, during footy finals? Holding it jointly with the LIV, and expecting attendance by a large contingent of solicitors? Covering the vast cost of a function at the NGV? It couldn't work. But the evening was for the retiring Chief Justice. And they turned out in droves.

On 23 September, the practising profession, past and present, gathered to celebrate and thank Warren CJ for her service to Victoria. That both celebration and thanks were in order could not be doubted: nearly 19-years as a Justice; more than 13-years as Chief Justice; 11-years as Lieutenant Governor; the first woman to be Chief Justice of a Supreme Court; the longest serving of the current Supreme Court bench; and, for the last 3-years, the longest serving Chief Justice in the country. This was service beyond call.

It was a balmy night in Melbourne; preliminary final weekend. The CJ's beloved Tigers were in the mix. Their game, also on that Saturday, commenced at 4:45 pm – not 7:20 pm – surely a nod by the AFL to the outgoing Chief. It meant that, if so inclined, one could comfortably see at least a half of the match before heading to the dinner. Of course, the Tigers trounced the orange pretenders from Western Sydney and marched into the Grand Final. Everything about this night belonged to the Chief.

The great and the good attended. Distinguished guests included the

Governor, and two of her predecessors, current and retired judges and the Commonwealth and Victorian Solicitors-General. It was a festival of postnominals; there were ACs, AOs, AMs, QCs, SCs, MPs and an RFD. The junior bar held its own, as did the solicitors, who came in large numbers representing firms from the monolithic to the very small.

There was no shortage of people wishing to publicly express their gratitude. Speeches came from the President of the LIV, the Chief Executive of the LIV and the President of the Bar. There was a comedic interlude by the Bar's A-Team (Ruskin QC, Quigley QC, Doyle SC and (Matt) Collins QC) that will live long in the memories of all who attended. The spirit was high. Then the CJ spoke, and eclipsed them all, with a speech that managed to be reflective, but forward-looking; passionate, but humorous; confident, but gracious.

In all, it was an occasion worthy of the person in whose honour it was held. When combined with the various celebrations that had preceded it, it may have been tempting for the Chief Justice to accept the adulation, and move on to some well-deserved years of relaxation. But, no doubt adherent to the phrase of another famous Chief Justice Warren – *the greatest reward for doing is the opportunity to do more* – Marilyn Warren will not depart field. Instead she will take up a Vice Chancellor's Professorial Fellowship at her *alma mater*, Monash University, where she will continue to influence, guide – and perhaps even direct – a new generation of leaders. ■

Members of the profession congregate in the National Gallery of Victoria to thank Chief Justice Warren upon her retirement from the Supreme Court of Victoria



Rachel Chrapot, Belinda Wilson, President LIV, Jennifer Batrouney QC, the Hon Marilyn Warren AC, CJ and Nerida Wallace, CEO LIV



Jeremy Ruskins QC, Matt Collins QC and Michelle Quigley QC



A toast, a roast and a celebration of The Honourable Marilyn Warren AC's significant contribution to the profession

Victorian Bar Legends

A Dinner to celebrate the Victorian Bar Legends of 2017. **SIOBHÁN RYAN**

Since its inauguration in 1998, by the late Hartog Berkeley QC and Peter Jopling AM QC, the dinner celebrating the Bar Legends Awards has become a hot ticket on the legal calendar. Not that this is an annual event. In fact, there have only been five such dinners, which reflects that it takes time to cultivate a Legend.

The Bar Legends Award recognises barristers who have made significant contributions to the Victorian Bar and the legal profession generally and who, for whatever reason, have not taken up a judicial or equivalent office. The current Awards Committee comprises Peter Jopling AM QC, Paul Anastassiou QC, James Mighell QC, Wendy Harris QC, Rowena Orr QC and Christopher Winneke QC. The announcement of the Awards is marked by the Dinner, at which a member of the judiciary is invited by the Committee to induct the recipients.

And so it was that on 14 September 2017 members of the Bar and the Bench gathered at the Essoign Club and the Honourable Justice

Jack Forrest was called upon to introduce this year's Legends. His Honour's speech began soberly enough with a pitch for Julian Burnside QC's latest book *'Watching Out: reflections on justice and injustice'*. Some may say that's where belief was collectively suspended because, apparently, each of the other inductees is an author in his or her own right. With masterful use of the PowerPoint, Forrest J reviewed each inductee's 'book' noting 'chapters' about their considerable professional achievements and aspects of their extra-curricular lives which set the Legends apart from the throng. Each 'book' pertained to a Legend, although Julian McMahon AC's was a magazine which outed him as the photogenic actor son of a former Prime Minister (who knew?). The Legends were fortunate to have Jeremy Ruskin QC on their team to respond. True to form, Ruskin's reply was free-ranging and terribly witty.

Congratulations to the 2017 Bar Legends, whose names have been added to the Legends Honour Board, located on the ground floor of Owen Dixon Chambers East. ■

2017 Victorian Bar Legends

Ross Macaw QC
John Karkar QC
Julian Burnside AO QC
David Curtain QC
Jeremy Ruskin QC
William Houghton QC
Ian Hill QC
Patrick Tehan QC
Peter Hanks QC
Michele Williams QC
Julian McMahon AC

They join the following barristers who have been inducted as Victorian Bar Legends:

2015 Victorian Bar Legends:

Arthur Adams QC
Dyson Hore-Lacey SC
Brian Collis QC
Robin Gorton QC
Peter Rattray QC
Brind Zichy-Woinarski QC

Remy van de Wiel QC
Ian Hardingham QC
Stanley Spittle
Noel Ackman
Clive Rosen
Richard Boaden

2012 Victorian Bar Legends:

Peter J O'Callaghan QC
A. Graeme Uren QC
Ron Meldrum QC
Richard J Stanley QC
Andrew J Kirkham AM RFD QC
Alan C. Archibald QC
Robert Richter QC
Dr John Emmerson QC
Ross H. Gillies QC
Allan J. Myers AC QC
Christopher J. Canavan QC
Colin L. Lovitt QC
Henry Jolson OAM QC
Philip J. Kennon QC
Philip A. Dunn QC
Beverley Hooper

John A. Gibson
Margaret L. Mandelert

2003 Victorian Bar Legends:

Jeffrey Sher QC
Douglas Meagher QC
Jack Fajgenbaum QC
Susan Crennan AC QC
Hartog Berkeley QC
George Beaumont QC
Gerry Nash QC
Max Perry

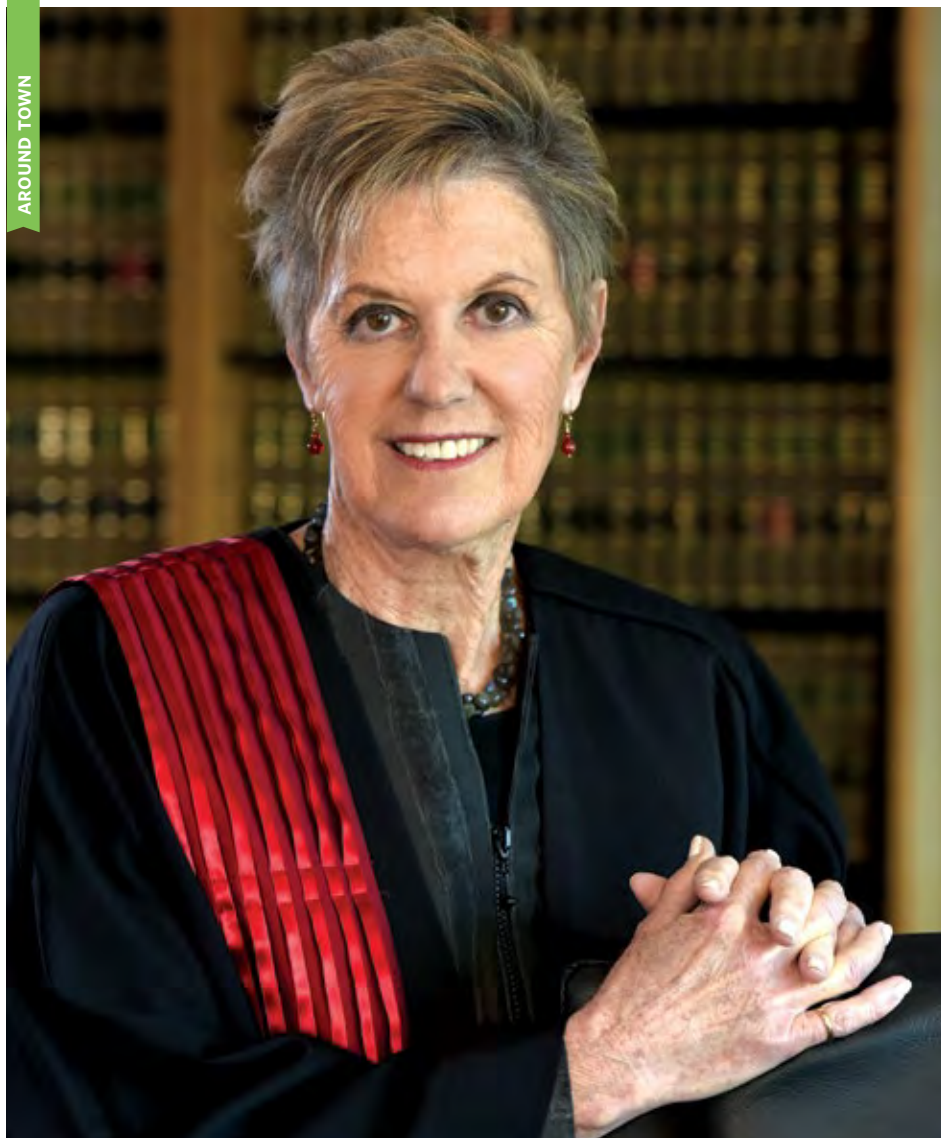
1998 Victorian Bar Legends:

SEK Hulme QC
Neil McPhee QC
Paul Guest QC
Michael Dowling QC
Jack Keenan QC
Brendan Murphy QC
Brian Bourke
Mary Baczynski



1. The Legends L-R: David Curthain QC, John Karkar QC, Patrick Tehan QC, Jeremy Ruskin QC, Michele Williams QC, Peter Hanks QC, Julian Burnside AO QC, Ross McCaw QC, Ian Hill QC and Julian McMahon AC 2. The Hon Justice (Jack) Forrest 3. Kylie Evans and Elizabeth Bennett 4. Jeremy Ruskin QC 5. Philip Dunn QC and Patrick Tehan QC





Bar from 1990, refining her family law expertise. She was appointed a silk in 1997 and was a founding member of Chancery Chambers, Melbourne.

From 2000 to 2004, she was the first Chief Federal Magistrate, before being appointed Chief Justice of the Family Court from July 2004.

Under her watch, a commitment to open justice led to the publication of judgments on the internet, a task involving sensitive navigation because of the need for many such judgments to protect individuals by the use of pseudonyms.

As Fiona McLeod stated, Chief Justice Bryant has lived the creed of the Family Law Act: that the “welfare of the child is paramount”. She has taken the lead on two of the most important social issues in Australia—surrogacy and family violence. These are inflammatory issues that the Chief Justice at all times approached with courage, and a commitment to transparent debate.

In February 2009, Chief Justice Bryant was appointed Patron of Australian Women Lawyers, in recognition of her support for women lawyers and efforts to promote equal opportunity for women in the community. Her approach has been realistic and optimistic.

At a dinner to celebrate the anniversary of the Australian Women Lawyers in September 2017, her Honour reflected upon inspirational role models who led her to leadership roles in the law. Elizabeth Evatt and Mary Gaudron are role models who her Honour followed into judicial office and service to the community. Like them, she has offered extraordinary support and encouragement to young women lawyers.

As her Honour said on the night of the Australian Women Lawyers celebrations, “We’ve come along way, baby.”

We wish her Honour all the best in her future endeavours, whether they involve further contributions to public life, whether she is flying down the ski slopes or whether she can be found in the middle of a dance floor. Whatever the case, her Honour has earned a rest, but is unlikely to take one. ■



Farewell to the Hon. Chief Justice Diana Bryant AO

FIONA McLEOD SC

On 6 October 2017, members of the profession paid their respects and thanks to retiring Chief Justice Diana Bryant at a special sitting of the Family Court of Australia. As Fiona McLeod SC observed, her Honour has served with courage, integrity and a fearlessness that will be the standard for years to come.

From an all-female household, she saw her mother go to work each day as a lawyer and breadwinner. Her Honour has since pursued the objects of support

and advancement of women with great passion throughout her career.

Her Honour hails from Perth, but is claimed as a Victorian by virtue of her attendance at Firkbank Girls’ Grammar School, her law degree from the University of Melbourne, and her LLM from Monash University.

Her Honour specialised in family law from her time in private practice, including when she was a Phillips Fox partner in Perth.

She then practised at the Victorian



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Please, Continue (Hamlet)

A diary of a thespian come barrister come thespian-barrister BY EVELYN TADROS

Tuesday, 25 July 2017

I am at the launch of the Melbourne Festival at the Melbourne Recital Centre when I first hear about *Please, Continue (Hamlet)*, a bold theatre production which will put Victoria's justice system in the spotlight.

Hamlet is on trial for the murder of Polonius, the father of his ex-girlfriend, Ophelia. Actual barristers are to prosecute or defend Hamlet before an actual former judge; actual forensic scientists are to give evidence; and Hamlet's fate is to be decided by an actual jury selected from the audience on the night. The only professional actors are to be those playing the witnesses: Ophelia, Gertrude and Hamlet. There are to be no scripts, no rehearsals, and different legal teams each night.

I am immediately intrigued. As someone who spent most of high school and university on a theatre stage, I certainly fit the stereotypical profile of a barrister: a "frustrated actor". I then feel the bitter pang of DAMO (disappointed at missing out). Who are these lucky barristers who have been chosen to be involved in this? How did I miss the callout?

At the Melbourne Festival after party, I am introduced to the

festival's executive director, Kath Mainland, who reveals that they are still looking for barristers and would I know anyone who is interested? Well, did Romeo love Juliet? "Of course", I say.

Wednesday, 16 August 2017

There is a buzz in the Essoign bar, where keen barristers attend a briefing session about the production from Kath Mainland and the Melbourne Festival's artistic director, Jonathan Holloway.

They explain how it will work. We will receive the brief about two weeks before the show, work up the brief as if we are instructed in the typical way, and then either prosecute or defend Hamlet in front of an audience of approximately 400 people as if it were a real murder trial.

The magnitude of the task suddenly dawns on me. With less than three years at the Bar and a practice predominantly in commercial and public law, I am doubtful that my readers' course experience defending Evelyn Cannon (notwithstanding George Hampel's excellent advocacy training and totally nailing the short blond/spiked hair distinction) would qualify me to

take on a brief for murder.

Whilst my FOMAFOM (fear of making a fool of myself) level is high, my FOMO (fear of missing out) ultimately wins out and I write my name down on the expression of interest form. Heck, I still have time to master the Hampel method.

Monday, 11 September 2017

I am working from home when I receive a phone call from Matthew Collins QC. Fresh from obtaining the highest defamation payout for his client Rebel Wilson against Bauer Media, he is looking for a junior to prosecute Hamlet for murder and would I be interested? Well, does night follow day? "Of course", I say. I squeal with excitement after I hang up the phone. And then wonder how on earth I'll be able to fit into my bar jacket when I'm six and a half months pregnant.

Friday, 22 September 2017

My black robes billow behind me as I enter the Supreme Court for a *Herald Sun* photo shoot. The actor playing Hamlet, Chris Evans, looks nervous as nine robed barristers crowd around him. He appears not quite sure what to make of his fellow "cast".

Tuesday, 26 September 2017

I feel nervous and underprepared as I enter Matt Collins' stylish chambers. We received the 64-page brief containing witness statements, autopsy reports, exhibits and record of interviews the previous Friday (if only all briefs could be as brief) but I have been preoccupied with an advice over the past few days. Matt appears to have read the brief several times, and is already on top of some of the details in the brief. Damn, I have already broken the cardinal rule of being a good junior: always have a better handle on the details than the silk. My FOMAFOM levels peak through the roof.

Matt's enthusiasm and excitement at being involved in this production is infectious and I quickly forget my nerves and focus on the task at hand. What is our case theory? Hamlet killed Polonius, he admits that. However, his defence is that he didn't mean to kill him; that he



“I imagine objecting to a long-winded question given by defence counsel on the basis that ‘brevity is the soul of wit.’”

thought he was killing a rat. Matt and I are perplexed. Surely, no jury member would fall for such an absurd defence?

D'Arcy, Matt's student researcher, investigates the number of acquittals in the previous productions. The result is about 50%. Hmm, if Hamlet has been found not guilty so many times, it must be because he is covering up for the real killer—perhaps Gertrude, or could it be Ophelia? As any good junior, I task myself with doing a little investigating...

Tuesday, 3 October 2017 (pm)

Matt and I meet to prepare our impending trial.

We then meet with the defence team, Fiona McLeod SC and Anne Hassan, with our presiding judge, former Supreme Court judge David Habersberger, and with his Honour's 'associate', Daniel Kinsey. Over a glass of wine, we try to resolve any evidentiary issues that would be too boring for an audience to sit through—if only all pre-trial issues could be dealt with this way.

Anne has helpfully printed out the best quotes from Hamlet and suggests we could incorporate some of the quotes into our submissions or examinations. We all respond enthusiastically and I imagine objecting to a long-winded

question given by defence counsel on the basis that "brevity is the soul of wit."

Tuesday, 3 October 2017 (later pm)

We zip down to the Fairfax Theatre to meet the co-creator of the play, Yan Duyvendak, the crew, the actors, and the professionals involved. There is trepidation in the room. Will this actually work? How on earth do you complete a murder trial in less than three hours? Is the audience going to enjoy it?

Yan explains that he wants the audience to experience their own justice system at work, not to say that it is good or bad but to show the complexity and even the possible beauty of it. After seeing the production more than 160 times in 30 different countries, he assures us that this production has been proven to work. But, he warns us that there are common pitfalls:

- » Do not try to act. We are not actors and if we try to act, we will fail and embarrass ourselves.
- » Do not play for laughs. For the production to work, the audience must believe that they are participating in a real trial. We must simply do our job and behave as if we are in a real courtroom.



“As the bell chimes to call the audience in, I feel my hands go clammy and the butterflies in my stomach.”

- » Do not use quotes from Shakespeare. (Well, there goes that idea.) It will make the audience laugh and cease to believe that they are in a real trial.
- » Stick to the allocated time of our parts or audiences will find it tedious or—worse—walk out.
- » The actors will generally stick to their witness statements and counsel shouldn't try to make them deviate drastically from them by, for example, suggesting that Gertrude is the murderer. (So there aren't any twists after all.)

We all get together for a group photo: actors, scientists, lawyers, creatives, judges, all working collaboratively to create a piece of theatre for Melbourne's pre-eminent arts festival. There is a palpable sense that we are part of something unique and special.

Friday 5 October 2017 (Day)

Matt and I have holed ourselves up in his chambers preparing for our first murder trial. Like in any case, we want to win. Doubly so because we have heard the prosecution could not secure a conviction the night before.

That afternoon, we drive eagerly to the Arts Centre. It's a total thrill to be performing at the Fairfax Theatre. Presiding judge, David Habersberger,

and I make sure we get the obligatory shots of ourselves preparing backstage. Thankfully, I can still squeeze into my bar jacket, just!

Friday, 5 October 2017 (night)

As the bell chimes to call the audience in, I feel my hands go clammy and the butterflies in my stomach. I see my mum come in late. She subtly waves at me from up the back.

Daniel opens the court and the trial begins. Matt draws the audience into his opening. They follow every word intently. When he reveals that Hamlet's defence is that he intended to kill a rat, they break into a bemused chortle and I discreetly fist pump behind the bar table.

Ophelia (Jessica Clark) takes the stand and her grief and anger at the death of her father at the hands of her ex-boyfriend is palpable. Matt is gentle but firm and elicits the evidence that we need. However, Anne skilfully pokes holes at some of the crucial parts of Ophelia's evidence. Gertrude (Genevieve Picot) plays the morally ambiguous protective mother perfectly. As she gives evidence that counters our case theory, Matt has to undermine her as time runs against us.

It is then my turn to take the forensic scientist (Dr Joanna Glengarry) through her evidence. I only have five minutes and

it very quickly runs out. I'm not quite sure the audience fully grasps the crucial parts of her evidence but it's over before I can do anything more. Hamlet (Chris Ryan) plays the underdog character deftly—he is likeable and relatable and makes his lies to the police sound justifiable.

Matt and Fiona close strongly and it is impossible to tell how the jury will decide. Twenty-five minutes go by. The jury requests more time. Another ten minutes pass. Yan reads out the number of acquittals, convictions and range of sentences from the more than 160 performances to date and we all wait in suspense to hear the jury's verdict.

How do you find Hamlet, guilty or not guilty? I cross my toes. “We could not agree”. It is a hung jury. The audience applaud enthusiastically.

We all gather backstage and our presiding judge expresses his disappointment at not being able to sentence Hamlet for 20 years. But we resolve that a hung jury means that both legal teams have won and we celebrate until the wee hours of the morning at the Forum bar.

Tuesday, 10 October

We are all invited for a debrief of the show over breakfast at Corrs Chambers Westgarth.

After watching the production twice as an audience member, I develop a deep respect and appreciation for Yan's artistry. The lack of any fourth wall, the

Brechtian set and costuming, and Yan's interventions throughout the production were super-effective at communicating his vision to the audience.

Over five nights, Hamlet is acquitted four times, with a hung jury on our night. (This is despite Ray Finkelstein, one of the presiding judges, offering to “help it along a bit” if there was no conviction.) I realise now how naïve and misplaced my earlier confidence was about the prosecution case. What a difficult job it is to prove a charge beyond reasonable doubt.

As we pose for our last group shot with the Melbourne Festival crew, I feel honoured and privileged to have been involved in the production and to have learnt from the Bar's finest in such a fun and creative environment. This is one of my career highlights and an experience to remember for years to come. ■



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Right Brain vs Left Brain (aka the Master and the Emissary)

HAROON HASSAN

Many readers will be familiar with the popular misconception about brain laterality. That is, the left hemisphere is the province of logic, reason and analysis whereas the right hemisphere is the domain of creativity, intuition and insight.

The truth is a little more complex. Both hemispheres of the brain are engaged in all types of cognitive function but very little is understood about why the two halves of the brain have evolved in the way they have. But why does that matter to lawyers and judges? It appears that it matters a great deal. In August, renowned writer, scholar, psychiatrist and speaker, Dr Iain McGilchrist was the guest speaker at the Federal Court of Australia Judicial Conference in Melbourne.

Dr McGilchrist is the author of the ground-breaking book "The Master and his Emissary".

Without wishing to give too much away, he mounts a compelling argument that something more complex is going on: the two hemispheres might have radically contrasting personalities, but there is a constant creative tension; a battle of wills as it were. This tension, he contends, has helped shape human history. Through a backdrop of Western philosophy, art and literature Dr McGilchrist illustrates how that tension has had a profound impact on the history of ideas and thus on humankind.

The members of Level 15 Castan Chambers were fortunate enough to have an opportunity to host Dr McGilchrist and a number of distinguished guests from the bench, bar and wider profession whilst he was in Melbourne. Guests were able to hear about Dr McGilchrist's pioneering work on brain laterality which has consumed over 20 years of his working life.

That is not to say the evening was entirely cerebral. Drinks and conversation flowed freely and it was a unique opportunity to be able to engage informally with a world leading expert on a topic that impacts on all of our daily lives.

Advocates and judges who have been fortunate enough to engage with Dr McGilchrist's work will not look at their stock in trade - thought, conceptualisation and articulation - in the same way ever again. For those who are interested in learning more about Dr McGilchrist and his work the following links may be of interest:

- » "The Divided Brain" - All in the Mind (ABC Radio): <http://www.abc.net.au/radionational/programs/allinthemind/the-divided-brain/8895804>
- » "The Divided Brain" - TED Talk - https://www.ted.com/talks/ian_mcgilchrist_the_divided_brain
- » www.ianmcgilchrist.com ■

- » 1 Dr McGilchrist started his career at Oxford where he read English. He became a fellow of All Souls College teaching English literature and obtained no less than two further fellowships at the College when he elected to read Medicine and then specialise in psychiatry. After a distinguished career in medicine Dr McGilchrist now devotes his time to writing and lecturing.



