

From the President

It would be a blessing, Brother Cadzeal (Ellis Peters' medieval detective) said, to live in boring times. The year has been a very arduous one for all Bar Councillors, and especially for the Executive members of it.

I mentioned in my earlier Report (part of the Annual Report) communication problems, ABA Rules, the Cost of Justice Inquiry, Law Reform Commission and Discipline and Trade Practices. I will not repeat what I said in that, nor what I said in the recent "Stop Press".

As well, the Council dealt with 99 complaints, dismissing 74 of them. There is perhaps some misunderstanding of the process. The Bar Council is bound to refer a complaint to the Tribunal if it involves a question of professional misconduct. This means that from time to time the Council is obliged to refer matters which it is confident will be dismissed. I have many times asked (various) Attorneys General to amend the Act to give us a *May v O'Sullivan*-type power to dismiss, ie. even though a prima facie case existed, the Council could dismiss if it was of the view that no reasonable tribunal, properly directing itself, would uphold the complaint. No Attorney so far has given the Council that power, which remains a matter for concern.

The problems with the Legal Aid Commission (LAC) are, if anything, worsening, notwithstanding our representations to the Attorney(s) General and our importuning of the Chairman and Director(s) of the LAC.

The LAC is now paying the private profession 90 days after memo approval and would require a cash injection of \$8m to reduce that to 30 days. This reflects a monstrous failure of public funding. The LAC Chairman's report says:

"I cannot over-estimate the critical situation in which the Commission finds itself at 30 June 1992. As a result of chronic under-funding of its programs by successive Governments - State and Federal - the Commission requires an injection of about \$8 million in order to be able to achieve its target of payment of the accounts of the profession within 30 days."

The latest decision, to "brief" solicitor advocates at rates higher than those paid to the junior bar, and including preparation fees, appeared at first blush to be designed to exclude the Bar from all but the longer, more complex trials. As you all know, long trials are now proffered on a maximum "lump sum" fee basis.

This has led me to make urgent representations to the Attorney General and the Chairman of LAC urging adoption of a dock-brief system, devised by James QC, Horler QC and others (which will leave the client with a choice of barrister advocate, not a "given" solicitor advocate) and as well insisting on a "same fee for same work" scale. I am assured by both

Rayment QC and the Attorney that there is, and will be, no policy of preference for solicitors.

The money in the SIA is public money. It is the interest earned on the money of clients of solicitors, held in trust accounts. The Trustees would not, I am sure, apply any of the funds in a way that was for the benefit of the members of the Law Society to the exclusion of other lawyers.

I am also assured that there will be fee parity. We may have to amend our rules to permit people doing legal aid work to do limited solicitor-type work like arranging witnesses and taking initial proofs. Dock Briefs were always done without an instructing solicitor of course.

Negotiations are continuing.

The Law Society has also refused to make a statement supporting the existence of a separate bar. Mr Marsden says that he does not want to adversely affect relations between solicitors and barristers, nor between the Society and the Association, but that his Council felt that no occasion for such a statement had arisen. Relations are, I believe, at a low ebb, although we have striven for improvement and ought continue so to strive. The Law Society's submission to the TPC expresses support for a separate bar of specialist advocates practising as we do and that is most welcome.

The bar needs unity at this time. I hope and pray that we can achieve it.

Nobel Prize winner Friedrich Hayek, in his book *The Fatal Conceit*, reminds us that our civilization depends on cultural traditions which have evolved over centuries, including the law. These traditions, he points out, are useful in ways which no-one can fully understand.

He says of the professional reformers (whom he calls "second hand dealers in ideas") that they "appoint themselves as representatives of modern thought, as persons superior in knowledge and moral virtue to any who retain a high regard for traditional values, as persons whose very duty it is to offer new ideas to the public - and who must, in order to make their wares seem novel, deride whatever is conventional. For such people, due to the positions in which they find themselves, 'newness', or 'news', and not truth, becomes the main value, although that is hardly their intention - and although what they offer is often no more new than it is true."

Let us not be victims of the fatal conceit. Remember how clever the media thought abolition of articles of clerkship was. The Law Society is reintroducing articles.

The role of the President is more time consuming every year. I have not done all that I should have, but I have done all that I could, consistent with the entirely reasonable demands of my bank manager, the tax office and my extended family's needs. I have served with great pride. □

John Coombs QC
President

