

## **Barristers and Judges: Mutual Labour**

### **The Hon Justice Robert Beech-Jones\***

Of the 31 judges of the Supreme Court of Queensland, 30 were barristers immediately prior to their appointment and the other judge was a highly experienced litigation partner from a large commercial law firm.<sup>1</sup> To travel south for a brief moment, there are 53 permanent judges of the Supreme Court of New South Wales. Of those 53, 49 were barristers immediately before their appointment. Of the other four, immediately prior to their appointment three of them were experienced litigation partners in large commercial law firms<sup>2</sup> and the other was the Crown Solicitor.<sup>3</sup> Of course, unlike the United Kingdom, barristers these days usually first enter legal practice as a solicitor. Most of those barristers appointed to the New South Wales and Queensland Supreme Courts first practised as solicitors.<sup>4</sup>

This brief foray into arithmetic bears out a proposition that will come as no surprise to you; almost all appointments to the superior courts in Australia come from the ranks of barristers and experienced litigation solicitors. There have been excellent judicial appointments from outside those two cohorts, but they make up a very small portion of judicial appointments. My hypothesis, which is a fancy word for a guess, is that the same is true with appointments to the District and County Courts and also to the Magistrate and Local Courts. What I suspect changes with the judges appointed to those courts compared to the superior courts is the relative percentage mix between barristers and experienced litigation solicitors and the type of litigation that the respective judges undertook when they practised.

From time to time there is public discussion about the process of how judges are appointed and why they are appointed including whether the diversity of judicial appointments properly reflects the society we live in. Sometimes, but less often, there

---

\* Justice of the High Court of Australia. This is a revised version of a Keynote speech delivered to the Queensland Bar Association Annual Conference, 6 March 2026, held at the W Brisbane Hotel.

<sup>1</sup> Williams J.

<sup>2</sup> Ward P, Ball JA and Black J.

<sup>3</sup> Armstrong J.

<sup>4</sup> But not McHugh JA.

are mutterings over the alleged alignment or lack of it between the supposed or imputed views of the judge that is appointed and the government that appoints them.

I will come back to say something briefly about diversity but otherwise I am not here to challenge or defend how judges have been appointed. My point is that, without professing any inside knowledge, I do not expect that the approach of most governments of all persuasions of making appointments to the trial courts at the District, Supreme and Federal Court level from the pool of senior barristers and experienced litigation solicitors will change much and that reflects both a political and economic imperative. The attraction to both heads of jurisdiction and to governments of appointing judges from those two cohorts is that such an approach carries with it a relatively high degree of confidence that the appointee is sufficiently experienced to run the types of hearings or trials within the relevant court's jurisdiction from the first day of their appointment. Sometimes that confidence is misplaced but that is relatively uncommon.

If that approach were not taken then someone, presumably the Courts, funded by governments, would have to establish and run lengthy trial management courses for new judicial appointees. There are very fine judicial education programs in this country but they start from the premise that the judge is qualified and capable of running a hearing or a trial. I do not detect any appetite on the part of governments to spend the tens of millions of dollars required to establish and run the type of training college that would be necessary to prepare those inexperienced in litigation in how to run a hearing or trial. Nor do I detect any government willingness to absorb the very substantial delay between the time of appointment of a judge and that judge embarking on the full complement of their duties that such training would entail.

So where do we get to? Well the bottom line is that most of us judges used to be you and, scary as it may seem, many of you will become us. We are each other's distant mirror.

So what do we have in common and where do we differ? What follows is a few brief insights into what we as barristers and judges have in common and what we don't. These comments are mostly directed to newer barristers because understanding judges in all our rich emotional depth is part of your job. To the extent I am referring to

the understandings and beliefs of judges please do not take this as being drawn from anything other than a sample of one. As we say to juries, what you make of what follows is a matter for you and you alone.

## **The Similarities**

### *1) Judges and barristers insist on answers to questions*

Barristers and judges just love to ask questions. We have a particularly charming way of asking them that our families just adore. But how do we feel about answering questions?