1. Dr Iain McGilchrist 2. Brian Walters AM QC, The Hon. Chief Justice Allsop AO, Paul Anastassiou QC, Helen Symon QC and Deputy President Ian Lulham (VCAT) 3. The Hon. Justice Pagone, Haroon Hassan, Kevin Connor SC (NSW Bar) 4. Daniel Kinsey, Dr Iain McGilchrist, and The Hon. Justice O'Callaghan 5. Richard Niall QC, The Hon. Nicola Roxon, The Hon. Mary Gaudron and Claire Harris 6. Daniel Kinsey, Sarah Zeleznikow, Kevin Connor SC, Dr Iain McGilchrist and Alistair Pound

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Rick Amor's Portrait of Peter O'Callaghan QC

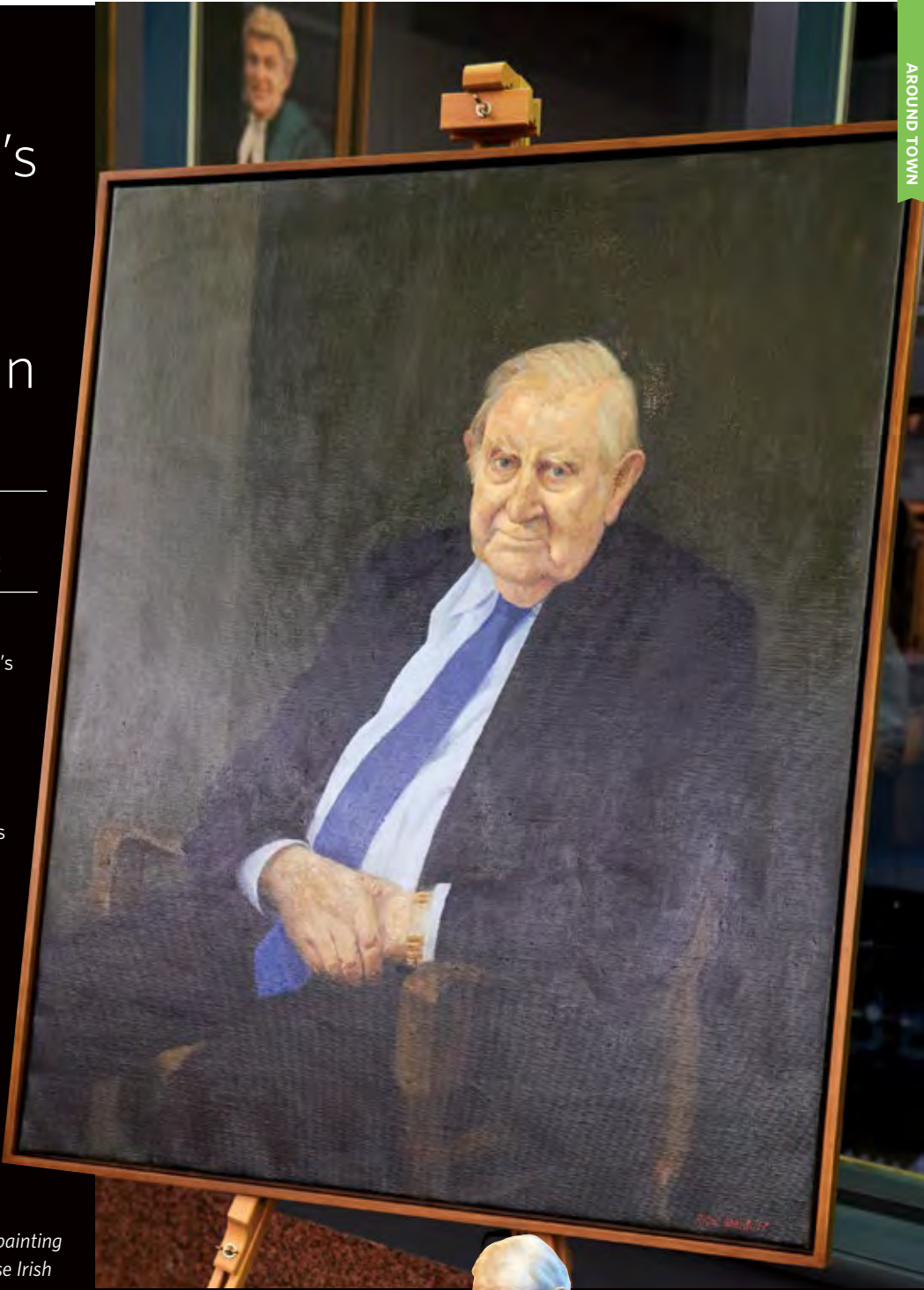
SIOBHÁN RYAN, ART & COLLECTIONS COMMITTEE

Missing in the Peter O'Callaghan QC Gallery's portrait collection has been a painting of Peter O'Callaghan QC himself. The generosity of Allan Myers QC, in funding the commission of a portrait of Peter by Rick Amor, has filled this space.

On 26 September 2017, the colleagues, friends and family of Peter O'Callaghan gathered in the Gallery for the unveiling. Peter's dear friend Susan Crennan QC did the honours and, in a warm and affectionate speech, recalled Peter's rich life, his large and loving family and his great contribution to the Victorian Bar. As Crennan so aptly put it:

Rick Amor has had the task of painting a man in his ninth decade whose Irish skin burns under the Australian sun even when he's wearing a shirt, whose insight into human frailty would be hard to match and whose inimitable place in our lives deserves permanent capture in a portrait...

It is fitting that portraits of Susan Crennan QC by Lewis Millar and of Peter O'Callaghan QC by Rick Amor now hang beside each other at the entrance to the Gallery. Two of Australia's finest artists have fixed in paint two legends of our Bar. ■



REPORT OF THE ANNUAL FRANK GALBALLY CUP FOOTBALL MATCH

Victorian Bar V. Law Institute Of Victoria

Sunday, 8 October 2017. BY DUGALD MCWILLIAMS

Sunday, 8 October 2017. It was a hot and windy day at Victoria Park when about 25 brave souls gathered on behalf of the Victorian Bar to do battle in the annual charity match between the Bar and the Solicitors. The Bar was defending the Cup after a stirring victory in 2016, its first in ten years. The contingent on behalf of the Bar were not deterred by the obvious presence of youth in the solicitors' side – made obvious by their hipster haircuts and beautifully groomed beards – because we had justice on our side: Justice Mordy Bromberg, to be precise, who was the coach appointed to lead the barristers to victory. His impeccable football record speaks for itself: 34 games for St Kilda between 1978 and 1981, 11 goals and three Brownlow votes in his VFL career. Just the recipe for a big victory.

The atmosphere in the change rooms was electric. The fetid air rising from a dank and dingy visitors' change room at Victoria Park, which hadn't been cleaned in about 25 years, stung the nostrils. The faint smell of Dencorub did little to exorcise the ghosts of visiting teams past. Old friends were reacquainted, and new friends were made. A liberal amount of strapping was applied to aged limbs and rheumatic joints. It was a shame that Paul Santamaria was not able to pull the boots on again this year, but he did the Bar a wonderful turn by making his three sons available, Pat, Bart and Alex. Given the average age of the Barristers, it is always necessary to drag in a certain number of ring-ins to the team. A very liberal approach is adopted such that the father/son rule is applied: Mordy and Ben Bromberg, Paul Santamaria and his holy trinity of sons (one has to ask where Jack Batten and his trio of champion sons are in this mix(!) – see VBN 156 at page 88). The Bar always reaches beyond the father/son rule to father/nephew, father/grandson, father/distant relative, father/some-bloke-I-met-on-the-train-on-the-way-to-the-ground.

Sadly, the Barristers' chances took the biggest blow before the first ball was bounced. A cry came up from the Solicitors' change room that they were short on numbers. The Bar Selection Committee (who will remain nameless), in their infinite wisdom, chose three young faces who were relatively unknown and unfamiliar to most gathered there on behalf of the Bar to join the Solicitors' number. Sadly, the three players they delivered ended up being possibly the best players on the field that day. This imbalance was quickly redressed when at half time we put out a similar call to

the Solicitors' change room and retrieved those three players and allowed them to star for the Barristers in the second half.

The match was officiated by John Russo (solicitor and former VFL/AFL umpiring great) and also Mark Gibson (Crown Prosecutor, Barrister and VAFA umpiring luminary). The players assembled, facing each other and the national anthem was sung in impeccable fashion by a Reclink beneficiary, who sounded like a proverbial angel and brought a tear to the eye of everyone gathered there. The first victory for the Barristers was the coin toss, probably the most significant contribution by Dugald McWilliams, the captain of the Bar team, that day.

The first quarter was a hotly contested affair. The Bar's ruckman, Clinton Benjamin (current law student, indigenous scholarship recipient and former Carlton Player, recruited by Mordy Bromberg J) dominated at the centre bounce and around the ground. Adrian Anderson showed that his years as an AFL administrator and more recently as a Barrister stood him in good stead, proving difficult to stop around the centre of the ground, reminiscent of Dale Weightman's efforts back in the '70s and '80s. His conspicuous fit-bit clocking up countless steps.

The second quarter proved to be a blowout. The Barristers were kicking with the wind, but this is when the three players were delivered up to the Solicitors really came to the fore and the Solicitors kicked 4 goals to 1 which ended up being an unassailable lead.

Jamie Gorton QC was a powerhouse upfront taking numerous marks and doing his best to imitate Nathan Burke, by wearing one of his old helmets from the 1990's. Unfortunately, he was wearing a borrowed pair of football boots which meant

his wealth of possession yielded only one goal and numerous behinds (at least that was his excuse). Justin Brereton and Chris Farrington provided good targets across the centre half forward line. Dr James Plunkett at half forward flank was clearly over qualified for this task; a PhD from Oxford doesn't mean much on Victoria Park, but he was solid around the stoppages. Ray Fernes did great work around the middle of the ground. The Santamaria boys were unstoppable all day. It was disappointing to not see Paul on the ground entertaining us all with his Vinnie Catoggio impersonation which usually involves running around in circles for about 10 seconds, baffling the opposition (and himself) and then firing off a handpass to someone in the clear, but his sons were a more than adequate replacement.



With the end score being Solicitors 6-5-41 and Barristers 3-6-24 there was obviously a lot to do in the backline. Pat O'Shannessy's brother, Rogan, was a standout at half back flank who ended up taking the prize for the best afield for the Bar. Dugald McWilliams marshalled his chargers across the back line and they managed to stem the haemorrhaging which had occurred in the second quarter. Ben Bromberg, Pat Santamaria and Ben Maunder in the fullback line were solid in defence. The readers Simon Fuller, Tristan Nathaniels and Joe Connelly provided some much needed youth – and leg speed.

The game was played in great spirit. There were two unfortunate orthopaedic

“We have to look on the bright side: at least the Barristers have potentially generated some work for the Common Law Bar.”

injuries sustained by the Solicitors' team. We have to look on the bright side: at least the Barristers have potentially generated some work for the Common Law Bar. Watch out for serious injury applications to follow!

Even though the Solicitors took home the chocolates, the true secret to their success was the fact that they had a Barrister coaching them. Wayne “Moose” Henwood (former Demons and Swans great) lead the Solicitors to victory. And whilst his loyalty might be questionable, his talent as a coach is not.

The match was a wonderful charitable event. The Bar is grateful for the financial assistance of Dever's List and Green's List. Matt Fisher and Pat O'Shannessy did a fantastic job in organising and managing the Bar team. The event is hosted by Reclink, which helps the homeless and those affected by drug, alcohol and gambling addiction re-build their lives through sport and the arts. The event raised \$25,000 and there are moves to have the match next year as the curtain-raiser for the Community Cup Football Match between the Rock Dogs and Megahertz.

It goes without saying that the Barristers' team could do with an injection of youth. We welcome anyone under the age of 30 with open arms. Hell, we will welcome anyone under the age of 45 with open arms. It is a wonderful event and hopefully with its increase in profile we can enjoy greater patronage in years to come. ■





Left to right: Matthew Page, Katarina Ljubicic, Stewart Bayles, Samantha Holmes, Joe Connolly, Morgan Brown, Neville Rudston, Michael Stanton, Olivia Trumble, Malcolm Thomas, Kristie Churchill, Jarrod Williams, Cecily Hollingworth, Amie Hancock, Michael Cahill, Cynthia Lynch, Angie Wong, David Cronin, Jason Gullaci, Paul Smallwood, Deanna Caruso and Alex Burt

Opening of Brian Bourke Chambers

JUSTIN WHEELAHAN

The opening of Brian Bourke Chambers was a poignant moment for Brian Bourke AM, who retired after over 58 years at the Victorian Bar this year. The occasion also marked a sense of comradeship and purpose amongst a small-defined group of 24 barristers practising exclusively in the criminal law. As Robert Richter QC said at the opening “Choosing the name under which a new set of chambers sets sail is a serious business. It proclaims the aspirational goals the chambers hopes to live up to.”

The portrait of Brian Bourke by Karl Schott at the entrance of the new chambers depicts him leaning back in his chair in chambers, feet atop of his desk. It helps create a relaxed atmosphere, devoid of pretension. A bit like the man himself, who once set up a debating club for the prisoners at Pentridge, the portrait puts you at ease. When asked once why he never took silk, he said the Queen had enough counsel: “I don’t believe in the principle of silk. I’m so Irish that I don’t believe in it.”

The founders of Brian Bourke Chambers chose his name as their guiding star because Brian Bourke represents an ethical principle. He is a great advocate, universally loved and

admired by the Bar and the judiciary, and has a sense of care and generosity for his clients and young advocates in need of guidance.

Brian regaled the attendees with many stories about his experiences as a trial advocate, but spared us his stories of meeting Harry Belafonte and Ernest Hemmingway. Some of these stories sounded apocryphal, but Brian assured us that he has been keeping a diary since 1959, and that he had “tried to check the facts.”

One story was about defending Mrs Lazarus. One night her husband, “a despicable bastard”, rang her on the way home and said “I am on the way home, and I going to kill you”. Mrs Lazarus rang the police and got her husband’s gun. By the time the police had arrived he was dead outside her door. Brian appeared before Sir Norman O’Byrne. It emerged during the trial that the deceased had interfered with his wife, and made life pretty difficult for his kids.

Showing the brilliance of Supreme Court Judges, before telling the jury anything about the law, Sir Norman O’Byrne directed the jury:

You’ve got two options here. You can find this woman guilty of murder or manslaughter. Or you can let her go home tonight ... to look after the kids.

The jury went outside and came out after three minutes.

Another case involved a man accused of raping a woman at Caulfield racecourse and theft of her rosary beads. A month or two after the offence, two police observed the accused trying door handles in St Kilda. He was picked up, his house was searched, and a set of rosary beads were located inside. One of the police officers remembered the report about the rape, and the victim identified the rosary beads as hers. He was charged, and Brian was “lucky enough to get the brief”. Brian advised the accused:

You’ve got to plead guilty. The girl’s identified the rosary beads as hers, and they were found in your room.

No, I’m not pleading guilty.

If you’re pleading not guilty, you’ll have to give evidence. If you give evidence, you’ll be cut to pieces.

Under cross-examination, the accused said he’d never seen the rosary beads.

How do you explain it?

I don’t know, they must have been someone else’s.

The trial judge was again Sir Norman O’Byrne. When it came to adjourn for lunch, Bill Connor, a shorthand writer, came down to the steps beside Court Four. Brian asked him:

Hey Bill, how are we travelling?

I tell you Bourke, four years for the rape, six for the rosary beads.

Which turned out to be about right.

When Brian Bourke started his speech, he said “When I woke up this morning I was Brian Bourke. Now I am Brian Bourke with chambers named after me.” Brian has now entered the pantheon of the likes of Dixon, Crockett, Rosanove, and Winneke. With characteristic humility, Brian said he felt he was in a field so illustrious that he felt out of his depth, but that he was honoured. VBN wishes Brian Bourke, and Brian Bourke Chambers, both well. ■

Brian Bourke AM and Robert Richter QC



Judge Gaynor



James Anderson and Vincent Azzopardi

The ICJ Victoria annual fund raising dinner

CAMPBELL THOMSON

On 11 October a chamber orchestra welcomed guests to the International Commission of Jurists' annual fundraising dinner at the RACV. The guests included Judges from the Federal, Supreme and County Courts, lots of solicitors, a table of Supreme Court associates, many barristers and a number of lawyers doing the Bar Readers' Course.

Assembled guests heard the Honourable Robert French AC, former High Court Chief Justice, speak about *International Law and Human Rights – Is Australia out on a limb?* His Honour posed and answered questions including: Is Australia excluded from the international conversation about human rights because it has no Bill of Rights? Are the rights set out in our Federal Constitution and the common law sufficient to prevent governments from abusing human rights? What about countries like Turkey and Fiji where bills of rights have not been able to prevent gross human rights abuses? His Honour observed that eminent jurists in India and the US have made it clear that no constitution can defend against bad political processes. The protection of liberty is the responsibility of active citizens.

While guests were enjoying their wine and food they listened to Mabel Leong, the Malaysian lawyer sponsored by ICJ to undertake the Bar Readers' Course. She raised a laugh when she related how Professor Hampel told her not to smile too much because advocacy is a serious business. She also discussed current human rights issues in Malaysia.

ICJ President, Justice Bromberg honoured retiring ICJ Chair Glenn McGowan QC with ICJ life membership. Justice Bromberg summarised the work ICJ Victoria has done over the last year in drafting submissions on Australian human rights issues such as indigenous incarceration and the efforts made by the ICJ to promote human rights overseas.

The silent auction of framed prints and photographs, accommodation and food packages and items such as a \$500 voucher from McClouds Shoes raised over \$10,000 for a good cause and a good time was had by all. ■



1. Veronica Holt, Isabelle Skaburskis, Campbell Thomson, Georgina Connelly and Anthony White. 2. Astrid Habin-Beer, Justice Elizabeth Hollingworth and Richard Wilson 3. Mabel Leong 4. Justice Bernard Murphy, Justice Mordy Bromberg, the Honourable Robert French and Glen McGowan QC 5. William Lye OAM, Adam Nguyen and Judge Takemura from Japan 6. Julian Burnside AO QC, Michael Stanton and Andrew Vincent

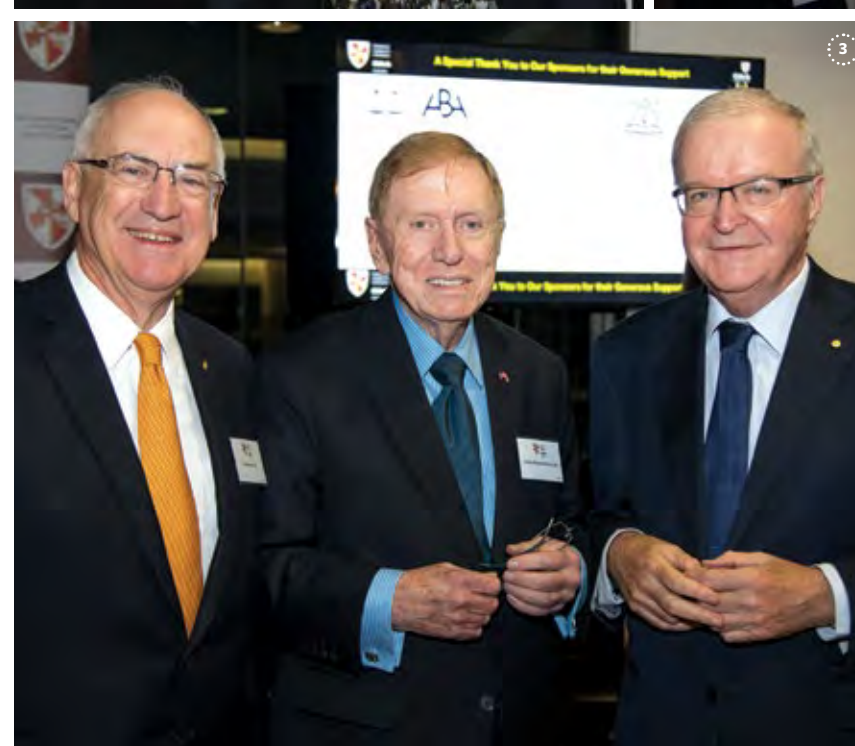
CIArb Australia Annual Dinner

Saturday, 7 October 2017

GIANNA TOTARO, CHIEF EXECUTIVE OFFICER CHARTERED INSTITUTE OF ARBITRATORS (AUSTRALIA)

The Australian branch of global dispute resolution body, the Chartered Institute of Arbitrators held its 2017 Annual Dinner on 7 October. Sponsored by the Australian Bar Association and the independent bars including the Victorian Bar, the dinner was held at the Museum of Contemporary Art, Sydney on the eve of the International Bar Association's Sydney conference. Guests included international practitioners, members of the Australian judiciary, business, media and representatives of global arbitral bodies.

MC-ed by Carson Scott, Chief Business Correspondent and Business Anchor for Sky News Australia, the evening's proceedings included a welcome address by CIArb Australia President, Caroline Kenny QC; and a keynote address by Guest Speaker, Alexis Mourre, President of the ICC Court of International Arbitration whose speech set the room abuzz. Will Alstergren QC (who attended the function shortly before his judicial appointment) delivered the Sponsor's Address in his capacity as President of the Australian Bar Association. ■



1. Alexis Mourre, Will Alstergren QC (before his appointment), Caroline Kenny QC and Carson Scott 2. Caroline Kirtan QC, Patrick O'Sullivan QC, Monique Carroll (King & Wood Mallesons) and Albert Monichino QC 3. Allan Myers AC QC, The Hon Michael Kirby AC CMG and The Hon Chief Justice Tom Bathurst AC, NSW Supreme Court 4. David Barniville SC (Immediate Past President, Bar of Ireland) and Sarah Fregon (CEO, Victorian Bar)



The Supreme Court of Ireland. From left to right on bench: Paul McGarry SC, Ms Justice Susan Denham and Will Alstegren QC.



View of the Round Hall beneath Gandon's dome, once described as "both the physical and spiritual centre" of the Four Courts.

Suzanne McNicol QC



Jeremy Ruskin QC



Attendees at the Dublin ABA Conference join together for a group photo

Dublin ABA Conference

JUSTIN WHEELAHAN

The Chairman of the Council of the Bar of Ireland, Paul McGarry SC, kicked off the Dublin ABA conference by saying "To all of you with Irish heritage — welcome home, and to all of you who don't have Irish heritage — welcome."

The roots of the Victorian and Irish Bars are intermingled. After the famine of the 1840s Irish émigré barristers made significant contributions to the Australian legal system. Three Irishmen held the office of Chief Justice of Victoria from 1857 to 1918, and Frank Gavan Duffy's half-brother, George Gavan Duffy, served as President of the Irish High Court from 1946 until 1951. The 2017 ABA conference in Dublin marked an occasion to celebrate the continuing friendship between the Victorian and Irish Bars.

Justice Gageler made the keynote address. It started out as a discussion about Sean Spicer's "alternative facts" about the Trump inauguration numbers, then segued seamlessly into a lucid analysis of evidence and truth, the Briginshaw standard of proof, and the epistemological divide between rationalism and empiricism.

The Victorian Bar and judiciary were well represented. The energetic President of the ABA, William Alstegren QC (before his judicial appointment) seemed to be ubiquitous. Sue McNicol

QC participated in a stimulating discussion about expert evidence, litigation privilege, and the basis rule. Judge Joshua Wilson spoke about the future relevance of an independent bar. Timothy Tobin QC spoke about starting out as a knockabout country lawyer, and ending up running complex bushfire class actions, in a session on corporate mega-litigation.

Justice Peter Vickery noted the maxim attributed to Abraham Lincoln that "Prophesying is one of life's less profitable occupations," then proceeded to foretell how technology will impact on the courts. Justices Jack Forrest, Justice Cavanough and Judge Katherine Bourke all participated in a panel on The Lore and Law of Racing.

Matthew Collins QC led a hypothetical with Jeremy Ruskin QC about the vicissitudes of an Australian rugby player called Gino 'Dingo' Liano and his Irish paramour Braden 'Baby' Bray with BarConIA: a futuristic acronym for the merged Bar Councils of Ireland and Australia. Dearbhail McDonald (pictured right), group business editor at Ireland's Independent News and Media, spoke from experience about the importance of the rule of law to the Irish people during the Troubles. After the sessions the Irish hospitality continued, lubricated with Guinness.

Taking a tour around the Dublin Four Courts is a bit like walking around the Victorian Supreme Court by the Liffey. The Corinthian columns on the court's portico façade facing the Liffey still bear bullet holes from the 1916 Easter Rising and the Battle of Dublin in 1922. The Four Courts' dome, designed by James Gandon, is reminiscent of the Victorian Supreme Court Library. The Dublin Law Library, by contrast, is adjacent to the Four Courts building. The Law Library is the home of the Dublin junior bar, who sit cheek by jowl with briefs piled up along long desks. The men are all well turned out, sporting three-piece suits beneath their robes.

The Chief Justice of the Supreme Court of Ireland, Ms Justice Susan Denham, held a meeting with conference delegates in the Supreme Court, and explained "the Pale" was territory under English

jurisdiction in Ireland, and the source of the expression "beyond the pale". Her Honour also spoke of her friendship with the recently retired Chief Justice of the Supreme Court of Victoria, Marilyn Warren.

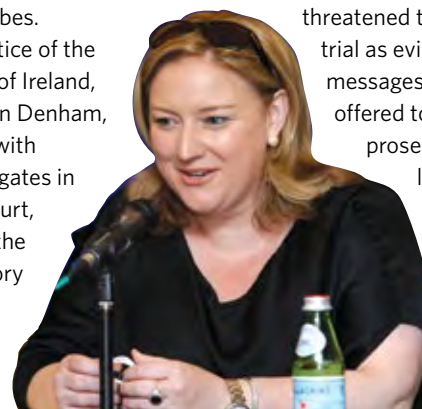
Another highlight of the tour was a radio play of the trial of Robert Emmet performed in the Supreme Court by Mr Justice Peter Charleton with court staff. Emmet was tried for treason for leading a rebellion against British rule in 1803. Prior to trial, Emmet was taken from Kilmainham jail to Dublin Castle and interrogated about Sarah Curran's love letters to him. The prosecution threatened to adduce the letters at trial as evincing coded conspiratorial messages. Emmet, greatly affected, offered to plead guilty if the prosecution would suppress the letters, but this was refused.

