



Karpal Singh to address the NSW Bar

Karpal Singh, the distinguished Malaysian lawyer and former member of Parliament, will visit Sydney as a guest of the Bar Association from Tuesday 23 July to Friday 27 July 2002. On the evening of 25 July, he will be giving an address in the Bar Common Room, entitled 'The Judiciary, Executive, Royalty and the Law in Malaysia'.

The evening's proceedings will begin at 5.15 pm with an introduction by the President of the Bar Association, Bret Walker SC. Mr Singh's address will begin at 5.30pm and will last for approximately 40 minutes, whereupon the forum will be opened for discussion, questions and dialogue.

Mr Singh is perhaps most renowned in Australia for representing foreigners facing the death penalty under Malaysia's harsh anti-drug laws. He has defended, among

others, Lorraine and Aaron Cohen in 1985, Kevin Barlow in 1986 and Michael McAuliffe in 1993.

Of greater significance for Malaysian politics and constitutional law have been his cases involving the rights and prerogatives of the country's sultans and the rights of persons charged under the draconian *Internal Security Act* and the *Sedition Act*. These cases have great resonance for all lawyers in common law jurisdictions.

In September 1999 Karpal Singh defended former Deputy Prime Minister of Malaysia, Anwar Ibrahim, who was standing trial on a charge of sodomy. During the course of that trial, Mr Singh was reported to have said that 'people in high places' were responsible for the abnormally high levels of arsenic found in his client's blood. As a result of these comments, in October 1999 Mr Singh was himself charged with sedition - a charge that was later withdrawn.

contents

- 2 CPD bulletin five
- 3 CPD conferences & courses
- 4 Appointments
- 7 Bar Council business
- 9 Media briefing
- 9 Papers to note
- 10 Court attire
- 11 Speeches to note
- 12 Pilot Mentoring Scheme
- 13 Children's Lawyer Awards

More recently, Mr Singh has found himself at the centre of a politically contentious case when he was asked to represent the parents of two Muslim girls suspended from the Singapore school system for wearing a *tudung* (Muslim headscarf).



'The Judiciary, Executive, Royalty and the Law in Malaysia'

- Date: Thursday, 25 July 2002
- Venue: Bar Association Common Room
- Times: 5.15pm: Introduction by the President, Bret Walker SC
5.30pm: Address by Karpal Singh
- Cost: No charge

CPD: Attendance at the address will earn 1.5 points in the substantive law, practice and procedure, and evidence strand.

At left: Karpal Singh (3rd from Left), defending former deputy premier Anwar Ibrahim, accompanied by his two sons, Gobin Singh Deo (Left) and Jagdeep Singh Dep (2nd from Left) arriving at the federal court building in Kuala Lumpur 01 July 1999. AFP PHOTO/Shamshahrin SHAMSUDIN

Continuing Professional Development Programme

By Robert Hayes, Director of Studies

Bulletin five: Risk management

The Bar Association will be the facilitator of a series of risk management seminars, to be conducted both in the Common Room and Carl Shannon Chambers, in the week commencing Monday 12 August 2002. Details are set out in the revised CPD programme, which follows.

Visit the Bar Association's web site at:

<http://www.nswbar.asn.au/Professional/Profdevt/CPDtable.htm>

to obtain the latest version of the CPD programme of seminars and events for 2002-2003

For CPD seminars provided by the Bar Association, there is no charge, and no registration is required. However, for some seminars provided by outside experts, there may be both a registration requirement and charges. This will be the case with the risk management seminars.

Details, and the registration form, are set out in the adjoining page.

A brief overview of the risk management seminars, courtesy of their provider, LeMessurier Harrington Consulting, is provided on the following page.

Risk management

90 minute session

1.5 CPD points in the Management (risk, practice and personal) strand.

Breakfast seminars	Lunchtime seminars	Evening seminars
		<input type="checkbox"/> Monday 12 August 2002 Bar Association Common Room 5.00pm-7.30pm
	<input type="checkbox"/> Tuesday 13 August 2002 Carl Shannon Chambers' Conference Room 13/175 Liverpool Street, Sydney 1.00pm-2.30pm (over lunch)	<input type="checkbox"/> Tuesday 13 August 2002 Bar Association Conference Rooms 1-4 5.00pm-7.30pm
		<input type="checkbox"/> Wednesday 14 August 2002 Bar Association Conference Rooms 1-4 5.00pm-7.30pm
<input type="checkbox"/> Thursday 15 August 2002 Carl Shannon Chambers' Conference Room 13/175 Liverpool Street, Sydney 7.30am-9.00am (over breakfast)		<input type="checkbox"/> Thursday 15 August 2002 Bar Association Conference Rooms 1-4 5.00pm-7.30pm

Numbers are limited. Please register by completing particulars and returning hardcopy with cheque to Meagan Phillips at the New South Wales Bar Association, DX 1204 Sydney, or credit card details by reply email mphillips@nswbar.asn.au

I have indicated the session I wish to attend above. I enclose payment of \$77.00 (GST incl).

Full Name: _____

Payment method: Cheque (attached) Payable to the NSW Bar Association
Charge \$..... to my Master Card Bankcard Visa Card Amex

Card Number: _____ Expiry Date: ... / ...

Signature:

Sorry - No refunds

On receipt of payment this document will be a tax invoice. Please keep a copy for your records.

CPD accredited conferences & courses for 2002

The following are lectures and conferences which have to date been accredited for CPD purposes. Points which may be accumulated for attendance over the entire period of the conference are as indicated.

A barrister who plans to attend a conference not listed below as accredited, should contact the Director of Studies at rhayes@nswbar.asn.com.au for a determination as to whether the conference should be accredited, and for how many points. Conference details are updated frequently. For an up to date list, visit the Bar Association web site and look under Continuing Professional Development.

