



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## Q&A with Stuart Hetherington

*Consultant, Colin Biggers & Paisley*

### **Do You Recall What First Attracted You to a Career in Law and Was There Any Previous Family History in the Profession?**

I read law at Cambridge University, did Bar Finals and was called to the Bar in England and Wales in July 1973. I then did one year of pupillage before emigrating to Australia in 1974 – the same year that the Maritime Law Association (MLA) of Australia was founded. I started my law degree without being committed to necessarily becoming a lawyer and thinking that my options were still open as to what career path I might take afterwards, as a law degree seemed to me to offer all sorts of possibilities for a career path outside legal practice as well.

My father had also been called to the Bar at Grays Inn and had had an interesting career as an in-house lawyer at Shell International which took the family to Venezuela for five years before returning to the United Kingdom.

By the time I had to choose what to read at university he had been involved in the fallout from the 1967 Torrey Canyon oil spill off the Scilly Isles, and had drafted the TOVALOP Agreement (Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution) with his opposite number at BP oil company. That was to be a turning point in his career. A few years later he was seconded from Shell to be managing director of TOVALOP and also the International Tanker Owners Indemnity Association (ITIA) which was managed by Thomas R Miller and which provided oil spill clean-up cover for tanker owners. I also worked at TOVALOP for a few weeks before I emigrated and got to understand something about the shipping industry and P&I Clubs in particular.

When I arrived in Australia in late 1974 I applied for jobs at law firms and was offered a position at Allen, Allen and Hemsley. While I was there I got to know people at Ebsworth and Ebsworth and applied for a job there 18 months later. On joining I became the honorary secretary of the NSW Branch of the MLA, the role which the solicitor I was replacing had filled. My career path was then essentially determined for me as I obtained considerable enjoyment in doing the shipping, insurance and commercial work, being involved with the MLA, and the practice of international law.



## ***Are There One or Two Particularly Interesting Cases Over the Years of Your Involvement You Would Like to Briefly Reference – Focusing on Your Personal Outtakes From Those?***

I was very fortunate in the two mentors which I had at Ebsworth and Ebsworth – Norman Lyall and Tony Scotford. They gave the young solicitors great autonomy and plenty of assistance and instruction where needed. As a result it was not long before I was conducting cases of my own.

***Hello from Stuart Hetherington (Vid)***

In the early 1980s I ran three cases in the NSW Supreme Court – *BHP v Hapag Lloyd*; *Sidney Cooke P/L v Hapag Lloyd* and *Mercedes Benz Ltd v Wilhemsen Lines* – which all upheld the carriers' entitlement to enforce the extended Himalaya clause (Bill of Lading Clause 4(2) from the European Trade Combined Transport Bill of Lading) pursuant to which the shipper undertook to sue only the carrier, and thus was precluded from suing third parties. None of those decisions were ever appealed.

It is hard to go beyond the case of *Candlewood Navigation Corporation Ltd v Mitsui OSK Lines Ltd* which went to the Privy Council in 1985 on the issue of damages for pure economic loss, in which the Australian High Court had diverted from the traditional position and the Privy Council disapproved of that.

Also during the 1980s I was involved in a number of marine insurance cases in which fishing boats had sunk in Queensland waters. The hull underwriter was based in Sydney and I retained Frank Turner of Thynne + Macartney to represent the insurers. Scuttling was established and breaches of warranties in the policies were also established in some cases – unseaworthiness and other warranties.

### ***Outtakes***

I was taught at law school to commence answers to the hypothetical scenarios that were part of the exams with the words "The question(s) for consideration are ...". That was an important lesson to learn. It required a focus to be given to identifying the legal issues that arose and which were to be discussed. That then led to the necessity to identify the essential facts contained in the given data that were going to be relevant to those issues, as well as the law that applied to the scenario. I sought to shape legal advices in the same way. Identify the issues, discuss the facts and then the law that applies to them.

