

Managing Your Own Money

Earlier this year I was surprised to learn that a junior barrister had recently taken out a substantial endowment policy on his own life. He had done so to protect his wife and child in the event of his premature death. I was surprised because an endowment policy was in fact an entirely inappropriate method of securing for his family the protection they might need. I advised him to cancel his endowment policy and take out a term policy. I later learnt that he had done so.

It is very easy for barristers to be so busy looking after the affairs of their clients that they neglect their own. The incident referred to has therefore encouraged me to write this contribution for Bar News in the belief that perhaps other barristers have also made inappropriate insurance arrangements for the protection of themselves and their families.

Temporary life or term insurance covers the policy holder against the risk that the life insured will die before a fixed age which, for example may be 50 or 55. If the life insured survives this age normally nothing is payable under the policy. Term cover therefore is not a means of saving for retirement. However, because there is a high statistical probability that a healthy person will survive the age of 55 the risk accepted by the life company under a term policy expiring at that age is low and it can afford to offer high cover for quite a modest premium. Term cover therefore is vastly less expensive than other forms of life insurance.

The period in a barrister's life up to say 45 is when his or dependents will be most vulnerable in the event of death. The barrister may have outstanding borrowings on home, chambers or both and children may be young and a financial burden for many years to come.

Hopefully by 50 or 55, when a barrister's substantial temporary life cover runs out, home and chambers will have been paid off, children largely educated and other savings accumulated.

Barristers holding temporary life cover should review their policies from time to time to ensure that the cover remains adequate. Inflation, growth in practice, a house move or an extra child or two can easily make what was once a good policy quite inadequate.

Premature death is not the only health risk faced by a barrister. A barrister may be unable to practise because of sickness or accident, but meanwhile a family has to be supported, overheads continue, and income tax must be paid. Insurance against sickness and accident is therefore needed. Barristers Sickness & Accident Fund is a suitable insurer. Barristers don't lightly take time off for illness or minor accidents and our low claims experience enables the fund to offer cover at very competitive rates. Premiums are fully tax deductible under Section 51 of the Income Tax Assessment Act.

A sickness and accident policy normally provides cover for only one year after the accident or the onset of the illness. A major illness such as cancer, multiple sclerosis, or hepatitis or a serious accident which does not attract any right to compensation may leave a barrister with no capacity to practise and no source of income except from any savings or private means. Prudence dictates that this risk be covered by a disability insurance policy. This will typically provide for

income payments to commence one month or more after the accident or onset of incapacity and to continue until a specified age, such as 65. The Law Council of Australia has negotiated a standard form of disability insurance policy which is available through American Home Assurance and Business Men's Assurance and possibly other underwriters as well.

Disability policies may be either indexed or fixed. With an indexed policy the annual premiums increase with inflation but so does the cover. One can also secure policies which provide for income payments which will themselves be indexed during the period of disability. The advantages of having a policy in this form will be obvious. In any event barristers should periodically review their permanent disability cover as policies taken out even a few years ago may well be inadequate in the light of inflation, growth in practice or increased commitments.

Premiums paid for such policies are fully tax deductible under Section 51 of the Act.

Incidentally you need both sickness and accident and disability cover. Most of us pay tax on past income out of current income. You will therefore need to receive payments under both policies during the first year of long term disability in order to meet the tax liability on the previous year's income.

Superannuation contributions either to a fund such as Barristers Superannuation or to a life company or the like which issues special superannuation policies are deductible up to \$3,000 a year pursuant to Section 82AAT of the Act. Premiums payable under ordinary whole of life or endowment policies or for term policies, however, are not tax deductible.

Barristers Superannuation operates an accumulation fund where members' contributions and the earnings and capital gains from those contributions build up over the period of fund membership. Fund membership therefore does not provide any significant protection against premature death, but is a worthwhile form of saving for retirement in view of the tax deductions available for contributions and the concessional tax treatment available for fund earnings and capital gains. Barristers over 40 should carefully consider making contributions to Barristers Superannuation, or some similar fund in excess of the tax deductible limit of \$3,000 a year currently available, in order to benefit from the favourable tax treatment available for the earnings and capital gains of approved superannuation funds.

