

## Retirement of the Chief Justice

On 9 August, 1988 the Chief Justice Sir Laurence Street K.C.M.G. announced his retirement to take effect on and from 2 November, 1988. His retirement will not see his talents lost to the world of dispute resolution as he intends to pursue the establishment of a system of commercial arbitration in the Pacific region. The Bar wishes him well in those endeavours.

A dinner in his honour will be held by the Bar Association on 4 November, 1988 in the Dining Room at Parliament House. □

## Well Appointed

A.M. Gleeson A.O. Q.C. is to become the next Chief Justice of New South Wales on and from 2 November, 1988. His impending appointment has been welcomed by the legal profession and the Bar in particular.

Rumours that he is intending to renovate the Chief Justice's garden in St. James Road to install a fish pond inhabited by his favourite fish - the piranha - are described by Gleeson as "partially unfounded".

Gleeson must have been reassured by The Sydney Morning Herald which offered as consolation for the substantial cut in income he would take in accepting the appointment, the fact that he could look forward to job security for life and a pension on retirement!

A dinner in his honour will be held by the Bar Association in early 1989. □

## Amendments to Supreme Court Rules

The Supreme Court Rules Committee has amended the Supreme Court Rules effective from 12 September, 1988. A full copy of the Amendments is available from the Registrar. The following explanatory note issued by the Supreme Court indicates the nature of the amendments. The purposes of the Amendment are -

1. to require particulars of a claim for aggravated compensatory damages;
2. to permit a subpoena for production to require attendance on any day;
3. to limit the time for applying for review of a registrar's or taxing officer's decision to 28 days after the decision unless time is extended;
4. to provide for cross-appeal and notice of contention on an appeal from a master to a Judge;
5. to rescind rules relating to defamation published before 1974;
6. to require an addition to the title of a document in relation to the Jurisdiction (Cross-vesting) Acts 1987;
7. to assign to a Division business relating to public assemblies, consequential on the Summary Offences Act 1988.
8. to make other provisions of a minor, consequential or ancillary nature. □

## Barristers' Disbursements

The Bar Council recently considered a submission from the Library Committee which was considering the provision in the Bar Library of a more extensive data base service for members of the Association. However, the provision of any such service would involve the charging to members of an hourly rate for use of these services. This gave rise to the question as to whether it would be proper for barristers to include in their memoranda of fees a separate item with respect to the charge for the provision of such services. This in turn gave rise to a consideration of the entitlement of barristers to include in their memoranda a list of disbursements such as photocopying, fax charges, telex charges, telephone, air fares, accommodation, taxis, hire car, stationery and other similar expenses.

The Council was of the view that costs of the nature of the foregoing could, at the option of the barrister, either be incorporated in a global fee or itemised individually by way of a list of disbursements. In particular, the latter course may well be appropriate in respect of "big ticket" items such as air fares, accommodation and, in some cases, photocopying, telex and special secretarial charges where these constitute such an amount as would not otherwise and ordinarily be included as part of counsel's fee. The Council does not, however, wish to encourage a solicitor-type bill of costs. Further, in many cases, the Court allowed loading will cover travelling and accommodation costs. Whether or not counsel itemises a separate charge for the type of disbursements referred to is very much a matter of choice and, ultimately, taste. Where the expenses in question are "normal" then, generally speaking, they should not be charged for separately, but would, as they are now, be included in counsel's fee. However, as already indicated, where any of those expenses are significant such as, for instance, where there has been the necessity to engage special secretarial services or where extensive use of photocopying, the facsimile or data base services are required,

## Appointment of Queen's Counsel

On 6 July His Excellency the Governor approved the appointment of the following Barristers as Her Majesty's Counsel with seniority at that date and in the following order of precedence:

Peter Dent  
Lloyd Dengate Stacy Waddy  
Anthony John Bellanto  
Bruce Meredith James  
Glen Thomas Watson Miller  
Dean Letcher  
Paul Menzies  
Brian Harrie Kevin Donovan  
John Anthony McCarthy

## Small Claims Under the Trade Practices Act

*The Chief Justice of the Federal Court, Sir Nigel Bowen, has asked the Bar Council to bring the following to the attention of the Bar.*

Many practitioners are still bringing relatively small claims to the Federal Court notwithstanding the fact that since 1st September 1987, these cases could be brought in an appropriate State court. They are doing this despite being advised by the Registries that:

- (i) the claims can be brought in State courts ;
- (ii) s.86A TPA permits transfer of the particular claim by the Court to an appropriate State court;
- (iii) Order 62 rule 36A allows for a reduction in costs by one third where less than \$50,000 is recovered.

