From the President

In my first chance to communicate through the Bar's official journal, I want to say how proud I am to be your President. You have had many more clever but none, I believe, who loved the Bar more.

Most will know that I had a serious health scare in the last quarter of 1991.

I now feel very strong and entirely well. This is indeed fortunate for the task you have given me is daunting. You will know from recent press reports that some of our modes of practice are under attack. There has been discussion between the Law Society Executive and ourselves about the matters and a meeting with representatives of the city firms concerned to complain, arranged and confirmed.

Sadly, someone chose to leak the contents of a discussion paper to the press. This John Marsden assures me (and I accept) was done without Law Society knowledge or sanction.

In my 30 years plus of practice the Bar has never criticised the solicitors publicly. All problems (and many have occurred over that time) have been ironed out by careful, unemotional and civilised discussion and agreement. We would like to keep it that way, for the benefit of the public and the whole profession.

The most important quality a barrister provides to the public is his or her independence. It is that independence which the corporate bar must be willing to fight for, in the public interest. A barrister has independence because :

- Barristers have no partners whose interests have to be balanced with those of a particular client;
- Barristers have no shareholders to answer to;
- Barristers have duties to the Courts, the Law and each client individually and no-one and nothing else other than their own integrity;
- Barristers are briefed by solicitors who alone have the ongoing relationship with the client: they cannot "steal" the client;
- Barristers can and do advise vigorously and without having to have any regard to whether the client will like the advice or not;
- Barristers are independent of the Government of the day, the bureaucracy, the multinational, the mega company and the *mega firm;*
- Barristers are bound to accept a brief for a client no mater how unpopular, unfashionable or "politically incorrect" his cause may be.

This independence is precious and in the public interest. Solicitors ought and in the main *do* value it, rightly. In the late seventies *every* suburban and country solicitor signed a petition urging preservation of the Bar in its present form.

The agenda of the large City Firm pushing the "practices" barrow is, I suggest not one which would have the support of the smaller city, suburban and country firms nor even I suspect, the support of a majority of the litigious partners in the larger CBD firms.

Let me say something about the five matters referred to in the discussion paper.

1. **Two Counsel**

The two counsel rule has long since been abolished. Notwithstanding that the view prevails at the Bar that most, perhaps almost all cases justifying the retention of Queen's Counsel require two counsel. This is efficient because it permits a junior to do the more routine parts of the essential forensic work whilst freeing the lead counsel to concentrate on the "big picture". For example, in every important case a transcript index which groups references by issues and adds references to other documents and statements must be done by someone constantly present at the trial and with appropriate forensic experience. If the Silk does it the rate for it is inappropriate, contrary to the client's interest. But it must be done.

As well, it is in the public interest that there be maintained a pool of hard/important case specialists "certified" as such. We call them Queen's Counsel. If they perform the routine tasks or appear in unimportant cases the currency is debased. Furthermore, appearing alone in such cases they take work appropriate to senior juniors who are testing themselves and are being tested by solicitors, to see if they are ready to take silk.

Moreover, all current Silks took silk knowing that for the future they would be holding themselves out as specialists in the kind of case that in general require two counsel. They did that knowing it would restrict *them,* but in the public interest.

In addition, Queen's Counsel have an important educational role which they willingly, freely and effectively perform, for the benefit of the bar and the public. That ought to be preserved.

All this is not to deny that there are cases where a Queen's Counsel alone is appropriate. A single issue but important criminal trial might be one. Appearing for the prime minister in a traffic charge another - his office requires it, not the charge. Argument of an important construction point might be a third. Again if senior counsel has successfully argued in the Court of Appeal he might well not require a junior to appear for the respondent in the special leave application.

These examples demonstrate why the public interest precludes a rule. The current practice is however very much in the public interest.

2. **The rule against conferring in solicitors offices**

The rule of course is not absolute as a reading of it demonstrates. It is a general rule which gives way to compactors full of documents or a need to see many people at once. But it

is important: it demonstrates the independence of the barrister to the barrister, to the client and to the solicitor. No firm can imply 'This is "our" barrister.' Other consultant professionals have their own rooms and so it should be.

3. **Cancellation Fees**

Fees should be negotiated between the solicitor and the barrister at the time of briefing. No cancellation fee is payable unless it is agreed to by the solicitor.

But barristers sell time. If a block of time is required which may not be used then a cancellation fee can be and often is negotiated. In my experience such fees are at a compromise level and significantly less than would have been earned if the time was used. Such fees remove any incentive to "keep the case going" which is clearly in the public interest.

But sometimes such fees turn out to be unfair in practice even if in accordance with a prior arrangement. We must always be sensitive and flexible about fees. Solicitors have to deal with the lay client and we must assist where there are problems.

All fees must be negotiable and must be appropriate to the needs of the client for advice and appearance.

A formula for every case is very hard to achieve.

4. **Appearances with solicitors**

Barristers appear with barristers if two counsel are required. We do not appear with solicitors for all the independence reasons outlined.

We have always supported the right of solicitors to audience, a fundamental departure from the English practice and we continue to support it. They can appear with other solicitors if they wish. We do not dispute that solicitors have important legal skills and that some have advocacy skills. But we are on about independence. With respect to them, the in-house amalgam advocates in the states where they exist lack it.

We firmly believe that our rule is appropriate, in the public interest.

5. **Wigs and Gowns**

We robe to emphasise to the client, to ourselves and to the world that we are first and foremost officers of the court. Our duty to the client although of enormous importance is in the end secondary to that.

In the context of the cab-rank rule this is important. It also emphasises that the individual barrister is "being" a barrister, not an individual in court, that a job is being done, not something personal.

Robes also tell the world we *are* those independent creatures, barristers. That of course is why the complaint is made: The mega firm wants to blur the distinction.

Included in this editorial is a photo taken at my English admission in 1988, with (inter alia) the Attorney General for the United Kingdom, Sir Patrick Mayhew.

I was in London for discussions with the leaders of the Bar of England and Wales about the Green Paper. I was much fortified by the vehemence with which they and he were prepared to fight for the independence of the barrister. All Australian barristers must be equally prepared. ❑

Adrian Solomons - The Bar's Good Friend

Sir Adrian was born on 9/06/1922. He was, for 30 years, senior partner in the firm Everingham Solomons & Co. of Tamworth. He was the litigation partner of that busy regional firm and used the bar extensively.

We knew him as "Sol". He died on 20/12/1992. I first met him whilst he was studying law with the Sydney University Regiment Group after World War II. He had served in the 2nd AIF with distinction for 6 years, enlisting on turning 18 in 1940. He graduated BA.LLB in record time and joined Col Everingham's firm in 1949.

He was a Country Party/National Party stalwart, serving as Federal President from 1974-1979. He was a member of the Legislative Council in NSW for more than 20 years.

Although he briefed the bar extensively, his loyalty to it, its independence, and to the Rule of Law were demonstrated most obviously as a politician. When the Askin Government sought to abolish juries and the right to silence in criminal cases, it was his work in committees that stopped the rot.

When Frank Walker set about an attempt to fuse the profession, Solomons not only defended the Bar in committees and in the House, but also persuaded every single suburban and country solicitor to sign a petition pleading for the retention of the independent Bar. Although from a National it carried the Labor caucus.

But weeks before his death he was lobbying independents about civil juries committal proceedings and the like.

He was always available when needed.

His local community service was a byword. He was a music buff, a traveller, a reader. He was a loyal husband, a devoted father and a great friend. May he rest easy. ❑

John Coombs