An Issue Not Easy to Accommodate

Twenty years ago the New South Wales Bar was, both corporately and collectively, accommodated in reasonable comfort within the various walls of Wentworth-Selborne Chambers. Since then, such growth within the profession has taken place as to render that building inadequate to house any more than roughly 26% of those in practice (see the figures on page 9 of the Association's 54th Annual Report). Geographical diversity in the form of the proliferation of "outside" chambers has followed as an inevitable consequence. With it, unfortunately, there has occurred a fragmentation of the bar to the point, seemingly, where many of its members do not consider the activities of the Bar Association, nor its ruling body, the Bar Council, to be of any particular "relevance" to their daily activities. This indifference has been exemplified by the comparatively low number of votes cast at the annual elections and, more recently, by the failure to achieve a quorum at an extraordinary general meeting convened to consider proposals for the alteration of the constitution of the Council. Ironically the number of candidates for election would have been more than ample to make up a quorum.

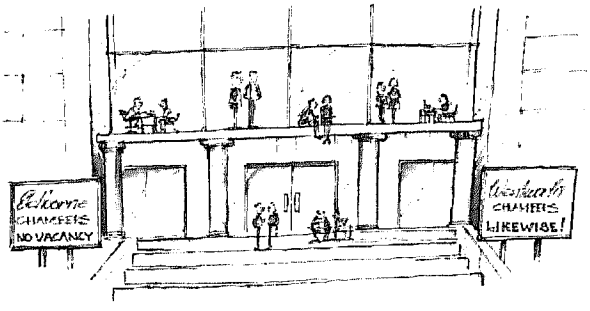
In the Annual Report, the President drew attention (on page 2) to the accommodation problems with which the Association itself is now confronted, indicating that the solution to them "will be neither easy nor cheap". Obviously all members will be called on, in one way or another, to pay for that solution, however it may be devised. A general meeting will no doubt be called in due course to consider the issue. Given the sensitivity of the hip pocket nerve there is little likelihood that it will not attract a quorum. Indeed it may itself prove the President's point.

The issue may well test the question of whether or not the apparent apathy of many counsel to the affairs of their profession reflects a lessening in the collegiate spirit of the bar and a converse emergence of attitudes of singular self interest. One hopes that the negative will be demonstrated.

Sadly, however, there is evidence abroad that the contrary may be so. Ever escalating overheads, and a corresponding necessity to devote effort to the pursuit of income to meet expense may be said to warrant concentration on individual rather than collective concerns. The impact of inflation on barristers' outgoings is doubtless as capriciously various as it is on other costs within the community. It is difficult, therefore, to say with confidence that outgoings are now proportionately greater than receipts as has been the case in the past. What cannot be denied, however, is that the most significant item of outlay to any newcomer to the bar is the capital required for the acquisition of chambers. One can only wonder how many capable people have been precluded from joining the bar's ranks because of this financial impediment. The phenomenon of paying substantial premiums for the privilege of becoming a member of a given floor has developed within this state, but not elsewhere in Australia. That development has been quite dramatic in the past twenty years. Before 1970 it was virtually unknown.

The practice has little, if any, rationale. Some proponents claim justification for it on the ground that in the case of Wentworth-Selborne, where the idea originated, an asset in the form of part ownership of realty is involved. But this appears to overlook the fact that the shares held by the occupants of that building are non equity, entitling their holders to no more than a return of their paid up (i.e. par) value in the event of a winding up (or reduction of capital). Other advocates of the "system" consider it to be so entrenched as to be incapable of demolition even by a gradual process of reversal. Others still are sufficiently unashamed as to claim that their chambers are an unassailable item of property and at that saleable for a substantial sum. Thus the bar has seen the emergence of "traffickers" in shares; chamber hopping has proved for some to be a much more lucrative activity than chamberwork.

The legacy of the 1980s is presently hard felt. Lending by financial institutions against will-o-wisp "securities" at high interest rates has had a significantly adverse effect on the nation's economy. As the community generally struggles to adjust its priorities to a new order which excludes such activities, so too a case may exist for the bar to consider disowning the custom mentioned in favour of its collective interests as a whole. Perhaps the point may be the subject of discussion at the suggested general meeting in due course. ❑ D.E. Grieve QC



Dear Editor,

In the Spring 1990 publication of Bar News there appears a drawing of a judge sitting with a gavel at his left elbow. I have always considered this implement to be an auctioneer's or chairman's hammer, as defined in the Oxford Illustrated Dictionary 1984, and unrelated to the administration of law. The Oxford English Dictionary 1989 describes it as a president's mallet or hammer.

The gavel has now been embraced by the media as something representing litigation. The Australian Broadcasting Corporation, when presenting news on Channel 2, frequently shows a gavel as an illustration for an item involving court proceedings. In at least two ABC dramas I have observed a NSW Supreme Court judge, when there was a commotion in court, pick up a gavel and beat upon the bench with it. Has anyone seen a British or Australian judge use a gavel or have one available for use?

I would prefer litigation to be illustrated by the scales of justice rather than by an implement which could imply that a verdict is knocked down to the highest bidder.

Evan Bowen-Thomas