

New Hand at the Helm

Recently appointed Chief Judge of the Compensation Court, the Hon. Judge M W Campbell QC, answers questions put by Anthony Monaghan for Bar News.

"As little as a year ago I would have thought that I should politely decline the opportunity that you have extended. However, having regard to the recent observations of Sir Anthony Mason that it is now appropriate for judges to be more forthcoming than has hitherto been the custom, I have formed the view that it is my duty to answer your questions as best I can.

"Some of the questions are not easy to answer, as no doubt you had in mind. There are a number which I do not think I should answer because it seems to me that judges should still be extremely careful not to make any observations which could even remotely be taken to refer to particular persons whether they be judicial officers or members of the profession."

Your predecessor, Chief Judge McGrath, was the first Chief Judge of the Compensation Court. What is your regard for his achievements?

"I have a very high regard for the many achievements of Judge McGrath, as he formerly was. You are interested no doubt in those that relate to his position as Chairman of the Workers' Compensation Commission and, thereafter, first Chief Judge of the Compensation Court. When Judge McGrath was sworn in as Chairman of the Commission the then Attorney-General, Mr Frank Walker QC, observed that the Commission was in for very difficult times.

"That observation was if anything an understatement. Throughout the difficulties in change of structure, change of legislation and change of approach to the payment of compensation for injuries to workers that followed, Judge McGrath held firmly to the paramount need to preserve the independence of the Commission and then the Court and to ensure that the Court, when it was established, was a true Court going about its business in an appropriately judicial manner and with at least as much independence as enjoyed by any other court in this State. The fact that he succeeded in those endeavours is to my mind his greatest achievement so far as the Court is concerned. There were, during Judge McGrath's time of office, real questions as to whether or not the Compensation Court would continue as an integral part of the system of justice in this State. There was, I think, general agreement by the time he retired that no such doubts or questions remained. It was also a major achievement that, throughout the upheaval, the Commission and then the Court continued to dispose of its workload with efficiency and despatch."

Why did you depart the Supreme Court to take the office of Chief Judge of the Compensation Court of New South Wales?



"The easy answer to this question is to adapt the reply of the mountain climber and say 'because the job was there'. I have always regarded the work of the Compensation Court as important and worthwhile and I was offered the opportunity to lead the Court in the performance of that work. Administration has been a long-time hobby of mine: in the Army, in other outside organisations, upon the Workers' Compensation Commission and with the Compensation Court. I knew that if I accepted the appointment I would have as much administrative activity as I could possibly desire. After eight years on the Supreme Court, in which I heard at least one of most sorts of cases likely to come my way in the future, I thought it sensible to indulge my hobby. I also knew that to be a Head of Jurisdiction and a member of the Judicial Commission would open a window on aspects of judicial life which had but rarely come my way in 18 years as a Judge."

At your swearing-in ceremony, you made reference to the Court as "a personal injury Court". Do you see the Compensation Court taking responsibility for adjudication of motor accidents, occupier's liability, medical negligence, dust diseases and other causes of action arising out of personal injuries? What sort of jurisdictional limits might be appropriate? What would be the

advantages of such a change? What would be the disadvantages?

"It should be understood that the answers to this question are personal observations of mine. Whether the jurisdiction of the Court should be extended is a matter to be determined by the Government and Parliament and involves the consideration of a wide range of issues. Amongst other things, the view of the Courts which presently exercise the relevant jurisdiction are very much to be taken into account. I have long believed that it would be sensible to use the specialist skills of the Compensation Court to deal with cases involving personal injury. When I was previously a member of the Court it seemed to me unfortunate that industrial accidents often led to two separate pieces of litigation, one before the Compensation Court and one in either the Supreme Court or the District Court.

