

## Disciplinary Powers

On 31st October, 1960, the President circulated to the members of the Bar draft rules on disciplinary powers and procedures. These rules were prepared for consideration by the Bar as a result of a resolution at a General Meeting of the Association on 21st November, 1957, in the following terms:— "After discussion it was resolved that the incoming Council prepare and submit to all members of the Association a report containing definite proposals as to the granting of disciplinary powers to the Council and as to how and by whom these powers are to be exercised."

The matter had, since 1957, been considered from time to time by the Council which had given special attention to procedural problems arising where complaints made by one member of the Association against another involved disputed questions of fact and to the desirability of having a defined and known procedure (including power to impose penalties) for cases in which it is not thought necessary or desirable to institute proceedings before the Supreme Court.

In the Annual Report for the year 1960, after referring to the circulation of the draft rules to members of the Bar, the Report went on— "The Council appreciates that this is a most important question and hopes that members will give the Council the benefit of their constructive criticisms and comments upon the proposed rules".

In his presidential statement for the year 1960, the President said:— "The Council has been conscious of the difficulties and dangers inherent in any proposal to vest disciplinary power in one's fellow members in a profession".

He indicated that there were weighty reasons in favour of doing so at this stage and this represented the view of the Council in 1960. It was, however, the view of that Council, as it is of the present Council, that the issues involved were of such importance that the opinion of the Bar should be taken.

### *Earlier Proposals*

It is of some interest to note that the discussions which have been taking place since 1957 were not inaugurated for the first time by the resolution of the Association quoted above. Indeed, as long ago as 1938 the Council considered measures for obtaining statutory disciplinary powers similar to those possessed by the Incorporated Law Institute (as it was then called) in the case of solicitors. The Attorney-General at that time invited the Bar to submit to him concrete proposals for legislation to achieve this purpose, and a committee consisting of *Bonney K.C.* and *Fuller K.C.*, appears to have been appointed to draft the necessary legislation but no further developments took place. More recently *Barwick Q.C.*, gave some considerable thought and attention to the matter of obtaining a Royal Charter for the Bar and raised for consideration in that connection the making of specific provisions on discipline.

### *Discussion of the 1960 Proposals*

The proposals which were finally circulated to the Bar, in compliance with the Association's resolution at its General Meeting on the 1st November, 1957, have stimulated a considerable amount of discussion. Twelve

letters were received before the end of 1960. At a meeting between the Council and liaison officers from the various floors held on 24th February, 1961, the matter was discussed and concern was expressed by some liaison officers, both about the introduction of the proposed scheme and the possibility that it might be put into operation without further reference to the general body of the Association. After this meeting further communications were received criticising the scheme and expressing the view of certain floors that it should not be put into operation until it had been approved by the members of the Association, either in General Meeting or by referendum.

It is not possible to publish a detailed summary of the comments and criticisms which the Council has received. Many constructive suggestions were made upon the assumption that the draft rules as amended and improved would be promulgated. It is, however, fair to say that the bulk of the criticism was unfavourable. One writer appeared to sum up much of the adverse reaction in the following statement:— "It seems undesirable to provide rules that may have the effect of encouraging irresponsible complaints, or complaints flowing from a scrupulous sense of professional etiquette, or from substantially personal differences."

This attitude led at least four critics to make the point that the introduction of the proposed rules would aggravate petty quarrelling amongst barristers. Others urged that the proposed rules were unnecessary, but would stimulate disgruntled persons to put the procedures into motion though they had no genuine complaint. There was some opposition to powers of the kind in question being exercised by fellow-practitioners of those involved.

### *English Procedures*

The committee which reviewed the whole matter this year had the benefit of information about the position in England. There are two bodies in England dealing with disciplinary matters. Since 1959 there has been a Joint Disciplinary Procedure Committee of the Four Inns which considers all complaints of professional misconduct before any formal hearing before an individual Bench. There is also a Professional Conduct Committee of the General Council of the Bar. In England it appears that the majority of complaints are made in the first instance to the Bar Council rather than to a particular Inn. All such cases are considered by the Council's Professional Conduct Committee, and, where it is thought that there is a *prima facie* case of professional misconduct requiring action, the complaint is always forwarded by the Council to the Joint Disciplinary Procedure Committee.

In some cases, where the Professional Conduct Committee are of the opinion that a breach of etiquette or improper conduct has occurred not calling for any action by an Inn, the barrister concerned is informed of the opinion of the Professional Conduct Committee by a communication which may include such advice and admonition or warning as may seem to the Committee to be appropriate in the circumstances. Complaints made direct to an Inn go straight to the Joint Disciplinary Procedure Committee and are not handled by the Coun-

cil at any stage. The latter Committee decides whether a complaint of professional misconduct is to be referred to the Bench of the appropriate Inn.

