

# Bar Association Plans to Acquire First Floor Selborne Chambers \*

*Jane Needham (St James Hall) and Justin Gleeson (Wentworth Chambers) outline the background and the issues which have arisen in the recent debate concerning the housing of the Bar Association.*

On 24 June, 1991 the President of the New South Wales Bar Association, Mr B S J O'Keefe AM QC announced that, subject to Bar Council approval, the Bar Association had agreed to purchase from Counsel's Chambers Limited the first floor of Selborne Chambers for \$2.4 million. The reason given for the purchase was that the Bar Association was bursting at the seams. Its functions have increased dramatically, in particular in the areas of the reading course, legal education, regulation and monitoring of professional conduct and membership. Because of these activities, and the increase of numbers at the bar, the Bar Association's staff has increased to eleven. The acquisition of the first floor of Selborne Chambers would allow accommodation for the association staff in one area and provide much needed space for use in connection with the reader's programme and CLE. Advice had been obtained from a valuer on the appropriate price to be paid.

Subsequently, a number of dissentient barristers led by D E Grieve QC, requisitioned an extraordinary general meeting of members of the Bar Association for 6 August, 1991 to consider a motion:

"That the company disapproves of the action or proposed action of its directors in purporting to have it acquire rights of occupancy in respect of the first floor of the building known as Selborne Chambers at 174 Phillip Street, Sydney and declares all contracts, agreements, arrangements and understandings made or purportedly made in connection therewith to be void and of no effect."

The extraordinary general meeting of members of the Bar Association was held on 6 August, 1991. After considerable debate that meeting was adjourned to a date later fixed as 24 September, 1991.

On 1 August, 1991 D E Grieve QC suggested that a possible resolution of the matter was for an agreement to be reached between the Bar Association and Counsel's Chambers Limited to the effect that the Bar Association would cede its equity shares in consideration for the right in perpetuity to occupy its existing space in the basement and sub-basement and the first floor for no rent.

The provisions of the Memorandum and Articles of Counsel's Chambers Limited relevant to this proposal are as follows:

- (a) One of the objects for which Counsel's Chambers Limited is established is to permit such part of the building as the directors of Counsel's Chambers may approve to be used by the Bar Association upon terms and conditions as the directors may decide (Memorandum, Clause 2(b)(i)).

\* This article was prepared before the meeting of the Bar Association on November 13. At that meeting (which was attended by approximately 500 barristers) a motion was passed to the effect that the meeting was of the opinion that the Bar Council should proceed to negotiate with Counsels Chambers a lease subject to ratification by a General Meeting of the Association.

- (b) The Bar Association holds seven deferred ordinary shares in Counsel's Chambers Limited which entitle it upon a winding-up of the company to all assets of the company remaining after payment to the holders of all shares of the capital paid up on the shares (Article 6A(a)(iii)). The Bar Association shares also entitle it to have the sole right to vote upon a resolution for the winding-up of the company, unless the Bar Association decides that it consents to the resolution (Article 76A).

Thus although the Bar Association is entitled to the surplus available on a winding-up of Counsel's Chambers Limited, it does not have any right to occupy any space in the Wentworth/Selborne buildings save as permitted by the directors of Counsel's Chambers Limited.

On 12 September, 1991 the Bar Council put to Counsel's Chambers Limited for its consideration a revised proposal under which the Bar Association would still obtain the right to occupy first floor Selborne Chambers without making a capital payment; however it would relinquish its right to participate in the surplus available upon a winding-up and would agree to meet maintenance charges proportionate with other shareholders. Also, the Bar Association would still maintain a right to prevent disruption of its occupancy or a winding-up. This revised proposal was put in the context of further valuations of first floor Selborne being obtained which were between \$1.7 and \$1.8 million as opposed to earlier higher valuations.

The adjourned extraordinary general meeting of members of the Bar Association was held on 24 September, 1991. There were two motions formally before the meeting. The first was the original motion put before the meeting of 2 August, 1991. The second was an amendment to that motion (foreshadowed in a letter of Grieve QC of 10 September, 1991 and amended again at the meeting itself) whereby the motion disapproving the action of the directors of the Bar Association in acquiring the first floor of Selborne was limited to an acquisition "for \$2.4 million or any other capital sum".

O'Keefe QC, as Chairman, reviewed the work that had been done since the previous meeting to determine the best course for the Bar Association to meet its accommodation problem. He indicated that the revised proposal which had been put to the Bar Association for occupancy of first floor Selborne Chambers without capital cost but in exchange for relinquishment of certain rights on a winding-up would not be put to this meeting. It would be the subject of a separate extraordinary general meeting of the Bar Association and full information would be provided to members in relation to the proposal. Similarly, it was indicated that Counsel's Chambers would call an extraordinary general meeting of its shareholders to consider the proposal.

Various speakers, including Grieve QC, spoke for and against the motion. After some time a procedural motion was raised, namely that the motion and amended motion not be put. After a lengthy attempt to count the votes, initially on a show of hands, then on a division and then in parliamentary manner the procedural motion was passed 250 to 200 with one abstention. The meeting then closed.

