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Ian Cunliffe has won lunch for four at the Law Society Dining Room.

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Inbox

EDITOR'S PICK

A plea to lawyers

Having graduated in law half a century ago, I am defensive of lawyers. I am a bit critical of them too. My heart swells when I hear eminent judges and other leaders of our profession at graduation and admission ceremonies, extolling the fine and enduring principles of lawyers standing up against oppression and demonstrating moral courage in the face of bullying, intimidation and injustice. When I hear criticism of the legal profession, I ask the critic: "Who goes into the butchers and asks for a free porterhouse steak, or the service station for a free tank of petrol, or the surgeon for a free hip replacement?" It's an everyday event for many lawyers to help battlers free of charge. We have much to be proud of. About six weeks ago, I began to take a close interest in the secretive criminal proceedings in Canberra against Witness J, Witness K and Canberra lawyer Bernard Collaery. I began to write about them. That has attracted some interest from others who had picked up on the issues more quickly than me – secret trials, oppressive laws, apparently vindictive prosecutions, Goliath (the Federal Government) launching attacks on David to cover up its own crimes, and more to make my blood boil. One of those others is a man in Darwin – a non-lawyer – who contacted me, and has helped me greatly with ideas, proof reading, editing and more. But my new friend keeps asking me, "Why aren't the lawyers speaking out?" I am embarrassed that my answers seem a bit inadequate. Mind you, some of the leaders of our profession have spoken out: the President of the Law Council of Australia, Pauline Wright; former NSW Court of Appeal judge and ICAC Commissioner Anthony Whealy QC; Nick Xenophon and Mark Davis of Xenophon Davis; Professor Spencer Zifcak; Geoffrey Robertson QC; high-profile former NSW Director of Public Prosecutions Nick Cowdery QC; former Victorian Court of Appeal judge Stephen Charles QC; Greg Barns; and Richard Ackland. One article about Collaery's case for a general audience is in The Guardian – just google "Collaery Cunliffe and Guardian". We live in troubling times. I fear that, increasingly, we are going to have to put into practice those fine principles we hear of at graduation and admission ceremonies and don the armour of moral courage with real intent. I have written to the Law Council of Australia quoting Robert French in *Hogan v Hinch* [2011] HCA 4 at [20]: "An essential characteristic of courts is that they sit in public. That principle is a means to an end, and not an end in itself. Its rationale is the benefit that flows from subjecting court proceedings to public and professional scrutiny. It is also critical to the maintenance of public confidence in the courts. Under the Constitution, courts capable of exercising the judicial power of the Commonwealth must at all times be and appear to be independent and impartial tribunals. The open-court principle serves to maintain that standard." I added that the Federal Government is pressuring courts to depart from the open-court principle, often quite radically, and inhibiting the discretion of the judiciary to decide issues of secrecy on their proper merits. I implore you, as a fellow member of a great profession, to write a short email or letter expressing your concern. Suggested addressees are the Law Council, your law society or bar association, and your federal MHR and Senators.
Ian Cunliff

Snap that?

Now that His Honour [Chief Justice Bathurst] has embraced the digital sphere, hopefully he will now also consider extending this by permitting, finally, restricted photography in admission ceremonies once resumed?
Edward Loong

Should you really publish that?

Recent months' issues of the *Law Society Journal* have featured exchanges of correspondence on climate change. While these might demonstrate a diversity of opinion as welcomed by the editor, I beg to disagree that they should be published. I hope *LSJ* will not fall into the fallacy that simply because there is "divided opinion", both "sides" deserve equal prominence. A news producer remarked to me once that 50 per cent truth and 50 per cent lies is not balance. Taken to its logical conclusion, the *LSJ* would be equally justified in publishing letters expressing opinions supporting anti-vaxxing, the flat Earth, that man didn't land on the moon, that COVID was caused so Bill Gates can insert chips via 5G into our brains, or the patent inferiority of women. People may hold these opinions, but should *LSJ* give them the time of day? Climate change denialists necessarily operate on the basis that the vast majority of scientists are 100 per cent wrong, because if there is even a 10 per cent possibility they are right, then action is justified to mitigate the risk. We take medical advice and buy insurance against risks far less likely than the prospect that 97 per cent of scientists are wrong or conspiring to produce falsehoods. There may, and should be, different opinions on how to address the problem but do not entertain a dispute on the existence of the problem.
Michael Berg

A plea to the Scots

I read carefully the letter of Peter Breen, but do not understand

how he can state there is no uncertainty re. global warming, but at the same time cite US surveys that show a large percentage of people do not know there is certainty and may indeed hold the opposite view, as by his own admission do many members of the US administration. I also do not understand why reduction of tropical forest and extinction of species can be said to be caused by burning of fossil fuels. Whilst these are to be deplored, as are air and sea pollution, the cessation of use of fossil fuels would not correct the situation. Indeed, it would almost surely lead to an increase in the use of wood as a fuel, accelerating the reduction of forests, thereby causing more extinctions of species. All of these problems require carefully planned and complex solutions, not a simple and ill-considered ban of one human activity, the use of fossil fuels. As to Mr Breen's cavalier dismissal of contrary views, I would with due respect cite two comments: Oliver Cromwell's plea to the Scots that they should consider they might be wrong, and Lord Bertrand Russell's comment that the whole problem with the world is that fools and fanatics are always so certain of themselves, but wiser people are so full of doubts. I hastily disclaim any intention to suggest Mr Breen is either a fool or a fanatic, but strongly urge him to take Cromwell's advice – as I will gladly do if persuaded I am wrong in my remarks.

Brian Bullock

Superfluous adjectives

Thank you for the update in the latest *LSJ* for September 2020 about the appointment of two solicitors as Registrars of the Family Court and Federal Circuit Court of Australia. However, I'm puzzled by the need to include the description that the appointment was "Two women registrars" in the title to the article. Seems superfluous given the Registrars' names are Lynda and Sandra and pictures were also supplied ... Unless, of course, a review of the last few appointments aptly describe a gender?

Samantha Lewis

Consulting on coercive control

We commend the current attention on coercive controlling violence (CCV) (Amy Dale, 'Criminalising Coercion', Sept *LSJ*). The Greens and Labor Bills to criminalise CCV are facilitating a desperately needed conversation. The Government's intention to hold a public consultation is what we need. It is vital that the community, first responders, and our legal systems, including all the professionals working within them, get better at recognising, understanding and responding to CCV. Women's and children's lives depend on it. We want to better understand how police and courts respond to existing laws including stalking and intimidation offences; the current blocks to police focusing more on context than on discrete incidents in isolation; and the Scottish experience. There are differing views on criminalising CCV. Some, such as Women's Legal Service NSW, are continuing to work through the complexities. We desperately need a criminal justice system which properly recognises and responds to gendered violence, including CCV, and holds perpetrators accountable. A thorough consultation on how to best respond to CCV is an essential step in this journey. Read our full statement at: wlsnsw.org.au/criminalising-coercive-control/.

Liz Snell, Women's Legal Service NSW