



# Australian Bar GAZETTE

January 2006

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## NOTE YOUR DIARY

### The Australian Bar Association Conference 2007

The next Australian Bar Association Conference will be held in Chicago – home of the American Bar Association and one of the great American cities. The Conference will be held between Wednesday 27 June and Saturday 30 June, 2007. An impressive list of speakers will be assembled to provide an informative and interesting business program. Further details will be published in the next edition of the Gazette.

*The President of the ABA  
and members of the  
Australian Bar Council  
wish all members  
the best for the New Year.*



## From the President...

The Rule of Law has been high on the public profile in 2005 in seemingly endless political fashion. At the Dublin Conference, Ian Barker QC delivered a superb paper (on the ABA website) full of his renowned dry wit on the role of the Australian Intelligence Services, demonstrating what we all know from the Iraq weapons of mass-destruction experience: there were none; that the spying of the intelligence services is not always that reliable nor relevant to national issues. This was brought home to me on a visit to the National Archives where they had

on public display ASIO records of intelligence reports at the height of the cold war. That is not to say, of course, that Australia should not have an intelligence service, but reading those reports does tell you that some ASIO agents can be like Mr Cooper, whose sentence for seditious utterances (to which Barker refers in his address which is printed in this issue of the Gazette) Barker thought was due to Cooper having “kangaroos loose in the top paddock”.

The IBA at its 2005 Prague conference passed a resolution (not unanimous) on the Rule of Law and resolved to make 2005/6 the Year of the Rule of Law. The resolution said:

*“An independent, impartial judiciary; the presumption of innocence; the right to a fair and public trial without undue delay; a rational and proportionate approach to punishment, a strong and independent legal profession; strict protection of confidential communications between lawyer and client; equality of all before the law; these are all fundamental principles of the Rule of Law. Accordingly, arbitrary arrests; secret trials; indefinite detention without trial; cruel or degrading treatment or punishment; intimidation or corruption in the electoral process; are all unacceptable.*

*The Rule of Law is the foundation of a civilised society. It establishes a transparent process accessible and equal to all. It ensures adherence to principles that both liberate and protect. The IBA calls upon all countries to respect these fundamental principles. It also calls upon its members to speak out in support of the Rule of Law within their respective communities.”*

Guy Mansfield QC, the retiring Chair of the General Council of the Bars of England and Wales, wrote to John North, President of the Law Council of Australia, in the midst of public debate on the *Commonwealth Anti-Terrorism Bill (No. 2) 2005*:

*“A nation’s level of civilisation is to be judged not by the way it treats the majority of its citizens but by what it does to its minorities, its criminals, its troublemakers, its misfits. You cannot defend and promote a democratic system by taking away the very freedoms that made it a democracy in the first place. All that happens is that the country becomes unfree and unpleasant – and probably still unable to resolve the terrorism problem with which it started off.”*

As these statements on the Rule of Law entered public debate around the world and here in Australia, we saw a rebellion in the House of Commons over the Blair government’s anti-terror legislation, rebellion in the United States Congress over long term extension of the Patriot Act and here in Australia, not a rebellion on the floor of Parliament but, at least, an expression of opposition by the Senate Committee against the new seditio provisions of the Anti-Terrorism Bill.

All of this kind of legislation is designed to increase the executive authority of government and diminish the long-established principles of the Rule of Law underpinning the criminal justice system.

John North, President of the Law Council of Australia, on behalf of the national legal profession, has done a superb job in public debate to bring these issues home to the Parliament and the public, notwithstanding the intransigence of governments and a certain complacency in public opinion (except for the self-interest of the media). John North is to be thanked for the vigour and determination with which he argued the cause of the Rule of Law.

In the face of the horror of New York, Madrid, Bali and London bombings, and the very nature of terrorism itself which is hidden until it erupts within communities, one can understand that sense of public complacency to cries for the observance of the Rule of Law and the protection of the civil liberties of every citizen, even those who are suspected of being involved in terrorist acts.

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But the public debate must continue. That is why the contribution of Ian Barker QC at the Dublin conference and back home in Australia is so valuable. Ian has again raised the level of cynicism a forensic notch or two by his address on sedition. If the Courts were prepared to convict for sedition the kind of words uttered in the cases he quotes in his address, what will amount to sedition with intent withdrawn, recklessness substituted and the onus of proof reversed? The first kangaroo corralled in Court will make for an interesting trial indeed. Mr Cooper revisited!

The issues, of course, are much more serious than the forensic entertainment of a future trial. Detention without arrest and trial, with limited access to the outside world whilst under interrogation will properly continue to be seen as a breach of the Rule of Law. The role of the judiciary as an issuing court under the new anti-terrorism regime should be another focus. Where does the judicial function end and the administrative function begin? There will certainly be some nice constitutional issues argued in the future. How will the judicial function in approving continuing detention be balanced with judicial independence? Is it, rather, a compromise of judicial independence; and how will the fundamentals of a fair trial under the Rule of Law be applied to a detainee interrogated without access to a lawyer? Many such questions will undoubtedly arise in the future.

