

# PETER O'CALLAGHAN QC

## Interview with Juliette Brodsky, July 2009

### Part One (Early Years)

Q Peter O'Callaghan QC, thank you for your time. You are at the time of this interview, July 2009, the Victorian Bar's oldest practising QC, with arguably one of its widest practices. I'd like to start with your early years. You were born in 1931 in Horsham to an Irish father, who'd left I believe in 1916, left Ireland?

A He emigrated to Australia in 1916, but I add that Tom Hughes would dispute whether I'm the oldest, because while he's gone off the Roll in this reciprocity situation, Tom Hughes signed the Bar Roll as a QC in 1965 I think, and if he's got a brief, he'll come down here, but leave that to one side. Yes, my father was, as I've said, and he was instrumental in his early times in introducing tractors, Delco lights and other things, into the Wimmera as a manager of that department from John Langlands and Sons, which were a very large store, and the pioneers of merchandising in Horsham. However, he foresaw the Depression, recommended to Langlands, and I add that I'm in the process of compiling some sort of history with Peter Langlands, who was a descendent of the Langlands, as to his roles. But from the time that I would have known him, that is from 1931, we lived in a home from which was conducted a, could be called, a backyard mechanics. He was a repairer of farm machinery, municipal machinery, sewerage works, and automotive cars. So that's what I grew up watching. It was in the Depression, and he was apparently as I now surmise, though a somewhat unreliable historian, able to support the family quite adequately, and indeed the extended family; my grandparents lived with us from time to time, and so on. And one of my recollections, if I can interpolate this, was the number of occasions that swaggies would come to the back door, and as I stress we were by no means an affluent family, but they would ask missus for something, and they were given a sandwich or something and away they went. And that was a lasting impression I have had of the '30s.

## **Part Two (Choosing a vocation)**

I was educated, or attended the Brigidine Convent in Horsham, and in 1945, my father suffered a ruptured duodenal haemorrhage and he was hospitalised. I was then in sub intermediate, but because of that fact, I then left school. Now let me stress that my leaving school in 1945 at the age of 14, would not have got a headline in the Horsham papers. The vast majority of children in those days left school at 14, they obtained their merit, and went about their work. So I then worked essentially as a mechanic, I played football, I did all those sorts of things, until later on. I think I should mention that I was a member of the Young Christian Workers Society, which was a society for men or boys by Canon Carter. And we used to meet every Monday night, and I think this is relevant to what I'm about to say, that you were obliged, at least on every second Monday, to make a speech of 5 minutes about something. And that did not produce a great deal of difficulty for me, as I was prepared to speak about anything. But I would like to put in this little anecdote, Korda and Mentha are now renowned, the Mentha is the nephew of Tootsie Mentha, who was a butcher, and he was required to speak at these mandatory speaking things, and he chose the subject of the construction of a sausage, and it was the most riveting speech that lots of people had heard. But that, and I went into other areas of parish and public life, and made quite a few speeches around the place. Such that I think it can be said that on these occasions I was wondering what it was. I had the opportunity to buy into a service station called Nigel Heard Service Station in Dimboola Road, and my father strongly advised me against doing that, but I was pretty keen on it, particularly because a great friend of mine, Jack Hanlon, who played with me in St Michael's Football Club, the junior football club, assured me as the representative of Esso that there would be a moratorium on service stations, there would be no more service stations. Jack later became the Victorian manager of Esso.

## **Part Three (Becoming a solicitor)**

In 1953, I was in the Whiteheart Hotel on Christmas Day in the blue room, and I was tapped on the shoulder and Dr Mark O'Brien said, pithily, 'you're a bloody fool', and I naturally sought particulars, and he said 'you should do law'. And I had not the slightest conception of how you could do law, but he explained it, or sought to explain it, such that in 1954, I did a special test in English, which was able to be done so as to qualify you for an adult matriculation if you'd left school for ten years. And I then took up a correspondence course with Taylor's, and I got my adult matriculation. But in that year, 1954 in October, my mother had

died and I had been intending to visit Taylor's as was required, to have tuition in public exams. I wrote a letter to Taylor's explaining the position, and they replied back saying that 'you had a contract, the contract was that you would receive and return assignments which you have done, however that's it'. So I did the exams, and then after I had done the exams I did reasonably well, and they wrote me a letter saying that 'we congratulate you and we propose to publish your name in our newsletter'. And I said that 'I had a contract, which was to receive assignments and to return them, and if you publish my name, I will sue you'.

