Twenty-five years of Bar News

By Ingmar Taylor and Kate Williams

The first issue of *Bar News* was published 25 years ago in 1985. The idea of publishing a journal for the bar came from the Hon. Murray Gleeson AC, then president of the Bar Association, who wrote in the inaugural issue:

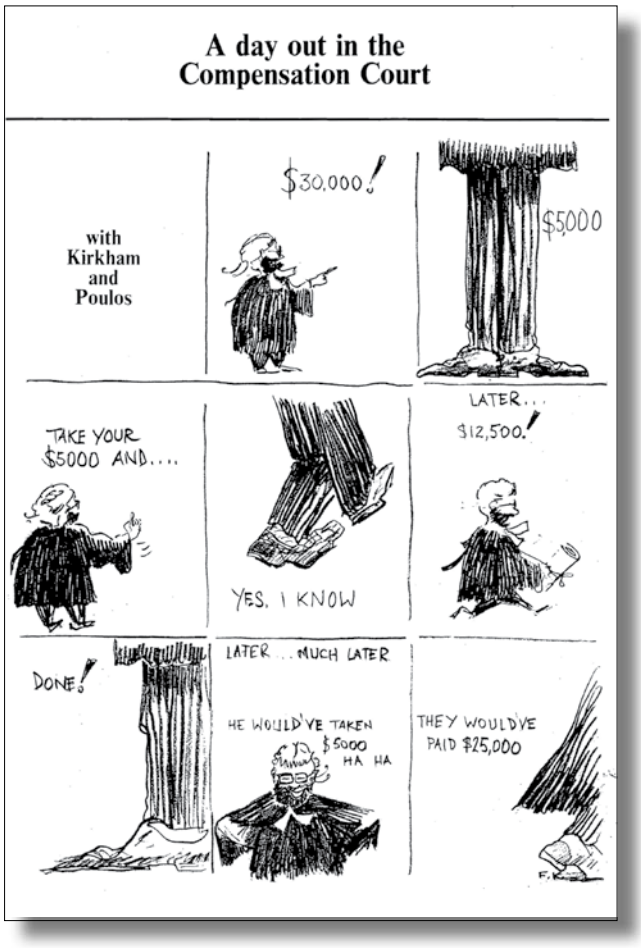
> It is hoped that it will provide, on a different level, some of the facilities of the Common Room: a medium for scandalous information; an occasion of privilege for defamation; and a forum for ideas about the Bar.
>
> What the Bar needs is a good free journal.

Gleeson QC[1] asked the Hon. Justice McColl, then a busy junior barrister and member of the Bar Council, to be the editor of the journal. McColl accepted the challenge and served as the editor of *Bar News* from 1985 until 2000, when she became president of the Bar Association. Justin Gleeson SC then took over the reins as editor of *Bar News*. Gleeson SC recalls:

> When Ruth McColl SC (as her Honour then was) asked me to be editor in 2000, I was surprised at the vote of confidence and her risky move. At that time, it was a given that a silk would be needed for any role of importance within the Bar Association. But I appreciated her invitation and set about trying to progress the work she had done over many years – painstaking and unrewarded work – to build a journal of relevance, importance and above all interest to our members. It was not then, nor probably now, widely appreciated within the bar, how much time and energy McColl had put in to ensure *Bar News* came out. Through the 1990s the committee was very small, the stories and the articles were largely generated by her, the typing was mostly done by her secretary, and the proofing was done by McColl herself.
>
> Over the five years that I was editor, I think there were three main areas of advancement: first, we were able to expand the committee which produced each issue so that a broader pool of the bar was drawn upon, and the content was of increasing interest to members. Secondly, we were able to put out an issue consistently at least two times each year and thus build a rapport with members. This was due to the financial commitment of the Bar Council and the support of Philip Selth as executive director, for which I am grateful. Thirdly, we strived hard to expand the content (and corresponding size) of the journal, so that, consistent with the push into continuing legal education, our journal regularly included case notes and short articles on matters of legal importance to members. Hopefully this was done while also continuing the broader and more humorous or light-hearted comment which has always marked out *Bar News*.

Gleeson SC remained editor of *Bar News* until 2005, when Andrew Bell SC took on the role.

