P J Booth on the art of charcuterie

2018 Victorian Bar Dinner

Marriage Law Postal Survey
by Kathleen Foley

The Rule of Law
Our interview with President Maxwell AC

Interview with Victoria’s new DPP, Kerri Judd
Enjoy the many benefits of our Corporate Programme*.

Mercedes-Benz vehicles are renowned for quality, safety, luxury and performance. That’s why cars with the Mercedes-Benz three-pointed star are the choice of those who demand the best.

The Mercedes-Benz Corporate Programme is designed to make ownership easier and more beneficial for you. As a qualified member, you are also eligible to receive exclusive benefits, including:

• Reduced Dealer Delivery fee¹.
• Complimentary scheduled servicing at an authorised participating Mercedes-Benz dealership for up to 3 years or 75,000 km² (whichever comes first).
• Total of 4 years complimentary Mercedes-Benz Road Care nationwide.

Take advantage of the benefits today.

¹ Not applicable to all models.
² Non-AMG up to 3 years or 75,000 km from new (whichever comes first). AMG (excluding V12 vehicles) 3 years or 60,000 km from new (whichever comes first). All V12 vehicles 3 years or 50,000 km from new (whichever comes first).

**Corporate Programme is subject to eligibility.

Visit aba.mbabenefits.com.au or phone 1300 119 493 to access your benefits.
At Bell Shakespeare, we believe that Australia is our stage, particularly when it comes to our work with students and teachers. Help us reach more Australian schools than ever before by supporting The Players.

52,659 | 9,943 | 42,716
STUDENTS REACHED | PRIMARY STUDENTS | SECONDARY STUDENTS
What does it mean to be a barrister?

If there is one word to describe what it means to be a barrister, it would be “multifaceted”. During his opening remarks at the Victorian Bar Dinner held recently, Dr Matt Collins focused on the word “independent”. Autonomy is, of course, a key characteristic of being a barrister. We are not beholden to an employer. We can say what we think, and we are, in fact, paid to do just this.

Our independence is also central to our ethics and professional obligations. We speak up about issues where appropriate, whether individually or as a collective profession. That said, if we are inappropriately unconstrained, what may be a positive for us may not be so positive for others.

We often disagree with each other. Barristers tend to be competitive and love a debate. In fact, many of us have grown up thriving on disagreement around the dinner table. It is energizing and, dare we say, fun, to engage in a battle of ideas.

We love words and the nuances of the English language. Words are the building blocks of our advocacy and our conversation. Dissecting words, parsing collocations, and mining the rich seam of ambiguity in the English language is part of what we do for work. For some of us, etymology is also a hobby.

We are known for our conviviality. Although we can be loners too. We love travel, food and holidays. For some of us, we become immersed in these interests to the extent we have a second career.

We explore these different dimensions of being a barrister in this issue of Bar News.
President’s article will put us into a much more confident position next time we are challenged on the meaning of ‘the rule of law’ at a dinner party.

I hope your honour shares with readers his views on the scrutiny often given to the Court of Appeal in the media, and what he would like to see from Government to assist the Court of Appeal to make decisions more effectively.

Kathleen Foley provides an insider’s perspective on the Marriage Equality Postal Survey, including her observations of barrister colleagues who experienced the ups and (for some barristers) very significant downs during the campaign that led to a Yes! Vote by a majority of Australians.

Victoria’s new DPP, Kerrji Judd, shares her views on her new role. Her observations on how she manages stress will resonate with many readers.

There is much in this Issue of Bar News about words. Julian Burnside would like certain Shakespearean words like beheaded to be restored to our vocabulary. Peter Gray teaches us that what is heard is often not what was said. As Bryan Keon-Cohn approaches the seventh stage of life he has become obsessed by the ridiculousness of pre-nominal, post-nominal and acronyms. Peter Heerey has something to say about clichés, and would prefer it if some Shakespeareanisms were honoured less.

The Verbatim column has also returned, by popular demand. Bar News also supports the idea that it’s never too soon to plan for your next holiday. Accordingly, destinations such as Lord Howe Island and Mexico may, or may not, move up the packing order once you have read our reports. Bar News’ Campbell Thomson also ‘took one for the team’ and explored Noosa’s restaurants, with somewhat mixed results.

‘A must read’ article is barrister Peter Booth’s determination to understand charcuterie to such an extent he has written more than 70,000 words about it in his much vaunted book, A Charcuterie Diary. Try his recipe for Petit Sale during the court vacation (unless you are a vegetarian). It is certain to impress friends.

We also announce that Annette Charak has joined the Editorial Team. The workload of Bar News has increased through, amongst other things, a rapid succession of recent judicial appointments, and accompanying farewells. Annette has been a Deputy Editor of Bar News for some years. She is seizing control of the Back of the Lift section, to the relief of her fellow editors.

In the spirit of thriving dinner party conversation, we welcome your feedback, debate, ideas, letters and articles. Please write to us!

The VBN Editors
vbneditors@vicbar.com.au
Driving change in the way the Victorian Bar is perceived, and the way we perceive ourselves

Interview with Dr Matt Collins QC, 2018 President, Victorian Bar

NATALIE HICKEY AND JUSTIN WHEELAHAN

The first half of 2018 has felt, at times, like a dizzying whirl of survey reporting about attributes of the Victorian Bar, with associated media attention. Issues of diversity have received particular focus. For Matt Collins, the Victorian Bar’s 2018 President, this is plainly not a time to sit on the sidelines, because there is much work to do. Here, Matt discusses his experience as 2018 President to date, his key priorities for members of the Bar, as well as further initiatives being planned for the latter part of the year.

Showcasing the Bar and its members in 2018

Asked whether being Bar President has met his expectations, Matt says that he never aspired to the presidency, but found himself in the chair without a lengthy apprenticeship due to a number of judicial appointments. He had received good advice about the importance of focusing on signature initiatives, which has been important to him when developing his priorities.

In answer to what those priorities are, Matt says, “If I could summarise it into a sentence, they are to showcase the excellence of the Bar and its members in as many different forums as possible.” He adds:

This approach informs things like the diversity and inclusion focus, showcasing the full array of talent in briefing decisions and the kind of workplace we maintain. It informs the kind of work we are doing in maintaining and growing our market share relative to solicitors. It informs our media strategy, and a complete review of our commitment to pro bono work. It informs our conference program. It informs the work we are doing with law schools, high school students, and mentoring.

Driving change in the way barristers are perceived and the way we perceive ourselves, is central to Matt Collins’ purpose as Bar President. He...
as one of the most important drivers to
diversity.
The statistical effect of this is that women now make up 45 per cent of barristers who have been practising for under 15 years call. That’s about double the amount in Sydney. He also refers to the observable effect of the Financial Services Royal Commission. That is, in February 2018, on the first day of the Royal Commission, 39 barristers announced their appearance. Of those barristers, 13 were women. There were seven female silks. The overwhelming majority of those barristers were Victorian. He says, “We have such
talented women in Victoria. I just
don’t think we could have had that mix anywhere else in Australia.” Nevertheless, we still face
difficulties with under-represented
groups at senior levels, especially
women, he says: “We need to
encourage top women to apply for
silk... and then to stay a bit longer before getting an appointment.”

Matt is conscious that diversity
extends beyond questions of
gender. He is of the view that we have quite properly focused on
gender equality but is concerned that this not be done at the expense of other diversity measures,
including race, religious belief and
disability. He also recognises the importance of ensuring a non-discriminatory environment for the LGBTI community, and the need to encourage LGBTI participation in barrister ranks. When asked whether he would like to comment on LGBTI participation in further detail, Matt responds: “As a gay man, I don’t want to be pigeon
nosed as the ‘Gay President’ of the Bar but I am conscious that LGBTI diversity hasn’t sufficiently been focused on. Regrettably we still have pockets of the profession who perceive that if you’ve got a serious Supreme Court case, you need a stereotypical grey-haired male barrister. Anyone who deviates from that perception risks missing out on work.”

A core goal – driving work for members
For Matt Collins, issues of diversity and inclusion are more than matters of principle. They are practically important. A diverse and inclusive workplace drives work for those members of the Bar not getting their fair share. He refers to barristers as “an association of sole traders.” A huge part of what we do, he says, referring to the work of the Bar Council, has to involve driving more work for our members. He mentions that when the Financial Services Royal Commission was announced, both he and the Victorian Bar’s CEO, Sarah Pregan, flew to Canberra and lobbied for the Royal Commission to be based in Melbourne. Whilst he doesn’t claim credit for its being here, he notes it has resulted in a massive boost in Melbourne’s legal economy. In answer to a question as to whether he is backward with Sydney about this, Matt says, “Well, I would frankly prefer the work to remain in William Street in Melbourne rather than be in Phillip Street in Sydney.” Driving work for members extends beyond the commercial sector: We are constantly in discussions with the DFP about using the Bar more for pro bono work. Secondly, it can be a fantastic means of countering future challenges. Getting members on their feet in challenging cases at an earlier stage is important, we know. It’s obvious, of course, but also about generating meaningful opportunities for advocacy which can lead to paid work. We also want pro bono work to be meaningful and rewarding, and that is why we are negotiating with courts about the matters they refer to the Bar for pro bono assistance. As to how this proposed portal means in practical terms, Matt caveats his response on the basis that “this is being developed by people smarter than me”, but otherwise explains that the objective is for every court to have a rule of court or practice note governing the referral of requests for pro bono assistance to the Bar. He wants to see a process where, when referrals are made, there is standardised information including why it qualifies as pro bono work, and the level of experience and time commitment required by the relevant barrister. The objective is to have a scheme that makes a difference to access to justice in a worthy case, with Matt acknowledging some previous challenges with the program. Frankly, in the past that hasn’t always been people’s experience. We must
do better. It is a huge job to get it right. We can measure results in a valuable way. In turn, this will be a huge marketing benefit for the Bar as a whole, and its individual members. It will help us showcase what we do in a more informed way. He also notes that it’s a big job, but says, “I’m passionate about getting it right. This is a huge opportunity particularly for junior members who might find it hard to get on their feet.” Speaking up by and on behalf of members of the Bar
As the author of Collins on
Defamation and The Law of
Deification and the Internet law, and with defamation law forming an integral part of his practice, Matt Collins is no stranger to the media or the benefits of speaking up within appropriate limits. He is comfortable in the space, and it shows in his attitude to the Bar’s engagement at a public policy and promotional level.

Matt considers that the Bar’s policy engagement has significantly increased. The aim, he says, “is to be an authoritative voice on law reform.” He also says, “On behalf of our members we make submissions for law reform. We now have a full-time lawyer in the Bar Office who performs work under the supervision of the Bar Council, relevant Bar Associations and the Bar Office.” He considers it important for the Victorian Bar to be integrated with peak bodies such as the Law Council of Australia, and the Australian Barristers’ Association. He also thinks it essential that the Victorian Bar has good relationships with the federal and state Attorneys-General and their shadow equivalents.

When asked about the basis upon which the Bar decides to speak up, Matt notes that there is a media statements policy available on the VicBar website, which guides decision making. That said, he acknowledges that judgement calls are inevitable. He says:

“On social and political issues, there will always be a diversity of views. But other issues will result in a consensus or near consensus. As obvious example of likely consensus concerns attacks on the judiciary. It is appropriate for us to speak up as we are very visible users of the court system and we can speak with authority on the pressure judges are under and the chasm between what we know happens in court and how it plays out in the media.

Other areas which he regards as ‘no brainers’ include discretionary sentencing. He says, “We always speak out against mandatory sentencing, which is an erosion of judicial power.” Another example is statutory reforms taking away common law rights. Access to justice and properly funded legal aid are other areas where the Bar will speak up. The erosion of civil liberties is another example. Matt says, “We don’t mean to suggest that there will be a unanimity of views among members, but we will speak up when we can expect a broad consensus.”

Marriage equality is an area where more complicated questions arose as to whether the Bar could or should speak up on behalf of members. Matt reflects on this:

This was an issue that arose long before my time. Jim Peters was the President. The position taken was based on the position that equality before the law, and non-discriminatory treatment, are values giving rise to sufficient consensus that the Victorian Bar should adopt a position.

Matt also considers that in a contemporary society, it is not just academic experts who should be made available to appear in the media to showcase their legal expertise. He refers to a pilot program called VicBarExperts and says:

“This is about promoting our members as experts in their field able to explain complex areas of the law, legal policy debates or complicated court decisions (in which they are not involved), in their own name.

He thinks this is a good thing because it is good for the profile of the individual. It allows the media to say ‘Melbourne barrister [the barrister’s name],’ which promotes an association between the Victorian Bar and legal excellence. However, he wants to see how it works before he is prepared to discuss the prospect of the pilot program’s expansion.

Mental health initiatives

Confronting the disturbing aspects of mental health outcomes to the profession as a whole is also a priority. Matt Collins says that the Bar is doing quite a lot of work around this. The Bar will co-sponsor an Australian first, a profession-wide summit on mental health in the second half of the year. A task force has just been formed, designed to understand the stressors, to improve information sharing between different branches of the profession, and to establish a mental health structure for the whole profession.

The State of the Bar survey which gave data on discrimination, sexual harassment and bullying, forms part of this bigger picture. Matt says that it is clear to Bar Council that there is a need to do more work around this. At the time of publication of this issue of Bar News the biggest concern on wellbeing at the Bar, conducted in conjunction with the University of Portsmouth in the United Kingdom (world renowned experts in conducting surveys of this nature), will be well underway. Matt says, “This will help us understand better the prevalence of discrimination, sexual harassment and bullying, and other conduct affecting wellbeing, and the contexts in which they occur.” In establishing processes for dealing with complaints of discrimination, sexual harassment and bullying, Matt acknowledges that, for the Bar, this is early days. He says, “It is a difficult area to grapple with, given the adversarial nature of the profession, subjectivity about where to draw the line and the importance of natural justice.”

Conclusion

Asked how he feels about his work as Bar President so far, Matt responds:

“Overwhelmingly, I feel it’s a privilege to be in the role. At the risk of making my life busier, it’s a really lovely feature of our Bar that any member of the Bar can pick up the phone to speak with me, whether the matter is large or small. I am conscious always of what a broad church the Bar is. Being modern, accessible and relevant is not the enemy of honouring our traditions and where they come from.”
The opening of the legal year is a centuries-old tradition. The first recorded instance was at Notre Dame Cathedral in Paris in 1245. The tradition continues in England. Judges arrive in a procession from the Temple Bar to Westminster Abbey for a religious service, followed by a reception known as the Lord Chancellor’s breakfast, held in Westminster Hall. This ceremony stems from the Middle Ages and, except during World War II between 1940 to 1946, has been held continuously until the present day.

In Hong Kong, the Ceremonial Opening of the Legal Year is marked by an address from the Chief Justice of Hong Kong.

The United States is more prosaic. The majority of U.S. state and federal courts have abandoned the concept of the legal year. Rather, rules of court simply require that the courts are open during business hours except for weekends or any day that is a legal holiday.

As is the case every year, in January 2018 members of the profession in Melbourne (and Geelong) conducted this annual ritual. In Melbourne, this included on 29 January 2018 an Ecumenical Service at St. Paul’s Cathedral, a Red Mass at St. Patrick’s Roman Catholic Cathedral (so-called because of the red vestments traditionally worn for this annual celebration), an Eastern Orthodox Service at St Eustathios Greek Orthodox Church, and a Synagogue Service at the East Melbourne Synagogue.
You deserve to be rewarded

As a member of The Victorian Bar you have access to many discounted personal and lifestyle benefits that are generally not available to the public. These include prestige vehicle corporate programs, a car buying service, travel, accommodation, electrical goods, white goods, gift cards, car rental, health & beauty and many more.

With one enquiry, get a great deal on a new car!

MBA Car Assist can do the hard work for you. We can help you find a great deal on your next new car, regardless of make or model and at no additional cost. PLUS, we can look after your trade-in.

We have already helped members save

Why choose us

“Just wanted to express my sincere gratitude for my recent car purchase through MBA car assist, an unbelievable price delivered within 24 hours of my request, an amazing service.”

Paul
MBA Car Assist Customer

Visit aba.mbabenefits.com.au or phone 1300 119 493 to access your benefits.

What is the collective noun for a group of past Victorian Bar Presidents?

The grammatically correct term is apparently a “succession”. Humorists prefer an “incompetence”. Jennifer Batrouney calls them a “gaggle”. Whatever the case, former Presidents of the Victorian Bar came together to farewell Jennifer Batrouney QC as 2017 President, and to usher in 2018 President, Dr Matt Collins QC.

In her parting speech, Jennifer likened her ascension to the Presidency to Steven Bradbury’s remarkable performance in the short track speed skating at the 2002 Winter Olympics. After trailing the field throughout the race, seconds before the finish line Jennifer, like Bradbury, watched those in front of her fall and literally fell from his post in the final days of his Presidency. The first such casualty was Paul Anastassiou QC, who proved the accidental winner.

After putting up with an unusually grumpy, distracted wife during the year, David O’Callaghan QC, was then given the nod by the Federal Attorney-General. This led to Jennifer rather unexpectedly assuming the driver’s seat. Jennifer was grateful to receive Paul Anastassiou’s extensive handover briefing: “Don’t stuff it up”. After evaluating her performance against this rigorous KPI, Jennifer thanked her fellow councillors, Bar office staff and members of the Bar for their support throughout her term as President. She reserved special thanks for her family, and in particular her husband, for suffering caused.

Jennifer Batrouney calls them a “gaggle”. Whatever the case, former Presidents of the Victorian Bar came together to farewell Jennifer Batrouney QC as 2017 President, and to usher in 2018 President, Dr Matt Collins QC.

In her parting speech, Jennifer likened her ascension to the Presidency to Steven Bradbury’s remarkable performance in the short track speed skating at the 2002 Winter Olympics. After trailing the field throughout the race, seconds before the finish line Jennifer, like Bradbury, watched those in front of her fall and literally fell from his post in the final days of his Presidency. The first such casualty was Paul Anastassiou QC, who proved the accidental winner.

After putting up with an unusually grumpy, distracted wife during the year, David O’Callaghan QC, was then given the nod by the Federal Attorney-General. This led to Jennifer rather unexpectedly assuming the driver’s seat. Jennifer was grateful to receive Paul Anastassiou’s extensive handover briefing: “Don’t stuff it up”. After evaluating her performance against this rigorous KPI, Jennifer thanked her fellow councillors, Bar office staff and members of the Bar for their support throughout her term as President. She reserved special thanks for her family, and in particular her husband, for suffering caused.
Junior Bar Conference 2018

Catherine Dermody

On a brisk morning that signalled the first day of winter, the Junior Bar Conference kicked off with a breakfast attended by members of the Bar Council and a very welcome tea and coffee.

The formal programme commenced with a presentation on future directions of the Bar from Dr Matthew Collins QC, President of the Victorian Bar. Matt spoke in-depth about the work of the Bar Council in future-proofing the Bar as a viable and vibrant institution for all current members and future members. He gave an overview of the outcomes of the survey undertaken last year on the State of the Bar and what the results indicate about the changing demography of the Bar, trends in relation to income, and changing work practices. Many of the indicators gave reason for optimism. However, as Matt said, it was also clear that more work is required when seeking to identify the subject of investigation and may be independently conciliated and, secondly, at a broader cultural level. This will be achieved through reporting of unacceptable conduct that does not involve investigation, but which is used to better inform training and awareness needs and initiatives of the Bar.

In the context of this session, participants discussed the experiences of individuals from minority groups. This involved investigation, but which is used to better inform training and awareness needs and initiatives of the Bar. Jacinta addressed the new policies on bullying, discrimination and sexual harassment that will come into effect on 1 July 2018. She explained that the grievance process set out in these policies has been designed to address conduct at two levels: first, at an individual level via complaints (which are the subject of investigation and may be independently conciliated) and, secondly, at a broader cultural level. This will be achieved through reporting of unacceptable conduct that does not involve investigation, but which is used to better inform training and awareness needs and initiatives of the Bar.

The session on equality and diversity at the Bar expanded upon a number of the matters touched on by Matt in the introductory session. The Victorian Bar’s CEO, Sarah Fregon, chaired the session at which Jacinta Forbes QC (Chair of the Equality & Diversity Committee), Elizabeth Bennett and Daniel Nguyen spoke. Jacinta addressed the new policies on bullying, discrimination and sexual harassment that will come into effect on 1 July 2018. She explained that the grievance process set out in these policies has been designed to address conduct at two levels: first, at an individual level via complaints (which are the subject of investigation and may be independently conciliated) and, secondly, at a broader cultural level. This will be achieved through reporting of unacceptable conduct that does not involve investigation, but which is used to better inform training and awareness needs and initiatives of the Bar.