So then there it was, that I then for the first year I went to Melbourne University, and I stayed at the Shakespeare Hotel in North Melbourne, there regularly, and would go back to Horsham and continue to work on the cars. I then again through the agency of Mark O'Brien, received assistance in admittance to Newman College, and I was there in 1956 and 1957. In 1957 I had been pitching woo to my late darling wife, Jennifer as she then was, and she always remained that, and in the middle of 1957 we agreed to be married. And that required however, the fact that we were going to be married six months later, the provision of a job. So I first spoke to the rector, Philip Gleeson, and he had Michael Chamberlain as he then probably was before he'd become Sir Michael Chamberlain, the Chairman of the National Trustees, meet with me, and who very kindly offered me a job with National Trustees, after the completion of my course, and those tentative arrangements were made, and he invited me down to National Trustees, having made that offer, and there told me that he thought he would withdraw the offer, because he thought I should go to the bar. And coincidentally, he introduced me to a person who had walked into the room and that was Eugene Gorman, the legendary Pat Gorman, and he was introduced to me and Michael Chamberlain said something to the effect 'he's thinking of going to the Bar', and Gorman said 'have you read *The Lives of the Chancellors?*' And I sort of nodded. And he swept out, and as Michael Chamberlain said, and so many other people have said 'well, that's Pat'.

However, I then needed a job, and I went around to a number of solicitors and they were all enthusiastic about my ideas, but as I can remember Oswald Burt saying, 'it's a great thing you are doing, but however we don't pay clerks, they pay us', or 'articled clerks pay us'. But I finally went to Brendan McGuinness, and I explained to him my position, and he said 'yes, I'll employ you. Can you start on the 3<sup>rd</sup> of January?' And I said 'yes I can'. And I asked 'what will the salary be?' And he responded, 'it will be adequate', looking down his aquiline nose. And I think that was one of the more prudent failures, failures to ask a question because I thought 'well okay, he said that'. So I naturally reported this to Jennifer, and she also naturally said 'what is the salary?' And I said 'I'm told it will be adequate'. Anyway, on January the 3<sup>rd</sup> or more accurately on January the 10<sup>th</sup>, when I received my first pay-

packet it was £20 a week, which was such that I rang Mark O'Brien and said 'I can save money on this', and he said 'like hell you can'.

Q A very good piece of luck?

A A piece of luck it was indeed.

#### **Part Four (Leo Scullion)**

A I went (to Brendan McGuinness' firm) on the 3<sup>rd</sup> of January and a great man, God rest him, Leo Scullion, who was a solicitor at McGuinness's, and Eira McGuinness who was Brendan's sister, handed me over to Leo, and Leo handed me the file of Douglas George Elliott, and James Warming Hayes, which was a fight about the Douta Galla Hotel in Moonee Ponds. And this great massive file was a cesspool of litigation, and Leo said 'read that'. And I can recall going upstairs to the little closet on the 18<sup>th</sup> floor of 118 Queen Street, or the 12<sup>th</sup> floor I think it was at 118 Queen Street, and I walked into this very, very small office, and there was a fellow there with his feet on the table and reading *The Age*, and who said to me 'who are you?' And I said 'well actually I'm Peter O'Callaghan and I'm a third year law student and I'm working here as a clerk'. And he said 'well, I'm William Norton Burchell, and I'm a solicitor of the High Court of England'. And from then on for about three years, I called him a Pommy bastard and he called me other sorts of things, but we became the closest of friends and he became a very prominent solicitor in Melbourne.