In addition to undertaking all of the work described by Gleeson SC in the 1980s and 1990s, McColl also prevailed on her sister, Christine McColl, to pen cartoons for the early issues of *Bar News*. Artwork was also commissioned from Simon Fieldhouse, then a solicitor and now an established visual artist. Fieldhouse's work graced the cover of the Summer 1985 issue of *Bar News* and his work continued to appear in many subsequent editions. Jim Poulos QC, then also a busy junior barrister, was delighted to find a public forum for his sketches and contributed to the artwork from the early days. The late Fred Kirkham, subsequently a judge of the District Court, was also a regular contributor of sketches. He submitted a cartoon for the Summer 1985 issue of *Bar News* starring himself and Poulos. It exaggerates only slightly the height discrepancy between Kirkham, a former Olympic rower, and his



The view from across the Dingo fence

May I make an immediate disclaimer. The title is not mine.

It was invented by Murray Gleeson QC as he sat beside me at the recent annual general meeting of the Law Council of Australia.

"Write something," he said. "Write something in a light-hearted vein, something that will at the same time make my constituents laugh and justify the resistance by Queenslanders to the intrusion of southern practitioners into the Queensland courts."

It has often been said that in practice interstate counsel would not wish to exercise, or exercise to any intrusive degree, the right to practice in Queensland. This seems to be contradicted by the Western Australian experience.

I am told that there are eight resident silks in Perth, but that twenty-seven visiting silks have taken advantage of the right to practice there.

Views may of course change, even, it may be said, in Queensland.

good friend Poulos. The first three issues of *Bar News* published in 1985 chronicle a time of change for the New South Wales Bar in many respects.

In his editorial piece published in the inaugural issue of *Bar News* in Winter 1985, Gleeson QC stated: 'The problems of the bar in 1985 are more than sufficient to tax us.'

In the Summer 1985 issue, the Hon. Roger Gyles AO, then newly elected president of the Bar Association, wrote:

> I do not need to catalogue all of the problems we face as barristers and collectively as a Bar.
>
> Escalating costs (particularly for accommodation), consistently inadequate revision of scales of fees ... and the current threat to several significant areas of work, combine to make survival difficult for those without established practices in commercial work or some other lucrative specialty.
>
> The proliferation of chambers, the growth of regional Bars, the increase in numbers of practising barristers, and the widely differing work background of new entrants to the Bar make the establishment and maintenance of uniform professional standards of competence and ethics more difficult than hitherto.
>
> To say that the New South Wales Bar Association is a trade union is about as unseemly and indecorous as (to take one of Gleeson's illustrations) submitting to a Federal Court judge that he has no jurisdiction.
>
> Nonetheless, it is the essential truth. It is also a truth recognised by those with whom we must deal. It is not something for which we need to apologise.

McColl JA recalls that the bar was then under threat from solicitors demanding rights of appearance, was having to adapt to the concept of an external disciplinary regime in advance of the passage of the *Legal Profession Act 1987* (NSW) and was introducing new measures to maintain high standards of competence and ethics in an expanding bar. These measures included changes to the Reading Program, which were reported in the Spring 1985 issue of *Bar News*, and an expansion of the Complaints Committees reported in the Summer 1985 issue.

In this context, the traditional 'two thirds rule' was under threat. Potential unintended consequences of the rule are illustrated in the following extract from the Winter 1985 issue of *Bar News*:

> STITT QC: I would like to put a couple of propositions to you.
>
> WOMAN WITNESS: You would? My luck has changed at last.
>
> HIS HONOUR: I think you had better wait until hear what the proposition is.

At the next adjournment Stitt QC happened to be in the same lift as the witness and the exchange continued:

> WITNESS: Still interested in that proposition?
>
> STITT QC: You have to realise, whatever I get, my junior gets two-thirds.'

The inaugural issue of *Bar News* generated debate about the prohibition on New South Wales barristers practising in Queensland. Gleeson QC invited the then president of the Bar Association of Queensland, Ian Callinan QC, to write something to 'justify the resistance by Queenslanders to the intrusion of southern practitioners into the Queensland courts'. Under the

title 'The view from across the Dingo fence', Callinan QC wrote in the Winter 1985 issue of *Bar News*:

> The Queensland Bar's view, and indeed as I understand it, the views of the Queensland Government are that there should be a strong Queensland Bar, and ready access by the Queensland public to that Bar: that that strength and access should not be put in jeopardy by an unrestricted right of practice by other barristers from out of Queensland.