Lectures

University of Melbourne Law School Graduate Programme

'Intangible assest and loan collateral', 4-10 July 2002.

Advanced e-commerce law, 29 July - 2 August 2002

Repackaging financial assets, 5-9 August 2002

Financial innovation and regulation, 25 September - 1 October 2002

For more information, visit the law school's web site at <http://graduate.unimelblaw.com.au/gradlaw.nsf> or contact them on ph: (03) 8344 6164 or e-mail: post@law.unimelb.edu.au. (*one point per hour in the substantive law strand*)

Sydney Law School's Corporate Law Seminar Series 2002

'Takeovers and harmonisation in the EU', 18 July 2002, 5.30 pm, Minter Ellison Conference Room, Sydney Law School. This seminar, to be given by Professor Klaus J Hopt, Director, Max Planck Institute for Private International Law, Hamburg, relates to recent highly controversial developments in European takeover law. For further information contact Continuing Legal Education at Sydney Law School on ph: (02) 9351 0238 or e-mail: cle@law.usyd.edu.au (*one point in the substantive law strand*)

'Disentangling Enron', Monday, 22 July 2002, 5.30-7.30pm, Mallesons Stephens Jaques, L60 Governor Phillip Tower. This seminar, presented by Professor James Cox

of Duke University, will identify weaknesses in US corporate and securities law, governance standards and the role played by analysts and ratings agencies. Cost \$66. Download a seminar information and registration flyer (in PDF) from the Bar Association's web site. For further information contact Continuing Legal Education at Sydney Law School on ph: (02) 9351 0238 or e-mail: cle@law.usyd.edu.au (*one point in the substantive law strand*)

Conferences

2002 National Administrative Law Forum, Notre Dame University, Freemantle, Western Australia, 4-5 July 2002

The conference, organised by the Australian Institute of Administrative Law, will examine the performance of regulatory agencies, the question of damages claims against regulators, as well as the effectiveness of FOI, judicial review and oversight by ombudsmen. For further information about the conference programme, contact the Conference Director, Michael Barker QC on ph: (08) 9220 0517, fax: (08) 9325 9894 or e-mail: chooper@iinet.net.au. For registration and other enquiries, contact Kathy Malcolm at the AIAL secretariat on ph: (02) 6251 6060, fax: (02) 6251 16324 or e-mail: ipaa@bigpond.com. (*six points in the substantive law strand*)

Competition and consumer protection law enforcement, The Regent Hotel, Sydney, 4-5 July 2002

The conference programme includes discussion on outcomes, trends and developments in the public enforcement of Australian, US and UK competition and consumer protection laws. Keynote speakers include Professor Allan Fels AO, Chairman of the ACCC, Peter Cashman, Jim Griffin from the US Department of Justice and Adrian Walker Smith, Office of Fair Trading, UK. A conference information and registration brochure is available at the Bar Association's Reception. (*one point per hour in the substantive law strand.*)

20th AIJA Annual Conference, Stamford Plaza, Brisbane, 12-14 July 2002

The conference will feature presentations and workshops in a wide range of areas

relevant to the improvement of access to justice. It will have as its objective the development of a plan for further action in this important area of administration of justice. For further information, contact the Conference Secretariat at Intermedia Convention and Event Management, PO Box 1280 Milton QLD 4064, ph: (07) 3858 5582, fax: (07) 3858 5510 or via e-mail: aija02@im.com.au. Alternatively, visit AIJA web site at www.aija.org.au. (*six points in the management strand*)

XVIth Congress of the International Academy of Comparative Law, University of Queensland, Brisbane, 14-20 July 2002

Confirmed speakers include His Excellency Gilbert Guillaume, President of the International Court of Justice, The Chief Justice of France, The Hon. Professor Guy Canivet and the Chief Justice of Queensland, the Hon. Paul de Jersey AC. Further information regarding the congress, including the academic programme and the registration brochure, may be obtained from the Congress Secretariat, C/- Brumfield Bird and Sandford (BBS) Public Relations, ph: (07) 3221 6711, fax: (07) 3229 8704 or via e-mail: info@bbscom.com.au. Information may also be obtained from the conference web site at www.law.uq.edu.au/congress. (*six points in the substantive law strand.*)

Intellectual Property Society of Australia & New Zealand (IPSANZ), Sydney, Renaissance Hotel, 6 - 8 September 2002, <http://www.ipsanz.com.au/news.htm> (Points TBA)

6th National Mediation Conference, National Convention Centre Canberra 18 - 20 September 2002, (02) 6292 9000, confco@austarmetro.com.au (*six points in the management strand*)

'People paving peace - PAVE Workshop on the aftermath of September 11', Tuesday 24 September, Waratah Room NSW Parliament House. Chaired by Simon Longstaff, St James Ethics Centre. (*1.5 points in the advocacy strand*)

Eighth International Criminal Law Congress, Sofitel Hotel, Melbourne, 2-6 October 2002

This congress, organised by the Victorian Criminal Bar Association and the Criminal Law Section of the Law Institute of Victoria, will cover a wide range of topics, including: video evidence, DNA, anti-terrorism laws and streamlining appeals. For further information, contact the Congress Secretariat, ICMS Pty Ltd, on ph: (03) 9682 0244 or via e-mail:

crimlaw@icms.com.au. (one point per hour up to seven in the substantive law strand)

Maritime Law Association of Australia & NZ (MLAANZ), Melbourne 3-4 October 2002. <http://mlaanz.org/> (Points TBA)

2002 International Institute for Public Ethics Biennial Conference, Brisbane, Sheraton Brisbane Hotel and Towers, 4-7

October 2002. The theme of the conference is 'Globalising the public interest' and delegates will discuss responses to asylum seekers, international terrorism and east/west dialogue on the public interest.

