

# INTERNATIONAL COUNCIL OF ADVOCATES AND BARRISTERS

## FIFTH WORLD BAR CONFERENCE

Sydney – 1 to 4 April 2010

### PROGRAMME

#### **Saturday 3 April**

##### **Session 1 – *Opening and Keynote Address***

*Chair:* Peter Riordan SC, President ABA

The Hon. James Spigelman AC, Chief Justice of NSW (*tbc*)

H.E. Mr Jeffrey Bleich, United State Ambassador to Australia

##### **Session 2 – *Barristers' and Advocates' Practices – Revolution or Evolution?***

Changes to the manner in which barristers and advocates practise have, in most cases, evolved over some decades. There has probably not been a complete consistency across the jurisdictions at any time but there have been a number of identifiable factors which have distinguished the Bar from the solicitor's branch and from other professions. Of those, the most obvious has been the prohibition on entering into partnerships or the sharing of profits. That is now about to come to an end in England and Wales. The Bar Standards Board of England and Wales has approved changes to the way in which barristers may practise. They include:

- Barristers should be permitted to become managers of Legal Disciplinary Practices (LDPs), regulated by the SRA without having to requalify as solicitors.
- The decision to permit barristers to be managers of LDPs should apply only in principle to LDPs which include up to 25% non-lawyer managers. The Board recognises that LDPs which contain one non-lawyer manager will be redefined as ABSs in the context of the regime for licensable bodies (ABSs) that is expected to be effective in 2011.
- Barristers should be permitted to practise in more than one capacity at the same time e.g. as both managers of LDPs and as independent practitioners

- A number of possible conflict of interest issues arise if barristers become shareholders in LDPs. Barristers should be discouraged from such investments until proper guidance in relation to conflicts and perceptions of conflicts of interest is developed by the BSB.
- Barristers should be permitted in principle to form barrister-only partnerships (BoPs), pending the creation of an appropriate regulator for such entities, currently not in existence, and consultation by the BSB in relation to becoming such a regulator.
- Barristers should be permitted in principle to practise through other barrister-only companies and limited liability partnerships (LLPs). However, further work is required to determine if the BSB should regulate these entities.
- The cab-rank rule will apply to barrister only partnerships, as well as the self-employed Bar. The BSB considers that all advocates should be subject to the cab-rank rule and will be raising this issue with other regulators.
- The Board should consult on whether or not it should become an entity regulator of the new legal entities, and, as part of this consultation, look at whether a modified cab-rank rule can be applied to barristers practising as managers of LDPs undertaking advocacy work.

This session will consider these changes, how they will apply in England and Wales, whether they are appropriate, and whether they should be adopted elsewhere.

Nicholas Green QC (Chairman of the Bar of England & Wales)

Mr Justice Malcolm Wallis (High Court, Sth Africa)

Richard Keen QC (Scotland)

Michael Collins SC (Ireland)

Mark Horner QC (Nthn Ireland)

### ***Session 3 – Financing Litigation: New Problems - New Paradigms?***

The increasing costs of litigation are a challenge to the Bar everywhere. Governments and Courts are seeking to contain them and to increase access to justice. The tension between the provision of legal aid and the budget strategy of any government is palpable. Some solutions have been generated through the use of class actions and, more lately, the funding of litigation by companies which then take a proportion of the damages. In Lord Justice Jackson’s recent “Review of Civil Litigation Costs” he makes recommendations about conditional fee agreements, “success fees”, contingency fees, legal expenses insurance, and case and cost management by judges. These matters will be considered from the viewpoints of different jurisdictions.

Speaker from England & Wales

Bret Walker SC (Aust.)

Gerry Moynihan QC (Scot.)

## **Sunday 4 April**

### **Session 4 – *Justice v Efficiency***

In this session a number of issues will be considered which deal with the question of whether efforts to increase the efficiency of Courts and litigation can result in a diminution of the fairness or justice to the parties. Is compulsory mediation appropriate? Should the parties be restricted to any substantial extent in the manner in which they litigate? If so, to what extent and how?

Prof. Dame Hazel Genn QC (Dean of Laws, University College London)  
Desmond Browne QC (England & Wales)  
Justice Ray Finkelstein (Federal Court of Australia) (*tbc*)  
Andrea Gabriel (Sth Africa)

### **Session 4 – *Global Warming, the Environment and Litigation***

In this session the speakers will consider:

- (a) whether there is a need for an International Environment Court and how such a Court might function, and
- (b) to what extent changes in the overall climate might be reflected in litigation through “greenhouse” suits and the like.

Chief Judge Brian Preston (Land and Environment Ct, NSW)  
Stephen Hockman QC (England & Wales)  
Simon Molesworth AM QC (Aust.)  
Matt Casey QC (NZ)

### **Session 5 – *Is the Pen mightier than the Tongue?***

Is written argument more persuasive than oral argument? Most Courts now either require or expect that counsel will provide some part of their argument in writing. This is not part of the tradition of the profession and there may be ways of improving the manner in which written argument is formulated and presented. Professor James has been teaching judges how to write a readable judgement for many years. In this session he turns his attention to counsel’s argument. The panel members will consider his suggestions and relate their own views on how to write a winning submission.

Prof James Raymond (USA)  
Chris Marnewick SC (Sth Africa)  
Russell Coleman SC (Hong Kong)  
Justice Carmel McLure (President, Court of Appeal, WA)