Lying at the heart of this public debate is the tension between the assertion of increased executive authority by this kind of anti-terror legislation and the civil liberties, as they are known in modern terms, of individual citizens. It is the same tension of nearly 400 years ago in the days of the Star Chamber, the trial of Charles I and the treason trials of the regicides after the restoration of Charles II and the era's which followed under Constitutional Monarchies and written Constitutions which spawned the Rule of Law. The tension is still there although time and circumstance have changed.

Passing a Rule of Law resolution is fine, but in a climate of public opinion moved by the horrors of terrorism, the public will be sceptical of Rule of Law issues when they are concerned to protect their personal safety, the safety of a nation and bringing the perpetrators to justice. Nevertheless, history has surely taught us that the lines between tyranny and democracy, between the Rule of Law and the rule of no-law can be very thin indeed. Vigilance and a good dose of Barker-like cynicism are always needed in times like these.

## Australian Bar Welcomes Crennan J



Your Honour was President of the Australian Bar Association in 1995. You were succeeded in that office by your pupil-master, the learned Solicitor General for the Commonwealth. Some significant matters were dealt with during your term as President. The constitution was amended to provide for election of the President rather than appointment by rotation among the States. Though seen by some as a dangerously democratic gesture, it has been a success. You led the way for the uniform recognition of Senior Counsel and Queens Counsel by the various jurisdictions so that there was no longer a need for separate applications in each jurisdiction. Probably the most important and lasting step taken during your term was the implementation of annual trips to Bangla Desh by ABA members to provide advocacy teaching for local practitioners.

The innovation you demonstrated as ABA President has not been reflected in every aspect of your life. You demonstrated a healthy disdain for modern technology by declining to learn to drive until about the time you took silk. That disdain is not unique to this Court. Your mastery of that skill may not yet be complete, as observers have noted that there have been occasions when, rather than executing a U-turn, you preferred to drive around the block.

Your Honour, your appointment has been greeted with unalloyed acclaim by the Bar. The many attributes which equip you so well for your new task have been related already and I will not rehearse them. They are endorsed without reserve. The ABA and its constituent members wish you well.

I should not return to my seat without saying something about another former President of the ABA and one of its few life members. In an era when age limits are being removed in nearly all circumstances, Justice McHugh has amply demonstrated that the restriction in s.72 of the Constitution will not always work to the advantage of this country. We join with the Attorney in his comments and express our admiration and gratitude for your contribution to the law, the profession and this nation.

May it please the Court.

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***At a ceremonial sittings of the High Court of Australia held on Tuesday 8 November, 2005 the Vice President of the Association, Glenn Martin S.C. welcomed the Honourable Justice Susan Crennan as a Justice of the High Court of Australia.***  
***Below is the address given by Martin S.C.***

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*It is my privilege today, in the unavoidable absence of the President, to express the ABA's warmest congratulations to your Honour, Justice Crennan.*

*As has already been noted your Honour was, before appointment to the Federal Court, in practice at the Victorian Bar. You were admitted to practice in many Australian jurisdictions. Like Justice Callinan, you are also admitted to practice in the Republic of Ireland. I have been asked by the Chairman of the Irish Bar to inform the Court that the Irish Bar is delighted to see another of its members appointed to this Court and to convey that Bar's congratulations. Their celebration of Justice Callinan's appointment concluded only two weeks ago. No doubt the party will now continue.*

## AUSTRALIAN BAR APPOINTS NEW LIFE MEMBER

The Australian Bar Council at its meeting on 4 December, 2005 unanimously resolved to appoint the Chief Justice of Western Australia, the Hon. David Malcom AC Cit WA as a Life Member of the Australian Bar Association in recognition of his exceptional service to justice, the law and the profession.

Chief Justice Malcolm graduated with an LL.B from the University of Western Australia in 1959 with first class honours and was the Rhodes Scholar from Western Australia in 1960. In 1962 he obtained his BCL at Oxford with first class honours. He was admitted to practice in 1964. He acted as Counsel and Deputy General Counsel for the Asian Development Bank based in Manila between 1967 and 1970. He practised widely in many areas of the law including commercial and corporate law, mining, media, shipping and administrative law. He was Chairman of the Law Reform Commission of Western Australia in 1976 and from 1979 to 1982 and a member of the Copyright Tribunal from 1979 to 1982.

He was Queen's Counsel from 1980 to 1988, President of the Western Australian Bar Association from 1981 to 1984 and Vice-President of the Australian Bar Association in 1984. In 1988 he was appointed Chief Justice of Western Australia. One of his many interests has been his involvement, at the highest level, with the judicial section of Lawasia. He became that section's chairman in 1991. After a long and distinguished career he has announced his intention to resign as Chief Justice in early 2007.



Chief Justice Malcolm will be presented with his Certificate of Life Membership at the Silks Dinner in Canberra on Monday 30 January, 2006.