#### **Part Five (Apprenticeship in the law)**

A The licensing branch of McGuinness's were essentially licensing solicitors, and I was initially immersed in this common law matter, I might say that Lou Voumard leading Arthur Adams, was appearing for Elliott, and Douglas Little, leading Ninian Stephen was for Warming Hayes. We appeared before Alistair Adam, and it was a great introduction to a completely unknowing person myself, as to the common law. But the licensing jurisdiction was very interesting. Brian Bourke, who was at McGuinness's when I arrived, and Brian left for overseas in about mid 1958, and I sort of succeeded to his role as a practitioner for what we called transfer of licenses. Now if I can interpolate - until 1953 there had been a numerical limitation on the number of licenses, and the Act which was passed then and which created the Licensing Court and removed that limitation, and produced a Licensing Court of Judge Fraser, Frank Field, and Ron Atchison. The second read speech of the formation of that Court, was moved by Archie

Fraser, he was what they call him the gravel-throated tenor, in the legislative counsel. And he moved the speech which resulted in him being the chairman of the Licensing Court, and it is piquant, it was piquant, that nobody every quite knew, and this was in the days of the massive Labor Party split, as to whether Archie and Frank Field (leave aside Ron Atchison) would have been for the DLP or against the DLP.

But however, that produced a massive legal opportunity. The silks who appeared in the licensing applications, and this is one of the terrors of doing things like this (you might miss someone out), but Don Campbell QC, Monaghan QC, Bourke QC, Sweeney QC, O'Driscoll QC, Smithers QC, and juniors Campton, O'Shea, Coleman, and Kevin Anderson.

Q Who you read with.

A Indeed.

Q I understand it was a stressful tribunal to appear for in many ways, particularly I think you wrote an obituary about the late Charles Sweeney, and you said 'particularly when the judge was in form.'

A It was indeed a stressful tribunal, and it was one that I thought it honed the skills of people who appeared before them. Archie Fraser had his good qualities, but he also had his bad qualities. And I can recall him saying, when I was cross examining, and I asked a question, and I've forgotten who it was, it may have been John Campton, he objected, and I said 'I withdraw the question', and Fraser said 'oh no you don't, tell me why you asked it'. [Laughs] And he was a most difficult person to appear before. On the contrary, Frank Field was one of the more judicial characters I think I've ever met, and Ron Atchison was a different type again. But the Licensing Court now you've revived it, it springs to mind that Reg Smithers, who appeared for the, what we call The Dries, that is the objections on any ground to the granting of a license, and he had gone to a meeting the night before at North Balwyn and asked the assembled throng, 'well do you want me to tell the court that liquor is evil, it's evil in all circumstances?' So he did, and Frank Field said, 'Well, do you say that liquor is evil in all circumstances?' 'Yes, I do'. And the consequence was that there was a barney between the Court and he, and such that he slammed his brief down and he said 'I'm withdrawing', and walked out. And Atchison said 'well why are you doing that', 'I don't like the look on your faces'. And then Fraser said to Kevin Anderson, who was Smithers' junior, 'well, what do you say?' and he said, 'I follow my leader'. Look, I could go on for ages about the things that occurred in the Licensing Court -

Q Can I ask you about one actually, because you also mentioned the late Don Campbell, and I understand he had a tendency to spoonerisms, and I believe he was cross-examining a witness and asking him whether he would like to have his liquor delivered, but Don Campbell actually said whether he would like his "liver de-liquored"?

A That's certainly prevalent, and I wasn't there when that happened. But Don Campbell was, when I first came to the Bar, and I had a great deal to do with him both as his junior and as a junior opposing him, because he was always opposed by a silk – I got to know him very well, he died at only the age of 67, which seems terribly young from my perspective now. But he was - until he got crotchety and started to fight the bench - one of the best barristers I've seen, and certainly one of the great cross-examiners. And he was always crotchety and he didn't have the admiration of his contemporaries that I think he had from persons such as I. But as I say (we haven't got all this much time but I could tell you lots of stories of – oh, I will tell you one)... Harry Campton, who was John Campton's father, and Harry Campton had been a member of the previous Licensing Court, and he was asking questions of a witness, and John who was Donny's junior, objected. And the objection was overruled and he continued, then he objected again, and again, and then he got up and he said, 'my learned friend says that this is going somewhere, well I invite the Court to accept from him an undertaking that it is going somewhere'. And with that, Harry ceased being the barrister but rather the father, and said 'I'll give undertakings to no one, and not to you, etc'. And Archie Fraser said 'oh, please, please Mr Campton, yes, yes'. So everything cooled down, and then the sibilant whisper of Donny Campbell (who) said 'that's what comes of having a father at the Bar'.