Emmet was defended by Leonard McNally, a government spy who reported to Dublin

Castle and received a secret pension for betraying Emmet. Emmet was found guilty, and sentenced to be hanged, drawn and quartered.

The conference ended with a gala dinner at The Honourable Society of King's Inns. The building, also designed by Gandon, displays the great history painting "High Treason" by Sir John Lavery of the 1916 trial of Roger Casement (whose relative, Glenn Casement, practises at the Victorian Bar) in the foyer. Before dinner the Hon. Peter Heerey recited his poem the Ballad of Briginshaw which provided a poetic counterpoint to the keynote address. The poem ends:

*Perhaps in other litigation
A learned judge's explanation
Would clarify and make quite certain
How much an evidentiary burden
Is borne in civil case. But yet
I doubt that we would ever get
A human drama of the law
Like that portrayed in Briginshaw. ■*



Dearbhail McDonald, Group Business Editor of Independent News and Media

Amelia Hughes, Katherine Rolfe, Rachel Waters, Amie Hancock.



Left to right: Judge Trish Riddell, Megan Tittensor, Amelia Beech, Judge Lisa Hannan, Justice Virginia Bell (aka Ginger de Winter), Fiona Todd, Judge Carolene Gwynn, Lesley Taylor QC, the Hon. Betty King, Liz Ruddie, Sarah Thomas and Joanne Piggott. Background: John Kelly and Neil Hutton

Criminal Bar Dinner

VBN

On a balmy, late October night, the criminal barristers of Melbourne who, to quote a High Court Judge, really know how to spend a Friday night, assembled at Taxi Riverside for the annual Criminal Bar Association Dinner. As promised by the venue's website, all "experienced the Yarra River from a different perspective".

We also all experienced a truly superb speech by Ms Ginger de Winter, aka Justice Virginia Bell. Her Honour brought the house down with her observations of life as a criminal barrister which, as was pointed out, is so very different from the "edgy and interesting" world of intellectual property lawyers. With pin-point accuracy, the single occasion in which humour appeared in a High Court judgment was located and celebrated.

Ms de Winter was pleased to have been reminded that she was once a muse to a band of minstrels called Mutant Death, a punk rock band, from her days as a lawyer at the Redfern Legal Centre. Upon hearing the verse:

*The police they came and got me,
They put me in a cell,
They said I had one phone call,
I rang Virginia Bell.*

Ms de Winter was forced to admit that on one occasion she pulled the PA system out because Mutant Death were so bad that even she could not stand to hear her song. "That's the sort of person I am", she said.

All of the normal rituals of the CBA annual dinner were observed: new judicial appointments noted, retirements marked and recent readers simultaneously welcomed and embarrassed. And, for the first time, the CBA welcomed Chief Justice Ferguson and Justice Hargrave to the dinner.

The night was a great success. The CBA is grateful to Justice Bell and wishes her many happy years of shopping for baked beans at the Kingston IGA. ■

PHOTOS COURTESY OF SIMON MOGLIA AND MEGAN TITTENSOR

CommBar Drinks

VBN

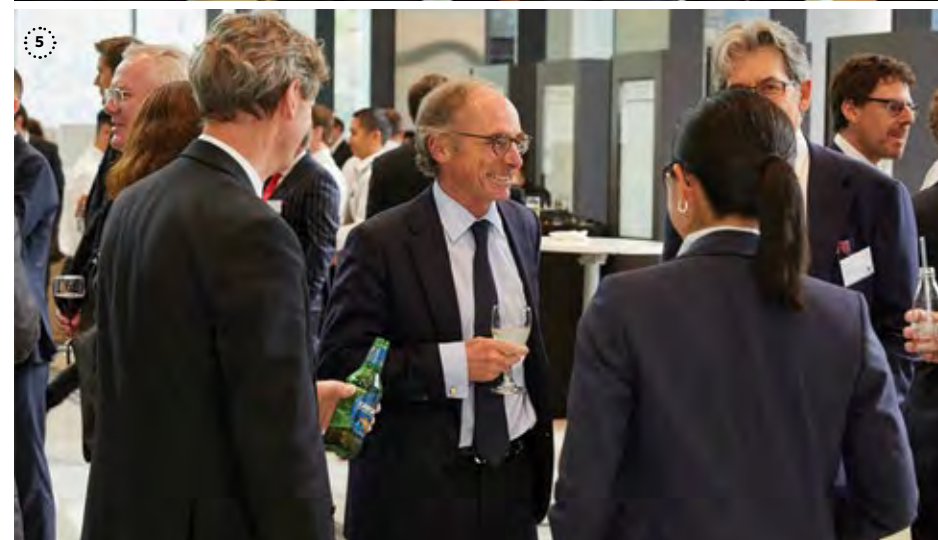
On 25 October 2017, the Commercial Bar Association of Victoria held its annual drinks in the foyer of the Owen Dixon Commonwealth Law Courts Building. The gathering was to bring together in an informal way members of the Bar, the broader profession, and the Bench who have an interest in commercial law, and to foster the important relationships between them.

CommBar President Matt Connock QC welcomed guests by way of a short speech, within the spirit of the advice, "Keep it short Matt, people are here for a drink and a chat, not to listen to you". On behalf of CommBar he offered congratulations to Chief Justice Ferguson of the Supreme Court of Victoria upon her appointment.

Matt Connock also took the opportunity to inform those present about an incident earlier that day concerning newly appointed Chief Judge Alstergren of the Federal Circuit Court of Australia, two of his Honour's kelpies, an Albert Park coffee shop and a coffee stain on the CommBar President's freshly dry-cleaned suit. Thankfully, the Chief Judge was not present when those remarks were made. The Mona Lisa smile displayed by Chief Justice Allsop of the Federal Court of Australia when delivering his own brief remarks may be explained by Chief Judge Alstergren's arrival a short time later.

The sound links that exist between Bench, Bar and the broader profession are strengthened by their support of functions such as this, and CommBar is grateful to all involved for making this event happen. ■

1. Attendees join together in the foyer of Owen Dixon Commonwealth Law Courts building.
2. Chief Justice Allsop of the Federal Court of Australia welcomes attendees.
3. CommBar President Matt Connock QC.
4. Jennifer Batrouney QC and attendees enjoy the occasion.
5. Justice David O'Callaghan and David Andrews enjoy conversation with attendees



PHOTOS COURTESY OF COMMBAR

News AND Views



Winemakers at the Bar

CAMPBELL THOMSON

The label for the Tarrangower Estate 2005 The Revolutionary's Chardonnay features a portrait of Petofi Sandor, the national poet of Hungary who fought against the Hapsburgs in the 1848 revolution. Tom Gyorffy QC, maker of the chardonnay, is descended from Sandor.

Maybe you have to be a crazy romantic to want to make wine. Vineyards eat money like racehorses or yachts. Hail can wipe out a vintage in five minutes. The Tarrangower vineyard is north east of Malmesbury. Before planting a vine, Tom examined the weather data back to 1860. There had never been two years in a row with less than average rain fall but between 2007 and 2015 conditions were mostly too dry for his unirrigated vines to produce much. In 2012, the weather gods deluged the vines in January and covered their leaves with mildew. Tom then bought some grapes from Heathcote. The resulting Shiraz has

lovely dark plum fruit with a full but restrained middle palate. It does not try to be a Barossa blockbuster.

In theory, the vineyard should produce 14,000 bottles of wine a year. Recently Tom's vineyard has made 1,000 -2,000 bottles when he's lucky. Tom makes natural, biodynamic wines without much human intervention.

2005 was the last year Tom was able to make Chardonnay. He has eight rows of the Bernard clone that he claims is the most aristocratic strain of the grape. The crushed grapes spent two weeks in an open vat before the juice was transferred into new French oak barrels. Only 700 bottles were made. Not many Australian Chardonnays last 10 years but this is a funky, rich and golden wine, nothing like some of our lean and mean contemporary Chardonnays.

Like the other two winemaking members of our Bar interviewed for this article, Tom studied wine making at Charles Sturt University in Wagga. His family had been

wine growers in Tokay, Hungary. He still dreams of planting two Hungarian varieties: Furmint, like Semillon, and Harslevu, akin to Gewurtztraminer.

While winemaking is a technical business, for Tom it uses a different part of the brain compared to law. If you are lucky you can make something lovely to share with your friends.

Justice Kevin Bell was inspired to make Pinot Noir, that fickle and demanding variety. His Honour's Hurley Vineyard at Balnarrang on the Mornington Peninsula produces about 1,000 cases a year. He has three sites with different Pinot clones and recently planted half an acre with the Pommard clone. Hurley is a cool five kilometres from the sea. I ask how climate change is going to affect the vineyard. He says an American expert on climate and viticulture has worked out that

“While winemaking is a technical business, for Tom it uses a different part of the brain compared to law.”

the peninsula will stay in the right spectrum for Pinot for a while yet.

The first vintage was in 2001. Bell J strives to make elegant wines that reflect the place they were made. He's moving towards a biodynamic regime and relies on wild yeasts to convert the sugar in the grapes to alcohol.

While James Halliday tries to convert the world to screw top closures, Bell J uses Diam corks that he maintains allow the wines to age more gracefully. He reckons his 2004 Pinots are now at their peak.

2015 may turn out to be the best year yet for peninsula Pinot. Bell J's best 2015 Pinot, from the Garamond site, sold out at \$72 a bottle. I wasn't able to speak to Justice James Judd but the peninsula's Ten Minutes by Tractor website says the 2015 Judd Pinot Noir has sold out at \$78 a bottle.

Before you get a second mortgage to plant vines at your weekender, figure in initial costs of at least \$25,000 per hectare and annual maintenance at \$10,000 per hectare. You won't get a useable crop for at least three years. You might turn a small profit by year five, depending on what you can get for your grapes: anywhere between \$500 and \$2000 per tonne depending on the variety and quality. Don't even think about making the wine yourself.

Wild Dog Track near Moonambel in the Pyrenees is a long way from the Mornington Peninsula. The Honourable Chris Jessup fell in love with the area's natural beauty in 1989. Max, his German viticultural consultant, told him the soil was too lacking in nutrients for vines. Undeterred, Chris bought a deep ripping device to put phosphorus a metre down on the north east facing ridges where he planted the Bordeaux varieties plus Shiraz, Viognier, Sauvignon Blanc and Semillon. He later grafted the Semillon and Malbec to other varieties when they didn't thrive.

The vines were narrowly spaced so he bought a Lamborghini tractor that is only 2.4 metres wide. He had to buy electronic bird scarers-like music boxes that send out screeching sounds at different frequencies to deter different species. He still loses 5-10% of his grapes to birds, but netting would be too difficult on his slopes.

In 2002 the Shiraz vines at Chris' Peerick Vineyard did well in a long cool season. The grapes were not picked until 16 April. There was enough wine for 66 barrels, half American oak and half French oak from Seguin Moreau. After two years, Chris tasted each barrel. He threw out some that didn't make the grade. The best 20 barrels became the Reserve Shiraz. It's a beautifully balanced and savoury wine with great length.

The 2010 changes to the tax regime mean that if you earn more than \$250,000 you can't gear a separate loss made on a vineyard. It's difficult to justify adventurous spending on new equipment or new vines. Chris now sells most of the 20-30 tonnes of his grapes.

His wife Merryl wants him to make a Shiraz Viognier in their basket press. This reminds Chris of the loveliest day in his life (after his wedding day) when he and an old French vigneron tasted wines from different vintages at Condrieux in the northern Rhone, the birth place of the ethereal Viognier. Chris produced a bottle of his own Viognier. He was pleased when it was swallowed rather than ending up in the spittoon.

The weather gods might be fickle, your bank manager might sigh, but nothing beats drinking your own wine after a day in court when your best argument ended in the bin. ■

Campbell Thomson was on the Cambridge University Wine Tasting Team, has made wine in Meursault and wrote a wine column in The Herald.



Justice Elizabeth Hollingworth, Magistrate Jelena Popovic, Tony Trood and other barristers with Ugandan Judges and lawyers in Kampala for the training course.

Teaching advocacy far away

CAMPBELL THOMSON

Sierra Leone, Nauru, Bangladesh, Papua New Guinea, the Solomon Islands, Uganda and Vanuatu. Victorian barristers have taught advocacy in all of these places. We pride ourselves that the advocacy training in the Bar Readers Course is the best in the country.

Why do some of us take weeks off and pay to go a long way to teach others how to perform in court?

Is it a missionary zeal to spread the word of Hampel? Is it a post-colonial attempt to instil adherence to our version of the rule of law? Any teacher must question what, why and how they teach.

When comes into it too. Murray Kellam led barristers teaching in Bangladesh for years until 2013 when it became too dangerous. A destructive cyclone delayed one trip to Vanuatu. You still need armed guards to go out at night in Port Moresby.

Lesley Taylor QC prosecuted for two years at the Sierra Leone Tribunal. In 2012 it convicted Charles Taylor, former Liberian President, on charges of aiding and abetting war crimes. Sierra Leone had been the second wealthiest country in Africa in the 1950s. It's now last on the world development index. Lesley and other lawyers at the Tribunal found there was no functioning legal system after many years of civil war. They started teaching local lawyers the basics of tort and contract and then how to act in court.

In 2010 Ashley Halphen was an intern with the Society for Democratic Initiatives in Sierra Leone. He spent four months supervising advocates in court and training

paralegals in effective communication. He found lawyers citing English text books from the 1970s. Ashley was the only foreigner who travelled around the country without an armed escort.

Sierra Leone has little infrastructure but it does have white sand beaches on its warm Atlantic coast where locals grill barracuda steaks and plantain for next to nothing. Lesley and others tried to continue teaching there two years ago but could not get funding.

Lesley and Ashley also went with Judge Jim Montgomery, Samantha (now Judge) Marks, Tony Trood and Michael Cahill SC to Uganda in 2016. They paid their own airfares to take part in an International Justice Mission program that trained police and prosecutors how to handle family violence cases. For instance, a wife could inherit her husband's land but it was common for others to seize it violently without the law intervening. They designed a rigorous one-week course around a specific domestic violence case. After the course, Lesley went on safari and twitcher Tony Trood travelled to enjoy the spectacular bird life.

This year Justice Elizabeth Hollingworth and Magistrate Jelena Popovic joined a Bar team in Uganda to train judicial officers. While Uganda is better off than Sierra Leone, they found that millions had been spent on an IT system but some courts had no electricity. Others had computers but no cords to connect them. Cases could go on interminably because witnesses went missing. Magistrates were transferred mid-case leaving another to continue on the basis of hand-written notes. Prisoners could languish

in remand for over five years. Prison officers advised inmates on bail applications to free space!

Justice Hollingworth and many others have taught closer to home in Port Moresby where the Bar has had a long standing commitment. DFAT (previously Ausaid) funds the program. Many PNG trainee lawyers are the first in their family to go to University. English may be their fourth language. Some have to travel hours by bus for the course and then go home to cook dinner for a large family. The village pays their tuition fees and expects a return on its investment. Ethical dilemmas abound.

Ian Hill QC, Mandy Fox QC and Ashley Halphen taught advocacy to some 35 practitioners in the Solomon Islands, funded by Ausaid. Robert Barry, who was prosecuting in the Solomons, hosted the program. Robert also mentored lawyers in Iraq in 2008 when he was there as part of a Law and Order Task Force.

Ashley and others also went to Nauru, when Geoff Eames was Chief Justice, to assist public defenders do their jobs.

Michael Cahill SC taught in Bangladesh five times until the last trip in 2012. Justices Coghlan and Lasry, Fiona McLeod QC and Caroline Kirton QC went, too. The military was destabilising the state. Muslim extremism was on the rise. It was difficult to see how the rule of law and judicial independence could survive in Dhaka's brown air and endless slums. On his way to a class one morning, Justice Lasry remembers a woman trying to sell freshwater pearls wandering from tuk tuk to tuk tuk on a busy highway. She had a baby in her arms. He was sure it was dead. The trainee advocates that day urgently wanted a better future.

All those I have spoken with felt they made a difference helping lawyers learn how to persuade.

The coaching techniques they use are nothing new. But the idea that advocacy is a skill that can be taught, like tennis, only really took off at the Bar with the first Readers Course in

1980. Since then the Hampels have been instrumental in spreading the concept.

You design a case study to enable the teaching of particular points. The scenario we used in Vanuatu was set in PNG around the alleged killing of a wife by an errant husband. A student opens the case. You observe and focus on an issue of form or content. You demonstrate to the student how it could be done better. It's like coaching a backhand volley.

All of us now use this model.

It's fun to help people become better lawyers. It's a bonus if you can further the rule of law and judicial independence. It's not bad if, after teaching in places like Vanuatu, you can go to a restaurant that is the legacy of a French colonial past and enjoy fresh crayfish and French wine at ridiculously low prices. ■

Campbell Thomson has taught advocacy in the Bar Readers Course and in Vanuatu.



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Barristers ON THE Move

Is a change as good as a holiday?

Does being a Victorian barrister mean being tied to the jurisdiction? For five barristers who provide their experiences here, the answer is 'not so'. We learn from their stories that change can take place in many ways. Sometimes, it involves a sabbatical, or a temporary move. Other times, the change is more permanent. What is plain to see in every case is that change necessarily involves challenge, but also corresponding reward. These experiences are sometimes very bold (a trip on a container ship being the standout example), but in all cases they involve something new, whether it be an attempt to grow a pineapple, dressing like a Sydney-sider, to trying to speak Dutch, or learning the ropes practising in a different jurisdiction.

PHOTOS COURTESY OF PERTH TOURISM

Perth is where the heart is

HELEN TIPLADY

When I signed the Bar Roll, I anticipated that I would always practice in Melbourne. Little did I know that four-and-a-half years later, I would follow my heart to Perth. It is now two years since I moved to the west. It's a good time to stop and reflect on my experiences.

When I first started discussing a possible move to Perth with colleagues at the Victorian Bar, I encountered puzzled and concerned looks. While many Victorian barristers accept briefs in interstate and international matters, it remains unusual for barristers to relocate to a different jurisdiction. The reasons for this are obvious. For the most part, our expertise is with our local laws. Our briefs come from our local networks. The idea that I was "throwing away the past five years" and "taking on a big risk" made me nervous about the move.

Before I relocated, I spent a number of months developing a network of contacts within the Western Australian Bar and the local legal profession. I met a lot of people for coffee to introduce myself and find out about the workings of the law in Perth. I'm pleased to report that Perth coffee is neither as expensive nor as awful as I had feared. These efforts were especially important in Western Australia, where there is no clerking system and where the profession is fused. Many solicitor advocates appear in court. As there are no clerks and the junior bar competes with solicitor advocates, it is critical that each individual barrister works to develop her or his own network.

The biggest difference between the Western Australian Bar and the Victorian Bar is size. While there are over 2400 barristers in Victoria, there are only 200 in Western Australia. While I have missed the depth and vibrancy of the Victorian Bar, the comparative size of the Bar in Perth has made it easier to establish myself. While continuing to develop my commercial practice, particularly in contract, construction and mining disputes, the size of the Bar has allowed me to develop in new areas, such as public law.

While my move to the west is not permanent, I will always be glad that I did it. While we are all invested in our work, family is more important to me. My relationship with my now husband is stronger as a result of this shared adventure. In terms of my career, despite the anxieties about making the move, I believe my years in the west will enhance my career when I return to the Victorian Bar. I have developed expertise in different practice areas with a strong network in a busy jurisdiction. I hope to continue work in the west when I am back in Melbourne. 🇲🇸



Moving to Amsterdam

MORGAN BROWN

I signed the Bar Roll in October 2014 after five-and-a-half years working at the Commonwealth DPP. I had gone straight to university from high school and started articles two months after graduating, so had never taken any significant time off. Nor had I necessarily wanted to: after university I was impatient, and ambitious. I wanted professional runs on the board and dollars in the bank. In crime, going to the Bar seems a natural transition for those who enjoy advocacy – for me it was no different, and I was thoroughly enjoying the challenges, the lifestyle, and the camaraderie of life at the Bar.

The concept of taking a year off after two years at the Bar was not one I was necessarily attracted to. I was too young to be having a mid-life crisis, too junior to be burnt out, and too old to be spending a year ‘working out what I wanted to do’. This all changed when my partner Michael was accepted into a Master’s of Transport Economics at Vrije Universiteit in Amsterdam. He had been keen to do this ever since we’d known each other. I had always assumed we would have a long distance relationship for a year, with a few overseas visits thrown in. As time passed however, I started to seriously consider the idea of a stint overseas.

How would this affect my career at the Bar? Was it ridiculous to leave for 12 months when I was still establishing myself? Would I have to start again from square one when I returned? I had gone to the Bar with a healthy sense of financial paranoia. Was it insane to throw caution to the wind to gallivant around Europe?

Interestingly enough, every single barrister I spoke to urged me to go. The Bar isn’t going anywhere, they said, you’ll be doing this for another 35 years. You’re young. You don’t have significant financial obligations. Everyone will just assume you’ve gone on circuit.

So, after a lot of back and forth, we packed our life into two suitcases and two hockey bags and headed for the land of *tulpen, mollen, fietsen en kaas* (tulips, windmills, bikes and cheese).



Amsterdam is an incredible city to live in, and comparatively easy for an expat. Everyone speaks impeccable English, and if you make even the most perfunctory effort to speak Dutch, they will absolutely love you for it. I’m not exaggerating. I actually had an elderly couple start clapping when I managed to stumble through a very basic conversation in the checkout of a supermarket shortly after we arrived. And in many ways, the Netherlands was an excellent choice – we both love cycling and hockey, and it’s conveniently located for visiting other European countries.

Easily the best thing about the entire experience was the ease with which we were able to travel. In 12 months we took 23 trips, and often felt we were living in an incredibly hedonistic alternate universe in which every weekend was spent exploring a different and interesting part of the world. We spent our anniversary in the

Scottish highlands and my birthday skiing in the Alps. We kite surfed in Sardinia and went canyoning in Slovenia. Over Easter we rented a 4WD with two friends and went road tripping around Iceland. We ate chocolate in Zurich, croissants in Paris, pinxtos in San Sebastian. If all this sounds obnoxious, it totally was. I was vaguely aware that friends and colleagues in the middle of a Melbourne winter might not be that interested in Instagram posts from the middle of a Mediterranean summer (sorry about that, guys).

How did this compare to a year at the Bar? On one hand, zero stress, amazing experiences, lots of fun. On

“So, after a lot of back and forth, we packed our life into two suitcases and two hockey bags and headed for the land of tulips, windmills, bikes and cheese.”

the other hand, I came to appreciate the value of working in a job that I genuinely enjoy and find satisfying. I worked part time in Amsterdam and found myself railing against the mundane nature of my (non-legal) job. At the end of the 12 months, we were both excited to return to Melbourne and establish a more permanent home again.

As it turns out, any fears about starting from square one were misplaced – when I started back at

work in Melbourne, it felt as if we had been gone for a week, rather than a year. Any post-trip back-to-reality blues were softened by moving into a new house, new chambers, and seeing all our friends and colleagues.

If anyone is in a similar position, and is toying with the idea of taking a year off, my advice is just go. The Bar isn’t going anywhere, you’ll be doing this for the next 35 years. And it turns out that some people did genuinely think I’d gone on circuit. ■



Slow Boat Sabbatical

INGRID BRAUN

Last year, at the end of a long cold Melbourne winter, I made myself a promise. In 2017, I would take a long dreamed of sabbatical that would finally tick a few things off my list. The sabbatical involved sailing from Melbourne to Shanghai on a container ship and then travelling by train from Shanghai to Beijing, Ulanbator in Mongolia, Irkutsk in Siberia and then on to Kazan, Moscow, St Petersburg, Scandinavia then Europe. In Europe I would visit the 'big three' art exhibitions - Documenta in Kassel, the Munster Sculpture Project, and of course, the Venice Biennale. Not one plane trip involved.

So, at 3pm on April 17th this year, I ordered an Uber to pick me up from my home in bayside Melbourne to take me to the docks at West Footscray. Then I hopped on a container ship bound for Shanghai.

My ship, the ANL Wahroonga, was due to depart the next day. No precise departure time was provided but my presence was required the day before for immigration, customs, a safety briefing, and of course to choose my cabin. Yes, I had a choice. There was either the 'electrician's cabin' - single bed, one porthole and ensuite, or the 'owner's cabin' - loungeroom with sofa, desk and two portholes, plus separate bedroom (with one porthole) and ensuite. Yes, the owner's cabin will suit my requirements very well, thank you very much!

After I settled in, I gazed out my porthole. The containers were being loaded as I arrived and continued to be loaded all night. I saw the deep cavern into which they were being precisely placed by enormous cranes. And beyond the containers, there was the sea. A smile broke across my face as I contemplated the long days ahead, staring out to the sea. By next morning there was no view from my cabin. Only containers.

My safety briefing was conducted by the First Mate, Ion, who was eventually to become my friend.



Several days later, somewhere around the Equator, he confessed to me that neither he nor my captain, Captain Chou, had ever had a passenger on their ship. Apparently, they had received an email from 'the company' that a passenger would be boarding in Melbourne. No choice. The passenger (me) would disembark in Shanghai. Apparently, my pending arrival caused a great deal of discussion and consternation as to how, as passenger, I would be dealt with, and where I would be permitted to roam - and how would I be entertained? What would my interests be? This was a working ship - a container ship, governed by maritime law and commercial interests. Upon arrival, Captain Chou took possession of my passport, insurance certificate (ensuring that in the event of evacuation I was covered - there is no doctor on a cargo ship) and my vaccination passport. I was entirely under his command for the duration of the voyage.