## SPEAKING NOTES

### CEREMONIAL SITTING OF THE FEDERAL COURT FOR JUSTICE NEIL YOUNG

MELBOURNE – DECEMBER 5, 2005



*The Australian Bar Association is particularly pleased to be able to welcome one of its distinguished Presidents to the Bench of the Federal Court of Australia.*

*His Honour's professional career and accomplishments, already outlined by the Solicitor General for the Commonwealth and Mr Bugg for the Law Council of Australia, demonstrate the distinction which has followed His Honour's career from its earliest days and undoubtedly marked His Honour out for elevation to the judiciary.*

*It is the good fortune of this Court that His Honour will now sit amongst his eminent colleagues to serve the people of Australia.*

*The stature of the Court continues to grow across the wide range of Federal jurisdiction conferred upon it; an ongoing process which will surely continue as the Commonwealth Parliament inexorably, I believe, expands the range of its legislation far beyond the classic division of powers between the States and the Commonwealth. That has been*

*happening since Federation began. This political process can be expected to continue as the demands of contemporary Australia push the Commonwealth to legislate more and more on a national basis with the real prospect of ever increasing demands upon the jurisdiction of the Federal Court.*

*The breadth of His Honour's experience and the obvious confidence which governments, corporations and individuals have had in Your Honour's professional capacities and judgment is the measure of the good fortune of this Court to have Your Honour join the Bench in the challenging times which lie ahead of it.*

*The Australian Bar Association experienced that kind of good fortune during Your Honour's presidency in 1999. A survey of matters addressed in that year shows an equally broad range of concerns and leadership on matters of national professional interest as the breadth of your professional career exhibited.*

I mention some of those matters:

- The development of an ABA Charter of Judicial Independence, which has now been completed;
- Opposition to mandatory sentencing;
- Support for the Malaysian Bar Association and the Independence of the Judiciary;
- Developing an ABA Model Code of Conduct for its members;
- Supporting the development of the independent referral bars throughout all Australian States and the mainland Territories – as to which Your Honour will be pleased to know that the Smaller Bars, as they are referred to, in Western Australia, the Northern Territory, South Australia and Tasmania are now firmly established and Western Australia, the Northern Territory and South Australia Bars (with Tasmania to follow I am sure) now constituent members of the Law Council of Australia in their own right;

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- Pioneering a model rule for Bars on Sexual Harassment and Discrimination;
- Advocating a national approach to Legal Education and Training – as to which the Bar Council has been active this year in establishing an Advocacy Training Council and the promotion of Bar Reader Courses for the Smaller Bars;
- Advocating a national approach to the provision of pro bono services of which the practice in this Court is a very good example.

There is just one other matter to recall from His Honour's presidency. It made me wonder what kind of judge Your Honour will be. At the 1999 International Bar Association Conference the ABA co-sponsored two sessions.

One on: "Counsel – Hired Tongue, Hired Gun or Officer of the Court?", and The other: "Court Rooms: Minefields for Disabled Litigators"

I don't know how Your Honour characterised yourself at the Bar – hired tongue? hired gun? Or officer of the court?

Your Honour is certainly now an Officer of the Court and you will certainly have discarded whichever of those other characteristics may have aptly applied to you. However that may be, please don't leave in your judicial wake too many disabled litigators, whether counsel or clients; nor lay too many mines before the Bar table - or sharpen your tongue - or load your gun.

On behalf of the Association, I think our advice to Your Honour is simple and easy: be the person we have known you to be at the Bar and the public who come to your Court will know they have been fairly heard and their cause very capably judged.

May it please the Court.

**Ian Viner, AO QC**  
**President, Australian Bar Association**

**Francis Burt Chambers, Perth**  
**5 December 2005**



## BARKER QC ON SEDITION

*This is an address given by Ian Barker QC, former President of the New South Wales Bar Association at a seminar convened by the Australian Centre for Independent Journalism on 11 November, 2005.*

## SEDITION

(Part of which was delivered on 11 November 2005 at a seminar convened by Aust Centre for Independent Journalism)

### Ian Barker QC

We are soon going to have a lot of laws telling us how to behave towards our government, our constitution and our country.

As the Anti-Terrorism Bill now stands:

- Treason stays (s.80 *Criminal Code*)
- Treachery stays (s.24 *Crimes Act*. It covers some of the same ground as treason)
- Seditious intent (new s.30A(3) *Crimes Act*. Restates the existing law in substance (formerly s.24A) but, importantly, its application is limited to unlawful applications)
- Sedition (a new offence created by s.80.2 of *Criminal Code*. Replaces various offences in *Crimes Act* s.24A to s.24E)

There is a significant difference in the proposed law of sedition as opposed to the existing law. Under the existing law we have a definition of *seditious intent* – for example an intention to bring the Sovereign into hatred, or to excite disaffection against the government – and then we have various offences committed with *that intention*, for example, using seditious words with the intention of created public disorder.

So to commit an offence, one had to do one of the things proscribed and at the same time have a seditious intent. That will no longer be the case.

The definition of seditious intent is now limited to the seditious intent which may be a mark of an unlawful association. The new offences of sedition do not require proof of a seditious intention, they can be committed by mere recklessness, and they carry a new penalty of 7 years. There is a good faith exception which seems to me to be a reversal of the onus of proof. In other words the practical effect of the new

legislation is that a person accused of doing any of the things in the new *Criminal Code* s.80(2) bears the onus of showing he or she did not act with a seditious intent. This is repugnant to our notions of fair process.

