

Mid-Year Reports from Committees

Accident Compensation Committee

The work since November has consisted of continued involvement in the Workcover Committees and liaison with Government for a restoration of "real" Common Law rights to the workplace. As well, a drive for return of redemption rights to workers has continued.

In addition, the Committee has prepared reports for the Attorney General and the Bar Council on amendments to the Limitation Act, proposals for "medical misadventure" legislation, proposals for general tort law reform, particularly in the damages area. Close co-operation with the Law Society Council and its committees in this area has been maintained. □

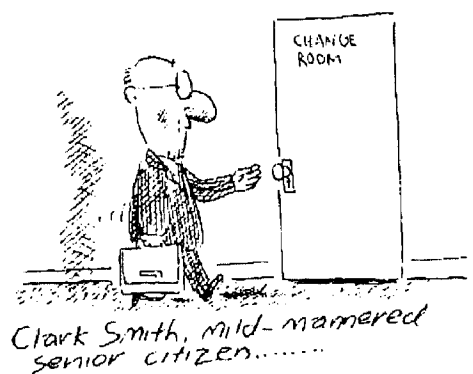
Common Law Listing & Liaison Committee

This committee dealt by negotiation with procedural and other complaints in respect of quasi judicial and judicial officers. Its Chairman also represented the Bar in the Delay Reduction Committee. The co-operation of the Bar in providing Acting Judges and the introduction of case flow management techniques and the holding of Issues and Listing Conferences close to the date for hearing have markedly improved turnover and reduced delays.

During 1989, 1,627 Common Law matters were disposed of compared with 787 in 1988, an increase of more than 100%.

Personal Injury case delays by December 1989 are said to be 2 years and 5 months, compared with 4 years in December 1988.

The Committee is also actively complaining at the overlapping of circuits in mid-year. □



Family Law Committee

The Committee has continued to meet on a regular monthly basis. The Committee members include Twigg QC, who is also on the executive of the Family Law Section of the Law Council of Australia, A.J. Young, who is Bar Council representative on the Legal Aid Review Committee, Trench from the Parramatta Bar, Simpson, Bar Council and Lakeman, New Barristers Committee. The other members are Rose QC, Ainslie-Wallace, Scott Mitchell and O'Ryan.

One main function undertaken by the Committee is to provide regular liaison with Judges, other committees and members of the profession.

Members of the Committee have regularly attended the Judges' Quarterly Meetings discussing with the Judge Administrator and other Judges of the Court questions of concern by practitioners and matters of practice and procedure.

Members of the Committee have also participated in family law conferences including the Fourth National Family Law Conference at the Gold Coast in July this year and also a Family Law Conference at Bali.

The Committee had considerable contact with the Legal Aid Commission during the year and in particular with the review of the Legal Aid Scale applicable to family law practitioners.

A further matter undertaken by the Committee this year is the proposed provision of a newsletter to family law practitioners to give greater feedback in respect of matters being dealt with by the Committee.

The major matters dealt with by the Committee during the year were the following:

1. The October, 1989 amendments to the Family Law Act introduced pleadings. Problems are still being experienced in relation to pleadings and Answers and Cross Applications. Further difficulties of interpretation of the Rules arise from differing approaches to providing particulars. One approach has been in accordance with equity practice that a pleading should be so precise, particulars are not required (*American Flang v. Rheem* 80 WN (NSW) 1294). The other approach (said to be the common law approach), is to provide only sufficient particulars to enable the issues to be identified.
2. The Legal Aid Commission conducted a review of its policies in the payment of legal aid to Counsel, this culminating in a decision in April this year to pay Counsel's fees on a legal aid basis at a rate of 80% of the Supreme Court, Equity scale.
3. The Committee has been concerned with the review of the powers and procedures of Judicial Registrars now sitting in the Sydney and Parramatta Registries. The Committee was also concerned in the question of the delegation of power under the amendments to the Family Law Act held to be valid in *Harris and Caladine* (1990) FLC 92-130.
4. Stage 2 of the Child Support Scheme has come into operation effective from 1st October 1989. The Committee was concerned with the evaluation of the scheme and

