

LEGAL REBUKE FOR MR. JUSTICE DOVEY

The Bar Council of New South Wales and the Council of the Law Institute yesterday strongly criticised Mr. Justice Dovey and his conduct of the Studley-Ruxton Royal Commission.

The Bar Council, in a statement, said Mr. Justice Dovey "failed in a signal degree . . . to exercise dignity, tolerance, judicial calm, and patience."

Standards of fairness

It said: "These qualities are indispensable or respect and confidence of the community in the courts and other tribunals."

The action of the Bar Council and the Law Institute is unprecedented in New South Wales.

Both bodies are understood to have studied the official Court transcript of the proceedings before issuing their statements.

The State Government appointed Mr. Justice Dovey as a Royal Commissioner to investigate allegations by David Edward Studley-Ruxton.

Studley-Ruxton alleged that seven police officers assaulted him at Darlinghurst police station on February 25.

The Commission sat for five days, and Mr. Justice Dovey presented his report last Friday.

"Deeply concerned"

The statement by the Bar Council reads:

This Council is not concerned with the merits or demerits of the complaint of Mr. Studley-Ruxton or with the correctness or incorrectness of the Royal Commissioner's findings.

It is, however, deeply concerned with the maintenance of the dignity and prestige of the Bench, with the observance by Counsel of due standards of conduct, and with protection of the citizens who are called before the tribunals of the State.

In the opinion of this Council the Royal Commissioner in the conduct of the proceedings failed at times and in a signal degree to exhibit and exercise those qualities of dig-

nity, tolerance, judicial calm and patience which this Council knows to be indispensable to the promotion and maintenance of the respect and confidence of the community and practitioners for and in the courts and other tribunals.

The Commissioner also at times failed to maintain that appearance of detachment and impartiality which is essential to the due administration of justice and to control Counsel and himself exercise due restraint, so as not to subject witnesses appearing before him to unnecessary insult and prejudice.

This Council is also of opinion that certain of the

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Complaints by many members'

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counsel appearing before the Royal Commission failed at times to observe proper restraint and a proper sense of fairness in questioning witnesses by asking questions which were unnecessarily insulting in form and in substance, and by making during the examination gratuitous and insulting comments upon answers given by witnesses.

This Council deprecates these departures, and desires to dissociate itself and its members from such conduct.

This Council is further of opinion that Royal Commissions conducted in this manner not only do a great disservice to the prestige of the Bench and of the legal profession, but tend to defeat the essential purpose of such Commissions, namely, the production after a dispassionate and impartial judicial enquiry and review of the available facts and circumstances of a report which can safely be acted upon.

Having regard to the complaints made to members of this Council by so many members of the Bar, the Council feels that in these resolutions it is expressing views and feelings generally held throughout the Bar.

In the view of this Council it is apparent that amendments to the Royal Commissions Act are both necessary and desirable to give greater protection to persons called before Royal Commissions, by inter alia, giving to persons affected a right to be represented by counsel and by imposing upon the Royal Commissioner in emphatic form a duty to confine the enquiry to relevant matters, and to protect witnesses against unnecessary or insulting questions, and questions which relate to matters too remote in time or circumstance to have any real bearing upon the present credibility of the witness, and to prevent the invasion of the privilege of professional communications unless the nature and circumstances of the enquiry inexorably demand such a course.

The Bar Council decided to forward its resolution to the Attorney-General (Mr. Sheahan), the Chief Justice (the Hon. K. W. Street), and Mr. Justice Dovey.

The statement of the Council of the Incorporated Law Institute of New South Wales said:

After careful consideration the Council of the Incorporated Law Institute of New South Wales has resolved to issue for publication the following comments on the conduct of the Royal Commission relating to David Studley-Ruxton.

1. The Council deprecates the departures from accepted standards of courtesy, fairness, and patience which took place during the proceedings, and it fears that the prestige and dignity of the Courts and of the Judiciary have thereby suffered greatly.

2. The Council regrets that the terms of the Commission were such as to make relevant to the enquiry consideration of interviews between solicitor and client, thereby disregarding the established

legal principle that such communications are privileged.

3. The Council considers that the principle of professional privilege is of supreme importance to the administration of justice and the preservation of civil liberties and regrets that notwithstanding the terms of the Commission and of Section 17 of the Royal Commissions Act 1923, the Commissioner did not exercise his discretion to exclude evidence of communications between client, solicitor, and counsel.

4. The Council notes with grave concern that the Commissioner permitted and participated in cross-examination of a solicitor as to his actions and motives in assisting his client, and regards such a procedure as a most unfortunate and dangerous disregard of established principles.

5. The Council proposes, in order to resolve any doubts as to the effect of Section 17 of the Royal Commissions Act, to make representations for an amendment to protect a client's privilege.

[Section 17 of the Royal Commissions Act provides that a witness shall not be excused from answering questions on the ground that the answer may incriminate him or on the ground on privilege or on any other ground.

Privilege is the rule of law which protects various matters from disclosure to any court, including matters which pass between a solicitor and his client.]

EDITORIAL

A stand for justice

THE Bar Council of N.S.W. and the Council of the Incorporated Law Institute yesterday rebuked a judge.

He was Mr. Justice Dovey, who recently presided over the Studley-Ruxton Royal Commission.

The Daily Telegraph last Saturday pointed out that public disquiet at the handling of the Commission had been widespread, and criticism voiced by the people of this State had been uninhibited.

The public uneasiness was apparently well justified.

In their unprecedented action of criticising a judge of the Supreme Court, the Bar Council and the Law Institute bolstered the opinion of the man in the street.

And the man in the street will sigh with relief as he realises that these responsible professional bodies are determined that the standards of the judiciary will not be lowered, and that this "great disservice to the prestige of the Bench" will not be repeated.

The Courts are one of the mainstays of our democracy.

The Attorney-General (Mr. Sheahan) has frequently expressed his concern that the cherished institutions of justice should be maintained.

He will no doubt read the statements from the Bar Council and the council of the Law Institute with keen interest.

It is to be hoped that Mr. Justice Dovey—and "certain counsel" who also are castigated—give the statements the same attention.