In the context of this session, participants discussed the experiences of individuals from minority groups. This involved investigation, but which is used to better inform training and awareness needs and initiatives of the Bar. Jacinta addressed the new policies on bullying, discrimination and sexual harassment that will come into effect on 1 July 2018. She explained that the grievance process set out in these policies has been designed to address conduct at two levels: first, at an individual level via complaints (which are the subject of investigation and may be independently conciliated) and, secondly, at a broader cultural level. This will be achieved through reporting of unacceptable conduct that does not involve investigation, but which is used to better inform training and awareness needs and initiatives of the Bar.

The session on equality and diversity at the Bar expanded upon a number of the matters touched on by Matt in the introductory session. The Victorian Bar’s CEO, Sarah Fregon, chaired the session at which Jacinta Forbes QC (Chair of the Equality & Diversity Committee), Elizabeth Bennett and Daniel Nguyen spoke. Jacinta addressed the new policies on bullying, discrimination and sexual harassment that will come into effect on 1 July 2018. She explained that the grievance process set out in these policies has been designed to address conduct at two levels: first, at an individual level via complaints (which are the subject of investigation and may be independently conciliated) and, secondly, at a broader cultural level. This will be achieved through reporting of unacceptable conduct that does not involve investigation, but which is used to better inform training and awareness needs and initiatives of the Bar.

In the context of this session, participants discussed the experiences of individuals from minority groups. This involved investigation, but which is used to better inform training and awareness needs and initiatives of the Bar.
The mercury had already reached 30 degrees at 9am on Monday 18 December, and was on its way upwards towards an expected maximum in the high 30s. The sky was clear, there was little wind: just the kind of conditions desirable for 11 toned, fit and experienced cricketers from the Bar, who were ready to take on the solicitors. Sadly, most members of the former team satisfied only the latter quality, with a very small percentage still playing competitive cricket. Nonetheless, everyone headed off to the Ian Johnson Oval in St Kilda, a lovely turf wicket in the heart of inner suburban Melbourne. The protagonists had assiduously dusted off their spikes (which had no doubt lacked attention for many years) in preparation for what was to be a fine display of batting, bowling spikes (which had no doubt lacked attention for many years) in Melbourne. The protagonists had assiduously dusted off their

Nonetheless, everyone headed off to the Ian Johnson Oval

with a very small percentage still playing competitive cricket.

The mercury had already reached 30 degrees at 9am on Monday 18 December, and was on its way upwards towards an expected maximum in the high 30s. The sky was clear, there was little wind: just the kind of conditions desirable for 11 toned, fit and experienced cricketers from the Bar, who were ready to take on the solicitors. Sadly, most members of the former team satisfied only the latter quality, with a very small percentage still playing competitive cricket. Nonetheless, everyone headed off to the Ian Johnson Oval in St Kilda, a lovely turf wicket in the heart of inner suburban Melbourne. The protagonists had assiduously dusted off their spikes (which had no doubt lacked attention for many years) in preparation for what was to be a fine display of batting, bowling spikes (which had no doubt lacked attention for many years) in Melbourne. The protagonists had assiduously dusted off their

newly-minted silk Mark Irving QC, Marc Felman, Andrew Fraatz, Cam Truong, Peter Lithgow, Dugald McWilliams, David Neil SC, Toby Mullen, Justin Willee, John Valiotis and Shaun Clement (C). On reflection (given the result), perhaps the Bar should have insisted on the members of the solicitors’ team producing current practising certificates before taking the field. Whilst the opposing team did appear to have some familiar faces from the ranks of the solicitors of Victoria, it seemed the only qualification the vast majority had for playing was membership of the Burwood Cricket Club 2nd XI. But let’s not get distracted by technicalities. Shaun Clement won the toss and elected to bat. The Bar got off to an excellent start with the opening combination of Irving and Felman. In the mould of Greendyke and Haynes, the opening partnership of 52 was just the start the bar barristers needed, Felman taking to the solicitors’ bowling with the long handle and amassing 28 for his innings. Irving was the first to depart, signalling an early collapse of the top order. Felman followed without addition to the total. That brought Andrew Fraatz to the crease; a champion schoolboy cricketer from that august Jesuit institution on Barkers Road. He was clearly a wise choice for first drop. Unfortunately, Fraatz appears to have focused too much recently on prosecuting bushfire class actions with Tim Tobin SC rather than his batting, because he departed for a duck. Peter Lithgow then exiting cheaply, bringing Dugald McWilliams to the crease. McWilliams and Cam Truong (clearly both classifiers to ever come out of Saigon) steaded the ship with a handy middle order partnership. With his sublime and graceful stroke-play, Truong grafted a delightful 36 runs. By contrast, McWilliams snicked, bludgeoned and lumped his way to 38. The late middle order struggled but then the magic began. John Valiotis was panther-like and amassing 28 for his innings. Irving smashed 72 for his innings. The Bar amassed a competitive total of 194 off its 45 overs.

The planets did not align for the barristers on the day. However, just as they took to the field, the temperature gauge hit 38° and a fierce northerly wind began to blow. Furthermore, the Bar team was left with only 10 men on the field at the start of the solicitors’ innings — Justin Willee accepted a late brief from John Dever for the following morning and had to take off to retrieve the brief, post-haste.

Toby Mullen took the new pill for two very good reasons: he could bowl the ball faster than 50 km/h and he was the youngest member of the Bar team by a mile. McWilliams opened at the other end but the solicitors’ opening batsmen (both of whom were stalwarts of the Burwood Cricket Club 2nd XI) smashed an opening partnership of 72 runs. Irving dazzled with his rhythmic sling action which brought to mind images of Jeff Thompson in full flight in the 1970s. His impassioned plea to the umpire, following an LBW decision halfway through his spell, of “Oh c’m on, throw me a bone here ump” was something to behold. Unfortunately the umpire turned down his exquisitely crafted appeal. He was also the first bowler on the Bar team to draw blood — sadly, his own — when he was fielding in slips and dived for a spectacular catch, taking the bark off both his elbows in the process.

John Valiotis was panther-like behind the stumps. He was poised and expert in the field. He chose not to wear pads, an exhibition of both his grace and toughness (as he described) because they inhibited his feline agility behind the wickets. He was also the first bowler on the Bar team to draw blood — sadly, his own — when he was fielding in slips and dived for a spectacular catch, taking the bark off both his elbows in the process.

John Valiotis was panther-like behind the stumps. He was poised and expert in the field. He chose not to wear pads, an exhibition of both his grace and toughness (as he described) because they inhibited his feline agility behind the wickets. He was also the first bowler on the Bar team to draw blood — sadly, his own — when he was fielding in slips and dived for a spectacular catch, taking the bark off both his elbows in the process.

Mark Irving drawing his own blood was one fine example, as was McWilliams’ effort to try and stop any ball in the outfield with shins, knees, ankles, torso — any part of his body other than his hands. (This was not due to any desperation on his part, he’s just horribly uncoordinated.) Despite counsel’s best efforts the solicitors got the runs with three overs to spare and all batsmen contributing — J. Kerr 50 not out, S. Kish 28, J. Wilkes-Green 50 not out, J. Edgar 16, S. Harris 15. After much post-match deliberation, the captains and the umpires agreed that the Brendan Keilar Memorial Trophy would be awarded to Dugald McWilliams for his efforts with the bat and ball (and lenmimg-efforts in the field). Brendan had been a keen participant for the solicitors in previous matches, but was tragically shot dead in the CBD in 2007 when he went to the aid of a woman who was being assaulted. He is remembered annually through this award.

Congratulations to all members of the Bar and the solicitors who participated. Special thanks must be extended to David Neil SC who was heavily involved with the Bar cricket team for many years, both as captain and organiser. His tireless efforts have ensured that this sporting event remains a fixture in the Bar and LIV calendars. Congratulations to Shaun Clement (one of the few members of the Bar who continues to play competitive cricket) who has taken up the mantle of captain. As with many of the Bar’s sporting activities, it could always do with an injection of youth and younger members of the Bar are encouraged to join in for future events.}

“His impassioned plea to the umpire, following an LBW decision halfway through his spell, of “Oh c’m on, throw me a bone here ump!” was something to behold.”

Bar v. LIV annual cricket match

Monday 18 December 2017

DUGALD MCWILLIAMS

---

Bar v. LIV annual cricket match

Monday 18 December 2017

DUGALD MCWILLIAMS

---

Bar v. LIV annual cricket match

Monday 18 December 2017

DUGALD MCWILLIAMS
Opening of Levels 19 & 20 Aickin Chambers

Daniel Briggs

Hosting a floor opening celebration on 3 May 2018, the new chambers on levels 19 and 20 of Aickin Chambers opened their doors to the profession and the judiciary. The expansion of Aickin Chambers is a product of the hard work by Barristers’ Chambers Limited, the Victorian Bar and the barristers involved. The result is modern and professional chambers, bringing the face of the Victorian Bar in line with the expectations of the community we serve. Barristers’ chambers are an important part of life at the Bar. The environment, the facilities and most importantly the people, all contribute to our daily lives as barristers.

Michael Thompson QC spoke of the new joint-chambers, which span over two levels, and bring together barristers from the now defunct Joan Rosanove Chambers and Scottish House, and other BCL and non-BCL Chambers. Floor members benefit from the wealth of experience on the new floor. This experience ranges from commercial, criminal, environment, planning, industrial, international, public, administrative, tax and common law; equity and trusts; and appellate work. The chambers offer a diverse learning environment for young barristers and a comprehensive knowledge base upon which to draw.

An extensive library spans across the two floors. Many of the volumes bear the names of their once-owners, including the neatly handwritten name of Joan Rosanove QC (the first woman to sign the Bar Roll in Victoria, the first woman to be appointed as one of Her Majesty’s Counsel for Victoria and, of course, the namesake of Joan Rosanove Chambers) as the first owner of the early Australian Law Journal reports. In memory of her contribution to the Bar, the members have decided to dedicate the library in her honour. Other inscriptions include Sir David P Derham (Vice-Chancellor of the University of Melbourne from 1968 to 1982), his son the Honourable Associate Justice Derham, the Honourable Mr JM Batt QC, and past Bar President Mr Paul Anastassiou QC.

The members of Levels 19 and 20 of Aickin Chambers are: Neil Clelland QC, Michael Thompson QC, Anthony Young QC, Peter Willis SC, Gerard Dalton QC, Mandy Fox QC, Ian Fehring, Garry Livermore, Mark McNamara, Richard Wilson, Don Farrands, Nick Harrington, David Bailey, Dean Guidolin, Anthony Lewis, Tim Purdy, Maree Norton, Carmen Currie, Nina Moncrief, Ben Jellis, Kevin Jones, Sergio Freire, David Oldfield, Damien McAloon, Brian Mason, Jennifer Findlay, Danial Briggs, Georgie Coleman, Claire Nicholson and Naomi Lenga.

Images courtesy of Peter Bongiorno
In case you hadn’t heard, the Bar’s latest portrait of a favourite son was unveiled on 14 March 2018. But how could you not? This event was the hot ticket of the Hilary term. Over 180 colleagues, friends and family of Ross Gillies QC, the man regarded by many as “the barrister’s barrister”, gathered in the Peter O’Callaghan QC Gallery to see his portrait by Julia Ciccarone revealed. A large contingent from Dever’s List was there to inspect the fruits of their donations, the commission having been largely funded by List D and members of the Common Law Bar. Barristers from other lists also attended, as well as tranches of judges (past and present) from all courts. Her Excellency the Governor of Victoria, Linda Dessau, arrived to do the honours. There were also 28 members of the Gillies family, plus another carload “still circling the building looking for a park”, Ross quipped.

Peter Jopling AM QC, the chairman of the Art and Collections Committee spoke with raw admiration:

It is our privilege tonight to honour a fearless advocate not only in court but outside the courtroom. A man whose insightful use of language and quick witted style has outfoxed many an opponent with its devastating acuity. His is a style that his supporters say is unparalleled at this Bar and which they say explains his success. But Gillies is also the man to go to for barristers in trouble and his pro bono advice is keenly sought after.

The choice of the Governor of Victoria to unveil the portrait was no accident. Linda Dessau and her husband, the Hon. Tony Howard QC spent a combined 40-plus years at the Victorian Bar. She witnessed firsthand the changing nature of the Bar and Ross’s contribution to maintaining its collegiality. Like so many in the room, as a young barrister, Linda Dessau was a recipient of Ross’ pastoral care which she recalled in affectionate anecdotes.

Her Excellency also introduced us to the life and art of Julia Ciccarone - a graduate of the VCA and in recent years a finalist in the Archibald and Moran portrait prizes - noting the invented space that inhabits many of Ciccarone’s works and the artist’s take on the intersection between memory and reality. She urged the viewer to understand Ciccarone’s portrait of Gillies QC against this background, to note the civility of his outstretched hand and to see, in that, how the artist has captured the essence of her subject as a “Renaissance man”.

All that was left was for Gillies to reply, which he did with his usual mischief by taking the “Renaissance man” mantle and running with it. He made teasing observations about the Governor’s “upward trajectory” to Yarralumla, which hinted at Machiavellian tendencies. He likened the Peter O’Callaghan QC Gallery to Vasari’s Corridor in Florence, or at least its structure: Vasari’s Corridor is upon a bridge – Ponte Vecchio – and is, of course, a corridor. O’Callaghan’s Gallery is also on a bridge, albeit traversing Guests Lane and not the Arno River. It is also a corridor.

Finally, he invoked the ghost of Filippo Brunelleschi, as he claimed the Supreme Court as Melbourne’s own Duomo. The jury was persuaded. As the throng exited onto Williams Street and Lonsdale Street in the cool autumn evening, they could not help but look anew at Guests Lane and the Supreme Court.
In his introductory remarks, Victorian Bar President, Dr Matt Collins QC, reflected on members of the Bar, Bench and Parliament (state and federal, either side of the aisle) coming together to celebrate their respective independence and mutual collegiality.

The early 20th Century Spanish Rococo architecture, plethora of candelabras, and resplendent attendees created quite an aura. In opening remarks, President of the Australian Bar Association, Noel Hutley SC, aptly described himself as ‘at Hogwarts’.

Chief Justice Susan Kiefel AC of the High Court was one of the key note speakers, her Honour’s remarks delivered with bone-dry humour. In the spirit of ‘what happens at the Bar Dinner stays at the Bar Dinner’, Bar News will only hint at one of her Honour’s stories from when she was a practising Silk: namely, that the ability to deftly roll one’s own cigarettes can prove key to winning a client’s trust. The anecdote brought the house down.

Anne Hassan delivered the Junior Counsel keynote speech, skewering the role of Victorian Bar President to the delight of those assembled. Anne revealed ‘tweets’ from President Trump on the ‘fake news’ of the VicBar Presidency. Her ‘revelation’ that the current President’s photographic pose bears hints of Derek Zoolander’s ‘Blue Steel’, and use of the Trump/Shakespeare heuristic, was also met with amusement.

If you could not attend the dinner, we have included the photo in the attached spread so you can judge for yourself.
**“Supporting and encouraging bright young minds from diverse backgrounds”**

all comers on merit. The program is an initiative of Justice Michelle Gordon, who is also the Patron of the program, Peter Jopling AM QC, Paul Anastassiou QC (who instated the City of Hume event in 2016), and your author.

**The Mentoring Program**

In a testament to the community-minded outlook of the Bar, the program has received overwhelming support from the barristers approached to participate in the pilot program: over 50 junior barristers volunteered, with alacrity, to participate in this program by mentoring a student.

These mentor-barristers met with their students for the first time on a Friday evening at the Melbourne Recital Centre on 27 April. Prior to this night, the 15 schools in the Hume region had each identified four promising legal studies students who would benefit from the program. Each mentor-student completed a questionnaire, and was then paired with a junior barrister who best suited the areas of law that student was interested in, traits the student had identified as important to them in a mentor, as well as the student’s general interests (some were easier to match than others: students’ outside interests ranged from reading and AFL to video games and ‘intricate nail art’!).

Consistent with her notorious dynamism, program patron Justice Gordon studied the completed student questionnaires, as well as the names of each student and their mentors, before arriving early at the Recital Centre; her Honour then met and spoke with each of the 45 students in attendance before the concert commenced; again doing the rounds over interval.

Reflecting the night’s focus on bright young minds from diverse backgrounds

Reflecting the night’s focus on bright young minds from diverse backgrounds, the concert at the Recital Centre was performed by ANAM, the Australian National Academy of Music, a training institute for young musicians. ANAM has a reputation for encouraging bright young minds from diverse backgrounds and a love of music and about how her career would not have been possible without encouragement and support she received from a diverse range of people.

The Mayor of the City of Hume, Cr Geoff Porter, also thanked the Foundation on behalf of the Council for the award and the mentoring program, and said that the Foundation’s award is “important in helping students who are passionate about legal studies to get insights into how the legal profession works and start developing a successful career path”.

The event at the Recital Centre was possible thanks to significant financial contributions from the Bar, two anonymous Recital Centre donors and the City of Hume, to cover the costs of tickets and refreshments. The Mentoring Program between these 50 junior barristers and their mentee-students will continue throughout this year: keep an eye on the next edition of Bar News for an update.

**Supporting and encouraging bright young minds from diverse backgrounds**

The Victorian Bar Foundation has largely focused on making grants to organisations and institutions, often to enable them to pass their students who would benefit from the Foundation’s award is “important to creating ‘life long links between the current and future leaders of many walks of life’. She urged the students to grab the opportunity of the evening to speak to their mentors, the judiciary present and the ANAM musicians (who met with the students and mentors after the concert) and to “be inquisitive”. Justice Gordon spoke of her love of music and about how her career would not have been possible without encouragement and support she received from a diverse range of people.

The Victorian Bar Foundation Student Achievement Award and Mentoring Program

GEORGIE COLEMAN

The Victorian Bar Foundation has this year established the Victorian Bar Foundation Student Achievement Award and Mentoring Program as a tangible way to promote the message that the Bar is open to all on merit irrespective of socio-economic circumstances, ethnic background, religious affiliation, sexual orientation, gender, gender identity or disability.

The Victorian Bar Foundation is the Bar’s charitable trust and a relatively recent initiative of the Bar. The Victorian Bar established the trust following the 2009 Black Saturday bushfires as a way to enable the Bar and Bench to contribute to the community and causes outside the Bar itself.

To date, the Foundation has largely focused on making grants to organisations and institutions, often to enable them to pass the Foundation’s benefaction to needing and deserving individuals in furtherance of the Foundation’s purposes. Such grants have been made to the Ninian Stephen Menzies Scholarship, the James Merralls Fellowship at Melbourne Law School, the Monash Refugee Scholarship, and the Bar’s Indigenous Barristers Development Fund, among others.

The Student Achievement Award and Mentoring Program is the first program to be administered by the Victorian Bar Foundation. For the pilot year, the Foundation has partnered with the City of Hume (which includes outer north-western suburbs of Melbourne such as Broadmeadows, Faulkner and Keilor). It is a diverse area of Melbourne. According to the most recent census data, the most common countries of birth of residents, after Australia, are Iraq, India, Turkey and Lebanon. Over half of the area’s residents’ parents were born overseas.

Further, astute readers of the Bar News may recall that in 2016, members of the Bar and judiciary travelled to the Hume Global Learning Centre in Broadmeadows to meet with 200 students who heard from then Chief Justice Warren and Justice Gordon about the importance of the legal system and the sense of fulfilment that one can achieve through a career at the Bar.

The City of Hume was seen as the perfect place to start the program, given it continues the message conveyed at the Hume Global Learning Centre in 2016 that the Bar is open to
The Student Achievement Award

As part of the program, the highest achieving units 1 and 2 legal studies student at each of the 15 schools in the City of Hume region have each received a prize of $1,500 ($1,000 each from the Foundation, and $500 from the City of Hume). The prize is a way to recognise the hard work and talent of each of the winners, motivate them to continue to excel in their studies (particularly during the challenging task of year 12), and to encourage them to consider a future career in the law. Each student is free to use the money as they wish: one has already spent it on a laptop for year 12 and university next year.

A prize presentation night was held in the George Hampel Library on 29 March 2018. In attendance were the winning students, their proud parents, siblings, teachers, and mentors, along with others from the City of Hume and past Foundation donors. The prizes were presented by Justice Digby, the Foundation’s Chairman, and the Mayor of Hume, Cr Geoff Porter. Justice Digby congratulated each student for the “hard work and talent you have already shown in the area of law, as well as, no doubt, your studies in general” and expressed the hope that the prize encouraged each to stay motivated to continue to excel as each student looked to completing the challenging task of year 12 studies. His Honour encouraged each student to keep in mind the possibility of a legal career as they progressed through school and tertiary education, adding that “the Bar would be extremely lucky to have each of you join its ranks as barristers in 10 or 15 years from now”. Councillor Porter echoed this sentiment, saying that the students will be “future leaders, thinkers and workers of our community. We are so proud of everything they have achieved”.

