Dear Sir

Only yesterday I was forcefully reminded of my old and dear departed friend, Horace Armitage Millar.

Those of a certain age will recall him as 'Horry', an eccentric and mercurial 'compo' barrister whose command of the English language, sacred and profane, was legendary.

Among his attributes was a startling disregard for the probities of the profession. In his dress and in his manner he many times fell below the standards set by his contemporaries (the late Antony Larkins springs to mind here).

The story of Horry, walking down Phillip Street in wig and gown eating a pie, is part of the shared memories of the bar.

Horry was brought before the president of the day to explain his actions and to be reprimanded.

Now Horry told me, when I asked him whether the event in fact occurred, and 'Was it true that he was eating a pie?' he replied, 'Master, it wasn't a pie it was me…' (the last word is left out because it may offend).

I formed the opinion he was not contrite.

What reminded me of all this, was that on Tuesday, 5 April at 1.05pm whilst I was in company of junior counsel, I observed a senior counsel, fully robed, carrying papers and hungrily devouring a large salad roll, all the while striding rapidly across Queens Square in a westerly direction.

Junior counsel said to me, 'Isn't that [name deleted] SC?' I said something in reply including the word 'yes'. Before I could reach for my iPhone and photograph the offender, he had decamped the scene. I then said something to junior counsel and he said something back to me.

Enquiries are continuing. In the meantime, does your editorial team have any suggestions as to what is to be done?

Jim Poulos QC

Editor responds

Ancient, sensitive barristers such as yourself should avoid Queens Square. P.S. I didn't think you could work your iPhone.

Dear Sir

The Bar News Editorial Committee, and yourself as editor, are to be congratulated on the production of a very fine journal. But it must be costly to produce and to distribute. Have you considered issuing it as an electronic version?

I am also a member of the Queensland Bar Association which recently ceased to produce its regular printed journal in favour of an electronic version which it calls: *Hearsay*. A copy of that journal can be viewed on www.hearsay.org.au

I am sure that nothing would be lost in the issue of *Bar News* by electronic means and it would, I expect, save the association a worthwhile sum of money in printing and distribution costs.

I also find that when *Bar News* arrives I tend to put it aside until I can find time to read it whereas when *Hearsay* comes up on my screen I usually look at it there and then. So perhaps there is another advantage to electronic distribution.

John de Meyrick

Editor responds

***Bar News* is produced in an electronic version, and is available on the Bar Association web site. Some of the cost is defrayed through advertising and, much to my satisfaction, members retain copies of past issues as a valuable, historical and practical resource. My own impression is that with the volume of material received electronically, so much that is valuable is caught up with the ephemera and lost, or, alternatively, glanced at superficially on screen and not absorbed.**

In short, the appropriate medium to use depends on the nature of the material being published.

Dear Sir

Only a lawyer of the stature, experience and acumen of the Hon Roger Gyles AO QC could write the comprehensive review of the Senior Counsel Protocol published in the *Bar News* Winter 2010 edition. Duncan Graham's interesting analysis under the title 'Stop pretending' in the *Bar News* Summer 2010–2011 edition says the letters 'SC' tell a consumer nothing about the qualification, training, or experience of the particular barrister, that the majority of solicitors probably have no idea how senior counsel are selected and that there should be a further review of the process to consider, *inter alia*, whether the system of silk selection should be abolished.

The appointment of senior counsel should not be abolished or abandoned as it is the best steppingstone to judicial office. It is probably too late and perhaps naïve to suggest:

- reducing the number of applicants;
- simplifying the selection process;
- mollifying disgruntled applicants; and
- reintroducing the compulsory two-counsel rule for silks for all matters in which silk are briefed, save for opinion work (junior counsel's fee to be not less than one half of the leader's fee).

Ultimately, it is the financial risk involved in taking silk and what the 'consumer' or marketplace comprising shrewd and experienced solicitors are prepared to advise their clients to pay for the specialist and unique services that the senior bar offers, that is probably the best criterion for ensuring that only the most suited candidates apply for and are appointed silk.