It is of some interest to note that, in England, it is now generally true that the hearings in the Inn are conducted by small committees of Benchers, who are practising members of the Bar, rather than (as was the case at some Inns only a few years ago) before the Full Bench, many of whose members are judges. This point is of some significance in view of the opposition expressed by some to disciplinary matters being decided by practising barristers. In substance the position in England is that, apart from disbarment or suspension from practice, the only sanction resorted to is that of reprimand. There appear to be no formal rules of the Bar laying down and providing for the actual form of disciplinary procedures.

### Conclusions

The comment and criticism of members of the Bar and the English experience were weighed and considered by the Committee appointed by the Council this year to consider the whole matter, and at its Meeting on Thursday, 8th June, 1961, the Council considered the report of that Committee. It was finally decided by the Council that, bearing in mind the nature of the opposition to and criticism of the circulated scheme and the detailed arguments sent in in response to the Council's request for comments and criticism, the Council would not go ahead with the promulgation of rules of the kind previously drafted and circulated.

In essence, the Council was of the opinion that the advantages flowing from having written rules of procedure were, on the whole, outweighed by the disadvantages which would flow from the opposition of a significant section of the Bar. It was also thought by the Council that, bearing in mind English experience, no special rule imposing penalties such as fines is necessary in relation to matters of professional conduct and etiquette.

The Council is, therefore, of the opinion that it has fulfilled the task set for it by the resolution of the Association made on 21st November, 1957, of preparing and submitting to all members of the Association a report containing definite proposals as to the granting of disciplinary powers to the Council, and as to how and by whom these powers are to be exercised. The Council, therefore, does not propose to take any further steps at the present stage of the evolution of the Bar in relation to this matter.

The point should, however, be made that during the whole of the life of the Association, the Council has had power to "inquire into and decide questions as to the conduct and etiquette of barristers". Throughout the period during which the discussion of formal disciplinary procedures has been taking place the Council has been receiving and dealing with complaints by members and others about the conduct of barristers and about matters of ethics and etiquette. The Council has always had power to condemn specified conduct as malpractice, professional misconduct, or breach of rule or of etiquette.

The decision of the Council to proceed no further with the promulgation of formal rules will leave matters for the future as they stand at present under the Memo-

randum and Articles of Association of the New South Wales Bar Association, and the position in the future will be that the Council and its Etiquette Committee will continue to exercise such powers as they now possess. As in the past, they will have to move from case to case doing what justice requires and evolving such fair procedures of investigation and enquiry, within their powers, as the nature of the problem demands.

### The Bench and Bar Dinner 1961

The Annual dinner of the Association was held at the Wentworth Hotel on Friday, 12th May, 1961. The Guest of Honour was the Chief Justice of the High Court of Australia, the Right Honourable Sir *Owen Dixon*, G.C.M.G. The attendance was far greater than at any earlier Annual dinner, namely, 165 members and guests. In addition to Sir *Owen Dixon*, there were present (among other Justices and Judges), the Chief Justice of New South Wales, the Right Honourable H. V. *Evatt*; the Chief Judge of the Commonwealth Industrial Court, the Honourable J. A. *Spicer*; the Federal Bankruptcy Judge, the Honourable Sir *Thomas Clyne*; and the Chairman of the District Court Judges, His Honour Judge *Monahan*.

The toast of the Guest of Honour was proposed by *Kerrigan Q.C.* and seconded by *Godfrey-Smith*.

When Sir *Owen* rose to reply, he was given a spontaneous ovation which reflected the affection and admiration which the profession in New South Wales has for him. The Chief Justice's speech included a candid (and occasionally tart) commentary on the membership of the High Court when he first sat as a member of it.

In addition to good speeches, those attending the dinner enjoyed excellent food, and wines to satisfy the connoisseur. The thanks of the Association are due to the House Committee and the Registrar for their organization of the dinner and to the Wentworth Hotel staff for their efficient service.

### The Law Convention 1961

The Law Convention which was held in Sydney in 1951 was remarkable for the fact that for the first time in its history Australia was visited by a Lord Chancellor of England and a Master of the Rolls who were actually in office. The 1961 Convention which is about to be held is equally remarkable in that for the first time a Lord Chief Justice of England, a Chief Justice of the Supreme Court of the United States, and a Minister of Law of India will be visiting Australia during their actual terms of office.

A note on each of these distinguished visitors is appended.

### The Rt. Hon. Lord Parker of Waddington

*Hubert Lister Parker*, Baron Parker of Waddington, Lord Chief Justice of England, was born in 1900, at a time when his father (later also Lord Parker of Waddington) was Junior Counsel to the Treasury. His family can trace its origins in Yorkshire back to the 14th Century. He was educated at Rugby and Trinity College, Cambridge, where, after being a Senior Scholar, he took two first classes in natural science. He was called to the Bar in 1924 from Lincoln's Inn of which in 1947 he became a Bencher. He was a pupil and later a "devil" to Lord Somervell of Harrow, and in the early