Sedition traditionally occupies the ground somewhere between treason, which is actually killing the Sovereign, or the heir apparent or the Queen consort, or the Governor General or Prime Minister, or actually levying war against the Sovereign, on the one hand, and lawful criticisms on the other. It started life as a common law misdemeanour, as a criminal libel.

So whilst not actually killing the Queen, it is seditious to bring the Sovereign into hatred or contempt or to urge disaffection, which I think means urging people to be disloyal, to the constitution or government or either house of parliament.

It consists in mere words.

The whole notion should have been abandoned years ago. For example urging disaffection against the government seems to be what many ordinary people, including journalists, often do, born of sheer frustration. Problems in prosecutions are legion, which probably accounts for the small number of prosecutions in Australia for sedition. So far as am aware, the last trial for sedition in Australia was in 1949.

The problem is, the crime is all about words and the construction of words. It is becoming increasingly dangerous to be honest and direct in the use of words.

I question whether, for example, Alan Ramsay's or Mike Carlton's Saturday effusions under the new law will not be seditious, if not already. And see, for example, the definition of "seditious intent" in the new s.30A:

*"An intention to promote feelings of ill-will or hostility between different groups so as to threaten the peace, order and good government of the commonwealth."*

Well - where do you draw the line?

Insulting the Australian cricket team, or the memory of Phar Lap, or the principles found in the Koran, might well have the potential to cause serious trouble in the realm. Who knows? The answer does not have to await a riot. The answer is somehow to be derived from the words themselves.

Treason is found in s.80 of the *Criminal Code*. It gives pride of place to the death of:

- the Sovereign
- the heir apparent
- the consort
- the Governor General; or
- the Prime Minister

The section then goes on to deal with levying war, and assisting the enemy.

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Killing the leader of the opposition or the attorney general is not treason, merely murder.

Why is this? The law is a historical anachronism. Treason once carried with it a special penalty, long discarded.

Blackstone tells us: <sup>1</sup>

*“The system of punishment for high treason was very complex. Thus an offender found guilty of this crime was (1) to be drawn to the gallows; (2) to be hanged by the neck and then cut down alive; (3) his bowels were to be taken out; (4) they were to be burnt in his presence, while he was still alive; (5) his head was to be cut off; (6) his body was to be divided into four parts; (7) his head and quarters were to be at the King’s disposal.”*

One’s bowels and genitals were burnt. Women were spared this immodest indignity by being burnt alive.

We can, I think, live with clearly defined laws against violence and sabotage such as the existing s.24AA.

We can live with the existing notion of two or more people conspiring to so act.

We can live with the offence of inciting someone to act violently.

But sedition is quite another matter.

The problem as I see it, with the definition of seditious intent, and sedition, is that we can never be sure that any words of strong criticism of government, however well intended, will not be seen to derive from motives entirely sinister.

If I said today:

*“Well may we say God save the Queen, because nothing can save the Governor General.”*

Some may well see it, as some saw it then, as an incitement to kill the Governor General or by violence drive him from office. They would be dangerous words to use under the new law.

Sedition has an interesting history in this country.

In the early colony journalists and lawyers were very prominent in public affairs, and very courageous. The lawyers Wentworth and Wardell started “The Australian” newspaper and in 1827 Wardell was twice tried for seditious libel against Governor Darling. Edward Smith Hall edited the Sydney Monitor and was tried perhaps a dozen times for criminal and seditious libel, usually offending Governor Darling. He spent some time in gaol, where he would write further seditious material, for which he was further prosecuted. It was the Governor’s way of controlling a turbulent society.

In 1896 John Norton was tried for sedition for publishing in Truth some remarks highly insulting of the Sovereigns George III, George IV, William IV and Victoria. It was a colourful tirade. The jury acquitted.

In 1932 there was a very strange case (not treason or sedition) of a man called Devanny who was convicted by a magistrate on the information of a prosecutor appropriately called Hush, of soliciting contributions to an unlawful association, namely the Communist Party of Australia. <sup>2</sup>

I cite the case merely to illustrate the danger of an imprecise approach to determining the meaning of words.

Dr Evatt (then on the High Court) - presently spinning in his grave – was particularly scornful of the prosecution, saying this:

*“The information is full of clichés and question begging phrases. Certain internationals are alleged to be interlocked as a result of which the communist party is brought into co-operation with another movement. Upon this slender and legally insufficient basis the information proceeds to impute all the activities of the interlocked movement to the communist party”*

In 1949 a man called Burns was convicted of sedition, for telling a public meeting in Brisbane that:

*“If Australia was involved in a war between Soviet Russia and the Western Powers the Australian Communist Party would oppose the war and fight on the side of Soviet Russia.” <sup>3</sup>*

It seemed to be little more than a provocative statement about an unlikely hypothesis, but it cost him 6 months.

The majority in the High Court said the statement was intended to excite disaffection against the Sovereign and the Commonwealth, and was therefore expressive of a seditious intention.

