

From the Profession

Dear Steve,

Thank you for your letter of the 12th August which I didn't receive until today because it went - like many mailouts from the Society - to the wrong address. But that's another story.

Your letter and enclosures have really fired me up. I have no objection to a modest fee increase if it is justified. What gets right up my nose is the massive hike in fees proposed and the sheer arrogance of the method of its announcement.

Lawyers tend to scream blue murder at regular intervals when Governments or anyone else planning to do something a bit radical fail to consult. But here we have a proposed massive hike in fees coupled with what amounts to defacto compulsory membership of the Society without the slightest hint of consultation with the wider membership of the Society.

I have read the enclosures with your letter. I make the following comments:

1. To say that the Society is responsible for the fall in Professional indemnity premiums is drawing a pretty long bow. Most of the credit for low premiums must rest with practitioners because of the low claim record. To justify an enormous increase in the Practising Certificate by linking it to a fall in insurance premiums is just ridiculous - one has nothing to do with the other. Next you'll be justifying it by saying that interest rates are low or phone call costs have dropped or holidays in Bali are cheap.
2. I don't have much respect for organisations who through complete lack of foresight keep fees the same for years and years then in panic, announce - like the Society has done - a massive hike. It's not as if National Practising Certificate or Competition Policy is new. I've been reading about it ad nauseam in *Balance* for the past few years. Surely the penny should have dropped years ago that fees might need to increase and a policy of orderly annual increases announced. In fairness, the present Council should

not be blamed for something that should have happened two or three years ago.

3. My initial reaction - without looking into the matter at all - is that making membership of the Law Society compulsory may well be illegal. Wouldn't the Society look like a nice old goose if it was found to be in breach of the Trade Practices Act or some other legislation.

Could I therefore suggest that Council take a deep breath, resist the temptation to panic and reconsider the matter and if it is still of the opinion that fees need to increase then firstly, abandon the massive hike and announce an orderly but modest annual increase in fees to come in over the next few years and secondly, abandon what really amounts to compulsory membership of the Society.

I have been a member of the Society since 1972 so I you will appreciate that I am not speaking as some Johnny come lately. In fact I had the honour, at the direction of Alice Springs members, of moving the motion at the AGM in about 1978 which led to the establishment of the Secretariat (and the employment of the late Ted Rowe) and which also led to the establishment of Compulsory Professional Indemnity Insurance. As some older members will recall, prior to that, the Law Society filing cabinet followed whoever was President and the poor old President coped as best as possible. Rumour had it, in those days, that in the filing cabinet were complaints years old which had never been acknowledged let alone dealt with - but that is only rumour!

I look forward to your early reply - to the correct address - and I hope your reply will settle my blood pressure.

I'm sending a copy of the letter to Jim Campbell with a request that it be published in the next edition of *Balance*.

Yours sincerely,

Peter Howard

17 August 1998

response to letter on page 5

BOOK REVIEW

BY JAN WHITBRED

Advocacy in Practice

Third Edition Examination: Practice and Procedure.

By Glissan, J.L. & Tilmouth S.W.
Butterworths 0409 309 74 5: \$90.00
April 1998; Hardback.

This book was formerly published as Glissan's Cross-examination: Practice and Procedure (published in 1985 and 1991). The new edition is truly a new and up-to-date practical work which reflects recent advances in thinking about advocacy. The chapters on examination and cross-examination have been completely rewritten.

The new edition also contains a complete chapter on the critical need for preparation and case analysis. It provides a practical step-by-step approach which will be extremely useful for new practitioners and, no doubt, useful to those old dogs who are still capable of learning new tricks!

The book covers the following areas: Preparation and Case Analysis; Opening; Examination; Cross-examination; Re-examination, Rebuttal and Reply; Objections; Closing Address; Etiquette and Ethics; Elements. Each topic is broken down into a number of headed paragraphs and sub-paragraphs, which are set out at in a contents page at the beginning of each chapter. Check lists are usefully provided at the end of each chapter and a final check list covers the major elements over the course of a trial from preparation to appeal.

As a general comment, the new edition is more accessible and, unusually for a text book, very readable. Clear examples are given and the way the book is structured makes it an easy to use as a day-to-day reference book.

