



17 February 2010

ETHICAL ENQUIRIES – ETHICS COUNSELLORS

From time-to-time, and usually with some urgency, BAQ members require counsel and advice on ethical issues which confront them in practice.

At present, when such issues arise, the member may:

- ask the Bar Council for a ruling.
- contact the President or Vice-President for advice.
- undertake informal enquiry of a senior barrister, usually a fellow chamber member.

Each of these is a useful course but harbours difficulty. A ruling must await a forthcoming Council meeting with consequent delay. The President and Vice-President are members of the Bar Council which may later have to consider the same issue at Council level. The informal enquiry will always be helpful but does not afford much protection of the enquiring member.

Most issues can be resolved by simple enquiry and response from a senior practitioner. Some issues are more complex, whether they involve prospective or past conduct.

With such matters in mind, with the assistance of the Vice-President, I have put together a group of senior barristers to assist members with ethical enquiries. On your behalf I thank each of them for accepting such position.

The “ethics counsellors” are:

Lister Harrison QC
Danny Gore QC
Robert Gotterson QC
Walter Sofronoff QC SG
Michael Byrne QC
Don Fraser QC

David North S.C.
John Baulch S.C.
Michael Stewart S.C.
Peter Callaghan S.C.
Michael Kent S.C.
Jim Henry S.C.

For future reference these names and this notice will be posted on the BAQ website.

The list will change from time-to-time to share the burden among the senior bar.

Members having ethical enquiries ought contact one of the above senior barristers.

Necessarily there are limitations upon the assistance a counsellor may afford:

- he or she is not acting as legal advisor.
- an enquiring member ought ensure (and if necessary be in a position later to prove) candour in issue fact disclosure to the counsellor.
- a counsellor may advise a member to seek legal advice, particularly if the relevant conduct has occurred and is likely to attract the attention of the Legal Services Commission. This advice ought be followed.
- according with a counsellor's advice will not excuse or condone the conduct in question but such accord would be a salient consideration should there be a subsequent LSC complaint.
- it is preferable to access a counsellor before, not following, questionable ethical conduct by the member.
- a member barrister must bear ultimate responsibility for his or her conduct. There is always the option of seeking a Bar Council ruling or legal advice.

Richard Douglas S.C.
President