McLay said that unauthorised copying prejudiced the 'legitimate economic expectations of authors and publishers'. But in language reminiscent of the problem of software copyright he stated that a fair balance had to be struck between the interests of owners and users and that concessions would be required from both sides. Mr McLay said that overseas developments would be followed in New Zealand (NZ *Herald, 5 May 1984*). An earlier New Zealand report indicated that the New Zealand Government had ruled out any clarification of New Zealand law on copyrighting computer programs during 1984. A discussion paper to be issued by the NZ Justice Department is expected within the next few months.

biotech patents. Leaving the microchip revolution for the other major technological dynamic, namely biotechnology, it is important to note the recent announcement by the Minister for Science and Technology, Mr Barry Jones, concerning patent legislation on biotech developments in Australia. A Bill introduced into Federal Parliament in May 1984 aims to give researchers access to a wide range of overseas micro-organisms for the first time. Until now they have been unavailable locally because of the inability of Australia to provide an internationally accepted place to deposit them. The Patents Amendment Bill 1984 will establish a national depository as well as making Australia a signatory to the Budapest Treaty on Patenting Micro-organisms. This will allow overseas patented micro-organisms to be deposited in Australia under certain conditions. The Bill will open up a wide range of material for use in genetic engineering work in universities, industrial laboratories and the CSIRO. Mr Jones said that the proposed legislation would be potentially 'of enormous value to industry'. He pointed out that under the terms of the Budapest Treaty, an actual depository had to be established in the signatory country, where a patented micro-organism could be kept alive for the life of the patent and beyond. He said that various sites were under consideration, the most likely being within the CSIRO. According to reports, most other countries in biotechnology research, including the United States, Britain and Japan are signatories to the Treaty. Supplementing these moves by the Australian Government are two publications by the Australian Patent Office : *Genetic Engineering, Patent Trends and Developments,* 1983 and *Update 1* of the same publication, March 1984. Perhaps it is of significance that the update is a larger tome than the original text. In matters of science and technology in 1984, things happen quickly. But can new laws and law reforms happen at the appropriate pace?

australasia's lawyers, '84

The twin curses of the law are expense and delay. It has probably been so ever since there were courts and lawyers. Hamlet thought the law's delay sufficiently important to mention in his Soliloquy. And nothing has changed.

Justice Tom Eichelbaum, Paper for NZ Law Conference, April 1984

under the microscope. When more than 2 000 lawyers gathered at Rotorua for the NZ Law Society's 1984 Triennial Conference, they were confronted from the start by dire warnings of the need to adjust to change. Indeed, the papers for the NZ Law Conference put the legal profession, its personnel and institutions, under the microscope. Attorney-General and Deputy Prime Minister Jim McLay kicked off with an assertion that the law was neither a 'static institution' nor 'removed from the day-to-day life of society'. He said that it serves society and must change as social patterns change. Statute law would quickly lose its broad base of public acceptance if it failed to deal with new problems. Certainly, there were many new problems on the agenda of the NZ Law Conference to be tackled by the participants:

- Lord Scarman (past Chairman of the English Law Commission) dealt with the protection of human rights, specifically minority rights in Britain, drawing lessons relevant to the Antipodes.

- David Baragwanath QC delivered a paper on the Official Information Act, the NZ equivalent to FOI, tracing the

changes effected by this new line of law.

- Russell Scott, Deputy Chairman of the NSWLRC, delivered an important paper on bioethics and experimental medicine, calling attention to the legal implications.

- Gordon Lewis, Director of the Law Institute of Victoria, addressed 'The Future for the Conveyancer'.

- David Andrews, a well known London solicitor, spoke of 'making the computer serve the lawyer'.

- Professor Don MacDougall, formerly of Sydney and Melbourne and now Professor at the University of British Columbia, wrote on a fast-developing theme, 'Dispute Resolution – The Negotiation Alternative'.

