Dear Sir

A relatively recent *Bar News* carried the story of LS Abrahams KC, and AC Gain, junior counsel, killed in the *Kyeema* air crash on 25 October 1938 in the Dandenong Ranges.

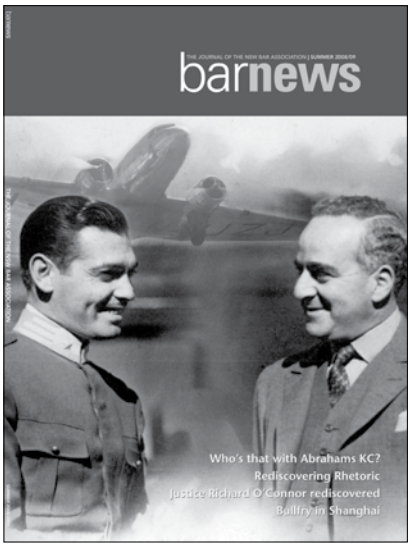
Two recent books by Macarthur Job OAM reveal that both barristers were en route to Sydney from Perth, having appeared for the British Medical Association in a royal commission on national health insurance.

Most of the records of the client for its long case were lost in the crash. Why? Because the two instructing solicitors were traveling on the same doomed flight. The four lawyers were also carrying unrecorded thoughts and opinions on the brief, these also lost to the client.

There may be a lesson there, with recent problems in air travel safety. In our understandable keenness to get back home, records and lawyers can all be lost.

Of the 18 killed, some (incl. Mr Gain) had survived the horrors of fighting in the First World War.

After much public and political concern was expressed as to the independence of the Commonwealth public service inquiry, the subsequent Air Accidents Investigation Committee was augmented by another prominent lawyer, Colonel Herring KC. The committee was vested with the status of the High Court



(presumably in the absence of the Commonwealth equivalent of our Federal Court).

Christopher Ryan

Dear Sir

The articles, 'Increase the retirement age for federal judges' and 'A creature of momentary panic' in the Winter edition of *Bar News* prompts me to write to you about one aspect of the current practice relating to acting judges which causes me some concern.

As your readers will know, the current practice is that judges, state or federal, who have reached the relevant retiring age, but who wish to continue on a part-time basis, are generally appointed as acting judges of the Supreme or District Court (the Commonwealth Constitution prevents the appointment of acting judges to federal courts). These appointments are for a term of one year: *Supreme Court Act 1970* s 37, and, if the individual judge is willing, renewed annually until he or she reaches the maximum retiring age for acting judges, currently 77 years: s 37 of the *Supreme Court Act 1970*.

My concern is that this practice breaches a fundamental and well-established constitutional principle dating back to the *Act of Settlement 1701*, in force in this state by virtue of the *Imperial Acts Application Act 1966*, s 6.

The principle established by that Act was that judges were appointed for life (since modified to a set retiring age) and so had nothing (such as dismissal) to fear and no expectation of further advancement from the government of the day dependent on how they performed their judicial duties or how they decided cases. In my opinion, the present practice of annual renewals breaches this constitutional principle.

In my opinion, judges who have reached the retiring age for permanent judges and who wish to continue should, if the government is willing, be appointed as acting judges once only with a commission lasting until they reach the retiring age for acting judges; and the annual renewals be discontinued.

I am not suggesting that any judges have decided, or are likely to decide, cases favourably to the government of the day in order to advance their prospects of re-appointment, but there could be a perception (particularly to a disappointed litigant) that this had, or could, happen; and it is to avoid the possibility of such a perception (or rather, misconception), that the principle has been established for the last 300 years.

In my opinion, judges who have reached the retiring age for permanent judges and who wish to continue should, if the government is willing, be appointed as acting judges once only with a commission lasting until they reach the retiring age for acting judges; and the annual renewals be discontinued.

Objection may be made that some such acting judges may reach a stage when their faculties decline and they are no longer as competent as they formerly were, and that the current system provides a 'safety valve' in this respect. But in my view, a preferable solution for such a situation would be for the relevant chief justice or chief judge to simply not allot the judge in question any further work. Acting judges only get paid for the days on which they actually work.

I actually had something to say on this subject in a judgment I delivered whilst on the bench, namely *Hagan v ICAC* [2002] NSWSC 686 at paras [18] to [24]. The case went to the Court of Appeal: [2003] NSWCA 93, but the matter of acting judges was not considered by that court.

John Dunford QC

Dear Sir

Having returned to the bar after five years as a senior member of the Administrative Appeals Tribunal, I have been struck by many changes that have occurred at the bar during those five years.

I was delighted to become involved in a project of the Women Barristers' Forum about the women who were admitted and practised at the New South Wales Bar before 1976. If the bar has changed in five years, it has changed tremendously since 1975 and, of course, earlier.

There is a wealth of knowledge about the bar known to retired clerks such as Brian Bannon, Bill McMahon, Greg Isaac, and Bill McCarthy, and those present clerks and staff who started working in and around 'The Street' as it was known, 30 or more years ago.

I urge the Bar Association to undertake an oral history project, to capture the story of the bar during the second half of the 20th Century before the opportunity is lost.

Josephine Kelly