"I still hold that view, although I understand that, by reason of the legislative changes which have occurred since that time, a small number only of common law actions are being commenced following industrial accidents. A difficulty at that time and now is that, although it could be done easily enough, there are perceived to be difficulties in conducting jury trials in the Compensation Court. It may be that this problem will solve itself as the extreme difficulty of directing

juries in accordance with the recent legislation may lead to a situation in which their use is by common consent abandoned. It would seem to me that the structured provisions relating to payments under the *Motor Accidents Act* would fit very conveniently with the type of work presently being undertaken by the Court. Questions would no doubt arise as to sharing of the funding of the Court and, perhaps, as to the possibility of delaying the resolution of workers' claims. I do not think that such difficulties would be insoluble.

"Dust diseases are presently dealt with by the Dust Diseases Tribunal and, having regard to the recency of its establishment, it would be difficult to argue that its jurisdiction should be placed with the Court itself. Of course, the Judges of the Tribunal are themselves members of the Compensation Court. Matters of occupier's liability, medical negligence and other causes of action involving personal injuries seem presently to me to be less suitable for addition to the jurisdiction of the Compensation Court, although that is not to say that I do not think that the Court could adequately deal with such work."

In calendar year 1993, the Court disposed of a little over 18,000 matters listed for hearing. If there was an increase in the Court's jurisdiction, surely there would need to be an increase in its judicial personnel. Do you agree?

"There would be no purpose to be served by increasing the Court's jurisdiction unless it was adequately resourced to deal with that increase. I would think that further judicial personnel would be necessary if, for example, the motor accident work was to be carried out by the Compensation Court."

Proceeding upon the assumption of an extended jurisdiction, would you see advantage to the Court in developing distinct lists for the types of matters being brought before such a Court?

"To answer this question is rather like counting one's chickens before they are hatched. Assuming that there were to be the addition of common law industrial accident cases and motor accident cases and that there were not to be jury hearings, I would presently think that there might be separate lists during the case management process but that, once ready for listing, cases would simply be listed in turn before the available judicial officers."

What do you see as the future of the Bar? What is your attitude to the concept of direct professional access to barristers practising in the workers' compensation jurisdiction? What do you think of the notion of trade unions briefing barristers directly? What do you think of the notion of insurers briefing directly?

"It is not easy to give a firm answer to this question. I have confidence that there will continue to be a specialist body of advocates. Whether legislative changes will compel, even more than is presently contemplated, a fusion of some sort is

something that I do not think anyone can answer now with certainty. I remain of the view that, generally speaking, the most efficient way for significant litigation to be conducted in the interests both of the litigant and of the disposal of cases is for there to remain a division of work between the solicitor in the matter and the barrister along substantially traditional lines.

"Litigation in the Compensation Court is presently conducted in a generally efficient way. I say 'generally' because where human beings are involved there will always be errors. I do not think that it would be conducted more efficiently or more cheaply, if the litigants dealt directly with the barristers or if trade unions or insurers did so. The work of preparation of a case on the one hand and, on the other, advice relating to that preparation and the conduct of the case are different and require different skills and experience. I see no advantage in altering the way in which the legal representation of litigants before the Compensation Court is presently arranged."

If you had in mind procedural improvements in the Compensation Court, what would they be?

"The Compensation Court was one of the first courts to use a modified form of case-flow management. From what I have observed in the past few weeks it operates with reasonable efficiency. I do not presently think that any significant changes are likely to be of advantage, although the List Committee of the Court keeps its procedures constantly under review."

The Attorney-General has flagged legislation providing for Senior Judges of specialist tribunals such as the Compensation Court joining on a case basis the Court of Appeal in determining appeals from the specialist tribunal. How do you regard that prospect?

"From a personal point of view, with considerable pleasure. As I observed in the remarks I made when being sworn in, the work that I should particularly miss was the collegiate work of the Court of Criminal Appeal. I do not think anyone who has not held judicial office can truly appreciate how lonely the performance of the functions of that office can often be. To sit with other judges who share the responsibility and to engage in collegiate discussions relating to the matter before the Court is both pleasurable and helpful. That is not to say, of course, that each judge does not have to come to his own conclusion. Should the proposal be adopted, an invitation to sit upon the Court of Appeal when dealing with appeals from the Compensation Court would offer, from my point of view, a welcome opportunity to again sit upon a collegiate court."