Burns was followed by the trial of Lance Sharkey, again in 1949,<sup>4</sup> for sedition, for uttering the following words:

*“If Soviet Forces in pursuit of aggressors entered Australia, Australian workers would welcome them. Australian workers would welcome Soviet Forces pursuing aggressors as the workers welcomed them throughout Europe when the Red troops liberated the people from the power of the Nazis. I support the statements made by the French Communist leader Maurice Thorez. Invasion of Australia by forces of the Soviet Union seems very remote and hypothetical to me. I believe the Soviet Union will go to war only if she is attacked and if she is attacked I cannot*

*see Australia being invaded by Soviet troops. The job of Communists is to struggle to prevent war and to educate the mass of people against the idea of war. The Communist Party also wants to bring the working class to power but if Fascists in Australia use force to prevent workers gaining that power Communists will advise the workers to meet force with force.”*

The High Court said it was open to a jury to hold the words conveyed a seditious intention.

Such can be the power of words.

The other case I know of involved a man called Cooper who was probably more or less insane, but he was convicted by a single judge in the Supreme Court of Papua & New Guinea in 1961 for uttering seditious words, and given 2 months.<sup>5</sup> The sentence suggested the judge thought Cooper may have had a few kangaroos loose in the top paddock. However, he was charged under the then Queensland Criminal Code which then applied in New Guinea and had sections dealing with treason and sedition.

There is little doubt that Cooper was guilty of sedition and perhaps more, because he did urge the overthrow of Australian rule by force of arms. He said:

*“You must have a new government of your own... “Now I don’t want a long delay... I want you people to get it within six months... Set a meeting and tell all the men so that they’ll hear... First a group can go and take hold of the Police Officer and tie him to a post with a rope so that he’ll remain there. Some groups can go and break into the stores, into the place where the rifles are and get them all; some groups can go to the big stores and break into them and take things such as beer, rum and food, and they can all eat and drink. Expel all the white people and tell them they have to go back to their own place... They must remain in their houses, board a ship and then they can go back. Now at the airstrip a group can go and cut some trees and throw them on to the airstrip, burn some aircraft and put them on the airstrip so that the Australian and American soldiers can’t come down. Your own army can get rid of all the Europeans so that they go back to their own place, Australia... I can get a message to the Russians and they will come and help you.”*

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## NEW OFFICE HOLDERS ELECTED

The following ABA Office holders were elected at the Annual General Meeting of the Association held in Sydney on Sunday 4 December, 2005. By convention, they assume office at the Silks Dinner in Canberra on Monday 30 January, 2006.

**President:**

Glenn Martin S.C. (Qld)

**Vice President:**

Stephen Estcourt QC (Tas)

**Hon Treasurer:**

Michael Slattery QC (NSW)

**Hon. Secretary:**

Dan O'Connor (Qld)

## 2006 SILKS DINNER

It has become the practice to hold a dinner at the High Court in Canberra on the night of the new Silks taking their bows in the High Court in Canberra.

The dinner to mark the occasion will be held in the Great Hall of the High Court of Australia on 31 January 2006, at 7.00pm for 7.30pm. All barristers (not just the new Silks) and their partners are invited to attend. Dress will be black tie and the cost will be \$135.00 per person (including GST).

The dinners have proved to be very enjoyable in the past and it is hoped that a large number from the Bar will be able to attend. If you would like to attend the dinner you should contact the ABA Secretariat (honsec@austbar.asn.au) to obtain a registration form. Registrations should be returned by no later than Tuesday 10 January, 2006.



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The significance of the case for present purposes is that the judge let in evidence from an ASIO agent called Donovan, and others, to the effect that the accused laboured under a trilogy of grave character defects: that is to say he was a communist, an atheist and he disliked missionaries.

The High Court upheld the conviction but said of the character evidence that to suggest it was relevant was absurd and that:

*“Evidence cannot be given which goes merely to show that an accused is the kind of man who is likely to have committed the offence charged. And, even if it could, the inference could not be drawn in the present case without some investigation of the habits and practices of communists and atheists and dislikers of missionaries. It was apparently hoped that the tribunal would judicially notice that people who dislike missionaries are likely to published seditious words.”*

The case does show the difficulty in determining with any degree of objectivity the real inference to be drawn from words to prove a speaker's intention. ASIO seemed to think the fact of Cooper's political leanings helped prove his state of mind. Others thought his rejection of a deity helped prove the point.

A suggestion that any ASIO agent should be empowered to make any sort of preliminary judgment in such matters should frighten us all. It reminds me of an interview I once had when I was required to obtain a security clearance to look at some of the material to be produced during the Combe Ivanov Royal Commission.

Their first question was directed to whether there was any homosexuality in the family.

Well, it was 1983.

Another exercise of ASIO's judgment concerning me, was a report from some anonymous agent that I, David Combe, Rod Madgwick and possibly Mungo McCallum – I can't remember – were seen at the National Press Club drinking with a man from the Soviet Embassy.

It was important enough to be recorded in ASIO's records and to become evidence at the Royal Commission.

It may not have occurred to my watcher that, if I was going to have a clandestine discussion with a foreign spy, I would probably choose a venue and time other than happy hour at the National Press Club, surrounded by intoxicated and inquisitive journalists.