Having made this attempt at explaining the prohibition as a matter of principle, Callinan QC promptly acknowledged that it was really a matter of Queenslanders protecting their own turf:

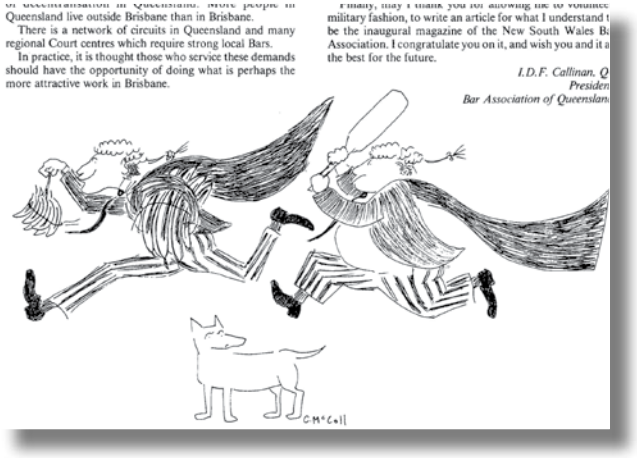
> There is a suspicion in Queensland – we are usually neither suspicious nor, I observe here, xenophobic – that perhaps it is presently a little easier for a junior to make a beginning in Queensland than elsewhere.
>
> It is rather unlikely that Queensland juniors would wish to put at risk this advantage, if advantage there be.

This was delightfully illustrated in a cartoon by Christine McColl.

Callinan QC's article generated a response in the Summer 1985 issue of *Bar News* from David Malcolm QC, then president of the Western Australian Bar Association and subsequently chief justice of Western Australia. Writing under the title 'The alternative view across the rabbit-proof fences', Malcolm QC said:

> I support the principle that a litigant in Australia should be able to choose his solicitor and counsel from among the Australian legal profession. This is not to say that I do not support the view that there should be a strong Western Australian Bar and ready access by the public to that Bar.
>
> I do support that view with enthusiasm. It is a view which is shared by the Western Australian Bar Association and I believe, the Government and Judiciary in this State.
>
> It does not follow that the strength and access of the Western Australian Bar will be jeopardised by the existence of an unrestricted right of practice by other barristers from out of Western Australia.

In 1989, the High Court held in the landmark case brought by Sandy Street SC that the Queensland rule limiting admission to practice in Queensland to residents of Queensland who were not practising in any


Queensland live outside Brisbane than in Brisbane.
There is a network of circuits in Queensland and many regional Court centres which require strong local Bars.
In practice, it is thought those who service these demands should have the opportunity of doing what is perhaps the more attractive work in Brisbane.

military fashion, to write an article for what I understand t
be the inaugural magazine of the New South Wales B
Association. I congratulate you on it, and wish you and it a
the best for the future.

I.D.F. Callinan, Q
Presiden
Bar Association of Queenslan

other state was contrary to s 117 of the Constitution.[2]

In 1985, the right of appeal to the High Court had recently been abolished and appeals were by special leave.[3] The bar had responded to this development by exercising more frequently the right of appeal from the New South Wales Court of Appeal to the Privy Council, by-passing the High Court. This prompted the following plea from the Hon. Justice Michael Kirby, then newly appointed president of the New South Wales Court of Appeal, in the Winter 1985 edition of *Bar News*:

> Australian appeals to the Privy Council – this magnificent imperial anachronism into which new life has unexpectedly been breathed – should, in my view, be terminated without delay.
>
> It has made many notable contributions to our jurisprudence in the past. But the time has come for Australian lawyers to shoulder the responsibility of their own legal system and to rise to the challenge which only legal independence from the Privy Council will facilitate.

His Honour's remarks proved to be prophetic. The right of appeal from state courts to the Privy Council was abolished by the *Australia Act 1986* (Cth).

Incidentally, the appointment of Justice Kirby to the New South Wales Court of Appeal had proved wrong a prophecy by the Hon. Michael McHugh QC AC (then also a judge of the New South Wales Court of Appeal). As *Bar News* reported in the Winter 1985 issue under the title 'Famous Last Words':

> At the time the President of the Court of Appeal, Mr Justice Kirby, was appointed to the Conciliation and Arbitration

Commission in 1975, he was appearing with Mr Justice McHugh (then McHugh QC) in an equity case.

In the course of the case the following exchange occurred:

> KIRBY: I am going to take a job on the Arbitration Commission.
>
> McHUGH: What! As a Commissioner?
>
> KIRBY: No. As a Judge.
>
> McHUGH: Michael, you are only 35. If you take that job you will sink like a stone. Nobody will ever hear of you again.