The Foundation’s aim to extend the program

The Foundation’s Chairman, Justice Digby, notes that the Foundation has been overwhelmed by the enthusiastic responses and generous offers (of time and in other forms) from junior barristers, the judiciary, the Recital Centre and other institutions, which means an inspiring program can be offered to a number of bright legal studies students from diverse backgrounds. The Foundation aim is in due course to extend the prize and the program to reach further students in future years, such as to students in regional areas such as Shepparton, or by partnering with community-based organisations such as SAIL (the Sudanese Australian Integrated Learning Program, which provides support and services to the Sudanese-Australian community).

The Foundation, Justice Digby says, “is delighted to have been able to establish this program this year, thanks in no small part to the generosity of barrister-donors in the past, and hopes that barristers, and others interested in supporting the Victorian Bar Foundation will consider donating this year, so as to allow the program to extend its reach in future years”.

A letter on how to donate to the Victorian Bar Foundation will be included in the Bar Subscription packs later this year; a donation form is also available on the VicBar website (vicbar.com.au/public/community/victorian-bar-foundation).


CIARB Australia autumn events

On 17 April 2018, Caroline Kenny QC, president of the Chartered Institute of Arbitrators (CIARB) Australia, welcomed over 800 delegates to the gala dinner at the 24th International Council for Commercial Arbitration (ICCA) Congress. A biennial conference, the ICCA Congress was held in Sydney and spread over three days. The Congress was an opportunity to shape the future of international arbitration, the theme being one of “evolution and adaptation”. CIARB Australia sponsored the gala dinner attended by delegates and guests from across Australia and around the world.

Earlier in the year, on 1 March 2018, Susan Crennan QC, Neil Kaplan QC and Dr Michael Pryles presided over the grand final tribunal of the CIARB Australia Vis Pre-Moot, held at the Federal Court in Melbourne. The aptly named Pre-Moot gives Australian students a unique opportunity to exercise and improve their advocacy skills, to help equip them for the rigours of overseas mooting competition. Participants may then proceed to the Willem C Vis International Commercial Arbitration Moot in Vienna, or to the Vis East Moot in Hong Kong.

RIGHT: Caroline Kenny QC, President of CIARS Australia, welcomes guests to the ICCA Congress Gala Dinner.
ABOVE: The Hon Susan Crennan AC QC, Caroline Kenny QC, The Hon Neil Kaplan QC QC and Dr Michael Pryles AO AM at Eastern Bar, Post Pre-Moot Grand Final Night at the Federal Court.
The Bar’s new conduct policies and procedures for lodging a grievance

O n 16 May 2018, the Bar’s Diversity and Inclusion Working Group presented a CPO to introduce the Bar’s new policies and procedures concerning the lodgment of sexual harassment, discrimination and bullying grievances. The new policies, adopted by resolution of Bar Council, will take effect on 1 July 2018.

Our President, Dr Matt Collins QC, addressed the recent data received by the Bar via its 2016-17 Case for Change Survey. 30 per cent of respondents reported being subject to at least one instance of discrimination, sexual harassment or workplace bullying in the past five years. This number represented a significant minority of Victorian Bar members and of that number, women disproportionately reported such instances.

The Diversity and Inclusion Working Group, led by Chair Jacinta Forbes QC and comprised of Dr Matt Collins QC, Sarah Fregon, Kathleen Foley and Daniel Nguyen, reviewed the existing grievance processes and saw a real benefit and need for the new policies.

The new policies make a clear statement that:

» the Bar is committed to providing a working environment where barristers and those engaging with barristers can conduct themselves free from bullying, discrimination and sexual harassment;

» at the Bar we demand and expect respectful behaviour by our members; and

» sexual harassment, bullying or discriminatory conduct are contrary to the values of the Victorian Bar and will not be tolerated.

The new policies respond to individual circumstances but are also aimed at driving broader cultural change at the Bar.

The new policies adopt a mechanism that is internal and voluntary, confidential and informal to address complaints. They introduce an informal process for an aggrieved person who does not wish to go through a formal process of investigation. They also open up the process so that people other than barristers may now lodge a grievance.

There will be two types of recording of grievances:

» ‘Reports’ of conduct that breach the policies where no redress or action is sought, designed to assist the Bar to identify areas of particular concern and to effect community change; and

» ‘Complaints’ of conduct where some redress or action is sought.

In a Report, the identity of the barrister complained of is not identified and no redress or action is taken. In a Complaint, the identity of the barrister complained of must be provided to enable some redress or action to be taken. For both Reports and Complaints, the aggrieved person will need to put their name to the online form which is submitted.

Persons who may submit Reports or Complaints include barristers, solicitors and others working within chambers such as barristers’ staff. Barrister’s clients cannot use the new policies but rather they should lodge any grievances with the Legal Services Board. Where the aggrieved person has an employer who is not a barrister, it is preferred that they first use their employer’s mechanisms for grievances.

Where the employer is a barrister or a group of barristers, the aggrieved person may use the new policies.

The Reports will be used for raising concerns before the Bar Council and the implementation of training and identification of actions to address any systemic issues. For example, where multiple reports arise from a particular event, this may lead to consideration of changes at a subsequent event.

Bar Conciliators have been appointed to assist in the triage of available options with the aggrieved person and the investigation and conciliation of individual complaints. Bar Conciliators are appointed from the Bar and they come from a cross section of seniority, practice areas and gender. Bar Conciliators will receive training before the new policies take effect.

The new policies and an online form to submit reports or complaints may be found on the Victorian Bar website, where many of the Bar Conciliators may also be found. For further information, refer to the ‘Governance’ page of the VicBar website and click on ‘Conduct policies and internal complaints procedures’.

Grievance Protocol, offer relatively formalistic processes and saw a real benefit and need for the new policies. Kathleen Foley and Daniel Nguyen, reviewed the existing grievance protocol, offering relatively formalistic processes and are available as between barristers only.

The new policies, formed in consultation with the Bar’s Ethics Committee, deal with the Bar’s stance in relation to sexual harassment, bullying or discriminatory conduct, and the Bar’s policies for lodging grievances regarding such instances.

The new policies make a clear statement that:

» the Bar is committed to providing a working environment where barristers and those engaging with barristers can conduct themselves free from bullying, discrimination and sexual harassment;

» at the Bar we demand and expect respectful behaviour by our members; and

» sexual harassment, bullying or discriminatory conduct are contrary to the values of the Victorian Bar and will not be tolerated.

The new policies respond to individual circumstances but are also aimed at driving broader cultural change at the Bar.

The new policies adopt a mechanism that is internal and voluntary, confidential and informal to address complaints. They introduce an informal process for an aggrieved person who does not wish to go through a formal process of investigation. They also open up the process so that people other than barristers may now lodge a grievance.

There will be two types of recording of grievances:

» ‘Reports’ of conduct that breach the policies where no redress or action is sought, designed to assist the Bar to identify areas of particular concern and to effect community change; and

» ‘Complaints’ of conduct where some redress or action is sought.

In a Report, the identity of the barrister complained of is not identified and no redress or action is taken. In a Complaint, the identity of the barrister complained of must be provided to enable some redress or action to be taken. For both Reports and Complaints, the aggrieved person will need to put their name to the online form which is submitted.

Persons who may submit Reports or Complaints include barristers, solicitors and others working within chambers such as barristers’ staff. Barrister’s clients cannot use the new policies but rather they should lodge any grievances with the Legal Services Board. Where the aggrieved person has an employer who is not a barrister, it is preferred that they first use their employer’s mechanisms for grievances.

Where the employer is a barrister or a group of barristers, the aggrieved person may use the new policies.

The Reports will be used for raising concerns before the Bar Council and the implementation of training and identification of actions to address any systemic issues. For example, where multiple reports arise from a particular event, this may lead to consideration of changes at a subsequent event.

Bar Conciliators have been appointed to assist in the triage of available options with the aggrieved person and the investigation and conciliation of individual complaints. Bar Conciliators are appointed from the Bar and they come from a cross section of seniority, practice areas and gender. Bar Conciliators will receive training before the new policies take effect.

The new policies and an online form to submit reports or complaints may be found on the Victorian Bar website, where many of the Bar Conciliators may also be found. For further information, refer to the ‘Governance’ page of the VicBar website and click on ‘Conduct policies and internal complaints procedures’.

1. Section 123 provides: ‘a barrister must not in the course of practice, engage in conduct which constitutes (a) discrimination; (b) sexual harassment; or (c) workplace bullying.'

On 20 October 2017, 57 players (14 from NSW and 43 from Victoria) competed at Commonwealth Golf Club for the Frank Marnie Trophy. With an average score of 39.86 versus our average of 38.09, the NSW visitors retained the trophy for the fourth year in a row. NSW will defend the title at the NSW Golf Club on Tuesday, 16 October 2018. Best pair - Tony Kenna and Jeff Sher QC.

On 14 December 2017, a twilight round of nine holes was played at Royal Melbourne Golf Club, followed by a casual dinner in the clubhouse. Best pair - David Parsons and Michael Strong.

On 16 February 2018, 24 members and their guests played 18 holes at Woodlands. On a warm afternoon, the course was in fabulous condition and there were several solicitors in attendance from regional Victoria. Best pair - Julian McDonald and Chris Arnold.

On 3 April 2018, the Sir Edmund Herring Trophy was contested at the Kingswood site of Peninsula Kingswood Country Golf Course (PKGCC). The solicitors played very well and proclaimed the trophy, which had been held by the Bar and Bench for quite a few years. The field of 35 players enjoyed ideal conditions, and the Kingswood course was looking fabulous. It will probably be the last time many of us will play on that course, as it is due to close for good in August 2018. Next year this event will be held on the new north course at the Frankston site of PKGCC. Best pair – Tony Salce and Paul Caris.

Many members have enjoyed the opportunity to get to know judges in a more relaxed context, and to make connections with other barristers and solicitors with whom they may have otherwise crossed paths. The VGLS is also open to law students, providing them with a unique networking opportunity. The joining fee for the VGLS is a one-off payment of $50. Any members of the Bar and Bench, past and present, who are interested in joining, are invited to contact either Caroline Paterson (carolinepaterson@vicbar.com.au) or Norman O’Byran SC (nobyran@melbchambers.com.au). There is no minimum handicap requirement, and some members do not have one. We encourage all keen golfers to participate.

An invitation to join the Victorian Golfing Lawyers Society

CAROLINE PATERSON, HONORARY SECRETARY

Golfing events, along with other sports, have been an important fixture on the social calendar of the Bar, Bench and our solicitor colleagues for many years. The Frank Marnie trophy between the Victorian and NSW professions has been played for years, and the Sir Edmund Herring trophy, contested between the Bar/Bench and solicitors, dates back to the 1920s. In a profession like the law, where interpersonal relationships are so central, it’s important to have opportunities beyond court to network with your colleagues. Playing golf with someone for four hours gives you a lot of time to talk.

But other regular golfing events, including the Lander Cup played between the country law associations since the 1960s when it was established by the late Hartwell “Chic” Lander, former Law Institute of Victoria President and keen golfer, had fallen by the wayside.

In July 2017, a group of barristers and solicitors established the Victorian Golfing Lawyers Society (VGLS), hoping to rekindle the enthusiasm of old. The VGLS has already signed up over 110 members. It was established with the purpose of organising golf events at Victoria’s premier golf courses for barristers, solicitors, judges and law students. Since then, the VGLS has successfully held four events.
The rule of law and the Court of Appeal’s place in an age of transparency

Insights from Justice Chris Maxwell AC, President of the Court of Appeal

NATALIE HICKEY AND JUSTIN WHEELAHAN

The rule of law has recently been in the public spotlight. Former Deputy United States Attorney-General, Sally Yates, expressed concern about the ‘normalisation’ of behaviours, such as the current US President’s hectoring of the Justice Department on Twitter, might threaten the current US President’s hectoring of the political attacks on the judiciary in Australia have led to lawyer’s opinion pieces on the topic in mainstream media. 

What is the rule of law? How is the rule of law consistent with transparency? For many of us, the rule of law recalls faint memories from jurisprudence lectures. The topic deserves consideration. Fortunately Court of Appeal President, Chris Maxwell, is available to elucidate the concept of the rule of law to Victorian Bar News. President of the Court of Appeal since 2005, the rule of law underpins Justice Maxwell’s approach to his daily work, and is also plainly an important topic to him. He approaches the task of explaining what it means, and how it interacts with other concepts, with genuine enthusiasm, and a keen academic focus. Given the Socratic dialogue that follows, it is no surprise to learn that the President is a keen teacher, having taught amongst other things the subject ‘Philosophical Foundations of Law’ to Juris Doctor students at the University of Melbourne.

What does the rule of law mean?
The supremacy of the law and judicial independence

Justice Maxwell explains that at the heart of the rule of law is the idea of the supremacy of the law. First, government and people should be ruled by law, and should obey it. Secondly, the law should be such that people are able to be guided by it, and to comply with it. An ‘indispensable bedrock requirement’ is the independence of the judiciary. Judges should be free of, and be seen to be free of, political interference. Whilst some might think the concept of tenure is anachronistic, his Honour explains that security of tenure is central to this notion of judicial independence.

Security of tenure ensures that a judge is immune from political pressure. There is no scope for political influence — or the perception of influence — on the judge’s decision making. This is critically important, never more so than in the area of judicial review of government decisions.

Characteristics of the rule of law

President Maxwell identifies the salient characteristics of the rule of law as follows:

- the government operates under law — the contrasting concept is arbitrary; capricious or discriminatory exercises of power;
- effective procedures and institutions to ensure that government action is in accordance with the law;
- open justice;
- an independent legal profession (free from influence);
- impartial tribunals and access to the courts;
- natural justice: the right to a fair hearing;
- proper limits on judicial function: judges interpret the law but do not legislate, and
- the principle of equality before the law: like cases are treated alike.

The penultimate point leads to further discussion. Certainty is a key quality of the rule of law. The court’s function in the rule of law framework is interpretation. In his Honour’s view, close adherence to the statutory text promotes the fundamental objectives of making statute law accessible to, and comprehensible by, those to whom it applies, increasing certainty in judicial interpretation, and maintaining proper limits on the judicial role.

His Honour notes that the characteristics of the rule of law are not just present in the legal system, but in laws themselves. Laws must be certain. He says, “If they are vague, then as citizens we don’t understand what they mean”.

Limits on the judicial function

Highlighting the distinction between interpretation and legislation, President Maxwell refers to the Charter of Human Rights and Responsibilities Act 2006. Section 32(1) provides that, so far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights. The Court of Appeal held — and the High Court agreed — that s 32(1) does not authorise a court to rewrite legislation so that it is more compatible with human rights. The President says:

‘If there is more than one interpretation, the Court must adopt the interpretation which is (more) compatible with the relevant Charter right. If the statutory language permits only one interpretation, however, that is how the provision must be interpreted.’

The President referred to a recent case which also illustrated the limits of the judicial role. In the ‘baseline sentencing’ case, DPP v Walters (a pseudonym), the Court of Appeal concluded that the legislation had an ‘incurable’ defect. Parliament had not provided any mechanism to enable sentencing judges to achieve the intended ‘median sentence’. The Court of Appeal had no authority to create such a mechanism, since “to do so would be to legislate, not to interpret”.

Judicial review is not about the merits of decisions but about the limits of law. It is intrinsic to the function of superior courts to review for legality. The President endorses that ensuring that Government operates according to law, and that powers conferred by statute on ministers and public officials are exercised within the legal limits fixed by Parliament, is a “thrilling notion”. He endorsed the comments made recently by appointed Justice of the Supreme Court, Melinda Richards, in her speech at her welcome: “The law is a higher power to which everyone, great and small, is held to account.”

The fundamental distinction between the function of judicial review and the merits of government policy was emphasised by the Court of Appeal in Minister for Families and Children v Certain Children. The Court pointed out “in the interests of informed public discussion” that it was not concerned with, and expressed no view about, the merits of the Minister’s decision to establish a youth detention centre at...
Barwon Prison. Courts play no part in government policy, but perform a supervisory role to ensure that Government operates according to law that powers conferred by statute are exercised within the legal limits fixed by Parliament. The Court said:

It is one of the foundations of our democratic society that the courts perform this supervisory role, and do so in an independent, disinterested, and impartial manner. This is one of the guarantees of the rule of law.14

Courts exist to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced. This means that people must in principle have unimpeded access to courts. Without such access, the UK Supreme Court said recently, laws are liable to become a dead letter.15

The principle of equality before the law.—Equity before the law is the rule of law.20 It means a right to equal treatment in the discharge of its functions.

Embracing change and new technology.—Justice Maxwell has overseen significant criminal and civil reforms in the Court of Appeal since 2011. It is not surprising then that he is unafraid of change when it comes to communication initiatives. He is keen to embrace new ideas. He welcomes the Supreme Court of Victoria’s move to begin using social media, considering it an essential part of modern communication. He is comfortable when photographs are taken in court in appropriate circumstances. He endorses webcasts by the Court of Appeal.

His Honour describes ‘marvellous’ the live streaming of important sentencing decisions. In his Honour’s view, such visibility dispels misconceptions.

Because it’s one step closer to having the public understand the nature of that task and the nature of the person who is doing it. When you see judges, you can identify with them. You get a better sense of how they deal with difficult questions, and you realise they are doing a difficult job. Visibility goes some way in dispelling the myth of the judge as remote or out of touch and not like me.’

He refers, in particular, to the landmark moment when people could hear the ‘actual voice’ of Justice Coghlan announcing that Arthur Freeman. Freeman had been convicted of murdering his daughter by throwing her off the West Gate Bridge—a crime that had captured the public imagination in Victoria.19

The sound of Justice Coghlan’s voice eloquently conveyed to the public that sentencing was ‘a serious and difficult task.’

Scrutiny is welcomed but should be informed.—Justice Maxwell endorses an open and transparent communications approach. His Honour sees the rule of law as a reason for courts to embrace scrutiny. One of the tests of the rule of law is that the content of the law should be accessible to the public.20 He approaches this transparency with a keen eye:

It is essential for the rule of law that courts are exposed to stringent scrutiny for what they do, how they do it, and their decisions. This is part of our democracy. We are publicly funded to serve the community. If people are unhappy with what courts do, they should be absolutely free to have their say. But the time and quality from courts is that it would be better for everybody if the criticism was based on a reasonably complete understanding of what was actually decided, and the basis on which it was decided.

His Honour adds, ‘General deterrence can only work if decisions are properly made and openly communicated.’ The President’s view is that, since governments have a proper commitment to public confidence, they should take greater responsibility for publicising what sentencing courts do. This is vital if the principle of general deterrence is to operate effectively. Making this point in DPP v Russell,21 the Court of Appeal drew an analogy with the TAC’s successful road safety campaign.

Judges are not public relations experts, nor should they be.—He would like to see a collaborative approach where courts talk more fully what the Court does.

I appreciate the difficulty of providing information in readily digestible form to the media, let alone to ordinary members of the community. That’s really hard. The problem for courts is that we are not equipped, not funded, not trained to be publicists of our own work. It is not our job. There is a role for government to communicate what courts are doing.

Sentencing – a continuing challenge to communicate the Court of Appeal’s work.—Perceived lenient sentencing is a topic that leads to frequent criticism of the judiciary. If the public do not know what exactly produces the result, it can lead to misunderstanding. There is a great deal of pressure on judges, associated with the need to arrive at a sentence that sends the right message of punishment and denunciation but that also takes into account mitigating factors, such as mental illness, moderating the principle of general deterrence.

It is difficult for journalists, and members of the public, to plough through complex Court of Appeal sentencing reasons. The Court of Appeal tries to communicate its own decisions by publishing judgment summaries (akin to a media release) for appropriate cases. For example, the Summary for DPP v Daiplish [a pseudonym]22 announced, ‘The Court of Appeal today said that higher sentences were required in cases of repeated sexual assaults. There was then provided a brief summary of the Court’s reasoning for finding that sentences for incest were disproportionately low when compared with the yardstick of the maximum penalty of 25 years’ imprisonment. His Honour noted that this summary formed the basis of the Government’s campaign to raise surveillance activity to a new high, but also that he regarded this as insufficient. He also regards the principle of general deterrence to be effective, making this point in DPP v Russell,23 the Court of Appeal drew an analogy with the TAC’s successful road safety campaign.

The problem for courts is that we are not equipped, not funded, not trained to be publicists of our own work.24


3. See, for example, Mary Rusie, ‘Attacks on the judiciary by politicians weakens our democracy’, The Age, 5 February 2018.


8. Speech in Reply by Her Honour upon her appointment as Chief Justice, Supreme Court of Victoria, 10 May 2018.


10. Ibid [12].


17. The Herald Sun, for example, embedded a podcast of the sentencing remarks into its 11 April 2011 report.


Interview with Kerri Judd QC, Director of Public Prosecutions

CAMPELL THOMSON AND ANNETTE CHARAK

Victorian Bar News spoke with the new Director of Public Prosecutions, Kerri Judd QC, in her eyrie on the 9th floor at 565 Lonsdale Street. The surrounding new towers have disrupted what used to be good views in all directions. Despite 100,000 workers marching through the streets, chanting about work place laws, we managed to ourselves heard.