- in particular, to ensure that the administrative assessment of maintenance contribution be subject to judicial review so as to ensure that special circumstances of individual cases could be considered.
5. Ongoing matters of procedure in relation to rolling lists, short causes lists and long causes lists are continually before the Committee and in particular, in respect of the Committee's liaison with the Judges at the Judges' Quarterly Meetings.
 6. The Committee reviewed the proposed amendments in the *Family Law (Amendment) Bill 1990*. This Bill proposes to make significant amendments in relation to the handling of child abuse allegations, the effect of step-parent adoption applications, authorisation under the Family Law Act for entry, search and arrest and various other matters relating to stamp duty and the implementation of the Bill.
 7. The Committee was concerned with the special position of Court Counsellors as witnesses both in relation to the preparation of reports under Section 62A of the Act and as witnesses before the Court. The Committee is endeavouring to review the present procedure so that the parties' representatives may have greater contact with the Court Counsellors to discuss both the evidence they propose to give and possible resolution of custody disputes.
 8. The Committee has been instrumental in changing the procedure on entry to the Courts so that practitioners use identification cards rather than being searched.

Finally, the Committee wishes to welcome the Honourable Mr. Justice Rowlands as the Judge Administrator of the Eastern Region, Family Court of Australia. The Committee through its representative at the Judges' Quarterly Meeting looks forward to working with Mr Justice Rowlands in improving the practice and procedure in the Registries under his administration. □

Fees Committee

Cancellation Fees

This remains a problem area. Many complaints and enquiries are received from solicitors. Disputes over cancellation fees are becoming more common.

If a barrister wishes to charge a cancellation fee, it is essential that an appropriate arrangement should be made with a solicitor. Such an arrangement should be specific, although there may be circumstances in which a prior course of dealing will suffice.

There is no reason why the required terms of such a fee cannot be reduced to writing and sent out to solicitors in the ordinary course of negotiating a fee.

Legal Aid Criminal Fees

As anticipated last year, the Legal Aid Commission has again increased fees paid for criminal work. This is the third consecutive year of substantial increase, and the Legal Aid

Commission is to be applauded for making the appropriate budgetary allowance at a time when it has not been easy to do so.

Fees Recoveries

The Fees Committee has suffered embarrassment on a number of occasions recently because of the failure of complainant barristers to include relevant material with their complaint documents. Moreover, some complaint documents do not come in an ordered fashion.

Having regard to the substantial increase in fee complaints, the committee does not have the time to sort out unordered or incomplete material.

It should also be remembered that the committee will require reasons why it should attempt the recovery of stale fees, i.e. fees owing for four years or longer. Early complaints are encouraged.

Scale Fees

In the past, the Supreme Court, District Court and Compensation Court have had jurisdiction over the fixing of fee scales with regard to the recovery of costs and fees upon a party/party basis. Amendments to the Legal Profession Act have removed that jurisdiction from the Courts and given it to the Legal Fees and Costs Board. As reconstituted, the Board has two barrister members.

A new scale of loadings will soon be gazetted following examination by the Board, and an application for an increase in the scales has recently been made to the Board at the direction of the Bar Council.

Arbitrations

The number of fees arbitrations continues to grow, both in number and complexity. It is gratifying that so many senior practitioners make themselves readily available to serve as arbitrators. □

Finance Committee

The size and complexity of the Bar's budget in recent years has led to the formation of the Finance and Office Committee. This committee meets as needed but at least 4 times a year. The Committee members include the Treasurer and the Senior Vice President. Also on the Committee are a small number of members of the Council, with the Registrar and the Financial Controller, Judith Grattan and Richard Kelynack from our accountants usually in attendance. The nature of the services we provide has contributed to this complexity. They are required both by statute and by the standards needed by those we serve. Thus we now have a full time Education Officer, Michelle Goodwin, and Helen Barrett has taken on the office of Professional Affairs Director which involves almost full time administration of the Professional Conduct Committees, the Tribunals and any investigations to be carried out. This structure has enabled younger office members to take on delegated responsibility in the areas of education, conduct and

standards, and finance. I hope that the contribution made by all those people is appreciated by all of us.

