

Committees

Criminal Law Committee

In the early part of 1987 the Criminal Law Committee of the Bar Association has dealt with a number of matters. One of the important matters arose out of a request by Mr. Howie Q.C. the Director of the Criminal Law Review Division of the Attorney General's Department. The issue was whether a statement taken under the "paper committal" provisions of the Justices Act could be used as the evidence in chief. The Association was strongly of the view that this should not be permitted without the consent of the defence. It is believed that the manner of giving evidence in chief, particularly in criminal cases, will frequently be most pertinent to the assessment of the credit of the witness. The Association was further concerned that the taking of the statement was not surrounded by the solemnity of the oath as it is in civil matters involving affidavits nor are statements taken by officers of the Court.

The second matter raised by Mr. Howie's letter concerned the present system in which the prosecution has the option to use the paper committal or to use the traditional committal. The Association was firmly of the view that the choice of the paper committal procedure should not be left to the prosecution alone. This is particularly so because frequently a committal can be shortened by use of the paper procedure with great savings of expense to the individual defendant. Such savings would not have the same significance to the prosecution as the costs are not paid by the individual informant except in the rare cases.

The New South Wales Law Reform Commission has brought out two volumes on Criminal Procedure which suggests radical changes to the Criminal Law Procedure. The most important of these is a suggestion to abolish committals. A number of the individual suggestions are acceptable but the Criminal Law Committee is very strongly of the view that committals should remain. There is no proposal to abolish them at the present time but members should be aware of the suggestion and the Committee would be grateful for any contributions which members wish to make on this point.

The Committee met with the Criminal Listing Directorate for the purpose of discussing the present difficulties with the listing of the first categories of trial at the beginning of each week. The problems that the Committee saw are:

1. In most cases it is impossible to know whether a case will be heard on the nominated day or on any day in the ensuing week.
2. Counsel faces grave problems in trying to set a realistic program for work for the week. It creates difficulties in knowing which briefs to accept and which briefs to refuse.
3. The system is degrading the practice of Criminal Law because it has led to briefs being passed at short notice with inadequate time for preparation.
4. The system is wasteful of legal aid.

So far as delays in Local Courts are concerned the Committee has been in regular liaison with the Chief Magistrate to discuss any difficulties which arise there and where the Bar may be able to assist. The Committee is hopeful that liaison both with the Chief Magistrate and the Listing Authorities in the Higher Courts can continue and that ultimately some of the problems may be resolved although it is difficult to see how they can be fully resolved given the present lack of resources.

The Committee for Review of Commonwealth Criminal Law wrote to the Association on the 16 March 1987 asking for submissions in the area of the Commonwealth Criminal Law. The Committee has already provided one submission on the use of averments and the onus of proof in Commonwealth Committal matters and the anomalies which arise in the use of those procedures.

The Council has considered the use of hypnosis in criminal investigations and the effect that that may have on the evidence given by the person subject to hypnosis. The Council's view was that at the present time the use of evidence obtained by hypnosis or where the witness has undergone hypnosis should not be allowed because of the dangers of suggestion involved in the hypnosis situation.

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Ethics Committees

At present there are 67 matters before the Ethics Committees. These comprise formal complaints and requests for guidance.

Disciplinary proceedings involving two barristers are presently before the Court of Appeal and a third will commence shortly. Four other barristers are, or shortly will be, dealt with by Disciplinary Tribunals.

So far this year, 37 formal complaints or requests for advice have been referred to the Ethics Committees. In 1986 there were 94 such references and in 1985, 85 references. The report from Professional Conduct Committee 2 (hereunder) describes the cross-section of matters which come before the Council. □

Professional Conduct Committee Number 2

Professional Conduct Committee 2 currently has before it about twenty complaints. Since the new committee was formed in November last year four complaints have been dismissed and one has resulted in the member being reprimanded by the President.

It could be said that the complaints range from the serious to the ridiculous. Most come from disgruntled litigants whose verdicts do not match their expectations. In some cases litigants have complained that irrelevant documents were not tendered or outrageous submissions were not made as "instructed". In one case (which was dismissed) a defendant complained about her over vigorous cross examination by the plaintiffs' counsel.

Some people complained about the profession as a whole including the judiciary. One man made extravagant complaints about all those who appear before the Family Court, its judges and the administration of justice generally. Another man serving a sentence for social security fraud complained generally about his representation without naming the counsel involved.

It is difficult to categorize complaints however they basically fall into the following groupings:

- (a) dealing with clients direct or without instructing solicitors — 3
- (b) failure to attend Court — 2
- (c) failure to follow instructions — 6
- (d) rudeness to clients or fellow practitioners — 2
- (e) misleading the Court or other practitioners — 1
- (f) incompetence and similar conduct — 3
- (g) unclassifiable conduct — 3

It was difficult to classify the conduct of a member who, when told by a Judge that if he did not call further evidence his client's application would be dismissed replied "Your Honour can do what you like". □

Fees Committee

Over the past six months the Fees Committee has been working intensively on submissions for the revision of the Supreme Court and District Court scales of fees to keep them in accordance with the increasing costs of running a practice. The structure of counsels' fees is also being considered in conjunction with the taxing officers to enable successful litigants to recover a greater proportion of counsels' fees on a party/party taxation. □

Motions & Mentions

Caption competition

The caption competition was won by Maconachie as much for his enthusiasm (seven entries) as for the ingenuity and lateral thinking involved in his winning entry which is set out hereunder. Many of the entries concentrated on a similar theme as the runners up set out below reveal.

- * "This dance was promised to me." (Mr. Justice Glass)
- * "Glass J.: Do you mind if I have the next dance Sir Maurice?
Sir John Kerr:
Yes please. It won't hurt so much if you tread on my toes?" (Mason Q.C.)
- * "Byers Q.C.: Do you mean Harold that when you were my age your hair was this long?"
Glass J.A.: Yes, and jet black too." (Ellison)
- * "Glass J.A.: You're quite right Maurice — it is going black at the roots. (Maconachie) □

It ain't me Babe

Scene: Castlereagh Street Local Court: Gypsy Fire, an actress, is bringing a criminal libel case against **Truth** newspaper alleging that an article published by that newspaper saying that Ms Fire had been Bob Dylan's sex slave was false. Sackar is appearing for **Truth**. A shortened version of this exchange appeared in the Stay in Touch column, but **Bar News** is brave enough to publish the unexpurgated version.

SACKAR: You were excited about making love to Bob Dylan, weren't you?

GYPSY FIRE: If you were making love to Joan Collins, you'd probably be excited.

SACKAR: I'm not so sure about that.

MAGISTRATE: Oh, Madam I think it would be Joan Collins who would be excited.

SACKAR: Your Worship is too kind. □

THE UNIVERSITY OF SYDNEY CONVOCATION ANNUAL GRADUATE DINNER FOR 1987

will have as its Guest of Honour
THE HONOURABLE D.M. SELBY
former Judge of the Supreme Court of
N.S.W., Fellow of Senate and former
Deputy Chancellor, University of Sydney.

The Dinner will be held on
Friday, 24 July 1987
commencing at 7.30 p.m. for 8.00 p.m.
in the Refectory, Holme Building
at the University.

The cost will be \$35.00 per head.
Dress will be formal.
For further details contact
Mr. H. Wilson 692 2248



I tellya, fellas, Fenech's arm was not even that high and that !#!*#! Conti gave him six flamin' weeks — he's gotta be down on the bunnies!*