The principal papers for the NZ Law Conference have been published by the NZ Law Society and will be reproduced in the *NZLJ*. In an innovative move, the President of the NZ Law Society, Mr Bruce Slane, arranged for the leading participants in the Conference to take part in a series of video panels. These will be shown on general NZ television. They will also be available for use in law schools and specialised legal meetings. Speaking at the opening of the conference, the Commonwealth Secretary-General, Sir Shridath Ramphal, himself a distinguished lawyer from Guyana, asserted that lawyers by their training 'and eventually by conviction' tend to see themselves 'more as custodians than activists and developers'. But he told delegates that challenges were arising for the law in a variety of forms, particularly from science and technology. He asked whether too many of the brighter students in Commonwealth countries were being encouraged to enter the law to the detriment of other professions. He pointed out that Japan, with half the population of the United States, produced 30% more engineering graduates each year than America did. Yet Japan had a total of only 15 000 lawyers (fewer than Australia) compared with the United States annual production of 35 000. According to Ramphal 'the Japanese say : engineers make the pie grow larger; lawyers only decide how to carve it up'.

short sighted. The need for lawyers in Australia to adapt to changing times was also stressed in a graduation address for the University of Sydney on 29 February 1984 by Mr Gerald Gleeson, Secretary of the NSW Premier's Department. Telling the young law graduates that the legal profession 'stands at the pinnacle of professions in Australia' and that it has 'retained elements of mystique, pomp, grandeur and ceremony', Mr Gleeson cautioned about the need for adaptability:

> You are entering the profession at a time of challenge but let me emphasise not a time of threat. It is a time when common sense is needed of all parties. As I see it you are entering a conservative profession that is resisting changes put forward by the New South Wales Law Reform Commission [concerning the legal profession]. It is evident that a similar campaign is now under way not only against these changes but others put forward by the Commission in the fields of workers' compensation and accident claims. I have studied the submissions of the Law Society on these matters and, to be frank, I find the arguments to be short-sighted, protective of the self-interest of senior members of the profession rather than graduates now entering. While opposing simplification in procedures in areas such as conveyancing and workers' compensation, they conveniently forget the new fields of laws that have been opened up considerably over the past decade in fields such as trade and consumer protection, the environment and administrative law.

As if in proof of Mr Gleeson's assertion, a number of controversies sprang up in the past quarter concerning moves to reform lawyers and their work, at least in New South Wales:

- In April 1984 the State Attorney-General, Mr Paul Landa, announced that he had 'reached an accord' with the NSW Law Society President, Mr Rod McGeoch, that in future law graduates, after practical training at the College of Law, would be admitted to practice without distinction between barristers and solicitors. This 'accord' on behalf of

solicitors was met by a vigorous response from the NSW Bar. Mr Peter Young QC, Vice President of the Bar, declared it to be 'an assault on the independence of the Bar'. He also said that it would ultimately advantage the large legal firms and their corporate clients. Mr Michael McHugh QC, President of the Australian Bar Association, wrote to the *Sydney Morning Herald* (10 May 1984) urging that experience throughout the English-speaking world had shown that where the legal profession was 'fused' the vast majority of competent trial lawyers 'either take work from other lawyers ie act as barristers or operate as partners in large firms'. He said that there was 'not the slightest evidence' that the use of an amalgamated profession decreased the general costs of litigation or delay. He pointed out that barristers at present were 'not the property of any firm, no matter how great or powerful'. This assertion was questioned by Clare Petre, a social worker with the Redfern Legal Centre in Sydney. Attacking the 'cab rank rule' by which it is asserted that barristers must act for any litigant that engages them, Ms Petre pointed out that defenders of this rule 'neglected to mention that some of the "cabs" are made of gold and will only carry passengers with the fare to match'. Mr AM Gleeson QC, President of the NSW Bar Association, expressed the hope that the government would never accept the amalgam principle announced by Mr Landa and Mr McGeoch.