Confirmed speakers include Justice Christie Weeramantry, Vice-President, International Court of Justice, The Hague, Tunku Abdul Aziz, Transparency International and the Hon. Justice Paul de Jersey AC, Chief Justice of Queensland. For further information, contact the IPE Conference Secretary, Douglas Magendanz on (07) 3875 5301, fax: (07) 3875 6634, e-mail: d.magendanz@mailbox.gu.edu.au or visit the conference web site at www.iipe.org. A conference information and registration brochure is held at the Bar Association's Reception. (one point per hour in the ethics strand up to seven)

Environment and Planning Law Association (NSW) Conference, Wildfire Restaurant, Overseas Passenger Terminal, Sydney, 10-11 October 2002

The topics to be covered include private certification, existing use rights, salinity and clearing issues for rural Australia, SEPP 65 and issues affecting the Land and Environment Court. For further information, contact Michele Kearns on ph: (02) 9221 3527 ; fax: (02) 9221 8686; e-mail: kearns@stjames.net.au or visit the EPLA web site at www.epla.org.au. (one point per hour up to seven in the substantive law strand)

APLA National Conference 2002, Hotel Grand Chancellor, Hobart, 17-20 October 2002

The conference will examine such topics as 'birth torts - navigating uncharted waters', 'slips, trips and falls', 'school authorities, sexual predator teachers, vicarious liability and the non-delegable duty of care' and 'Highways liability case studies from around the world'. For further information contact Tamara Dickson at APLA, PO Box 2348 Strawberry Hills NSW 2010, Ph: 02 9698 1700 Fax: 02 9698 1744 tdickson@apla.com.au or visit the APLA web site at www.apla.com.au (one point per hour up to seven in the substantive law strand).

3rd AIJA Technology for Justice Conference, Sydney Convention and Exhibition Centre, Darling Harbour, 20-22 October 2002

The theme of the conference is using

technology - what can it do for you?

Confirmed speakers include Justice David Hunt, who will talk on the role of IT in the work of the International Criminal Tribunal for the former Yugoslavia, The Hague.

For further information, contact the Conference Secretariat at GPO Box 2609, Sydney NSW 2001, ph: (02) 9241 1478, fax: (02) 9251 3552, e-mail: techjust@icmsaust.com.au or visit the AIJA web site at www.aija.org.au (seven points in the management strand)

Union Internationale Des Avocats / International Association of Lawyers, 46th Congress, Sydney 2002, 27-31 October 2002

Download a conference programme in PDF from the UIA web site at www.uianet.org (For full attendance: Eight CPD points, to be allocated on the basis of two points to each of the four CPD strands. For part attendance: one point per hour; to be allocated to strands according to the subjects of the sessions attended)

Representing Justice, Canberra, 12-14 December 2002

This conference, organised by the University of Canberra, in conjunction with the Australian Institute of Judicial Administration, will examine the physical, social and symbolic environments of the delivery of justice. Themes for discussion will include improving the jury experience, using new technologies effectively, remote justice and user friendly court designs. For further information contact Dr David Tait at the University of Canberra on ph: (02) 6201 2729 or via e-mail: david.tait@canberra.edu.au. A conference information brochure is held at the Bar Association's Reception. (seven points in the management strand)

13th Commonwealth Law Conference 2003, Melbourne, 13-17 April 2003

The programme for the conference will encompass areas of broad contemporary concern in Commonwealth jurisdictions, and in particular, on matters in which one Commonwealth jurisdiction may be able to draw from the experience of another. In addition to matters of social concern, the agenda will also include items on e-commerce, the admission of lawyers to other jurisdictions and legal education. Visit the conference web site at <http://www.mcigroup.com/commonwealthlaw2003.htm> to obtain an expression of interest brochure. Alternatively, contact the CLC 2003 Conference Secretariat on ph: (03) 9820 9115; fax: (03) 9820 3581; e-mail comlaw@mcigroup.com (Points to be allocated)

Appointments

District Court of New South Wales

Colin O'Connor QC has been appointed as a judge of the District Court of New South Wales, effective 24 June 2002.

Ian Barnett, Magistrate, has been appointed as an acting judge of the District Court of New South Wales and as a judge of the Drug Court of New South Wales, effective 13 June 2002 - 20 January 2003.

His Honour Acting Judge Rummery QC and his Honour Acting Judge Smyth QC have been reappointed as acting judges of the District Court of New South Wales, effective 1 July 2002 - 1 April 2003 and 26 December 2002 respectively.

The following persons have been reappointed as acting judges of the District Court, effective 1 July 2002 - 30 June 2003

His Honour Acting Judge Andrew CBE
the Honourable Acting Judge Cripps QC
His Honour Acting Judge Davidson QC
His Honour Acting Judge Grogan
The Honourable Acting Judge Holt QC
His Honour Acting Judge Hosking QC
His Honour Acting Judge Job QC
His Honour Acting Judge Kirkham
His Honour Acting Judge Mahoney QC
His Honour Acting Judge Moore
The Honourable Acting Judge Nader RFD QC
His Honour Acting Judge Nash
His Honour Acting Judge Shillington QC
The Honourable Acting Judge Stewart
His Honour Acting Judge Viney QC
His Honour Acting Judge Wall QC
His Honour Acting Judge Sir Robert Woods CBE

Ian Bowden

Clifford Boyd-Boland

Dr Leroy Certoma

Emeritus Professor Michael Chesterman

Alexander Dagleish QC

Emeritus Professor Helen Gamble

Alan Eugene Hogan.