We have not needed a law of sedition at least since 1949, and probably never, for all it achieved. We do not need it now.

As to compulsory disclosure, journalists are obviously at risk because of the oppressive provisions of the *ASIO Act* introduced in 2003.

Your business is collecting information. If you happen to collect some which an ASIO agent thinks may substantially assist the contribution to terrorism intelligence you can be incarcerated and interrogated.

And refusal to disclose information carries a penalty of 5 years.

We all know journalists have no legal privilege, and have known since 1940, when one Frank Vincent McGuinness, the editor of *Truth*, was fined £15 for refusing to disclose a source to a royal commission.

In the case against Deborah Cornwall in 1993 the judge said:

*“The authorities clearly establish that there is no “privilege” protecting a journalist from disclosing his/her source of information. There is no privilege known to the law by which a journalist can refuse to answer before an inquiry such as the ICAC... the refusal to answer questions which are relevant or to produce documents undermines the rule of law.”*

So under the *ASIO Act* the law has become so degraded that secret interrogation by ASIO pursuant to the powers conferred by s.34 of the *ASIO Act* is to be treated as creating the imperative necessity of revealing the truth in the witness box, in the interests of “justice”, in contrast to established notions of open courts and public justice.

Another real problem for journalists is the compulsory disclosure of operational information required by s.34VAA of the *ASIO Act*. Investigative journalists are in distinct danger of becoming mere agents of ASIO, gathering information which may have to be disclosed to ASIO.

I do not know why some sections of the news media are so enthusiastic in their support for this legislation. One editor seems to have a direct line to ASIO, so maybe his reporters have some sort of unspoken indemnity; the rest of you don't.

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### (Footnotes)

- <sup>1</sup> 4 Commentaries 92
  - <sup>2</sup> *The King v Hush Ex Parte Devanny* (1932) 38 CLR 487
  - <sup>3</sup> *Burns v Ransley* (1949) 79 CLR 101
  - <sup>4</sup> *The King v Sharkey* (1949) 79 CLR 121
  - <sup>5</sup> (1961) 105 CLR 177
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REGISTRATION

# World Conference of Advocates and Barristers

Hong Kong and Shanghai • 15 – 19 April 2006



**The International Council of Advocates and Barristers will be holding its third world conference in Hong Kong and Shanghai from 15 to 19 April 2006.**

The International Council of Advocates and Barristers is an organisation formed by the Bar Associations in jurisdictions where there is a separate profession of an independent referral Bar. Its members are currently the Bar Associations of Australia, England and Wales, Hong Kong, the Republic of Ireland, New Zealand, Northern Ireland, Scotland, South Africa, Namibia and Zimbabwe. The objects of the Council include the promotion and maintenance of the rule of law and the effective administration of justice. Its focus falls on matters particularly important to the Bar worldwide, including: regulatory issues, better training for the profession, and strengthening the independent Bar as a prerequisite to an independent Bench.

Very successful conferences have already been held in Edinburgh and Cape Town. Those who have attended have had the benefit of hearing from a wide range of speakers such as Mary Robinson UN Commissioner for Human Rights, the Hon. Anthony Gubbay (the former Chief Justice of Zimbabwe), Param Cumaraswamy, UN Special Rapporteur on the Independence of the Judiciary, Justice Ian Callinan (High Court of Australia), and Justice Dikgang Moseneke (Constitutional Court of South Africa).

**You will be addressed by many eminent speakers including:**

- The Hon. Chief Justice Li, Chief Justice of Hong Kong SAR
- Rory Brady AG S.C., Attorney General of Ireland
- The Hon. Bob Debus MP, Attorney General of New South Wales, Australia
- The Hon. Mr Justice Patrick Chan, Hong Kong Court of Final Appeal
- Eric Matinenge, (Zimbabwe Bar)
- Gerald McCoy SC (New Zealand)
- Stephen Hockman QC (England & Wales)
- Roy Martin QC (Scotland)
- Norman Arendse SC (South Africa)
- Margaret Ng (Member, Legislative Council of Hong Kong)
- Sharise Weiner SC (South Africa)
- Ross Ray QC (Australia)
- Tim Dutton QC (England & Wales)
- Hugh Mohan SC (Ireland)
- Philip Greenwood SC (Australia)
- Edwin Glasgow QC (England & Wales)
- Wong Yan-lung, Hong Kong Secretary for Justice
- Kevin Lau, (Journalist - Mingpao Newspaper, Hong Kong)

**Full details of the programme and speakers can be found on the World Bar Conference website at [www.worldbaronline.com](http://www.worldbaronline.com)**

**IN HONG KONG**

- *Maintaining the Rule of Law: The Roles of the Attorney General*
- *Maintaining the Rule of Law: What is the Essence of a Referral Bar?*
- *Jurisdictions with more than one official language: Conflicts & Resolutions, Law Reporting*
- *Challenges facing People with Disabilities at the Referral Bar*
- *The Referral Bar and the Media*
- *The Young Bar Strikes Back: Safeguarding our Future*
- *Public and Private Financing of Litigation*