I was the only passenger. And the next day was departure day.

Apparently, upon hearing of my arrival, consternation spread amongst the crew (mostly Filipino) and the other officers and engineers. I was to be left alone. Treated politely, but guided as to where I was permitted to roam when necessary. My safety briefing entailed indicating which lifeboat was mine

“As we headed toward the Equator, Ion had the swimming pool painted and filled with 30 degree equatorial crystal clear sea water.”

and where I was to assemble in the event of an emergency (the bridge). This was to become important later when there was an actual emergency on the ship - a fire in the engine room at 2.00am halfway through our journey! I was taken around the deck, where at the bow we were met by dolphins accompanying us out through the heads. I was told which parts of the ship were dangerous or off limits. Eventually I was to have a tour of the engine room, but for the duration of our journey this part of the ship was very much off limits.

I struck up a friendship with the Melbourne pilot who guided us out of Port Phillip Bay and through the heads, and then, three hours later, watched him scramble down a ladder onto the pilot boat. Suddenly I was alone.

Many people think there is nothing to do on a container ship. They're right. Well perhaps not quite right. My ship had a gym, a swimming pool, and a loungeroom/library for relaxation and reading. And after my safety briefing, I was permitted (almost) unrestricted access to the bridge. As we headed toward the Equator, Ion had the swimming pool painted and filled with 30 degree equatorial crystal clear sea water. I

had exclusive use of the pool until 1pm every day before the crew knocked off.

We sailed past New Guinea, Manus Island, the Philippines, then onto a direct route to Shanghai across glassy calm seas and 7000 metres above the sea bed. We sailed through a thunder storm and endless blue skies. Seabirds and dolphins accompanied us along the route. I found my place on the ship at the far edge of the navigation wing, 20 stories above the water, staring out to the sky, staring down to the sea. The containers in front and behind, the clouds always gathered on the horizon, our relentless progress through the water all entertained me for the duration of our voyage.

I spent my days reading, writing, drawing, hanging out on the bridge, getting up for the sunrise and sharing a brewed coffee with Ion, chatting to the captain and chief engineer, swimming, staring out to sea and contemplating the vast oceanic expanse. Then one day, after 16 days at sea, it was the end of the first leg of my journey and at 4.30am we were being guided into Shanghai Port. It was soon time to disembark.

The train, China, Mongolia, Russia and Europe still lay ahead. ■



Moving to the Brisbane Bar

BEN GARDINER

There are lots of good reasons to move to Brisbane. Move there (like I did) to be closer to your family. Move there for the outdoors life, for boating and fishing, for rugby league, for the wildlife. Move there to grow pineapples and watermelons in your backyard. Move there for your arthritis. But don't move there for work.

Brisbane is not a career move but you don't have to quit the law and become a lifeguard or a cocktail waitress. There is a thriving Bar and new talent is welcomed.

Of course, there are barriers to jumping jurisdictions. The idiosyncrasies of local civil procedure laws (and local judges) and the minor problem of having to rebuild your practice from scratch are good reasons for barristers to avoid moving interstate. All those years going to CPD seminars and list drinks and the Bar Dinner and even giving your own CPD talks in solicitors' offices (for free) until you finally mustered a group of instructors who give you enough regular work to make you think that maybe, if this keeps up for a few more years, you could be persuaded that it was all a good idea in the first place... All of that, you might worry, will be wasted. But fear not, it's easier the second time around and Brisbane is a fun and friendly place to do it.

Brisbane, for those of you that have not ventured further north than Mt Hotham, lies approximately 1,600km north-west of Melbourne in subtropical Queensland. It has an airport, electricity and the internet. There are regular flights to and from Melbourne. Technically you don't need to move there at all. Going on holiday will usually suffice. If you are going to move, however, there are a few things you should know.

Perhaps surprisingly, chambers are much more expensive in Brisbane. (It's easy to take BCL rental rates for granted. As Joni Mitchell said, you don't know what you've got 'til it's gone.) In my first year I paid roughly the same for a very small internal reader's room as I had been paying for an average-sized external room in ODC. Moving to a large external room in a good chambers meant paying more than double my old Melbourne rate. This expense

is offset to some extent by the fact that daily rates are significantly higher in Brisbane. (I have no explanation for this – I am told it's something to do with supply and demand. If that's right, the tyranny of distance is working in favour of the local barristers.)

For me, the move was made easier by the fact that my practice is predominantly in the Federal Court and IP Australia. As a result, I have largely managed to avoid entering the Queensland Courts and displaying my scant knowledge of, *inter alia*, the UCPR.

Being an IP specialist also helped as there are few IP barristers in Brisbane and experience in the larger cities is well regarded.

Most chambers are arranged similarly to private chambers in Melbourne. They share secretaries and other common expenses. There is no clerking system. Most barristers do their own billing or have their secretaries do it. In my case, I have remained on my Melbourne list and my clerk continues to do all of my billing.

There are other differences too, like my daily commute. The City Cat ride home past South Bank, the Kangaroo Point cliffs and the city, and under the Story Bridge, just after dark on a warm evening is truly one of the great public transport journeys of the world. It is almost always warm enough to stand out on the front deck and enjoy the night air. This sure beats the sweaty squash of the 109 along Victoria St, Richmond – although there is nowhere to stop for pho.

Another difference is that the local flora and fauna have not yet ceded the Brisbane CBD.

Nor have the elements. One has the sense that if everyone took two weeks holiday at the same time, we would return to find the city overgrown and returned to the wild. Bush turkeys roam the city streets. Braminy kites nest in city buildings. Walk across North Quay from the Commonwealth Law Courts building and down the steep embankment covered with star jasmine, oleander and jacaranda trees and you will arrive at a hidden world under the Riverside Expressway, along the edge of the muddy Brisbane River. Here, less than 100 metres from the Federal Court, the ancient sub-tropical wilderness lives on. Amongst the mangroves, in the

mud and on the rocks there are mud crabs, lungfish and Eastern water dragons. There are egrets, darters, masked lapwings and magpie larks. Pelicans land like Catalinas. Further out, unseen, bull sharks up to 3 metres long cruise by. The river is full of them. You don't get that in Flagstaff Gardens.

If you are considering a move to Brisbane, please give me a call or email. I would be very happy to chat about the practicalities of shifting a practice across state lines. ■



“A pineapple plant in my veggie patch. (I think it's going to be a long wait for one pineapple) ”

A view of Sydney – Dress Codes

ED HEEREY

As a new resident of Sydney, sometimes I feel like David Attenborough wandering through a strange jungle, observing the habits and rituals of the local inhabitants. I've been visiting Sydney all my life, but it's remarkable how you don't really see the city and its people until you are paying the rent, commuting to work and immersing yourself in local day-to-day life.

One thing struck me early about Sydneysiders: their somewhat confusing dress codes.

Before arriving mid-summer at our new abode in North Bondi, I was warned by a prominent QC and fellow “NoBo” resident that he would be the only gentleman in the neighbourhood wearing a shirt and not sporting facial hair. This struck me as easy to deal with, having generally opted for a “relaxed” look myself, but I was interested to see what he meant.

One might expect to witness the local men of Bondi wandering the streets shirtless while heading to or from the beach, and that is certainly the case. But that is just the beginning. Soon enough one notices gentlemen of all ages and physiques going about their daily business entirely topless, while wearing shorts clearly not intended for swimming. Going to a café? No shirt required. Supermarket? Ditto. Catching a bus? No drama. Taking the kids to school? Borderline, but doable.

While gradually assimilating with this lenient streetwear regime, I was simultaneously getting to grips with another key feature of Sydney life: licensed clubs. So the story goes, back in the days when “public houses” had heavily restricted opening hours, the Supreme Court of NSW ruled that members of private clubs were entitled to enjoy their clubs whenever they wished. This significant competitive advantage partly explains how these clubs became so entrenched in NSW. It is a regular part of family social life to attend bowling clubs, RSLs, leagues' clubs, life saving clubs, golf clubs etc. Membership is cheap (around \$25 per annum) and immediately pays for itself with discounts on drinks and foods. My wallet now bulges with all my new membership cards.

It had never occurred to me in Melbourne to do any of this; there are so many other dining options and I associated clubs with tedious rules and regulations. Which brings me back to the dress code question. On our first visit to the North Bondi RSL for dinner, I had a

flashback to the complex graduated dress codes applying throughout the constituent parts of the old Melbourne Cricket Club pavilion. I also recalled the time when I arrived at the Barwon Heads Golf Club without a jacket, and was required to wear the mustard-coloured blazer

which hangs behind the reception for precisely such occasions. In an abundance of caution, I decided to ring ahead and learned that the North Bondi RSL dress code is both concise and mysterious: “No bare feet. Gentlemen wear a shirt. Ladies use your discretion.”

I was just getting on top of the Sydney Summer dress code when, all of sudden, “Winter” arrived on the first day of June. Autumn had failed to appear, and of course it still was not remotely cold as we would understand it. Nonetheless, I suddenly beheld

Sydneysiders of all types sporting woolen scarves. These scarves had nothing to do with football, but rather seem to have been acquired on trips to London or other cold climes. Indeed, many wearers appeared to have visited Paris and were keen to show off their natty cosmopolitan scarf tying skills.

For Melburnians, a scarf is a second resort item, when your overcoat is not quite doing the job. In Sydney, the scarf is an immediate go-to, with little utilitarian relevance. My good wife Mim and I ended up in a competition: spot the scarf and check the actual temperature. I witnessed a suited gentleman with tightly tied scarf stepping out for lunch in 22 degrees sunshine. Mim topped that with a reading of 24 degrees. Once on the lookout, in all sorts of balmy conditions, one will see endless Sydneysiders sporting puffer jackets, beanies, leather gloves and even the occasional Russian fur hat.

Our dress code confusion took a new turn when Mim started a new job inside a large magazine publishing company. Powered by a workforce of ambitious fashion-focussed young adults, this workplace resembled an ongoing magazine shoot, and it was nothing unusual for a young woman to turn up for a day in the office in what would pass anywhere else for a ballgown.

Anyhoo, as I write, Spring has well sprung and we are struggling with the barbarity of turning up for school and work on Cup Day. Don't ask me what we are supposed to wear then. ■

Ed Heerey QC is a specialist in intellectual property who has recently moved his 'home base' to Sydney but returns to Melbourne as often as possible to get a decent coffee.



The 'start-up' that questioned Victoria's corruption innocence

STEPHEN O'BRYAN QC, IBAC COMMISSIONER

Where there is corruption, or police misconduct, it hurts us all. Corruption is never a victimless crime. It diverts scarce taxpayer funds that should be spent on our schools, hospitals, transport, and other public services and infrastructure.

IBAC is charged with an important role: exposing and preventing public sector corruption and police misconduct in Victoria. After nearly five years as Commissioner of one of Australia's newest 'start up' anti-corruption agencies, it is an opportune time to reflect on the work of Victoria's anti-corruption agency.

While there had been declarations of bipartisan political support for IBAC when I was approached for my role, I had to think carefully about taking on the job. For there were perspectives about the new agency—positive, negative and cautious — that I had to consider.

In particular, there was an oft-expressed view that "there was no serious corruption in Victoria". Many Victorians—including public sector leaders — thought we were somehow immune from the corruption exposed in other states. Some suggested a small number of rogue police were the only concern in our jurisdiction, covering the public sector, councils, the judiciary, parliament and police. Clearly, this view was wrong.

The IBAC legislation was criticised at the time, a broad theme being that IBAC was likely to be ineffective due to the very restrictive nature of its investigative powers. Some commentators went as far as suggesting IBAC was designed to fail, with the oft-used descriptor 'toothless tiger'.

A major concern was the original definition of "corrupt conduct". In the Act, the definition was narrow because it required prescribed criminal offending, with the offence of misconduct in public office (MIPO) not included. Nor could we investigate serious conflicts of interest—which we know often masks criminal behaviour or corrupt conduct. Nepotism, other unreasonable or suspicious favouritism, internal deception or other wrongdoing, such as undue influence, and other forms of corruption of proper process, were also not included. While not amounting to criminal offending, such behaviours in the public sector would meet ordinary definitions of corrupt conduct.

High threshold for investigations

Another concern was the threshold that had to be met before we could commence an investigation. There had to be reasonable satisfaction about the existence of corrupt conduct, based on facts that, if proven at trial beyond reasonable doubt, would establish that an offence had been committed.

There was considerable potential for this vague language to land IBAC in regular court challenges, thereby thwarting effective and timely investigation of serious matters. This concern, coupled with the view of some that IBAC did not have all the powers it needed and faced undesirable restrictions, was not unreasonable.

From the outset, I decided to take a practical approach to the interpretation of the IBAC Act as part of an effort to determine for the first time the extent of corruption in the Victorian public sector. Once established, all of us at IBAC got on with the job of performing our primary function of investigating and exposing serious corrupt conduct, and police misconduct. We quickly commenced a range of investigations and began our important prevention work.

We also built a case for amending the legislation to enable us to more effectively fulfil our purpose. We were pleased when the Act was amended last year, as part of the Government's stronger integrity system reforms, making it more straightforward, for example, for us to commence investigations.

An important amendment was the introduction of a mandatory requirement for public sector agency heads to notify IBAC of suspected corrupt conduct. Before this, corrupt conduct notifications by government agencies (other than police) were merely voluntary.

Investigating serious and systemic corruption, and the importance of public exposure

IBAC has exposed serious and systemic corruption in some of the largest Victorian state government agencies. Our Operation Fitzroy, on which we reported to the Parliament following our first public hearings in 2014, dealt with corruption in Public Transport Victoria. Our Operations Ord and Dunham, in which public reports followed public hearings in 2015 and 2016 respectively, dealt with corruption in the Department of Education and Training.

“We have had challenges to the legitimacy of our examinations, mostly in private, from lawyers for represented parties.”

We have also exposed serious corruption in other state government agencies and local councils, with the findings of these investigations outlined in IBAC special reports, which are available on our website at www.ibac.vic.gov.au.

So far we have held five public hearings. These hearings are very effective in exposing corruption, encouraging credible complaints of improper conduct, and driving speedy reform in the public sector. However, the provisions around our public hearings are—in some respects appropriately—restrictive. Our default examinations practice is through private hearings, with public hearings allowed only if certain requirements are met and if the circumstances are 'exceptional'.

A challenge for IBAC has been around our public coercive examinations, which are conducted in the style of public inquiries, as a basic inquisitorial instrument. These are perhaps less well understood in Victoria than in other jurisdictions such as New South Wales, which has a long established practice of such examinations into alleged corrupt conduct.

We have had challenges to the legitimacy of our examinations, mostly in private, from lawyers for represented parties. And we have publicly fought out one challenge in the courts involving two members of Victoria Police in an investigation known as Operation Ross, which examined allegations of misconduct in Ballarat and elsewhere. New South Wales Court of Appeal decisions regard public examinations as abrogating the accusatory principle of criminal justice before an



Commissioner Stephen O'Bryan

examinee is charged in favour of certain statutory protections.

The Operation Ross challenge ended in the High Court. While this challenge delayed an important investigation by more than a year, it validated our approach to public hearings, and confirmed our coercive examination power in situations where a person of interest is yet to be charged with a criminal offence, but is reasonably suspected of having committed one.

Police oversight

Police oversight is an important part of our role. IBAC's remit—as with most police oversight bodies—is to examine those complaints which relate to serious or systemic misconduct or corrupt conduct. IBAC was not established to deal with the bulk of police complaints, the majority of which are service- or behaviour-related matters and

therefore appropriately addressed by police managers.

IBAC retains responsibility to oversee the handling of complaints that are referred to Victoria Police for investigation. This independent oversight includes:

- » reviewing selected matters referred to Victoria Police to ensure they were handled appropriately and fairly
- » conducting 'own motion' investigations about police personnel conduct or corrupt conduct
- » undertaking research and other strategic initiatives (such as IBAC's audit of how Victoria Police handles its complaints).

Encouraging 'speak-up' cultures

At our corruption prevention and integrity conference held this

October, what stood out were the common risks and vulnerabilities across jurisdictions and agencies, and the importance of encouraging and developing 'speak-up' cultures in which people feel confident and supported in reporting wrongdoing.

A robust protected disclosure, or 'whistleblower', regime to encourage those who suspect that something isn't right, to report it, is absolutely crucial. It is generally the people within an organisation who are in the best position to know about, or reasonably suspect, wrongdoing and who are in a position to speak up.

People who report suspected corrupt conduct need reassurance they will not suffer adverse consequences. In Victoria, our protected disclosure regime provides safeguards, and the public sector needs to do more to address those perceived barriers to reporting corruption and increase understanding of the protections available.

A recent IBAC community education campaign, *When something's not right. Report it*, worked to raise understanding of public sector corruption and its impact.

The IBAC Parliamentary Committee has recently reviewed our protected disclosure regime, and its recommendations are now subject to Government consideration. We look forward to seeing this important regime further enhanced.

'Follow the dollar' powers

There is still room to improve and strengthen our legislation. I would like to see IBAC given explicit 'follow-the-dollar' powers, similar to those now available to the Auditor-General. These powers would enhance our ability to more thoroughly investigate public sector corruption, which often involves complex and well-disguised financial arrangements between public and private entities.

Another area needing attention is action to recover the proceeds of public sector crime. The community reasonably expects that corruption involving defrauding the public purse will be prosecuted and the proceeds of crime recovered. More needs to be done. For example, while having the power to commence prosecutions, IBAC is unable to make confiscation or even tainted asset restraining order applications.

Human nature being what it is, we know we will never eliminate corruption, and that there are very real and present corruption risks and vulnerabilities in our public sector. In Victoria, we excel in a broad range of areas, particularly in our public sector. But while much has been and is being achieved, there is no room for complacency when it comes to corruption. We must and can always do more, and it is only by working collectively that we can achieve our shared vision of a public sector that actively resists corruption. ■

In Conversation with Helen Garner

VBN

Helen Garner, one of Australia's most admired writers, has become renowned for her coverage of themes relating to the justice system, starting with *The First Stone*, followed by *Joe Cinque's Consolation*. More recently she has explored the complex motivations behind multiple child filicide in *This House of Grief* in 2014, and *Why She Broke* published in *The Monthly* in 2017.

Helen has also been closely involved in assisting judges to improve judgment writing, suggesting that the line between law and literature is but a faint one.

We could not resist the opportunity to turn the tables. This time, it was Helen's turn to be under an inquisitorial gaze. We are delighted that she found the time to respond to a few questions, and enlighten our readers.

Do you think the path to legal persuasion in Australia depends on plain prose, or is there room for imagination?

You don't have to be George Orwell to know that plainness and imagination aren't mutually exclusive. Wouldn't the ideal be a mastery of plain prose but with the ability and the freedom to break into vivid imagery when the moment comes?

To be "Garnered" has become a verb and an occupational hazard at the Victorian Bar. Do you reflect on how your vignettes of counsel might affect them?

Of course! It's on the list of things that keep me awake at the horror hour of 2am. I'd be even more mortified by this question if I hadn't read about anthropologists realising that their presence affects the strange tribes they study: an outsider walks in carrying a notebook, and people get self-conscious.

What about the power differential between you and the convicted you have written about?

That differential is integral to the situation. I don't see how anything can be done about it. Yet I worry about it way more than I do about hurting the feelings of counsel,

whose ego I always assume to be more robust than that of the average convicted person (though the more barristers I get to know the less sure I feel about this). But I work hard at sparing people's dignity. Or at restoring some vestiges of it to them after they've been savaged on the witness stand, or pained by what they're hearing about themselves from the dock. In fact, I think my main purpose in writing about murder trials is to tear these stories out of the trashy grip the tabloids have on them. I want to recount them in a way that gives full value to the psychological complexity of the accused person's actions — also of the behaviour of the judges and jurors and counsel, those mysterious and fascinating beings.

How do you choose the subject matter of your books?

It falls into my lap. I read a story in the newspaper and I

go down to the court to see what's going on. By the time I emerge, seven years have passed and I have to write a book. It's a kind of madness. But also the most absorbing thing I've ever come across. I wish I'd started going to courts years before I did. My whole life would be different. ■

“You don't have to be George Orwell to know that plainness and imagination aren't mutually exclusive.”



IMAGE COURTESY OF NICHOLAS PURCELL



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A Kimberley Homicide

JOHN KELLY

On a Friday afternoon after court, I walked down to Spencer Street, caught the Skybus to the airport and flew to Perth. By midday the next day I was in Broome conferring for the first time with Phillip Watson alongside my junior Ben White.

Phillip Watson had been in custody for 11 months. He was charged with the murder of his best friend at Pandanus Park, a community 60 kilometres south of Derby. The community is on the banks of the Fitzroy River. It is home to roughly 100 Aboriginal people and is nominally “dry”. There’s good fishing with plenty of cherabin (freshwater prawns). You can hunt bush turkey in the surrounding pindan or savannah woodland.

Mr Watson and the deceased had grown up together and related to one another as brothers. Mr Watson was 10 years older and employed on the CDEP scheme to run the community’s generator. He lived alone, but had extensive family in the community, all of whom cooperated with the police in their investigation.

October is the start of the build-up to the monsoon season. The weather is oppressively hot and humid but there is no respite: no storms, no rain. Traditionally, there’s an upswing in violent offending at this time of year.

When I started with the Aboriginal Legal Service office in Broome in 1994, there were eight pleas listed on Day 1 of my first District Court circuit in Derby. The first involved a man who stabbed his wife in the face 28 times with a screw driver when she returned late from the Fitzroy Crossing Inn on the evening of his father’s funeral. The next concerned a man from Mowanjum Community who had shattered his sister’s skull with a house brick when she refused to give him a cigarette. She accompanied him to court in her wheelchair having been rendered paraplegic by the assault. The third involved a man from Imintji

community who had persuaded himself that the child his wife was carrying wasn’t his. He had stabbed her in the stomach a number of times. She survived. The child could not be saved. Each offence occurred in the build-up. Gross intoxication featured in each one.

By 6pm on 15 October 2015, Mr Watson had been drinking all day with most of the civilian witnesses in his trial.

Relations between Mr Watson and the deceased frayed after eight hours’ drinking in the punishing heat. The deceased liked to bait the accused when “full drunk”. After a confrontation outside a neighbour’s house, Mr Watson grabbed his grog and returned to his place, a one room shed near the entrance to the community. A number of others followed him, including a young nephew from Halls Creek, Liam Lannigan, an actor who had appeared in Baz Luhrman’s *Australia*.

Soon afterwards the deceased reappeared. He was tolerated initially but he had run out of grog. He wanted some of Mr Watson’s unopened carton of Emu Export. Mr Watson told him to leave, as did two others. A table was tipped over. When he refused to go, Mr Watson produced an axe and chased him outside. The deceased threw a log at the house. Mr Watson grabbed a boning knife and went back outside. After a brief struggle the deceased lay dying on the ground with twelve stab wounds in the heart, stomach, shoulder, arms and buttock.

The ambulance took an hour to arrive. Mr Watson remained outside his place slumped in a chair until his arrest. He still had the knife with him.

He was too drunk to interview until the following day and was still belligerent then. He admitted intending to cripple the deceased but denied trying to kill him.

Mr Watson told police that the deceased was armed with a stick when he stabbed him but Mr Watson was uninjured in the fight. Onlookers pulled Mr Watson off the deceased, who was still being stabbed ▶

“In Western Australia the defence of home invasion is available to those with homes to protect.”

whilst motionless on the ground.

In Western Australia the defence of home invasion is available to those with homes to protect. In defending himself from home invasion, an occupant can use force that is intended or is likely to cause death to the home invader if the occupant believes, on reasonable grounds, that violence is likely to be used or is threatened by a home invader. There is no need to demonstrate that the response is proportionate.

It's unlikely that the legislature had indigenous accused in mind when the legislation was introduced. I don't know of another homicide trial in the State where an Aboriginal accused has relied on the defence. There was certainly a basis for leaving it to the jury here. It was duly left once the Judge ruled that the backyard of

Mr Watson's house constituted an "associated place." The trial lasted six days with a day of deliberations.

The Broome court is a lovely colonial affair with heavy cyclone-proof shutters. The space inside is intimate. No more than four metres separate the dock from the jury box. A number of Aboriginal members of the jury panel sought to be excused due to kinship ties with either the deceased or accused. We would have challenged them anyway on account of what they were likely to have heard. That left us with an all-white jury. We hoped each was an occupant fearful of home invasion.

The jury acquitted Mr Watson of murder and manslaughter. It had been 13 years since the Aboriginal Legal Service had secured a complete acquittal in a murder trial.

It wasn't lost on us that we were able to use a classically Texan defence on behalf of an indigenous man who will never accumulate assets and has no interest in owning anything, let alone a house. As soon as he was released he made his way to the father of the deceased who had come to court each day of the trial. The father had greeted us civilly and with dignity every day we arrived at court. The pair embraced and shook hands. It was the first time since his arrest that Mr Watson was able to show he was sorry.