Local Court of NSW

James Coombs and Fiona Toose have been appointed as magistrates and as mining wardens, effective 15 July 2002.

Crown Prosecutors

Natalie Adams has been appointed as a crown prosecutor, effective 4 July 2002.

Vale

The Hon Joseph Goldstein, former barrister and Family Court judge, died on Friday, 28 June 2002. A funeral was held on 2 July 2002.



The University of Sydney

Annual Julius Stone Address

**Delivered by
Professor Patricia Williams
of Columbia University, New York**

Professor Williams is one of the seminal figures associated with the incorporation of questions of race and racial discrimination into critical legal studies. Her work, and particularly her book *The Alchemy of Race and Rights*, has been an inspiration to students and scholars alike.

'Inlaws and Outlaws: The Fate of Equality in Unsettled Times'

Venue: Banco Court, Supreme Court of New South Wales

Date: Thursday, 1 August 2002

Time: 5:30 pm

Cost: Attendance is free, donations are welcome
(see Registration Form attached)

To reserve a place please complete and send the attached registration form to Mr Greg Sherington or contact him on:

Tel – 9351 0202; Fax – 9351 0200; or email gregs@law.usyd.edu.au

**New South Wales Barristers who attend will earn
1.5 CPD POINTS IN THE SUBSTANTIVE LAW, PRACTICE & PROCEDURE, AND
EVIDENCE STRAND**

Bar Association a partner in LawAccess NSW

New South Wales has a new 'one stop shop' providing access to legal services and assistance. LawAccess NSW was launched by the Attorney General of NSW, the Hon Bob Debus MP, on 17 June 2002.

The Bar Association is one of the founding partners in the initiative, together with the NSW Attorney General's Department, the NSW Legal Aid Commission and the Law Society of NSW.

LawAccess NSW is tasked with:

- providing legal information, referral and advice
- developing and distributing legal information resources; and
- working with other legal assistance services in NSW to streamline the provision of services.

Services will be provided to people who either live in New South Wales or who have a legal problem in this State.

For further information about LawAccess NSW, visit their web site at www.lawaccess.nsw.gov.au

Risk management – no longer an optional extra

The need

Risk management is no longer an optional extra to professional practice. It is now an essential element.

All barristers have a responsibility to assist in the reduction of professional negligence claims and the growing number and cost of complaints. Quite apart from anything else – it is self-preservation.

At the request of the Bar Association, Willis Australia Ltd has arranged for the development of a suitable risk management education programme for the NSW Bar and has engaged LeMessurier Harrington Consulting to undertake this task. Your participation in the impending programme will be a negotiating tool for brokers to reduce premiums.

Professional negligence claims and complaints impact widely. They expose barristers to financial cost and generate unwanted criticism for the profession. Behind every claim or complaint is a dissatisfied client.

The flip-side is that good risk management and appropriate strategies will reduce the incidence of claims and complaints and lead to a reduction in premiums; improved performance and greater profitability.

Who are we?

After experience in private practice, Jane LeMessurier and Sue Harrington worked in the professional indemnity insurance arena for barristers and solicitors for over 10 years with the South Australian Law Society. For the past five years we have developed and facilitated the risk management education programme delivered to the South Australian profession. We have also presented programmes for the legal profession in ACT and Tasmania. In 2001 we started our own business, LeMessurier Harrington Consulting, which focuses on risk management education.

Most of the profession in SA have attended the educational sessions. They have repeatedly stated that the programmes provide a unique opportunity to discuss and develop an understanding of the real causes of claims and that as result they have made changes to the way they run their practices.

Carolyn Richards (former director of Law Claims in SA, now Claims Manager, Kuala Lumpur, Willis) says:

The highest testimony of the skills of Sue and Jane comes from the underwriters of the Professional Development Scheme and from the improvement in the claims record of the profession in SA which was significantly discernable after three years.

The NSW Bar Association Risk Management Education Programme

With our workshop-based seminars incorporating NSW statistics, videos and case studies, we offer the

opportunity for barristers to discuss relevant issues and together devise systems and strategies to overcome the threats to the profession.

We want this Risk Management Educational Programme to make a difference to the number of claims and complaints and therefore reduce the cost of premiums in the next few years.

Our experience and research indicate that similar problems plague barristers as solicitors, with complaints stemming from delays, communication, unprofessionalism, perceived exorbitant costs and the client's lack of understanding of the legal system. These issues make it difficult for clients to feel they own their settlement, but all can be tackled by implementing appropriate risk management strategies.

The first module will address:

- General risk management principles
- The causes of claims and complaints
- The Bar's heightened exposure to claims and complaints
- Client expectations

Subsequent modules will focus on:

- Communication
- Your paper trail
- Obtaining informed consent
- Limiting the retainer
- Diary systems
- Other issues that arise from earlier sessions

The Risk management component of the Bar Association's Continuing Development Programme will begin with programs being offered in the week commencing 12 August, 2002.

We look forward to meeting with you at that time.



By Jane LeMessurier LLB & Sue Harrington LLB
LeMessurier Harrington Consulting
The Practice Support Group

Bar Council business for May - June

President's report

Meeting with Professor Leon Trakman, Dean, Faculty of Law, University of New South Wales

On 16 May 2002 the President, the Senior Vice-President and the Executive Director met with the new Dean of the Faculty of Law of the University of New South Wales, Professor Leon Trakman to discuss the Faculty's working relationship with the Bar.

Meeting with CEO Insurance Council of Australia 5 June 2002

The President advised that he had met with Mr Alan Mason, CEO of the Insurance Council of Australia to discuss the general issue of public liability and the *Civil Liability Bill 2002* in particular.