The major substantive legislation occupying the Court is the Workers' Compensation Act 1987. If there were provisions of the Act which in your view should be amended, what are those provisions and why should they be amended?

"I have not sat upon the Compensation Court for long enough for it to be appropriate for me to make comments upon possible amendment to the legislation."

Would there be advantage in consolidation of the other Acts with which the Court is often concerned?

"I do not think so. Judges are accustomed to dealing with claims under a variety of Acts and sometimes consolidation can lead to more difficulty than it solves."

The immediate future of the Court is apparently a change in location, from Citra House to adjacent the Downing Centre. What is your view on the accommodation arrangements being planned at the new Court House?

"The Court is presently engaged in extensive negotiations and discussions as to the accommodation in the John Maddison Tower. I do not think that it would be appropriate for me to comment whilst the subject is under discussion."

Considering the praise received by your predecessor upon his retirement, what are the achievements and other highlights you would prefer people to remark upon on your retirement?

"The question assumes that there will be achievements and highlights. I suppose there will be some, as there will also be failures and low spots. When the times comes some warm words will be much appreciated, but I would hope that the speakers will be able to refer with sincerity to a job well done."

And at that far-off time, what do you think you would like to say to the third Chief Judge of the Compensation Court? The fourth?

"So much has changed, and will change, that to answer this question in any meaningful way is very difficult. I expect, however, that I will adopt the old army phrase and say 'you'll be sorry'. On a more serious note, if advice is sought, it will almost certainly be to stress the fundamental importance of maintaining the independence of the Court and its Judges and its deserved reputation for disposing of large numbers of cases efficiently and with a minimum of unnecessary trauma and disturbance." □

Solicitor's Correspondence

(The winds of micro-economic reform are chilling - it seems that ordinary care and skill is to go unrecompensed.)

"As part of our review of this matter and as little has happened over the past several years, we request that Counsel return his brief and, if appropriate, a memorandum of fees for any outstanding services." □

Brief Note on Overseas Criminal Law

Criminal lawyers are well experienced with the difficulty encountered in joint trials where each accused has confessed and set out their actions in a lengthy record of interview. Almost always they implicate the co-accused. Judges are required to tell juries that they may not rely upon the record of interview of the co-accused as evidence against the accused. As a matter of practicality the question must always arise whether juries are able, or do, in fact, ignore completely such material when dealing with the first accused.

In Singapore the court is entitled to take into account evidence in the confession of the co-accused when dealing with the primary accused. Section 30 of the *Singapore Evidence Act* says:

"When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession."

Until recently there was some belief in Singapore that the section only meant that the court could take into consideration the co-accused's confession and not use it as strict evidence or, indeed, base a conviction upon it. That view has been rejected by the Singapore High Court when it dismissed appeals in May of 1993. The written judgment was given in December 1993 and made available to the media in February 1994.

Three accused - Chin Seow Noi, Chin Yaw Kim and Ng Kim Heng - were jointly tried in the High Court in October 1992 and were sentenced to death. They chose to remain silent when the defence was called. Each had made confessions implicating themselves and their co-accused. The trial judge had held that s.30 of the *Evidence Act* did not allow the co-accused's confessions to be used as evidence against the accused in the same way they might be used against the co-accused i.e., against the person who made the confession. The Singapore Court of Criminal Appeal said this was incorrect. The Chief Justice, Yong Pung How, said:

"The natural interpretation of s.30 is that it allows that the conviction of an accused person to be sustained solely on the basis of a confession by his co-accused, provided of course that the evidence emanating from that confession satisfies the Court beyond reasonable doubt of the accused's guilt. And no other interpretation will emasculate s.30."

The position in Singapore now is that the co-accused's confession is evidence which may be used against the primary accused and, indeed, it must follow that an accused can be convicted on the evidence of that confession even where that may be the only evidence provided the confession is persuasive enough to convince the Court beyond reasonable doubt of the accused's guilt. □

Brian Donovan QC