Letter to the Editor

Dear Sir,

The National Conference

Those of us who attended the recent conference in Sydney, were indeed privileged to hear the distinguished group of speakers and to be exposed to such a wide range of thought-provoking subjects. Personally I can think of few other similar occasions which yielded so much worthwhile material. Congratulations to all concerned in the organization and particularly to Norbert de Rome and Lynne Kilgour who had the responsibility for ensuring that it all went smoothly.

The presence of speakers and visitors from overseas is not always guaranteed to enliven such proceedings, but in this case it paid dividends. Mr Allen Foster from the American College of Construction Arbitrators gave us what was, to my mind, a provocative and certainly often critical outline of the American arbitration system. Let us not be complacent! Americans have a commendable ability to criticise themselves and their institutions; this is one of their great strengths. We should emulate them. Who says *our* dispute solving procedures are even near perfect?

The eminent visitor from Hong Kong, Mr Justice Hunter, whilst not of the speakers panel and telling us not a lot about the Hong Kong system of arbitration, contributed significantly in other ways to discussion with his wise comments and gentle wit. One hopes that he and his working party do not succeed in their aim to make Hong Kong the international arbitration centre for this part of the world. We want the privilege for Australia but Justice Hunter's contribution and obvious skill in putting his case makes it clear that we will need to develop and maintain in this country extremely high standards in dispute solving procedure in order to acquire it.

I feel sure that we all benefited from the very thorough and interesting treatment which was given to the subject of 'Frustrations & Delays' by our fellow member, the Honourable Justice Mears—surely one of, if not the most frequently encountered problems in the practice of arbitration. A copy of Justice Mears' paper will certainly find a place in my library, as will that of the Honourable Justice Rogers on 'Commercial Disputes and Arbitration', a subject requiring constant updating and on which the honourable speaker stimulated our thinking with suggestions related to short "mini trials", judges acting as occasional arbitrators and the right of arbitrators to call for evidence not otherwise submitted.

We all regret that our respected friend and national councillor, Joe McMahon was ill and unable to speak to his paper on 'Arbitration v Litigation'—a paper which deals with new legislation on the extension of the arbitration processes in the state of N.S.W. We trust that Joe has now fully recovered.

Rising to the occasion as always, and on minimal notice, that 'stalwart' Norbert de Rome, presented in Joe's place, an excellent paper on 'Conciliation'—a subject to which practising arbitrators probably need to apply more attention. What a versatile fellow Norbert is!

As always, a fellow member Tony de Fina did not disappoint us with his very comprehensive and entertaining presentation of the paper on "The Expert Witness—a Man for All

Seasons". Those who act or are likely to act as experts in the witness box from time to time and who have absorbed the contents of Tony's paper will, I feel sure, be better able to avoid in future the snares and pits encountered by such as the Azaria witnesses.

And so finally, on Saturday evening came the annual dinner and an address by Professor Ronald Sackville, dean of the faculty of law at the Universtiy of N.S.W. and chairman of the currently constituted N.S.W. Law Reform Commission. Professor Sackville spoke on the subject of consensus and conflict, coming down rather heavily on the side of conflict as an aid to progress; the alternative being stagnation. This later attracted the attention of the press and newspaper comment resounded (in Sydney at least) for some days afterwards. Personally I did not agree with all the Professor said but found it intriguing that he should say it at a time when I think most of us, ignoring political affiliations, may agree that this country has had a gut full of conflict and could do with a little consensus in order to get our act together on the world stage. Predictably, the Institute office I am told, had some protesting phone calls from certain unions on the Monday.

All I have written to this point esteemed sir, indicates I think, that annual conferences as staged by The Institute of Arbitrators Australia, are far from being run of the mill, mundane affairs. Serious and instructive yes, but also entertaining and stimulating. I would also add nourishing, for the catering was excellent.

In conclusion, would a suggestion be in order? Membership of the Institute I think is presently nearly 800. I am told that the organizing committee is not disappointed that only 57 people (including some non members) attended the conference, as from previous experience this was to be expected. It is unfortunate however that we do expect that probably something less than 7% of members feel sufficiently involved to outlay the necessary time and money to attend our annual conferences. Accepting that time is a problem to most and that not a lot can be done about that, why not look more closely at the money?
Of the 57 who attended, 22 I am told, were from interstate and 1 (bless him!) from New Zealand. The fee charged for the recent conference represented very good value and should not have been a major problem to local members. Outer-staters and N.Z.'ers however have much weightier transport and accommodation costs to outlay. Why not in future, a subsidy from the Institute say of $50 on fares to these people? Without being privy to the recent financial aspects, I would venture to say that had this offer applied, the additional subscriptions attracted would have gone close to maintaining the desired level of revenue and had the added advantage of improving attendance.

Yours faithfully

Doug Peacocke
Gareel Bay, N.S.W. ■

Quote

"On such a clause, the arbitrator is just as likely to be right as the judge—probably more likely. Because he, with his expertise, will interpret the clause in its commercial sense: whereas the judge, with no knowledge of the trade may interpret the clause in its literal sense."

Lord Denning in re Pioneer Shipping v B.T.P. Iroxide (C.A.) Weekly Law Reports, August 15, 1980 at page 335.
