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J G STARKE QC

Sixth Editor of the Australian Law Journal

With this issue of the *Australian Law Journal*, Mr J G Starke QC lays down the responsibility of editor. He assumed the task of presiding over Australia's premier law journal in 1974. He followed in a distinguished line: Mr (later Sir Bernard) Sugerman (1927-46)¹, Mr (later Sir Nigel) Bowen (1946-61),² Mr (later Justice) R Else-Mitchell (1946-58),³ Mr (later Justice) Russell Fox (1958-67)⁴ and Mr (later Justice) Philip Jeffrey (1968-73).⁵ Only Sir Bernard Sugerman's term of 19 years eclipsed Joe Starke's 17 years as editor.

It is a sign of changing times that the incoming editor will be a judge (Justice Peter Young of the New South Wales Supreme Court). The earlier editors served whilst senior counsel and resigned on their appointment to the Bench or other high office. The distinction of the successive editors of the *ALJ* will be obvious to any Australian lawyer, to whom the names of all of them are familiar. Joe Starke would doubtless still be controlling the fortunes of the *Journal* but for an illness which struck him on the eve of his 80th birthday, requiring him to relinquish the post on

medical advice. His career in the law has been truly remarkable. It is appropriate to record it both as an expression of appreciation for the long years of attention to the affairs of this *Journal* and also because it provides an encouragement, and example, to younger readers of what a training in the law can lead to.

Born in Perth, Western Australia in 1911, Joe Starke was educated at the famous Perth Modern School and at the University of Western Australia where he took the BA and LLB degrees, the latter with First Class Honours in 1932. He was the Rhodes Scholar for Western Australia in that year. He graduated BCL from the University of Oxford in 1934, also with First Class Honours, winning the coveted Vinerian Scholarship for that year. During 1933, at Oxford, he was a pupil of Felix Frankfurter just before the latter's appointment to the United States Supreme Court. It was at Oxford also that an interest in the then nascent field of international law took hold of his imagination. It led him to postgraduate studies in the University of Geneva, Switzerland. Under the shadow of Calvin's sturdy cathedral, he joined the Graduate Institute of International Studies and was taught there by Hans Kelsen in 1935.

Completing his studies, Starke joined the Secretariat of the League of Nations in Geneva and worked there from 1935 to 1940. His first appointment was to the opium trafficking section, addressing the international drug problem which was then of much smaller dimension than today. Thereafter, he shifted to the legal section where he spent three years. In Geneva he came to know many of the large figures in international organisations at the time, including Professor

(later Sir Wilfred) Jenks, the executive head of the International Labour Organisation (ILO), an agency which survived the failure of the League and the advent of the United Nations in 1945.

On his return to London after the outbreak of War, Starke read for the Bar in the chambers of Harry Leon, better known as Henry Cecil: the novelist and dramatist who wrote about law and lawyers. During this period he appeared as junior counsel to Mr Tom Denning KC (later Lord Denning MR). According to the biographer of Denning, Iris Freeman, it is difficult now to find in London anyone who appeared with Denning when he was practising at the Bar. The famous later Master of the Rolls and Law Lord was appointed to the King's Bench as long ago as 1944.

Joe Starke soon returned to Australia. Mr Bernard Sugerman KC, then editor of the *Australian Law Journal*, directed him to Sir John Peden, Dean of the Sydney Law School. As chance would have it, Professor Charteris had died and Peden offered Starke a temporary lectureship in international law on the strength of his Oxford degree and his experience in the League of Nations Secretariat and various of its committees. He was admitted to the Bar of New South Wales in 1940. He combined his practice at the Bar with part-time teaching of international law until 1961 when he was appointed to silk. In that year also he accepted appointment to the Institute of Advanced Studies in Canberra, holding the post until 1976. In that position he inaugurated the *Australian Yearbook of International Law* in 1965. In the following year he became a consultant at the International Court of Justice in the Hague, in the

Netherlands, a post which was renewed in the two succeeding years. Thereafter, he was appointed Visiting Professor in a number of distinguished international places of learning, including the University of Paris, the Max-Planck Institute, Heidelberg, and the International Institute of Humanitarian Law, San Remo, Italy.