Meeting with ACCC 5 June 2002

The President advised that he and the Executive Director had on Wednesday 5 June met in Canberra with Sitesh Bohjani, the ACCC Commissioner with primary responsibility for the legal profession, Bob Alexander, General Counsel, and Jennifer Moore, Acting Director Professions Unit, Compliance Division. The main topic of discussion was New South Wales Barristers' Rules 81-84, the sole practitioner rules.

Bench and Bar Dinner 31 May 2002

The President expressed his appreciation to the Association's staff for the very successful Centenary dinner. The Bar Council unanimously supported the President's remarks.

Items for consideration

Membership of the New South Wales Council of Professions

Bar Council discussed the long-standing issue of the Bar Association continuing to belong to the New South Wales Council of Professions. The Council noted that the Council of Professions at times purported to speak in the name of the Bar Association (as one of its members) when the Council's views differed from that of the Association. The existing relationship between the Association and the Council was not close; it was some time since the Association had played an active role in the Council of Professions. If another body was to represent the views of the Bar Association, it should be the Law Council of Australia or the Australian Bar Association.

Bar Council resolved that the New South Wales Bar Association withdraw from the New South Wales Council of Professions.

Service of expert reports in the District Court

Bar Council resolved to endorse the recommendation of the Personal Injuries Litigation Committee that the District Court Rules be amended to make clear that merely because a medical practitioner is a defendant the fact that he or she is a medical practitioner does not exclude him or her from the obligation to serve an evidentiary expert report in proper time if that defendant intends to give or rely upon opinion evidence as to what occurred.

The gap between public liability and CTP insurance

Bar Council resolved to endorse the joint submission to the Motor Accidents Authority by the New South Wales Bar Association and the Law Society of New South Wales entitled 'The Gap Between Public Liability and CTP Insurance.'

Continuing Professional Development Programme

On 24 April 2002 the Director of Studies presented a report to Bar Council proposing a programme of continuing professional development (CPD). The Bar Council endorsed generally the thrust of the report and the recommendations contained in the report. The Director of Studies was asked to prepare for the next meeting of the Bar Council draft resolutions to formally establish the CPD Programme, together with a protocol setting out in detail how the 'points' scheme will operate and a draft article for publication in Bar Brief that explains the points scheme's operation.

The Bar Council discussed the matters raised in the Director of Studies' memorandum of 4 June 2002.

Bar Council noted that its power to impose conditions on practising certificates is found in Part 3, Division 1 of the *Legal Profession Act 1987*:

'32 Conditions may be imposed on practising certificates:

- (1) A practising certificate may be issued unconditionally or subject to conditions.
- (2) A Council may attach a condition to a practising certificate when it is issued or at any time after it is issued, and may at any time vary or revoke any such condition.
- (3) A condition cannot be attached to a practising certificate unless it is of a kind authorised by this Act to be attached.
- (4) (Repealed)

- (5) A legal practitioner who is the holder of a current practising certificate must not fail to comply with a condition to which the certificate is subject.'

Subsection 33(1)(a) of the Act relevantly provides that conditions of the following kinds can be attached to the practising certificate of a barrister or a solicitor:

- '(a) a condition requiring the holder to undertake and complete one or more courses of continuing legal education;
- (b) a condition requiring the holder to undertake additional academic or training courses;
- (c) a condition of a kind authorised by the regulations, limiting the practising rights of the holder as determined by the Bar Council or the Law Society Council;
- (d) (d) any other condition agreed to by the holder.'

The commencement of the CPD Programme

The Bar Council had previously determined in principle (meeting of 24 April 2002) that the requirement to undertake continuing professional development will commence on 1 July 2002. A barrister who wishes to hold a



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DX 9104 Dee Why**

Bar Council business for May - June

Continued from page 5

practising certificate for the year commencing 1 July 2003 must have met the requirements of the New South Wales Bar Association's CPD Programme.

It was resolved, pursuant to sub sec 32 (1) and para 32 (1)(a) of the *Legal Profession Act 1987*, that, as of the practice year commencing on 1 July 2003, and for each subsequent year, it should be a condition attached to the practising certificate that a barrister wishing to hold a practising certificate for that year shall, in the immediately preceding year, have met the requirements of the Bar Association's Continuing Professional Development Programme.

Senior Counsel Selection Committee

The President noted that the Senior Counsel Protocol provides for the Senior Counsel Selection Committee to comprise the President, Senior Vice Present and three other Senior Counsel nominated by the President and approved by the Bar Council, not more than one of whom may be a member of the Bar Council.

Bar Council resolved that the 2002 Selection Committee comprise the President, Walker SC; the Senior Vice President, Harrison SC; Barry Toomey QC; Annabelle Bennett SC and Richard Cogswell SC.

Acting judges

The Senior Vice President advised that the practice of barristers appearing in court of which they hold a temporary commission as a judge had been raised with him. The Bar Council reaffirmed its view that the practice of having solicitors and barristers appointed as acting judges is an 'abomination'. The Bar Council does not support the practice of solicitors and barristers being appointed acting judges. If a barrister accepted a part time appointment they should not accept a brief in that jurisdiction while they held the appointment.

Law Council of Australia meeting on 15 June 2002

The Executive Director informed the Bar Council that on 15 June 2002 he and McColl SC, who was acting on behalf of the President, attended a meeting of the Law Council of Australia in Brisbane. Major items of business included a review of the governance of the Law Council of Australia and the 'national practice' project.

Australian Bar Association meeting on 16 June 2002

The Executive Director advised the Bar Council that on 16 June 2002 he attended a meeting in Brisbane of the Council of the Australian Bar Association with McColl SC, who attended as Treasurer.