Like all advocacy books "Advocacy in Practice" stresses that there is no alternative to "hard grind". The authors also stress the need to establish individual systems for organising a file or brief and the suggested approaches will be of use to both counsel and practitioners preparing a brief to counsel.

All in all, a thoroughly practical and useful addition to most practitioners book-cases.

From the Profession

continued from page 3

Dear Peter

Thank you for your letter of 17 August 1998.

I am sorry that my letter of 12 August 1998 went to your Alice Springs address rather than your Watervale address but all member records are computerised and I asked that the letter be sent to the Managing Partner at the firm address. Our records show your practice address at Alice Springs.

It is not in my view a charter of an organisation such as the Law Society of the Northern Territory to make a profit from its members. We don't.

From the outset, supporters of the travelling practising certificate concept within the constituent bodies of the Law Council of Australia, assured our successive Law Council representatives that the Law Society of the Northern Territory would not suffer financially if such a concept were introduced nationally.

Several of the constituent bodies were not in favour of the concept as there appeared little hope of solving jurisdictional problems associated with complaints handling, professional indemnity insurance and fidelity fund claims.

These jurisdictional differences will now be overcome by introducing a protocol between each of the participating jurisdictions which address such problems.

Upon recently becoming aware of the fact that a travelling practising certificate was to be introduced nationally in the near future, Council of the Society immediately raised the financial implications with the Law Council of Australia.

It was discovered that although the Law Council of Australia was prepared to assist to some extent, the problem of a major shortfall in income was left to this Society to deal with.

Council of the Society immediately established a committee to consider all options in respect of increasing income and reducing expenditure. Unfortunately, after investigating all possibili-

ties, Council reached the conclusion that the fee increases as proposed was the only option.

I can assure you that there was no panic within the Council. Council spent considerable time and effort before reaching the decision it did.

Modest fee increases over the past three or four years could not be justified on the basis that there was a possibility that some time in the future the Society might lose an income source.

In any event, although those increases may have added to the Society's reserves a considerable increase would still have been required to make up for the anticipated loss in income.

Your comments in respect of professional indemnity insurance premiums are noted. However, I would like to bring the following to your attention.

Upon his appointment as Executive Officer in 1991, Mr Jim Campbell was given a charter to review all the then practices and procedures of the Society with a view to improve the cost of effectiveness and efficiency of Law Society operations.

One of those matters investigated was professional indemnity insurance.

For a number of years the premiums had increased annually on the premise of a poor claims history. Investigations indicated that except for one or two periods, the premium pool exceeded the claims paid. There were also some concerns in respect of claims handling.

With the consent of the Council, the Executive Officer called for tenders to operate the Northern Territory professional indemnity insurance scheme and was successful in the first year in obtaining insurance at a lower premium than that proposed by the then current insurers.

Unfortunately the following year, premiums were again increased and in 1995/96 tenders were again called and Sedgwick Ltd was appointed as the Society's broker to operate the professional indemnity insurance scheme.

The decision to appoint Sedgwick Ltd was made after they negotiated a lower premium pool with the underwriters, agreed to a lower commission, established an efficient claims reporting and claims handling system and introduced annual claims prevention strategies.

Contrary to your comment on a low claim record, the number of claims has risen from 30 in 1992/93 to 51 in 1997/98.

I have no doubt that the Society has been instrumental in the reduction of professional indemnity insurance premiums. However, having said that, it is now up to the profession to ensure the premiums remain at the current low level.

In my column in the July 1998 issue of "Balance" I emphasized that there was no intention to introduce compulsory membership of the Law Society.

This procedure to be introduced is similar to that currently in use in Queensland, New South Wales and Tasmania.

This procedure will reduce the number of forms required to be completed by practitioners and reduce the cost and time expenditure of the Secretariat.

It will also allow practitioners to use the premium funding facility arranged by Sedgwick Ltd to pay membership if required.

Practitioners who do not wish to be a member of the Society will simply tick a box on the application for practising certificate form and return it to the Society.

It is noted that membership of the Society is voluntary and has risen from approximately 170 in 1991 to 325 in 1997/98. I believe that all Territory practitioners should be a member of the Society notwithstanding that they do not always agree with what it does.

Yours sincerely,

Steve Southwood

1 September 1998

