

# Chief Judge Staunton C.B.E. Q.C.

Richard Bell interviews with the Chief Judge of the District Court, his Honour Judge Staunton C.B.E., Q.C.

*Q. Chief Judge, the profession and public are conscious of change within the structure of the profession and the judiciary. Those changes significantly involve the District Court. One of the recent changes is the increased jurisdiction limit to \$250,000. What effect is anticipated?*

A. The increased threshold will increase civil filings that might otherwise have been lodged in the Supreme Court. The extent of this is not known precisely at this stage and may depend upon the level of costs sanctions as may be within the scope permitted of the Supreme Court by the changes made in the *Legal Profession Reform Act 1993*.

*Q. There is often a focus on the broad range of civil and criminal matters that are the business of the Court, but are there developments in recent times that affect the mix of Court business?*

A. Civil matters in the Court include not only actions at common law and in equity, the latter to a minor extent, but also matters in which the Court is given jurisdiction by various statutes. These include complaints against police officers brought under the *Police Service (Complaints, Discipline & Appeals) Amendment Act 1993*; complaints against medical practitioners under the *Medical Practice Act 1992*; complaints against veterinary surgeons brought under the *Veterinary Surgeons Act 1986* and appeals under the *Victims Compensation Act 1987*. Appeals lie from decisions made under the *Freedom of Information Act 1982*, the *Dentists Act 1989*, the *Fisheries Management Act 1994* and the *Gaming and Betting Act 1912*. Consideration is presently being given to extending the Court's equitable jurisdiction.

*Q. What are the most recent observations of change?*

A. There has been a considerable increase in filings under the *Police Act* and the *Medical Practice Act* and there seems no reason why work from these two areas will decrease. As the judges for all this work are drawn from the list of judges rostered for causes work in Sydney, it becomes difficult to maintain an adequate number of judges to deal with what I may call the ordinary civil cases.

I believe this problem will increase unless additional judges are appointed.

Three acting judges are to be appointed for each of the second terms of 1994 and the first term of 1995 in order that the old personal injury cases (the GIO "tail") can be cleaned up.

*Q. What is the future for arbitration in the District Court?*

A. Arbitration has operated very successfully in the Court since 1983. Up to the end of June 1994, 7,432 matters had been dealt with under the general scheme and 11,449 matters under the Philadelphia system which has operated since 1987.

Arbitrations have also been carried out at certain country places, as demand for them has been shown.

Obviously, arbitration has become an important adjunct to the Court's ordinary hearings and I expect will be continued in the future.

However, this depends upon the provision of funds for the payment of arbitrators and this has been a problem to some extent in the past. Whether it will be in the future will depend upon the Government's acceptance of the success of the scheme and the availability of funds.

*Q. What is the position with the Court's criminal lists and the Sentence Indication Scheme?*

A. Criminal trial lists have been reduced by the introduction of firmer listing procedures and a lot of sustained pressure of the judges. I expect this to continue so that by 1995 or 1996 these lists will be in a much more acceptable state so far as delay is concerned. This will enable time standards to be achieved and an altogether more acceptable time delay between committal and trial.

A matter of great significance is Sentence Indication hearings. This sunset legislation may be expected to be extended, given the perceived success of the scheme.

The results are encouraging. Between 30 April 1993 and 20 May 1994, 489 applications were made.

In 356 cases the sentence indication was accepted and only 78 rejected. Other applications were rejected by the presiding judge and 43 were withdrawn.

On the trial time estimates given to the Criminal Registrar there was a saving of trial time of 425 weeks. Of course, many of the 356 acceptors may have eventually pleaded guilty; but the fact remains that in 356 matters the expense of mounting a trial was obviated.

*Q. Is any particular time frame important for practitioners in the Sentence Indication process?*

A. It is important for practitioners to attempt to be in a position at the first arraignment of an accused to indicate whether a sentence indication is sought.