It would seem some practitioners are "dressing up" TPA claims by claiming injunctive relief and relief under s.87 TPA in an endeavour to permit the matters to remain in the Court. Perhaps some are not aware of the decisions of Mr. Justice Wilcox in Ewins & Ors. v. Buderim Imports Pty. Ltd. (1988) 76 ALR 157, Mr. Justice Gummow in McIntosh v. National Australia Bank Ltd. (NSW G127/87 - 4 March 1988), and Mr. Justice Northrop in Kinna and Anor. v. National Australia Bank Ltd. (Vic. G449/87, 4 June 1988) which dealt with transfers under s.86A where relief is sought under the Trade Practices Act.

By the time a clerk arrives at the registry with documents for filing it is too late to persuade him to bring the proceedings in some other court. It would seem some procedure needs to be followed to bring to the attention of practitioners the desirability of bringing small claims elsewhere than in the Federal Court. □

## Federal Court Reporting Services

The President made a number of submissions to the Chief Justice of the Federal Court in April last, concerning suggested improvements to the Federal Court Transcription Service. The Chief Justice has now advised the President that, following the representations made by him on behalf of the Bar Association, the following new procedures have been implemented by the Federal Court Reporting Service ("C.R.S."):

1. Priority is to be given to the provision of transcript in witness actions. It is recognised by the C.R.S. that the supply of transcript in these matters has been badly delayed and steps will be undertaken to achieve the availability of each day's transcript by 6 p.m. on that day. To this end the C.R.S., unless specifically requested otherwise, will proceed as follows:

- (a) Opening and closing addresses will not be transcribed.
- (b) The tender of exhibits will not be referred to otherwise than by reference to the description of what is tendered, the exhibit letter or number given the exhibit and a statement whether the exhibit was admitted with or without objection. In a case where the tender of a

document is rejected, the transcript will contain only a note of that fact. In short, argument and discussion in relation to the tender of documents will not be transcribed.

- (c) The procedure with respect to objections to evidence is to be the same. If there is an objection, there will be a note of that fact and a statement that the question has been rejected or allowed. That procedure will be followed in relation both to oral evidence and affidavit evidence.
  - (d) If judges do not identify documents sufficiently or state clearly that a document or question has been objected to and admitted, allowed or rejected, discussion will nevertheless not be transcribed. The transcript will be restricted to the evidence.
2. If a request is made for a full transcript (including argument) it is unlikely to be available on a daily basis and it may be delayed for some days.
  3. In single judge matters no opening or closing addresses or argument or discussion concerning evidence will be recorded unless the judge otherwise directs.
  4. Transcripts of proceedings not involving the calling of oral evidence, e.g. directions hearings, motions (including interlocutory applications for injunctive relief) and appeals (whether to single judges or full courts) will not be given the same priority as transcripts of witness actions. But, except in the case of full court appeals, the same abbreviated form of transcript as is to be provided in witness actions will be provided in other proceedings. In the case of full court appeals, a full transcript will be available unless the Court indicates otherwise.

Steps have also been taken to improve the efficiency of the New South Wales Court Reporting Service. In particular, as and from 1 July, 1988, the Court Reporting Branch amalgamated with the Transcription Services Bureau and the transcription unit of the Local Courts Reporting Services Section. \* The new Branch is to be known as the Reporting Services Branch. It is hoped that this step will further improve the efficiency of the court reporting services to be provided by the Branch. However, the Branch is still short staffed but attempts continue to be made to overcome this problem.

Two other matters may be of interest. The first is that the Reading Program now includes a lecture by a senior member of the Court Reporting Branch designed to instruct new barristers in courtroom techniques from the point of view of the court reporter. The second is that the Court Reporting Branch is preparing a publication entitled "Setting the Record Straight" based on a similar American publication published by the National Shorthand Reporters Association of the United States. This will, in due course, be distributed to all members of the Bar.

Finally, the Chief Court Reporter is keen to obtain as much feedback as possible from members of the Bar and would, therefore, welcome and encourage any comments or suggestions from members with a view to increasing the efficiency and the adequacy of the court reporting services being offered. Accordingly, any comments or suggestions from members should be forwarded to the Registrar who will convey them to the Chief Court Reporter. □

\* See separate report in Motions & Mentions - Ed.