VBN: Did you have any sense of what you wanted to do and where you wanted to go before you went to uni?  
KJ: I knew I wanted to do a law course. I didn’t envisage that I would be a barrister. I had no contacts in law at all. I had no concept at all of what being a lawyer was. And I certainly wouldn’t have known who the Director of Public Prosecutions was. 1983 saw the first director appointed. That would have been when I was doing HSC.

VBN: So what drew you to law?  
KJ: My grades at school were good and I wanted to do something that could extend my brain. I liked the policy side of it. I don’t think I thought about being a lawyer but I thought about how law impacts on society. The other path was medicine/science but that wasn’t where I had any interest or skill.

VBN: Did you have any particular mentors who encouraged you to do law?  
KJ: I don’t think I really started developing any mentors until I went to work as a judge’s associate.

VBN: What was working with Justices Gray and Crockett like?  
KJ: I became a judge’s associate, not really thinking about being a lawyer but I thought about how law impacts on society. That was another scenario where it was difficult to get instructions. Having those experiences helped me formulate how government officials should respond to things, whether there should be apologies. It helped with getting through the evidence. Some of those witnesses were older men, who were just so broken. It was really upsetting.

VBN: Some solicitors deal on a day to day basis with child sexual abuse cases, which are stressful and can be damaging. Inherent in that is a work, health and safety issue. How do you cope with the stress of cases like that and stress at work in general? And how do you help other people cope with those sort of things?  
KJ: I cope by doing a lot of exercise. And I’ve found since I’ve started in this job that I haven’t had as much time to do my normal exercise and I’m getting grumpy! I swim, I use to run… I am too old now for too many injuries! I walk the dog. I do gardening. I see my family and friends as much as I can and they force me to talk about other things. I think well-being is very important and what the office has done is be very conscientious of well-being programs, so we have bring your dog to work day… only one dog per floor! We have Pilates…

VBN: Maybe a yoga class would be a good idea! Is there access to counselling or mental health support?  
KJ: There is. John Cain is the Solicitor for Public Prosecutions. He is my solicitor, he runs the office. I do not micro-manage that side of things, but I support all these programs. The other aspect to wellbeing though is to make sure that there is rotation. You don’t want anyone doing the same type of case day in day out and that is very important for managing stress.

VBN: Emily Wilson recently translated Homer’s Odyssey into English. She is the first woman to have done that. She was asked at the Sydney Writer’s Festival about being the first woman and she pushed that question aside and said that it is not her being the first woman that is interesting but what she, as a woman, brings to the task that those who have gone before her did not. What do you bring to this role that is different from what other Directors have offered?  
KJ: I think it enables me to act as a role model, it enables me to demonstrate that women can be in leadership positions, women can be the head of organisations like this. The other part of it is that it gives me a great opportunity to promote women and to assist in helping women reach their full potential. We are getting to a point where being a woman in this type of job is unremarkable with Chief Justices of the Supreme Court and the High Court, lots of women judges, Kristen Walker QC as Solicitor-General, a lot of silks. I think it leads to a different culture. Being the head of an organisation is about leadership. It is about systems, it is about training and it is about culture. I think just the women side ticks off on their own way of dealing with things I learnt a lot.

VBN: The central Australian experience must have been helpful in your role at the Royal Commission into Institutional Child Sexual Abuse, when you were acting for the State.  
KJ: When I was in Alice Springs, there were a large number of young boys who had been sexually abused. That was another scenario where it was difficult to get instructions. Having those experiences helped me formulate how government officials should respond to things, whether there should be apologies. It helped with getting through the evidence. Some of those witnesses were older men, who were just so broken. It was really upsetting.

VBN: Some solicitors deal on a day to day basis with child sexual abuse cases, which are stressful and can be damaging. Inherent in that is a work, health and safety issue. How do you cope with the stress of cases like that and stress at work in general? And how do you help other people cope with those sort of things?  
KJ: I cope by doing a lot of exercise. And I’ve found since I’ve started in this job that I haven’t had as much time to do my normal exercise and I’m getting grumpy! I swim, I used to run… I am too old now for too many injuries! I walk the dog. I do gardening. I see my family and friends as much as I can and they force me to talk about other things. I think well-being is very important and what the office has done is be very conscientious of well-being programs, so we have bring your dog to work day… only one dog per floor! We have Pilates…

VBN: Maybe a yoga class would be a good idea! Is there access to counselling or mental health support?  
KJ: There is. John Cain is the Solicitor for Public Prosecutions. He is my solicitor, he runs the office. I do not micro-manage that side of things, but I support all these programs. The other aspect to wellbeing though is to make sure that there is rotation. You don’t want anyone doing the same type of case day in day out and that is very important for managing stress.

VBN: Emily Wilson recently translated Homer’s Odyssey into English. She is the first woman to have done that. She was asked at the Sydney Writer’s Festival about being the first woman and she pushed that question aside and said that it is not her being the first woman that is interesting but what she, as a woman, brings to the task that those who have gone before her did not. What do you bring to this role that is different from what other Directors have offered?  
KJ: I think it enables me to act as a role model, it enables me to demonstrate that women can be in leadership positions, women can be the head of organisations like this. The other part of it is that it gives me a great opportunity to promote women and to assist in helping women reach their full potential. We are getting to a point where being a woman in this type of job is unremarkable with Chief Justices of the Supreme Court and the High Court, lots of women judges, Kristen Walker QC as Solicitor-General, a lot of silks. I think it leads to a different culture. Being the head of an organisation is about leadership. It is about systems, it is about training and it is about culture. I think just the women side ticks off on...
The leadership and ticks off on the culture.

I’ve got a good understanding of how a variety of Directors worked. I started at the Bar as junior to Bernard Bongiorno QC. I was then junior to Geoff Flatman QC and to Paul Coughlan QC. I saw the way each of them worked. And they all had a different way of dealing with things. Before I became a Senior Crown Prosecutor, I had a good 10 years of not doing any criminal law. A lot of things changed; a lot of things stayed the same. But I can look at things freshly. I have good knowledge of government law, administrative law, privilege and subpoena cases. I understand the way public interest immunity works. I’ve acted for the government in a lot of cases. So that makes it a good starting point in terms of relationships with other stakeholders.

VBN: Where do you see the OPP going in terms of size? We’ve got bigger prisons, more people getting arrested, more police. Are we going to need more solicitors at the OPP?

KJ: I think it is always growing. We rely on the Bar a lot. We have Crown Prosecutors but each day we brief about 80 external counsel.

VBN: What sort of cases do you see yourself appearing in now that you are the Director and you can pick and choose?

KJ: I would like to do some High Court cases. I would like to do some Court of Appeal cases when they involve matters of particular public interest and importance. We’ve got a whole raft of new legislation coming in. I’d like to be involved with some of those cases. For example, I would be looking at doing the first detention order application for serious violent offenders.

VBN: There is bound to be a case on standard sentences going to the Court of Appeal before long. Would you take that on as an issue?

KJ: That is the type of case that I would take on but Brendan Kissane QC as Chief Crown Prosecutor could do it, or Fran Dalziel who has been formulating where we are going with that body of sentencing law. We can also call on Chris Boyce SC for that sort of appellate work.

VBN: This role places you very much in the public eye. How do you feel about that side of your job?

KJ: I am adjusting to the public aspect of the role. I was much more used to working in the background. But I’m a good decision-maker and I know what the job requires. And this job really does represent the next stage of a career.

VBN: Thank you very much for your time.

The Crown
Essays on its manifestations, power and accountability

WITH CONTRIBUTIONS FROM THE HON JUSTICE STEPHEN Mc LEISH AND THE HON JUSTICE RICHARD NIALL

T he notion of the Crown, no less than the notion of the people, is a value-laden abstraction. Within a system of representative and responsible government, the two abstractions are intertwined. The notion of the Crown is capable of appreciation only in its relation to the notion of the people, and only then in the sweep of history and with an understanding of the practical working of democratic and administrative processes. Both notions bring with them a sense of unity and continuity. But it is in the notion of the Crown that there is captured that expectation of tempering privilege with responsibility which characterises our fundamental attitude to institutions of government. Because it is a notion that is not the product of the law, the Crown defies legal definition. Aspects of its operation and application have been described by lawyers, and aspects of its legal incidents and legal consequences have been identified. But its contours have never been mapped. Perhaps because it has defied definition, it has been a source of both fascination and frustration over many years to many lawyers, whose professional habit of mind has often led them on a quest for greater precision than the subject-matter of their study will bear. The subject-matter of this book is as deep as it is wide. Each author whose contribution appears in this book, through long study and experience, is extraordinarily well qualified to shed light on a dimension of it. Collectively, they do much to deepen our appreciation.

From the Foreword by the Hon Justice Stephen Gageler AC

The 2017 ACC Australia Benchmarks and Leading Practices Report draws on the data from previous reports and highlights a range of trend data that will shape the future of the in-house profession.

Whether you lead an in-house legal team, or service the in-house sector, this report delivers a range of information and will provide a crucial reference point into the future.

The 2017 ACC Australia Benchmarks and Leading Practices Report can be purchased via the ACC Australia site: acla.acc.com

The 2017 report includes the following sections:

• The external environment – the new normal
• The 21st-century General Counsel
• The 21st-century legal team
• The 21st-century legal function’s operating model
• The 21st-century legal function’s sourcing model
• The future of in-house

The latest instalment in this biennial publication features a range of essential data to improve the performance of small and large in-house legal teams.

The report has been compiled following a survey of over 300 General Counsel and Chief Legal Officers and interviews with over 20 General Counsel across Australia and New Zealand.
November 2017 was an historic day for Australia. The result of the controversial “Australian Marriage Law Postal Survey” was announced, with the “yes” vote a resounding win at 61.60%. Like many Australians, I threw a party at my home that night, to celebrate with friends and family. We celebrated the result, but we also celebrated having reached the end of what was (for many) an incredibly painful campaign.

I was involved as counsel in one of two High Court challenges to the postal survey. I will never forget the queues stretching down William Street when the challenges were heard by the Full Bench, sitting in Melbourne. I will never forget the unprecedented number of rainbow-coloured umbrellas confiscated by security at the entrance to the Commonwealth Law Courts Building. But this is not an account of the case. This is a personal account of the campaign that followed.

Challenging the postal survey in the High Court—and losing—seemed to have a remarkable galvanising effect on the “yes” campaign. No matter whether one felt that the process was right or wrong, lawful or unlawful, the collective mood seemed to be that with the challenge lost, the only option was to fight and in fighting to win. Like many others, I resolved the night of the High Court’s decision to dedicate myself in whatever way I could to the “yes” campaign, and embarked over the next few months on a whirlwind of fundraisers, rallies, community family days, house decorating, rainbow accessorising and the like. Bringing my stance on the survey into my workplace (in the form of a small badge, helping to arrange a fundraiser at the Essaiong and attending rallies) was unusual for me. As a young lawyer, I was cautioned to keep my politics to myself. Nevertheless, I decided to be quite open about my support for the “yes” campaign. For me, this was not a political issue. It was an issue of basic human rights. It was about the fact that a segment of the Australian population had been denied the right to marry solely on the basis of their sexuality, and that the postal survey represented a chance to change that. But more than anything, I looked at my two children—then six and three years old—and realised I wanted to look them in the eye as they grew older and be able to tell them that I had done everything I could to help the “yes” vote win. Many at the Bar felt the same way, and it was wonderful to see colleagues attending rallies, organising fundraisers or door-knocking.

I worried about the impact of the postal survey on my children. Their circle of family and friends includes many from the LGBTI community. To have a same-sex partner is so normal in their world that the word “gay” had never arisen or been discussed with my children. It would have been odd to make that point of distinction. Would I now have to discuss this with them, to explain for the first time that some people in Australian society did not think all people should share the same right to marry their loved one? I entertained the vain hope that I could get through the campaign without having to broach the topic, at least with my three-year-old. Yet the topic couldn’t be avoided. We live in the inner north of Melbourne and the suburb was quickly plastered...
with rainbows and “yes” campaign material as far as the eye could see. There was also the not-insignificant matter of a “no” campaign billboard prominently displayed within walking distance of our house. The discussion had to be had. As it turned out, both my kids threw themselves into the “yes” campaign with absolute enthusiasm. Spotting “yes” campaign material on houses as we walked or drove became a favourite pastime.

Despite the interest of my children in our suddenly rainbow-themed suburb as the campaign went on, I realised the very different experiences of the campaign of some of my LGBTI friends and colleagues. A number of close friends found the campaign incredibly hard. Some were particularly pained by the fact that family members or work colleagues were unexpectedly voting “no”. It was so very personal. Some found the “no” campaign’s focus on children to be particularly hurtful. Others found that the campaign was triggering long-buried memories of homophobic experiences. And the process was just so long. As the weeks of the campaign dragged on, many found it hard to maintain their positivity. It was, at its base, a horrible thing to have to go through, to have the country voting on whether you should have the same fundamental rights as your siblings, colleagues and neighbours. At the same time, other friends were finding the campaign to be a surprisingly uplifting experience. They felt it was bringing people together; LGBTI Australians found new allies, often where they least expected it. These divergent experiences were reflected on the night of the survey result.

The Victorian Bar knows how important the mediation process is. We’ve put our experience and knowledge into creating the right space to support parties through mediation.

“...and the survey had to happen at all. Sadness that the “no” campaign had been so hurtful to so many. But here we are, six months later. Whether it should have occurred by way of a postal survey or not, the survey happened and the “yes” vote prevailed. Legislation was passed, and marriage equality is now a reality. I am not one of those who believes that the result retrospectively justifies the process. But that is now nothing more than an interesting discussion point. What matters is that the denial of the right to marry because of sexuality is now a matter of history (and becoming more distant history by the day). The denial of marriage equality is something future children will find impossible to understand. Sitting at my desk a few months ago, an email popped up on my screen: a “save the date” for a wedding day. Two dear friends—together for years and previously not able to take this step—announcing they are to be married. At that moment, for me, it was all worth it.”
The real game changer came with the 'free to air' online law reporting services (eg Austlii, BarNet JADE, NSW CaseLaw, etc). Although said to be free, at least some come at an indirect cost through Government grant funding.

The availability of free to air publication of legal judgments may be described as contributing to the 'democratisation' of the law. That is, it contributes to a system of justice administration that is both more transparent and more accessible to citizens. In that regard, my view, these developments are to be welcomed.

That 'democratisation' has been made possible because of the coincidence of a number of factors in the late 20th and early 21st centuries. Those factors include:

First, the increasing and now universal practice of judicial officers producing written judgments in a digital form capable of being uploaded to an online platform immediately following delivery, checked by those who authorised them.

Second, the funding for and construction of online internet platforms widely and freely accessible across the world-wide web; and

Third, and in tandem, the development of powerful search engines capable of being applied to the vast databases of judgments stored on those platforms using various kinds of search parameters.

But this democratisation has led to something else—something which takes us back to a characteristic that was prevalent in the early 19th century. The massive take-up of free online legal databases, as a tool of convenience, is contributing to de-systematisation of the reporting of judgments. The online, free to air databases do not generally organise the material on any topical basis. No selection is made of what is to be reported, other than by the individual judicial officers who cause them to be uploaded.

Important decisions advancing legal principle are reported alongside humdrum decisions of fact involving no application of principle, all in one undifferentiated mass. This situation may be described as a new form of 'hotch potch'.

These forms of cross-linking to other databases, and in particular the search engines, have made innovative developments in authorised law reporting. As with the changes brought about in the mid-19th century, the modernised model that each of them has adopted emerged from and involves a close association between the law reporting process and the profession itself. All three have staked themselves as leaders in meeting the present challenges. Against the trend of de-systematisation, each has sought to preserve and revitalise the important role of authorised law reporting for the systematic development of the common law by the principled selection and reporting of authoritative decisions. Each has responded innovatively to technological challenge and changing consumer demand, including by first publishing cases online and by providing various means of access and subscription models, including ‘pay-per-view’.

The journey is not over, of course. Speaking locally, for example, even more can be done to achieve connections between the various repositories to reflect and enhance the development of the ‘one’ common law of Australia. There is ongoing conversation nationally on this issue.

1. Judge of the Trial Division of the Supreme Court of Victoria, Chair of the Council of Law Reporting Victoria, Chair of the Law Library of Victoria. Speech given on 10 May 2018 at the ‘Autumn Drinks’ function in Melbourne to celebrate developments in the reporting of authorised law reports published by the Incorporated Council of Law Reporting (England & Wales), and the Councils of Law Reporting in NSW and Victoria.


4. A general account of the landscape of authorised law reporting in Australian jurisdictions to the end of the 1990s, together with the usual rationale given for authorised law reporting and the stages through which the reporting process passes, is given by Nada J Manton in ‘Law Reporting and Risk Management Citing Unreported Judgments’ (1998) 17 Australian Bar Review 84.


6. Hutchinson, 586.

7. https://www.iclr.co.uk


Lost in transcription: covert recordings

PETER A GRAY

We often mishear the lyrics of songs. How many of us heard repeatedly Jimi Hendrix singing, “Excuse me while I kiss this guy”, when all he wanted to kiss was “the sky”? We are often surprised to be corrected, because we are certain that what we have heard is what has been sung.

Misheard utterances in recordings have been called “Mondgeerms” (‘laid him on the green’), “Lady Mondegreen”8, “pullet surprises” (after the famous American literary awards)9 and “headless whores” (because of a mishearing of “head lessor” in a dictated letter).10

The recordings we mishear are made under ideal conditions, often in studios, with the best recording equipment. How much easier it must be to mistake something said when a conversation is recorded through a hidden microphone. Covert recordings from bugging devices are used often in criminal proceedings. These recordings are made in conditions that are far from ideal. The sounds of TV or radio and the myriad noises we make in our ordinary lives, which our brains filter out as “white noise”, are preserved along with the utterances the police are hoping will provide evidence of culpability. Speakers are rarely facing, or even close to, the microphone. They are not trying to enunciate clearly, as if they were in a recording studio or speaking into a dictating machine.

In most cases, simply inviting the jury to listen to the recording would be a waste of time. Juries would be unlikely to hear anything meaningful. Following Butera v Director of Public Prosecutions (Vic), the practice is for the police to prepare a transcript, which is given to the jury to assist them in listening to the recording. The police who have prepared the transcript are said to have become “ad hoc experts” on the recording, by means of repeated listening to the recording, they have developed an understanding of what was said. Often, much is made of the fact that the recording has been “enhanced” by an audio engineer (although the jury is given the original, as well as the enhanced version). Science has moved on since Butera. We now know that repeated listening does not make the indistinct clear. Transcribing speech is a very specialised skill. It is the result of the training in the ways in which the various sounds of language are produced (phonetics) and how those individual sounds (phonemes) are put together to construct speech (phonology). It requires long experience of making transcripts, before anything like accuracy can be expected.

Police have neither the training nor the experience to do the job properly. What they do have is background knowledge of the other evidence revealed by the investigation of the alleged offences, and a keen ear for anything that might add to that evidence. It is easy for them to become convinced that they have heard inculpatory utterances and to include those utterances in their transcripts.

Enhancement of a recording is possible. It is used to make music more pleasant to listen to (especially when remastering old recordings). It cannot make indistinct speech more distinct. You can test these propositions easily. In a NSW case, a father and son were convicted of murdering the former’s father, who was the latter’s grandfather. The father denied being a party to the murder. He admitted to having failed to call the police after his son told him what he had done, which would have made the father an accessory only. One minute, out of about 38 minutes, of an enhanced covert recording used in the case is available online11. Chances are you won’t understand any of it.

Once you are told that the excerpt includes the father saying to his son “At the start we made a pact”, you are very likely to hear those words. The prosecutor made much of this alleged admission in the case. The prosecutor, the defence counsel, the judge and the jury all accepted that the father said these words. They “heard” them, just because they were shown the police transcript of the recording. This is a phenomenon known as priming. Once you have been primed, it is very hard to change your mind, just as the misheard lyrics tend to stay with you, even if you have been told the correct version.

Independent researcher Dr Helen Fraser is an expert in phonetics and phonology. She says those words are not there. The sounds, the rhythm and the cadences do not match such an expression. She is not certain what was said, but something like, “It was fuck’n’ payback” is more likely. Dr Fraser has conducted experiments with audiences, priming them with first one, and then the other, suggestion. Priming is almost 100% effective and is very hard to undo. If you are briefed in a case involving a police transcript, don’t accept the accuracy of the transcript. Ask for an expert in forensic transcription.

To avoid the risk of priming, don’t brief the expert on the facts or provide the police transcript until the expert asks for it. The expert’s evidence might help you to exclude the police transcript from the evidence, which might be an important step in defending your client.