Q [Laughs]

A Now I'll just tell you one other thing, I think, out of the Licensing Court. From time to time, they brought down, John Starke, Jack Cullity, and not infrequently, and this was Dr Coppel. And I was junior to Dr Coppel, I just got round to conforming with the Bar tradition of calling him 'Coppel', and that he was always tremendous as far as I was concerned, though he was an acerbic character. But we were walking into the Licensing Court, and Warrington Rogers of Rogers and Gaylard, said to Coppel 'oh, an unfamiliar jurisdiction, Dr Coppel?' And Coppel had a penchant to rub his nails in his coat, said 'infrequent, yes, unfamiliar - no'.

Q When he used to rub his nails, I believe people used to say it was him sharpening his talons?

A I think that's probably right.

### **Part Six (Jim Foley)**

A I had, at my time with McGuinness's, a great deal to do with Kevin Anderson, and I thought that I should read with him if he would have me, and I tee'd that up. But I'd also had a great admiration for Jim Foley,

who was the paradigm of clerks. And so I arranged that whilst I would read with Kevin, my clerk would be Foley. And Foley was absolutely fabulous. I can recall when I was taking this decision to go to the bar, and by then we had three children, and whilst I never deviated much, it required a bit of support, and support which I sought from going to the Commonwealth Bank, and I won't mention his name, and seeing the manager to obtain £200, by way of overdraft, and he said 'come back in seven days and I will tell you'. And I did. But when I went there, it was the assistant manager, and he looked at the file and said that 'Mr X said that you shouldn't go to the Bar'. So I told him that I hadn't come here for that advice, I'd come here for money. And I went back to Jim and told him about that, and he rang up and in no time at all, the loan was available, and it was very valuable. And Jim was like that, he was; Jim Foley had been the person whom a group of barristers chaired by Eugene Gorman in 1931, had established Equity Chambers, at a time when there was as always, a great accommodation crisis. And Equity Chambers was established by this group of barristers of which Gorman was the leader, and Jim Foley was their clerk. He'd gone from Moules where he had been a managing clerk.

### **Part Seven (Signing the Bar Roll)**

I read with Kevin Anderson, of whom I have an absolute complete and utter appreciation, and love indeed. He was a man of very considerable legal talents, though not often appreciated as much as they should be. But he was also a magnificent person, and he was gregarious, he would talk with everyone, and when he became chairman of the Bar Council, he I think more than any other chairman of a Bar Council, facilitated social intercourse between all barristers. And I'd read with him in Selborne Chambers, and I was always amazed at how much work he must have done in the nights, because of the time that he spent with me and with others coming into his chambers, and he was a great person.

Q Was it he who said to you, never to knock back a brief if it was offered to you?

A Well that was he certainly who said that, and I had always subscribed to that idea, because I hasten to say that I think that barristers shouldn't think that they decide what they are going to do, it's other people ought to decide what they think they ought to do. And consequently I've always adopted the idea of: if there is a brief within its proper purview, you should take it. And in that, my first brief I got was funnily enough in the licensing jurisdiction, from Frank Curtain, and he was as all the other licensing solicitors were, keen rivals, and there was a certain piquancy in the fact that he briefed me on my first case. But I then was happily doing a lot of licensing work; I'd previously instructed John Campton as the barrister for most of the applications for transfers, and

I'll return to John later, but he was a consummate, and remained a consummate barrister. But I then, as happens if you do take briefs, I got briefed in other jurisdictions, I did quite a deal of crime, and I was briefed on circuit to go to Warrnambool particularly, later to Ballarat, but I was then offered the brief to appear in the Royal Commission into Liquor in 1994.

Q 1964?

A 1964, I'm sorry. Yes, 1964, before PD Philips. And Jim Forrest, of revered memory, said 'don't take it, you'll ruin your practice if you take that - you've got a practice starting, you've got the circuits going, don't do it'. And I spoke to Jim Foley, and Jim Foley said 'oh no'. And what I gather must have happened is that Jim Foley went to Kevin Murphy of Luke Murphy and Co, and said that 'if the AHA are going to have O'Callaghan as their counsel, it's said that he's likely to lose his practice'. Jim obviously didn't believe that and he may have put it very artfully to Kevin. The consequence and the amazing consequence was that I was briefed to appear for the AHA, in the Royal Commission into Liquor, at a brief fee of 60 guineas, which was in that day compared to the ordinary supreme court brief of 35 guineas. And I can remember in the midst of that Royal Commission, Woodsy Lloyd, a great fellow and a great friend, coming out there for someone and opining to me that he knew what my fee was, and stating that it was obscene. And I said that 'I would agree that otherwise it's obscene, but not when it's my fee'.