Thus the current position is that extraordinary general meetings of each of Counsel's Chambers Limited and the Bar Association will be called in the next month or so to consider the revised proposal being worked out between the company and the Bar Association. Some of the issues which emerge from the debate are as follows:

**(a) Does the Bar Association need further space?**

The decision to move is based upon the needs of the Association, both in relation to its administrative functions and duties laid upon it by the *Legal Profession Act*, for more space. The proposal to occupy the first floor of Selborne includes rooms to be used for conferences, references and arbitrations, which obviously will generate some income. It would also enable the lectures in the Reader's programme to be held there, rather than, as is presently the case, holding lectures in spare Court rooms and in the Bar Association dining room. The question is really, does the Bar Association need further space in the Phillip Street/Martin Place area of the CBD?

**(b) Should the Bar Association acquire further space within Wentworth/Selborne?**

On the one hand, the following matters are put. First, Wentworth/Selborne is located most conveniently to the Supreme and Federal Courts. Second, if the Bar Association were to relocate its other facilities such as the kitchen and dining room to other premises, there would be substantial wasted costs involved. Third, consultants engaged by the Bar Counsel examined a series of other options in nearby city buildings, each of which emerged as more expensive than the option to take up further space in Selborne.

On the other hand, some question whether the first floor Selborne in fact represents the best option financially for the Bar Association. Further, Grieve QC has suggested that it is contemplated that Wentworth/Selborne will be demolished within the next ten years. He says this is apparent from the 1989 purchase by Counsel's Chambers Limited of Frederick Jordan Chambers for approximately \$15 million; this suggests, so he says, a plan to acquire all adjoining properties and redevelop the area between the Supreme Court, Phillip and Macquarie Streets and Martin Place. In addition, Grieve QC suggests that the Supreme Court/Federal Court complex is likely to prove inadequate to house those Courts within the comparatively near future which indicates a likely wholesale move to the Liverpool/Goulburn Street precinct. If that occurred, the Bar, as a whole, would move in that direction. For these reasons Grieve QC casts doubt on whether Selborne is the appropriate place for the Bar Association to continue its headquarters.

As a further matter, the Bar Association's occupation of Selborne Chambers has led to a view amongst some barristers outside the Selborne/Wentworth complex, and particularly amongst those not located in Phillip Street and its immediate environs, that the Bar Association and its facilities are primarily for the use of barristers within that complex. The point was made by some that it may be desirable, although expensive, for the Bar to move to another location completely so that any harmony remaining within the Bar may be preserved and relations between members of the Bar and the Association enhanced. In view of current trends towards decentralisation,

and in particular the movement of Courts to the Liverpool Street area, the location of the Bar Association next to the Supreme and Federal Courts to some merely underlines the perceived isolation of District and Local Court practitioners and, in particular, the criminal Bar.

**(c) If Selborne, at what price?**

Presumably the notices of general meeting for the Bar Association and Counsel's Chambers will include material supporting the valuation of the proposal from each side's point of view. The latest proposal involves a fundamental trade off. From the Bar Association's point of view, what is the value in obtaining largely rent free accommodation for the foreseeable future as against the loss of the right to receive the surplus on a winding-up at some unknown future date? The question from the point of view of members of Counsel's Chambers Limited is the reverse. One might think that the further away the likelihood of a winding-up, the greater is the value to the Bar Association in acquiring a largely rent free occupancy.

A further issue which arises is that under the latest proposal the Bar Association will have to pay "ordinary maintenance charges" associated with the first floor Selborne. Grieve QC says that this ought not include that part of the maintenance fees currently levied on Counsel's Chambers shareholders which funds the payment of interest on the 1989 purchase Frederick Jordan Chambers. The acquisition of Frederick Jordan Chambers is an issue which is the basis for a substantial level of discontent amongst some barristers outside (as well as inside) Selborne and Wentworth and in particular has made the issue presently under consideration more volatile.

**(d) Is a fundamental change in the relation between Counsel's Chambers and the Bar Association appropriate?**

It was an important part of the establishment of Counsel's Chambers Limited that it would provide accommodation for the NSW Bar. The holding by the Bar Association of the "equity" shares reflected this. That situation has changed over time since now only 40% of barristers are located in Wentworth/Selborne. The problem of finding suitable accommodation for barristers, whether new barristers or established ones, is increasingly devolving upon small groups of barristers. The Bar Association's ability to look after the interests of barristers with their accommodation has declined. This proposal may mark a further divergence from the original nature of the relationship between Counsel's Chambers and the Bar Association, as it serves to confirm that the relationship between the two bodies is essentially a commercial one.

**Conclusion**

A disturbing factor arising from both meetings is the level of dissatisfaction apparent from the views of barristers "outside". The desire of the Bar Association to stay within the confines of its current home, in Selborne and Wentworth Chambers, is seen by some, rightly or wrongly, as an alliance with the practitioners in that building. It is to be hoped that further meetings of the Association can be conducted without the previous high levels of personal acrimony and with the understanding that a view taken on the issue of the Association's accommodation is not a view taken either pro-or anti-Grieve QC or the members of the Bar Council themselves. □