

New Silks on the Block

Remarks by the Hon Sir Gerard Brennan AC, KBE
on the occasion of the new Silks' welcome in Canberra on 6 February 1996.

The Court congratulates those who have appeared today wearing their silk gowns for the first time in this courtroom.

Silk is a self-sought honour the application for which was restrained, in earlier times, by the two counsel and two-thirds rules of practice. Those rules have gone and the restraint has been largely removed. In some jurisdictions the issue of a Queen's Commission has been discontinued and some Bars have chosen to identify particular barristers as Senior Counsel.

The status of silk has altered but it does not necessarily follow that the grant of silk has lost its significance or that the institution of silk in any jurisdiction is without value.

The status of silk now depends upon the standards which are adopted by the authority in whom the discretion to grant silk depends. If silk is granted only to those counsel who have been put extensively to the test and have proved themselves to be men and women of integrity, committed to high ethical standards and possessed of superior skills as a legal advocate, silk will be seen as a recognition of high merit by counsel's own profession.

So long as the standards adopted by the respective granting authorities are maintained at a high level, there will be an incentive for recognition that can assist in the maintenance of professional standards to the benefit of the efficient conduct of litigation. And the community of silks will be marked by a camaraderie born of mutual respect. Then silk can be regarded as a warranty of competence to clients seeking counsel's services in complex or difficult matters.

The value of the institution of silk depends upon the way in which silks use the status and authority that is incidental to the honour. If, in their daily work, silks are seen to be men and women of integrity, committed to high ethical standards and manifesting superior skills as legal advocates, they acquire authority and influence. With that comes the responsibility of leadership - chiefly by example.

The status of silk cannot be justified as a merely personal accolade. It can be justified only on the footing that the silk will set and maintain high standards of professional work and conduct.

That is the kind of leadership that has moulded the ethos of the Bar. It is the kind of leadership without which the Bar degenerates into a service industry regulated by no more than market forces. There would be no place for the "cab rank" rule by which an independent profession sees to it that its services are available to the unpopular or the undeserving litigant and that the most demanding cases get their day in court.

It is appropriate to acknowledge here the assistance that this Court has received from senior counsel and their juniors, some of whom are present in Court today, who have appeared without fee and argued some of the more difficult appeals on behalf of impecunious parties.

The efficient conduct of litigation requires a mutual trust between Bench and Bar.

Without that trust, the Bench must start from scratch the work that the Bar should - and usually does - perform of identifying the issues, adducing relevant evidence and referring to relevant authority.

Without that trust, the adversary system would collapse and the public purse would have to meet the cost of a multitude of investigatory judges. Conversely, without the trust that the Bar reposes in the Bench, the curial system would be a waste of time and resources.

The mutual trust is preserved by competent, strong and fearless advocacy in open court.

The qualities expected of a silk enable counsel to be independent of inappropriate influences - and that produces the detachment essential to sound advice and powerful advocacy. It leaves the advocate fully committed to the same object as the object to which the court is committed. That object is the administration of justice according to law; not decision-making that will satisfy popular opinion. The court is not assisted, nor is a client's cause advanced, by courtroom advocacy that is a prelude to an *ex parte* appeal to a public audience. Nor does the court need the advocate's public comments on the court's acceptance or rejection of the advocate's submissions. Justice is not advanced by door-stop interviews. The competent advocate is not a public relations consultant for a client's cause, much less a touter of his or her own abilities.

The task that lies ahead of the new silk is not only successfully to build a silk's practice: it is to set and maintain the standards of a profession that has the important function of assisting the courts in the administration of justice according to law. To perform this function, the Bar is invested with the privilege of appearing for clients and the Bar is protected in ways that have been thought to be conducive to the public good. It is for the leaders of the Bar to ensure that the privilege is earned and the public good is served. You are entering on a more challenging and a more rewarding part of your career. The Court wishes you well and also extends its good wishes - perhaps tinged with a certain sympathy - to your spouses and families. □