

Holiday – Celebrate

Ingmar Taylor SC

Our cover image evokes all that I am longing for at the end of this year. Sun, sand, reading for pleasure and no masks!

I trust that, like our two cover image barristers seen holidaying on Charles Meere's beach, you too will find something to enjoy in this summer edition of *Bar News*.

I recommend the interview with our most recently appointed Supreme Court Justice, Dhanji J. When asked what changed with his appointment Justice Dhanji says 'walking out of court, sending the brief back and sending a bill.' As the first Indian Australian to be appointed to the Supreme Court he recounts how an IT employee of the court told him how proud he and his family were that someone of their background was on the court.

He, along with the rest of the Bench, now have to manage their various barrister friendships in light of the High Court decision in *JKB Holdings v Alejandro De La Vega*. Anthony Cheshire's article *The High Court sends trial judges to Coventry* asks whether the Court went too far in stating that only in exceptional circumstances can there be any communication outside court between a Judge and a barrister prior to the conclusion of a matter. How are court user groups to operate? Does it mean specialist judges, usually appointed from a small pool of close colleagues, are required upon appointment to give up the very social ties that were no doubt important to their wellbeing over many years?

The more literary amongst our readers will enjoy the delightful topic of literary allusions in judicial decision-making by Farid Assaf. Surely Judges are to be encouraged to leaven their decisions with



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News, we wish you
a virus-free decent
holiday, wherever you
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occasional poetry and beautiful prose. For example, Justice Burchett in the Superleague case, faced with an applicant who had established breach and asserted that as a result relief must be granted, quoted Queen Dido in the *Aenid* responding to Aeneas's assertion that he must undertake a god-given task:

*I rave, I rave! A god's command he pleads,
And makes Heav'n accessory to his deeds.*

Burchett J considered that the court, likewise, would not become an accessory to the misdeeds of the applicant, whatever the nature of the proven breach.

Looking for more? Christine Melis interviews former Justice Greg James

AM QC who famously prosecuted Ivan Polyukhovich and has returned to the bar 'to work in court with my sons', fellow barristers Evan and Liam. To this day he takes briefs from Legal Aid and the Aboriginal Legal Service and his long and varied career is rightly lauded.

We have two articles written by barristers who served in Afghanistan. Gray Connolly and David McClure SC, who reflect on Australia's role in that war following the recent withdrawal of troops.

Elizabeth Lambert writes about another effect of the end of that conflict, in a piece titled *What now for the female judiciary of Afghanistan?*, a topic that has been the subject of concerned announcements by the ABA and the Law Council.

Sean O'Brien discusses the rule of law in Hong Kong. Two years ago Sean penned a prescient article for *Bar News* titled *A message from the Free State of Prussia to Hong Kong*, which identified, through the prism of what occurred in pre-2nd World War Germany, how easily a security law permitting law by decree could result in the removal of fundamental rights. In *The Fragility of the Rule of Law in Hong Kong* Sean returns to the subject in light of the National Security Law, which has indeed been used to fundamentally alter rights in Hong Kong. For example, the Chief Executive can designate which judges are to hear NSL cases, and has the power to remove those whose words or deeds are considered to endanger national security. Small wonder former Chief Justice James Spigelman resigned as a non-permanent Judge of the Court of Final Appeal of Hong Kong, citing reasons 'related to the content of the national security legislation'.

Professor Rosalind Croucher has written a lovely portrait of the Association's oldest member, her father, Dr Frank McGrath AM OBE, who turns 100 this December. He has been a waterside worker, pianist, barrister, playwright, sailor, Chief Judge of the Compensation Court and (at 79 years young) constitutional law textbook author.

To all those who think they nailed 'appearing by AVL', Kavita Balendra's article may make you think again. Three barristers demonstrate their AVL set-ups, which are a far cry from simply sitting in front of a laptop in a badly lit room. Take *Bar News'* own Dominic Villa, whose set up includes a camera mounted inside a picture of a robed and wigged current Supreme Court Judge to ensure the appropriate eye contact and gravitas is maintained.

Following on from our previous Wellbeing Special Edition, Dr Norman Swan speaks about stress, alcohol and what barristers should be doing to protect their health (in addition to sitting on a beach reading *Bar News*).

Now we could not profess to be a serious magazine emerging from lockdown without having at least one article on how to cook sourdough bread. Even better, should you again be forced to spend extended time at home, we also have recipes for the perfect limoncello plus floral florentines. Delicious.

While you are taking, or at least contemplating, long healthy walks over summer, you can be accompanied by the best of podcasts. Our resident podcast reviewer, Reg Graycar, provides the definitive summer podcast guide, from 'the best true crime podcast of all time' *West Cork*, to *Dolly Parton's America*, voted 'best podcast of the year' which is 'the perfect

summer antidote' to all that might be gruesome in your usual listening.

The scourge of sexual harassment at the Bar is addressed in a number of pieces. Our President, Michael McHugh SC, writes about the important work the Association is doing in this area, including producing a film including the Chief Justice, the President and Kate Eastman SC that focuses on the need to change the culture of our profession. He writes too about the appointment of a new, independent, Sexual Harassment Officer to provide confidential advice and support to anyone who has experienced or witnessed discrimination, workplace bullying and sexual harassment at the bar and the establishment of an online tool that members can use to lodge a report, including on an anonymous basis.

Kate Jenkins, the Sex Discrimination Commissioner, writes about recent federal legislative reforms which broaden liability, including changes that now clearly capture conduct by one barrister directed at another.

Our resident advisers, the Furies, confront the subject head on and from personal experience (#ustoo) in their most powerful piece to date, answering the question: *Is there any way to stop unwelcome sexual comments from my senior counsel without sounding like a prudel/causing offence/committing assault?*

The beach is the subject of Belinda Baker's '*With my own two hands*' which features Rangii Mathur talking about the Australian Lawyers Surfriders Association. Rangii speaks of both the positive personal effects surfing can have on wellbeing, and the significant charity work the Association conducts.

Also at the beach, we find Bullfry, dozing

in the heat in a faded rashie as cicadas drone around him, who having overdone the aperol spritz, dreams he is before the Court of Appeal dressed in a sarong appearing for a strata-title owner who has been refused permission by her body corporate to keep a house-trained Komodo dragon as a pet.

As we emerge from this year of lockdowns, an end-of-year holiday and celebration is what we all need. Inspired by Farid's article on using literary allusions to make good a point, I call in aid the poetry of Madonna¹ (sing along with me now):

Everybody spread the word

We're gonna have a celebration

All across the world

In every nation

It's time for the good times

Forget about the bad times, oh yeah

*One day to come together
to release the pressure*

We need a holiday

If we took a holiday

*Took some time to celebrate
(come on, let's celebrate)*

Just one day out of life (holiday)

It would be, it would be so nice!

From all of us at Bar News, we wish you a virus-free decent holiday, wherever you may take it. After this year, you deserve it!

ENDNOTES

¹ Yes, my musical tastes, for what they are, were formed in the 80's.