

This means that, unlike the position which existed before the amendments to the Judiciary Act in 1984, almost every private law decision made by this Court has great significance for the people in Australia. Moreover, since this Court is not bound by its own or other courts' decisions, it can and must examine the functional operation of legal rules and questions of policy to an extent denied to intermediate appellate and trial courts.

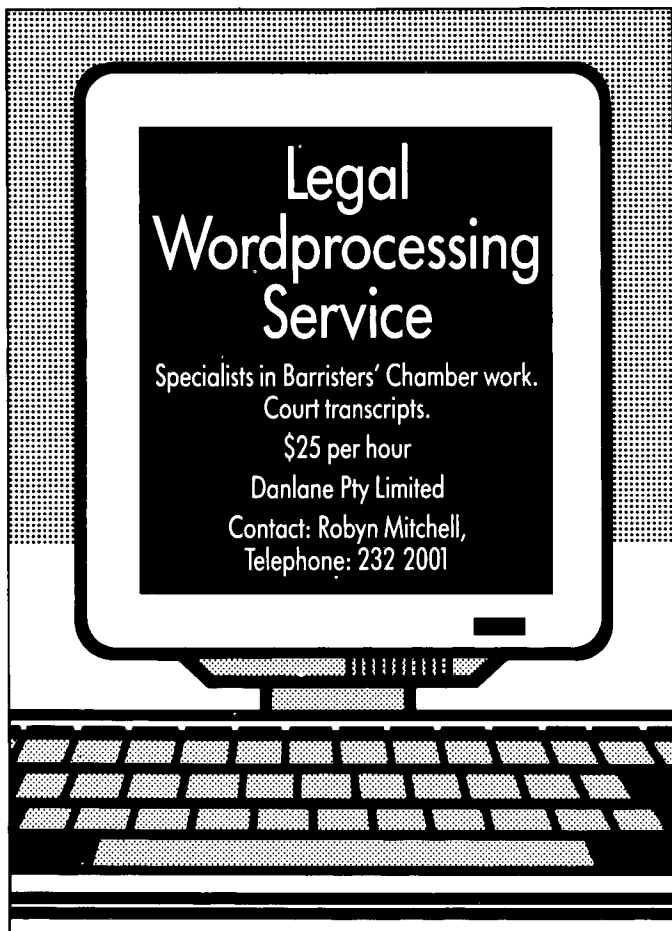
Against that background, it is inevitable that, no matter what legal experience a person has had, reflection on the nature of this Court's role must induce a measure of anxiety as to his or her capacity to discharge the responsibilities of a Justice of this Court. I am no exception. My anxiety is not lessened by the knowledge that my appointment follows the retirement of that much loved and highly respected judge, Sir Ronald Wilson, and that the Court to which I now come consists of outstanding lawyers of immense capacity and reputation.

Although I am only too well aware of the difficulties involved in discharging the duties of a Justice of this Court, nevertheless, I remain confident that, with your goodwill, the co-operation and assistance of the legal profession and my fellow judges, and my own determination and experience, I will discharge my duties to your satisfaction. □

Shrinking Jurisdiction

"Powell J. (talking about Protective Business) "I'm the only Judge mad enough to take this work"

Nelson: "I appreciate that your Honour". □



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Interviewing Witnesses - A Reminder about Rules 37 and 38

A ruling was recently sought from the Bar Council relating to the propriety of counsel for the plaintiff in a motor vehicle accident case interviewing the owner or driver of the vehicle on whose behalf the Government Insurance Office is the party on the record. The Bar Council adopted the view that the matter was sufficiently clear from the provisions of Rule 37 and Rule 38. The owner or driver in such case, not being the party on the record, are merely witnesses in whom there is no property and that prior to conferring with the owner or driver the Counsel or representative appearing on behalf of the GIO should be notified and given the opportunity of advising the owner or driver following which conferring may take place subject to counsel then advising the owner or driver of any possible adverse consequences either to his indemnity or insurance policy or under Section 14, paragraph 20(1)(d) of the Motor Vehicles (Third Party Insurance) Act.

Counsel on behalf of the GIO in the above instance as with any other witness may not seek to prevent or discourage a witness from being interviewed by opposing counsel.

Insofar as there are any judicial determinations criticising or prohibiting counsel in a personal injury case from conferring with owners or drivers on whose behalf the Government Insurance Office is the party on the record, such decisions cannot be supported on ethical grounds where the steps referred to above have been taken.

The interesting question as to what evidentiary use an admission of liability may be put after the introduction of paragraph 20(1)(d) to Section 14 of the Motor Vehicles (Third Party Insurance) Act is open to debate. On one view the admission of liability may have no effect against the Government Insurance Office except for the purpose of cross examination of the owner or driver as to credit. On the other hand the admission of liability may do no more than expose the owner or driver to a penal liability and has no impact upon the evidentiary use of an admission of liability. It is however common ground that the mere giving of a version of the facts which may establish negligence does not constitute an "admission of liability" within the statutory provision. □

Brysonalia

(1) "A person who reckons his future in months or years and not decades may reasonably have a different attitude to preserving and disposing of property and a different attitude to people generally. A character in Lawrence Durrell's *Alexandrine Quartet* said that when one is dying, one finds oneself in funds."

(2) "There would be few debates in which the defendant would prevail and few minds which he could ever overbear or persuade."

(Moon v. James, Bryson J., unreported, 24 November 1988)