If you are interested, you can read a New Zealand case in which part of a recording was excluded from the evidence, because experts on both sides were agreed that the defendant had not uttered an admission a policeman thought he heard in the recording.12

3 Young, R ‘Headless Whores’ (2011) 85 ALJ 330
4 (1967) 164 CLR 180
Acronyms, ‘pre’ and ‘post’ nominalis et al

DR BRYAN KEON-COHEN AM QC, PH D (MON), LLM, LLB, BA (MELB) DIP ED (MON)

W ith the last Ron Castan, AM QC, Bryan worked tirelessly on the landmark Mabo litigation for more than 10 years, representing the Murray Island plaintiffs. The opportunity arose only after being admitted to the bar, when Bryan received a phone call from Ron asking if he would be interested in working on the case. They had known each other for a few years, prompted in part by Bryan’s unsuccessful attempt to read with him. Bryan had previously worked as a lawyer at Monash Law School, and at the ALRC in Sydney, on its reference concerning the recognition within the general legal system of aboriginal customary law. He was, in his own words, “very cheap.” An important legal journey therefore began, culminating in the historic High Court decision handed down in 1992. In 2016, after a career of 35 years of tireless work, Bryan retired from active practice (or was “re-directed” as he puts it) and has, after all, developed a sense of the ridiculous about things like the art and science of nominalis—of which he bears a few.

I prefer to use the term ‘re-directed’ rather than “retired” to describe my on-going (but carefully disguised) existential crisis. After a busy professional career driven daily to produce work efficiently and meet deadlines, the change of pace needs, I think, to be recognised and managed, with appropriate adjustments.

I consider myself fortunate to have long held interests, held in abeyance for 40 years or so, to continue to pursue, being interests completely outside the law—especially writing fiction. Sadly, to date, no self-respecting, or any publisher wants my stuff (cf the much-published F Dostoevsky, held in abeyance for 40 years or so, to continue to pursue, recognised and managed, with appropriate adjustments).

54

doing nothing—a serious skill to be fostered and pursued for the ridiculous number I seem to have collected. In my humble opinion, those who rely on or emphasise their would be much happier frequently, not the Essington Club, but London’s West End clubs, whose members still crave invites to Royal weddings.

Acronyms are increasingly prevalent, however, everywhere. They reflect various factors, which include, at best, a need for concise expression given limited space, or a method of efficient communication amongst a discipline-based working group, keen to get to the point, at worst, an opaque and impenetrable club-speak by members intent on secrecy or obfuscation, a craving to belong by participating in a made-up language that excludes others, and an increasing community practice where language is optional and acronyms become a bridge between words and those cute emojis as a means of communication.

Having become familiar with the Urban Dictionary as part of my re-directed creative life, I’ve turned my mind to deconstructing ‘legal’ acronyms as a useful guide for those time-poor practitioners seeking a moment to relax and ROFL (for the meaning, refer below).

Acronyms essential for the Essington Club and other suitable locations

A-G Aka politician, first lawyer of the Crown. Sits in parliament, supposed to know a bit of law, appoints Js, so good to buy the A-G a G&T.

Aka Also Known As. Used by criminals, often.

ALRC Australian Law Reform Commission. Sydney-based, so not recognised in Victoria. Produces valuable reports rarely implemented by A-Gs, especially if a report was commissioned by a predecessor now in opposition (my personal experiences influencing this one—Big-time gong. Usually received from the G-G; envious of AG and AC. As to G-G, AC and AC, for space reasons, go to Google.

Cf Important demonstration of intellect (short for the Latin: confer/conferatur, both meaning “compare”). Use often in Essington to secure your briefs.

CLR Commission decisions of the High Court. See also, eg, VLR, NSWLR, ALJR, SLSJ, UoB, News etc. All increasingly digitised, unavailable in hard copy so query how they are remain to read and recall.

OMG, if I don’t find Vol. 41 of the CLRs, I won’t make it to the Q to watch the Big Briefs with you et al

OMG You had to look it up? The Mighty Melbourne Football Club, of course. Use more frequently in Essington Club, given recent on-field success.

Dr, PhD, LLM, etc Academic concepts used to terrify students, until acquired by said students who then feature them on LinkedIn and Facebook.

Et al Short for et alia, which doesn’t help much.

Etc Ibid, for et cetera, which helps even less.

G Sporting shine, holy of holies. The Stones also played there once (bad acoustics); the mighty Ds won a flag there, actually, back in...?


J The most useful post-nominal for cutting into queues.

Loitering Long-established, honourable tradition of pinching other counsel’s briefs (plural) at Owen Dixon Chambers front steps. Essential for survival, at all career stages.

LOL Laugh Out Loud. Used by Gen Y to fill in screen space on smart-phones. See also ROFL.

LGBTIQ+ Not to be confused with LGBTIQIA+. A bit all mysterious to cis-male PC baby boomers who never inhaled during the 60s.

OMG Oh My God. Expression of alarm favoured by Gen Y/ Millennial types, increasingly used by baby boomers. Now included in the QS. Yes, really.

PC Politically Correct, cf Privy Council (UK), cf Prince Charles, cf Personal Computer.

Pro bono The public interest, aka poverty trap.

Punters Derisory colloquialism, aka great unwashed, hoi-polloi, ripped off consumers, bank customers, party faithful, and lawyers’ clients who, actually, pay the bills.

QC Much classier than SC, presumably because of the letter ‘Q’. Actually, depends who’s sitting on the (UK) throne. Roll on Floor Lauging.

ROFL Not a QC.

Sine die Used by courts to demonstrate commitment to plain English in the 21st century when concluding a hearing.

Soly-G or S-G Solicitor-General, senior law officer appointed to advise a government. Traditionally enjoys independence to enable full and frank advice, with the occasional fracas that does not bear repeating here.

Viz With or without a full stop is short for the Latin videlicet, and used as a synonym for ‘namely’, ‘that is to say’. To wit, or as follows.

VCCL aka Liberty Victoria. Fights for your rights, silks often elected President (eg, Castan). Needs donations, good for networking and (pro bono) briefs.

WTF Used to express astonishment, relieve tension, be sociable and trendy when otherwise lost for words. Candidate for Macquarie Dictionary, but not yet the OED. (If meaning unclear, see Urban Dictionary online or any human under 25 years of age.) Heard often in Essington.

XYZ name withheld for legal reasons.

Punctuation mark, useful in written submissions. Shows [also] it’s time to stop.

1. See also C Ford, “The Power of Sentences”, (2016) U/L (May), mentioning His Honour writing as “therapeutic outlet” and “auto-biographical series” published in Monash. Does he ever sleep?

2. See also F Kafka, The Trial, (1925); H Lez, A Kill at Buchangelod (1900); H Gaiman, The First Stone (1999); And see Peter Gray’s article in this issue.


NEWS AND VIEWS
Cottage by the Sea is a non-profit, non-government, registered children’s charity in Queenscliff, Victoria, supporting disadvantaged young people in a positive, healthy, seaside environment. Our vision is that every child deserves a happy and a healthy childhood.

We offer children and young people inspiration, fun and opportunity through diverse programs offered in a wide range of environments. During their camp experience, we provide opportunities for building positive relationships with peers and adult role models to help participants learn and grow.

Help us provide children with inspiration, fun and opportunity by donating online at www.cottagebythesea.com.au or by calling (03) 5258 1663.

Cottage by the Sea, Queenscliff Inc. is endorsed by the Australian Taxation Office as a Tax-Deductible Gift Recipient. Donations of $2 or more are tax-deductible.

cliche corner

Peter Heerey

George Orwell’s famous six rules for good writing advise us:
1. Never use a metaphor, simile, or other figure of speech which you are used to seeing in print.
2. Never use a long word where a short one will do.
3. If it is possible to cut a word out, always cut it out.
4. Never use the passive where you can use the active.
5. Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent.
6. Break any of these rules sooner than say anything outright barbarous.

The first rule is, of course, about the cliché. Apart from their irritation factor, one feature often found with clichés is that they convey an exactly opposite meaning to that of their origin.

Some examples:
“During the by-election campaign, the Party Leader was missing in action.” The writer wants us to understand that the Party Leader was obviously absent from the campaign.

Yet the expression has its origin in a military context. The person in question has not returned from battle. He must have been killed, wounded or captured. The assumption is that he has been in the battle in the first place.

“The Government’s plan begs the question where the money is going to come from.” So there is a question which requires an answer.

However, in its origin, the expression refers to an implicit assumption underlying the question eg “Did Jane wear her blue dress to the dinner last night?” This begs the question whether Jane was at the dinner.

“This is a custom which is more honoured in the breach than the observance.” So it is a good custom which, regrettably, is not much followed.

The phrase comes from Act I Scene iv of Hamlet. On a cold night, Hamlet and Horatio are on a platform outside the castle at Elsinore. From inside the castle there are the sounds of trumpets and a cannon firing off. Horatio asks Hamlet what this means. Hamlet explains:

The king doth wake to-night and takes his rose,
Keeps wassail, and the swaggering up-spring reels;
And, as he drains his draughts of Rhenish down,
The kettle-drum and trumpet thus bray out
The triumph of his pledge.
Horatio asks “Is it a custom?”
Hamlet replies:
Ay, marry, is’t
But to my mind, - though I am native here
And to the manner born, - it is a custom
More honour’d in the breach than the observance.
This heavy-headed revel east and west
Makes us traduc’d and tax’d of other nations;
They clepe us drunkards …
So it is a bad custom, which it is more honourable to breach than to follow.

In any Olympic cliché contest today, “iconic” would be the unbackable gold medal favourite.

Writing in the Age (18/1/18) Terry Lane asks whether the following have anything in common: Airbus A380, Violet Crumble, Akubra hats, Ferrari, Broome camels and Tchaikovsky? It seems that they are all “iconic.” This is so despite the lack of any obvious connection with Greek or Russian Orthodox religious emblems.

Are there any degrees of iconicism, so that something, or someone, might be slightly, or marginally, or allegedly iconic, or even non-iconic?

Lane suggests that the iconic W S Gilbert might have said in the iconic Gondoliers, “When everything is iconic then nothing is an icon.”

I discussed this conundrum with a friend Anon (a descendant of the well known poet), who commented as follows:

The use of adjective “iconic” has spread like former plague Bubonic, Applied with ruthlessness Teutonic.
There’s surely need for some good tonic Expressed in style that’s quite laconic With undertones that seem ironic. No longer must we wait in vain It’s been supplied by Terry Lane.
Following on from the highly successful London 2016 International Commercial Law Conference (‘London2016ICLC’), at which Chief Justice Warren and Lord Clarke were keynote speakers, on Friday 21 and Saturday 22 September 2018, CommBar in conjunction with members of the Hong Kong Bar will be conducting an international commercial law conference at the Four Seasons Hotel in Hong Kong (‘HK2018ICLC’).

The theme is ‘Wise Counsel: Litigation and Arbitration in the Asia-Pacific Region’. There will be eight business sessions addressing important areas of current interest to commercial barristers and judges, and two social events to promote networking amongst conference delegates. The purpose of the event is to showcase to members of the legal profession and consumers of legal services throughout Australia and abroad, that Melbourne is a centre of international excellence in the field of commercial dispute resolution, and to highlight the role of our judiciary and members of CommBar in contributing to Victoria’s growing reputation as Australia’s premier legal state.

Keynote speakers to date include: The Hon Justice Middleton of the Federal Court of Australia, The Hon Mr Justice Geoffrey Poon of the Court of Appeal of the High Court of Hong Kong, The Hon Justice Riordan, Principal Judge of the Commercial Court of the Supreme Court of Victoria and The Hon Chief Judge Alstergren of the Federal Circuit Court of Australia, in addition to a leading Chinese jurist (to be confirmed as at the date of publication). Leading members of the Victorian Bar and the Hong Kong Bar, as well as members of the English Commercial Bar will also be participating in the conference as speakers and panellists.

Key dates:

**Friday 21 September 2018**
HK2018ICLC Business Sessions – Four Seasons Hotel, Central
0930-1645 (Dress: Lounge Suit)
The Rise of the International Commercial Court (Plenary Session)
Morning Tea
After the Apocalypse: Re-regulation of the Banking and Financial Services Industries
Lunch
Arbitration on the One-Belt, One-Road: Enforcement of Arbitral Awards in China
Afternoon Tea
International Arbitration in a Tri-Polar World
HK2018ICLC Gala Dinner – China Club, Central (Dress: Black Tie)
1900-2230

**Saturday 22 September 2018**
HK2018ICLC Business Sessions – Four Seasons Hotel, Central
0930-1645 (Dress: Smart Casual)
Managing Big Data: Profits and Privacy
Morning Tea
Words Without Borders: Defamation and the Internet
Afternoon Tea
The Bottom Line: The Value to Clients and Courts of the Independent Bars
HK2018ICLC Drinks Reception – TBA (Dress: Smart Casual)
1730-1930

Over 100 people are expected to attend, comprised of commercial judges and barristers, as well as solicitors and in-house counsel, from Australia, Hong Kong and England. To date, over 100 ‘expressions of interest’ to attend have been received from members of the Victorian Bar alone. The HK2018ICLC is also suitable for Victorian CPD accreditation.

Another feature of the HK2018ICLC is the Young CommBar speaking competition at which Counsel under five years’ call will compete for the opportunity to participate in one of the business sessions of the conference. The winner will also receive free conference registration, and a return flight to Hong Kong.

The subscription for the HK2018ICLC is very competitively priced: AUD$1,995 per delegate, inclusive of all activities and catering; AUD$1,995 early bird rate, available until 30 June.

For more information about the HK2018ICLC and to register, visit: www.hk2018iclc.com
彼得·维克利教育于墨尔本 Grammar, and graduated with a Bachelor of Laws from the University of Melbourne in 1971. He served articles with Hugh Graham of Madden, Butler, Elder & Graham, and was admitted to practice in August 1973. He was a foundation volunteer at the Fitzroy Legal Service in his articles year; and remained so until 1980. After completing an MA at King’s College London he attended the Bar for more than 30 years, just over 12 of those years as Queen’s Counsel. He began at the Bar in challenging times in 1974. He emerged from what he once described as “the age of want” as, in his words, “a child of the age of Renaissance” when he took Silk. His Honour had a broad practice in common and administrative law, engineering, environment and planning law. He also practised in arbitrations (such as the Collins Class Submarine Arbitration) and in court-appointed references in his specialist area of engineering and construction law.

During his time at the Bar he contributed to the broader community. He was a founding member and member of the Butterfly Foundation (a charitable foundation that supports young Victorians with eating disorders). He was a member of the leadership council of Whitehill (a mentoring and employment program for young people out of home care or in the youth justice system). He also worked with the International Commission of Jurists, including coordinating various governmental agencies to gather evidence of crimes against humanity in East Timor. He worked with the International Commission of Jurists, including coordinating various governmental agencies to gather evidence of crimes against humanity in East Timor. He was the ICJ Special Rapporteur in relation to the situation of David Hicks, Guantanamo Bay of crimes against humanity in East Timor. He was the ICJ Special Rapporteur in relation to the situation of David Hicks, Guantanamo Bay of crimes against humanity in East Timor. He was the ICJ Special Rapporteur in relation to the situation of David Hicks, Guantanamo Bay of crimes against humanity in East Timor. He was the ICJ Special Rapporteur in relation to the situation of David Hicks, Guantanamo Bay. This became the longest civil case in Tasmanian legal history. After being appointed to the Trial Division of the Supreme Court in 2002 he showed a Lord Denningesque penchant for writing engaging opening paragraphs. An exemplar can be found in Nurnberg Court v Riskon (2011) VSC 136. “Kahuna” is a Hawaiian word which can be used to describe a ‘priest, sorcerer, magician, wizard, or expert in any profession’. ‘The Big Kahuna’ in surfing language can be traced back to the 1955 film Gidget, where the name was applied to the leader of a group of surfers. Surfing is a pleasurable pastime, but it is well stocked with chance. Sandbars, rocks, reefs, marine creatures and perhaps above all, other surfers, combine with the ever-present challenges of unpredictable wave patterns. Considerations such as these, no doubt inspired adoption of the name ‘The Big Kahuna’ by certain syndicates of investors in the Australian lottery known as “The Big Kahuna”.

One of his legacies to the Court was establishing a specialist Technology, Engineering and Construction List in the Commercial Court. We wish him well in his retirement.

I have had the pleasure and privilege of being a friend of Mark Whittamore for five years. One of us would care to remember. I can say without fear of contradiction that the table was both interesting and eclectic. It is unnecessary for me to add to the complimentary addresses already given regarding his Honour’s legal ability and achievements. The independence and learning which Mark brought to both his profession and the benches upon which he sat is obvious. One need only pick up any volume of the Commonwealth Law Reports or State Reports of the 1970s onwards to realise the contribution he has made.

His Honour has for many years reminded me that the Court of Appeal is assisted by trial counsel’s appearance in determining the complex forensic matters in which it is called upon to consider. I have for many years reminded his Honour that since the unfortunate counsel will undoubtedly be pinned to the wall by an uncomfortable thought that he or she made a tactical decision, I have no wish to join the display. There, at least, we must agree to differ. What could be said is that you would always be assured of a courteous reception and reminded when appropriate that it is usually of service to start with your points and limit the other ones to interesting meeting examples for trusting law students.

He has also contributed for many years both academically as well as teaching when his time commitments permitted. He possesses a somewhat puckish sense of humour that is not always readily apparent to those who appear before him. His Honour is an excellent bridge player and I believe sensible enough to avoid the obvious risks which exercise tends to involve – a clear indication of a superior mind and fitness for judicial office.

Mark’s wife Rose and I have the common goal of the Chinese lad now aged 14, but I suspect the mental age of 80 and an IQ of depressingly high levels – who once returned home having paid a visit to Mark and family “How did you go, Andrew?” I asked to receive the reply “I like talking to uncle Mark, it’s like dancing. You have to pay attention or you end up somewhere else”. I’m delighted, but entirely unsurprised to see that Mark is returning as a reserve judge. Indeed, the loss to the bench would be significant had he failed to remain. I hope he has more time for travel and reading – pursuits I know that he enjoys.

I wish him and his family well in his retirement and hope to see more of him. If MacIavelli will forgive me, this is certainly one Prince I am prepared to place my faith in.
The Honour Judge Caroline Kirton

Bar Roll No. 2568

Judgment Day

J udge Kirton completed a degree in Law and Arts, at the University of Melbourne. At the time, her Honour had half an eye on joining the foreign service. Instead she chose the law denying the Australian people, and perhaps the people of Beijing, the chance to engage in a career which former UN Secretary General Kofi Annan once described as "problems without passports". She also completed a Master of Laws at Monash University. Her Honour began life as a practitioner at Phillips Fox, now DLA Piper, where she worked under Michael Salter. After little more than a year, she was offered working briefly for firms in Mount Isa and Hervey Bay. She came to the Bar in September 1990, reading with Peter Murdoch and Andrew Poole in QC’s. Her Honour took silk in 2011.

Much of her practice focused on matters to do with large construction projects, which she downplayed, describing the work as "not very interesting". But the breadth of expertise she gained from acting in complex litigation of such significance as the construction of Southern Cross Station cannot be minimised.

Her Honour has always been interested in the practice of family law something which will certainly serve her well in her new role. And she was much sought after in the field, often used to arbitrate. Her Honour has even achieved the unusual feat of combining in the one matter mediation, arbitration, construction and family law.

Another stand out feature of Judge Kirton's career is the sheer volume of committee and other appointments in aid or enhancement of the profession, particularly at the Bar.

Consistent themes do emerge: equality, diversity, helping those with fewer opportunities, and helping everyone do better work. Her Honour draws the important conclusion, that the one hand, diversity and inclusion on the other. She hastens to add that this does not mean equality, and in particular her Honour has been achieved. But her Honour believes that we must also focus on greater inclusion based on other characteristics in addition to gender, such as ethnicity, LGBTQI status, and other measures of diversity.

Judge Kirton has also been an advocate instructor for the Australian Advocacy Institute, the Australian Bar Association and the Bar Readers’ course. Advocacy work has taken her abroad, to Papua New Guinea, Samoa and, perhaps most notably, to Bangladesh, where she was mobbed because of her blonde hair. The collapse of either believed she was Princess Diana Spencer, or found her a sufficiently good facsimile to merit the attention. As a mark of her advocacy training in our region, she took on two readers from Papua New Guinea.

Her Honour is known for her enormous capacity for hard work. Her professional, and professional extracurricular, commitments account in large measure for the tight and demanding schedule. So too, does her hands-on commitment to two teenage daughters and a son in her early 20s. He may now be more independent, but otherwise her Honour is engaged in attending a whirlwind of ballet and other classes.

Her Honour loves to travel and to engage in pursuits well beyond the law, like reading and going to the theatre and the opera. She is super smart, remarkably poised under pressure, and generous with her time as a mentor, especially of young women. There is no doubt about her capacity to jugg the smallest of rabbits.
through discussion with colleagues in chambers. Not for him preparation in the silence of an undisturbed tomb Counsel in his Honour’s court may find that he is occasionally interrupted by the seductive and wide-ranging. His wide experience will allow his Honour to bring a fresh perspective on many a legal issue. His Honour is a master of craft and the nuts and bolts of bringing a case to bearing, and has already heard and determined some matters at first instance. His Honour is a welcome sight to be greatly missed as a colleague. The Bar wishes him all the best for the next stage in his career.