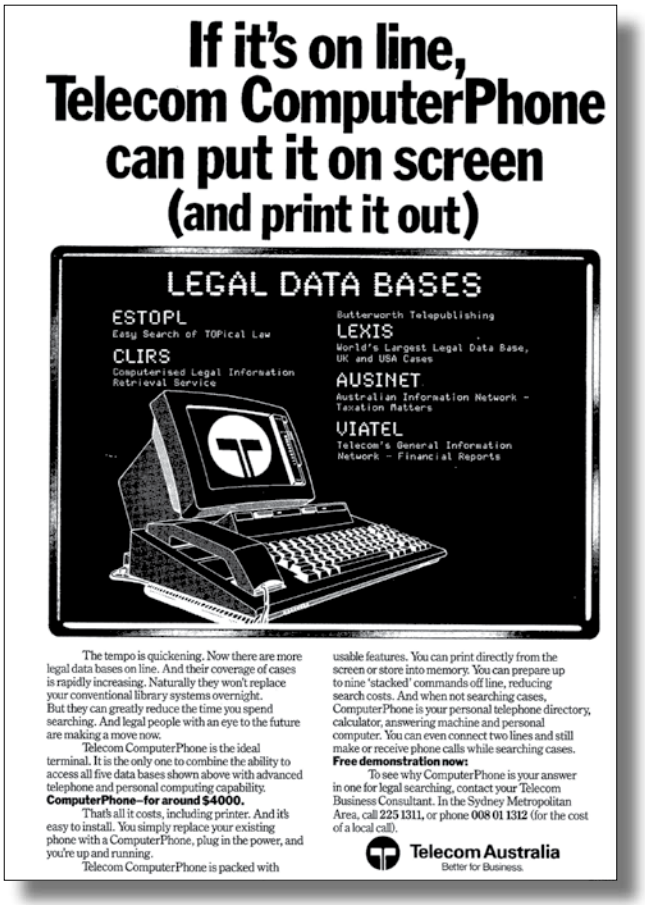
Another change shaping the nature of practice at the bar in 1985 was the increasing computerisation of legal information.

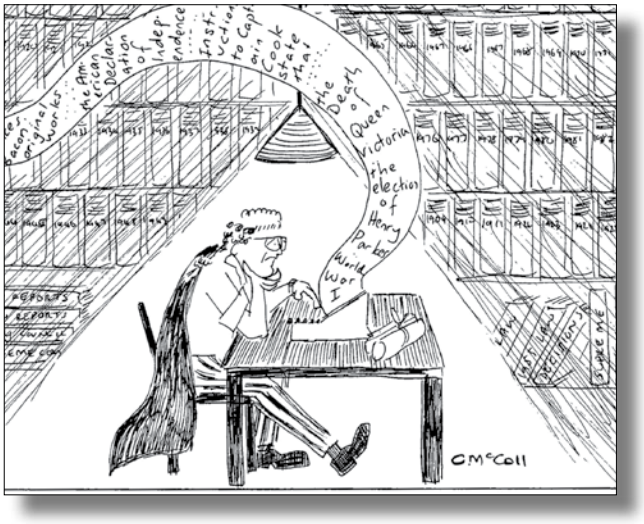
Writing in the Spring 1985 issue of *Bar News*, R H Macready (now associate justice of the Supreme Court of New South Wales) expressed the concern that 'most members of the Bar do not appear to be computer literate'. Macready proceeded to enlighten readers by providing a description of the contents and facilities offered by the databases then available and even setting out step by step instructions for the purchase of computer equipment:

> In general the equipment would, if one were purchasing equipment to install in one's own chambers, comprise (i) a terminal which consists of a keyboard and a screen, (ii) a modem which allows the communication between the terminal and the data base and (iii) a printer.
>
> The communication medium for such equipment in the Sydney area is via Telecom telephone lines and it is desirable to have a line specially installed for this purpose.

Whilst members of the bar have now embraced computer technology (although few will remember what a modem is), it is open to debate whether they have paid due attention to the warning issued by Sir Laurence Street, then chief justice of New South Wales, in the Winter 1985 issue of *Bar News*:

> Computerisation of judicial decisions in readily accessible form will prove to be a most valuable servant, but we must be on our guard lest it abandon its role of service and tend towards dominating the practice and administration of the law.
>
> There is a risk of the system overtaking the substance of our law. By this I mean that there is room for justifiable fears that the day-to-day administration, and even more importantly the development, of the law may be crushed under too great a weight and proliferation of decided cases being fed into the data base.
>
> ...
>
> The computer enables us to break the limiting bounds of the ordinary human intellect and research capacity. There will no longer be the same absolute necessity for selectivity and subjective evaluation of those cases that are of real worth.
>
> ...
>
> It would be a tragedy if the computer became little more than an unedited means of providing access to a great deal more cases than we have been able thus far to accommodate intellectually.