When I used to sit in the New South Wales Court of Criminal Appeal, it was not unusual for some of the experienced jury advocates to appear in that Court and they would often be thrown when questions from the Bench interrupted their submissions. Juries don't talk back.<sup>5</sup> Judges do. You have all had the experience of judges asking questions, sometimes persistently. A judge asking difficult questions in a respectful but persistent tone is not bullying. It's their job.

So to give you an insight into a judge's perspective when their questions to counsel are not answered, I just ask you to recall how you feel when you are cross-examining that witness who is dancing around your question. Bring to your mind that increasing sense of irritation, that I found used to centre around a spot on the back of my neck, as the witness would not answer. You would repeat the question, the witness would say they answered the question but they hadn't answered it and they are still not answering it. Your opponent would feign a look to the effect that you are being obtuse because of course the witness has answered the question; but you're not being obtuse, they haven't answered it and regrettably the judge won't intervene. Well for a judge the counsel who dodges their questions can be like that; it becomes annoying and hard to move on.

It's not unknown for questions to be asked during argument in the High Court. We generally have the benefit of excellent counsel and they do answer questions from the Bench. They have various techniques regarding when and how to answer while

---

<sup>5</sup> In modern times at least. See, eg, Langbein, *The Origins of Adversary Criminal Trial* (2010) at 64.

keeping their argument on track. One is to answer and then add a brief supplement; another is to answer the question but foreshadow that they will return to expand their answer or place it in context as they develop the balance of their argument; another is to explicitly say they will answer but they need to elaborate on their argument first, and then they do return to answer the question; and sometimes, usually with factual inquires, they say they don't know the answer but promise they will find out, which they do during a break and then they answer. Whichever way they do it, the judicial hunger is usually satiated.

## 2) Judges and barristers can spot a fudge

In his Hamlyn Lecture entitled *The Essence of Advocacy*, Lord David Pannick KC identified his fourth principle of advocacy as "Address the Weaknesses in Your Argument".<sup>6</sup>

Most of us have been present in that hearing, either as counsel or judge, with our pen poised ready to hear the response to what seems like a pretty good point but then - whoosh - we must have missed it. It must seem easy for some counsel to pass over that weak spot in their case. I suspect that it may have been easier when civil cases were mostly jury trials. As I said, juries do not talk back. But as Lord Pannick KC stated, judges will lose trust in you and your case if you seek to avoid or evade a weakness.<sup>7</sup>

As I will develop shortly, what weighs on a judge's mind especially as a hearing moves towards its conclusion is: how am I going to write this? By final submissions most judges will be trying to fix upon a structure of the judgment in their head. For my part I did not and do not want to write a judgment on a critical part of the case that said that a party was silent on that issue. I still must address it but for the litigants reading the judgment that silence can be deafening.

None of this means you have to call your weak spot, my "weak spot". I have heard counsel start by saying "now I have to acknowledge a real weakness in my case but ...". When you hear that you can disregard everything after "but".

---

<sup>6</sup> Lord Pannick KC, *Advocacy*, 1st ed (2023) at 29.

<sup>7</sup> Lord Pannick KC, *Advocacy*, 1st ed (2023) at 29.

On the other hand, there is the effervescent, sometimes delusional, optimism of counsel who says, "yes, my client was found standing over the body with a bloodied knife in his hand but we rely on that; that's good for us. If my client was really the killer he would have run. Only an innocent man would stay there in shock having picked up the knife and covered himself in the victim's DNA". Well make of that what you will but at least you cannot say that what looks like an overwhelming prosecution case was left untouched.

### *3) We were all young once*

Believe it or not, judges were young once, well we were young barristers once. We all had those hard (or more accurately, terrible) cases that young barristers are briefed in. The cases in which the solicitor seemed to have checked out of preparing a while back but the clients seem like really nice, decent people who look at you with such hope in their eyes. We experienced that knot in the stomach as you walk into Court to face off against a more experienced opponent who can smell blood in the water and you ready yourself to appear in front of what looks to be an unforgiving judge.

You can probably tell from what I have just said that the memories of those cases can linger. But with hindsight I can tell you that, while it may have felt that way for you, that's not necessarily how it was. Chances are, that apparently smug opponent was actually remembering when they had the brief you had and was worrying that they will fumble what should be an unlosable case. Maybe the judge was not unforgiving. The post-trial discussion in the metaphorical judicial locker room is usually not "how could anyone take on that type of case", but "what a good job a newbie counsel did with a tough brief". Appreciating and treating with respect the nervous young barrister in the difficult case that will most likely be lost is one of the ways judges do justice to the litigant sitting behind that barrister.