- Another reform opposed by lawyers during the past quarter was the abolition of automatic appeals to the High Court of Australia. Amendments to the Federal Judiciary Act, now in force, removed the automatic right of appeal where the case involves $20 000 or more and replaced it by a provision permitting the High Court to decide whether to grant special leave to hear an appeal or not. The retiring President of the Law Council of Australia, Mr Ian Temby QC, now Federal Director of Public Prosecutions, in an address to the National Press Club in late April, said that the Law Council did not believe that the arrangement would reduce costs to litigants having to get through the 'gateway' of leave. However, Federal Attorney-General Evans said that the seven Justices of the High Court were overburdened with appeal work and that a discretionary provision would ensure that their work was confined to matters of general public importance or cases where it was necessary for the High Court to resolve differences between opinions on the state of the law in different States in cases involving the interests of the better administration of justice. The Attorney-General has also announced that the High Court will revive the practice of hearing of applications for leave to appeal by sitting in Sydney and Melbourne. Clearly, this will save the costs involved in travel to Canberra. It will restore a practice that preceded the move to the High Court's palatial premises on the shores of Lake Burley Griffin in Canberra, opened by the Queen in 1980.

legal aid throttle. A major conference at the University of New South Wales at the end of April 1984 heard a number of controversial views put forward on the state of legal aid in Australia:

- Justice Peter Connolly of the Supreme Court of Queensland told the conference that 'if legal aid is not to become a positive cancer some radical steps will have to be taken'. On the proliferation of judges and the legal aid 'industry', Justice Connolly declared 'in truth it would be very much in the interests of Australian people if both our industries were heavily throttled back'. He claimed that legal aid had become a victim of two of Parkinson's laws : that expenditure

would rise to the level of available funds and that the task would take as long as the deadline set for it. Justice Connolly called for reduced lump-sum fees in legal aid cases, with the practitioner taking the full sum if the case finished early and absorbing the balance if it was prolonged. He declared that it was misplaced zeal to seek to acquaint individuals with the 'maze of legal rights which may be available to them ... stirring up litigation is positively mischievous'.

- Justice David Yeldham of the Supreme Court of New South Wales declared that too much public money was being wasted in legal aid for 'completely and utterly hopeless cases'. He warned that the legal aid system could result in 'an over-litigious society'. He said that it already allowed some of its recipients an unfair advantage over those who had to pay for legal assistance. Justice Yeldham declared that there was room for improvements in the vetting of the merits, both factual and legal, of cases of persons to whom legal aid was granted. Specifically, Justice Yeldham expressed a fear that a 'breed of second and third-class lawyers' would be the result in the future of specialist legal aid lawyers employed by government agencies.

Needless to say, these views provoked forthright reactions. Justice Connolly was careful to say that he saw 'no evidence that a significant number of the [legal] profession is engaged in the conscious exploitation of the legal aid system'. But this did not content the critics. The Directors of the NSW, WA, SA, Victoria and Queensland Legal Aid Commissions held a press conference on 28 May 1984 designed to rebut Justice Yeldham's assertion. The Directors claimed that the judge's remarks were 'not only inflammatory but quite wrong'. They claimed that the judge had not provided any evidence to support his assertions and had 'refused to respond to questions when his statements were challenged'. They also stated that the State Legal Aid Commissions were 'attracting extremely talented lawyers whose motivation and industry were second to none'. One survey quoted showed that criminal appeals in Victoria had a higher success rate for legal aid cases than for non legal aid case. There were 25% success rates in Full Court appeals undertaken by private practitioners compared with 29.5% for legal aid clients.

money again. The vulgar subject of money was also raised by Federal Attorney-General Evans in his address to the Commonwealth Legal Aid Council Conference. Senator Evans warned that the legal aid system in Australia was near financial breaking point. He said that the prospect was in sight that 'legal aid will soon be unavailable to any but the very poorest members of the community'. Senator Evans said that over the past three years Federal expenditure on legal aid in Australia had risen by 52% in real terms. However, the number of people assisted had grown by only 20%. Where legal aid clients were referred to private practitioners, expenditure had gone up by 50% in real terms whilst the number of matters dealt with had grown by only 15.6%. Senator Evans said that he would soon be considering options for the establishment of a new national body to oversee Federal and State legal aid delivery funded by the Commonwealth. The government was also awaiting a report of a Task Force set up in December 1983 to analyse legal aid delivery.