Senior Council Protocol

Bar Council noted that the Executive had considered an amendment to Part B, cl.4 of the Protocol which stipulates that only junior counsel who are members of the Association can be considered for appointment as Senior Counsel. Bar Council noted that the Executive proposed that the provision be amended to delete the requirement for membership of the Association.

It was resolved that the reference to being a member of the New South Wales Bar Association in Part B cl.4 of the Senior Counsel Protocol be deleted.

Cl 4 will now read:

'On or after 1 July in each year, applications may be made in writing to the President by junior counsel with full practising certificates who wish to be considered for appointment as Senior Counsel.'

Review and monitoring of the NSW Workers Compensation Scheme

Bar Council resolved that the Personal Injuries Litigation Committee's comments on the NSW Workers Compensation Scheme comprise a submission to the Legislative Council General Purpose Standing Committee.

Barristers, gaols and mobile phones

Bar Council resolved that a letter be sent to the Minister for Corrective Services in relation to his Department's new policy effecting a ban on the carrying of mobile phones by legal practitioners visiting custodial institutions.



New members of the Bar Association

Local practising practitioner

Rohan Cooley	Ada Evans Chambers
Simon Doctor	13 Selborne / Wentworth Chambers

Legal practitioner other than local practising practitioner

Julie Dodds-Streeton	c/- HIH Royal Commission
Peter Lange	Everton Park (Queensland)
Wayne Martin QC	Francis Burt Chambers (Perth)
Lee Smith	MLC Centre (Brisbane)

BARCARE

BarCare is designed to guide barristers through emotional and stress related problems including family or marital problems, drug or alcohol dependency and practice pressures. The Bar Association will cover costs associated with the initial consultation with the BarCare counsellor.

For further information contact the BarCare information line (02) 9230 0433 or visit the Association's website www.nswbar.asn.au

Media briefing

Excerpts from recent interviews given by members of Bar Council

'The law of defamation would not be described by even its greatest admirer as being in a state of perfection, and that reform is an appropriate thing to consider. The expedients that the government has proposed are at least worth experimenting with', Bret Walker SC, **regarding Premier Bob Carr's proposed changes to the law of defamation**, 2UE News, 10 July 2002.

'If it means that it brings order and consistency into the availability of the action including the award of damages then probably, it very tentatively should be seen as a step towards a possible improvement', Bret Walker SC, **regarding Premier Bob Carr's proposed changes to the law of defamation**, 'Sally Loane', 2BL, 10 July 2002.

'The whole idea of minimum sentences is underpinned by the notion that we need to take away the discretion of judges because

there's some misconception abroad that one can't trust judges to be tough enough on criminals. That's an illogical and dangerous thing to use as a philosophical underpinning for all of this', Ian Harrison SC, **regarding the NSW Opposition's proposals for mandatory minimum sentencing**, 'Philip Clark', 2GB, 24 June 2002.

Media releases issued by the Law Council of Australia

Review Panel – Will it have a chance to work? [re: Negligence Review Panel], 3 July 2002

Law Council submissions

International Criminal Court and United Nations Peacekeeping Operations; A submission to the Hon Colin Powell, US Secretary of State, 12 July 2002

Review of Enforcement of Trade Marks; A submission to the Advisory Council on Intellectual Property by the Law Council's Business Law Section, 18 June 2002

Inquiry into the impact of public liability and professional indemnity insurance cost increases; A submission to the Senate Economics References Committee, 31 May 2002

Review of Australia's Commercial Arbitration Legislation; A submission to the Commonwealth Attorney-General's Department by the Law Council's Business Law Section, 27 May 2002

Visit the Law Council's web site at www.lawcouncil.asn.au to obtain the full text of all its submissions.



Gift to the Tonga Law Society

The Bar Association has presented as a gift to the Tonga Law Society a copy of Peter Birks, *English private law*, volumes I and II.



Papers to note

Inquiry into court waiting times, New South Wales Parliament, Public Accounts Committee, June 2002. The Committee has recommended, among other things, greater use of alternative dispute resolution methods, teleconferencing, electronic call-overs and penalties for legal practitioners who fail to comply with case timetables set by the courts. The report also recommends that consideration be given to the transfer of prosecution functions from the NSW Police to the DPP. A copy of the report may be obtained from the NSW Parliament web site at www.parliament.nsw.gov.au. A copy is held in the Bar Library.

* * *

Claims Assessment Guidelines: The Motor Accidents Authority's *Claims Assessment Guidelines* are made pursuant to sec 69(1) of the *Motor Accidents Compensation Act 1999* ('the Act'). They apply in respect of a motor accident occurring on or after 5 October 1999.

The *Guidelines* replace the *Claims Assessment Guidelines* gazetted on 17 December 1999 and will apply to all new applications received at the Claims

Assessment Resolution Service ('CARS') after 1 August 2002 and all matters current at CARS after that date.

The *Guidelines* explain the operation of those sections of the Act relating to the Claims Assessment and Resolution Service and are primarily intended to guide the officers of the MAA, members of the legal profession and the insurance industry.

A copy of the *Guidelines* is held at the Bar Library. Questions about CARS and these *Guidelines* should be directed to the Principal Claims Assessor at the Authority.

* * *

Complete tax guide for small business; *Tax facts*, Australian Taxation Office, October 2000. As part of the Continuing Professional Development programme, a seminar on barristers' record keeping was held in the Bar Common Room on 10 July. Included in the material handed out at that seminar were the *Complete tax guide* and a number of *Tax facts* brochures, covering topics such as 'Non-commercial losses' and 'Correcting GST mistakes'. Copies are available at the Bar Association's Reception. Copies are also held in the Bar Library.

