



# Lawyers' Christian Fellowship Newsletter

www.lawyerschristianfellowship.org

September 2003

Chief Justice of  
the New South Wales  
Supreme Court

**Hon J J Spigelman AC**

will present his fifth lecture  
on Thomas Becket:

## Becket and Henry II Martyrdom



**29 September 2003**

Banco Court, Level 13,  
Supreme Court of NSW,  
Queen's Square

at 5.30pm

No RSVP required

If you have missed the preceding lectures then the text of these is available at the Supreme Court web site on the speeches pages:  
<http://www.lawlink.nsw.gov.au/sc>

### Inside Lawyer Stress

by Justice Dyson  
Heydon QC

## Changing Chairs

When Ian Davidson invited me to take on the position of Chairman, I agreed to do so but expressed my view that the LCF might benefit from a "fresh face" after two years. Four years later I can report that a "fresh face" has been found!

The LCF was formed following the 1959 Billy Graham Crusade to provide support and fellowship to new Christians who were already lawyers. I took the view that, apart from trying to cater for existing members, we should now be endeavouring to provide support and fellowship to new lawyers who are already Christians. Unfortunately, efforts to obtain new members from recently admitted lawyers have not yet borne fruit.

Another goal has been to arrange "after work functions with speakers". The Committee has found suitable speakers to be in short supply. I am sure the any suggestions would be welcome. In particular, can you suggest a candidate from overseas who will be visiting Australia and may be able to add an LCF function to his/her itinerary?

Thirdly, can we muster the resources to do in Sydney what has already been done in Melbourne and Brisbane: hold an Australasian Christian Legal Convention?

We all labour against the tyranny of time: juggling work, home and church commitments. Those commitments no doubt impact on attendances at LCF functions. They have made it increasingly difficult for me to devote as much time to LCF activities as I would have liked. However, I was fortunate to have Steven Nicholson issuing LCF newsletters and Naomi Stafford attending to all manner of things, not to forget the contribution made by Rev James McPherson. My thanks to them and best wishes to the new Chairman and loyal Committee members who, with God's help, will steer the LCF towards its 35<sup>th</sup> anniversary in 2005.

*Graham Ellis*

## The New Chair.

After several years as the Chair of the Lawyers' Christian Fellowship we say thank-you to Graham Ellis who this month retires as Chair.

Thanks also to Graham's wife Teri for her support of Graham and the ministry of the Fellowship.

We also welcome back the familiar "fresh face" of Martin Drevikovsky to the position of chair as the organising committee faces the challenges ahead.

Martin was for many years the secretary of the LCF and is a principal of Toomey Pegg & Drevikovsky. Martin returns to the committee after almost seven years.

Please continue to uphold Martin and the committee in your prayers



# Lawyer Stress

## Justice Dyson Heydon QC

*Law Week Dinner Address 2003*



Ian Davidson invited me to speak on mental health and the law. That is a depressing subject of which I know mercifully little. However, for nearly a decade my colleague Kirby J has been drawing attention to what he calls "judicial stress", and he has been engaging in controversy with Thomas JA about whether there is such a thing. I thought we would not be moving too far from the theme Ian suggested if I spoke on some aspects of "lawyer stress" - the particular pressures affecting legal practitioners.

Let me begin by reading a passage in a letter from Thomas More to Peter Gillis.

"While I am constantly engaged in legal business, either pleading or hearing, or giving an award in arbitration, or deciding a matter as judge, while I am paying a friendly visit to one man or going on business to another, while I devote almost the whole day to other men's affairs, and what remains of it to my family at home, I leave to myself, that is to writing, nothing at all. For when I have returned home, I must converse with my wife, chat with my children, and talk to my servants."

I interrupt to say that at least in modern Australia we do not have that last drain on our time.

"All this I count as business, for it has got to be done - and it is quite necessary unless you want to be a stranger in your own home - and one must take care to be as agreeable as possible to those whom nature has provided, or chance has made, or you yourself have chosen to be companions of your life, provided you do not spoil them by kindness or through indulgence make them your masters instead of your servants. In these occupations that I have named, the day, the month, the year slip away. What then can we find time to write? Nor have I yet said anything about sleep, nor even of meals, which for many take up as much time as sleep, and

that takes up almost half a man's life. So I only get for myself the time I can filch from sleep and food."

If nothing else, that letter shows that the problem under discussion is not new. Let me set out some common places.

Lawyers belong to a class of professionals the defining characteristic of which is that their duty is to solve the human problems of other people as well as coping with their own.

Other central members of the class are doctors, dentists and other medical practitioners; ministers of religion; and perhaps accountants. Well outside the class are persons active on their own behalf in business: they may have many cares, but they are personal cares, not the cares of others. Perhaps on the edge of the class are engineers and architects and financial advisers and company officers with some responsibilities to others - but most of them lack the direct sense of personal responsibility for the affairs of others borne by lawyers and those like them.