Apart from superannuation the best tax-free investment a barrister can make is to accelerate payments in reduction of any mortgage over his or her own home. Interest payments under a mortgage over one's principal residence are not tax deductible. Assuming a mortgage interest rate of 18% per annum at the present time, an early repayment of say \$1,000 being an amount of principal otherwise due in say 1995 will secure for you a tax-free return of 18% per annum on that \$1,000 between the date of payment and 1995. This is a much better overall return than that available from an investment of \$1,000 in some income-producing asset. The barrister making such an investment would have to pay tax on the income and would be paying interest on the \$1,000 still secured under the mortgage out of taxed income.

Other things being equal it is better to pay off one's home early (where the interest is not tax deductible) and carry the debt on one's chambers where the interest is tax deductible.

Finally it would be as well to be insured under an adequate professional indemnity policy. While the Gianerelli decision protects barristers and other advocates in respect of the actual conduct of Court proceedings no such immunity attaches to chamber work or to advice given in the context of negotiations for settlement. It won't do you much good to have paid off your house mortgage early to find that you have to raise a fresh mortgage to pay a Court verdict or settlement for negligent advising or failure to advise in the context of settlement negotiations (contributed). □ K.R. Handley Q.C.

Family Law Conference

"The Family Law Section is holding its biennial National Family Law Conference at the Gold Coast next year. 18-21 July 1990.

The Conference shall be followed by a satellite conference at Hamilton Island on Queensland's Great Barrier Reef.

Topics will include the rights and obligations of Third Parties, the dependent litigant, domestic torts, creative presentation techniques, cross-vesting, trends in valuations, Bankruptcy and Family Law, proceedings after death, Child and Spousal Maintenance, and enforcement, for orders for access. In addition, comparative aspects of Family Law in the United States of America, the United Kingdom, Hong Kong and New Zealand shall be dealt with.

The Section is also arranging for Family Law Moot Competitions to be held in each State of Australia during 1989-1990 and the final of the Australian Family Law Moot shall be held during the conference programme and thereafter, there shall be an international moot competition involving an Australian and a New Zealand team.

Any initial inquiries or interest in respect of this Conference should be directed to:

Gail Hawke
Capital Conferences Pty. Ltd.
P.O. Box E345,
Queen Victoria Terrace,
Canberra A.C.T. 2600

phone (062) 85 2048 facsimile (062) 85 2334 "

Silent Praise

Coram Gleeson C.J., Kirby P. and Clarke J.A.

Gleeson C.J.: Call the second case for hearing please.

The case was called and appearances announced.

Counsel: We are happy to be able to inform the Court that this appeal has settled and Terms of Settlement are available to be handed up.

Kirby P.: May I be so rude as to ask when this matter was settled?

Counsel: About 8.45 am this morning and we rang the Court immediately to notify it.

Kirby P.: It would be appreciated if Counsel would advise the Court when appeals like this settle. I have spent considerable time reading the papers in this matter. This is a terrible waste of the Court's time.

Counsel: We did advise the Court immediately the matter was settled.

Terms of Settlement were then handed up.

Gleeson C.J.: There will be Orders in accordance with the Terms of Settlement which will be filed with the papers. I congratulate the parties and their legal advisors on reaching this settlement.

Kirby P.: My congratulations are mute. □

Courtesy

Tobin QC

Q: "Dr. Gill, you were making the allegation, weren't you?"

A: "I was pointing out the connection between and I was pointing out the letter of Mr. Smith and the surrounding..

Q: "You were making - ?

A: And the surrounding material related to -

Q: "Will you stop interrupting my interruption. Do you have any respect for the use of the English language?"

A: "I am not as good at using the English language as yourself, and I appreciate that distinction. I do have great respect and I have great admiration for the way you can put the words together."

□ (*Chelmsford Royal Commission*)