In practice I also learned that it was vital to obtain all possible evidence that was available at the earliest possible time, before crew disappeared and while the trail of events remained front of mind of the witnesses. Good marine surveyors and investigators were essential in this respect. Very early on my senior partner at Ebsworth and Ebsworth advised that it was necessary to ensure I briefed the best counsel available if I was taking cases to court. I took that lesson to heart and briefed Simon Sheller QC (subsequently a Judge of the NSW Court of Appeal) in both the Privy Council and the first two of the Clause 4(2) cases and many other cases, and Murray Gleeson QC (subsequently Chief Justice of both the NSW and the High Court of Australia) in the third Clause 4(2) case and many others.

In all of those cases I saw at first hand how important it was to identify the essential principles of law and evidence needed to support the facts and law involved, and whether the case was a likely winner as early on as possible. Having persuaded the client as to the good prospects for the case, it was then necessary to obtain all relevant documents from the client, marshal all of the material (engaging experts to supplement any matters not covered by a marine surveyor's report) in the gathering of the necessary evidence and the preparation of clear instructions in the observations provided to counsel and well-organised counsels' briefs. All were essential steps if success was to be achieved.

## ***If Not Covered Above, What Events/Highlights During Your Career Are You Most Proud of and/or Have Provided the Most Satisfaction?***

I think my involvement in leadership roles, organising conferences and meetings for both MLAANZ and Comité Maritime International (CMI) have given me the greatest satisfaction in my career as well as the many friendships made with colleagues that I have worked with in Australia and New Zealand and around the world since I became involved with CMI in 1990. We often refer to the “CMI family” and it is a very apt description.

## ***Have There Been One or Two Colleagues in Particular Over the Years Who Have Held Particular Place in Heart?***

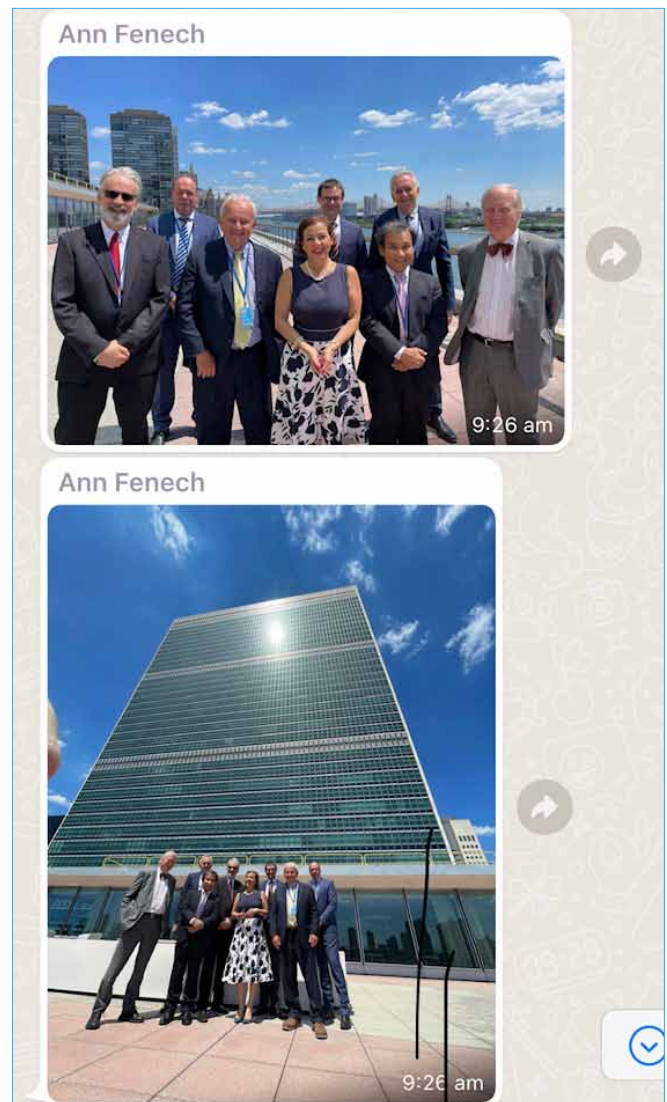
As mentioned, when I first joined Ebsworth and Ebsworth the two partners I worked with were Norman Lyall and Tony Scotford, who had been instrumental in NSW in setting up the MLA of Australia. The latter was the most formidable maritime lawyer that I ever worked with. In addition, many of the barristers I have worked with or against remain good friends.