The diversity of Starke's interest in the law is most clearly shown in the multitude of notes which he wrote during, and even before, his appointment as editor of this *Journal*. The first which I could find was an expanded commentary on the decision of the Privy Council in *Attorney General for Canada v Attorney General for Ontario & Ors.*⁶ The case, interestingly enough, followed the adoption by the Parliament of Canada of three draft Conventions of the ILO. The question was whether the Federal Canadian statutes, or any of their provisions, were *ultra vires* the Parliament of Canada. It was a problem which was to emerge on numerous occasions in various guises in the Australian Federation. It engaged contemporaneous commentary in the journal of the Melbourne Law School.⁷ It has continued to present thorny problems for the Australian Federation and upon its judicial views have been sharply divided.⁸

Many of Starke's early contributions to the *ALJ* concerned aspects of the law of evidence.⁹ But he also had a long-term intellectual commitment to the law of contract. Witness the number of early essays in the *Journal*¹⁰ and his joint editorship, up to the fifth Australian edition in 1988, of Cheshire and Fifoot's *Law of Contract*. Another quite different field which captured his

attention was psychiatry. It led to at least one essay in these pages¹¹ and to a book in 1973 on *The Validity of Psycho-Analysis*.

Nevertheless, Starke's greatest love, unsurprisingly, was for international law. He was amongst the first lawyers to see the radical transformation caused this century by technology and the phenomenon of global war. He saw their impact at first-hand in the League of Nations. His opportunity there enlivened an interest which occasioned many early contributions to this *Journal*.¹² It prompted him to write a number of texts including the well-known *Studies in International Law*, 1965, now in its tenth edition (1989).

The foregoing chronicle touches but lightly on the diversity of the interests of Joe Starke. For a full understanding, one has only to glance through the pages of this *Journal* over the past seventeen years. During his time, the *Journal's* format changed radically. Early warning signals to horrify the traditionalists came with the abandonment of the dull grey paper covers, so unpleasant to touch and their substitution by a glossy and more informative cover, with colour coding no less, to mark the succeeding years. Then, in 1988, a still more radical change was adopted.¹³ The old-fashioned masthead gave-way to a more modern layout with columns, footnotes and marginal comments. The oppressive dense text became more readable with more white paper and a multitude of shorter essays under attractive themes such as *Now and Then*, *At the Office* and *Devil's Advocate*. Although earlier editions had included a photographic insert from time to time, the advance

of printing technology had permitted good photographic reproduction on the printed page. Without going overboard, Joe Starke (one suspects reluctantly) permitted the occasional photograph to illustrate the text.¹⁴ All of this was a sign of the conscious effort of the editor and the publisher to maintain the status of the *ALJ* as the foremost law journal of Australia, having a general utility to the whole country.

A willingness to change and to innovate belied the sometimes gruff and orthodox exterior which Starke presented to the world. His honesty and frankness were legendary amongst contributors. Essays would be rejected summarily as "unsuitable". One plain-speaking book review contributed by one of my judicial brethren was rejected bluntly as "obviously defamatory". The heavy obligations of the editor, at least as perceived by Mr Starke, can be gauged by the burden he accepted to review all major essays, to write the *Current Topics* column which opened each part, to contribute numerous thoughtful commentaries on recent cases, many from England, some unreported from all jurisdictions of Australia, to offer book reviews, *Personalia* items and, from time to time, leading articles. As evidence of his unquenched fascination with international law, he usually wrote the *International Legal Notes*: providing Australian lawyers with a good overview of this fast-developing field.

Like anyone as energetic and opinionated as he is, Starke had his critics. The orthodox complained about the change in the presentation of the *Journal*. Some practitioners criticised the attention given to the end of

his reign to English cases which, since *Cook v Cook*¹⁵ represent merely one of the many sources of comparative law available to the Australian lawyer. Others bemoaned the headnotes which, remarkably enough, for a time, he also contributed to the *Australian Law Journal Reports*. And there were always complaints about the "academic" nature of some of his interests and his attention to international law about which he was uncompromising.