BOB VERNON, who appeared for one of three accused. Vernon branded us Jews 1 and Jews 2, which was all very funny until I started humming the theme from the movie - at which point John lost his composure and Bob lost his temerity. In the mid-1990s, we were briefed by the Commonwealth to prosecute a significant tax fraud in the ACT Supreme Court. We spent a long time together, including shopping together in the local supermarketers, and much to his embarrassment. It was during that case, over numerous beverages in the Ansett Golden Wing lounge, that we both asserted we could play musical instruments. So began the Lex Pistols.

I am very pleased for John and for the Court on his appointment. His career at the Bar is marked by the very best people professionally. They also need to hold their end up socially. Matt hit the mark on both fronts. Alex closely guarded his professional and personal relationship with Matt, and it took time before I could discover what all the fuss was about.

John Champion
Bar Roll No. 1349

The Hon Justice
John Champion
Supreme Court of Victoria
Bar Roll No. 1349

because we are friends, as well as colleagues. I had hoped that John Champion would be appointed a judge of the Supreme Court before my retirement, which is imminent. He made it His Honour’s appointment was announced in December 2017 and he was appointed judge of the Criminal Division of the Court. When he asked me, as Principal Judge of the Division, what he should do now, I told him to go on holidays. He immediately complied. I first met John in the 1980s when briefed by the Victorian DPP to prosecute a drug trial. I barely knew who he was. But he ‘came with the brief’ as my junior, and I suspect that was because I succeeded Graeme Morris QC in the trial. John read with Graeme and they had a high regard for each other. I soon discovered a tightly reserved conscientious and impeccably fair barrister who rarely if ever, lost his cool. In the trial however, he was put to the test because we were taunted constantly by the legendary Sunshyne at the dawn of the 60s to a recently migrated Kiwi carpenter and a florist from Geelong, her Honour took John’s trial-blazed her path to the Court, while giving assistance to those in need along the way.

Her Honour’s secondary education was at Atuna North High School and then at Geelong College where she was in the first year of girls enrolled in the senior school—one of seven girls in a class of 133. Undaunted, Her Honour was appointed a prefect, rowed in the first four and played in the first softball team. It was a hop, step and jump to the Bar, university while at Ormond College, articles at Holding Redlich and then, after a year as a solicitor, straight to the Bar; reading with Tony Southall and John Karkar (both now QC).

From then, both her Honour’s community service and her planning practice flourished. By way of example, her Honour served on Bar Council for two three-year terms. She chaired the Equality and Diversity Committee and the Commercial Bar Association Environmental Planning and Local Government Committee; and was a founding member of the Women Barristers’ Association. Her Honour also contributed to the community of Geelong, where she was appointed Chair of Performing Arts Trust Arts and served for years on the Geelong College Council. Closer to home, she also taught at the University of Melbourne in various planning-related courses for 13 years. Throughout her career at the Bar, her Honour has shouldered the burden of many massive trials with expertise, enthusiasm and dedication. Examples include her years of work in the Casey landfill gas case, many wind farm cases in the Ballarat district, as well as many successful Supreme Court cases such as the Abbotsford Convent case and the Newport Women’s Housing development matter.

Nothing of her Honour would be complete without reference to her love of the Cats and their superstar ‘Lingy’ and oh her, husband, Hugh, and son, Darcy. Justice Quigley was a cherished mentor of the Bar as a mentor and role model. She has been a positive force for equality in the law and in the law We will miss her but wish her every success in her next challenge.

JENNIFER BATGROJUEY Q.C.

The Hon Justice
Matthew Connock
Bar Roll No. 2837

I met Matt Connock when he was a junior barrister briefed by Alex Wolff in the long-running Silvertone case, arising from the collapsed Silvertone building in Canberra. Alex then was a solicitor at Mallesons Stephen Jaques. Alex was my colleague and friend, and would have been the very best role model. She has been a positive and son, Darcy.

Matt’s friendship with Philip Crutchfield QC started when they were both articled clerks at Mallesons. They worked in London at the same firm, Cameron Markby Hewitt. They found themselves sharing rooms on the same floor at Joan Rosanove Chambers for many years after an early stint in Owen Dixon West. They then moved together to was appointed a silk in 2003.

Working with Matt was a privilege and a pleasure. He is personable and fun, smart and kind to junior solicitors, and has a clarity of thought that makes you realise why he is Matt Connock and you’re not.

He also had an encyclopaedic knowledge of the law. He was a junior barrister briefed by Alex Wolff in the long-running Silvertone case, arising from the collapsed Silvertone building in Canberra. Alex was then at Redlich, and then, after a year as a solicitor, straight to the Bar; reading with Tony Southall and John Karkar (both now QC).

From then, both her Honour’s community service and her planning practice flourished. By way of example, her Honour served on Bar Council for two three-year terms. She chaired the Equality and Diversity Committee and the Commercial Bar Association Environmental Planning and Local Government Committee; and was a founding member of the Women Barristers’ Association. Her Honour also contributed to the community of Geelong, where she was appointed Chair of Performing Arts Trust Arts and served for years on the Geelong College Council. Closer to home, she also taught at the University of Melbourne in various planning-related courses for 13 years. Throughout her career at the Bar, her Honour has shouldered the burden of many massive trials with expertise, enthusiasm and dedication. Examples include her years of work in the Casey landfill gas case, many wind farm cases in the Ballarat district, as well as many successful Supreme Court cases such as the Abbotsford Convent case and the Newport Women’s Housing development matter.

Nothing of her Honour would be complete without reference to her love of the Cats and their superstar ‘Lingy’ and oh her, husband, Hugh, and son, Darcy. Justice Quigley was a cherished mentor of the Bar as a mentor and role model. She has been a positive force for equality in the law and in the law We will miss her but wish her every success in her next challenge.

JENNIFER BATGROJUEY Q.C.

The Hon Justice
Michelle Quigley
Bar Roll No. 2347

Justice Michelle Quigley is the quintessential all-rounder who is up for any challenge sent her way. It was no surprise then, that she was appointed to the Supreme Court in December 2017. Born in

SUNSHINE AT THE DAWN OF THE 60S TO A RECENTLY MIGRATED KIWI CARPENTER AND A FLORIST FROM GÉEONG, HER HONOUR TOOK JOHN’S TRIAL-BLAZED HER PATH TO THE COURT, WHILE GIVING ASSISTANCE TO THOS IN NEED ALONG THE WAY.

HER HONOUR’S SECONDARY EDUCATION WAS AT ATUTA NORTH HIGH SCHOOL AND THEN AT GÉEONG COLLEGE WHERE SHE WAS IN THE FIRST YEAR OF GIRLS ENROLLED IN THE SENIOR SCHOOL—ONE OF SEVEN GIRLS IN A CLASS OF 133. UNDAAUNTED, HER HONOUR WAS APPOINTED A PREFECT, ROWED IN THE FIRST FOUR AND PLAYED IN THE FIRST SOFTBALL TEAM. IT WAS A HOP, STEP AND JUMP TO THE BAR, UNIVERSITY WHILE AT ORMOND COLLEGE, ARTICLES AT HOLDING REDLICH AND THEN, AFTER A YEAR AS A SOLICITOR, STRAIGHT TO THE BAR; READING WITH TONY SOUTHALL AND JOHN KARKAR (BOTII NOW QC).

FROM THEN, BOTH HER HONOUR’S COMMUNITY SERVICE AND HER PLANNING PRACTICE FLOURISHED. BY WAY OF EXAMPLE, HER HONOUR SERVED ON BAR COUNCIL FOR TWO THREE-YEAR TERMS. SHE CHAIRLED THE EQUALITY AND DIVERSITY COMMITTEE AND THE COMMERCIAL BAR ASSOCIATION ENVIRONMENTAL PLANNING AND LOCAL GOVERNMENT COMMITTEE; AND WAS A FOUNDING MEMBER OF THE WOMEN BARRISTERS’ ASSOCIATION. HER HONOUR ALSO CONTRIBUTED TO THE COMMUNITY OF GÉEONG, WHERE SHE WAS APPOINTED CHAIR OF PERFORMING ARTS TRUST ARTS AND SERVED FOR YEARS ON THE GEELONG COLLEGE COUNCIL. CLOSER TO HOME, SHE ALSO TAUGHT AT THE UNIVERSITY OF MELBOURRE IN VARIOUS PLANNING-RELATED COURSES FOR 13 YEARS.

THROUGHOUT HER CAREER AT THE BAR, HER HONOUR HAS SHOULDRED THE BURDEN OF MANY MASSIVE TRIALS WITH EXPERTISE, ENTHUSIASM AND DEDICATION. EXAMPLES INCLUDE HER YEARS OF WORK IN THE CASEY LANDFILL GAS CASE, MANY WIND FARM CASES IN THE BALLARAT DISTRICT, AS WELL AS MANY SUCCESSFUL SUPREME COURT CASES SUCH AS THE ABBOTTSBOROUGH CONVENT CASE AND THE NEWPORT WOMEN’S HOUSING DEVELOPMENT MATTER.

NOTHING OF HER HONOUR WOULD BE COMPLETE WITHOUT REFERENCE TO HER LOVE OF THE CATS AND THEIR SUPERSTAR ‘LINGY’ AND OH HER, HUSBAND, HUGH, AND SON, DARY. JUSTICE QUIGLEY WAS A CHERISHED MENTOR OF THE BAR AS A MENTOR AND ROLE MODEL. SHE HAS BEEN A POSITIVE FORCE FOR EQUALITY IN THE LAW AND IN THE LAW WE WILL MISS HER BUT WISH HER EVERY SUCCESS IN HER NEXT CHALLENGE.

JENNIFER BATGROJUEY Q.C.

THE HON JUSTICE
MATT SONNABY
BAR ROLL NO. 2837

I MET MATT CONNOCK WHEN HE WAS A JUNIOR BARRISTERS BRIEFED BY ALEX WOLFF IN THE LONG-RUNNING SILVERTONE CASE, ARISING FROM THE COLLAPSED SILVERTONE BUILDING IN CANBERRA. ALEX THEN WAS A SOLICITOR AT MALLESONS STEPHEN JAQUES. ALEX WAS MY COLLEAGUE AND FRIEND, AND WOULD HAVE BEEN THE VERY BEST ROLE MODEL. SHE HAS BEEN A POSITIVE AND...
In 2000, her Honour was briefed as junior counsel to Jack Rush QC and Mark Dreyfus QC in the Cullibool “Stolen Generations” case and on subsequent proceedings was widely credited with contributing to the impetus for the apology to the stolen generations, ultimately delivered on the Commonwealth Parliament in 2008.

In 2009, her Honour was one of the junior counsel assisting the Victorian Bushfires Royal Commission, a team comprising Jack Rush QC, Rachel Doyle SC, Stephen Donohue QC, Lisa Nichols QC and Peter Rozen, instructed by a team from Corrs, headed by Val Gostencnik (now Deputy President, Fair Work Commission). Her Honour’s forensic skills and capacity to simplify difficult planning law regimes were highly valued. Most important though, was her Honour’s calm and empathetic approach towards grieving families. Her Honour was appointed Senior Counsel in 2013.

Her Honour’s writing to draw on many of her personal qualities when, in 2014, she was appointed counsel assisting the Hazelwood Mine Fire Inquiry as lead counsel, leading a team comprising Jack Rush QC, Rachel Doyle SC, Stephen Donohue QC, Lisa Nichols QC and Peter Rozen, instructed by a team from Corrs, headed by Val Gostencnik (now Deputy President, Fair Work Commission). Her Honour’s forensic skills and capacity to simplify difficult planning law regimes were highly valued. Most important though, was her Honour’s calm and empathetic approach towards grieving families. Her Honour was appointed Senior Counsel in 2013.

Her Honour was appointed to chambers life and will be greatly missed by Castan Chambers, Level 11.

Her Honour has a temperament well suited to her new role, measured, considered, thoughtful and always willing to work hard, keeping an open mind and an open heart.

RACHEL DOYLE SC AND PETER ROZEN

COUNTY COURT OF VICTORIA

Her Honour Judge Patricia Riddell
Bar Roll No. 3091

Compassion, integrity and an eye for identifying the killer point— all attributes that have made Judge Patricia (Trish) Riddell an avid advocate and will stand her in excellent stead as a judge of the County Court.

Judge Riddell set her sights on the criminal bar early. She completed articles with Galbally & O’Byran and then moved on to established firm Corrs, Chambers and Partners. She has served as a committee member and treasurer of the Criminal Bar Association, as an advocate committee and as an advocacy instructor in the Bar readers’ course and played in the Bar hockey team.

Beyond the Bar, her Honour has long been involved in supporting social causes— in ways ranging from fundraising pubs to volunteering with the Cystic Fibrosis Association of Victoria, an organisation founded by Judge Riddell’s parents.

Judge Riddell’s breadth of experience, intellect and outstanding character will make her a tremendous asset to the Court.

JENNIFER COWEN

Her Honour Judge Julie Condon
Bar Roll No. 3126

On 12 December 2017, Julie Condon was appointed to the County Court of Victoria. Twelve years earlier, her Honour was sitting in one of Cambodia’s worst prisons, visiting an Australian woman serving 31 years’ imprisonment for her involvement in a drug importation. Legal visits afford no special rights or privileges as a criminal lawyer. Starving and sick dog owners appear to have the only entitlement of freedom as they wander in and out of the main prison gate and into the visitors’ area, foraging for food. The conditions of detention have to be seen to be believed. This was one of many pro bono cases her Honour undertook during her career at the Bar and this would be her Honour’s last prison visit.

Judge Condon completed her education at Pattona Girls’ School in 1987 and undertook a Bachelor of Arts and Law at the University of Melbourne, completing the latter with Honours. She went on to undertake a Masters of Law at Monash University. Admitted to practice in 1994, following articles at Clayton Utz, Judge Condon worked as an employee solicitor at Clayton Utz and Corrs Chambers Westgarth. Her career as a commercial lawyer was cut short when she took a position as an associate to the Honourable John Coldrey, then a judge of the Supreme Court. After two years as Justice Coldrey’s associate, her Honour’s career proved exclusively in criminal law was about to begin. She read with Terry Forrest, later QC and Justice of the Supreme Court, and signed the Bar Roll in May 1997.

Her Honour’s strong sense of social justice drove her to many far-flung places. In 1999, her Honour took leave from the Victorian Bar to work at the Aboriginal Legal Service in Katherine. Nine months later, her Honour described this part of her career as one of the most rewarding and challenging times as a lawyer. In 2002, she returned to the Victorian Bar and re-signed the Bar Roll.

The next adventure was only around the corner. A move to The Hague to appear as a defence advocate at the International Criminal Tribunal for the Former Yugoslavia. Upon her return to the Victorian Bar in 2009, her Honour established a formidable reputation as an advocate of the highest quality: brave, eloquent, passionate and tough.

In 2014, her Honour travelled to the infamous Execution Island, Nusa Kambangan, in Indonesia to assist Nigerian man Humphrey Jefferson Ejike Eleweke (Jeff) Juk Yoshiro was sentenced to death in 2016 by a panel of judges with the appeal. The proceedings are widely considered an open mind and an open heart.

RACHEL DOYLE SC AND PETER ROZEN
Brian Collis QC

Bar Roll No. 189

With the death of Brian Collis QC on 29 March 2018, following complications from an elective surgical procedure, the Bar has lost one of its living legends (2012). Brian was born in Foster on 8 October 1943 and subsequently attended Joseph’s College Geelong with future judges Bernard Bonjourno AO QC and Roland Williams QC.

At school, Brian was nicknamed “Stick”, and this name followed him through his law course at Melbourne University, where he was a resident at Newman College, and thereafter to the Bar. Brian signed the Bar Roll in March 1968, reading with future Attorney-General Haddon Storey AM QC.

Brian practised in both crime and common law the length and breadth of the State in his early years. From the 1980s, he practised almost exclusively in common law, both in Melbourne, where he commanded a substantial practice, and in the Gippsland circuits at Sale and Bairnsdale, where his hallmark as a reserved voice that softened but ascended mountains both literally and figuratively and inspired those around him to give of their best. An inquest and memorial service occurred a bushwalk in his early 20s had gifted him with a reserved voice that softened but fine humour. His energy was quiet, focused and seemingly boundless. Together with the practice of law, Daryl played an important part in preserving his family life through a close and enduring marriage that was central to Daryl’s personal and professional success.

Daryl’s contributions to the law were many and significant, in particular in the development of taxation and administrative law. On the occasion on which he was bestowed with the Graham Hill Award, it was noted that from his judgments one could “appreciate the intellect he brought to bear in the areas of taxation and administrative law; the measured response he brought to issues in dispute and the balance he displayed in the exercise of his judgement in deciding those issues”.

In 1998, Daryl retired from the Federal Court but not from judicial life, as he continued to serve as an acting or additional judge in the Federal Court of the Supreme Court of NSW and the Court of Appeal of Fiji.

In January 2004, Daryl was appointed to conduct an inquiry into the liquor industry in Victoria. (In later life he appreciated the finesse of a well-aged single malt.)

Daryl’s judicial life commenced in 1978 with his appointments to the Federal Court of Australia, the Supreme Court of the ACT and as Deputy President of the Administrative Appeals Tribunal. The following year he was appointed to sit as a Judge of the Australian Federal Court. His presidencies in the formative years of the Tribunal are acknowledged and the contribution each of them made to development of the jurisprudence in administrative law in Australia. Sir Gerard became one of Daryl’s closest friends.

Daryl’s children are his ilk, and his grandchildren, whom he numbered, and classified for ready reference, are his proud legacy.

LUCINDA LONGCROFT AND THE HON JUSTICE JENNIFER DAVIES
Robert Baxt AO
Bar Roll No. 886

Professor Robert (Bob) Baxt AO died on 12 March 2018 at the age of 79. Throughout a career in law spanning some 56 years, Bob made an extraordinary contribution to both the law and the community in fields related to company, securities, tax, and competition law and policy.

Bob was born in Japanese-occupied Shanghai in 1941, his family settling in Australia in 1947. He was educated at Newington College (Sydney) and the University of Sydney (BA LLB(Hons)) and was admitted to legal practice in 1962, having served articles with M. Robinson & Co.

In 1963, he went to Harvard University on a scholarship, where he completed an LLM. Bob returned to practise as a solicitor with Freehills in Sydney. In 1965, he came to Melbourne as a senior lecturer at Monash University law school and in 1969 was called to the Bar in Victoria. Whilst a lecturer in the law faculty at Monash, Bob read first with the late Peter Brushey and then, after Brushey took silk, with the late Alan Goldberg (later QC and Federal Court judge). Though he retired from the Bar in 1974, his life's work's affected the commercial and competition Bar profoundly.

Space does not permit a full recitation of the posts to which Bob was appointed and the positions in which he served the community. In 1972, he was appointed the Sir John Latham Professor of Law at Monash University and was Dean of the Faculty of Law at Monash University from 1980 to 1981. Between 1988 and 1991, he served as chairman of the Trade Practices Commission (now the ACCC).

From 1991 to 2004, he was a partner in the Pro Bono Business Law Journal from 1991 and, from 1975, was a founding editor of the Australian Business Law Review. He was chairman of the Business Law Section of the Law Council from 2003 to 2005 and was a driving force in a number of its committees, particularly the Trade Practices Committee, for more than four decades, contributing actively until the days before his death. He was chair of the Law Committee of the Australian Institute of Company Directors from 1994 and held posts as a visiting professor in Canada.

Apart from being a loving husband to Ruth and a father to two daughters, his contribution as a legal practitioner, outspoken academic and leader in commercial law in Australia will be sorely missed.

Richard Berrian Phillips
Bar Roll Nos. 1786 & 2950

Richard Berrian Phillips was a great lawyer and a decent man who valued friendship and had a wicked sense of humour. Richard passed away unexpectedly on a January 2016, at the age of 75, as a result of a sudden illness.

On his return to the Bar he established a practice as a trust and estate specialist. He was co-authoring and had a wicked sense of humour.

Richard was well-known at the Victorian Bar as an intellectual barrister and a truemerchant. He was a firm supporter of the LexisNexis Wills Probate and Administration Service, as well as having provided commentary in Wills, Wound, Sale of Land, and Contributing to Court Forms Precedent and Pleadings. He was a member of the Society for Practitioners (based in London) and was regularly sought after as a speaker at conferences. As well as being well-respected for his advocacy and argument, he was an advanced mediator.