Outside my own colleagues and within Australia, two people I have admired and whose friendships I have cherished are Ron Salter and the late Richard Cooper. Both of whom I looked up to when I first attended MLAANZ meetings and who subsequently became great friends. In New Zealand I have remained in contact with Tom Broadmore for whom I have always had great admiration.

Internationally, Patrick Griggs (former senior partner at Ince and Co and president of CMI) and Stuart Beare (former senior partner of Richards Butler) are outstanding human beings and have become great friends. In addition the CMI president who preceded me, Karl Gombrii, and the two secretary generals of CMI that I worked with, being the late Nigel Frawley and John Hare, will always be in my memory – hard workers and a joy to be with.

## ***Have There Been Any Difficult Moments in Your Career That You Might Care to Also Reference?***

Making the decision to leave Ebsworth and Ebsworth was the most difficult decision I ever had to make career wise.



*Smartphone screenshots of a June 2022 group photo at the United Nations headquarters in New York, featuring: (front row) Alex von Ziegler, Frank Nolan, Ann Fenech, Tomotaka Fujita and Stuart Hetherington; (back row) Jan-Erik Potschke, Peter Laurijssen and John O'Connor*

## Brief Bio

Stuart Hetherington is a consultant in the Colin Biggers & Paisley insurance group with over 45 years' experience in insurance and commercial litigation with particular expertise in maritime and logistics law.

His clients have included some of Australia's largest marine insurers as well as London and international market insurers. He began his career acting for most of the International Group of P&I Clubs and major participants in the Australian marine insurance market managing liability claims and hull and cargo claims. He instructed overseas lawyers in cases conducted in the Privy Council in the United Kingdom and in the United States Supreme Court. He also instructed interstate lawyers in the Supreme Courts of Queensland, Victoria, South Australia and Western Australia and instructed counsel in leading cases in the High Court and Federal Court of Australia and Supreme Court of New South Wales.

Mr Hetherington has instructed senior counsel in a recent significant High Court constitutional law case and an appeal to the Court of Criminal Appeal in NSW and the High Court.

He has advised clients in the transport and logistics industry on a range of admiralty, cargo liability, hull and liability claims areas. He has also advised clients on legislative changes, policy and documentary drafting and interpretation. He is the author of *Annotated Admiralty Law*.

Mr Hetherington was president of the Comité Maritime International (CMI) from 2012 to 2018 and has chaired CMI International Working Groups on Places of Refuge for Ships in Distress, and a Review of the Salvage Convention, and is also currently serving on the International Working Group in relation to the Judicial Sale of Ships and is chairing the Standing Committee for the Ratification of the Rotterdam Rules Convention, as well as the Working Group on Negotiable Cargo Documents. In doing so, he has liaised with the Australian Government, the International Maritime Organisation (IMO), the United Nations Commission on International Trade Law (UNCITRAL) and other international organisations.

Mr Hetherington regularly writes articles and book reviews for legal and maritime journals. Most notably he has written recently on the need for Australia to Ratify the Rotterdam Rules for Shipping Australia and he has written book reviews for Shipping Australia on recent works about Captains Cook and Phillip and Alexander Hamilton. His major critique of the United Kingdom Supreme Court's controversial decision on the burden of proof in cargo litigation in the *Volcafe* case was published in the *Journal of International Maritime Law*.

