

Bullfry in the virtual world – lost in the post?

Recently¹, in the Supreme Tribunal, in a ‘virtual’ hearing:
The Solicitor-General: ‘Your Honours, I am sorry to interrupt my learned friend. It appears that Mr [X] [the appellant’s counsel] vanished maybe 30 seconds or a minute ago. At least, I cannot see him.’

The Chief Justice: ‘Yes, thank you, Mr Solicitor, I had not observed that. Mr [X], are you there? The Court should adjourn while we re-establish that connection.’

And a little later: ‘Thank you. We have the Solicitor-General for Western Australia back. We lost you. Did you lose audio, Solicitor-General for Western Australia? Can you hear us, Mr Solicitor? Solicitor-General for Western Australia, can you hear us? The Court will adjourn until we reestablish the link?’

For fully five minutes after his ‘hearing’ had finished Bullfry stared disconsolately into a now blackened screen. The skull on his desk looked back at him with a knowing grin – *hodie mihi, cras tibi*.

Had it come to this? – after forty-five years of legal practice? Looking at a ‘postage’ stamp on the screen?

A shouted call earlier from Alice: ‘Justice B’s on the blower! Hearing in three minutes!’

Then the tragicomedy of the faux-appearance – the pretended rap on the door, and the ‘All rise’ as Bullfry waited, semi-recumbent on the *recamier*, fetching in his Bulldog boxers (a Christmas gift), with his laptop on his lap – then the ‘hearing’ – interrupted twice when his opponent had ‘dropped out’ – then, at the end – ‘I will make the following orders shortly’.

All light-years away from the javelin men, and trumpeters of yesteryear, when the judges came to clear the Assizes. No pomp or panoply – the utter banality of legal process ‘online’ – the impossibility of any attempt at advocacy, however described or defined. Of what use or relevance now a wig and gown, the pin-striped suit? In a virtual world all was anonymous.

The timeless lyrics of Peggy Lee came to mind as apposite to the entire, forlorn, proceeding:

*Is that all there is, is that all there is?
If that’s all there is my friends, then let’s
keep dancing
Let’s break out the booze and have a ball
If that’s all there is.*

There was, as well, a very great and unrecognised danger to the Bar as an institution in all these developments. As those in power came to realise the savings to be had from ‘virtual courtrooms’ and all that meant for eliminating transaction costs (no travel time; no waiting time; no need even for fixed premises or attendant staff) it could not be long before ‘virtual hearings’ themselves were completely truncated. And looked at vulgarly, what could be charged appropriately for a ten-minute telephone ‘hearing’ where a registrar simply ‘cued’ the lawyers in, and then curtly dismissed them with a remonstrance: ‘I will call you both back in six minutes and I expect the timetable to be agreed’.

For the younger advocate there was no longer the opportunity for a morning’s visit to the running list with four or five mentions, the chance to meet and form new acquaintances with solicitors or solicitors’ clerks which can be so important in establishing a nascent practice. More relevantly, now gone was the opportunity to cross-examine a live witness, or to attempt *inter praesentes* to divine the inner workings of the minds of the Court of Appeal – and without that training how could a neophyte advance?

Ultimately a move to a virtual world would devastate the practices of the youngsters and the larger beleaguered and ageing cohort. Already certain Floors had collapsed as their landlords proved unwilling to meet the new realities of reduced work, and the cash flow it generated. Why bother to have a room on one of the more salubrious Floors when work would arrive via the computer in electronic form in any event? Why take on the attendant costs and risks when a virtual office and a coffee shop were all that the laity required?



It was always a shock to Bullfry to realise how few of his colleagues fully appreciated the demographic tidal wave about to hit the Bar. Many naively thought of the population of the Bar as a classic pyramid with a large base of eager youngsters, fresh from a Bar course, with a much smaller number above.

Far from it! Fully 60 per cent of counsel were over 50 years of age and one third were more than 60. Given it takes more than a decade to become confident to appear in any tribunal, one thing was distressingly clear: very soon there would likely be a large shortfall in the numbers of competent and experienced counsel. Over twenty years the number of admitted solicitors in the state had gone from some ten thousand to thirty-five thousand practitioners – the raw numbers at the Bar had increased by barely four hundred.



Bullfry waited, semi-recumbent on the
Recamier, fetching in his Bulldog boxers...

Jim Bullfry
Apologies to
DAVID. 2/22

Large firms, truth to tell, were in a similar strait. In particular, the vital paedagogy of watching and discussing an evolving matter or transaction with an older and wiser head was no longer automatically available – the camaraderie which arose from working side-by-side on discovery, or some M & A chivaree, or a complex commercial transaction was missing entirely and could not be supplanted by adventitious advice delivered remotely through a small screen. It was no wonder that a general feeling of dissociation and lassitude was said to be sweeping the junior ranks.

What would the judges of the past have made of it all? Now, thought Bullfry, all those great jurists I admired and did not understand when I was young are dead, but I still reach out to them. There is a land of

the living and a land of the dead and the only bridge is memory, the only survival, the only meaning. A little like the Banco Court where old, minatory jurists stare down forlornly from whatever spectral callover they now inhabit, or late at a Bar Dinner when, spectre-like, one of the ancients staggered out of the darkness to share a glass of red wine.

He thought happily of his days at the coast in his tinnie. Of course, now he was too old to be much of a flathead fisherman, and now of course, he usually fished the big waters of the estuary alone, although some friends thought he shouldn't.

Like many fishermen, when the summer days are almost Antarctic in length and scorching with heat, he often did not start fishing until the cool of the evening. Then

in the dimming half-light of the westering sun, all existence faded to a being with his soul and memories and the sounds of the ceaseless, lapping waves and the hopes that a fish would rise.

Eventually, all things merge into one, and the waves run over it. The estuary was cut by one of the world's great glaciers and runs over rocks from the basement of time. Out on the waves in his boat – unbidden – forensic images flood into the mind's eye – those images that yet, fresh images beget, on that dolphin-torn, that strong, fomented sea. **BN**

ENDNOTES

- ¹ *Farm Transparency International Ltd v State of New South Wales* [2022] HCATrans 6 (11 February 2022).