(Laughter)

### **Part Eight (Early years of practice)**

A I then had a great circuit practice both at Ballarat and at Warrnambool, and whilst it was very hard work, it was very remunerative work, and it had the disadvantage of being away from your family. But two of my great friends on circuit were McPhee and Villeneuve Smith. And one of the handicaps was that (with) either one or the other, I always drove, and they would sit in the passenger seat and read the briefs, in which they were opposed to me. But we had a marvellous camaraderie on circuit, and I don't say they were the only two who were there, there were many others too. And it was also advocacy of a very high order, and I treasure the memories of those days.

And that jumping across, as I guess I'm invited to do to describe what's happened, culminated when I first gave up Warrnambool, and I then gave up Ballarat, and was given a suitable farewell in the Ballarat Club, and drove back to Melbourne in circumstances which you would hesitate to do today perhaps. And announced at the dinner table to my wife and then six children, although it remains six children, that 'from

now on, you will be seeing your father at home every night'. The next day I came into chambers and Kevin Foley said 'look, could you go to Sydney to do an adjournment application in the Royal Commission', and that was the Royal Commission into Petroleum, which was in 1973. And from then on for the next two to 2.5 years, I was a frequent commuter to Sydney, and likewise in the Prices Justifications Tribunal in the petroleum industry. And that really bought me back into the ordinary broadness of barristerial practice. I did I think four or five jury trials after I'd taken silk which was in 1974, and when previously I'd done that hand over fist. I did a lot of planning, and then I was into some white collar crime, commercial work and so on, and of course there was always hanging around the place, the inquiries, the Brockenshire Inquiry, the Davies Inquiry into the liquor industry. I was counsel assisting in the BLF Inquiry, and you reminded me, which I'd almost forgotten, that I was appearing in the Tricontinental Inquiry. So they took up a lot of time, and I do not complain one whit about that.

### **Part Nine (Royal Commissions)**

- A My essential brief was to try and establish that there was liability in the auditors, that is liability for negligence in the auditors, and Alan Goldberg was for the accountants, I think it was KPMG, and at a late stage in the proceedings for whatever reason and I've forgotten precisely now, the issue of that was removed from the terms of reference. So the Commission was not called upon to judge whether or not there was a case established for negligence on the part of the accountants. But there were lots of other things in that Commission which would take a long time to explain.
- Q Did that lead to some people's arguments, or perceptions if you like, that people got off too lightly?
- A No, well not in the context of liability for it, because I went out of the case after that, but there was a claim in negligence which was successful. It was a Commission which was notable for the fact that Sue Crennan, I think, my very good friend Sue Crennan was counsel assisting, and it's one of the few Commissions in which, and she won't mind me mentioning this, (that) their recommendations for prosecution were rejected.
- Q You worked a great deal with Royal Commissions and inquiries as you mentioned. Did you find that to be a particularly favourite area of work; did you like that as compared to say arbitration and mediation which you have also done a great deal of?

A If I had to choose between Royal Commissions, arbitration and mediation, I think I'd pick arbitration first, mediation certainly last. I am not an espouser of mediation.

Q Why is that?

A Well I think that the problem with mediation is that it is not possible generally, to produce the atmosphere which exists at the door of the Court, and until that atmosphere is produced, there is not complete control of the case by the representatives. Put another way, I would always say a case in the hands of competent counsel, A against B, will be better resolved rather than by alternative dispute resolution. That might be something of a heretical view, but that's been my experience of mediations, and I think that mediations often, certainly in the case of where an insurer for instance is on one side and the plaintiff on the other, the mediator is made the conduit of the message reinforced by the insurer, 'we're not paying any more'. But however that's just very random, very incomplete criticisms of the mediation process. But if we, and I add this and I think this is a valid point, if the appointment of judges had kept pace pro-rata and mutatis mutandis with the population, we wouldn't have the difficulties we have got now. I think one of the great problems which has been produced is the failure to appoint sufficient judges.

Q So I'm interested in what you're saying about the fact that; is it the formal atmosphere of the Court that you feel is more conducive somehow to, if you like the passage and the execution of justice?