For lawyers there are numerous sources of pain. There is the pressure of numerous cases and matters: solicitors responsible for enormous quantities of files who are expected to be familiar with the contents of each of them; solicitors who have to run quite complex businesses in a highly regulated modern environment; barristers who have many calls to return on reaching chambers from court after a day of difficult tactical decisions. The subject matter of the lawyer's work can cause pain. In criminal cases there can be various causes of distress - gruesome injuries, appalling behaviour to the victims of violence, or to small children. In civil cases, too, the subject matter can be painful: people being ejected from their houses, or being bankrupted, or suing in relation to grievous personal injuries on a cause of action which is difficult to prove or even formulate. Lawyers have to deal with litigants whose litigation is funded by the legal profession, the only financial advantage to the lawyer being a costs order if the litigation succeeds: litigants of this kind tend to behave even more unreasonably than those paying for the services rendered to them.

Then there are other factors which in combination can produce great pressure. Lawyers are under increasing public and political scrutiny and press criticism. Clients are increasingly demanding. Costs structures in some fields are tilted more and more against the profession. The law is generally becoming more complex, and in particular areas markedly so. To some extent lawyers have to retrain themselves continually in the use of new computers and other business machines. Whatever pleasure is derived from the marvels these devices perform is diluted by the expense of their acquisition and the difficulties of learning how to use them. Practitioners

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within firms, large or small, have to cope with the need to meet targets in relation to profits and billable hours; they have to cooperate with people whom it is not easy to cooperate with.

Practitioners are constantly oscillating between the position of having too much work and the position of having too little. Either there is insufficient time to do what must be done, or there is insufficient work to fill the time available. As F E Smith said: "In England there are fifteen hundred barristers. There is enough work to occupy one thousand of them, and the work is actually done by five hundred of them."

An essential difficulty stems from the fact that in many fields of practice the client consults the lawyer when problems and difficulties which were once readily soluble have now become acute and soluble only with difficulty. The lawyer thus often has to deal with clients in a condition of acute personal distress.

Another source of trouble is that the responsibility of acting for a client is difficult to delegate. If the responsibility is that of representing the client in court, it is impossible to delegate and difficult to share. It is inescapably personal. If the responsibility is to act for a client in some business transaction, while there may be routine aspects to be entrusted to others, the ultimate responsibility for the success of the whole enterprise remains with the senior lawyer.

To many it is the pressure of this unavoidable responsibility, and the worry about the consequences for the client if professional skill fails, which creates the greatest burden. Will clients be gaoled? Or ejected from their homes? Or bankrupted? Or fail to recover damages which are vital if they are to live the rest of their lives decently or maintain their businesses?

For barristers, and litigation solicitors to some extent, there is the ordeal of constantly performing in public against hostile opponents in a relentlessly combative atmosphere and before tribunals which are not necessarily sympathetic or helpful or even courteous. There is the risk of a single failure becoming widely known in a manner perpetually damaging to reputation.

It is difficult to organise respite from these pressures. If a legal practitioner is a sole practitioner or operates in a small practice, it is hard to take vacations of any length. It is hard to organise a locum tenens.

Perhaps the greatest danger is, paradoxically, that the lawyer becomes addicted to the long hours, the need to respond to a variety of problems, the surges of adrenalin caused by crisis, the gaining of victories in court or successes in negotiation against the odds, the daily deployment of the power of the human will.

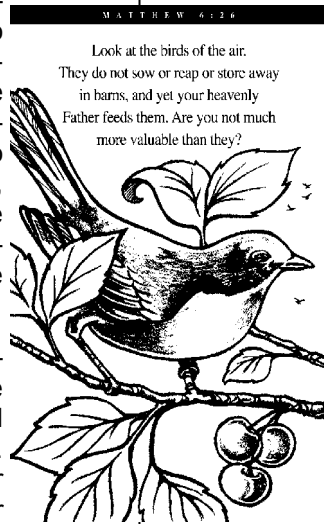
All these professional demands and risks call for the

expenditure of much time and leave the lawyer, like Thomas More, handicapped when it comes to a fresh and bright response to the claims of family life each evening.

For some, the result of all these difficulties is simply unhappiness; for some it involves recourse to excessive drinking, or to drug taking; some succumb to mental disorders of varying degrees of seriousness; a few to suicide.

To a degree the difficulties just described can be exaggerated. Like professional sportsmen, professional lawyers often work best when under a little pressure. The fact that time is short tends to ensure that it is well used. Often if something has to be done quickly, it is best to select a busy person to do it.

But there is no doubt that many aspects of professional life generate unpleasant experiences and unhappiness.



What solutions are there? Apart from saying that one should endeavour to remain calm, to become better organised and to err on the side of refusing work than on the side of accepting too much work, I have only two practical suggestions.