Christine McColl's illustration of the problem that concerned Sir Laurence also depicts, we think, the burden felt by barristers today poring over the endless streams of judgments, legislation and other information circulated by email to be read and assimilated into one's working knowledge of the law overnight. It is comforting, however, to reflect that there are some things that have not changed. The 'seven deadly sins' identified by Justice Kirby writing in the Winter 1985 issue of *Bar News* provide invaluable guidance today for novice and experienced advocates alike:

> Failing to state at the outset the basic legal propositions which the lawyer hopes to advance in the course of the argument.
>
> Reading large passages of legal authority on the apparent assumption that literacy is confined to the Bar table and is lost upon elevation to the bench.
>
> Failing to plan adequately the structure of legal argument so that it moves swiftly and economically to the central factual and legal issues of the case.
>
> Failing to supply proper written submissions, and the chronology now required, in good time before the hearing.
>
> Failing to supply lists of legal authorities in time to permit the books to be got out.
>
> Squandering the great value of oral advocacy which remains, from first to last, to enter the judicial mind and to persuade.
>
> Failing to add a proper touch of interest and humour to advocacy, including, worst of all, failing to laugh appropriately at judicial humour, injected deftly to relieve the tension or tedium of the court.

It is just as well that Gleeson QC had designated *Bar News* as 'an occasion of privilege for defamation'. The inaugural issue printed the text of a speech by Meagher QC (as his Honour then was) at a dinner held in honour of the retirement of Kenny QC, Officer QC and Sullivan QC after 50 years' practice at the bar. His caricature of Gleeson QC has since become famous:

> People call him 'The Smiler'.
>
> This, no doubt, is on the lucus a non lucendi principle. It was on this principle that the ancient Greeks called the awful Avenging Furies 'you kindly ones'.
>
> When one visits Gleeson – at any of his homes – one passes fish ponds wherein contented piranhas glide between the bones of inefficient solicitors and discarded juniors and arrives eventually at a grey house and ultimately The Baleful Presence itself.

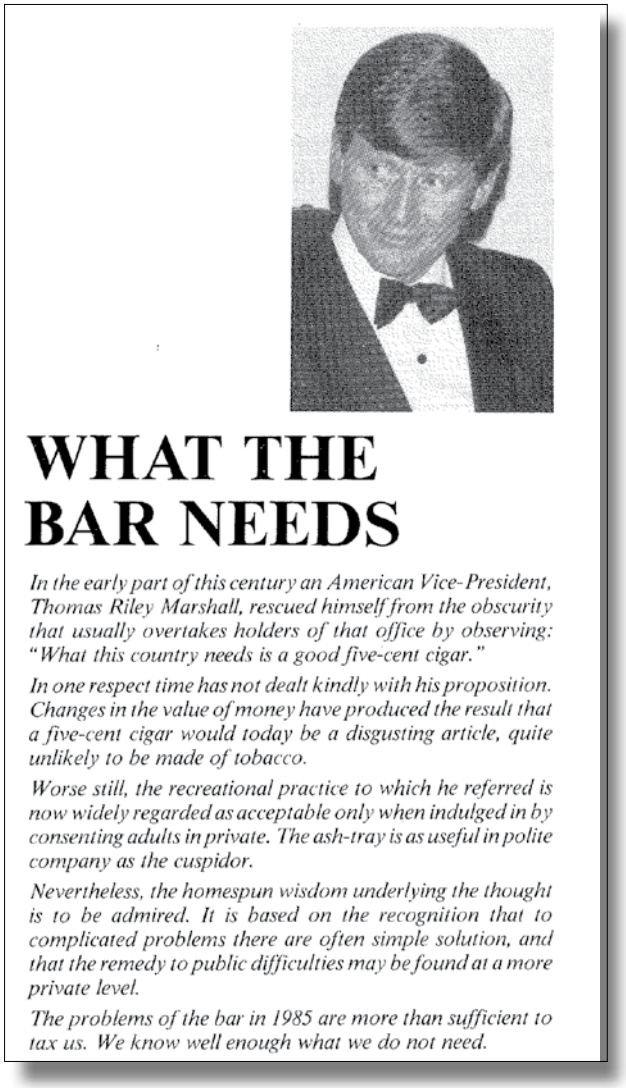
For those wishing to take a step back in time, all of the previous issues of *Bar News* from 1985 to date are available on the New South Wales Bar Association website and provide amusing and informative reading.