A No, it's the tension which is produced in the party, initially the plaintiff and then the defendant, that they are going to have to go into the box and be sworn and give evidence. It's then that they see, and indeed their advisers see, with a greater clarity than in the shuffling beforehand, of the pros and cons of the case. I might say that back in the old days, very often the insurers, be the state or club or whatever, they were late in getting instructions to the defendant's counsel, because they might have lost the file or whatever, and consequently a plaintiff was often, when I say forced, his counsel said 'okay, well we're going on'. And then the plaintiff has given his evidence, and then they find the file. But it's a different situation then because he's had his day in court, he's seen what it's like, and he's quite prepared to hang in, or she is quite prepared to hang in there.

## **Part Ten (Advocacy)**

Q You said you took any brief that was put to you, but did you ever develop any special fondness for any particular areas of law?

- A Yes, I always enjoyed jury trials, and as I say as it happened, I did very few after I took silk. But I have done a few, and I don't think there is any better experience than running a jury trial.
- Q What did you like especially about it, is it the watching of the jury's faces while you're putting to them your case, or what mostly appeals to you about jury work?
- A Well I find that difficult to answer, except that you have what is so obviously a ground for dissuasion, and if you've got the power of persuasion, you can produce the result which you or your client thinks is just. And added to that is the tension that I think every jury practitioner will tell you, you have when the jury walks into court, be it a criminal trial or a civil trial. But it's not something I can precisely articulate except to say that's what I liked best doing, even though it had its ups and down and its tension.
- Q You alluded to a lot of very fine advocates that you have worked with over the years, how would you describe your own advocacy style?
- A The thing about advocacy is one essential – you've got a judge, a tribunal, or a jury, and you've got a case to put to them. So it's how you persuade your point of view to that tribunal or jury. Similarly with cross examination for instance, you've got to be very careful as to how you cross examine, there's a great myth that the cross examiner is in charge of the situation and the witness is terrified, in my experience generally the opposite is the case, you are tremulous about what's going to happen with the line of questioning that you are taking. And if I thought I had any attribute, I thought that if you could produce in the witness, that is the plaintiff you called, something like a conversational style, you could get the story told. And that certainly in jury trials, is the most important feature, to have the plaintiff spread out his or her case, and I've always found that if you can sort of produce in the witness the ease or the flavour of the conference you've had the night or the day before, that's what works.
- Q I read that the late Joan Rosanove QC when she was doing certain criminal trials, she apparently if the foreman of the jury looked at her when they came in to offer their assessment of a case, if that person looked at her, she knew she'd won, but if they didn't look at her, she knew that she'd lost the case. Did you find that ever happened with you?
- A No, I don't think so - in fact I would be very hesitant to dispute anything that Joan Rosanove said - but it was always my experience that if the jury didn't look at the accused, you were in trouble. But if the jury walked in and looked at the accused, and there's no universal result of that, but if they looked at the accused, for the moment you had optimism, and generally that was forthcoming. But I don't think that a

jury walking in would worry about looking at counsel, but they certainly did or did not look at the accused.

Q Was there ever a time you ever felt very bad about the outcome of a case? Normally of course, most barristers would make it a point of practice not to identify too closely with a client, but was there ever a time when you did feel badly about the outcome of a case, or an inquiry that you worked on?

A Oh yes, I think so. I think that there are many occasions when the result was adverse, and you went to bed or woke up and thought 'well, if I'd done this' or whatever. I had been told and it's very important that you should not be more than the instrument of justice in the form of counsel appearing for the particular client, and you are thus not wedded to him or her. But if you say I didn't kick the cat, and be even slightly averse to the beautiful administrations of my wife, if I'd got a bad result, I'd be telling a lie.