As for nerves, standing in the middle of Courtroom Number One in Canberra, facing seven persistent questioners, could be described as nerve-racking and sometimes it is clear that counsel is nervous. For my part I find those nerves humanise counsel and reminds me that at this point their job is a lot harder than mine. It's normal to be

nervous. Don't be nervous about being nervous. If anything be nervous about not being nervous; it may be a sign that you are not taking the case seriously enough.

#### *4) For judges and barristers reputation matters*

Many years ago, two judges sat next to each other at a Bar dinner. One judge was known for being fair to counsel but was very slow in delivering judgments. The other judge was known for cutting counsel off but was very quick in producing high quality reasons. The barrister speaking at the dinner pointed to both and said it was nice to see Judge X, who conducted hearings without judgments, sitting next to Judge Y, who delivered judgments without hearings. Apparently Judge X laughed a lot. Judge Y was not so happy.

I told that story last year at a judges' conference in Victoria on the topic of judgment writing.<sup>8</sup> I did not name the judges or identify the jurisdiction. It is fair to say my speeches are not exactly front-page news. Still, somehow those who were at the function more than 40 years ago got wind of it and one of them wrote to fill me in on the details. I can reveal they were Queensland judges and the function was a floor dinner for a group of Queensland barristers that invited former members who had joined the Bench.

You see Judge X and Judge Y cared about their reputations. Most judges are no different and how much we care is often in inverse proportion to how often we get honest feedback. There is not much upside for a barrister to tell a judge that they are slow, indecisive or come across as flippant or pompous. If you are tempted to tell me that after this speech please don't bother. However, from their time at the Bar, judges know that after a settling-in period, judgments about them will be formed, that a consensus will be reached, and when it has it will be very hard to change.

And it's the same for a barrister - perhaps worse. As barristers we all suffered at the hands of an opponent who pushed that ethical envelope too far. But karma is a thing and if you're on the receiving end it's likely others are as well. In the medium to long-term a barrister who has a reputation for being even a bit tricky or a bit untrustworthy

---

<sup>8</sup> 'Judgment Writing: Get Smart' (Speech, Judicial College of Victoria program: The Art of Judgment Writing, 20 February 2025) at 13.

or for sometimes pushing ethical boundaries will pay the price. Barristers, especially young barristers, make mistakes. They can recover and should be allowed to recover because, as I said, older barristers and even judges were young once. But at some point the die is cast. For a barrister, the entry of a final verdict of poor reputation can be fatal.

*5) Judges and barristers value team loyalty (or at least they should)*

I sat on an appeal where early in his submissions Senior Counsel was asked by the Bench to have some inquiry made. When we came back to the topic he apologised that it had not been done, took personal responsibility for the failure to make the inquiry and sought time to address it in writing. It was the sort of inquiry that his Junior Counsel should have been able to make. My colleagues and I suspected that the Junior was not well but without mentioning that the Silk took responsibility for the omission. For my part I rated his conduct. He was not throwing anyone under the bus to preserve his own standing. His actions were a contrast to some Silks who present a case by dropping a hint that everyone else on their team is hopeless, but they are doing their best to overcome their obvious failings. I have a problem with that approach. Judges seek to do justice between the litigants, not justice between the lawyers. Litigants have enough stress without finger-pointing in their own ranks happening in Court. If finger-pointing is really necessary then there is usually time for it later. When he was Chief Justice of New South Wales, Murray Gleeson AC observed that "[d]amage control is part of the art of advocacy".<sup>9</sup> It's a rare case that is prepared perfectly. You are briefed to iron out the defects.

These duties of loyalty are mutual. There is a practice in New South Wales which for a period was described as the "Senior Counsel rub down". I emphasise the rub down was metaphorical only. The rub down is what the Junior says to the Silk when the Silk has just finished cross-examining the important witness or making their final submissions. No matter how badly the Silk went, no matter how much the witness wiped the floor with them or the judicial questioning exposed the massive hole in their

---

<sup>9</sup> *R v Birks* (1990) 19 NSWLR 677 at 685.

case, the Silk was to be told how well they did: "that was great", "you nailed it", "brilliant job" etc.

