

Opening of Maurice Byers Chambers

An address by The Hon. Sir Anthony Mason AC KBE, 4 August 2000 on the opening of new chambers at Level 60 MLC Centre.

Only two months ago I attended the opening of a set of chambers in Hong Kong. There, as in mainland China, great deference is extended to the feng shui man. A feng shui man is invariably consulted in China as to the siting of a building and its internal arrangements, particularly the location of windows, with a view to fending off unfavourable vibes and spirits. In the case of the Hong Kong chambers, the feng shui man had advised that the architect's location of a window be altered or at least blocked out. He predicted that, if it were not altered, counsels' fees would be spirited through the window into the hands of competitors below.

Whether he was referring to another set of chambers below, or to the solicitors who are claiming equal rights of advocacy in Hong Kong with members of the Bar, was not clear. Such was the authority and influence of the feng shui man that his advice was taken.

It would be too much to expect that those who have set up these chambers to have consulted the local equivalent of a *feng shui* man. But they have done the next best thing by naming the chambers after Sir Maurice Byers. The magic of his name should ward off evil spirits and other satanic emanations like solicitors-general for the State of Victoria, for whom Sir Maurice had a healthy and undisguised contempt.

It is very appropriate that a set of chambers be named after a distinguished member of the Bar, rather than a judge and it is all the more appropriate when that member of the Bar commanded the deep affection and great respect which was always accorded to Maurice Byers.



The Hon. Sir Anthony Mason AC KBE

Maurice's qualities were legion. On this occasion, I shall endeavour to capture some of them in the hope that those who inhabit these chambers in the years to come will exhibit similar qualities.

Maurice began his career as a smart point-taker, briefed by astute but not leading solicitors, on behalf of clients who, if not shady, did not always appear to advantage in full sunlight. In those days, he was given, indeed compelled, to argue technical, sometimes specious points, but he managed to do so in a manner that conveyed that he was engaged in a virtuous enterprise that attracted the goodwill, rather than the asperity, of the judge.

Whenever I argued such a point, I excited a tidal wave of judicial scorn.

Maurice ended his career as a Queen's Counsel who appeared for government and large corporations. He was then, more often than not, called upon to present constructive rather than destructive arguments. Constructive argument is a greater test of ability than destructive argument. Some of Australia's outstanding counsel were noted for their destructive ability. They were not quite so impressive when it came to constructive ability.

That was not so of Maurice. He was a counsel for all seasons, able to handle a wide range of cases and a miscellany of judges of varying dispositions and competence. And, like Sir Garfield Barwick, he never forgot those who supported him in his early days.

Maurice was at all times generous in the advice and assistance that he gave to other members of the Bar. One of the Bar's finest traditions is that each and every

member is ready to assist others, to pass on the fruits of his or her experience to others. Maurice was an exemplar of this tradition. More than once I was a beneficiary of his generosity in this respect. In the first case in which I appeared in the High Court as solicitor-general after my appointment, he appeared with me. In fact he had been briefed to lead me. The reversal of roles made no difference whatsoever to him except that he gave me invaluable support and advice for which I always remained indebted to him.

He had an abiding sense of justice. He was of course a great servant and respecter of the law. But he believed that the law was moving in the wrong direction if it failed to take account of the justice of the case. His sharp criticism of the High Court's decision in *Kruger's Case*, the case concerning the stolen children, which he described as 'an extraordinary, indeed a shocking decision', conveys some sense of the purpose of law as he saw it and how it is to be applied. If you have not read what he wrote, you should do so. It was published in volume 8 of the *Public Law Review* at page 224.

Maurice epitomised the conversational style of advocacy. He invited the court to engage in a dialogue about the issues in the case. This style has its advantages and disadvantages. It does not make for eloquence and Maurice's arguments were intricate rather than clear. There is some truth in what Justice McHugh once said of him, namely that his great strength as an advocate was that you never quite knew what his argument was. So if you were his opponent, it was difficult to devise an effective reply.

Maurice was not without artifice. He knew that all judges are vain, some more so than others, and that sometimes it is good advocacy to let the judge think that he has discovered the answer himself. At other times, Maurice would appreciate that clarification of argument might spell the end of his client's case. Not that he would resort to obfuscation but a measure of complexity would not go amiss and it would give the judge something to work out. After all, that is what the judge was paid to do.

I do not suggest that Maurice failed in his duty to the court but he strongly believed in his duty to the client. There is a tension between the two and they cannot be reconciled quite as easily or as glibly as the House of Lords sought to do in their recent decision on the advocate's immunity from negligence.

Maurice was extremely literate and a lovable and lively companion, all being qualities we like to see in a barrister. So with his spirit hovering over the inmates of these chambers, I am sure that the members will enjoy themselves. Hopefully they will also enjoy

success and prosperity.

I conclude with two stories about the Law Lords. There is a strange convention that Law Lords include in their title the name of a place with which they are closely associated. So if I were raised to the peerage I might call myself Lord Mason of Mosman, just as in the 1970s Lord Justice Salmon, when elevated to the peerage, chose to call himself Lord Salmon of Sandwich. The alternative is to omit the place name. In that event I would call myself *The* Lord Mason. When Lord Justice Jenkins was elevated to the peerage in the 1960s, he elected to call himself Lord Jenkins of No. 9 Elmsley Gardens or similar address), that being an undistinguished apartment in an obscure suburb of London where he lived. He was prevailed upon to abandon this egalitarian enterprise.

When I first sat with Sir Robin Cooke, the President of the New Zealand Court of Appeal, in the Supreme Court of Fiji, he signed the Court judgments as Robin Cooke. After his elevation to the House of Lords, his signature took the form of 'Cooke of Thorndon', 'Thorndon', being a small suburb in Wellington, New Zealand. When I asked Sir Gerard Brennan whether I should sign a judgment as 'Mason of Mosman', Sir Gerard advised against that course. 'People will think you are a small suburban store or a second hand car dealer' he said.

In passing, I should mention that many years ago when the High Court were sitting in Perth the management of the Sheraton Hotel, labouring under the mistaken belief that I was Lord Mason, put my wife and myself into a luxurious suite and treated us in regal style. Unfortunately Lionel Murphy, who was on the Court at the time, informed the hotel that I was masquerading as a peer with the result that we were relegated to being commoners - but we still retained the suite.

Viscount Dunedin was a Scottish judge who became a member of the House of Lords and the Privy Council in the first quarter of this century. According to legend, he is chiefly remembered for not only sleeping but also snoring during the course of argument. As one Lord Chancellor is reputed to have said, it was thought discourteous to awaken him. That extreme course was resorted to only when his snoring became so loud that it awakened other Law Lords from their slumber.

I shall conclude lest by speaking instead of snoring I send you into a slumber. I now declare these chambers open.



Sir Anthony Mason and Lady Patricia Byers

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