### **Part Eleven (Accommodation at the Bar)**

A When I was first coming to the Bar, the rage about accommodation was whether there would be built a home for all the barristers at the Bar, and that was the contemplation because they were living in very, very compressed chambers at Saxon House, Eagle Star and so on. So there was a big debate, and this is in the time when I was a clerk at McGuinness's, and the fight really was between Equity Chambers and those who were sponsoring what became Owen Dixon East. And it impaired and perhaps terminated some friendships. Whether from Equity there would come all, and they didn't, about a half of them stayed. But Owen Dixon East was built, and in 1961 it was opened, and then three years later another four floors were put on it. There was then a succession of stop-gap proposals for further accommodation, because of the escalating population of the Bar. And all that was done, with the one exception of Seabrook Chambers, was done by the Bar providing chambers. And then we come to 1979, and there was a great debate as to whether we should buy the ABC site. And at that time I had become chairman of a committee was named variously, but we'll call it the Accommodation Committee. And we had a special general meeting as to whether the Bar would acquire the ABC site with the view to constructing a building on it. And that was quite overwhelmingly passed, I think there was seven dissident. So thereafter there was then the picking of how you would construct the building in which we are now sitting. And ultimately, because the Bar whilst they were asked for another 2,000 debentures, but essentially the Bar said 'we are not paying any money', and the way this building was constructed was to have Schroeder's fund Leighton's, to build this building, on the basis of lease back and so on, and such that at that stage we, BCL remained the

title holder, and at the end of 40 years we would have had the option to buy or the option for a further lease. Now because we in 1990 we hit the ratchet clause problems, and under the great skill and persuasion of Alan Myers, we negotiated an agreement which resulted in the title going to Schroeder's. But the fact is that this building has housed, and continues to house a great number of barristers.

Now in 1984, having signed the contracts with Schroeder's, a group of barristers called for a special general meeting to abolish Rule 34. Rule 34 was the requirement that barristers would occupy chambers, owned or leased by Barristers Chambers Limited. That was the last general meeting in which that issue was considered, and it was quite overwhelmingly, or by a very significant majority, confirmed. Now somewhere along the line, in ways which are mysterious to me, there was introduced into legislation that that requirement was abolished. And that's in my view, the worst thing that's happened to the Victorian Bar, and it's manifested now, and I don't say this critically of those who have put up independent chambers, or want to put up independent chambers, because if there's a buck to be made, you can't stop them. But if the situation had remained as it was, I would be confident that we would be in a much better position than what is presently proposed as a forthcoming special general meeting, about the change of, for instance the allocation of seniority in chambers. And that's going to happen. And the problem about that is that there has of course been a great decline in the number of barristers occupying BCL chambers, but without being anything other than I hope objective, the idea that we're going to have a series of groups, will in my view produce a myriad of Guthrie Featherstones, and I think it's a sad day if that occurs. But however, that's for a meeting to be coming shortly.

## **Part Twelve (The Bar today)**

- Q When I met you, you spoke with some concern about the trend towards specialisation among barristers. Your own view is that in many ways it's better to be almost, as it were, a generalist – would that be something that many other barristers here at the Bar would share, a view that many would share?
- A I naturally accept any barrister who wants to specialise, and there are many who have and they have done so very, very well. But when you see the associations or the groups of barristers within barristers, I get concerned that the old concept of a barrister being able to appear for anyone anywhere, is being cut across. Now it's too late now, but for instance, and this is undoubtedly heretical, but I am not a member of any association of barristers within the Bar: I'm not a member of the Criminal Bar Association, I've done tons of crime; I'm not a member of the Commercial Bar Association, I've done tonnes of commercial. I have

a view that if I could wave a wand, the Bar would be just a group of barristers overall, without associations. Though I must concede I can see the merit of specialisation in one sense, but it's never been my experience, if you have a brief in a jurisdiction of which you are not completely familiar, you can readily remedy that by going and speaking to a colleague, and that's one of the great things of the collegiality of the Bar, is the readiness of another barrister to tell his or her fellow, what's it about.

Q Has that atmosphere of collegiality in any way diminished over the years since you first signed the Bar Roll?

A Well, it hasn't as far as I'm concerned, because I could talk to anyone about a problem and lots of people come to me to talk about problems. But I do think if, and I don't want to get too much partisan about what's the forthcoming meeting, but if you do have a covey of barristers dealing with the same subject, I think that is running counter to what I would regard as the traditional ideal.

Q The problem, I imagine, is that I suppose in the past people knew more and were familiar more with people who had wide general practices, but these days do you think perhaps there will be a growing expectation perhaps among the public, that they would be preferring a so-called specialist, over say someone who has had a wide general practice, could that be deleterious for people who do have wide practices and take briefs no matter what, and from where?