Report on the review of the NSW Industrial Relations Act 1996: Report to Parliament by the Minister for Industrial Relations, June 2002. This report by the Hon John Della Bosca MLC set out to determine whether the policy objectives of the 1996 Act, introduced by the Government of Premier Bob Carr, are still valid and whether the Act meets those objectives. The key objectives and principles identified by the Minister are:

- the maintenance of necessary protection for vulnerable workers;
- the creation of a bargaining system which allows for flexible adjustments in enterprises; and
- an emphasis on cooperative workplace reform and consultation

According to the report, the submissions received by the Government generally indicate that the Act supports these objectives. A copy of the report may be obtained from the Department of Industrial Relations web site at: http://www.dir.nsw.gov.au/action/current/ir_act_report.pdf

Leadership qualities in silk applicants

By the Bar Association Equal Opportunity Committee

In March 2001 Bar Council amended the Senior Counsel Protocol by adding a 'measurable leadership test' to the list of desired qualities in those seeking appointment as a silk.

Central to this requirement is the notion that in order to encourage diversity and community at the Bar, applicants should take a more personal responsibility for the wellbeing of the community of barristers. It encourages them to recognise that some individual barristers face greater obstacles to success than others, and to help break down the barriers faced by many colleagues.

Clause 5 of the Senior Counsel Protocol sets out the qualities required to a high degree before appointment as senior counsel. Primarily, they consist of skill and learning, integrity and honesty, independence, diligence and experience. In

its amendments of March 2001, Bar Council added sub-clause (h), which states that:

Senior Counsel will have demonstrated leadership in:

- (i) developing the community and diversity of the Bar; or
- (ii) making a significant contribution to Australian society as a barrister.

Whilst the most obvious area in which applicants can demonstrate these qualities is in the area of gender equality, there are a number of less advantaged groups. Indigenous lawyers, for example, now coming to the Bar, would benefit from leadership and assistance.

How might this be done?

1. By passing briefs outside the usual comfortable network, so as to provide opportunity to all those with talent at the Bar.

2. By introducing those barristers to solicitors and to more senior colleagues and making appropriate recommendations
3. By taking a reader from a diverse cultural or socioeconomic background
4. By becoming a mentor in the 2nd year female barrister's mentoring programme.
5. By taking on an advisory role in relation to a junior barrister's practice.

Clearly this is the beginning of a revitalised and diverse community of which all barristers are a part. It will contribute to survival of an independent Bar and can only bring quality and satisfaction to barristers' working lives.



Court attire

The Bar Association has in recent weeks received a number of queries regarding the use of robes and wigs required in courts and tribunals, both State and federal. In response to this demand, a document outlining the attire to be worn by barristers in the various courts, commissions and tribunals in the federal and New South Wales jurisdictions is available from the Bar Association's web site at www.nswbar.asn.au

One particular court in which there appears to be some confusion is the Land and Environment Court of NSW. Whether or not robes are worn in a particular matter depends upon the *class of the matter*, and not the nature of the hearing. Robes but *not* wigs are worn for all ceremonial sittings. The following table provides a summary guide to attire in the Land and Environment Court.

Type of proceedings	Attire
Class 3 compensation, encroachment, and boundary claims Class 4 matters Class 5 matters Class 6 matters Class 7 matters Ceremonial sittings	Robes are worn, but wigs are not worn.
For all other proceedings	Robes and wigs are not worn.

Speeches to note

'A new agenda for government', address to the Sydney Institute by the Premier of New South Wales, the Hon Bob Carr MP. In this speech, delivered on 9 July 2002, the Premier reviewed the State Government's changes to workers compensation, medical indemnity insurance and greenslips and previewed further changes to the law of negligence and defamation.

Mr Carr denounced what he called 'an American-style culture of litigation' and its associated 'total justice mentality', which encourages people to believe there can be a legal remedy for every misfortune. The solution, he argued, is to 'restore personal responsibility'.

The Premier predicted that in September this year his government would introduce legislation to change the law of negligence. Some specific points foreshadowed by the Premier include:

- restating what is reasonably foreseeable;
- abolishing reliance by plaintiffs on their own intoxication;
- preventing people from making public liability claims where their injury arises in the course of committing a crime;
- protecting public authorities from unrealistic standards imposed with hindsight by a court;
- protecting good Samaritans who help in emergencies; and
- ensuring that a warning of risk is a good defence for risky entertainment or sporting activities.

Mr Carr also announced changes to the law of defamation, including increased incentives to use corrections and apologies, a ban on corporations and statutory bodies from bringing actions, a cap on compensation for non-economic loss and reducing the limitation period from six years to within 12 months of publication.

A copy of the speech is held in the Bar Library.

* * *

'Tension between the Executive and the Judiciary', speech delivered by the Hon Justice McHugh AC at the Australian Bar Association Conference, Paris, 10 July 2002. Justice McHugh warns that although some tension between the two branches of government is inevitable, persistent criticism of the judiciary by the Executive is likely to undermine public confidence in the integrity and impartiality of judges and undermine their authority. Continuing

conflict is also likely to induce the Executive to prevail on the legislature to take 'the extreme step of reducing or abolishing judicial review with the result that the rule of law is undermined'. His Honour cites immigration law as a particularly contentious area. A copy of the speech is available at www.hcourt.gov.au/speeches, and also from the Bar Library.

