# Juniors

## Bullfry QC makes his return in a more reflective mood than his last appearance (*Bar News* Winter 1996)

*By Lee Aitken*

'*Omne animal post forum triste*' intoned Bullfry, disconsolately to himself in an equity whisper. The last of his large whisky and water was almost gone. He had always known that there were two types of junior at the Sydney Bar: those who rang you after the case to find out how it had gone, and those who didn't.

Even so, the behaviour of the junior that morning had shocked even his case-hardened heart. Bullfry had developed a technique in handling difficult questions, vouchsafed to him by the foremost appellate advocate of his youth. He had been advised by the maestro to step back a little from the Bar table and then pause, in order to regain momentum and blunt any judicial attack. Bullfry had glossed this by getting down physically below the Bar table (or 'parapet', as he called it) and coming up when he judged the moment right. To do this successfully and still retain dignity required the utmost aplomb.

'Bullfry'

This morning, he had opened with his usual veiled equity in an intimidating and acrimonious atmosphere in the Court of Appeal. He had been harangued with all the bitterness of an old 'friend' by a former floor colleague, who began the questioning with the new ball from the southern end - a green pitch - called on first for the respondent - the usual shivaree. As a result, he'd been constrained slightly earlier than he had anticipated to perform the 'Bullfry manoeuvre', as it was called in the Bar common room. When he came up for air, his junior had gone!

Now, Bullfry had never emulated the famous example of Sir John Starke who, when asked by his junior what role the latter should perform, replied 'Just listen son, just listen'. Bullfry was often 'on remote', as his juniors delicately put it, picking up the gist of the argument and, frequently, the relevant facts while on his feet. He had no false modesty about this, on one occasion asking a bewildered Full Federal Court, 'Can you all hear what my learned junior is saying to me?' This well-known reliance had led to a subsequent celebrated incident in the Court of Appeal, when a junior had forgotten that Bullfry was not leading him, and attempted to interpolate advice, to receive the shouted admonition from another leader: 'I'm not Jack Bullfry!' On another occasion, Bullfry himself had had to reprove and quieten an over-excited junior with an early volume of the *English Reports*. Of him and a bewildered Court of Appeal it was often said, as it had been of FE Smith QC and Lord Darling, that it was 'marvellous to see which of two agile minds coming entirely fresh to the problem could get on top of the facts first!'

Even so, Bullfry had come to expect from a departing junior at least the courtesy of a Captain Oates: 'I'm just going outside but I may be some time'. Frequently this was a signal that he should expect to see no more of the interlocutor for the forthcoming week. Today, however, the junior (known informally to his colleagues, for a number of reasons, as 'Amelia Earhart') had disappeared without a trace and without a comment.

Bullfry, in his sober moments, was an acute observer of human nature. He well-knew that no self-respecting man or woman commenced practice at the Sydney Bar with the unvaunting ambition of handing books to some superannuitant who was being mauled by an unsympathetic tribunal. 'No-one is a hero to his juniors.'

Most juniors, he knew, had the same egocentricity as that reflected by Sir Patrick Hastings in his memoirs. Hastings spent his first day in court after his call to the Bar watching a trial in which Rufus Isaacs QC, Edward Carson QC and Henry Duke QC severally appeared. He despaired of ever emulating them. On his second day he began to differentiate between their respective merits as advocates. By the end of the third day he concluded that there were great opportunities for an ambitious and able junior at the English Bar.

Most people, Bullfry thought metaphorically, came to the Sydney Bar with a view to flying the forensic aeroplane itself. Since you cannot safely fly a Jumbo without first learning to fly a Cessna, most people would be off at the first hint of an opportunity to be airborne themselves, however humble the tribunal, rather than hand bumf as third junior to the second junior to hand to Bullfry.

Furthermore, Bullfry well knew that nothing was more dangerous than a barrister who was generally available. The old and cynical maxim of Sir Frederick Smith applied to Sydney as it had long ago applied to London: 'There are 1,500 people at the Bar, there is enough work for 1,000 of them, and it is all done by 500 of them'. Heaven forfend that a junior should be generally available for weeks on end - that in itself was a sure indication of a lack of a practice, and by inference, the requisite expertise, or fighting ability.