At the outset of a case, the advocate must make an objective assessment of its strengths and weaknesses, but at some point, as the hearing draws nigh, the better advocates convince themselves they have a good legal case to sell and sometimes they need to be bolstered to keep selling it. Of course the difference between selling a hard case persuasively and driving a car into a ditch can be a fine one. Knowing when to distinguish between the two is called judgement.

There is a counterpart to this for judges which you should be aware of. With some exceptions, to my observation appellate judges do not, or at least should not, level criticisms at lower court judges for the sake of it. A concomitant aspect of the system of precedent by which lower courts are bound by and must afford respect to the ratio of decisions of higher courts (and, it has been said, the well-considered dicta of the High Court<sup>10</sup>) is that higher courts should afford respect to the conscientious work of the lower courts. Just because a lower court judge is overturned on a matter of law, fact or application of the law to the facts is not itself a reason to criticise the judge. It is important for you to know this because you should not frame your submissions on appeal as an attack on the trial judge or even make reference to what may be the judge's history of being overturned. While he was in office, Justice McHugh counselled appellate advocates to avoid critical or sarcastic comments concerning the trial judge or judges of intermediate appellate courts.<sup>11</sup>

Of course there are some transgressions such as complaints about aggressive interference in the conduct of cases amounting to bias where the proper performance by the appeal court of its function necessarily requires that something be said that reflects adversely on the judge at first instance. But overall, as experience overseas shows, unless the flow of mutual respect between the component parts of the judicial hierarchy is maintained, then that system will decay and do so quickly.

---

<sup>10</sup> *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 at 150-151 [134].

<sup>11</sup> McHugh, 'Preparing and Arguing an Appeal' (2010 Winter) *Bar News: Journal of the New South Wales Bar Association* 85 at 91.

## The Differences

So these are some of the things we have in common, how are we different?

### *1) Who is important?*

Well for a start we may have different views of who or what is important. Just after I was sworn in as a Judge of the Supreme Court of New South Wales I was invited along to address the Bar Readers' course. Feeling very pleased with this new found opportunity to impart pearls of wisdom to young minds, I first had to listen to a talk from a very experienced junior barrister. The barrister commenced his talk by asking the question, "who is the most important person in the court room?" Well, I thought, the answer is obviously the judge. But no, apparently the answer was the solicitor instructing the barrister's opponent. The line of reasoning was that the barrister had already secured work from the solicitor instructing them, so the challenge for the barrister was to weasel the other side's solicitor away from their opponent to get a new source of briefs. So all that deference to us in Court was only for show; who would have thought?

### *2) Judges often have sympathy for witnesses, barristers need not*

Many barristers love cross-examination. Let me correct that; many barristers love their own cross-examination. A smaller cohort become so enamoured with their own cross-examination that they do it at length and in a manner that has all the courtesy and tone of a rottweiler. While he was Chief Justice of New South Wales, Murray Gleeson, himself no slouch at cross-examination, observed that judges and juries do not like seeing witnesses mauled and "[n]or do they like seeing them bored to death".<sup>12</sup>

When I undertook the Bar Readers' course in 1992 Chief Justice Gleeson addressed the course. I still recall what he said about cross-examination which he later repeated in an article, namely that "when examining or cross-examining a witness ... the judge's

---

<sup>12</sup> Gleeson, 'A Judicial Perspective on Cross-Examination' in Dillon (ed), *Advocacy and Judging: Selected Papers of Murray Gleeson* (2017) 16 at 18.

initial sympathy, in the case of a conflict between a witness and an advocate, is likely to be with the witness."<sup>13</sup>

If one thinks about it, it is not hard to see why. Most people react adversely to anyone who initiates an aggressive verbal confrontation. Why should it be so different when that conflict takes place in a courtroom which the judge controls and where the judge has a level of responsibility for the people present, especially those who do not want to be there, such as (most) witnesses? Of course the judge must listen and, within limits, let the parties conduct their respective cases<sup>14</sup> but you need to be aware that the judge may start from a different place to you so far as the treatment of witnesses is concerned. If you start by effectively treating the witness as a worthless liar and you do not justify that with your cross-examination then your case will have gone backwards.

