

Judicial Criticism of Barristers' Fees

At the recent Australian Bar Association conference in Darwin, each State and Territory was required to present an irreverent skit during the Dinner and Dance held on the last evening.

The following is the contribution made by Robert O'Connor QC of the Western Australian Bar. It was inspired by comments at the conference made earlier in the day by a Queensland silk in response to a suggestion by a Queensland Judge that barristers should act on a gratis basis in alternative dispute resolution matters.

In the light of that Judge's comments and the other occasions where Judges, immediately on elevation to the Bench, have taken the opportunity to criticise the level of barristers' fees, Mr O'Connor looked into his crystal-ball and speculated whether, in line with the trend, the Queensland silk himself would make the following speech if and when he is appointed to the Bench.

"Your Honours, ladies and gentlemen.

To the ladies and gentlemen of the Press, I hasten to let you know that, if you miss anything I say, don't worry - pop around to my chambers and I'll gladly give you a full copy of this speech.

I thank you all for attending this Court ceremonial sitting

Managing the Long Civil Trial

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three weeks, I was allowed, I think, three days to write the judgment. I had already put together in my ring folder copious notes together with photostats from the law reports under the appropriate guidecard. I also had summarised the witnesses by either writing a summary immediately after they had given evidence and having my Associate type it up and insert it in the relevant part of the ring folder and/or photostatting pages of the witness's affidavit or statement or exhibit and similarly positioning it in the folder. Accordingly, if my memory serves me correctly, by the end of those three days I had the first draft of a judgment that was eventually to go to 152 A4 pages with my Associate. This took some time to type up and then it needed some more time spent on polishing it and minor adjustments. We then had to prepare about 25 copies of the judgment to go to the various parties and legal publishers etc., an exercise which itself takes time. The judgment was handed down on 10 November 1988, just over six weeks from the last day of hearing. I allowed an extension of the patent for roughly six and a half years. This appears to have been regarded as a satisfactory solution by the parties because no appeal was ever lodged. □

NB that statutory provisions as to extensions of patents have been changed since the hearing of the Bayer case.

today to mark my appointment as a Judge of this Honourable Court.

I must offer my profuse apologies to my learned brother Mr Justice X for the gross ignorance I displayed when I made observations regarding him at the Australian Bar Association Conference in Darwin way back on 12 July 1990.

The problem is that I did not know then that, immediately upon my swearing-in as a Judge of this Honourable Court today, I would be suddenly the beneficial holder of great wisdom, foresight and compassion, and that when I was a barrister I did not really possess any of those virtues.

How was I to know that a leopard could change its spots, or a poacher turn gamekeeper?

Please disregard the fact that I exercised my free choice to cease being a barrister and have opted to take judicial office - with security for the rest of my working life, on a comfortable salary, generous superannuation entitlements, and an office which gives my wife and me the greatest status, prestige and privilege which cannot be measured in money terms.

While 99% of the community feels that as a Judge I will be overpaid, what I just cannot stand is that money is money, and that henceforth some barristers may be earning almost as much as I have been receiving over the past 20 years.

Let me say, barristers should not earn so much.

I ask you to ignore - their many years of study; their long hours of work; their early starts; their rushed lunches; their late evenings; and sacrifices to family life, all in the interests of their clients, and to put their cases to the Judges in the most presentable form.

Ignore also their expenses for - chambers accommodation; technological equipment; library; salaries of clerk and secretary.

Further, ignore that up to one-half of their net income goes in paying tax.

As well as lower earnings, barristers should do pro bono work, i.e. act for free. Some say 50 hours a year. It's a matter of degree - I say: why not 52 weeks a year?

Finally, ignore - legal aid work done at reduced rates; deserving cases done for nothing; work done on Barristers' Board, Bar Association; work done on committees in relation to legal education, ethics, complaints, and presenting papers to the various professions, and writing professional articles, all for nothing.

Ignore also the other charitable and community work done for free by barristers.

I am proud to have left the real world. Like some of my brethren, I can now pontificate on the financial circumstances of a professional group of which I was a fully participating member until yesterday.

I thank God that today I have been blessed with the great gift of being the source and repository of all wisdom and knowledge." □