Acting for Aboriginal accused in remote areas is as challenging and rewarding as it gets. Funding for them in Western Australia and the Northern Territory has been cut severely. Many Victorian barristers have offered to work pro bono. It is expected that briefs will arrive next year. Anyone interested should let me know and their name will be added to the list. ■

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Vanessa Graf at her graduation with daughter Amari and partner Clint.

Bar indigenous mentee graduates

PAUL DUGGAN

Vanessa Graf, a participant in the Bar's Indigenous mentoring scheme has completed her master of laws at Deakin University and is set to start a graduate program with the Commonwealth Attorney-General's Department in Canberra in the new year.

Ms Graf, 36, from the Central Coast of NSW, started university in 2010.

Since then she has acquired a bachelor's degree, become Deakin's first female Indigenous law student to make it on to the Dean's Honours Roll, completed a masters by course work and given birth to daughter Amari, now aged 4. She has done all this while raising her teenage son Josef.

For some years now the Bar has organised a mentoring program

catering to Indigenous law students and graduates. Each participant is linked up with both a barrister and a judge (from the Supreme Court, Federal Court or County Court) to facilitate long term career assistance.

Ms Graf is very enthusiastic about the help and support she received from both the Bar's mentoring scheme and from Deakin University's Institute for Koorie Education.

Through the Bar's scheme, she was introduced as a first year student to Simon McGregor as her barrister mentor and to Justice Simon Whelan (now of the Court of Appeal) as her judicial mentor. Their relationships prospered over subsequent years as she visited them in chambers and kept in touch by phone.

"They were both excellent," she says of her mentors. "They gave me whatever support I needed. It was amazing."

"Simon [McGregor] was able help me with assignments and general advice. He also introduced me to a lot of people. He has connections everywhere."

"He'd also call every now and then just to check in with me and see how I was going."

Ms Graf lived on the Central Coast throughout her university career and travelled to Deakin's Geelong campus about eight times per year for intensive programs.

"I would speak to them [Whelan JA and McGregor] every few months, often on conference calls but I always knew they were there if I needed them," she said.

McGregor is similarly complimentary about Ms Graf.

"Her mentors don't deserve any of the credit. She is an easy-going dream and made the achievement of her feat — whilst raising both a new-born and a teenager — look easy"

"I have got a lot out of our relationship, too. Through her I have gained a much deeper understanding and appreciation of Indigenous culture and issues." ■

A big year for BCL: eight new floors and major refurbishment project begins

MARY HAYES, PROGRAMME DIRECTOR

Over the past eight months the Project Management Office (PMO) of Barristers' Chambers Limited (BCL) has been focused on delivering the largest programme of works in BCL's history.

Equivalent to approximately 25 per cent of the current portfolio, this has included four new floors at Aickin Chambers, 200 Queen Street, four new floors at Castan Chambers, 460 Lonsdale Street, as well as the refurbishment of nine floors at Aickin Chambers and the refurbishment of Level 14, Owen Dixon Chambers West.

It goes without saying that this has been a challenging and exciting process. Promoting the benefits of the works, and simultaneously managing client expectations, was anticipated and proved to be a crucial aspect of the project.

BCL approached the exercise by having a dedicated project management office to ensure a consistent and efficient approach to management governance. Client experience was at the forefront of BCL's business decision-making. BCL tenants were provided with an opportunity to create bespoke chambers and common areas by being given design choices within specific guidelines, so the new chambers would be fit for purpose for the long term.

The above exercise forms part of a broader BCL project to manage client expectations and to mitigate risks such as cost overruns, occupancy delays and poor client experiences. Key to this is BCL's commitment to learn from experience. As a result, over the past six months BCL has held lunchtime barrister focus groups to determine what BCL is doing well, and what it can do better.

There was certainly an air of excitement from clients on move-in day. All new floors at Aickin Chambers and Castan Chambers have been opened, and feedback is very positive. These new floors are a testament to the hard work of the BCL PMO and their chosen project partners.

Aickin Chambers

Four new floors were successfully completed in Aickin Chambers at the end of October 2017.

Spanning levels 18, 19, 20 and 21, one of the largest architectural practices in Australia, COX Architecture, were engaged for the design, with IRM Interiors completing the construction.

Providing chambers to 63 barristers, the design principles include borrowed natural light through glass partitions, supporting collegiality through open/break-out kitchen spaces, and creating identity through inviting entry and waiting areas. All floors have conference rooms with audio visual facilities and Wi-Fi. Clients were successfully relocated to levels 19, 20 and 21 across two weekends in October 2017. Level 18 will be used as the relocation floor for clients who are part of the Aickin Renewal programme commencing in November 2017.

Castan Chambers

All new floors in Castan Chambers were successfully completed in early December 2017. With the new floors located across levels 9, 10, 11 and 18, these chambers will be home to 123 barristers. COX Architecture were again engaged for the design, and Jones Lang LaSalle completed the construction. The design principles and amenities are as above, however a key point of difference is BCL's first co-working environment on Level 9 - a large chamber accommodating up to 8 barristers.

Clients were successfully moved onto their new floors over two weekends late November/early December 2017.

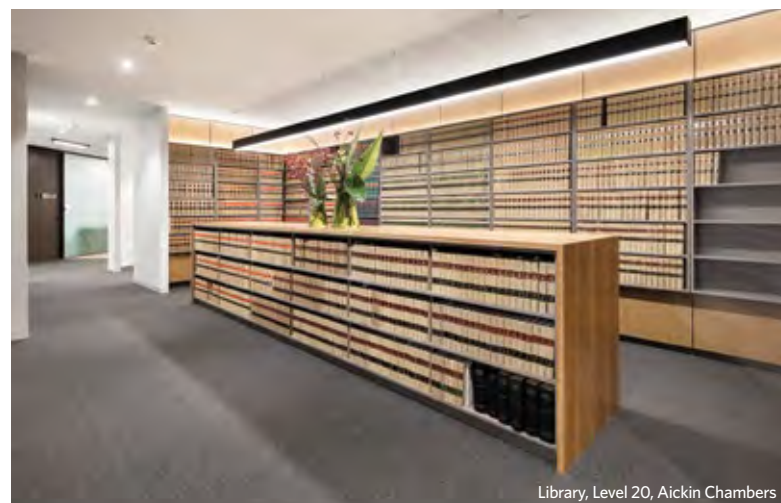
Aickin Renewal

With the above projects completed, the PMO is now executing a 14-month project to refurbish levels 16, 22, 23, 27, 29, 30, 31, 32 and 33 of Aickin Chambers.

Accommodating 150 clients, this project commenced in November 2017 and has a target completion date of March 2019. The project will be completed one floor at a time, with clients being relocated to level 18 Aickin Chambers as the refurbishment is completed to minimise disruption. ■



BCL PMO Team members James Campbell and Mary Hayes with level 32 Aickin Chambers design committee representatives Matt Collins QC & Ben Murphy.



Library, Level 20, Aickin Chambers



Kitchenette, Level 20, Aickin Chambers



Reception, Level 21, Aickin Chambers

Back OF THE lift

In this Back of the lift section of the Victorian Bar News, the Bar acknowledges the appointments, retirements, deaths and other honours of past and present members of our Bar.

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Back OF THE lift

ADJOURNED SINE DIE

SUPREME COURT



The Hon Justice Robert Redlich

Bar Roll No. 890

A ceremonial sitting of the Supreme Court was held in the late evening of 9 August 2017 to farewell his Honour Justice Robert Redlich. The Banco Court was overflowing with friends and colleagues, who heard warm and heartfelt addresses from the Solicitor General Mr Richard Niall QC on behalf of the State of Victoria and Ms Jennifer Batrouney QC on behalf of the Victorian Bar.

Mr Niall and Ms Batrouney reminded his Honour of some highlights from his long and storied career as an advocate, including the Costigan Royal Commission, the Higgins police corruption trial (said to be the longest trial in Victorian history), helping to establish the Commonwealth DPP and National Crime Authority, inquests into the Kew Cottages and Linton fires, and appearing as counsel assisting the board of inquiry into the Richmond City Council Elections in 1980. His Honour's ingenious cross-examination in the latter inquiry caused him to be regarded, along with the late Neil McPhee QC, in the very top tier of cross-examiners in Victoria.

Justice Redlich was thanked for his lengthy service as a justice of the Supreme Court. At the time of his retirement, his Honour was the longest serving puisne justice of the Court of Appeal, having been appointed from the trial division in 2006.

In 1996, before his Honour's appointment, he was photographed by Francis Rees as part of a commission of portraits of leading Victorians. The photograph showed the then senior Queen's Counsel smiling while holding the leash of a large Great Dane. Mr Niall told his Honour, to laughter, that the combined features of the duo, demonstrated the "qualities of charm, restraint and menace that made you such an effective advocate". The photo was duly tendered by Mr Niall as exhibit A, the last exhibit admitted by his Honour in a judicial career of nearly 16 years.

The tender of the photo left one remaining question. How could his Honour have worked so hard and for so long, but appear not to have aged a day? If the great cross-examiner knew the answer, he wasn't telling. His Honour can retire happily, knowing that he is held by his colleagues in the highest esteem. We wish him a fun, busy, and ageless retirement.

BEN JELLIS

COUNTY COURT



His Honour Judge Graham Anderson

Bar Roll No. 904

On 6 June 2017, the County Court of Victoria held a ceremonial sitting to farewell Judge Graham Anderson. His Honour spent 28 years at the Bar, eight of those years as silk. He was a judge of the County Court for 19 years.

On the bench, his Honour's high work ethic was no secret. In a four-week Warrnambool circuit, his Honour heard 13 serious injury applications. He delivered judgments in all of them by the end of circuit.

In 2006, his Honour established the County Court's Commercial List before sitting as head of the Banking and Finance Division and of the Building Cases Division. Even in the most complex of cases, his Honour's ability to break down the factual matrix into a series of issues resulted in judgments that were clear, well-reasoned and concise.

His Honour's endeavours off the bench are also impressive. A

prodigious reader, Judge Anderson and his wife Anita regularly donate book collections to the State Library of Victoria. It was quite usual for boxes of books to be delivered to chambers. His Honour would then cart them to writers' festivals and book launches for signing by the author. Once signed, all copies would be donated.

His Honour showed similar dedication as an athlete, competing in the World Rogaining Championships (think cross-country orienteering) as a team member in the ultra-veteran's category. His Honour took home silver from Russia in 2013, gold from North Dakota in 2014 and bronze from Lapland in 2015. This year he competed in Latvia.

His Honour pursued all this without fanfare or ceremony. His humility is evident in the seminar he delivers annually at the Court's judicial conference. Entitled "Judges behaving badly", his Honour provides a 'what not to do' guide to new judges featuring CCTV footage of his own behaviour on the bench.

His Honour will take a break before returning to the County Court as a reserve Judge. We thank him for his many years of service to the legal profession to date.

CATHERINE KUSIAK



Her Honour Judge Carolyn Douglas

On 13 October 2017, Judge Carolyn Douglas retired as a judge of the County Court. A judge for 20 years, her Honour was a lawyer for twice that time.

Admitted into practice in 1977, her Honour applied immediately to come to the Bar and signed the Bar Roll in February 1978. She read with the late Lynne Opas (later QC and, under her married surname, Judge Schifftan – the first woman judge of the County Court).

Judge Douglas shared Tait Chambers with those described in her farewell speech as a 'merry band': Judge Bill Stuart, retired County Court judge Margaret Rizkalla, and retired Supreme Court judge Elizabeth Curtain (earlier also a County Court judge).

Like every good barrister starting out, Judge Douglas took whatever work came in the door, mostly appearing in the Magistrates' Court in crash-and-bash and other civil matters, in traffic offences, and in crime.

No doubt under the influence of her mentor Lynne Opas, who practised almost exclusively in family law, Judge Douglas developed her own family law practice, leading to appearances in the Family Court of Australia, and in the Supreme Court, which then still had jurisdiction for extra-nuptial maintenance claims.

Her Honour also appeared in the Federal Court in bankruptcy matters, and in the Supreme Court, such as before Sir John Starke, in a property law withdrawal of caveat case.

It was in crime that some would say Judge Douglas found her true calling. Initially it was mostly defence work, although she was also briefed to prosecute in the County Court towards the end of her time at the independent Bar.

In January 1986, her Honour was appointed Crown Counsel. She took hard cases and managed a heavy workload. One of them was the high profile murder trial of Lenny Squires. The accused was a Mortlake horsebreeder. The victim was an RSPCA inspector who went missing after a visit to the farm. He was found in a shallow grave. The evidence against Squires was circumstantial. There was no physical evidence to

link the accused to the murder.

At the time of this case, her Honour had only been a permanent prosecutor for about four years. The committal should have had two counsel, but she did it alone and secured the committal. She then appeared in both trials: in the first, led by Geoffrey Flatman (later to become a director then a Supreme Court judge); in the second, led by Remy Van de Wiel.

It was a complex, high-profile case. The first trial was in 1990 in Warrnambool and ran for nine weeks. The prosecution called 84 witnesses. The trial ended in a hung jury. The second trial, in 1991, was in Melbourne. The accused was found not guilty.

This high level of responsibility was emblematic of Judge Douglas’s experience before her appointment. She prosecuted—unled—many, many murder trials. She appeared alone in the old Full Court and the Court of Criminal Appeal.

Direct, economical and “straight down the line”, colleagues previously opposed to her, such as Paul Holdenson QC, say that she knew the law, she made appropriate concessions, and she was fair.

So too, Judge Douglas has been an outstanding judge. Meticulous and demanding, but always courteous and, with a substantial background in defence as well as prosecution, she is regarded as scrupulously fair. Her Honour is known also for her amazing gift and skill in engaging and communicating with juries, explaining to them the most complex issues and their application to the tangle of facts and evidence with astonishing clarity.

Amongst Judge Douglas’s many contributions, she contributed substantially to the readers’ course, working a lot with the late Ross Ray QC. For years she acted as the magistrate in the Bar readers’ course moots. She taught advocacy at Leo Cussen Institute.

The Victorian Bar thanks Judge Douglas for her life of professional

service in the law to date, and wishes her, Peter Harvey her husband, and her son Robert, joy and satisfaction in her Honour’s retirement from the Court.

SILENCE ALL STAND

FEDERAL CIRCUIT COURT

His Honour Chief Judge William Alstergren

Bar Roll No. 2676

Justice Edvard (William) Alstergren (aka Ragnar) feeds on a challenge – large or small. His indefatigable energy and determination were the hallmark of his practice at the Bar. Those qualities will soon become manifest, if they have not already, in his new roles as Chief Judge of the Federal Circuit Court and Justice of the Family Court of Australia.

His Honour’s boundless contribution to the life of the Bar over many years demonstrated that he will persist until the job is done and will not be denied success in the end. The community of the Bar has been the collective beneficiary of his Honour’s energy in areas that are too numerous to recount in this short piece. By the time this article is published, much will have been said about his Honour’s contribution to the Bar. However, one area in particular must be underscored.

His Honour put pro bono work at the top of his agenda as a member of the Bar Council and as President. He turned the Bar’s well intentioned but essentially ad hoc efforts in relation to pro bono work into a well organised mission. He effectively invented the Bar’s duty barristers scheme. Perhaps more significantly, his infectious enthusiasm for pro bono work shifted the Bar’s commitment to it from the periphery

to the centrepiece of the Bar’s reach into public service.

In his capacity as President of the Australian Bar Association, right up until the time of his appointment, his Honour engaged with jurisdictions around Australia to explore ways to better deploy scarce legal aid funding, and explored ways to find potentially new, non-government, sources of funds for legal aid. No doubt his Honour will continue those efforts from the other side of the Bar table where he now sits.

His Honour’s commitment to public service was of course also reflected in his determined representation of his clients. He had a broad practice by modern standards of narrow specialisation. His Honour routinely turned from commercial matters, to common law and to family law. He did not eschew the difficult or financially unrewarding cases. He regularly took on clients on a no win no fee basis and led by example when it came to pro bono work. He was a skilled and tenacious advocate, he was always prepared and always ready to fight the case, if necessary, hand and fist.

The appointment of his Honour as the Chief Judge of the Federal Circuit Court and as a Justice of the Family Court is a justified recognition of his skill and experience as a barrister as well as his finely turned talent for getting things done and effecting change. His Honour’s talent for organisation is difficult to describe, but any one who is subjected to it is unlikely to realise they have been herded until after they have wandered through the gates and into the yard – such is his Honour’s charm and his ability to bring others along with him.

The real beneficiaries of his Honour’s appointment are the very many citizens who come before the Federal Circuit Court and the Family Court of Australia, nearly always at times of great stress and anguish. His Honour has a deep understanding of, and empathy for, the human condition. He will undoubtedly strive to ensure that those courts deliver justice, with the utmost fairness and

efficiency, to the community they serve.

Since his Honour left the Victorian Bar a mysterious lacuna has been identified, the bottom of which, like the Bermuda Triangle, may never be chartered. With respect to the Bar Office, quite how the Bar dinner is to be organised in future remains to be seen. The Federal Circuit Court and the Family Court, on the other hand, have acquired a Nordic force of nature, the effect of which will have been felt even by now.

PAUL ANASTASSIOU QC

COUNTY COURT OF VICTORIA

His Honour Judge Edward Woodward

Judge Edward (Ted) Woodward completed his education at Balwyn Primary School, Camberwell Grammar, and the University of Melbourne. He completed his articles at Arthur Robinson & Co., and then practised as a solicitor in corporate insolvency for 13 years. He is reputed to have sung his speech to the tune of “The Teddy Bear’s Picnic” upon attaining partnership at that firm in 1992.

He came to the Bar in September 1997 and read with Paul Cosgrave and established a general commercial and corporate insolvency practice. He had a sideline in inquests and inquiries and was junior to Stephen Kaye representing the Country Fire Authority in the Coronial Inquest into the Linton fires in which five firefighters perished.

He was junior to Lex Lasry as counsel assisting the inquest into the 2003 ACT firestorm. Justice Lasry described his junior as “straightforward, honest, and conscientious”. Lex also taught him the important art of interpolating song lyrics into cross-examination to sustain counsels’ interest during prolonged inquiries.

Judge Woodward took silk in 2010,

and acted as lead counsel at the first IBAC public inquiry, examining corruption in the Department of Transport. His Honour also acted for IBAC in resisting a challenge to the public examinations of Ballarat police officers suspected of corruption, on the basis that the public examinations cut across the privilege against self-incrimination and breached the “companion principle” to an accusatorial criminal trial. His Honour’s arguments that the IBAC Act clearly abrogated the privilege against self-incrimination, and the companion principle did not apply (as the Ballarat police had not yet been charged) ultimately carried the day on appeal in the Court of Appeal, and on appeal to the High Court, where his Honour was led by the Solicitor-General.

Judge Woodward was a member of the Victorian Bar Council, and worked for six years on the Bar Education and Training Committee (as Chair in relation to Continuing Professional development in his final year) and for six years on the Ethics Committee, including as Deputy Chair, and Chair.

One of his Honour’s legacies on the Ethics Committee was his implementation of the Grievance Protocol, which set in place a procedure for the Ethics Committee to investigate grievances between barristers regarding bullying and other misconduct, on its own motion, in the absence of a complainant.

The County Court and the public can only benefit from the appointment of a member of counsel held in such universal esteem by his peers.

Her Honour Judge Aileen Mary Ryan

Bar Roll number 2807

“Always maintain a poker face, no matter what.” This was her Honour Judge Ryan’s advice to a green barrister on what to do when things go awry in the witness box. Judge

Ryan’s own face in one trial gave no hint that her star witness was self-destructing while a promising case was disappearing into a deepening hole.

Others describe her Honour as cool, calm and very collected. This was certainly true in a careful and cutting cross-examination that exposed a young witness’s sexual proclivities. Her Honour’s skill was likely honed years earlier when her Honour was led by Jeremy Ruskin QC in the *Australian Red Cross* case. After the critical concession, her Honour’s expression remained unchanged as she darted a glance at the bench to confirm that the concession was noted and forming part of the judgment.

Judge Ryan gave generous support to the junior Bar. She led many rising stars allowing her juniors sufficient latitude to learn the craft while providing the safety net of experience.

Her Honour gave wise counsel in her role on the Victorian Legal Admissions Committee. Young at heart, she could appreciate and forgive the youthful indiscretions of applicants who came before the Board of Admission.

Her Honour could weave into one conversation the use of iPads in Court, the goings-on of her British Blue cat, Miss Tilly, and the hottest new French restaurant before Melbourne’s foodie mafia discovered it.

Before coming to the Bar, Judge Ryan was a Senior Associate at Arthur Robinson & Hedderwicks, and before that, a solicitor at Blake Rignall. Her Honour read with Leslie Glick QC. In early years, Judge Ryan shared chambers with and was later neighbour to Jeremy Twigg QC. Among other high jinks, each young barrister would attempt to distract or otherwise embarrass the other in front of their instructors during conferences. This was where Judge Ryan’s poker face was perfected.

Judge Ryan’s 25-year career at

the Bar saw her develop a keen expertise as a professional indemnity insurance specialist. Her Honour took on hard cases, including an estate claim by a beneficiary who killed the testator, cases involving costs orders against solicitors and against determined self-represented litigants. Her Honour conducted herself with integrity, professionalism and a keen insight into the human psyche. She will no doubt enjoy a long and fulfilling career on the bench.

His Honour Judge Douglas Trapnell

Judge Douglas Trapnell was appointed a County Court judge on 27 June 2017, after practising as a barrister for more than 26 years, including almost 14 years as a crown prosecutor, more than eight years as senior counsel, and nearly seven years as a senior crown prosecutor.

His Honour’s advocacy skills were spotted early when he was recruited into the Jessup International Moot Court team by his property law lecturer at Monash University, the late Harry Reicher. The team was required to master international humanitarian law subject matter and the protocol of the International Court of Justice. The Melbourne University team that knocked out the Monash team went on to win the world competition in Washington D.C. This proved a pivotal experience in motivating his Honour to pursue a career at the Bar.

Work at the Bar, as it does for many, commenced with appearances in the Magistrates’ Court. His Honour then began appearing in complex criminal trials and appeals, often led by various luminaries of the Criminal Bar.

After about eight years at the Bar, Judge Trapnell accepted an appointment as the Director of Research and Executive Officer of the Law Reform Committee of the Victorian Parliament. The Hon. James Guest was Chairman of the

Committee. The Committee inquired into on a number of references, including a report that reviewed the jury system in Victoria. The role involved researching complex issues, and the logistical challenge of arranging the travel of politicians of all persuasions to different countries and cities.

After more than four-and-a-half years with the Parliamentary Committee, his Honour returned to the Bar in 1999, specialising in prosecuting serious criminal cases in the Supreme and County Courts, with occasional appearances for the Crown in the Court of Appeal. His Honour also developed particular expertise in complex motor traffic law cases.

On 1 January 2007, his Honour was assigned to the Major Appeals Unit. On an appeal to the Court of Appeal in 2015 after hearing the appellant’s submissions he frankly conceded with conspicuous fairness that a trial that led to the conviction being appealed was a “mess”, and “difficult to defend.” The court said “The concessions of senior counsel for the Crown were properly made and conformed to the highest and best standards of prosecuting counsel.”

His Honour has also served as an Army Reserve Officer in the Royal Australian Infantry Corps. He brings to the Court a breadth of experience, a scholarly bent, thorough industry in the law, and an intuitive sense of fairness.

His Honour Judge Paul Higham

His Honour, Judge Higham, grew up in the suburbs of London in a Catholic working-class family. From these humble beginnings, he went on to read history at Cambridge, graduating with a bachelor’s, and later a master’s degree in arts. He completed his graduate degree in law at the City University of London and was admitted to the Bar of England and Wales in 1982.

His practice at the London Bar

came to be exclusively criminal, and included international drug trials, money laundering and corporate fraud matters, and murder trials in the Old Bailey. He rose to be the (unofficial) head of One Pump Court Chambers in London, a progressive set of 50 barristers with a commitment to equitable access to justice and the preservation of civil liberties.

In 2004 he moved to Australia with his long-term partner, Shane McGowan, and their beloved daughter, Evie, who has sadly since passed away. Shane is a children’s book writer and illustrator who grew up in Australia. The couple moved here to be closer to Shane’s family. Despite being embraced by Shane’s family, the move did come at some personal expense to him. Despite having practised as a lawyer for over 20 years, he was required to study constitutional and administrative law, ethics and trust accounting before being admitted into practice in Victoria.

Following admission, he practised as in-house counsel at Paul Vale Criminal Law, before signing the Roll in 2007. He became an Australian citizen in 2008.

During his time at the Victorian Bar, he continued his work in areas where the criminal law intersects with human rights. He successfully defended clients in rape, attempted murder, taxation fraud and ecstasy importation cases. He appeared in *TSL v The Secretary of the Department of Justice* in the Court of Appeal, which came to be the guideline case for the making of extended supervision orders under the *Serious Sex Offenders Monitoring Act* 2005 (Vic).

He was a member of the Bar’s Equal Opportunity Committee and Sexual Assault Working Committee, and is a registered advocacy trainer who regularly teaches at Monash University.

His Honour fills his spare time watching Midsomer Murders (an admission against interest), running marathons and singing in the Low Rez Male Choir. He is looking forward to a time when Australian

law permits him to marry Shane, his partner of 29 years.

His Honour Judge Michael O’Connell

Michael O’Connell attended Whitefriars College and completed studies in law and Indonesian language and civilisation at Monash University, where he was editor of the university magazine, *Lot’s Wife*.