On the subject of government funds for professions, a hard fight continues by the professional organisations aimed at repelling efforts to bring professional fees under the Federal Government's prices and incomes accord. Purporting to speak for 150 000 lawyers, doctors and accountants and other professionals in Australia, the Australian Council of Professions, in mid April 1984, vowed to fight any moves to control professional incomes. However, shortly after this announcement and after discussions with the Federal Minister for Employment and Industrial Relations (Mr Ralph Willis) the Council agreed to meet Federal Government and ACTU representatives to 'thrash out' proposals for voluntary use of the

Australian Conciliation & Arbitration Commission to review professional fee schedules.

conveyancing reform. Meanwhile, the moves to reform the staple income producing activities of Australian lawyers in land title conveyancing continued during the past quarter. In an important ruling by the Chief Judge in Equity of the Supreme Court of NSW (Justice Helsham), the NSW Law Society failed in a bid to stop a cut-price conveyancing company from offering services allegedly in breach of the Legal Practitioners Act. That Act guarantees a virtual conveyancing monopoly in paid services for the legal profession. The Flat Fee Conveyancing Service was referring its cases to a retired barrister, whom the judge held to not fall within the prohibition in section 40B of the Act. According to John Slee, legal correspondent for the *Sydney Morning Herald* (11 May 1984) the ruling put an end to the Law Society's attempts to have the activities of the Flat Fee Conveyancing Service declared illegal. But it does not settle the broader question of whether other cut-price conveyancing companies, working with solicitors, are operating legally.

Meantime in Britain, the debates about cut-price conveyancing continue. See [1984] *Reform* 80. According to a report in the *Times* (25 April 1984), plans by fifty Liverpool solicitors to launch a cut-price conveyancing company on 1 May 1984 were shelved after a strong warning from the English Law Society. 'The Law Society did not actually threaten us, but there is always the danger that one can get into difficulties' said one of the solicitors involved in the scheme ominously.

A consultative document issued by the Lord Chancellor's Department on 3 April 1984 indicated that the United Kingdom Government is opposed to extra safeguards to protect the consumer against conflict of interests where solicitors employed by banks and building societies undertake conveyancing. The document foreshadows amendments of the Solicitors Practice Rules so that solicitors would be freed from restrictions on touting for work, from advertising and on fee sharing with persons not qualified as lawyers. The general issue of conveyancing law reform in England remains for the future.

odds and ends

■ ***surrogate mothers.*** During the last quarter the debate about surrogate motherhood has become more active in Australia and Britain. In Victoria, Attorney-General Jim Kennan has expressed concern about newspaper advertisements seeking volunteers for surrogacy. He suggested that any such contracts may be against public policy and indicated that legislation could be introduced to ban such ads, pending the report by the committee chaired by Professor Louis Waller, Victorian Law Reform Commissioner. In Britain the Council for Science and Society, in a report published on 23 May 1984 declared that surrogate motherhood contracts could be 'almost as exploitive as prostitution' and 'degrade the process of childbirth'. According to the *Times* (24 May 1984) an American-based surrogacy agency has been set up in Britain and two British women are pregnant with babies for whom they will be paid £6 500. The Chairman of the Council which produced the report, *Human Procreation : Ethical Aspects of the New Techniques* (OUP, 1984) is Rev Professor Gordon Dunstan, Emeritus Professor of Moral and Social Theology at the University of London. According to a leader in the *Times* : 'It is more important to prepare clear principles and a code of conduct for observance by professionals. Only later will it be necessary to devise some legal codification for the laity. It is the conduct of scientists which matters immediately, since scientists are hustling society to take a view about these matters'. Professor Ian Kennedy in the *Times* (26 May 1984) declared that two issues stand out as 'particularly taxing'. These are the use of a woman's womb to bring to term the fertilised egg of a couple and the use of embryos for research. According to Kennedy, if the law is to command respect (and therefore obedience) it must not 'stray too far from the collective conscience of society'.