He has been consistently recognised for his expertise as per being named:

- The Best Lawyers in Australia 2013 to 2025 – Shipping and Maritime Law, Transportation Law and Insurance Law
- The Best Lawyers in Australia 2016 to 2025 – Alternative Dispute Resolution and Litigation
- The Best Lawyers in Australia 2019 to 2025 – Trade Law
- Best Lawyers 2014 and 2015 – Lawyer of the Year, Shipping and Maritime Law
- Best Lawyers 2021 – Lawyer of the Year, Transportation Law
- Best Lawyers 2023 – Lawyer of the Year, Trade Law
- Doyle's Guide 2017 and 2020 – Preeminent Leading Admiralty, Shipping & Maritime Lawyer in Australia
- Doyle's Guide 2023 to 2024 – Leading Admiralty, Shipping & Maritime Lawyer in Australia
- Chambers and Partners 2013 to 2023 – Leading Lawyer in Shipping
- Chambers and Partners 2023 – Senior Statesperson
- Who's Who Legal 2015 to 2019 – Global Leader and National Leader in Transport – Shipping Law

Mr Hetherington was called to the Bar of England and Wales on 19 July 1973 and admitted as a Barrister in NSW in 1975. He was admitted to practice in the Supreme Courts of NSW and Victoria in 1978, as well as the Federal Court and the High Court of Australia.

### ***Do You Have Any Particular Personal Mantras or Processes You Swear by?***

Not really but, following on from the previous question, I have learnt that there is merit in the adage “when one door closes another one opens”.

### ***Any Advice for Up-and-Coming Maritime Lawyers?***

Get involved with MLAANZ and CMI, embrace change and accept challenges.

### ***What Have You Personally Most Enjoyed/Valued About Membership to MLAANZ?***

The many friendships I have made as referred to above (and many other individuals I have not mentioned), which then extended on into the CMI world.

### ***Would You Also Like to Include a Brief Mention of Your Family and Your Non-Work Activities?***

I am very proud of my three children and the six grandchildren that the eldest two have produced. My two eldest children were dragged around MLAANZ conferences when they were very small in the late 1970s and 1980s, and my youngest travelled the world to many CMI meetings, so they have all benefitted from my good fortune in being a regular attendee at MLAANZ and CMI events.

### ***What Are Your Plans Now and for the Future?***

To live longer! I retired from the Colin Biggers & Paisley partnership at the end of 2023 but have remained as a consultant. I am chairing a Standing Committee of the CMI to seek to regain momentum in having the Rotterdam Rules Convention ratified around the world, and an International Working Group of CMI to monitor the work being done at the United Nations Commission on International Trade Law (UNCITRAL) on Negotiable Cargo Documents, in respect of non-maritime carriage of goods. I enjoy reading judgments on admiralty and maritime legal topics and writing case notes on them. Outside of work I enjoy international travel, playing golf, tending my garden, engaging in the sporting activities of my six grandchildren, reading Trollope (and lots else besides), attending concerts, opera, cinema and theatre and volunteering in charity work.

### ***Anything Else to Add?***

If I have one regret or gripe it relates to the complete lack of leadership (and interest) in the political and bureaucratic world in Australia to engage in reform in the maritime legal area. This is astounding given the importance of maritime trade to this country and the funds that are disbursed out of Canberra for bureaucrats to attend meetings at the International Maritime Organization (IMO), UNCITRAL, the Hague Conference (HCCH), the International Institute for the Unification of Private Law (UNIDROIT) and others where legal matters relating to shipping regularly come up but the assistance of maritime lawyers who practise in the area in Australia (and I suspect New Zealand also?) are rarely consulted or advised of developments – and, once a treaty has been agreed, the bureaucracy seemingly loses interest and closes the file.

On rare occasions (wreck removal) seminars were organised and papers presented long after the convention was finalised by the bureaucracy in Canberra but activity since then seems to have dissipated.

What particularly mystifies me when I have attended these meetings my colleagues at CMI are often present as part of their country’s delegation. For example, when the Judicial Sales Convention was being negotiated, CMI members (practitioners and academics) were on their country’s delegations at UNCITRAL meetings from China, the United States, Switzerland, Japan, Canada, Germany and possibly others I’ve omitted.

I ask rhetorically – why does not Australia (or New Zealand) reach out to MLAANZ? It is a cheap resource and one that actually knows something about the subject matter! I have yet to meet a bureaucrat in NSW or Canberra (excluding marine surveyors) who have ever worked in the maritime area.

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