There will be a separate advocacy stream designed for those who have entered practice recently-

- *Case Analysis*
- *Witnesses in Civil Trials*
- *Witnesses in Criminal Trials*
- *Expert Witnesses*

**IN SHANGHAI**

- *The Chinese Legal System*
- *The Legal Profession in China*
- *The Chinese Judiciary*
- *The Court System in China*
- *Together with papers and presentations designed by members of the International Council of Advocates and Barristers of interest to members of the Shanghai Bar.*





## CONFERENCE DATES

DATE	TIME	EVENT	VENUE
Saturday, 15 April	09.00 - 16.00	Registration	Island Shangri-La
	12.00 - 17.15	World Bar Cup Race Day	HKJC Sha Tin Racecourse
	18.30 - 21.00	Welcome Reception	Café Deco
Sunday, 16 April	08.00 - 17.00	Late Registration	Island Shangri-La Hotel
	09.00 - 11.15	Plenary Session	Ballroom
	11.50 - 11.30	Morning Tea	Level 5
	11.30 - 13.00	Concurrent Sessions	
	13.00 - 14.00	Lunch	
	14.00 - 15.30	Concurrent Sessions	
	15.30 - 15.45	Afternoon Tea	
	15.45 - 17.00	Concurrent Session	
Monday, 17 April	08.00 - 12.30	Late Registration	Island Shangri-La Hotel
	08.30 - 10.30	Plenary Session	Ballroom
	10.30 - 11.00	Morning Tea	Level 5
	11.00 - 12.30	Concurrent Sessions	
	12.30 - 13.30	Lunch	
	13.30 - 15.00	Concurrent Sessions	
	15.00 - 15.30	Afternoon Tea	
	15.30 - 14.00	Closing Session	
	19.00 - 22.30	Gala Dinner	Renaissance Harbour View Hotel
Tuesday 18 April	TRAVEL TO SHANGHAI		
Wednesday 19 April	08.30 - 09.30	Registration - Shanghai	Pudong Shangri-La Hotel
	09.30 - 10.45	Plenary Session	
	10.45 - 11.00	Morning Tea	
	11.00 - 12.30	Plenary Session	
	12.30 - 14.00	Lunch	
	14.00 - 15.30	Plenary Session	
	19.00 - 23.00	Conference Dinner	Peace Hotel

## REGISTRATION

A registration desk will be open from 09.00 - 16.00 on Saturday, 15 April, 2006 at the Island Shangri-La Hotel. Upon registration you will receive, among other things, the Conference satchel and Handbook, and your name badge/s.

## Name Badge

You will be required to wear your name badge to obtain entry to all business sessions and the Welcome Reception, and the Conference Dinners in Hong Kong and Shanghai.

## Opening Reception

The Conference will open with a reception at Café Deco on the Peak commencing at 1830. Transfers will be provided from the Island Shangri-La Hotel.

## Business Sessions

Business sessions in Hong Kong will be conducted in the Ballroom, located on Level 5 of the Island Shangri-La Hotel. Business sessions in Shanghai will be conducted in the Pudong Shangri-La.





## Registration Fees

### Registrant

\$A950.00 (\$A1050 if paid after 01.03.06)

### Accompanying Person

\$A325.00 (\$A425 if paid after 01.03.06)

#### The fee for a registrant includes:

- entry to all business sessions in Hong Kong and Shanghai
- morning coffee and tea
- Conference satchel
- lunch
- the Welcome Reception
- the Gala Dinner in Hong Kong and Shanghai
- transfers to and from the Conference Hotels to the Opening Reception and Gala Dinners
- services of a travel consultant while in Hong Kong and Shanghai.

#### The fee for accompanying person includes:

- transfers to and from the Conference Hotels to the Opening Reception and Gala Dinners
- entry to the Welcome Reception
- the Gala Dinner in Hong Kong and Shanghai
- services of a travel consultant while in Hong Kong and Shanghai.

## Conference Travel Agent

The Conference Travel Agent is TQ3 Navigant. The contact details are:  
Ruth Carlton, Convention Services Manager  
TQ3 Navigant, Level 6, 410 Queen Street  
BRISBANE AUSTRALIA 4000  
Tel: 61 7 3225 7404 Fax: 61 7 3225 7444

## ACCOMMODATION

The International Council of Advocates and Barristers (ICAB) has obtained block bookings at the Island Shangri-La and Pudong Shangri-La in Shanghai. Special rates have been negotiated for registrants. The hotel rates set out below are expressed in Australian dollars. A number of rooms are allocated to the ICAB at the rates given. Please register early as the room blocks available are strictly limited and the same rates may not be available once the ICAB allocation has been fully utilised.

You will need to pay for your accommodation (room only) in advance and forward your accommodation request on the attached separate form to the Conference Travel Agent at the address listed or via facsimile. Unfortunately, accommodation requests cannot be processed without full payment. Our Conference Travel Agent will confirm your accommodation bookings and charges with you directly.

## Conference Hotels

The Conference hotel in Hong Kong is the Island Shangri-La Hotel and in Shanghai, the Pudong Shangri-La. Requests for alternate accommodation should be directed to the Conference Travel Agent.

