

Pacific circuit

By Stephen J. Stanton

The ‘cab rank rule’ at the Bar is not only the hallmark of our profession but also a tradition, which in this age of specialisation seems far removed from the practices that some of us follow. In my case I would like to share with you experiences which began in January 1983. As was my custom then, I enjoyed working through vacation in January, in order to keep the wolf away from the door. I’ve relented in recent times.

I recall being briefed by David Ross, who indicated to me that an attorney from Fiji required counsel to settle pleadings quickly in a case that was coming on in Suva. I expressed some disbelief as to whether I would be competent to handle such a matter. Nevertheless, being assured that it would be within the parameters of my professional expertise and skill, as understood by my solicitor, I took the brief and met the attorney, thereby beginning an adventure which has taken me from Fiji to Tonga, to Western Samoa, Kiribati and Tuvalu. In addition, I have also had the opportunity to appear before the Judicial Committee of the Privy Council and to be counsel for various entities in arbitrations conducted in Washington and New York, arising out of matters in the South Pacific.

The benefit of sharing this with our readers and fellow members is to indicate the prospects for portability and mobility of our services, not only within the confines of our own jurisdiction in New South Wales and Australia, but also as professionals in the neighbouring regions. It has shown to me that there are opportunities to participate in the administration of justice with our neighbours in the South Pacific and elsewhere.

What I have learned from practising in Fiji since 1983, a jurisdiction that regrettably has undergone very troubled developments in recent times, has been both sobering and satisfying. I was involved in the formalisation after the second coup, to ensure that law and order prevailed as quickly as was possible.

It was an experience which I regard as unique for any counsel: to take a regime from *de facto* to *de jure* recognition. The opportunity to participate in such a development has both advantages and disadvantages of which I am painfully well aware. Nevertheless, the courage and independence that is required of counsel and which is inculcated in the spirit of an independent Bar is, I believe, a factor which enables delivery of service to the client.

It is in no small measure that when we take our talents overseas we are enriched by the experience and the ability to assist the administration of justice in countries such as Fiji, Tonga and Western Samoa. They will benefit from an exchange between our practitioners and themselves. Equally, it must be said that in these jurisdictions I have mentioned there are many able and talented practitioners who contribute to the exchange and dialogue.

I would like to share with our readers some humorous if not ‘*bête noir*’ episodes that I have enjoyed in my travels in the South Pacific.

I recall being in Suva on 14 May 1987, when I was on my feet attempting to address an expatriate judge whose name I shall withhold for reasons that will become self-evident. Whilst attempting to assist his Lordship as to why the administration that was proposed for a company to which we were opposed should not go ahead, the associate literally charged into the courtroom and handed the judge a note. Upon reading the note the judge looked in utter disbelief and uttered inaudibly, but able to be lip read, ‘Oh F*!’ I immediately asked his Lordship was the reference to the Australian case which I was relying on so utterly inappropriate that it offended him in terms of its citation. He replied with words to the effect that there had been a military coup and he was not minded to proceed. It was serious, yet funny on reflection, to observe how news of the coup broke in the courtroom that day. The scene outside was amazing, seeing soldiers dressed in balaclavas, bearing arms and people milling around like ants in a nest which had been disturbed abruptly.

On another occasion I was briefed to appear in the Privy Council on a special leave application concerning a very notable murder trial in Fiji - *DPP v Amos*. I recall the settling of the appeal in *forma pauperis* which is invariably the format for most of the criminal matters which go to the Privy Council. In ringing the Registry, usually late at night, to ensure the application was being processed, I became quite friendly over the phone with the registrar's secretary. She explained to me the registrar's mother had my surname as her maiden name. She informed me the registrar was very keen to make my acquaintance to see if I was from a possible lost branch of his family. I could not contain my delight and thought fondly of my

Lebanese ancestry, and how the registrar would react when I accepted the invitation to have morning tea with him.

Upon my arrival in London I went to Downing Street and introduced myself to the registrar's secretary. The inevitable soon became apparent as she was immediately taken back by my appearance. She fumbled papers and then indicated to the registrar that I was in attendance. He could not contain his delight, bounding out of his room to welcome me. Upon seeing me, it was reminiscent of Spencer Tracey greeting Sidney Poitier in *Guess Who's Coming to Dinner*. After I assured him that I was from the Beirut side of the family, and that he had nothing to fear as to any infiltration of the gene pool, especially in Cheshire, he welcomed me. We enjoyed a cup of tea and a very long chat.

As often is the case when one goes to another jurisdiction there is a perception that as a foreigner one must try to adapt to the local custom, wearing local dress and taking up habits or practices in which the locals participate. There was a case in which the behaviour of my opponent, who was from Auckland, demonstrates the premise.

In the course of addressing the court I had given written submissions which were replete with reference to Australian authority at both High Court and New South Wales Court of Appeal level, with some New Zealand authorities, as many of the local lawyers are trained in New Zealand universities and New Zealand judges do sit in the Court of Appeal from time to time.

My learned friend's consternation at having to accommodate numerous Australian authorities that I had referred to, resulted in his constant interjection that, surely there were other cases, and in particular from New Zealand, that were appropriate that could be relied upon. I waited my time. Upon adjourning for morning tea the colleague from Auckland enquired of me with words to the effect: 'Where do we get a cuppa?'

I said, 'I don't drink tea here, I drink *kava* as is the custom at morning tea time. The locals go to an area underneath the court building where *kava* is drunk and the usual contribution sought is one dollar per customer.' I then said, 'Have you ever drunk *kava* before?'

He said, 'No, but I'll give anything a go once.'

I then said he was most welcome to join our colleagues and we proceeded to the *kava* bowl. He said to me, as he looked at the liquid in the *tanoa*, 'What does it taste like?'

I said, 'Well, it's much like any substance that looks a little off, once it's past your teeth and down

your throat, what have you got to worry about?'

He then said, 'Yes of course' and proceeded to participate, following the custom of clapping, took the bowl (*bilo*) and drank heartily from it, dropping the bowl into the *tanoa* and proceeding to clap three times, following the example of the others. Having seen him drink, I then took my opportunity and leaned over and made a deliberate attempt to share what to all and sundry appeared to be a very confidential aside to him. I said to him, 'Why did you drink from the bowl putting your lips around it?' and he said 'Why, what's the problem?'

I said to him, 'Can't you see, they've all got advanced stages of gingivitis in their gums!' He then took on a facial pallor that was very much like the *kava* in the *tanoa*. Suitably subdued, he and I returned to court and needless to say he lost a lot of his Kiwi clout for the remainder of the matter. He drank glass after glass of water and at lunch time I asked him whether he would be partaking of more *kava*, to which he replied, 'No, I need to get a large bottle of Listerine as soon as possible'.

Such amusing and, at times, vivid episodes that one can recount from these jurisdictions give great satisfaction. I know that in the South Pacific there is a real opportunity for our association to participate in advocacy training and education and to assist in the administration of justice on a

regional basis.

In concluding, I would like to dedicate this short article to my late friend Vijaya Parmanandam and thank my colleagues in Fiji, Tonga and Samoa for the benefit of many happy and at times demanding professional encounters. I know from other Australian counsel who have gone to Fiji that even though conditions can sometimes be sparse and resources thin, the ability to rise to the occasion always brings out the best in any counsel worthy of their mettle. Sharing these observations with you I trust puts in perspective the reality that the profession has only boundaries which we impose. If we are prepared to market effectively and adapt our skills to the changing times we will flourish as a profession and more particularly will serve society in accordance with our motto.

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