The New Zealand Bar Association Wellington Seminar November 1991

The New Zealand Bar Association came to life in 1989. Its first President was Ted Thomas QC, now Mr Justice Thomas of the High Court of New Zealand. The Association has strengthened over the last two years, and in Wellington on Saturday 9 November, 1991, held its first formal Bench and Bar Dinner at the Park Royal Hotel, Wellington. It was preceded by an all-day seminar. I attended as a member of the Association, and found myself to be the only Australian present amongst about 80 Kiwis.

Since its inception, the NZ Bar Association has held a number of seminars in various parts of the country. The Wellington seminar was the most successful yet, and these seminars seem set to become regular bi-annual events.

The first session in Wellington was entitled "Advocacy and Arbitration". Mr Justice McKay, recently appointed to the Court of Appeal, reflected upon a career of some 35 years in arbitration, both as an advocate and as an arbitrator. In New Zealand, it is quite common for members of the Bar to sit as arbitrators in substantial commercial arbitrations. He was followed by Mr T Kennedy-Grant, a member of the Auckland Bar, who delivered a fine paper on commercial arbitration practice. A discussion session followed.

The second session was entitled "Appellate Advocacy". The first speaker was Sir Robin Cooke, President of the Court of Appeal. He opened by enjoining all those present not to repeat his comments. I may therefore only say that he reflected and reminisced for about an hour on appellate advocacy before the Privy Council over the last 40 years, both as an advocate and as a member of the Board. It was a privilege to be amongst the audience. He concluded with some favourable comments on American appellate advocacy as an observer before the Fifth Circuit Court of Appeals in Washington, and then asked for comments from the floor on whether appellate practice in New Zealand should be changed to introduce an abbreviated form of the American appellate brief. Debate on this topic was adjourned until after lunch.

The afternoon session continued on the theme of appellate advocacy with David Williams QC of the Auckland Bar describing the New York litigation which followed the New Zealand America's Cup challenge. He circulated copies of the written briefs which had been filed by Mercury Bay both in the Appellate division of the New York Supreme Court and the New York Court of Appeals. The New York Court of Appeals is televised on cable television in New York, and Mr Williams was able to show us a videotape of the entire final hearing. He stopped the tape at various points for comments and questions. The standard of argument in the face of the 30 minute per side time limit and at times hostile questioning from the Bench was quite extraordinary.

This exercise generated a long debate on the merits of written submissions. The feeling of those present, predictably, seemed to be that an exchange of outline submissions of fact and law prior to the hearing of an appeal was desirable, but full-length written submissions were to be avoided as it would be necessary to impose an arbitrary limit on length - in New York it is fifty pages - and the natural tendency of writers tis o overstate their case and to say excessive things which would be quickly rejected in oral argument. In short, the oral development of argument was seen as fundamental to the New Zealand appellate system where the present practice is for counsel to hand to the Court on the hearing of the appeal both a synopsis of argument and a list of authorities. The President's proposal seemed to me to envisage no more than what is required by our own Practice Note 64.

The day concluded with a "hypothetical" conducted by Julian Miles QC and a panel of eight practitioners from around the country on the topic of "Practical Ethics". The New Zealanders found this to be the most interesting and useful session of the day, and this was understandable given that the Bar in New Zealand is only about 200 strong, is scattered throughout the country and has yet to promulgate its own set of rules.

The dinner was attended by numerous Judges including the Chief Justice and the President of the Court of Appeal. All present went out of their way to make the sole Australian welcome. The guest speaker was David Lange, New Zealand's former Prime Minister. He delivered an entertaining and thoughtful speech on the relationship between the media, particularly television, and the courts. A topical subject on both sides of the Tasman.

On this side of the Tasman, as we all are well aware, barristers are under scrutiny and to some extent attack. It was therefore refreshing to meet for a short time and to enjoy the company of members of the youngest Bar Association in our region, one which has come into existence to satisfy a perceived need for a divided profession. New Zealand is only a small country, but it has an interesting history, and one which is substantially different to our own. Juridically, it is developing in some directions quite differently to Australia. It has no written constitution, but a treaty signed in 1840 - the Treaty of Waitangi - is rapidly becoming, through the influence of the Court of Appeal, a constitutional document. New Zealand's ultimate Court of Appeal remains, and shall remain for the foreseeable future, the Privy Council. It is a jurisdiction worth watching both for its similarities to Australia and to its differences. We can learn a lot from each other.

The next seminar is likely to be held during the ski season in 1992. Before I left Wellington I tentatively mentioned that I thought a few members of the New South Wales Bar (at least) might be interested in attending. That idea found favour, and I shall publish advance warning when the dates are known. ❑

T J Hancock