From 2000, *Bar News* has published all of the Sir Maurice Byers lectures in each year's Winter edition. Thus, there is preserved the important lectures on constitutional history, theory and practice and legal reasoning of Sir Gerard Brennan AC KBE, Justice McHugh AC, Professor Leslie Zines AO, Justice Keith Mason AC, Justice Gummow AC, David Jackson AM QC, Dame Sian Elias, Justice Heydon AC, Gageler SC and Bennett AC QC.

In addition, *Bar News* has produced a number of thematic issues over the years on topics such as:

- Regional and security issues (Summer 2001/2)
- Women at the NSW Bar (Winter 2004)
- Working with statutes (Winter 2005)
- The junior bar (Winter 2006)
- Expert evidence (Summer 2006/7)
- Mediation and the bar (Winter 2007)
- Capital punishment (Summer 2007/8)

The current editor and editorial committee of *Bar News* are pleased to play a role in continuing to provide the bar with a good free journal and a forum for ideas. They wish to acknowledge and thank past editors McColl JA and Justin Gleeson SC and members of past



WHAT THE BAR NEEDS

In the early part of this century an American Vice-President, Thomas Riley Marshall, rescued himself from the obscurity that usually overtakes holders of that office by observing: "What this country needs is a good five-cent cigar."

In one respect time has not dealt kindly with his proposition. Changes in the value of money have produced the result that a five-cent cigar would today be a disgusting article, quite unlikely to be made of tobacco.

Worse still, the recreational practice to which he referred is now widely regarded as acceptable only when indulged in by consenting adults in private. The ash-tray is as useful in polite company as the cuspidor.

Nevertheless, the homespun wisdom underlying the thought is to be admired. It is based on the recognition that to complicated problems there are often simple solution, and that the remedy to public difficulties may be found at a more private level.

The problems of the bar in 1985 are more than sufficient to tax us. We know well enough what we do not need.

editorial committees for their dedication to this cause, and also barristers and others who submit material for publication in *Bar News* from time to time.

Although it is invidious to single out particular contributors, four rate a particular mention. Lee Aitken, formerly of the bar and now a professor at the University of Hong Kong (but still regularly spotted in the coffee shops of Phillip Street) gave birth to Bullfry in his piece 'The Last QC' in *Bar News* (Winter 1996). Bullfry returned in a more reflective mood in a piece styled 'Juniors' (Spring 2000) in which he was brought to life by the pen of Poulos QC. Over the last decade, Aitken and Poulos in tandem have regularly cast their satirical and withering eyes over developments in, and characteristics of, the modern profession to create what should be published as an anthology chronicling the New South Wales Bar at the beginning of the twenty-first century. Circuit Food, rebranded Coombs on Cuisine (again illustrated by Poulos QC) ran for many years and was the late lamented John Coombs' Leo Schofieldian-inspired (or was it vice versa) roving and rambling reviews on post-settlement/victory lunch haunts around town and in favoured circuits. Any serious lunchers are invited to step forward to fill the void. More recently, David Ash has embarked on a series of detailed and diverting profiles of each of the justices of the High Court to hale from the New South Wales Bar. Four down, 19 to go (and counting). He is also the indefatigable but now 'outed' Rapunzel, creator of the *Bar News* crossword.

The contribution of Chris Winslow of the Bar Association must also be singled out. Chris has been involved in the production of *Bar News* for more than a decade and has seen its transition from a reasonably slender and more ephemeral publication to a substantive bi-annual journal featuring an eclectic mix of serious academic and historical work which also tracks and records important professional developments, events and appointments. Gleeson SC refers to Winslow as the 'sine qua non' of *Bar News*:

> the secretary of the editorial committee, the liaison officer with the typesetter and printer, the advertising man, a source of content and, above all, an astute observer, supporter and intelligent nurturer of all that is the best in our somewhat idiosyncratic profession in the modern world.

At a recent Bar Council meeting, the Bar Council threw its support behind *Bar News* moving to three issues per year, which it is proposed to publish in April, August and December.

Endnotes

1. As this is an historical article, persons are referred to initially by their present titles and subsequently by their titles at the time of relevant events.
2. (1989) 168 CLR 461.
3. *Judiciary (Amendment) Act 1984* (Cth).