Bullfry, of all people, was well aware of value of a good junior. Psychologically, it could not be overstated. In a hard-fought matter he was worth his weight in rubies: when you were down to the last few cartridges as the judicial assegais closed in, morale was everything. Many a victory Bullfry had snatched *ex articulo mortis* by his junior's inspired reference to some conventional, or other, estoppel.

How were juniors chosen? Bullfry had his own favourite, a wizened and taciturn fellow in early middle age who supplemented his leader's manifold technical deficiencies in a number of jurisdictions. Bullfry could think of several discrete but not necessarily mutually exclusive categories. There were, to begin, some 'stall fed' juniors 'recommended' perforce by the clerk in a third-line forcing sense in order to allow them to withstand the weight of a crushing mortgage repayment; that it had the happy collateral effect of also maintaining the 'goodwill' and thereby the value of shares owned by the superannuitant floor members was nothing to the point.

Then there were the 'panel juniors' - snapped up, invariably by secured lenders, expert with 'conclusive evidence certificates' and deeply attuned to the desires of the credit control team. At any given time, in a straitened economy, a sufficiently large number of big debt recovery actions would be on foot to keep them gainfully occupied. Such a one, however, like a member of a 'bomb-disposal' team of old, lived a life of constant fear, well knowing in the quiet watches of the night that the statistically certain loss on the summary judgment application (and consequently, perhaps, of his practice) was out there with his name on it.

More usually, however, sheer habit and personality controlled the combination amongst those 'Silk' who still insisted on a junior appearing with them. Bullfry had noticed a disturbing trend among the newer 'Senior Counsel' either not to require a junior at all or to appear with an instructing solicitor to fill the post. This only confirmed his mournful view, adopting Lord Chesterfield on another subject, that on appointment to the new honorific, 'the pleasure was momentary, the cost was enormous, and the position was ridiculous'. In addition, of course, it was inevitably far more expensive for the client to have any solicitor acting as junior compared with the modest per diem requested by experienced members of the junior Bar. This never seemed to raise any query with large corporate clients, no doubt because the 'in-house' counsel at the client who was 'supervising' the matter was an erstwhile senior associate from the large law firm on secondment to the client! It was Bullfry's considered and melancholy view that the only true discrimen of 'senior' counsel in the tattered legal market of the new millennium was the ability to require a large firm of solicitors to brief two counsel in an appropriate matter rather than rely upon a figurehead.

Bullfry was also well aware of a counter-intuitive fact concerning the demography of the junior Bar. Of the 1,800 odd counsel in active practice, over 200 were Senior Counsel. Below them lay an inverted pyramid; some 250 juniors had from zero to five years experience; some 250 had from five to ten years experience; the vast and remaining preponderance had more than ten years experience. This was the reason why the number of aspirants for a silk gown had reached ludicrous proportions. Accepting that anyone with more than, say, fourteen years call would feel morally obliged to apply, there was every likelihood that in time three hundred or more juniors would be applying annually for silk. A complex protocol existed to tell those unlikely ever to succeed to desist from applying. Indeed, some had been found worthy of silk after five or six applications notwithstanding that it was unlikely that their 'advocacy skills' (sic) had altered for the better in the interim.

'Bullfry noticed a disturbing trend.'

On the other hand, few counsel and most especially those newly 'in Silk' were proof in the silent watches of the night against the fear of an empty diary. 'July is a desert!' as a famous Silk was wont to say. It took a certain emotional hardihood to be confident that a juicy 'two-dayer' would come in to fill the void.

Amongst juniors themselves there had always been the most internecine disregard. The man with a 'commercial /

equity' flavour to his practice looked enviously at the common law hack, able successfully to run a 'double clock'; both disfavoured the 'cash and carry' of a large criminal clientele; all three looked enviously upon a bespoke compensation practice.

Bullfry looked up at his favourite *objet d'art*, the skull of a former Chief Judge, nicknamed by those who had appeared in his Division, *Rhadamanthus*. Bullfry had incautiously purchased it from a wanton executrix. On its base was a mordant brass inscription, the motto of the skull's owner when presiding - *'ita feri ut se sentiat emori'*. A large black beetle had made a home, appropriately, in the left eye socket.