He was also a great traveller. He was reading at America with a few of us at the time the September 11 tragedy occurred. Undeterred by air travel being shut down across the world, he and a few others persisted and managed to make their way to the legal profession's conference, including the Pro Bono Business Law Journal. He was a regular for coffee and at the Essoun Club on a Friday evening. His devotion to Ingrid after he married was noticeable to all and he did what he could to support the local cuisine and wine, joining in whatever activities were offered (those who have seen the hilarious footage of him sliding on slippery ice in Russia will know what sometimes entailed), making puns from local names, all with good humour. He discovered ‘sleeping under the stars’ in the Australian outback and did a couple of trips whitewater rafting down the Colorado river.

He was an enthusiast for progressive rock music, happily trying to sing along and play ‘air guitar’, and acknowledging how badly he managed to do either. He loved good food and good wine, with quality wine stored both at home and in Singapore. He enjoyed his retirement in December 1986. He read with Wikramanayake (later QC) and signed the Bar Roll on 19 May 1985.

For 10 years, he had a general practice at the Bar, which included jury work. He then left to start a ‘Nut Shack’ franchise. He used to tell stories to undermine the ‘success of that business’.

Brian James Bourke AM
Bar Roll No. 612

Brian James Bourke was born on 13 June 1929 at Wangaratta, where his father was a publican. He died on 31 March 2018, at his farm in Purtartington. He was 88. When he retired on 20 October 2017, Victoria had the member on the Practising List longest in continuous, full-time practice. In 1996 he was named a Legend of the Bar.

Encouraged by Mother Columbana, who had “a profound influence on [his] life”, Brian moved to Melbourne in 1942 and attended Scotch College and then (the University of Sydney). He described Ryan as the “toughest man I’ve ever known” because he faced the gallows without fear. Days before Ryan’s death, Brian broke down to tears when he spoke of the condemned man comforted the junior barrister in Pentridge Prison cell. For him the ‘travesty’ of Ryan’s execution represented “a tireless advocate for abolition of the death penalty”.

Brian was a fearless advocate. He was a solicitor who brought a great analytic intellect to all arguments. He was well-respected for his advocacy and argument, he was an advanced mediator.

In 1998, he was the ‘star’ in the team that won the Australian Debating Championship. In 1963 he co-authored, with Senator Alan Misson, ‘The Australian Debater’. In 1958 Brian travelled extensively throughout Europe, England, the United States and Central America. He enjoyed telling how, on a plane from Cuba to America, he met and dined with Ernest Hemingway.

Brian was a fearless advocate. He was a solicitor who brought a great analytic intellect to all arguments. He was well-respected for his advocacy and argument, he was an advanced mediator. He was a true colleague who took his knowledge with them and others. He took an ‘open door’ policy seriously. He took the time to listen and to understand. He brought a great analytical intellect to all arguments. He was well-respected for his advocacy and argument, he was an advanced mediator.
The Hon Alec James Southwell QC
Bar Roll No. 467

A PERSONAL REFLECTION
Bar Roll No. 478

S
dir Ninian Stephen had a most remarkable public life. He was a Rhodes Scholar and internationally he was a High Court judge of England Grammar School and at the University of Melbourne. After completing first-year law, he served in the Royal Australian Naval Reserve from 1944–46, seeing service in New Guinea and Morotai. He graduated with an LLB in 1949, served Articles with Alan Benjamin, and was admitted to practice in March 1951. He came straight to the Bar, signing the Roll in May 1951 and reading with Ben Dunn (later a County Court, then Supreme Court judge). He had a varied practice and became a dominant figure in common law and personal injuries, serving some years on the juries subcommittee of the Bar Practice Committee and other committees including as a Bar appointee to the Legal Aid Committee. He had five readers and took silk in 1968.

His Honour is one of the rare few to have served as a judge on both the County Court and the Supreme Court. He served 10 years as a judge of the County Court from 1969, during which he also conducted three important homicide inquests, and two Courts of Marine Inquiry. That was followed by 18 years as a judge of the Supreme Court, and a further five years as a Circuit Judge. At his Supreme Court welcome, his Honour joked that his forays into the "whispering jurisdiction" were "but dim memories". As to Harvard’s farewell, the Solicitor-General said that his Honour “seemed as much at home in such esoteric fields as administrative law and town planning as in crime and personal injuries” and that, in recent years, most of his Honour’s time had been occupied in the hearing and disposition of criminal appeals in the Full Court, then as an additional Judge of Appeal.

Alec Southwell was an outstanding sportsman. As a cricketer, he played in the First XI at Melbourne Grammar; earned a half-blue as a member of the university team, and played district cricket, and for the Bar. He was elected to the committee of the Melbourne Cricket Club and served from 1979–97, including nine years as vice-president. He was vice-commodore of the Sorrento Sailing Club and captain of the Sorrento Golf Club. He played tennis and pennisquash and billiards.

Two poignant occasions came in 2014 and 2016, when he moved the admission of his grandchildren, Sarah and Katherine Southwell, with Sarah as his junior for Katherine’s admission. His was a long and accomplished life. His family and friends, and those who worked with him will remember him with great fondness.

To his children and grandchildren, and to his extended family Sir Ninian was the antithesis of the grand patriarch. His international career was extraordinarily varied. Beginning with his appointment as Ambassador for the Environment in 1989, it ranged from chairing peace talks in Northern Ireland to investigating options for the trial of former Khmer Rouge leader Nuon Chea. He was a founding member of the International Criminal Tribunal for the former Yugoslavia. In its judges’ Centre, and so in his career, was unique in Australian history. What distinguished Sir Ninian in every setting, public and private, was his warm and engaging intelligence and his interest in people. And it was doubtless those qualities which made him such an effective leader in so many different directions.


The number of people during his long life in the law. He had 11 readers: Judge John Barnett, Russell Sarah, Don Gude, Jack Rush QC, Patrick Tehan QC, Kris Hanscombe QC, Angela Northridge, Magistrate Peter Power, Linton Lethlean, Andrew Combes and Nicole Peasley.

In 2017 Brian was appointed a member of the Order of Australia in recognition of his service to the law and to his extended family, Sir Ninian Seidler and Sarah, the University of Singapore in 1963. He had 3 readers: Judge John Barnett, Russell Sarah, and Don Gude; Jack Rush QC, Patrick Tehan QC, Kris Hanscombe QC, Angela Northridge, Magistrate Peter Power, Linton Lethlean, Andrew Combes and Nicole Peasley.

In 2017 Brian was appointed a member of the Order of Australia in recognition of his service to the law and to his extended family, Sir Ninian Seidler and Sarah, the University of Singapore in 1963. He had 3 readers: Judge John Barnett, Russell Sarah, and Don Gude; Jack Rush QC, Patrick Tehan QC, Kris Hanscombe QC, Angela Northridge, Magistrate Peter Power, Linton Lethlean, Andrew Combes and Nicole Peasley.

In 2017 Brian was appointed a member of the Order of Australia in recognition of his service to the law and to his extended family, Sir Ninian Seidler and Sarah, the University of Singapore in 1963. He had 3 readers: Judge John Barnett, Russell Sarah, and Don Gude; Jack Rush QC, Patrick Tehan QC, Kris Hanscombe QC, Angela Northridge, Magistrate Peter Power, Linton Lethlean, Andrew Combes and Nicole Peasley.
**Victorian Bar Readers**
**March 2018**

**BACK ROW:** Geoffrey Lake, James Portelli, Jonathan McCoy, Ramon Fowler, Nicholas Modrezewski, Stephen Scully, Andrew White, William Barker, William Stephenson, Callum Dawlings, Andrew Roe, Glenn Barr, Kate Ballard, Joanna Dodd

**MIDDLE ROW:** Andrea Skinner, Rachel Chrapot, Amanda Carruthers, Caroline Dawes, Julie Zhou, Abilene Singh, Simone Tatas, James Claridge, Matthew Tennant, James Stoller, Paul Reynolds, Nicholas Walter, Lachlan Molesworth, George Glezakos, Sally Bastick, Lachlan Carter, Maryann Gassert, Mitchell Grady, Nonni Sdraulig, Wendy Pollock

**SEATED:** Alexandra Metherell, Timothy Smurthwaite, Edwina Keynes, Tanya Skvortsova, Pauline Chia, Simon Kelly, Veronika Drago, Amit Malik, Hugo Moodie, Amy Hando, Joanne Poole, Benjamin Hill, Serena Armstrong

---

**Readers' Free Cover Offer**

Exclusive offer to readers to insure against loss of income through sickness or accident, with no premium charged for your first year of cover.*

Don’t miss this opportunity to join Bar Cover, the insurance fund created by barristers for barristers.

Phone Bar Cover on
(02) 9413 8481
or email office@bsaf.com.au

*Initial annual premium waived for cover up to $2,000 per week, conditions apply. To decide if this product is appropriate for you please read the PDS available at www.barcovers.com.au. Bar Cover is issued by Barristers Sickness & Accident Fund Pty Ltd ACN 000 681 317
William Shakespeare is arguably the best-known of English writers. There is a fashionable debate about whether the person named William Shakespeare was the person who wrote the works attributed to him. Various suggested candidates include Sir Francis Bacon; Edward de Vere (17th Earl of Oxford); Christopher Marlowe; and William Stanley (6th Earl of Derby). As Patrick Cheney says:

It is true, when students come into my Shakespeare courses, they typically want to ask only a single question: ‘Did Shakespeare really write all his plays?’ When they leave, I hope they’re more inclined to ask, ‘How did it come to be that the world’s greatest man of the theatre also penned some of the most extraordinary poems in English?’ Shakespeare wrote those plays—and poems. Read them; see them; listen to them. They are our great cultural inheritance, the real legacy of William Shakespeare.

Part of the confusion may come from the word author. Its principal meaning is ‘The person who originates or gives existence to anything … He who gives rise to or causes an action, event, circumstance, state, or condition of things’. A bit of ambiguity is found in an obsolete meaning: ‘He who authorizes or instigates; the prompter or mover’. This meaning was current in the time of Shakespeare, and is still found in the related verb authorize the meaning of which includes, ‘To give formal approval to; to sanction, approve, countenance’. Shakespeare authorized the production and staging of many plays. That could justify calling him the author of those plays, given the meaning of the word which is now obsolete but which was current in Shakespeare’s time. It hardly matters. The plays exist, they were written by someone.

The plays attributed to Shakespeare introduce a vast number of words which were new, or which the author used in new ways. A (very) short list of Shakespeare’s new words includes: academe, arouse, beached (that is, having a beach: a ‘beached house’), barefaced, caked, compromise, dawn, dwindle, exposure, frugal, gust, impartial, laughable, madcap, monumental, obscene, panders, rant, tranquil and worthless.

The full list is staggering: Shakespeare appears to have taken the Humpty Dumpty principle to its furthest reaches: ‘When I use a word’, Humpty Dumpty said, in rather a scornful tone, ‘it means just
what I choose it to mean—neither more nor less’. ‘The question is’, said Alice, ‘whether you can make words mean so many different things’. ‘The question is’, said Humpty Dumpty, ‘which is to be master—that’s all’.

However that may be, ‘To be or not to be’ is probably the best-known phrase from any of the plays attributed to Shakespeare. It hints at, but does not reveal, that there is a grammatical construction in English which is quite old, but common enough that it passes unnoticed. A noun has been added as a prefix to create a verb: siege (noun) becomes besiege (verb); devil leads to bedevil and smudge leads to besmudge.

There are quite a few words which use the be- construction. Some examples of this form are familiar befriended, beguiled, beheld, berate, behove. There used to be many more. The OED, with its passion for completeness, identifies a number of different functions which this handy construction can perform.

First, forming verbs (derivative verbs) with the sense of around. In this sense, it offers all manner of curiosities such as behang (to hang about); bejig (to jig about: how times change); behorewe (to befoul); becurry (to bespatter: this is from times when horses were the main means of conveyance on muddy, bescumbered streets in London). I say bescumbered, because beshit and becorck are doubtful, but the source of the problem was not dogs or foxes but the horses themselves.

Another obsolete word is begruntle (to make uneasy). It is quite useful, and it sounds good. Its most recent recorded use is in P.G. Wodehouse’s, The Code of the Woosters, in which Jeeves says: ‘He spoke with a certain what-is-it in his voice, and I could see that, if not actually disgruntled, he was far from being gruntled’. It is a reminder that gruntled is a useful word, which ought to be revived. And the way to revive it – applying the Humpty Dumpty principle – is to use it, and use it often.

Another word from Shakespeare’s time is forsooth. Sooth as a noun is an old Anglo-Celtic word for truth. It has had many forms including sooth, south, suth, weth, wuth and soth. From as early as 950 it is found in such works as Beowulf, the Lindisfarne Gospel and the Old English Chronicles. It was also used in phrases with modern equivalents which more or less follow the old pattern: in very sooth (in truth), sooth to say (to tell the truth), to come to sooth (to come true) and by my sooth (upon my honour). Originally, forsooth was a genuine declaration of the truth of a statement. Shakespeare used it this way frequently.

“Forsooth. How long hast thou to serve, Francis? For, forsooth, five years…” (Henry IV, Part 1)

‘more incline to Somerset than York: Both are my kinmen, and I love them both. As well they may upbraid me with my crown, Because, forsooth, the King of Scots is crowned’ (Henry IV, Part 1)

SIMPLE: Ay, forsooth. QUICKLY. Does he not wear a great round beard, like a glove’s gaung-kely?

SIMPLE: No, forsooth; he hath but a little whey face, with a little yellow beard, a caun-colour’d beard.

QUICKLY: A softly-sprighted man, is he not?

SIMPLE: Ay, forsooth; but he is as tall a man of his hands as any is between this and his head; he hath ought with a warren.

(The Merry Wives of Windsor)

For some curious reason, Shakespeare uses forsooth much more often in Henry VI, Part II (1590) and in The Merry Wives of Windsor (1598) than in any other of the 21 plays in which he uses it.

Since Shakespeare’s time forsooth has become less common. Perhaps he wore it out. It was used by John Locke (A Letter Concerning Toleration, 1689), by Tom Paine (The American Crisis, 1780), by Mark Twain (The Prince and the Pauper, 1881), several times by Rudyard Kipling (The Jungle Book, 1894, The Second Jungle Book, 1895; and in Kim, 1901). Jack London used it a few times in White Fang, 1906 and once in White Heart, 1907. It still lives at the edge of memory, as a word not used but still recognised.

Some lawyers cause their clients pain by their concern about truth. For some clients at least less sooth will more begruntle.”
RED BAG BLUE BAG

‘What are the limits of sartorial respect in the courtroom?’

BLUE BAG – a view from junior counsel

I’ve been having a look at executive menswear trends for Winter ’18, and am pleased to see that shearing ‘has made a subtle advance’, that the season’s colour is ‘baguette’ (cf. ‘boring brown’), and that the funnel neck sweater is finally making a come-back. And yet, I’m not convinced that my attempt to be on-trend will find favour in the courtroom.

I would therefore appreciate your advice on ‘best practice’ courtroom dress code. When doing so, could you please explain (a) what’s with the wide striped suits? (b) a pocket square – Yes / No, (c) the pros and cons of bow ties, and (d) novelty socks. Also, would your advice be the same if I were briefed in the Magistrates’ Court? Please note, I have not addressed women’s dress code due to reasons of first, space, and secondly, risk (but please do so if you wish).

If you need practical context, please see Figure 1.

BLUE BAG – a view from senior counsel

Dear Blue Bag,

Why so troubled mon ami?

Don Dunstan (former Premier of South Australia for our Gen Y readers) used to cut quite a dash while wearing a polo-neck sweater with a suit during the winter months and as they say in fashion, everything old is new again. That funnel neck sweater of yours may be well received next time you pop it on under a suit on your next trip to VCAT or other progressive forums.

Except though in the Supreme Court it seems, where it has been rumoured recently that Court Dress may go in the same direction as barristers’ wigs – to the dustbin of history! I am not quite sure of the current status of the Court Dress ‘discussion’, although the need for Court Dress was robustly defended at the Bar’s Law Week event last month, ‘Facing the Law: Wigs and Robes Today’, where the overwhelming majority of attendees seemed in favour of advocates appearing robed in court, as they presently do.

There are of course two compelling reasons why Court Dress (as it is and preferably with wigs) should remain as the gold standard for advocate’s apparel. First, there is the blindingly obvious contention that, irrespective of gender, race, age, appearance (yes, there is university research that so-called good looking people seem to do better in life), wealth, prosperity or social status, all advocates appear uniformly equal before the Court, as their clients are in the eyes of the law which is all the more important in a diverse society and an equally diverse Victorian Bar. Second, fashion faux pas in the form of safari suits, baguette coloured suits (that’s right, we all remember Leonard Teale [Rds: perhaps not Gen Y]), any garment or accessory made of polyester or rayon, hosiery worn with open-toe sandals, unpolished shoes and ready-made bow-ties, can potentially distract the judge and/or jury’s attention from Counsel’s argument, sometimes resulting in a gross miscarriage of justice.

Out of court and in the more exotic jurisdictions though, the guidelines are pretty simple when client interaction is involved. If a client is paying you, their barrister, a daily fee, then you give them ‘Barrister’. This means thinking of the client, taking a professional approach and meeting public expectations, which more often than not involves (irrespective of gender), a well-cut and properly made suit made out of natural fibres (either tailored, or bought off the peg from any good retailer which doesn’t have the word ‘warehouse’ in its brand name), a decent shirt/top and good quality leather footwear (not sure what vegans do here).

As for blokes and ties, yes do wear when in court but when not in court, the presidential ‘Collins-look’ of no tie is perfectly fine. Although if a tie is chosen, then it must be silk and must not display cartoon characters, naked persona or any prose (the words ‘carpe diem’ interspersed amongst random goldfish on a very cheesy looking tie once seen in the County Court morning line up, worn by a person whom I suspect was a solicitor-advocate, remains an indelible and traumatising memory). Break this rule and you’ll be out of court and in the more exotic forums.

Second, fashion faux pas in the courtroom? Please note, I have not addressed women’s dress code due to reasons of first, space, and secondly, risk (but please do so if you wish).

For example, perhaps not Gen Y, the average womans’ dress code due to reasons of first, space, and secondly, risk (but please do so if you wish).

Any garment or accessory made of polyester or rayon, hosiery worn with open-toe sandals, unpolished shoes and ready-made bow-ties, can potentially distract the judge and/or jury’s attention from Counsel’s argument, sometimes resulting in a gross miscarriage of justice.

Our 3 principal lawyers, Wendy Jenkins, Paul Ross and Marita Bajinskis are Accredited Family Law Specialists.

We provide expert legal advice regarding:

- Marriage and defacto relationships
- Separation
- Division of assets
- Care of children
- Child support and maintenance
- Financial Agreements (pre-nuptial or cohabitation agreements)
- International family law matters

Level 3, 224 Queen Street, Melbourne VIC 3000 T 03 8672 5222

www.blackwoodfamilylawyers.com.au

Liability limited by a scheme approved under Professional Standards Legislation

Tavelengths's solution

[ADDITIONAL TEXT]
Having weathered the whirlwind of the Victorian Bar’s presidency last year, I had to find a way to distract myself from the relevance deprivation syndrome rapidly engulfing me. A month in Mexico sounded about right. It might be a metaphorical feather duster, but my modus operandi remains, “do one thing each day that scares you”. The thought of a solo trip through Mexico terrified me. So I decided to do it.

I thought it best to avoid the bad hombres fighting it out in drug wars leaving innumerable dead in Acapulco (according to Sky News, 30,000 people were murdered there last year). Instead, I headed to the beautiful 15th century towns scattered throughout central and eastern Mexico.

I kicked off my travels in Mexico City. The city is built at an altitude of over 200 metres on a swamp. It is slowly sinking. My first outing was a walking tour of the markets. These enormous shanty shambles sell everything from a curse at the sorcery market to a massive albino boa constrictor at the live animal markets. Perhaps some crickets to snack on? Chillies of every possible shape and size, cacti, the ubiquitous mole sauce and, of course, wall to wall boilerplate.
Mexicans have a very different relationship with death than we do.

wall skeletons. The Mexicans love their skeletons. They dress them up in beautiful clothes and put them everywhere. Mexicans have a very different relationship with death than we do.

As I headed out to Coyoacan to see Frida Kahlo’s Blue House (the Mexican equivalent to Sunday Reed’s Heart Garden at Heide), I asked my driver if there was a drug problem in Mexico City. “No,” he said sagely, “we are producers not consumers.” Fair enough.

I proceeded north to the delightful little town of San Miguel de Allende. Bliss.

Next on my list was Guanajuato. An old silver town, it is famous for its mummies. In about 1870, the town decided to impose a local tax on burial sites. If you could not pay the tax, your dearly beloved was soon disinterred. It was discovered that many of these bodies had become mumified, apparently due to natural climatic conditions. I was amazed and horrified to see all manner of mummies on display at El Museo de las Momias (The Museum of the Mummies): a mother with her newborn child, a woman with long plaited hair wearing cowboy boots, and many other chaps buried in what was no doubt their “Sunday best” suit served at the sleek but homely Oliva Kitchen & Bar (Calle 49-a 56, Merida). This place ticked all the boxes.