## Decision of Disciplinary Tribunal No. 9 Barristers' direct contact with members of the public

A complaint was made that a member of the Bar had accepted an appointment as arbitrator in a matter in which he had given advice to the complainant about the matter in which he was to arbitrate. The complainant came directly to the barrister's chambers and saw him without a solicitor being present. There was a substantial dispute as to the content of what passed between the barrister and the complainant. It suffices to say that the complainant alleged that the barrister had given him advice on the prospects of success in the case, on the procedure for his own (i.e. the barrister's) appointment as arbitrator to arbitrate the dispute itself and the procedure to be followed at the proposed arbitration. It was also alleged that the barrister had told the complainant to write directly to the complainant's opponent suggesting that the barrister be appointed arbitrator.

Ultimately, the barrister was appointed arbitrator and decided the arbitration adversely to the complainant. The barrister denied the complainant's allegations and the Disciplinary Tribunal accepted the barrister's evidence and dismissed the complaint.

In the course of giving its decision, the Tribunal said :-

"We therefore advise the Bar Council that there has been no breach of the Bar Rules established in this case. The circumstances of this case do, however, emphasise the importance of these Rules and the need for their strict observance. They also indicate the general undesirability of counsel seeing members of the public at or in their chambers to discuss a matter which has legal connotations without an instructing solicitor being present even though no breach of the Rules occurs. This is because members of the public might, even though unfairly, misunderstand or misconstrue some statement by the barrister as being in the nature of legal advice. Such a situation could arise where a barrister is merely explaining to the public the practice and procedure in relation to arbitration. This is not, in our view, the giving of legal advice. It is, however, capable of being so construed by a member of the public."

What the Tribunal found was that the barrister had been telephoned by the complainant who had said that the barrister's name had been given to him as an arbitrator and asked whether he would be prepared to accept appointment. The barrister said that he would accept. A very short time later, the complainant just arrived at the barrister's chambers and asked to see him. The barrister went out to the foyer, saw the complainant who asked him whether he had been in touch with the opponent to see if he was acceptable as an arbitrator. The barrister was told that the complainant had not yet got the consent of the opponent and was then asked what would happen once that consent had been obtained. The barrister explained that there would then be a preliminary conference with whomever it was that was decided upon as being the arbitrator at which time procedural matters would be attended

to and a date fixed for hearing. The barrister was also asked what would happen in respect of the award and said that, subject to any errors the arbitrator might make, as to matters of law, the award would be final and binding between the parties.

As the Tribunal concluded, by seeing the complainant directly, the barrister, although giving completely innocuous information to him, had placed himself in a position where, because there was no instructing solicitor present, and no other person who could act as a witness to the conversation, he could later become the subject of a complaint as to his conduct. Even the fairly innocuous statements as to matters of procedure in arbitrations were able to be misconstrued by the complainant and so found a reference to a disciplinary tribunal. □

## Lunch- A Long or a Short Matter

A mere 12 minutes by taxi (or Hire Car for Silks) from Phillip Street is the Cricketers Arms Hotel. Eschew the bar which is likely to be stocked with sturdy women engaged in hearty arm wrestling contests over schooners of Reschs Draught.

On the first floor is a delightful restaurant, airy and not cramped. Cheerful and highly efficient service will see you through in an hour, if that is what you require.

The food is imaginative and delectable, focusing on fresh ingredients and not fussy. As a starter, I had slivers of raw beef marinated in tomato and garlic with lemon and served with crispy deep fried onion rings in a beer batter. This was a delicious novelty, not like a steak tartare at all.

My companion (who will be known in these chronicles as the party of the third part) had a pigeon salad. Thinly sliced and pink breast served over a bed of salad with a pink wine vinegar and olive oil dressing. This was at least as nice as the raw beef.

For a main course I had fillets of flathead fried in a wafer-thin batter and served with button mushrooms similarly encased. It came with a bernaise sauce stirred not whipped and therefore of the correct and thick consistency. A salad and chips of the size that one bought at the fish shop next to the Cremorne Orpheum in the '50's but crisp and hot, not soggy and warm! The P of TTP had a sweet only, fresh berries with a brandy cream sauce. This repast was washed down with a 1986 Wirra Wirra Rhine Riesling which was crisp, dry and softly flinty.

Do try it - and have the chips!

*Cricketers Arms Hotel, 106 Fitzroy Street, SURRY HILLS  
(first right off South Dowling Street) Phone 331.6869*

**John Coombs**

\* Bar News welcomes contributions (in the form of reviews) to the endless search for the perfect restaurant - both for the quick (but elegant and gourmet) lunch within a stone's throw of chambers and the long, languid, equally elegant and gourmet lunch after the case has settled! - Ed.