*Q. Chief Judge, in recent times have you noticed changes in community perceptions that have affected the Court's mix of listings?*

A. There seems no doubt that a better informed community has affected the filings, particularly in relation to the statutory complaints that I have referred to and, in particular, those against police and medical practitioners.

*Q. Historically, what shifts have you noticed in terms of the broad nature of the business of the Court?*

A. The Court's workload, which once was in the order of one-third criminal work and two-thirds civil work, has been reversed and is now in the order of two-thirds crime. A large part of this concerns sexual offences. It is also plain that the increased drug problem in the community has affected the workload of the Court.

*Q. Has there been any particular focus on alternative dispute resolution in recent times?*

A. Apart from pre-trial conferences and arbitration, mediation and Early Neutral Evaluation have engaged the attention of the Court. No attempt has been made to introduce mediation, due principally to the problem of funding it. The Court has introduced Early Neutral Evaluation only recently, so there is no experience of its usefulness.

*Q. Chief Judge, you are approaching retirement at the end of the year. There have been a number of Judges who have become active in legal practice and dispute resolution upon judicial retirement. Do you have any such plans? Do you have a view on post-judicial roles?*

A. No, I have no such plans. As to post-judicial roles, there is a number which, I think, are compatible with the standing of ex-judicial officers. These include serving as acting judges, membership of government tribunals and in additional dispute resolution. The resumption of the practice of law may be included although not, I would feel, involving the appearance before the Court from which the judge resigned or retired, or the instructing of lawyers in that Court.

*A. At this time, how do you reflect upon the evolving role of the judiciary in the community over the time of your appointment?*

A. Events of various kinds involving the judiciary over the last twenty three years have brought a degree of public interest in the judiciary, and perhaps individual members of it, which did not exist at the time of my appointment. In a democracy every branch of government should be seen to be accountable and fulfilling its designed function. The actual role of the judiciary during this time has changed by reason of and in response to the demands cast upon it. There is now necessarily more involvement of the judiciary in the management of court

business for the purpose of the more efficient, more economical and quicker disposition of cases, both civil and criminal.

*Q. What particular changes do you think likely in the role of the judiciary and the profession in the future?*

A. I think it likely that the role of the judiciary in the future will continue to be more interventionist for the purposes of achieving that to which I have just referred. The profession will continue to change in adapting itself to these conditions. I hope the important and significant role of the advocate will be maintained whether by lawyers practising exclusively as advocates or by those who continue to practise as solicitors. For the latter, however, I think it will need to recognise that the attainment of skills of advocacy will require particular application, study and dedication.

*Q. Will you miss the Bench? And the Bar?*

A. Yes, very much. I have enjoyed my time as the Head of a Jurisdiction which has grown in that time from 24 to 58 Judges, and the jurisdiction, both criminal and civil, of which has increased very greatly. They have been challenging times giving great personal satisfaction and reward. As for the Bar, like most Judges, I was genuinely sorry to leave it after 20 years of its hurly-burly. I have no intention of not keeping in touch with it and its interests. Fortunately, Associate Membership of your Association enables this to be done. □

## Double Dutch

Mr Hughes QC: "If you wanted the funds partly for the nightclub, and partly to pay interest to the bank, why didn't you write that or cause that to be written on the loan application?"

Answer: "I have property as collateral. I have the right to apply how the fund was going to be used."

Q. "Will you not answer that question?"

A. "No."

Q. "You won't."

Interpreter: "'No' means not to reply, sir."

Mr Hughes QC: "Is that the only answer you will give to my question?"

Mr Gyles QC: "I object. That is really extremely confusing. There is obviously a double negative involved."

His Honour: "Yes, by the time it gets through the translation ..."

Interpreter: "I might add, sir, that in the Chinese language there is no double negatives, which makes it very difficult, particularly on our part."

*(SonHouEnterprises Pty Limited & Anor (Receiver & Manager Appointed) v Bank of China & Anor, cor. Cohen J., 27 September 1994) □*