* * *

Speech for the Women Lawyers Association of New South Wales 50th Anniversary Gala Dinner, by the Hon Justice Mary Gaudron, 13 June, 2002. Justice Gaudron summarised the fight for women to study and practice law in NSW since 1902 when Ada Corbett became the first woman lawyer to graduate despite neither having the 'physique for law' nor being a 'person.' Justice Gaudron noted that the numbers and successes of women lawyers over the last 'action-packed' fifty years have been probably greater than the founders of the Association had dreamt of, but: in NSW only seven out of 308 women are members of the senior Bar; the 'merit fiction' and the patronage system still prevail.

The 'profession needs, and the interests of justice demand, the greater involvement of women in the law.' Had the 'still male-dominated legal profession' been 'effective servants of justice', she believes the current debates on such as the insurance crisis would have been unnecessary or very different and 'the rights of individuals would have been much better protected.' To make their 'own distinctive contribution to the law and justice', Justice Gaudron concludes that women must 'reject patronage and professional structures and create new ones.' A copy of the speech is available at www.hcourt.gov.au/speeches, and also from the Bar Library.

* * *

'Global influences on the Australian Judiciary', speech delivered at the Australian Bar Association Conference in Paris, by the Hon Justice A M Gleeson AC, Chief Justice of Australia, 8 July 2002. In this speech the Chief Justice provides an overview of the ways in which the Australian legal system has 'developed as part of a great international network', firstly by receiving the common law from England, then through US constitutional law and international treaties. 'There is a growing awareness, within the Australian profession, of the importance of looking beyond our own statutes and precedents,

and our traditional sources, in formulating answers to legal problems. Our law is increasingly aware of, and responsive to, the guidance we can receive from civil law countries. Ultimately, the issues that arise, and the problems that require solution, are in many respects the same throughout large parts of the world. The forces of globalisation tend to standardise the questions to which a legal system must respond. It is only to be expected that there will be an increasing standardisation of the answers. A copy of the speech is available at www.hcourt.gov.au/speeches, and also from the Bar Library.

* * *

'The birth, life and death of section 74', speech to the Samuel Griffith Society, by the Hon Justice A M Gleeson AC, 14 June, 2002. Chief Justice Gleeson examined the original negotiations and two conventions for federation and the Constitution to enshrine it, noting the striking 'relative detachment of the imperial authorities... rather than interference in them.' He discussed the influence of Sir Samuel Griffith in London, especially in relation to the final compromise, including cl 74 on appeals to the Privy Council from the High Court, its ambiguous nature regarding constitutional cases, and the effect on our legal system of the continued existence of appeals from State supreme courts to the Privy Council. Justice Gleeson summarised the history of appeals and the path to their end in 1986, and the changes to both UK and Australian law, legal and social culture that make a return to any 'supra-national' tribunals impossible. A copy of the speech is available at www.hcourt.gov.au/speeches, and also from the Bar Library.

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Pilot Mentoring Scheme for personal injury barristers

It was reported in the April/May edition of *Bar Brief* that the Bar Association, through the Personal Injuries Litigation Committee, is setting up a pilot scheme in which barristers with practices in personal injury who are interested in transferring their skills to other areas of practice will be mentored by senior practitioners those areas, giving them assistance and practical experience to enable them to redeploy their skills.

The scheme will initially be offered for twelve months to barristers who have been admitted for five to ten years. If successful it will be expanded.

The Association has appointed Christopher Gee QC as the coordinator of the scheme.

All participants in the scheme will earn CPD points.

The following is a list (in alphabetical order) of barristers who have agreed to act as mentors.

David Bloom QC
Paul Brereton SC
Peter Callaghan SC,
David Catterns QC
Kevin Connor
Franco Corsaro SC
William Dawe QC
John Durack SC
Stephen Finch SC
Robert Forster SC
Stephen Gageler SC
Peter Garling SC
Tim Hale SC
Philip Hallen SC
Bruce Hodgkinson SC
Chris Hodgkiss
Peter Johnson SC
Peter Kite SC
Robert Lethbridge SC
Paul Menzies QC
Glen Miller QC
W H Nicholas QC
Grahame Richardson SC
Stephen Rothman SC
The Hon J W Shaw QC
Clive Steirn SC
Peter Taylor SC
Dennis Wilson SC

Their specialist areas of practice include administrative; building & construction; commercial; commissions of inquiry; constitutional; courts martial; crime; defamation; equity; family law; industrial; intellectual property; land & environment and revenue.

Members who are eligible and interested in taking part in the scheme should contact Anna Katzmann SC on ph: (02) 8233 0301 or via e-mail: a.katzmann@mauricebyers.com

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Children's Lawyer Awards

In recognition of the work of legal practitioners in advancing the interests of children and young people through the legal process, the National Children's and Youth Law Centre ('NCYLC') conducts an award ceremony.

The Children's Lawyer Awards (previously held annually and known as the Children's Lawyer of the Year Awards) acknowledge the work of such practitioners generally, and particular individuals for their commitment. Two national awards are presented, as well as an award in each State and Territory.

The NCYLC is once more calling for nominations for its Children's Lawyer of the Year Awards. Nominations close **5pm Friday 6 September 2002**.

This year will mark the fifth time the Awards have been held (the awards are now a biennial event). Since their inception in 1997 the Awards have served to recognise the legal practitioners who work tirelessly for their clients in the areas of care and protection, criminal and family law, litigation and traffic jurisdictions, as well as providing advocacy for young people in a whole range of administrative and domestic situations. This year, the Awards are open not only to solicitors and barristers but also legal volunteers, legal policy workers and organisations/departments in the representation of children and young people.

The NCYLC is a joint partnership between the University of NSW, the University of Sydney and the Commonwealth Attorney-General's Department.

For further information, or to obtain a nomination form, contact Jacqui Houston at the Centre on ph: (02) 9398 7488, e-mail: ncylc@unsw.edu.au or visit their web site at www.ncylc.org.au

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