## Tours

Tour details can be found in the attached Tour Booking Form.

## Passports

Holders of a valid Australian, Irish, New Zealand, South African, United Kingdom, Namibian or Zimbabwean passport do not need a visa or entry permit to enter Hong Kong for a period of up to 90 (ninety) days, provided that the passport is current. Registrants are advised to check the visa requirements for entry to Hong Kong SAR at <http://www.info.gov.hk/immd/>

Tourists are not allowed to work in Hong Kong.

The Chinese government requires all visitors to any part of the People's Republic of China to have the appropriate visas and a valid passport. Registrants should contact their nearest diplomatic or consular mission for the People's Republic of China to obtain the appropriate entry documents. People intending to visit China must be in possession of a passport which is valid for at least six months after the duration of intended stay, and a return or onward airline ticket. A visa is required for all travellers to China whether it is for tourism, business, employment or study purposes and all visitors should ensure they obtain a visa that is appropriate for the purpose of their visit. It is very difficult to obtain visas at Chinese border entry points.

Travellers should be aware that Hong Kong and Macau are Special Administrative Regions with separate visa and entry administration. Travellers who exit mainland China to visit those destinations may require a new Chinese visa if they wish to re-enter mainland China. Some travel permits, issued in Hong Kong or at Hong Kong-Macau-Chinese mainland border crossings, are valid for limited travel to special areas only such as Shenzhen, Zhuhai or other areas in Guangdong Province. It is illegal to use these permits to travel onwards to other parts of China.

## Dress

The dress for the Welcome Reception in Hong Kong is business attire.

The dress for all Business Sessions is casual.

The dress for the Gala Dinner in Hong Kong and Shanghai is Business attire.





ACCOMMODATION				
HOTEL	LOCATION	RATES - All rates are in Australian dollars and exclude breakfast and taxes		
<b>The Island Shangri-La Hong Kong SAR</b>	Pacific Place, Supreme Court Road, Central, Hong Kong Ph: 852 2877 3838 Fax: 852 2521 8742	Double OR Single Occupancy		
		Superior Room	\$270	
		Peak View Room	\$285	
		Harbour View Room	\$350	
<b>The Pudong Shangri-La Shanghai PRC</b>	33 Fu Cheng Road, Pudong, Shanghai 200120, China Ph: 86 21 6882 8888 Fax: 86 21 6882 6688	Double/Twin	Single	
		Tower 1 Deluxe River	\$345	\$315
		Tower 2 Premier	\$412	\$385
		Tower 2 Horizon Premier Bund	\$470	\$440



### Travel and Medical Insurance

You are strongly advised to take out both travel and medical insurance. Should you become ill or have an accident the cost of medical care in Hong Kong or Shanghai can be expensive.

### Climate

The average weather in Hong Kong in April is warm. The average maximum temperature is 25°C (77F)

The average weather in Shanghai in April is mild. The average maximum temperature is 18°C (65F)

### Electricity

The electrical current in Hong Kong and Shanghai is 240 volts (AC). 50 Hz

### Conference Website

The conference website can be accessed at [www.worldbaronline.com](http://www.worldbaronline.com)

### Cancellation Policy

This applies only to the registration fee for registrants and accompanying person. Please refer to the Conference Travel Agent for the cancellation policy with respect to tours, accommodation and flights.

The following dates are important

**28 February 2006** If you cancel in writing by this date you will receive a Registration fee refund less \$A100

**10 March 2006** If you cancel in writing by this date you will receive a Registration fee refund less 20% Cancellation after

**10 March 2006 WILL NOT** attract a refund.

Please note:

- Only written notification of a cancellation will be accepted
- Substitution of other people will be permitted.

Please send notification of cancellation to:

World Bar Conference Secretariat  
Level 5, Inns of Court  
107 North Quay  
Brisbane Queensland 4000  
Fax: 61 7 3236 1180  
Email: [mail@worldbaronline.com](mailto:mail@worldbaronline.com)

### Enquiries

Enquiries about travel, accommodation or tours should be directed to:

Ruth Carlton  
Convention Services Manager  
TQ3 Navigant  
Level 6, 410 Queen Street  
Brisbane Qld 4000  
Tel: 07 3225 7404  
Fax: 07 3225 7444  
[Ruth.Carlton@tq3navigant.com.au](mailto:Ruth.Carlton@tq3navigant.com.au)

All enquires relating to the business sessions of the Conference should be referred to:

Dan O'Connor  
World Bar Conference Secretariat  
Level 5, Inns of Court  
107 North Quay, Brisbane Australia 4000  
Tel: 61 7 3238 5100  
Fax: 61 7 3236 1180  
Email: [mail@worldbaronline.com](mailto:mail@worldbaronline.com)

### Disclaimer

Neither ICAB nor any of its office holders or constituent members accept liability for damage and/or loss of any kind which may be incurred by Conference participants or by any persons accompanying them, both during official activities and any tour or other associated activity.

### Alterations

ICAB reserves the right to vary, amend or cancel any part of this conference if circumstances arise which, in the reasonable opinion of its office holders, require such variation, amendment or cancellation.