Admitted to practice in 1987, his Honour completed his articles at Melasecca Tobin and Zayler in Greville Street Prahran, and acted as a solicitor/advocate at the firm until 1990, often appearing at Prahran Magistrates’ Court in Malvern Road before its closure in 1998. The Prahran Magistrates’ Court was either “a hot house of crisis management” (as his Honour described it) — or a “utopia of jurisprudence” (as Rob Melasecca described it) depending on one’s view of the world.

As a committed vegetarian, his Honour earned the moniker “Micklepickle” and “Supporter of the Sentient Prawn” at the Greville Street firm. After being called to the Bar and reading with Roy Punshon in 1990, Rob Melasecca mischievously challenged his Honour’s commitment to the cab rank principle by briefing him to appear for two brothers conducting an illegal slaughterhouse.

As a barrister, his Honour had a national criminal practice and was chairman of the Criminal Bar Association prior to his appointment. He was committed to his clients, believed in the presumption of innocence, and had a reputation for being empathetic and compassionate in helping accused people through the process, often telling them “Now this is my problem.”, which put them at ease. His cross-examination skills were described by Justice Stephen Kaye as “beyond superlative”.

Galbally & O’Bryan briefed him in murder, major fraud and terrorism cases. His Honour obtained an acquittal for Shane Bond in his trial for the murder of Elisabeth Membrey in Ringwood 1994, based on circumstantial evidence. He represented the family of barrister Katrina Dawson — killed by police bullet fragments as they stormed the Lindt Cafe — at the inquest into the deaths resulting from the siege in Martin Place Sydney. He was also part of the team of Melbourne lawyers who fought for a decade on behalf of Andrew Chan and Myuran Sukumaran, who were executed in Indonesia in 2015. He contributed valuable work to the Northern Territory Legal Aid Commission, and taught advocacy for 18 years in Australia and abroad.

He has been proud of his Irish heritage since childhood. As guest speaker at Stary Norton and Halphen’s May Day party in 2016, he spoke on the 100th anniversary of the Easter Rising in Dublin. When the Irish rebels challenged British rule, they did not have public support. However, when 15 leaders of the uprising were executed after hasty courts martial, public opinion shifted. He drew an analogy between that outcome and the executions of Chan and Sukumaran, and the futility of putting people to death.

The community benefits greatly from the appointment of such a respected, experienced trial lawyer with a social conscience and commitment to the rule of law.

His Honour Judge Trevor Wraight

Judge Trevor Wraight completed year 11 at Montmorency High School, but was lured away from year 12 by grooves, guitar, and Melbourne jazz luminary Nicky Bomba (now leader of the Melbourne Ska Orchestra). By the tender age of 21, in the mid 80s, he was living the dream studying guitar at a music

institute in Hollywood in central Los Angeles. On return to Melbourne, his Honour played in bands with Nicky Bomba and co wrote ‘My Family’, which Nicky’s band Banana Oil subsequently recorded on Mushroom. It won an APRA music award in 1998 for the most performed jazz work. After a recording contract fell through, his Honour enrolled in law.

His Honour completed his Bachelor of Law through the University of London’s international distance learning program, approaching his study with monastic self-discipline, and went on to complete the Leo Cussen Practical Legal Training Course. He came to the bar in 1995 and read with Pat Tehan QC, and appeared with him in *R v Mills*, a significant sentencing case that articulated the general proposition that rehabilitation of a young offender is usually far more important than general deterrence.

He regularly appeared in criminal, coronial and disciplinary matters in the County Court, Supreme Court, Court of Appeal and Coroner’s Court, as well as various disciplinary tribunals. He had eight readers at the bar, and was appointed silk in 2014. In summer time on vacation, he could often be spotted at swim meets — particularly Lorne around Pier to Pub time, where he earned the official ‘Shark Bait’ title for completing over ten swims.

Some of his Honour’s notable appearances as a barrister have included acting for a principal accused in the Benbrika terrorism trial; the appeal of Byron Pantazis (who helped Tony Mokbel flee Australia); an inquest into the death of Adam Rosen (an inpatient in a psychiatric unit who died in seclusion at the Alfred Hospital); and acting in disciplinary and criminal proceedings arising out of the inquiry into live baiting of greyhounds.

His Honour acted for art dealer Peter Gant in the Brett Whiteley Lavender Bay paintings art fraud trial. Justice Croucher reluctantly

rejected a no case submission based on a consignment book and a catalogue that suggested the allegedly forged painting could have been produced in 1988-9 rather than decades later as alleged by the Crown. A virtual invitation to acquit in the form of a Prasad direction was declined by the jury. Gant and co-accused Siddique were convicted, and appealed.

The DPP fairly conceded each ground of appeal, and the convictions were quashed and acquittals entered on the basis that a reasonable inference must rest on more than mere conjecture. His Honour’s conduct during this trial and appeal demonstrates his exemplary tenacity and diligence.

His Honour is congratulated on his appointment. He brings to the Court a wealth of experience, expertise, and hidden musical ability.

FAMILY COURT OF AUSTRALIA

Chief Justice Pascoe

The Hon Chief Justice John Pascoe AC CVO is now at the helm of the Family Court of Australia, following his appointment on 13 October 2017.

The former Chief Judge of the Federal Circuit Court of Australia for 13 years, he brings to the role a wealth of experience from his time dealing with the Commonwealth’s busiest trial court. He is also no stranger to the nature of the matters he must administer; the Federal Circuit Court deals with more than 85 per cent of all federal family law matters.

His Honour is the Australian representative to the Hague Conference on Private International Law Experts’ Group on Parentage.

Chief Justice Pascoe’s eminent service to the law and to the judiciary was recognised by his appointment as a Companion of the Order of Australia in January 2016.

MAGISTRATES’ COURT OF VICTORIA

Magistrate Ivy Abigail Burchill

Bar Roll No. 4471

On 25 July 2017 Abigail Ivy Burchill was appointed a magistrate of the Magistrates’ Court of Victoria. Her Honour brings to her new role 22 years of experience in the law, first, as a solicitor and, then, as a member of our Bar.

Her Honour was raised and attended secondary school in Mooroopna, near Shepparton. She graduated from the University of Melbourne with degrees in Arts and Law in 1994. In 1995 she commenced her articles at the Office of the Commonwealth Director of Public Prosecutions, and worked there as a solicitor for a further 15 years. Before moving to its Melbourne Office, her Honour worked as a Senior Legal Officer in complex prosecutions at the CDPP’s Sydney Office.

Her Honour was called to the Bar in 2011. She read with Julian McMahon AC. Once at the Bar, her focus shifted to defence work. Her career at the Bar took her from suburban Magistrates’ Courts and summary crime, to the State’s Superior Courts and the High Court. Her Honour was a much-sought-after junior. She was as thorough as she was indefatigable. Her forensic acumen and sound knowledge of the law meant that she was always in demand.

Her Honour is a proud Aboriginal woman. She is the second Aboriginal woman to be appointed to judicial office in Victoria. She was born and raised Dja Dja Wurrung and is a Yorta Yorta Traditional Owner. Whilst at the Bar, she served as Deputy Chair of the Indigenous Lawyers Committee, President of Tarwirri – Indigenous Law Students and Lawyers Association

of Victoria, and as a Member of the Law Institute Committee for the Development of its Reconciliation Action Plan.

Her Honour enjoys the reputation of an outstanding lawyer, a generous colleague, and a person with great understanding of others. The profession welcomes her appointment enthusiastically.

THEO KASSIMATIS QC

Magistrate Carolyn Burnside

Magistrate Carolyn Burnside was admitted to practice in 1989 and signed the Bar Roll in 1993.

Her Honour studied law and arts at Monash University, and majored in history. After completing her Articles with Haines and Politics, her Honour became Associate to the late Michael Kelly. Judge Kelly wrote the first Victorian Criminal Charge Book. He was described by Sir Daryl Dawson as “one of the great judges of the County Court.” She worked as an associate to Judge Kelly for two-and-a-half years, during which he presided over the legendary 11-month Beljajev importation trial.

After reading with Bill Morgan-Payler (shortly before he became a Senior Crown Prosecutor), she established a specialist practice in criminal law. Her Honour took hard cases and fought passionately for her clients.

She was appointed a magistrate after dedicating the past decade of her career primarily to prosecuting in the notoriously difficult area of indictable sex offences, often in cases involving multiple complainants and tendency and coincidence evidence, for the Office of Public Prosecutions. As a prosecutor she was a formidable opponent, and had a reputation for having a genuine compassion for the victims of sexual crime amongst her instructors at the OPP. Complainants always felt that they had been heard and supported during trial.

An active member of the Victorian

Bar, Magistrate Burnside held various positions, including as a member of the Bar Council and of the Ethics Committee.

She was a member of the Bar Council that commissioned the landmark Equality of Opportunity for Women at the Victorian Bar report. She frequently sent emails to instructors late at night after dinner, when homework had been completed, and children were in bed. She has been a role model and mentor to a number of women balancing the strenuous demands of legal practice and family at the Bar.

Magistrate David Starvaggi

Magistrate Starvaggi was appointed a Magistrate after serving as Chairman of the Springvale Monash Legal Service. He has been on its board since 2003. He brings to the bench broad and diverse life experiences.

His Honour was admitted to practice in January 2001 when he was 35 years old. By then he had already experienced one career. He left school in Year 11. His father was seriously ill, and he had to leave school to work in the family business, Southern Star Security. The family business continued to grow from 50 to 80 employees in the years that followed.

He obtained special entry for mature-age students at the University of Melbourne after blitzing the exams. His first year results led to acceptance into Arts/Law at Monash University. He completed his degrees on a part-time basis, graduating in Arts in 1993 and in Law in 1999.

His Honour then completed the practical training course at the ANU. Admission in the ACT in 2000 was followed by admission in Victoria in 2001.

In May 2013, his Honour was appointed a part-time Public Interest Monitor.

Magistrate Starvaggi also possesses wide-ranging knowledge of road

safety laws, and has conducted training for Victoria Police prosecutors on national heavy vehicle laws. He has practiced extensively in VicRoads prosecutions.

He has practised in all areas of criminal, family and civil law, and is a dedicated legal educator who has taught a wide range of subjects, including advocacy at Monash University, and as a sessional teacher at Holmesglen TAFE.

VALE

Michael Anthony Adams QC

Bar Roll No. 1144

Michael Adams died on 22 June 2017 at the age of 68.

He joined the criminal law branch of the Victorian Crown Solicitor’s Office in 1967, moving to the Office of Chief Parliamentary Counsel in 1970. He was legal assistant to Victorian Attorneys-General Sir George Reid QC and Vernon Wilcox QC, to the Standing Committee of Attorneys-General, and to the Victorian delegation to the Constitutional Convention.

Michael was admitted to practice on 3 December 1973, after being awarded the Supreme Court prize as the best student in his year at the RMIT Council of Legal Education articulated clerks course. He then served as associate to Sir Alistair Adam on the Victorian Supreme Court. Michael signed the Bar Roll on 10 April 1975 and read with William Ormiston (later Judge of Appeal).

Following 10 years of general practice, he specialised in public and constitutional law, equity, and commercial law in the Supreme, Federal and High Courts, later practising also extensively at VCAT. He had one reader, Justin O’Byran, and took silk on 24 November 1992.

In 1996, Michael was appointed

to the Magistrates’ Court as Chief Magistrate of Victoria, resigning from the Magistrates’ Court in 2000. During his tenure, and demonstrating a commitment to social justice, he introduced significant initiatives including the roles of disabilities officer, Koori liaison officer, and CREDIT (early intervention drug treatment). He also facilitated the early planning of the Koori Court and played a major role in the design and building of the new Children’s Court. He resumed practice at the Bar in 2002.

Michael Adams served on the Victorian Bar Council and its committees. He was on the advisory panel that established the Essoign, and was a founding member and director, and sometime chairman. He was a director of the Essoign Art Exhibitions, and was honoured with life membership. In 1987, he drew the first constitution of the Victorian Bar that replaced the ‘counsel rules’ and served on the constitution committee that finalised and implemented it.

He was an independent tutor in the RMIT articulated clerks course in crime, procedure, equity, and executors and trustees. He lectured at Leo Cussen in commercial law, and he taught in the Bar readers’ course.

Michael Scarfo

Bar Roll No: 1251 & 1763

Michael Scarfo was born in the village of Monsoreto in the region of Calabria, Italy. His father came to Australia first; he and his mother followed in the mid-1950s. He began school at Gumbower Primary School in the Murray Valley. The family moved to Sunshine and his secondary education was at Sunshine High School. Michael was a good athlete — a sprinter; and it is believed that his record in the long jump still stands. He played football at school and, after school, with the Braybrook Sporting Club.

Michael won a Commonwealth Scholarship and completed his Law degree at the University of

Melbourne. He served Articles at Patrick J Cannon, Testro & Coburn and was admitted to practice in May 1975. Michael practised briefly as a solicitor then travelled overseas. Upon his return, he came to the Bar, signing the Roll on 1 March 1976. He read with the late Neil Forsyth (later QC).

Michael left the Bar in November 1976 and established his own law firm in Sunshine, M A Scarfo & Associates. He had a general suburban solicitors’ practice, specialising in personal injuries work, the Magistrates’ Court jurisdiction and in Family Law. He did his own appearance work in the Magistrates’ Courts, and occasionally in the Coroner’s Court, County Court Appeals and in the County Court. He had an employee solicitor and took an Articled Clerk.

Michael returned to the Bar in 1983 and, although he had fully completed his Reading in 1976, read again, this time with Michael Ruddle. He had a remarkably broad practice: Crime, including murder; Common Law, including personal injuries; Family Law, including substantial property and custody cases and appeals; and Commercial Law. He had six Readers. Michael served on the Equality Before the Law Committee, the Applications Review Committee and on the Joint Bar, LIV & ABA Medico-Legal Standing Committee for 12 years, up to his retirement from practice in 2009.

His Honour Judge Peter Gebhardt

Bar Roll No. 2129

Judge Peter Gebhardt was a Renaissance man. After completing his education at Geelong Grammar School and studying law at the University of Melbourne, he taught English and Latin at Geelong Grammar and Sydney Church of England Grammar School.

In 1964 he earned an MA in Teaching from Harvard University, and was appointed Headmaster of

All Saints College Bathurst in 1966, and Principal of Geelong College in 1976. As a principal he was a committed reformist. He oversaw the establishment of the environment centre and the Austin Gray Centre for Performing, Visual and Creative Arts at Geelong College. He later returned to Harvard and studied under Seamus Heaney, with whom he became lifelong friends.

In 1986 at the age of 50 Peter commenced his Articles with Brian Flynn in Coburg, and was admitted to practice in March 1987. He came straight to the Bar and read with John Kaufman QC and signed the Bar Roll in May 1987. He developed an administrative and criminal law practice, appearing in the Full Federal Court, and the High Court. In May 1996, he was appointed a Judge of the County Court.

On the bench his Honour was renowned for his compassion. When asked about the similarity between education and the law, he said: “In both you’re dealing a lot with young people.” Judge Gebhardt had an intuitive understanding of the critical role that rehabilitation could play in a young person’s life. “It is always easy to send people to jail, much harder to find reasons to keep them out,” he wrote in his 2014 memoir *Functus Officio*. He was reputedly once awarded “best and fairest” judge by prisoners at Port Phillip.

He wrote and published poetry, and was a lifelong supporter of Aboriginal people, supporting the Aboriginal Treaty Committee 1981 Townsville Conference, where instructions were taken from Eddie Mabo. He was the driving force behind Trinity College’s support of Aboriginal students, personally funding the first Visiting Indigenous Fellow.

Peter published poetry and prose including *Killing the Old Fool* (1988), *Secretary of Praise* (1992), *British Bulldog* (1996) and *Their Stories, Our History* (2003), dedicated to his former pupil at All Saints, indigenous author Paul Collis, and Sir William

Deane “for keeping the historical conscience alive.”

Their Stories included a transcript of a public dialogue between Peter and art historian Bernard Smith, and a foreword by Pat Dodson describing the book as “the story of dispossession and disaster that engulfed our society”. After reading *Their Stories* Heaney wrote to the judge: “A poem should mean as well as be, and start to make something happen.”

Peter Gebhardt died in Melbourne on July 22, and is survived by Christina, their children Nicholas, Sophie and Anna, grandchildren Ruby, Max and Matilda and his sister, Mary Jane Joscelyne.

Jillian (Jill) Christine Fischer

Bar Roll No. 4013

Jillian Christine Fischer had a broad and practical intellectual curiosity, education and professional life, reflected in her diploma and degrees: Associate in Theology (Melbourne College of Divinity 1965); Bachelor of Arts (La Trobe 1977); Bachelor of Social Work (Melbourne 1981) and Bachelor of Laws (Monash 1988).

Before becoming a lawyer, Jill worked in the insurance industry for almost eight years, and was then with Telecom for almost 20 years, initially as a welfare officer and ultimately as a social worker in charge.

Jill completed the Leo Cussen Practical Training Course and was admitted to practice in November 1989. She practised for more than 17 years as a solicitor and duty lawyer with Victoria Legal Aid. She was seconded for five years as the first Drug Court lawyer to the Department of Justice in the Drug Court Pilot at Dandenong. She never gave up fighting for the participants and their struggle to rehabilitate – “the redoubtable Jill Fischer”.

Jill read with Bill Stuart (later SC; now County Court Judge) and signed the Bar Roll in May 2007.

She practised at the Bar for more than 10 years, predominantly in the Criminal Division of the Magistrates’ Court including all suburban courts and country areas, particularly the Latrobe Valley and Ballarat. She practised also in the County Court and in the Victims of Crime jurisdiction.

She died on 21 August 2017, just a few days before her 71st birthday. She was a determined and totally fearless advocate. On 10 August 2017, she was part-heard at Moorabbin. Gravely ill, she got herself to court, appeared and completed the matter. It was her last case.

Lachlan McConchie

Bar Roll No. 3960

Lachlan McConchie was educated at North Balwyn Primary School and Greythorn High School, completing his HSC in 1973. He tried his hand at many things before coming to the Bar – taxi driver, switchboard operator, cleaner. During the 1980s and 90s, he and his wife, Carole Jackson, established and ran five video libraries and a number of commercial properties.

He gained entry to Monash Law School and graduated in 2004. While a student, he completed a placement in the Melbourne office of the Commonwealth DPP. After graduation, he did placements with barristers working on a range of criminal, civil and family law matters. He completed the Leo Cussen Practical Legal Training Course and was admitted to practice in March 2006.

Lachlan read with Alasdair (“Sandy”) Robertson and signed the Roll in November 2006.

He remained in Sandy’s chambers for some time, before taking his own room in Owen Dixon West. He practised mostly in criminal law matters in the Magistrates’ Court. His work defending wildlife conservationists was recognised within environmental circles and commemorated through the naming

of a subgenus and two subspecies of amphibians in his honour, including Cryptophis (Macconchieus) Hoser – a subgenus of brown small-eyed snakes from Australia.

Despite suffering from a debilitating illness, Lachlan was determined to keep practising as long as he could, and did so until about November 2014. He transferred to the Retired List on 1 July 2016, still occasionally visiting chambers and maintaining contacts.

Lachlan was a proud husband, father, and grandfather. He and Carole were married for 37 years. He was an avid reader and collector and researcher of antiques, records, books and ephemera (in particular, antique mechanical musical machinery) and was in the process of restoring a Norton Commando motorcycle.

Christopher Sexton

Bar Roll No. 2640

Christopher was born on 21 May 1961 and died at the age of 56 on 23 August 2017.

Christopher graduated Bachelor of Economics and Bachelor of Laws from Monash University and Bachelor of Arts (Honours) from Deakin University. He was later awarded a Doctor of Philosophy in Theology.

He served Articles at Mallesons Stephen Jaques in Melbourne and was admitted to practice in March 1989 working as a solicitor, first, at Mallesons and then Blake Dawson Waldron. He was a Resident Tutor in Law at Trinity College within the University of Melbourne.

After serving as Associate to The Honourable Mr Justice Gobbo of the Supreme Court of Victoria, Christopher signed the Bar Roll in May 1991 and read with Robin Brett (now QC and The Victorian Inspector). He practised at the Victorian Bar for nearly two years to March 1993.

From 1994, he acted almost exclusively in Intellectual Property matters both in an advisory and

transactional capacity, appearing in the Victorian and New South Wales Supreme Courts and in the Federal Court of Australia in a wide range of copyright, patent and trademark infringement cases. Most recently, he was the Principal of Sexton IP Law.

In the IP world, Christopher will be particularly remembered for his role as the Editor of *Intellectual Property Forum*, the quarterly journal of The Intellectual Property Society of Australia & New Zealand, from 2004 until his death. Under Christopher’s guidance, the quality and range of the journal was transformed. In addition to his editorial work, he contributed “In conversation with ...” articles in which his gentle probing sought to coax thoughtful revelations from many luminaries of the legal and intellectual property worlds.

He was the author of *Peggy van Praagh, a Life of Dance* (Macmillan 1985), *The Seeds of Time: The Life of Sir Macfarlane Burnett* (Oxford University Press 1991), Sir Robert Helpmann in *The Australian Dictionary of Biography* (Melbourne University Press 2007), and the Chapter on Trademarks in *The Laws of Australia* (Thomson Reuters 2013).

A Mass of Christian Burial was offered on 27 September 2017 in St Canice’s Catholic Church, Elizabeth Bay, Sydney.

WARWICK ROTHNIE

Magistrate Michael O’Dwyer

Bar Roll No. 854

On Sunday 24 September 2017, (Thomas) Michael O’Dwyer passed away. He was 75.

Michael had attended no fewer than five schools in the Catholic Archdiocese before he made what has been described as “his first, gallant, but unsuccessful, attempt at matriculation” at St Bede’s College, Mentone. Michael’s efforts were more successful in 1961, when he matriculated from Swinburne College Night School while working

full-time in the Victorian Railways Accounts Branch.

By 1962, he had advanced to the Victorian Crown Solicitor’s Office and begun the Articled Clerks Course. He was admitted to practice in June 1968 and came straight to the Bar two months later, reading with Robert Brooking (now retired Judge of Appeal).

Michael established a remarkably broad practice at the Bar. He was able, with great facility, to turn his hand to any jurisdiction. He appeared in all Courts (except only the High Court) and in most Tribunals. The one thing he would not do was prosecute. He prosecuted only once when, in the Army Legal Corps Reserve, he had received written orders to do so.

Michael had four Readers, one of whom, Tom Hassard, later joined him on the Court as a fellow Victorian Magistrate.

After practising at the Bar for approaching 25 years, Michael was appointed to the Magistrates’ Court in March 1993. His time on the bench was spent exclusively in the civil jurisdiction of the Court, mostly in the Workers/Accident Compensation jurisdiction.

With determination, he continued to work and sit as a Magistrate for some years after a stroke until his retirement on 14 April 2009. In a tribute published by the Court in *The Age* newspaper following his passing, Michael was described as a decisive magistrate who excelled in his area of expertise.

Following his retirement from the bench, Michael remained on the Retired List – a member of the Bar for more than 49 years.

His Honour Judge
Peter J Davis

Bar Roll No. 1669

Peter John Davis was born on 16 October 1954 and passed away just short of his 63rd birthday.

Peter was educated at Scotch College and at the University of Melbourne, where he obtained his LLB in 1978. He served Articles with Geoffrey Croxford at what was then Kenna Croxford & Co., and was admitted to practice in May 1979. He remained with the firm as a Solicitor and was very quickly made an Associate in September 1980.

Peter came to the Bar in September 1981 and read with Ramon Lopez. He practised at the Bar for more than 35 years, initially in criminal law but later exclusively in family law. He developed a very significant family law practice.

Peter was a fearless advocate for his client; a man of courage who fought gallantly the battles and struggles in his life. He was described as “a revered colleague and always a formidable opponent”.

He served on the Bar Readers Course Committee for six years – from 1989/90 to 1994/95. He had four Readers: Sylvia Maramis, Ewan Hall, Brian Tierney and Andrew Barbayannis.

He was a highly accomplished snow-skier and skied both in Australia and overseas. He was also a highly accomplished wind-surfer.

Peter was a devoted father to Matthew and Lauren.

VBN

Sir Ninian Stephen KG,
AK, GCMG, GCVO, KBE,
PC, QC

[A full tribute will appear in VBN 163]

Jeff Moore QC

This is an edited version of a speech given by Ross Gillies QC on 27 March 2017

Bar Roll No. 925

Jeff Moore QC was a well regarded and longstanding member of the Common Law Bar Association and the Dever List, the members of which feel a great sense of sadness and loss at his passing.

Jeff attended the Essoign Club for many a luncheon. Sometimes he would sit alone but more commonly would join the common law table in the north eastern corner. The common law barristers who never lose cases sit at that table together with judges who never make mistakes in deciding cases. It is thus a very learned corner of the establishment.

Jeff was a polite and well mannered individual. Despite the fact that he was a very well known and established common lawyer he would arrive at the table with the question “... do you mind if I join you?” in his mellifluous and rich voice. No one else would seek approval to sit at the table. They would join as of right. Most such as Beach JA or Blanden QC, would arrive at the table and in the event of it being crowded simply state “... shift up I’m sitting down”.

Despite him being well known and respected as a member of the legal profession little is known of the detail of his life.