The idea of a national journal for Australian lawyers was promoted by Mr (later Sir John) Latham and explained in the foreword in the very first issue.¹⁶ Latham, ever the intellectual, urged the value to a high standard of legislative and judicial work of independent competent criticism of that work by members of the legal profession. He repeated that exposition of the mission of this *Journal* when, as Chief Justice of Australia, he contributed a note to the opening of the eleventh volume in 1937 - the first volume to which J G Starke contributed his writing.¹⁷ Latham repeated his view that informed non-partisan criticism of legislative and judicial work was essential to the healthy functioning of the legal system. In his view, the articles on legal subjects appearing in every issue were a vital stimulus to shaping informed opinions about the law. By implication, he cautioned against turning the *Journal* over exclusively to notes on topics having immediate professional relevance. Latham had his eye fixed firmly on the long haul of the law. In a world of pedestrian concerns and in a country notorious for its provincialism, this vision was remarkable.

J G Starke has been true to this mission. He has

appreciated the rôle of the law in an advanced Federal society such as Australia, in fashioning the ideas about the way we are governed and the way we deal with each other in public and private affairs. As any octogenarian, he has witnessed the most remarkable changes in his lifetime. But he has not been a mere witness. Through his activities and in his writings, he has influenced the content of the law and the notion which nearly two decades of Australian lawyers have had concerning what the law is about.

It may be hoped that Joe Starke will continue to contribute to legal writing in the future, including in this *Journal*. Alternatively, he may be encouraged to write a book on the League of Nations. Since the end of the Cold War, many of the challenges now faced by the United Nations seem eerily reminiscent of those before the League in the 1920s. He says he plans to go back to his original interest in mathematical and theoretical physics and light theory. Some of the best lawyers of this century (eg Lord Reid) have been mathematicians. Joe Starke always wanted to pursue these interests. His father wanted him to do law. By happy chance, his father's will prevailed.

If you wish to see Joe Starke's monuments you will find them in the seventeen volumes of this *Journal* which precede this part and in the minds of lawyers throughout this continent and beyond which were profoundly influenced by the editorial work of this most unusual and highly talented lawyer.

FOOTNOTES

1. See note (1976) 50 ALJ 613.
2. See notes (1977) 51 ALJ 50; (1990) 64 ALJ 606.
3. See notes (1979) 53 ALJ 52; (1980) 54 ALJ 243f; (1984) 58 ALJ 475f; (1986) 60 ALJ 420 and (1989) 64 ALJ 799.
4. See notes (1967) 41 ALJ 182 (1977) 51 ALJ 106; (1981) 55 ALJ 170 (1982) 56 ALJ 204 and (1989) 64 ALJ 299.
5. (1979) 53 ALJ 107.
6. [1937] AC 326 (PC). See note (1937) 11 ALJ 45, presumably written from Geneva.
7. See T D Phillips, "External Affairs and the Commonwealth" (1936) 1 *Res Judicatae* 200.
8. See eg *The Commonwealth v Tasmania: The Tasmanian Dam Case* (1983) 158 CLR 1; (1983) 57 ALJR 450. See also P H Lane, "The Federal Parliament's External Affairs Power: The Tasmanian Dam Case" (1983) 57 ALJ 554; Mr Starke's comment is found in (1983) 57 ALR 545.
9. See eg (1941) 15 ALJ 231; (1945) 19 ALJ 262.
10. See eg (1944) 14 ALJ 207; (1947) 21 ALJ 382, 422, 455; (1949) 22 ALJ 67.
11. See (1942) 16 ALJ 227.
12. See (1937) 11 ALJ 45, 87.
13. See (1988) 62 ALJ 1.
14. See eg *ibid*, 102.
15. (1986) 162 CLR 376, 390; 61 ALJR 25, 30f.
16. See (1927) 1 ALJ 1.
17. (1937) 11 ALJ 1.