I took silk in 1973 in the Republic of South Africa when the two-counsel rule applied. After being appointed queens counsel in New South Wales in 1988, my practice of requesting to be briefed with a junior in all work other than opinion work was invariably acceded to. My lay clients benefited from this practice. Matters requiring the briefing of silk justify the advantage of paying for two specialised minds that the separation of bar and side bar offers.

Roy Allaway QC

Dear Sir

In his opinion piece, 'Stop pretending' (*Bar News*, Summer 2010–11), Duncan Graham submits a compelling case as to why the annual selection of senior counsel, 'although revamped and much improved, remains fundamentally unfair'.

He has not, however, identified the critical factor as to why this is so.

Put simply, whilst the process purports to identify counsel of outstanding merit it is, in truth, an exercise in providing a quota of higher fee-earning services for those litigants (being mainly business and government) who are prepared to pay such fees in the belief that they are receiving the best advocacy services that money can buy. It is simple market doctrine. It has little to do with the discernment of superior merit between counsel of equivalent competence and experience.

If this were not so then it defies belief that highly experienced candidates for silk who are not worthy of selection one year miraculously become outstanding the next.

Clearly, those who are selected are well worthy of recognition. But on merit alone, so too are many more who are just as competent, just as experienced and just as worthy. The unspoken problem is that to appoint more silk than is needed to serve and maintain the demand would dilute the status of senior counsel and over-supply the market, especially in some areas of practice where the need is not as high as others.

Unfortunately it is a problem the bar has created for itself. No other profession ranks its members so as to cater directly to the market in this way. No other profession selectively limits and withholds its recognition of merit for pecuniary reasons.

The status of senior counsel should be its own reward and not for the greater financial reward it may bring. If it has purpose at all it should recognise demonstrable competence and experience based on objective criteria devoid of opinion and patronage, and without regard to market considerations.

This is still not the case. Not only is selection limited by quota, the perpetuation of taking into account information and opinion about candidates that is not disclosed nor able to be addressed by them is fundamentally wrong. In any other profession it would be condemned at Equity.

By having a distinction between senior and junior counsel, notwithstanding that after long and meritorious service at the bar a barrister may still be regarded as 'junior', what it says to litigants and the public is: if you don't have silk then you don't have the best. That just stigmatises all other equally competent and experienced barristers as being of some lower quality.

It would be to the immense credit of the bar if it were to either abandon the annual selection of senior counsel altogether (and the discriminatory concept of an 'Inner Bar' is long overdue for posterity), or to extend the status to all worthy candidates irrespective of any commercial reasons for maintaining a quota system; *or* to at least 'stop pretending' (as Graham puts it) and openly acknowledge that non-selection is not to infer that those candidates are less worthy, but that sensible commercial (if otherwise indefensible) considerations limit the number of senior counsel to market requirements and that candidates, with regard to their respective areas of practice, should regard their applications accordingly.

John de Meyrick

Note: The author submitted to Roger Gyles QC a comprehensive review of the protocol in which a number of observations and suggestions were put forward, some of which Mr Gyles seems to have addressed in his report. A copy of that submission is available upon request to: jdem@unwired.com.au

Dear Sir

I have just read Duncan Graham's interesting piece 'Stop pretending' (*Bar News* Summer 2010–2011) providing the benefit of his thoughts on a suitable selection protocol for the appointment of silk.

The purpose of my letter is not to comment on his personal view, but rather, without breaching in any way, shape or form Selection Committee confidentiality, simply to assure your readers from my personal knowledge as a member of the 2010 committee that no applicant was rejected 'on the basis that an unidentified third person has told a member of the Senior Counsel Selection Committee that the applicant is not skillful, diligent, independent, disinterested or honest enough' (sic).

I am sure that no reasonably informed observer with some knowledge of the Senior Counsel Selection Protocol would regard that hypothetical outcome as in any way justified by the current selection system.

Anyone with a passing acquaintance with the bar and barristers would regard the prospect of five senior practitioners from disparate areas of practice, not to mention an eminent Australian like the Hon Keith Mason QC, going along with the rejection of an application on the basis of the say so of an unidentified third person as farfetched or fanciful.

SG Campbell SC