A Well it's hard to answer that, but can I go back to when I was reading with Kevin Anderson, and in those days in personal injuries, and I'm sure it's still the same now, the insurers typically had a panel of Villeneuve Smith, so on and so on, and they wouldn't brief anyone other than them. And as Kevin Anderson pointed out to me many times, they are denying themselves the expertise of the left-field barrister who might think differently to them and so on. Anyway that's an imperfect answer, but it reflects my belief that a barrister ought to be capable of, in general terms, of dealing with whatever he or she is confronted with.

Q I interviewed for the oral history some time ago, a number of retired Supreme Court judges, and a colleague of yours, James Merralls QC, and they were talking about the advent of technology in recent years, and its impact on barristers and their practice. What's your own feelings about technology and what it may have done, whether it may have improved people's practices in the Bar, or perhaps in some ways taken away from it?

A Well I'll deal with this, and I've got one other thing I want to say, but deal very quickly with that. The photocopier first produced the situation in contrast to what was previously the case of the imperfectly produced brief, being the file, wrapped in a brief sheet with red tape around it. Then when the photocopier came in, everything was

photocopied and there still wasn't in the imperfect brief, any identification of what the issues were. And progressively with the capacity to photocopy, email reproduce, that's occurred. And we see and I read the 'History of Four Judges and a Silk', in which they very accurately point out the vice of the casebook, though I might say it could have been done earlier. The vice of the casebook is that you get a whole mass of material which is not often looked at. As far as the barrister is concerned, when that comes up from the solicitor, he'd better look at it, or she'd better look at it, because there might be something in it.

Can I just finish this? John Dahlson, who was the solicitor at Corrs for many years, and he was the first man in my experience to really introduce the casebook principle, which he did at the Licensing Court. And he produced casebooks, and everyone was happy with that. But Frank Field said 'as long as they are in hardbacks'. And the late Michael Winneke, a great fellow and a good friend of mine, was instructing me for the North Melbourne Football Club social club, on the day of or the day after man had landed on the moon. And I said 'for God's sake, Mick, whatever you do, put these papers into a hardback folder', and he didn't. And Frank Field, who was, as I say, one of the most judicial characters I've struck, was walking into Court and the looseleaf folder spilt the whole lot over. The only way I got out of it was by saying 'well look, let's look at what happened today elsewhere, man has landed on the moon, let's not make too much of that'.

### **Part Thirteen (Concluding words)**

A If I'm about to conclude, I guess, am I?

Q Yes.

A Well I only want to say one other thing in praise of generally, what clerks have done, what members of the Bar Council over the years have done selflessly and efficiently, albeit we snipe at them and do all sorts of things. And the other thing that I'd like to say is that in the main, barristers have been vastly supported by their wives, and it's a big strain on a marriage when barristers are, during the week no chance of going to a play or to the theatre because they've got to prepare for the next day and so on, and whether they're going to be in court on Thursday or not, they don't know. So I'd just like to pay a great tribute to the wives and families of barristers – without them, I am sure they couldn't have done as well as they did.

Q Can I just quickly ask you about your six children, did any of them follow you into the law?

A The answer is yes, only in the sense that my sixth son firstly did commerce, and then he did a law degree at Bond, and his articles at Mahony's and he was in the law for quite a while, but he's now a financial adviser. But the others said (though it's difficult for them to say it now because they're doctors, obstetricians, and vets, etc) 'no way are we going to be a lawyer if you have to work as hard as that'. And they probably do work at least as hard, if not harder.

Q What do you feel in all these years has been your greatest achievement during your time at the Bar?

A I wouldn't be so presumptuous to say anything other than I think I've been a member of the Bar, I've fought, fitted in, had great camaraderie, affection for my fellow barristers, be they ladies or men, and that's it. I wouldn't want to say it any more than I said to Norman O'Bryan II (that is Norman O'Bryan, the retired judge) many years ago when I was on the circuit at Warrnambool, and he asked me how I was feeling about the Bar, and I said 'Norman, I pinch myself'. And I don't think I've changed from that. But I'm not going to say what any achievements I've made - that's for somebody else to say.

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An edited version of an interview conducted for Foley's and the Victorian Bar oral history project by Juliette Brodsky, and filmed by Stewart Carter at Owen Dixon Chambers on 22 July 2009