As an example in terms of his hobbies, sports and recreations, it will amaze many that he in fact had hobbies, sports and recreations. Because one common impression might have been that he had little time for anything other than the law and his serious and very detailed approach to it. He worried about his job and he worried about its future. On the one hand, he would worry about how little work there was but then on the other hand when work was plentiful, which for him was the usual case, he became depressed about how he would manage to pay his income tax.

In fact Jeff had many interests outside the law.

Jeff had a passion for cars. At the time of his death he owned four cars. His pride and joy was an ancient MGB Fastback. However, he very rarely drove his more precious cars. He tended to drive only one; the others, although in excellent

condition, remained unregistered and uninsured. He sat in them. He tinkered with them. His real joy was owning them.

Jeff was very conscientious about his fitness. He regularly attended the gymnasium and pushed himself to the limit whether lifting weights or working on a treadmill. Before he became ill he was exceptionally fit. Jeff enjoyed sport. He was a very capable tennis player. He could beat most people but with complete grace. Although he was not at all a braggart, I have the impression that he experienced a warm inner pleasure from beating colleagues who were highly boastful about their tennis prowess.

Jeff loved music and, in particular, classical and jazz music, and was a very keen chef. He was remarkable in the kitchen and could prepare a wide variety of dishes. He specialised in Asian and Middle Eastern food. In this area the kind side of Jeff re-emerged. If he heard that a friend or colleague was in trouble, be it emotional, domestic or financial, he would appear unannounced on the doorstep, especially of people who lived alone, and cook them a sumptuous meal.

In addition, he regularly presided over feasts for 15 or 16 guests. Not only did he cook but he also waited on table. He would serve many courses and many bottles of wine but he did not himself significantly partake. Some of his guests may have entertained concerns upon noting that he was not eating what he was serving.

As a barrister, Jeff was a quiet and very effective achiever. He was at the Bar forty-six-and-a-half years, 17 of which were as a silk. He was careful, scrupulously fair, courteous, serious and relentless.

Jeff’s style was systematic and understated even at a time when the Common Law Bar was probably overrepresented by comedians. Jeff’s approach exemplified what is now usual and appropriate. Juries and certainly judges are more attracted to the quiet, systematic, restrained

and time efficient presentation of a case as opposed to the previous more comedic and flamboyant style of advocacy.

Jeff realised that the more colourful forms of advocacy could be distracting to juries. His technique for defusing such distractions involved him observing to the court “... this is a very serious case, my learned friend might think it is very funny but my client regards it as being deadly serious and so do I ... ”.

Jeff’s self-organisation was exemplary. He always arrived at court early and was first at the Bar Table. His focus was complete. He did not leave anything to chance. For example he arrived at court holding his bottle of Quink ink, still in its carton. He held it like a cup of coffee – you see people come into chambers holding a cup of coffee out in front of them like an Olympic torch. He held his bottle of ink in such a fashion rather than place it in his brief case or in his pocket lest it leak.

Jeff read and reread his brief. His briefs were heavily tagged using a multi colour system known only to him. After a full preparation his briefs resembled technicolour porcupines. Every colour meant something.

Jeff was a clerk’s dream because he was predictable and never refused a case no matter how hard it was or how little time may have been left to prepare it. He had a sub-speciality in difficult cases.

Jeff’s readers and juniors emphasise he was a kind and patient mentor and leader. They learned a lot in terms of intense preparation and in presenting cases in a restrained and inviting manner.

One sad part of Jeff’s life at the Bar was his experience on the Ballarat circuit. He had an exceptionally large circuit practice at Ballarat for many years. He regularly appeared against John Jordan QC and Paul Scanlon QC who acted for the plaintiffs against Jeff’s defendants. They would appear in tandem against him with a new jury being empanelled whilst

a previous jury was considering its verdict. The cases were mainly of the industrial accident variety.

One day the Victorian Workcover Authority arbitrarily decided that a change of counsel was desirable. It chose to replace Jeff as its counsel on the circuit. It then opted not to brief him in other litigation.

These events greatly saddened Jeff. He was bewildered. I don’t think he ever got over them. He had an acute sense of fairness and propriety and was thus highly vulnerable to being seriously hurt when he considered that he had been unfairly treated.

I am happy to announce that this part of the story has a happy ending. Notwithstanding the pain and insult which he felt as a result of his dismissal he rehabilitated himself in the best possible way. He took briefs against the VWA and he won case after case. He won cases which were regarded as impossible. His results were amazing. He did not conduct his cases with bitterness but instead was quiet, determined and irresistibly relentless. The dismissal of Jeff by the VWA was a really bad move on its part. It riled him and they paid dearly for it.

Jeff’s generosity of spirit carried with it a disinclination to be critical of others. He never uttered a pejorative adjective about anyone – in court or out of court. He would suffer silently as he did for example with the VWA.

Jeff was diagnosed with cancer in early February this year. The diagnosis carried with it a prognosis of certain death. Some who did not know Jeff might have thought that with a disposition to being pessimistic that this devastating news would have caused him to retreat into his shell. It did no such thing. He reacted with great courage and a burst of activity. He chose to use his remaining time not to sit there contemplating and awaiting the ultimate calamity but instead to do things he had never done before.

He commenced by renovating his home at Sandringham.

Jeff approached Michael Dever who is the high-tech guru of the Dever List. Jeff had a large order for Michael to fill. He ordered a new computer to replace his existing computer. He ordered a state-of-the-art printer, an iPhone and a digital camera. He insisted that the printer be able to produce very high quality photographs. He ordered two powerful audio systems — one for home and the other for chambers.

Additionally he materially expanded his wardrobe by purchasing a new range of clothing.

The frugal side of Jeff emerged during this uncharacteristic period of extravagance when he found that he had lots of coins around his home. He harvested the coins placing them into rice bags. Four large bags were filled. He then presented the bags of coins to Michael Dever and requested that he sort them out and then arrange for their banking. Michael obligingly performed this task which was time consuming as well as dirty. The bags had obviously been filled in a hurry because Michael discovered old leaves, dust, paper clips and pen tops among the coins. By the conclusion of the sorting job Michael's hands were black.

Jeff's life was abbreviated by a fall at home. He fractured two vertebrae in his neck and was thought to be too weak to undergo stabilising surgery. His last days were spent at the Alfred Hospital where he was overwhelmed by pneumonia. Clearly Jeff would maintain that he did not die of cancer. Surely he would say "I did not die of cancer, I beat cancer, I died of an accident related pneumonia". That would be, I think, a reflection of his contrary nature and a fierce refusal to succumb to what was really his principal tormentor.

The sadness of Jeff's departure was emphasised by him losing his voice a week or so before he died. The magnificent voice, the velvet tonsils, had gone. We could never seek to mimic such a voice any more than we would seek to mimic Luciano

Pavarotti; it would be an impossible thing to do. Pavarotti singing the climax to Nessun Dorma with all rockets firing: "vincerò,incerò", which means, "I shall win, I shall win". It's what every common law counsel should hum to themselves when they're on their way to court. Their solicitors would be filled with optimism and joy.

I shall win, I shall win — Jeff Moore was a winner. He was a winner as a person and a winner as a barrister. The self-effacing fact is that he would never have so regarded himself. The truth about Jeff Moore is that he, although very successful, would never have dreamt of regarding himself as anything other than average. He was much much better than average, he was a fine barrister and a fine man and we feel a deep sense of loss and sadness at his departure.

Jeff's daughter Meagan, is well known to us all. She works for the Dever List and we love her. Meagan has a fine husband and family who no doubt are a great source of emotional support. Meagan's extended family is the Dever List, and the Dever list will always be there for her.

ROSS GILLIES QC

The Hon Rosemary Balmford

In her 84-year lifetime, the Hon Rosemary Anne Balmford AM (LLB (Hons) 1955, MBA 1972) made a remarkable contribution to the people of Victoria, the legal profession, the judiciary and the courts.

She was a pioneer. She was the first woman to lecture in law at the University of Melbourne. She heard the first sex discrimination in employment case brought before the Equal Opportunity Board. And she was the first woman appointed a judge of the Supreme Court of Victoria.

As this publication goes to press, a minority group in Australia, the

LGBTI community, have experienced a significant moment of change. The 'Yes' response in the Australian Marriage Law Postal Survey means that they are now equal before the law: if they want to get married (and once pending legislation is passed), they can. Justice Balmford's own history reminds us that equal opportunity has been a relatively recent part of our history. Her appointment to the Supreme Court was in March 1996. That milestone achievement is only a little more than 20 years ago.

Rosemary Anne Balmford was born in Melbourne on 15 September 1933. John and Ada Norris were her parents. Her father, Sir John, after serving in World War II, resumed his law practice in 1945. He was himself a barrister and then a judge appointed to the County Court and later the Supreme Court. Her mother, Dame Ada, acquired the title in her own right for her extensive charity work. Her Honour had big shoes to fill.

Justice Balmford grew up in Camberwell with her younger sister Jane and attended Melbourne Girls' Grammar. She was inspired to pursue academic studies by Dorothy Ross, her headmistress.

She completed her law degree at the University of Melbourne, winning the Supreme Court Prize.

Admitted to practice on 1 March 1957, she was one of five women and 27 men. Back then, Law was 'a funny course for a woman'. This also became the title to her 2013 memoir. She described in it how, in 1957, when she was appointed the first female lecturer to the University of Melbourne Law School, students at her first lecture whistled when she entered the lecture theatre. She was prepared for this though, and the room swiftly calmed down when she told them what would be in the exam.

She became a solicitor and partner at Whiting & Byrne. She returned there after the birth of her son Christopher and then worked as

part of the in-house legal team at the University of Melbourne. While there, she did an MBA.

In 1971, she was appointed as the founding executive director of the Leo Cussen Institute for Continuing Legal Education.

In 1979, it was at the Equal Opportunity Board that Justice Balmford heard the landmark case *Wardley v Ansett Transport Industries (Operations) Pty Ltd*. This was the first sex discrimination in employment case contested before the Board. Ansett had refused to employ Deborah Wardley as a commercial pilot. The Board ruled that this was unlawful. Deborah went on to become the first female commercial pilot in Australia.

In 1982, Justice Balmford was appointed as a senior member of the Commonwealth Administrative Appeals Tribunal.

Suddenly, she was in the centre of Australia's leadership role in the field of administrative law. She reviewed a decision involving a single parent of a handicapped child who was not entitled to a supporting parent's benefit because her child was adopted. Justice Balmford recommended the legislation be changed and, within a day or so of handing down her decision, the Minister announced that the legislation would be appropriately amended.

Ten years later, she was appointed to the County Court of Victoria. In 1993, there were no women serving on that court. The majority of the work was crime, largely jury trials.

Justice Pamela Tate recalled, when delivering the eulogy in August 2017, Justice Balmford's speech from her welcome ceremony to the Supreme Court, where she said she hoped "her appointment would help establish in the minds of other women an awareness that they could aspire to the same".

Two years later, she accepted an appointment with the Supreme Court. The symbolic significance of this appointment resonates as

strongly today as it did then.

Justice Balmford's appointment was the foundation for the establishment of women judges both on the County and Supreme Courts.

At the Supreme Court she occupied the chambers that her father, Sir John Norris, had occupied. She became the first woman to preside over a murder trial in Victoria. She sat in every area of the court's jurisdiction: crime, common law, commercial and equity, and on the Court of Appeal. She was the judge in charge of the valuation, compensation and planning list.

Justice Balmford served the Supreme Court with distinction until her retirement from the bench in 2003. As Justice Tate reflected in her eulogy, "the women judges of Victoria owe Rosemary a great deal. She was an inspiration to all of us".

In January 2012, she was appointed a Member of the Order of Australia for service to the judiciary, the practice of law in Victoria and the study of ornithology.

Justice Balmford died on August 8 and is survived by her sister, son, stepchildren Clare and Jonathan, daughter-in-law Kym, grandchildren William and Grace, and step-grandchild Lina.

His Honour Judge Francis Lewis

His Honour Francis Bannatyne Lewis, retired judge of the County Court, passed away on 24 August 2017.

Known as "Tiger" to some and "Frank" to others, Judge Lewis was born on 4 January 1935 to Brian Bannatyne Lewis and Hilary (nee Archer). He was married to Penny; older brother to Clare (Atkins), Miles, David and Jonathan; step-father to Moray, Benedict, Sebastian and Sophie; father-in-law to Andrea, Ella, Junwei and Kirsten; and grandfather to Campbell, Sam, Emily, Ruby, Jasmine Max, Felicia, Isobel, Michaela and Bobby.

Judge Lewis spent his first 13 years in England, where his father had ventured to further his architectural studies. After moving to Melbourne, he attended Melbourne Grammar and Melbourne University. He then completed his articles and returned to London, teaching in the East End for two years. To reduce the cost of the return trip to Melbourne, he drove a second-hand Land Rover through Greece, Turkey and Persia to Cochin in southern India.

Upon arriving in Melbourne, Judge Lewis practised in personal injuries and commercial litigation at Madden Butler Elder & Graham. He was a partner from 1967 to 1982 and a consultant until 1985.

Judge Lewis served on the Law Institute Council from 1977 to 1980, during which time he was a member of numerous committees, including the Supreme Court Rules Committee which re-wrote the rules. He was attending a meeting of the Law Institute Council at 465 Little Bourke Street when a fire broke out, tearing through the building and destroying the Law Institute's library. He was subsequently involved in the Law Institute's move to 470 Bourke Street, which has been its home ever since.

In 1985, Judge Lewis was appointed the first master of the County Court, prior to being appointed as an acting judge in October 1987 and as a judge on 1 August 1988. On 25 May 1995, he sentenced serial sex offender Kevin John Carr to an indefinite term of imprisonment, to be reviewed after 12 years. This was reportedly only the second case in Victoria in which an accused had been sentenced to an indefinite term of imprisonment. The legislation permitting such sentences had been introduced into the Victorian parliament in April 1993 amid calls that it was draconian and inhumane. Judge Lewis retired from the County Court on 30 March 2001. He was well liked and respected by his judicial colleagues.

VBN

NOTABLE PERSONS

Eamonn Barnes

Ireland appointed the legendary Eamonn Barnes as its first DPP in 1975 — a post he held for 25 years. Mr Barnes' principal objective was to make the office independent of government, and that independence has been credited substantially to him.

Former Victorian DPP the Hon. Paul Coghlan met Barnes at a meeting of the International Association of Prosecutors. Barnes

served as President of the IAP from 1996 until his retirement in 1999, when he was succeeded by Nicholas Cowdery QC, the NSW DPP. Coghlan held Barnes in the highest regard, in particular for his wisdom that to prosecute is easy — the hardest decisions are those not to prosecute. Cowdery acknowledged that the inspiration for the IAP — the ideas of collaboration between colleagues, assistance to the struggling, sharing of knowledge and experience, improving society, and combining to increase positive impact — came from Eamonn's convivial personal qualities.

Mr Barnes saw the severe and irretrievable damage and injustice that flows from prosecuting an innocent person. He said that every effort humanly possible must be made to get the prosecution decision right. He died on 1 November 2017.

GONGED!

Queen's Birthday Awards

Julian McMahon AC
The Hon Joseph Kay AM
Brian Bourke AM

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2017-2018

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VICTORIAN BAR READERS

SEPTEMBER 2017



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3RD BACK (LEFT TO RIGHT): Mark Gibson, Scott Johns, Garry Fitzgerald, Suresh Senathirajah, Scott Stuckey
READ (LEFT TO RIGHT): Marcus Clarke, Paul Ehrlich, William Guy Gilbert, Sally Flynn

Q&A New Silks

In November 2017, the Hon Chief Justice Anne Ferguson appointed the following barristers as senior counsel in and for the State of Victoria.



William Guy Gilbert SC

When you were a child, what did you want to be when you

grew up? A museum curator

Where will you go to eat/drink in celebration of your appointment?

Tacco & Tosca

What was your most memorable junior brief? Cabal/Pasini extradition to Mexico

How do you achieve work/life balance? Deep breathing

What is your favourite book? *The Outsider*, Albert Camus

Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer? Stop Adani

What is one of your guilty pleasures? Triple brie

What is the soundtrack to your life? Easy Rider

Any s 44-type issues to declare? No, not as far as I know

Who would you cast to play you in a movie, and why? Clint Eastwood. "Go ahead, make my day."



Mark Gibson SC

When you were a child, what did you want to be when you

grew up? A *National Geographic* photographer.

Where will you go to eat/drink in celebration of your appointment?

The Thai Deli in Clarendon Street...\$12.00 cashew nut chicken.

What was your most memorable junior brief? First murder trial.

How do you achieve work/life balance? Blowing the whistle while running 14 kms every Saturday.

What is your favourite book? *Dictionary of Medicine & Nursing* by Miller-Keane; to regularly help me understand medical terminology and anatomy.

Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer? Greater tolerance of others.

What is one of your guilty pleasures? Haigh's chocolates

What is the soundtrack to your life? Albinoni's 'Adagio in G Minor'.

Any s 44-type issues to declare? The luck of the Irish.

Who would you cast to play you in a movie, and why? Rowan Atkinson for his characteristics and Shaun Micallef for his grey hair and looks.



Marcus Clarke SC

When you were a child, what did you want to be when you grew up? James Bond or a

barrister

Where will you go to eat/drink in celebration of your appointment?

Home for a plate of home-made Polish food

What was your most memorable junior brief? *Ebner v Official Trustee in Bankruptcy* (2005) 205 CLR 337

How do you achieve work/life balance? Going to the football to watch Carlton play with my son

What is your favourite book? *The Lonely Breed* by my father

Australia just voted in favour of marriage equality – what will you be saying Yes! To this summer?

Travelling to South America and the Caribbean

What is one of your guilty pleasures? Carlton Football Club

What is the soundtrack to your life? The James Bond theme song

Any s 44-type issues to declare? My wife is Polish

Who would you cast to play you in a movie, and why? Sean Connery as he appeared in 'Dr No'. Why? Because I am a fan of Ursula Andress.



Paul Ehrlich SC

When you were a child, what did you want to be when you grew up? Lawyer.

Where will you go to eat/drink in celebration of your appointment?

Bergerac.

What was your most memorable junior brief? Any I didn't disappoint in.

How do you achieve work/life balance? Walking dogs and sport.

What is your favourite book? JP Taylor, *A Treatise on the Law of*

Evidence as Administered in England and Ireland 2nd ed (1855), Vol 2 at pages 1046 to 1051 (cryptic, but true). **Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer?** Rest and cricket. **What is one of your guilty pleasures?** Chocolate. **What is the soundtrack to your life?** ‘The Impossible Dream’; ‘Man of La Mancha’. **Any s 44-type issues to declare?** As Homer and Shakespeare both said, “it’s a wise child who knows his own father.” The founding fathers might be quite surprised by recent pronouncements. **Who would you cast to play you in a movie, and why?** Telly Savalas; it’s obvious why.



Michael Wise SC

When you were a child, what did you want to be when you

grew up? From the age of about seven, I wanted to be a lawyer. **Where will you go to eat/drink in celebration of your appointment?** Ezard at Adelphi. **What was your most memorable junior brief?** A fraud recovery against two banks and Crown Casino for a group of victims in which I had a cavalcade of notable leaders: first Geoff Nettle QC (before he was appointed to the Supreme Court), then Chris Maxwell QC (before he was appointed President of the Court of Appeal), followed by Michael Colbran QC. **How do you achieve work/life balance?** It’s difficult. I think that I owe my holidays to my family, so I try to ensure that I take two weeks in the middle of the year and five weeks at the end of the year. Although, that is not always possible. **What is your favourite book?** A Suitable Boy by Vikram Seth. **Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer?**

Leisurely reading, walking and beaching at the family holiday house at Shoreham. **What is one of your guilty pleasures?** Leisurely reading, walking and beaching at the family holiday house at Shoreham. **What is the soundtrack to your life?** Queen: A Night at the Opera. **Any s 44-type issues to declare?** Yes! My father’s family were Polish Jewish nationals living in Germany in the 1930s who fled the Nazi regime and arrived in Australia in late 1938. I recently went through the process of having my Polish citizenship, acquired by descent, confirmed. So – no Commonwealth Parliamentary elections for me! **Who would you cast to play you in a movie, and why?** Harrison Ford – because I’d like to emulate him more than he’d like to emulate me.



Paul Hayes SC

When you were a child, what did you want to be when you grew up? A

Commando. **Where will you go to eat/drink in celebration of your appointment?** Owen Dixon Chambers Far East (aka ‘The Flower Drum.’) **What was your most memorable junior brief?** *Goryl v Greyhound Australia Pty Limited* (1994) 179 CLR 463. Led by David Bennett QC, instructed by my father. **How do you achieve work/life balance?** Not sure that I do. Am still trying... **What is your favourite book?** Three-way tie. *American Visions*, *Shock of the New* by Robert Hughes, or the *Larousse Gastronomique*. **Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer?** Pretty much everything! **What is one of your guilty pleasures?** Martinis. And not just one, either. **What is the soundtrack to your life?** The Rolling Stones.

Any s 44-type issues to declare? Not sure how this impacts upon taking Silk in Victoria, but in the fullness of candour, yes, I was born and raised in Queensland. And yes, I still barrack for the Queensland Reds in Super Rugby. **Who would you cast to play you in a movie, and why?** Rob Sitch or Mick Molloy. Possibly for my life’s almost unlimited comic potential, if looked at closely enough.



Craig Dowling SC

When you were a child, what did you want to be when you

grew up? David Bowie. **Where will you go to eat/drink in celebration of your appointment?** Home. **What was your most memorable junior brief?** *FSU v CBA*, led by Bromberg J, instructed by DP Gooley, opposed to Middleton J leading McDonald J. **How do you achieve work/life balance?** Does anyone? **What is your favourite book?** *The Road* by Cormac McCarthy **Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer?** Another gin and tonic. **What is one of your guilty pleasures?** The chocolate in my drawer. **What is the soundtrack to your life?** Four shouting children, two barking dogs, the phone ringing and the Go-Betweens playing. **Any s 44-type issues to declare?** Nothing to declare. **Who would you cast to play you in a movie, and why?** Malcolm Tucker, because I swear a lot.



Scott Stuckey SC

When you were a child, what did you want to be when you

grew up? Taller than my brother

Where will you go to eat/drink in celebration of your appointment? Uncle, in Carlisle Street **What was your most memorable junior brief?** *Price Higgins & Fidge v Drysdale*. **How do you achieve work/life balance?** The what? **What is your favourite book?** *The Inferno*. **Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer?** A work/life balance. **What is one of your guilty pleasures?** Summerfield’s Tradition red blend. **What is the soundtrack to your life?** Tom Waits. **Any s 44-type issues to declare?** “I can only go off what I read on the internet and believe was entirely true and valid.” **Who would you cast to play you in a movie, and why?** George Clooney. Anyone else would be silly.



Michael Gronow SC

When you were a child, what did you want to be when you

grew up? A barrister. **Where will you go to eat/drink in celebration of your appointment?** Pinotta, Best Street, North Fitzroy. **What was your most memorable junior brief?** MUA case with Julian Burnside QC – a great leader. **How do you achieve work/life balance?** Not sure that I do. **What is your favourite book?** *The Complete Works of Shakespeare*. **Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer?** An overseas trip to visit our daughter in Oxford and touring Israel on the way back. **What is one of your guilty pleasures?** Buying too many books. **What is the soundtrack to your life?** Late Beethoven string quartets. **Any s 44-type issues to declare?** No. I’d rather wait until my enemies find

out and leak it to the media. **Who would you cast to play you in a movie, and why?** (a) Orson Welles. (b) People might think I am interesting.



Garry Fitzgerald SC

When you were a child, what did you want to be when you

grew up? Spitfire pilot or French Foreign Legionnaire. **Where will you go to eat/drink in celebration of your appointment?** The Station Hotel, Footscray. **What was your most memorable junior brief?** Led by Colbran QC in a long-running commercial lease dispute that went on for years in the Supreme and the Federal Courts including appeals. Learnt a lot. **How do you achieve work/life balance?** If I do, it’s inadvertent. **What is your favourite book?** Too hard to pin one down. A book that impressed me enormously when I read it long ago was *Perfume* by Patrick Süskind: its vivacious world of smells. **Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer?** Test cricket, beaches, a few beers and gin and tonics. **What is one of your guilty pleasures?** Laphroaig whisky. **What is the soundtrack to your life?** Don’t know what that means, but I’ve always liked British 80s ska music. **Any s 44-type issues to declare?** Not to the best of my knowledge (not that my ignorance matters). **Who would you cast to play you in a movie, and why?** Really? Will pass on this one.



Julian McMahon AC SC

When you were a child, what did you want to be when you

grew up? A swagman

Where will you go to eat/drink in celebration of your appointment? Wherever my colleagues in chambers are still allowed in, so, probably, in chambers... **What was your most memorable junior brief?** That one with that guy who got acquitted. **How do you achieve work/life balance?** Is that a trick question? Using a forward slash / I suppose. **What is your favourite book?** Too hard — settle on *Magic Beach*, Alison Lester **Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer?** Pesto and Spf 50+. **What is one of your guilty pleasures?** Often mistaking large blocks of chocolate for pieces of fruit. **What is the soundtrack to your life?** Bruce. **Any s 44-type issues to declare?** Of the Summary Offences Act? No need to declare, charges withdrawn, just a misunderstanding. **Who would you cast to play you in a movie, and why?** David Wenham. Because of his grasp of procedure in Getting Square, and because he was Faramir, Captain of Gondor.