The Bar's Caterer, Mr John Close, has now established his kitchen on an independent footing. He now caters for many functions including those for members at their homes. He has been very favourably received in these jobs.

Members will note that in this year's budget an allowance has been made for a contingency fund. There are many areas of law reform emerging and it is necessary for the Bar to assist in a substantial way. At present there is the Cost of Justice Inquiry. It is expected that continued funding of our submissions to these enquiries and reforms will be needed.

Finally I must emphasise the need to have your fees lodged for practising certificates by the last working day of May each year. Many members applied after this date. This causes difficulties to such an extent that it is likely that next year certificates for late applicants will not be issued in time.

□ B.H.K. Donovan QC

Commercial Legal Aid Committee

The main activity of this Committee during the year has been the development of the Commercial Legal Aid Scheme. Two more cases have been accepted this year and both are proceeding satisfactorily. Details of the scheme have been published in "Bar News". While it has not been operating on a grand scale, the scheme has assisted in solving the gap left by the reluctance of Legal Aid to operate in the commercial field. It is confidently expected that, in view of the present state of the economy, a number of leaders of the Australian business community may become clients of our Legal Aid during the next year. □

Legal Aid (Civil) Committee

The saga of fee levels for Legal Aid work has dominated. Funding is decreasing in real terms and although the administration costs consumers less per dollar than it used to, it still takes too much. The question of compulsory 5 days Pro Bono and Legal Aid work is under anxious and active consideration.

Negotiation for much more prompt payment has had significant effect and co-operation between the Bar's representatives and the Commission is much improved. □

Rules Committee

There have been a number of minor changes to the rules during the year, none significant enough to justify an annual report.

The major project presently being embarked upon by the Rules Committee is a complete redraft of the rules. In the

course of this process we are working with Queensland and South Australian Rules Committees which are redrafting their own rules. It is hoped to produce a set of rules which will be fairly standard throughout Australia.

It is appreciated that this would involve the disadvantage that the existence of standard rules will provide some sort of pressure against the frequent changes which have been made in the past. This should not be the case, however, as the rules will not be identical but merely more similar than they have been to date.

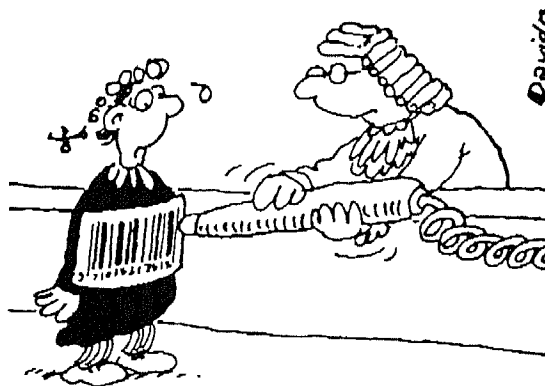
One thing which has been of interest to the Committee in studying interstate rules is to observe the extent to which the clerking system in Melbourne permeates the Victorian rules. There are express rules, for example, forbidding gifts to clerks by barristers and forbidding a clerk to engage in solicitation on behalf of barristers. There are also rules suggesting that the norm is for a fee to be negotiated through a clerk. In Queensland, on the other hand, there are no clerks at all.

The redraft should be completed before the end of the year. □

Professional Conduct Committee No. 3

Generally speaking, it has been "business as usual" for the Committee in 1990 in the sense that the number and subject matter of the complaints considered or currently under consideration have not differed materially from the past.

However, one case should be mentioned. It arose under rule 4. The barrister in question had, during the course of the proceedings in which he was briefed, formed a close personal relationship with his client. The complaint was made, not by the client nor the solicitor, but by the adversary party. The barrister did not, in any subjective sense, consider that his professional independence was in any sense compromised. Indeed, he maintained, as did his client, that he had argued the case to a very satisfactory end result. Nonetheless the Council, after considering the Committee's report, determined that rule 4 is to be construed strictly so as to oblige counsel to reject or return a brief whenever there exists an association or relationship such as might impair his or her impartial judgment. □



The Bar Code of Conduct