My final stop was at Oaxaca (pronounced Wah-haa-kah). In the tiny historical centre there are 29 churches. They all cater to Catholicism but with various bits of local idolatry bolted on. I stayed in the Santa Catalina de Siena Monastery (now a schmick hotel with the only down side being the three amigos serenading me for breakfast) (Quinta Real Oaxaca, Calle 5 de Mayo 300, Oaxaca). This was such a friendly town. There were people dancing in the street at night for the sheer joy of it.

Every one of the Mexican people that I came into contact with was kind, knowledgeable and gentle. Those parts of their country that I visited were extremely interesting and beautiful. I would not hesitate to recommend a trip to Mexico. Just stay away from the bad hombres in Acapulco and enjoy the show!
Lord Howe Island: A simpler, sunnier choice

NATALIE HICKEY

It is not difficult to convince barristers of the need for a break. We choose self-employment for its ‘flexibility’. Our job is stressful. And a brief fee often burns a hole in the pocket when it could be put to more sensible use.

For these reasons, and more, I recently found myself stepping off the plane at Lord Howe Island (or “LHI” as the locals refer to it), which is an island (no surprise) off the New South Wales coast, essentially in the middle of nowhere.

LHI is a ‘volcanic remnant’ and UNESCO world heritage site, protected due to its extraordinary biodiversity. It is an Australian version of the Galápagos Islands. It is also home to the world’s most southern coral reef, inhabited by tropical and sub-tropical fish and turtle life.

It is challenging to travel to LHI because it is small, and so the planes must be small. Ours was a Dash 8 which, to this rather uncertain flyer, felt not far removed from a Wright Brothers prototype.

The weather can be wild. That is how I found myself at Earl’s Anchorage (https://earlsanchorage.com; 02 6563 2029). When our Dash 8 plane arrived a day later than planned, we were greeted at a picket fence by a person who asked where we were staying, and who directed arrivals to their bags and pickup point. My partner tried to put on his seatbelt in the mini-bus and was told to take it off: “We don’t use seatbelts around here”, we were told. With a speed limit of 55 km/hour, this is understandable.

It also appears we can drink and drive with impunity at nighttime, although we were warned that “he” (a reference to the Island’s local policeman) had recently introduced random breath testing in the mornings. Given there are only 350 residents, a maximum of 400 visitors at any one time, and a sprinkling of cars on the road, “he” must have someone particular in mind.

Thoughts surface of the television shows ‘Death in Paradise’ and ‘Midsomer Murders’. LHI would be a fabulous place to shoot a show in an idyllic setting with a small community, but with sinister undercurrents.

Fortunately, evidence of sinister undercurrents was a bit sparse. Indeed, all the evidence was to the contrary. We learnt quickly that every time you walk past someone, you must. Booking with Oxley Travel is recommended because they specialise in LHI and are confident managing these issues (oxleytravel.com.au; 1800 671 546).

When our Dash 8 plane arrived a day later than planned, we were greeted at a picket fence by a person who asked where we were staying, and who directed arrivals to their bags and pickup point. My partner tried to put on his seatbelt in the mini-bus and was told to take it off: “We don’t use seatbelts around here”, we were told. With a speed limit of 55 km/hour, this is understandable.

It also appears we can drink and drive with impunity at nighttime, although we were warned that “he” (a reference to the Island’s local policeman) had recently introduced random breath testing in the mornings. Given there are only 350 residents, a maximum of 400 visitors at any one time, and a sprinkling of cars on the road, “he” must have someone particular in mind.

Thoughts surface of the television shows ‘Death in Paradise’ and ‘Midsomer Murders’. LHI would be a fabulous place to shoot a show in an idyllic setting with a small community, but with sinister undercurrents.

Fortunately, evidence of sinister undercurrents was a bit sparse. Indeed, all the evidence was to the contrary. We learnt quickly that every time you walk past someone, you must. Booking with Oxley Travel is recommended because they specialise in LHI and are confident managing these issues (oxleytravel.com.au; 1800 671 546).
Therefore, whilst the concept of staying on a film-set location in a simpler and friendlier time might sound great in theory, it was challenging in practice, at least initially. In a typical day we are assaulted by information from social media, emails, phone calls and texts. It becomes an addiction. ‘Dropping out’ from this was initially frightful. I wondered if every day of the stay would feel like Good Friday. Fortunately the mood became more upbeat after a 15km walk on day 2, with a mix of incidental activity—nine holes of truly lousy golf in a spectacular setting—and bird watching. I can’t tell you what the birds were. I have never seen them before. Gradually, I settled into the daily pace, and loved it. Things I loved included the honour system, which applied almost to everything. The honour system applied to rounds of golf and the hiring of golf clubs. The money just went into a box. It also applied to hiring wetsuits, snorkeling gear and fish food at Ned’s Beach, with written instructions on a board reminding the user to wash out their suit before they put it back.

I also loved simple pursuits like watching the Island Trader, the regular supply boat, which had come in and unloaded its cargo over a few days (this was a big attraction with many onlookers). We also inspected the kayak of a man who had come to LHI from New Zealand. His kayak’s solar panels, tiny sleeping cabin and high-tech navigation system proved quite a talking point with locals. Ned’s Beach is listed as the number 1 attraction on TripAdvisor for Lord Howe Island—for good reason. On its face, it is just a gorgeous, very quiet beach with a few barbecues and almost no people. The $1 coin required for fish food hints at much more. There is fish food, so that you can feed them directly into their mouths. There was a Piranha-style moment when, encouraged to let them nibble at me, one blue fish chomped down with the result being extreme pain (okay, it wasn’t that extreme) and blood dripping down my finger (okay, it wasn’t really dripping)

The other two nights of our stay were spent at Arajilla (arajilla.com.au, 1800 063 928) which has the feel of a yoga retreat, with alcohol. All meals are included, and guests are provided with bikes (which is great, because we had decided walking was not exactly roughing it and not a vegan), this cook book is for you.

The duck confit at Arajilla – (and not a vegan), this cook book is for you. In any event, if you are an enthusiastic cook and apologises for the cost (‘P J Booth’ may be less humble). It is a beautiful work, with numerous gorgeous photographs accompanying stories and instructions. He says his first products were inedible. After reading as widely as he could, he then spent several years experimenting with recipes and techniques suited to his circumstances. He wrote A Charcuterie Diary mainly because the books available to him, he did not find helpful. They were either based on imperial measurements (not metric) or just really old. They used products he could not source either based on imperial measurements (not metric) or which he found unhelpful. They were available to him, he did not find helpful. They were either based on imperial measurements (not metric) or just really old. They used products he could not source reliably or at all (‘saltpetre’ for example) or which he did not understand (‘Baston butt’ which comes from the...
A prosciutto called Kevin

I was determined that this charcuterie thing would not beat me. Frankly, I had mixed success. For reasons which I do not now recall, I decided to jump into the deep end and embark on a prosciutto. I certainly did not understand what I was doing, but it felt good nonetheless. I was becoming a charcutier, (well sort of) although I did not know it at the time.

It just seemed like a good idea at the time. Kevin was the start of the more scientific approach. If you feel the need to apportion blame for all that has followed, then most must fall to Kevin. Although, you already knew that. But I digress.

Kevin was the first prosciutto. I asked Frank The Butcher (his real name) when it would be good to start preparing a prosciutto. He said, “When you see me wearing a beanie in the shop, then it will be time.” It sounded pretty scientific to me. I waited. I waited some more. Frank The Butcher did not wear the beanie until mid-June, to my mind a bit late. In any event, I did what he said.

When I saw the beanie being worn, I attended the shop to purchase a leg of pork. Frank The Butcher trimmed the leg of pork for prosciutto and I was all set to start the journey. After careful consideration, it was decided that the inaugural prosciutto would be called Kevin. Kevin was lovingly rubbed with a mixture of salt and Curing Salt and put to bed in a salty sleeping bag (a big plastic tub actually) for two days/kilogram. Far too long as it turned out but it seemed like a good idea at the time. Thereafter Kevin was put into some nice muslin pyjamas for the big sleep. Kevin was hung high up on the veranda out in the direct sun but with good airflow. I checked Kevin every few days and things were good. Kevin was happy and so was I. Nonetheless, I figured that it was not good to be so far away from Kevin, so we returned to Melbourne together. The question now was what to do, the weather becoming warmer each day. I suggested that Kevin might enjoy time in my modest cellar. Kevin agreed. Sadly, although the temperature was good, the humidity was too high. Things went bad very quickly. We fought off the MOMC bravely together. It was a close run thing. What to do? The answer was at hand, Sebastian (a local gastronome), has a cellar. Well alright, it was just a space under his house, but which has more airflow than my modest cellar. Kevin was agisted at Chez Sebastian quite happily for much of the remainder of his days. Kevin ended up being a remarkable success, especially as a first time effort (albeit a bit salty).
In March, my partner is minding her sister’s place in Noosa. My trial is adjourned, so I join her for a few days. During school holidays in the Melbourne winter, half our Bar can be found lolling on Main Beach. Backpackers and European families also sprinkle the sand. Marquees are going up for a surf carnival but squalls spinning off a late wet season to the north send tourists dashing into the cafes on Hastings Street.

By dinner time, the monsoon is belting down as we make our way to Masio’s Seaford and Steakhouse on the river at Noosaville. Masio’s proudly advertises itself as the first eating house in the area, established by the Massoud family in 1930. They say that, in World War II, diggers stationed nearby drove their amphibious army ducks out of the river to the front door to collect their takeaway tucker.

The restaurant walls are decorated with old black and white photos of men with huge catches of fish. We could order Clancy’s Overthrow; a 200g eye fillet wrapped in bacon with two oysters Kilpatrick and two oysters on the half shell with fingers and a delicious scent. The combination of taste and texture excites a palate lubricated as a crayfish. It has no claws like the panulirus family is better described on the wall. Think Ho Chi Minh City plus Bondi. We share Moo Ping Duck, a young rib fillet with toasted sesame, ginger and green onion, comes next. Three exquisite pieces of sushi with Tasmanian wasabi follow. The uzura, roasted quail served with a lovely barbasco, leaves you wanting more. We finish with yukimi, a dessert with dried fruit and tropical fruit and vegetables and egg yolk. It makes this mouth smile.

Japanese chillies. On the Noosa side of the river, the serenity of the staff assures us we are in good hands. We order the Omakase menu; seven dishes chosen by the chef with seven matching beverages. The teishoku, six seasonal amuse-bouches, come with a natural orange wine from WA. Our waitress recites the various ingredients with practised poise but the words float over our heads as we take in the varied colours, textures and flavours. They make this mouth smile.

Then the parade starts with hotate, scallops with finger lime, bamboo shoots and konbu radish. Accompanying is an Austrian pinot gris. Next is the tempura dumpling of king prawns over which our waitress grates the zest of Bhudda’s hand, a citrus fruit like a lumpy lemon with a wonderful crunch under the fingers and a delicious scent. The combination of taste and texture excites a palate lubricated with chilis.

Shiromi ponzu, cured kingfish with toasted sesame, ginger and green onion, comes next. Three exquisite pieces of sushi with Tasmanian wasabi follow. The uzura, roasted quail served with a lovely barbasco, leaves you wanting more. We finish with yukimi, a dessert with dried pineapples and shiro-an (sweetened white bean paste) crisps. A Japanese whisky in a crystal tumbler cuts through the sweetness.

I am reminded of Per Se in Manhattan because of the subtle flavours produced from local ingredients with consummate professionalism. The reckoning, $54 for two including tip, is worth every cent.

The next morning I buy some fresh Morton Bay bugs, my favourite seafood. Cut them in half with a heavy knife, remove the viscera, fry in a mixture of olive oil and butter until the flesh is lightly caramelised. Serve with a squeeze of lemon juice and chopped parsley. Hard to beat.

The Sunday before I have to fly south, we go for lunch at Sum Yung Guys near Sunshine Beach. It’s packed and buzzing. Our table is next to a Rickshaw propped against the wall. Think Ho Chi Minh City plus Bondi. We share Moo Ping Duck, chicken skewers and Mooloolaba prawn toast for starters. The names are groovy, the dishes less so. I then have the salmon with coconut, ginger and turmeric curry. We order a bottle of beaujolais. It comes to the table warm. I have to shout to make myself heard when asking for an ice bucket. Everyone seems to be having a great time. On Saturday night I imagine it’s party central but the food is a non-event. $190 including a small tip.

So on your next trip to Noosa, save up for Wasabi. Otherwise take home some of the outstanding local seafood and tropical fruit and vegetables and cook it up yourself.
BOOK REVIEW
Justice Michael Pembroke: Korea: Where the American Century Began
TREVOR MONTI

In February 2018, NSW Supreme Court Justice Michael Pembroke published his book KOREA. Where the American Century Began. The book is a documented history of the Korean peninsula with particular reference to the period from the division of Korea in 1945 at the 38th parallel. The book was inspired by the fact that Mr Pembroke’s father fought in Korea, as evidenced by his preface to the book:

I absorbed my father’s experiences so that even the smallest details became a small part of my own consciousness. I knew they had been grim and frightening. I knew there had been fear and confrontation, desperation and death. Gradually I learned that the outcome of war is rarely good; that its most aggressive proponents are usually those who have never fought with butt and bayonet; who have never heard the moaning of the wounded or the anguish of the wounded or the anguish of innocent civilians; who have never been required to kill and maim in the name of their country.

The author reviews the events which led to the division of Korea and the war which inevitably succeeded it. His historical analysis of the relevant events should be compulsory reading for law students. He observes that though Trump has been impeached and continues to be hated, the war drums are still beating, and a war with North Korea in War. War with North Korea may well involve Australia – certainly its military – and with a risk that the civilian population will be endangered. These factors should be weighed against the historical events recorded in this book.

The author criticises the American decision to obtain UN authority to attack across the 38th parallel, a decision, he says, that was made in unconvinced rationalisation, transparent ambiguity, and diplomatic and legal machinations reminiscent of the wrangling over the invasion of Iraq in 2003. He critically examines the impact of the US-led invasion of North Korea and its population after the North Korean forces had been pushed back to the 38th parallel. Not content with the restoration of the status quo, Washington continued the war for three more years, during which time civilian deaths among the Korean population were estimated to have been more than a million.

He explains the “prolifigate bombing campaign” during that period, the widespread use of napalm, and the flattening, burning and destroying of North Korea. Not surprisingly, he concludes that the culmination involved the people of North Korea in violation of their trust and detriment that has shaped the country’s continuing hostility towards the USA. In the rebuilding streets of Pyongyang, he notes the legacy of bombing is bitterness.

Pembroke observes that the war left North Koreans with a permanent siege mentality: a defensive, embattled, ultra-nationalistic spirit and self-image based on pride at having survived an encounter with the most technically advanced power in the world. North Korea, he explains, lives with a constant fear of invasion, subjugation and occupation. The siege mentality is exacerbated by the Pyongyang regime’s knowledge that the United States has a stockpile of between 4,000 and 7,000 nuclear warheads, over a thousand of which are actively deployed on ballistic missiles and submarines and at air bases, and some almost certainly targeted at Pyongyang.

He explains that in the face of such threats, North Korea regards its nuclear program as an important deterrent to external aggression and a security guarantee for the regime’s survival, a quote from Durwin Peksen from the Korea Economic Institute of America, 23 July 2016. Pembroke also reviews the position of the United States and its failure to abide by several international obligations. In 1997 it unilaterally abrogated the Korean Armistice Treaty by introducing nuclear weapons. In 2001 it withdrew from the anti-ballistic missile treaty with Russia. And in 2016-2017, it opposed – and in 2017, opposed – the ground-breaking United Nations resolution for multilateral negotiations designed to achieve a worldwide nuclear ban treaty. It is obvious, he says, that North Korea’s nuclear and missile capability is a response to the American military presence, not the cause of it. Pembroke makes clear that the regime in Pyongyang is “harsh, authoritarian and repressive” and that there is nothing much to like about it. But the book provides a better understanding of the Korean perspective. After reading this book, no rational, responsible and reasonable-thinking human being could fail to understand the position of North Korea and not be concerned by the uncompromising American aggression directed at it.

Finally it is to be observed that before writing this book, Michael Pembroke was a Visiting Fellow at Wolfson College, Cambridge in 2015, and a Director’s Visitor at the Institute for Advanced Study, Princeton, New Jersey in 2017. He also visited and travelled through North Korea in 2016.

Lewis & Kyrour’s Handy Hints on Legal Practice

There are known knowns; there are things we know we know. We also know there are unknown knowns; that is to say, we know there are some things we do not know. But there are also unknown unknowns—the ones we don’t know we don’t know.

—US Secretary of Defense, Donald Rumsfeld, 12 February 2002

After 25 odd years as a barrister and before that, a solicitor, there are some things I know how legal practice. However, I am often stuck by how much I know I do not know. Known unknowns are, of course, not necessarily a problem, as gaps in knowledge can be filled with research. But unknown unknowns are outright perilous.

Fortunately, Gordon Lewis, Emilios Kyrour and Nuwan Dias come to the rescue in all three categories—known, known-unknowns, and unknown-unknowns—in the fourth edition of Lewis & Kyrour’s Handy Hints on Legal Practice (Lawbook Co, 2018).

Gordon Lewis is a former judge of the County Court and former Executive Director of the Law Institute of Victoria. Emilios Kyrour is a judge of the Victorian Court of Appeal and a former partner at Mallesons Stephen Jaques (now King & Wood Mallesons). Between them, Lewis and Kyrour have more than 90 years’ experience in legal practice. They were the authors of the first three editions of Handy Hints. In the fourth edition, they are joined by Nuwan Dias, a solicitor at Herbert Smith Freehills.

Handy Hints walks readers through the gamut of matters that practitioners need to master or at least be aware of, in everyday practice. For those starting out in the law there are useful tips on topics ranging from how to approach your first interview with a client, to drafting correspondence in plain English, conducting settlement negotiations, and managing competing demands. For more experienced practitioners, there are answers to the questions one can sometimes feel too reticent to ask: “Can I take the staple out of an original affidavit before photocopying it?” and useful primers on topics as diverse as privilege, contempt, duties and undertakings.

The book does not shy away from providing advice on dealing with difficult dilemmas such as the perils of intra-office sexual relationships and how to deal with dishonesty and physical threats by clients.

When the third edition of Handy Hints was published in 2014, Facebook had just been founded. Twitter had not yet been invented. Mobile phones were Blackberries, not iPhones. Electronic trials and the paperless office were at best conceptual. In the fourth edition, the authors have addressed the increasing complexity of legal practice as a result of these and other developments.

Handy Hints will be most useful to solicitors embarking on a career in the law, but it contains wisdom for counsel at all levels. Many topics are illustrated with practical and often humorous examples drawn from the catastrophes that can befoul practitioners, such as the all-too-common experience of inadvertently hitting ‘reply all’ to an email, or the not-so-common experience of one practitioner who hatched a failed plot to influence a jury by climbing onto the roof of a courthouse in order to inject laughing gas into the air-conditioning system.

We all make mistakes and commit errors of judgment in our professional lives, although most of them do not involve nitrous oxide. Learning from the mistakes of others is clearly preferable to making them oneself. In that endeavour, Handy Hints has earned a place on the bookshelf of both the budding and the experienced practitioner.
Kids in Wigs

Georgia Berlin has provided Bar News with photos of her one year old daughter Francesca Hume, “taking a break from working up her brief to read the Bar News”. The Editors note that any aspirational parent would be pleased to see Francesca’s rather more marked enthusiasm for Volume 2 of the 1991 Victorian Reports.

My Dog Ate It

This work of art which we think was authored by a barrister with a bit of downtime, was observed recently in the Geelong Court OPP office. Bar News decided it had to be captured for posterity. Please come forward if you are the cartoonist and would like attribution. If you’re not but believe you are equally talented, do provide us with your contribution, and if we like it, we’ll publish.

At Oscar Hunt, we adopt a tailoring approach that values the performance of a suit above all else - the result is an impeccable fit without compromising on comfort.

For good measure, enjoy a complimentary shirt with your first suit purchase when you mention VMAB.

WWW.OSCARHUNT.COM
BAR JACKET MISSING A BUTTON?
GOWN SLIPPING OFF YOUR SHOULDERS?

We will repair these for you, FREE OF CHARGE!
Dry cleaning available at a modest fee 1-3 day turnaround*

* CONDITIONS APPLY

LUDLOWS MELBOURNE
530 LONSDALE ST, MELBOURNE
03 9670 2000
INFO@LUDLOWS.COM.AU

LUDLOWS SYDNEY
153 PHILLIP ST, SYDNEY
02 9222 9794
NSW@LUDLOWS.COM.AU

LUDLOWS BRISBANE
LEVEL 1, 327 GEORGE ST, BRISBANE
07 3221 1940
QLD@LUDLOWS.COM.AU