The first relates to courtesy. If one reads Philip Ayres' life of *Owen Dixon*, one will see that the 1930's and 1940's were periods of considerable formal politeness coupled with a fair bit of private brutality. The modern age goes in for superficial geniality, less formality, less primitive brutality, but, in the legal profession, a lot of argumentative non-cooperativeness. Some solicitors' letters are written in terms which might have made their authors feel better at the time, but which read badly when annexed to an affidavit and examined in the harsh glare of open court; what is more, unfortunately, they tend to provoke equally aggressive and unhelpful replies. This kind of behaviour, apart from wasting the money of those clients who are charged for it and pay for it, deflects attention away from the rational performance of professional tasks. It falls into the same category as unnecessarily aggressive, discourteous and uncooperative behaviour in court or just before court. If practitioners abstain from behaviour of those kinds, the sum of professional happiness would be increased. In short, we need more mutual civility.

That is the first suggestion. Having opened the address with a reference to the life of Thomas More, a great Christian statesman of the 16th century, I take this second suggestion from an incident recorded in the life of a great Christian statesman of the 19th century, the third Marquess of Salisbury, Prime Minister on three occasions for a total of fourteen years. In the masterly but regrettably unfinished biography of Lord Salisbury composed by his daughter Gwendolen Cecil

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the following anecdote is told (volume 1 pages 118-119). Salisbury, as Foreign Secretary during a great international crisis, was entertaining guests at Hatfield. As they departed, they sympathised with the great burden of responsibility he was labouring under. He said to his family after they left: "They would have been shocked if I had said I didn't understand what they were talking about". His family protested, and he said, as he was about to start a walk into the threatening clouds of an autumn afternoon: "I don't understand what people mean when they talk of the burden of responsibility. I should understand it if they spoke with the burden of decision - I feel it now, trying to make up my mind whether or no to take a greatcoat with me. I feel it in exactly the same way, but no more, when I am writing a dispatch upon which peace or war may depend. Its degree depends upon the materials for decision that are available and not in the least upon the magnitude of the results which may follow." Then, his daughter records after a moment's pause, and in a lower tone, he said: "With the results I have nothing to do."

That is, he saw no point in using up energy or disturbing his mental equilibrium worrying about the consequences of his decisions. The vital thing was to devote energy to the technical difficulty of arriving at the decision itself, and to avoid fretting about anything else.

A similar frame of mind is useful in professional life.

The final thing I wish to do is refer to the famous words of Christ to the Disciples counselling against worry - the words which are recorded in the Gospel according to St John, chapter 12, verses 22-34. Let me read only part of the passage.

*"Take no thought for your life, what ye shall eat; neither for the body, what ye shall put on.*

*The life is more than meat, and the body is more than raiment.*

*Consider the ravens: for they neither sow nor reap; which neither have storehouse nor barn; and God feedeth them: how much more are ye better than the fowls?*

*And which of you with taking thought can add to his stature one cubit?*

*If ye then be not able to do that thing which is least, why take ye thought for the rest?*

*Consider the lilies how they grow: they toil not, they spin not; and yet I say unto you, that Solomon in all his glory was not arrayed like one of these.*

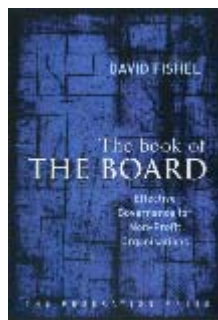
*If then God so clothe the grass, which is today in the field, and tomorrow is cast into the oven; how much more will he clothe you, O ye of little faith?*

*And seek not ye what ye shall eat, or what ye shall drink, neither be ye of doubtful mind."*

I thank you for your hospitality.

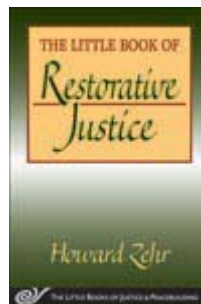
*This above is text of the Law Week Address delivered on the 7th May 2003. Justice Dyson Heydon is a judge of the High Court of Australia*

## Books Notes



**The Book of the Board — Effective Governance for Non-Profit Organisations** by David Fishel, Federation Press 2003

An Australian book which incorporates the experience of Australian not for profit organisations. A number of contributors including Myles McGregor-Lowndes (who will be known to attendees of the Australasian Christian Legal Conventions) share their wisdom. It contains a very useful resource section which includes CEO recruitment criteria, a CEO performance review, a training policy. It also includes interviews with CEOs and Chairs of not for profit organisations. Topically it includes some good material on risk management.



**The Little Book of Restorative Justice** by Howard Zehr, Good Books, 2002.

If the concept of restorative justice is new to you then this book is a good place to start. It is a very short and concise introduction to the principles of restorative justice by the man who is considered one of the founding fathers of restorative justice Howard Zehr. This book is available from Prison Fellowship NSW for \$10.00 + postage (ring 9896 1255)

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