Scott Johns SC

When you were a child, what did you want to be when you grew up? I told

my grade 3 teacher I wanted to be a lawyer like Petrocelli, but for the most part I wanted what most of the boys at primary school did: to be a Geelong footballer. **Where will you go to eat/drink in celebration of your appointment?** Don’t know! **What was your most memorable junior brief?** County Court trial of R v Yun, because I got to go to Shanghai and Macao to take instructions (quite unnecessarily). **How do you achieve work/life balance?** Spending most of my time at work dilly-dallying in what (until his appointment) used to be

Magistrate Zebrowski’s chambers, and then continuing the practice once it became Michael McGrath’s chambers, and then working at home at nights and weekends.

What is your favourite book?

My Brother Jack.

Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer?

Books.

What is one of your guilty

pleasures? Trafficking in old books.

What is the soundtrack to your life?

‘Spanish Flea’ by Herb Alpert & the Tijuana Brass.

Any s 44-type issues to declare?

Not sure...

Who would you cast to play you in a movie, and why? Tom Courtenay in his ‘Billy Liar’ form.



Suresh Senathirajah SC

When you were a child, what did you

want to be when you grew up?

Playing John McEnroe in the finals of Wimbledon.

Where will you go to eat/drink in celebration of your appointment?

Wherever my wife suggests.

What was your most memorable

junior brief? Junior to (the late) silk of some notoriety in a trial before Gray J. After commencing his opening, which was interrupted by a short break, the learned leader left the courtroom without a word (either before or after) and was never to be seen again at the trial. That was being thrown in the deep end!

How do you achieve work/life balance? Catering to the demands of twin 10-year old boys.

What is your favourite book? *Dune*, by Frank Herbert.

Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer?

Watching the five Ashes tests.

What is one of your guilty

pleasures? The tiramisu from Italy 1.

What is the soundtrack to your life?

My Friend the Chocolate Cake’s ‘I’ve got a Plan’.

Any s 44-type issues to declare? Too many to mention.

Who would you cast to play you

in a movie, and why? James Earl

Jones – more aspirational than representative.



Minal Vohra SC

When you were a

child, what did you

want to be when you

grew up? Taller. Now I

am an adult I still want to be taller.

Where will you go to eat/drink in

celebration of your appointment?

The day we found out coincided with my Readers Course 20 year reunion. I celebrated with Michael Gronow and Mark Irving at a Bar in Hardware Lane. We all read together and it was pretty special to all take Silk together.

What was your most memorable

junior brief? So many stories I could tell about the strange facts in many family law cases. I won’t forget when I was still a Reader getting a backsheet from Legal Aid marked to “Menial Vohra”. Summed it all up at the time really.

How do you achieve work/life

balance? I often do not. A supportive partner helps.

What is your favourite book? There is no one book. Crime, true crime, modern Australian and biographies are all my favourites.

Australia just voted in favour of marriage equality – what will you be

saying Yes! to this summer? Skiing a bit faster by trying to forget about the possibility of breaking all my bones.

What is one of your guilty

pleasures? Coffee, café, alone, book.

What is the soundtrack to your life?

White noise.

Any s 44-type issues to declare?

Indian/Australian but India does not allow dual citizenship so nothing to renounce.

Who would you cast to play you in a movie, and why? Selma Hayek surely.

And why not?



David Purcell SC

When you were a child, what did you want to be when you

grew up? BIG.

Where will you go to eat/drink in celebration of your appointment?

At home, with my family, children and an ice cream cake.

What was your most memorable

junior brief? Six weeks with Tim

Tobin SC (enough said).

How do you achieve work/life

balance? I don’t

What is your favourite book?

The Catcher In the Rye.

Australia just voted in favour of

marriage equality – what will you be saying Yes! to this summer? Beach time.

What is one of your guilty

pleasures? Marella Jubes.

What is the soundtrack to your life?

“Thunder Road”.

Any s 44-type issues to declare? Yes.

But do I have to?

Who would you cast to play you in a movie, and why? Ryan Gosling. He is on my fiancé’s “list” ...



Mark Irving SC

When you were a child, what did you want to be when you

grew up? Loved.

Where will you go to eat/drink in celebration of your appointment?

Home.

What was your most memorable

junior brief? Acting for the Health Services Union in the Kathy Jackson saga.

How do you achieve work/life

balance? Start by 6, leave by 5 and try to make sure I get to the kids’ cricket games to coach.

What is your favourite book? *Man’s Search for Meaning* by Viktor Frankl.

Australia just voted in favour of

marriage equality – what will you be saying Yes! to this summer?

Watching the Ashes.

What is one of your guilty

pleasures? Playing cricket each Saturday afternoon in summer.

What is the soundtrack to your life?

Rostropovich playing JS Bach’s Cello Suites.

Any s 44-type issues to declare?

I am eligible to play for both sides in the Ashes.

Who would you cast to play you in

a movie and why? I would like to

think the stoic Tim Robbins from ‘The Shawshank Redemption’ but it is more likely to be the screwball Tim

Robbins from The Hudsucker Proxy.



Stephen Parmenter SC

When you were a child, what did you want to be when you

grew up? A tennis player - I wanted to win Wimbledon.

Where will you go to eat/drink in celebration of your appointment?

I am not sure yet, but am looking forward to a drink with my former readers.

What was your most memorable

junior brief? The rail access case.

How do you achieve work/life

balance? I don’t think I achieve it! I spend as much time as I can with my family.

What is your favourite book? Any good detective/crime thriller.

Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer? A good break – hopefully.

What is one of your guilty

pleasures? Biscuits before dinner.

What is the soundtrack to your life?

A very noisy household.

Any s 44-type issues to declare? I also have a British passport.

Who would you cast to play you in

a movie, and why? Robert Patrick (from Terminator 2) - people used to say I looked like him, and being made of liquid metal and being able to shapeshift might be helpful for bad days in court.



Claire Harris SC

When you were a child, what did you want to be when you

grew up? A teacher, like my Dad.

Where did you go to eat/

drink in celebration of your

appointment? VicAsia with my

family. The lovely Wendy Harris QC spoiled us in style with vintage Dom Perignon.

What was your most memorable

junior brief? A Deacons brief

requiring me to take witness statements across Europe, from Istanbul to Versailles. I peaked early.

How do you achieve work/life

balance? Not sure that I do but lots of holidays help.

What is your favourite book?

The Poisonwood Bible by Barbara Kingsolver; but I also have to say *To Kill a Mockingbird*.

Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer? Sleep, a long holiday, snorkeling in Thailand and “more time with Leo.”

What is one of your guilty

pleasures? Reece’s peanut butter cups. Hideous, I know.

What is the soundtrack to your life?

Mum. Mum. MUUUUUUUUM!

Any s44-type issues to declare?

Nothing exotic in the Harris family. I’ve happily gained Hellenic ties through marriage.

Who would you cast to play you in a movie, and why? Susan Sarandon.

It’s in the eyes, apparently.



Robert Heath SC

When you were a child, what did you want to be when you

grew up? Football commentator or historian.

Where will you go to eat/drink in celebration of your appointment?

Gelato Messina, Windsor.

What was your most memorable

junior brief? Vioxx class action,

round 2, with S.M. Anderson QC.

How do you achieve work/life balance? By spending time with my family.

What is your favourite book?

The Good Soldier Svejk by Jaroslav Hasek.

Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer? A white Christmas in Tallinn.

What is one of your guilty

pleasures? An afternoon visit to

Koko Black.

What is the soundtrack to your life?

3AW on weekends in winter and ABC Grandstand in summer.

Any s 44-type issues to declare? No comment.

Who would you cast to play you in a movie, and why? No idea.



Lisa Nichols SC

When you were a child, what did you want to be when you

grew up? A Professor of Something Learned.

Where will you go to eat/drink in celebration of your appointment?

Gertrude Street Enoteca.

What was your most memorable

junior brief? Junior counsel assisting the Bushfires Royal Commission.

How do you achieve work/life

balance? What’s that?

What is your favourite book? *What I Loved* by Siri Hustvedt.

Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer? Si! To speaking Spanish.

What is one of your guilty

pleasures? The Bee Gees.

What is the soundtrack to your life?

Dylan, Young and Bowie.

Any s 44-type issues to declare?

You’ve caught me out; I am a Canadian citizen by birth.

Who would you cast to play you in a movie, and why? Juliet Binoche,

because she’s all-class. ▶



Sally Flynn SC

When you were a child, what did you want to be when you grew up?

I wanted to be a rock star, movie star, singer, actress or tv host.

Where did you go to eat/drink in celebration of your appointment? I enjoyed a couple of quiet glasses of bubbles at the Essoign.

What was your most memorable junior brief? Any one of the so-called Melbourne gangland trials that I was lucky enough to junior Andrew Tinney SC in.

How do you achieve work/life balance? The short answer is that I don't, but I try.

What is your favourite book? I have always loved *Gone with the Wind* by Margaret Mitchell, which is very different from the film. I have read it several times since my mother gave it to me when I was a teenager and still love it.

Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer? I am saying yes to our traditional family summer holiday at Lorne with my husband and three kids. Looking forward to lots of beach time, and a cold beer or two at the Lorne Aquatic Club.

What is one of your guilty pleasures? Just one? Toblerone.

What is the soundtrack to your life? The Carlton Football Club theme song.

Any s 44-type issues to declare? No issues here – Permanent resident of Geelong, as were my ancestors before me!

Who would you cast to play you in a movie, and why? Cate Blanchett - what female would not want her to play them in a film?!



Stewart Maiden SC

When you were a child, what did you want to be when you grew up?

A computer programmer or a lawyer. Doesn't every little boy have the same dreams?

Where will you go to eat/drink in celebration of your appointment?

Many places, I hope, but the first was Mercedes Me on Collins St, where my wife and four-year-old son took me for lunch after my appointment was announced.

What was your most memorable junior brief? A hard-fought seven-week trial before Vickery J, led by Peter Riordan SC (as his Honour then was). I think it was the most intense period of education in my life. The chance to learn at the feet of giants is one of the great benefits of our profession.

How do you achieve work/life balance? I contest the premise of the question.

What is your favourite book? As I'm forced to name just one, it's *The Atlas to The Life of George Washington* by John Marshall, which my reader Fiona Hudgson gave me for my 40th birthday. Being an atlas, it's not a gripping read, but my copy was published in 1832 while John Marshall was still Chief Justice, and it belonged to a general from the American Civil War. I just love holding that history in my hands.

Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer? Every request to spend time with my wife and kids. See question above.

What is one of your guilty pleasures? Buying books.

What is the soundtrack to your life? Audio books – the only way I really get to 'read' for pleasure any more.

Any s 44-type issues to declare? I hope to retain a pecuniary interest in an agreement that I have with the Commonwealth, but first we have to talk about rates...

Who would you cast to play you in a movie, and why? The most handsome actor available, for obvious reasons!



Lisa DeFerrari

When you were a child, what did you want to be when you grew up?

An engineer and an Olympian.

Where will you go to eat/drink in celebration of your appointment? Da Noi, in South Yarra.

What was your most memorable junior brief?

Acting for the King Valley Vignerons, in the determination of the King Valley Wine Region. [It was a privilege to learn about the King Valley, its people and its history. The hearing at first instance, in the AAT, was a fantastic experience; hard work but also great fun. We had a view over two days, which took place touring the King Valley in a small bus, the President at the front and lots of locals among the passengers. This was followed by a hearing at the Wangaratta Court House for the lay witnesses, and then expert witnesses in Melbourne. The appeal in the Full Federal Court (I appeared for the respondent, led by Tim Ginnane S.C., as His Honour then was) was also very interesting. The Wine Region determination which had been made by the President survived the appeal. For a while, I was treated almost like a hero when I went back to visit the King Valley, and I enjoyed that too.]

How do you achieve work/life balance? I don't think that it is something that one 'achieves'. I see it more as a constant managing of different demands, keeping stress under control and enjoying life in all of its complexities. I accept that, at times, I have to borrow from family and personal time to focus more on work, but I have learnt that I need to give that time back to myself and the family whenever I can.

What is your favourite book? *The Little Prince*.

Australia just voted in favour of marriage equality – what will you be saying Yes! to this summer? An extended holiday at Inverloch.

What is one of your guilty pleasures? Friday evenings at home, doing absolutely nothing.

What is the soundtrack to your life? Ideally, it would be the sounds of the bush.

Any s 44-type issues to declare? Yes. I am a dual citizen, and I have two passports – Australian and EU.

Who would you cast to play you in a movie, and why? Amal Alamuddin Clooney. Apart from being a highly intelligent woman and a successful barrister, she can probably act too. ■

Boilerplate

JUDGE & JUNIOR

A matter of etiquette

In *Judge & Junior*, Readers are invited to submit questions concerning navigating life at the Bar, particularly in relation to issues not resolved by a statute, policy, or guidelines. So that the answers can be fearless and frank, a member of the judiciary is assisting on an anonymous basis.

Many barristers, young and old, have friends or former colleagues who have gone to the bench. This leads to a conundrum. We receive feedback that judges sometimes can feel a bit socially isolated. However, when is a warm hello, well, too warm?? Should we start with 'Judge' and wait for 'It's Rob', or 'Mary' or 'Madam'. And if we're friends and it's a cocktail party with members of the profession, can we kiss hello? Does location matter for warm and friendly (e.g. in front of a bank of cameras outside the Supreme Court)? Please help us navigate this process so we can move from 'embarrassing' to 'excellent'.

-Junior

What a sign of changing times your question reflects.

There was a time, in the lived experience of barristers whose names still appear on the practising list of counsel, and serving judges plucked from their ranks, when it was taboo for barristers to shake hands. I still smart from the time a senior silk, and member of the Bar Council, rebuked me, then a senior junior, for shaking hands with an interstate silk to whom he introduced me.

And now, we are talking about kissing judges in public.

In the best common law tradition, to distil the principle, we must look backwards first. To before the establishment ►



of the Colony of Victoria, and a time when all barristers were members of one of the Inns of Court. Back then, barristers were, by tradition, gentlemen. If you were not already a gentleman, you became one, or at least an honorary one, upon being called to the bar.

Colonisation, and federation, brought with them the history and traditions of the English, and later Irish bars. One of those traditions was the eschewing of the handshake. For many years, I thought it was derived from the assumption barristers, being gentlemen, already knew each other, if not from school, then the club. That made introductions, and the handshakes that traditionally accompanied them, unnecessary. But, there was more to it than that. Back in the times barristers started wearing the robes they still wear today, men wore swords, often concealed by their gowns. They would display their right hand and shake another's hand, to prove they were not armed with a sword. A gentleman, however, could be trusted on his word. He did not have to display his right hand. Or shake with it.

I digress, but I wonder why the Supreme Court has abandoned the ceremonial sword belt sash that that used to contain the judicial girth, and why the County Court has retained it.

The school and club connection seemed to explain too, why barristers so frequently called each other by last name. Those with a Bar Roll number below 2,500 will recall it was not until the 90's¹ that the Bar abandoned the practice of addressing correspondence to members of counsel using their last name only.

Taking an anthropological approach, my observations revealed that if someone was pleased to come across a colleague, that was best expressed by the skittish informality of adding an e to their last name², or dropping the ending of a long name³. Handshakes to indicate pleasure at seeing someone you already knew and who was a member of the same honourable profession seemed to be

“Well, let me tell you, despite public statements to the contrary, judges would argue they are still human beings.”

regarded as an over-enthusiastic and unseemly PDA⁴.

However, things change. Even at the Bar, and on the Bench. In fairness to the Bar, back then there were many other institutions which thought treating people equally was to admit women, and people from ethnically and socially diverse backgrounds into their ranks, and treat them all as gentlemen, as if they had all once been private schoolboys. Even if they had first names like Lillian or Gaetano, and last names ending in non-silent vowels. Some of them eventually became judges. One (with, it must be said, a last name ending in a non silent vowel) was recently described as being “moderately physically animated” and manually expressive”⁵.

And meanwhile, there were other changes out there. Women wearing trousers, men not wearing ties, kisses replacing handshakes, even between men, and things called names like Smart Phones, Facebook and Instagram, that could, without your knowledge, record and make public what previously had been private encounters.

So, you ask, is it okay to call a judge by first name or greet or farewell them with a kiss at a cocktail party or in the street? Does it make a difference if there are TV cameras around?

Well, let me tell you, despite public statements to the contrary, judges would argue they are still human beings, still, although possibly to varying degrees, possessed of that human desire to be liked, and valued. Such a need is not always completely satisfied by the traditional “your honour is so wise/ witty/kind” compliments. Something more may be welcome. But a tabloid front page pic of the judge and a barrister embracing on the steps of Owen Dixon Chambers is not

what most judges would have in mind. Nor, a friendly first name exchange involving reference to a case before the judge, which could be misconstrued by jurors, litigants or witnesses who could become aware of the exchange.

So, context, and the ease with which interactions between judges and barristers outside court can now be published to a wider audience suggests caution. In fact, it may be wise, in this post-Trump, Weinstein, and Westminster era, to let the judge indicate whether they want to be kissed, or addressed by first name, rather than giving it a go and seeing what happens. This, in sociological terms, is called the communicative model of consent, and is succinctly encapsulated by the introductory words of s 36 of the Crimes Act 1958. Consent means free agreement.

In other words, don't do anything you or the judge would not want to see go viral, without asking, or being invited.

Don't be too frightened, however, of having friendly, even animated exchanges with judges. We don't have to go back to the days of the acknowledgement of a judge or barrister by no more than use of their last name. We now have judicial authority (from the case of the manually expressive judge) of the “ordinary human experience that people, to a greater or lesser extent depending on personality, culture and mood, gesticulate when speaking.”⁶

Yours Anonymously,
The Judge

1. That is, the 1990s not the 1890s
2. Young – e
3. Tadge
4. Public Display of Affection
5. Jose v DPP [2014] VSCA 90 at [31]
6. Jose v DPP [2014] VSCA 90 at [31]

BOOK REVIEW

Peter Heerey: Can You See the Mountain?

A legal journey with a few diversions

BY WILL HOUGHTON

Peter Heerey is well known at this Bar, having joined it in 1967 and practised successfully until his appointment to the Federal Court in 1990. After a long and fruitful judicial career, Peter reached the statutory age in 2009 and departed the Bench to return to this Bar as a mediator and arbitrator. He has now written this delightful short book of memoirs.

Books of memoirs can be divided into several categories. The first category are those polemical, highly political memoirs in which the authors, usually retired politicians, use the occasion to revisit past controversies and settle old grudges. Another category is of the jokey, anecdotal kind which, whilst humorous, never really engages the reader. Peter Heerey's new book fits neither of those categories. It is an affectionate look back upon his life and times, friends that he knew and others who influenced him. It also contains some pithy observations upon the state of our polity and judicial system.

A disclosure – I have known Peter for many years both whilst he was practising at the Bar, as a Judge before whom I appeared on a number of occasions, and post-retirement. On the Bench, he was known not only for the utmost fairness in which he conducted trials but also his learned judgments, most of which, when appealed, were eventually upheld by the High Court. Above all, he was a man of utmost modesty and humility. Those two character traits are apparent in the pages of his latest book.

The singular, defining feature of Peter's upbringing was that it took

place in Hobart. Early family life, school days and a law degree at the University of Tasmania are recounted in the early chapters. A transfer to the University of Melbourne took place in 1962 and, thereafter, the start of a legal career as an articled clerk at Corr & Corr. Peter returned to Hobart for two years in accordance with the terms of his scholarship before returning to Melbourne to commence reading at the Victorian Bar in 1967. Peter took silk in 1985 after a busy practice as a junior. Practice as a silk continued unabated until his appointment in 1990.

What is clear from this book is the satisfaction and enjoyment that Peter experienced whilst on the Federal Court. This included not only conducting trials but also participating in appeals from single justices. Peter is a strong believer in an ad hoc court of appeal rather than the permanent courts of appeal which have been adopted by most of the States. He puts forward some convincing reasons for that position. He concludes by observing that “it was rewarding to work at the second highest judicial level in Australia” when sitting on a Full Court. No doubt, there would be a number of members of intermediate courts of appeal particularly in the eastern seaboard States that might disagree with that observation.

Peter is very complimentary toward his judicial colleagues not only on the Federal Court but on the various State and Territory Supreme Courts. He notes the considerable overlap between the jurisdiction of the Federal Court and the State and Territory

On the Java Ridge
by Jock Serong
Text Publishing, 2017



Supreme Courts particularly in the area of commercial law which has driven a degree of institutional rivalry. I would have liked to learn more of that institutional rivalry and, perhaps, some of the personalities involved but, with his usual tact, Peter passes on.

The Tasmanian connection is a recurring theme of the book. Because there was no resident judge in Tasmania whilst Peter was on the court, Peter travelled to that State about half a dozen times a year to hear cases. He did that with much pleasure.

Some chapters are spent on practice and procedure in his court, particularly in that vexed area of expert evidence. Peter revisits the case of *Cadbury Schweppes v Darrell Lea Chocolate Shops* [2006] FCA 363 in which he ruled as inadmissible a 90-page affidavit by an expert as to whether consumers were likely to be misled by the colour of chocolate wrappers of rival producers. At common law, the observations of people at large on subjects concerning ordinary human nature could not be the subject of proof by evidence, whether expert or not. However, section 80(b) of the *Evidence Act* changed all that by providing that the evidence of an opinion is not inadmissible only because it is about “a matter of common knowledge”. Unfortunately, neither senior counsel on both sides nor the judge knew of the existence of section 80(b). Accordingly, the Full Court reversed the trial judge (see (2007) 159 FCR 397).

However, Peter strongly puts forward the view that expert opinion evidence should be confined to cases where a judge or jury cannot make a sensible decision without it. It is hard to disagree with that.

This is a book of legal (and other) reminiscences that will easily fit into the bookshelves of even the busiest practitioner.

BOOK REVIEW

Jock Serong's
'On the Java Ridge'

PAUL DUGGAN

A boatload of Australians is sailing east on a surfing safari through the Indonesian archipelago. Another boat, this one filled with asylum seekers, is heading south towards Australia. By unhappy chance, the two groups meet.

Things had already gone awry before their meeting. They don't improve from there.

All involved are very far from their very disparate homes. No one knows of their plight.

Or so they think.

Unbeknownst to any of the seafarers, thousands of kilometres away, Australia's Minister for Border Integrity is taking an increasingly anxious interest in them. He has some unreliable eyes in the sky, a social media post of uncertain provenance apparently out of Indonesia, and a strong inkling that no one is giving him the full story as a potential disaster limps towards Australian territorial waters.

And it is election week.

So begins *On the Java Ridge* by Jock Serong.

It is a cracking yarn.

Jock (aka Justin) Serong left our Bar 12 years ago and moved to Port Fairy. Since then he has variously worked as a partner at Maddens Lawyers in Warrnambool, a criminal law lecturer at Deakin University, a freelance writer, an editor and publisher of *Great Ocean Quarterly*, a screen play writer and a regular contributor to surf mags like *Surfing World*.

Serong's first two novels *Quota* (2014) and *The Rules of Backyard Cricket* (2016) both included reprises to the court room, but *On the Java Ridge* is completely lawyer-less.

I don't think Serong has forsaken us completely.

While his book makes no overt point about the absence of lawyers, the story is premised on a contemporary Australia where the government's management of border integrity occurs over the literal and figurative horizon.

On the Java Ridge is simultaneously a nautical and political thriller.

It is more cerebral and political than *Point Break* and more scenic and wry than *House of Cards*. It is also told in a consistently laconic and contemporary Australian voice.

Serong has deep experience with much of his subject matter (although, mercifully, not all of it) and a great eye for what he is describing.

In real life, it is just possible that Serong has surfed or swum in the ocean most days of his adult life. As a surf mag writer and on his own shilling he has cruised between Indonesia's breaks on the *phinisi* boats like the boat at the centre of the story, the Java Ridge. In former times, as a barrister, he worked closely with at least one ex-cabinet minister for months on end and, in another barristerial context was regularly briefed by both sides in asylum seeker cases. In his spare time he is a keen gardener, diver and father of four kids (although possibly not in

that order).

These snippets from his résumé are echoed in his writing. His depictions of surfing the fringe of a coral reef, the Minister for Border Integrity's competing public and private agendas, the best way to grow basil on an ocean-going *phinisi*, the use of fresh herbs in fish-based salads at sea and an exhausted sleeping child all suggest Serong's lived experience rather than just a vivid imagination.

But there is also plenty of imagination.

On the Java Ridge is a great story. I'd recommend it to anyone who is not putting out to sea these holidays. ■

On the Java Ridge
by Jock Serong
Text Publishing, 2017



VERBATIM

Have you heard something interesting or amusing in court? Send in the transcript extract to vbncitors@vicbar.com.au

County Court of Victoria

Dwellings Group Pty Ltd v JG King Pty Ltd
- before her Honour Judge Marks on 30 October 2017

Appearances: Justin Foster for the plaintiff; Paul Duggan for the defendant.

Context: When the case was called on, perhaps half of the lights in the court room were off and the room was distractingly ill-lit as a consequence. Her Honour queried this. Her associate then fumbled with some switches, rectified the problem and banished the gloom.]

HER HONOUR: Excellent! It really is important that justice not only be done but that justice also be seen to be done. ■



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