

David Rofe QC

by M A Pembroke SC



On 10 February 2006, David Rofe QC celebrated fifty years since his admission to the New South Wales Bar, aged 24 years.

From the outset, his circumstances were propitious for a future career at the Bar. His father, Wyndham, was a well-known solicitor.

His mother, Florence, was a member of the Shand family. School days at Scots College were followed by degrees in arts and law at the University of Sydney and the obligatory year abroad – in the United Kingdom, France, Spain and Morocco. In 1974 he took silk in an eminent batch which included Gleeson, Meagher, McLelland and O’Keefe.

He has been seen by some as a scion of the establishment. But nothing is ever quite that simple. It is true that he has lived all his life in Woollahra and served as its mayor and deputy mayor. It is also true that he has never been known to display affection or enthusiasm for modernist tendencies and leftist politics. But in the conduct of his practice as an advocate, and in the pursuit of occasional personal crusades, David Rofe has invariably acted with a fierce sense of independence and determination.

His independence of mind, always admirable, was however sometimes quixotic. It is illustrated by the case that probably represents the apogee of his professional career – *Sankey v Whitlam* although it should not necessarily be assumed that his career has yet concluded. The theory of that case was typically visionary. It was alleged that in December 1974 a criminal conspiracy occurred between the prime minister (Mr E G. Whitlam), the treasurer (Dr Jim Cairns), the attorney-general (Mr Lionel Murphy), and the minister for minerals & energy

(Mr F X Connor). The unlawful purpose was said to be the borrowing by the Commonwealth of Australia from overseas sources (Mr Tirath Khemlani was the go between) of the modest sum (by current standards) of up to \$4 million. It was said that the borrowing was contrary to the Financial Agreement Act and the Constitution and was achieved by misleading the governor-general as to its temporary nature. The informations were laid under the Justices Act on 20 November 1975. It was a bad month for the then former prime minister whose commission had been withdrawn nine days earlier.

Ultimately, the prosecution faltered and the conspiracy was never proved. Malcolm McLelland, who was Rofe’s colleague on the 12th Floor of Wentworth Chambers, appeared for E G Whitlam. As well as McLelland, Rofe’s contemporaries on the 12th Floor of Wentworth Chambers from that era included many talented and respected figures. There were four presidents of the Court of Appeal: Jacobs, Moffit, Kirby and Mahoney, as well as Holmes, Needham, Powell, Rogers, Finlay, Allen, Ireland, Levine and Rolfe. There was also the sage and gentlemanly Forbes Officer QC, the late W W Caldwell QC and, until they found larger rooms elsewhere, a young Hope and a younger Handley.

Very few of us could contemplate, let alone have the stamina to achieve, fifty years in practice as a barrister. David Rofe has now passed a magnificent milestone and there is no sign of any change of direction. Save for an act of God, there will probably never be one. He deserves our recognition and our congratulations.

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