But Bullfry did not despond. With all its vicissitudes, what an incomparable life it was! In what other calling could one be sacked over the telephone? More to the point, in what other calling could one (after reference to Barristers' Rules) sack oneself? In what other chosen profession were you 58 before the self-realisation dawned that you were a complete failure? (In any large law firm the ravening group of 'junior' partners would be tireless in cutting your 'points' from the age of forty five onwards). Where else would you be overgenerously paid for talking, and drinking coffee? In what other profession could you look forward to a steady potential increase in earnings as death, drink, and the Bench removed other competitors? In what other profession would the balding, saurian head, the slight distal tremble of the fingers, a general 'lived in' look - all command a high premium in the market place?

'Bullfry and the former Chief Judge.'

Bullfry recalled with distaste the self-pitying and atrabilious comments of John Parris in his autobiography on his departure from the English Bar:

'Miss the tension, the strain, the weariness, the boredom, the squabbles, the jealousy, the injustices, the snobbery, the sycophancy, the nepotism? Miss the stomach ulcer, the Barristers' Impotence, the wig-induced baldness? Miss the friendliness of some colleagues, the spotlight in Court, the vain glory of some ephemeral triumph, the rare moment of exhilaration? Or miss the money, snatched away almost before it had arrived? Miss them or any of them? I think not.'

Now it was true that Bullfry QC had been treating the first Mrs Bullfry *quoad sororem* for a time before her departure but that happily had no organic cause. And what was the worst thing that could happen in life? The risk of the curt entry of a summary judgment on the guarantee in the absence of sufficient 'facts and circumstances' did not compare in any sense with a surgeon's killing someone under the knife - unlike death, no judgment was final.

Additionally, the Bar was not, unlike a solicitors' partnership, a 'zero sum' game - that someone else was busily employed gladdened Bullfry's heart since if enough players were absorbed in other matters the likelihood of 'overflow' was vastly increased.

Of course, things were markedly different in a social sense from when he had first commenced. Even Bullfry himself was conscious that he was regarded as no more than a day-labourer in the legal vineyard by those instructing him. Like the centurion, he came when they said come and went when they said go. The notion that everything could be reduced to an hourly rate meant that he was, on occasion, giving the benefit of forty years' experience and expertise to some jackanapes who, when accompanied by his young assistant, was charging (without any ultimate responsibility) the gullible multi-national far more than Bullfry himself.

And yet, in terms of the actual business-side of rendering accounts and having them timeously paid, there was still something of a *noblesse oblige* feel to the whole operation: 'Don't worry if its another few months before Los Angeles can bestir themselves to pay my modest account!' (There was a faint, perceptible and lingering overtone of the Bar as a cosy career for the second son whom primogeniture had deprived of the family estate at Tibooburra.)

Bullfry couldn't help thinking that matters had swung sharply in favour of those controlling the purse-strings, who on the one hand expected to haggle like those on any other Rialto to drive down fees but yet exerted typical arrogance towards the legal 'sub-contractor' by failing to ensure that bills were paid promptly for work successfully, and unsuccessfully, done. Oh for the custom of the London Bar, where a fee on brief usually still bore some relation to the ultimate importance of the case!

In addition, there was the added and increasing danger that some slight gaffe in conference, or pre-trial directions, could attract a large claim for negligence in which the solicitors sought to send all liability 'up-stream' to Bullfry on the basis of his advice.

As to loyalty, general and special retainers had become merely a memory. Yet many a large institution found it hard to understand the 'cab-rank' rule, or to fathom how Bullfry one week could be vigorously defending its interest and the next exerting himself to bring it down. The ultimate result was being tied to one client, or worse, one firm of solicitors, where the slightest personnel change, severing links painfully garnered over several years, could see a former practice vanish overnight. He was well-aware of the constant encroachments into traditional work by the cadet branch of the profession. He regretted the disappearance of the besom of the tribunals of his youth where even the boldest counsel had feared to tread.

His secretary knocked and entered. She had been hand-picked for her singular looks by the second Mrs Bullfry many years ago and had grown older (if that were possible) in the service. 'Just time for another double before the next conference, Alice, and pour one for me as well, if you would.'