

Senior Counsel in the Court of Appeal

On 9 November 1995 the new Senior Counsel took their bows before the Court of Appeal (Kirby P, Clarke and Powell JJA). After congratulating them individually, Kirby P made some general observations:

Having welcomed the newly appointed Senior Counsel, it remains only to say a few words of general approbation. It is an important day for you. It is an important day for the Court. It is also a great day for your families and clerks and other employees. The Court congratulates them all on their contributions to this day.

Two weeks ago I was in Bangalore, India. I was there for the triennial meeting of the International Commission of Jurists. I walked along what used to be called South Parade and is now named Mahatma Gandhi Road - named after the leader of Indian independence, himself at one time a barrister. Bangalore was a garrison town. At one end of the parade is a statue of Queen Victoria which looks remarkably like the statue that is in Queen's Square, Sydney. At the other end is Holy Trinity Church which is an absolute replica of St James' Church, Sydney. Our city was also once a garrison town, with a garrison church. It began as a place of law and order.

As I knelt to say my prayers I looked up and saw a small brass plaque that had "The Hon'ble the Resident". This was the place that The Resident, representing the Crown in Mysore, came to worship. I reflected upon the debts which Australia and India have to that period of our shared constitutional tradition.

Later in the week I was taken to the High Court of Karnataka State. That is a State in which Bangalore now prospers. The Court was built by the British. The old Royal insignias have all been removed. Yet apart from that, and apart from the absence of wigs, everything else was the same. Absolutely the same. True, they have two judges sitting in appeals. But the conversation that took place between the Bar and the Judges was exactly the same as it is in this courtroom. It is one of the abiding legacies of the period of the British Government. We should not disdain or forget our debt to that period.

The Senior Counsel in India are called Senior Advocates. They wear the same gown as you do, that is silk, with a square back. They have a special relationship with the Court. They are trusted by the Court. They are, in the words of Chief Justice Brennan, the ministers of justice who, with the Court, fashion the legal principles under which we all live.

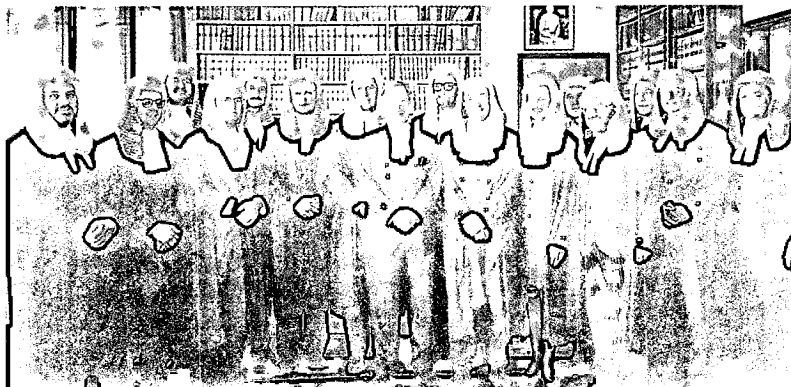
When I go to Cambodia for the United Nations I see a contrast in the legal system of that land from the system which India, Australia and other countries of the Commonwealth enjoy. The biggest contrast is seen here in this courtroom today. We choose the leaders of our profession, and in most cases, the Judges, from the senior members of the private Bar. They are not promoted in a public or governmental service. Those chosen have worked their lives in the private sector. Most have never worked as government employees until that moment when they receive a judicial commission. Even then they are not government servants. They are independent in law and in their attitudes. That is tremendously important. It is significant for the whole life of a barrister and ultimately, if they accept appointment, in life as a judge. It means that those chosen have never looked at government and never looked at bureaucrats as being part of their team. They have looked at them as something separate and different. It is a truly remarkable system of law which we inherited. It is institutionally designed, and regularly replenished, to uphold an independence of mind and of action.

This is a major justification of our system of administering justice. We should never forget that. We should seek to explain and to justify its merits to fellow citizens who may not know its history and may not appreciate its purpose.

It now really falls on you, as the successors to 800 years of people who have gone before, including in ceremonies such as

this, to carry on the high tradition. There is no doubt that, in your careers as leading counsel, you will see great changes. In this Court, changes have been proposed by Clarke JA who is in charge of our list. Something will have to give. We cannot maintain things quite as they are. The pressure on the few Judges is so great, the pressure on time is so pressing, the number of judges is limited. Therefore, in your professional careers as Senior Counsel, you will have an important role to play in, at the one time, maintaining the high standards which we have secured from the past and, at the same time, making sure that we are not part of the problem of unacceptable delay and cost.

I hope, as you go forth into your practice as Senior Counsel, that you will bear in mind the added responsibility which you have now assumed as leaders of the legal profession. You are leaders in society and not just in the courtroom. We send you out with a great deal of applause, with good wishes, with full hearts for your success and with great expectations. □



(l to r) Stephen Rothman SC, Leslie Katz SC, Cliff Hoeben SC, Alan Robertson SC, Ian Harrison SC, Tony Meagher SC, Dick Edmonds SC, Mr Justice Kirby, David Higgs SC, Robert Keleman SC, Gay Murrell SC, Michael Pembroke SC, John Agius SC, Tim Hoyles SC, David Nock SC, Michael Cranitch SC.