### *3) Some barristers like sledging, judges rarely do*

In the 2001 Ashes series a young English batsman was being sledged by Mark Waugh. Upon being told that he was not any good, or words to that effect, the English player responded, "[a]t least I'm the best player in my own family," something that at least Steve Waugh most likely agreed with.

Just like cricket, stories about famous sledges amongst barristers are constantly retold and regaled. They are mostly untrue and they only serve to produce bad habits in the young. If you are tempted or even provoked to sledge, can I suggest that you don't.

The layout of most court rooms is such that the perspective and acoustics from the judge's chair are different to those where counsel sits. In the judge's chair you can usually see just about everything in the courtroom and most importantly you can usually hear everything, including the quietest sledge or snide remark. A sledge usually comes across as childish or even bullying, especially if there is a disparity in seniority between counsel. Even if you think about succumbing to temptation while the judge

---

<sup>13</sup> Gleeson, 'Advocacy and Judging' in Dillon (ed), *Advocacy and Judging: Selected Papers of Murray Gleeson* (2017) 20 at 26.

<sup>14</sup> See *R v Watson; Ex parte Armstrong* (1976) 136 CLR 248 at 264; *Concrete Pty Ltd v Parramatta Design and Developments Pty Ltd* (2006) 229 CLR 577 at 610 [112].

has adjourned, don't. Court officers and staff have ears, actually very attentive ears, and they talk.

For judges this aversion to sledging comes back to the litigants and the fairness of the process. If the judge witnesses or hears about the sledging, chances are the litigants did as well or at least the judge suspects the litigants did. The judge has to declare someone the loser and you want to be the other side. Why make that task harder for the judge by insulting their lawyers in the process?

#### *4) Judges have to write judgments, barristers do not*

Judges worry about judgments perhaps more than anything else. How many judgments they have to write, the judgment they are trying to write but cannot start and the judgment they have started but cannot finish. We sometimes look at you with envy as the case finishes and judgment is reserved. We see you pack up your briefs and remember that you can now put the whole thing aside at least for a while and leave someone else to worry about it, and we are that someone else.

It is beyond the scope of this speech to catalogue all the do's and don'ts of putting your case in submissions, both orally and in writing. One thing I suggest is that you think hard about how your submissions will help the judge to write their judgment. Your aim should be that when the judge comes to write their judgment, they will have an annotated copy of your submissions in front of them. Of course that will not guarantee victory but, all other things being equal, it could minimise the chance of defeat and certainly means your case will be addressed.

One way to help is to not overstate your case, especially in written submissions. Justice McHugh wrote that overstating your case in written submissions can be a "red rag" to the Court, will usually be a source of many questions at the hearing that can interrupt the flow of your argument, and may lead to your better points being lost.<sup>15</sup> I agree with all that and would add that if you overstate your case in written submissions the submissions will most likely be thrown in a pile. They might get dragged out again

---

<sup>15</sup> McHugh, "Preparing and Arguing an Appeal" (2010 Winter) *Bar News: Journal of the New South Wales Bar Association* 85 at 89.

so the judge can afford natural justice by addressing and rejecting your principal arguments but that is about it.

At the very least can I suggest you produce a recitation of the facts and evidence that delineates between what is genuinely not in contest and what is in contest and then develops the argument as to why one version of the contested version of the facts should be preferred over another. Unlike some newspapers, give the judge the facts and the evidence without spin and give the judge argument or submissions that are clearly labelled "argument" or "submissions".

#### *5) Judges and barristers sometimes see statutes differently*

If you were to redesign law school curricula from scratch and adopt a purely functional approach then at least half the course would be statutory interpretation, although I doubt it would be very interesting. Just about every area of substantive law is becoming subsumed by statutes,<sup>16</sup> many of which are highly prescriptive. In many cases, the common law may set the historical context for reading the statute and perhaps identify the underlying concepts or values upon which the statute operates, but that is about it, and even that can be contestable.

To advocates a statute is either a weapon, a shield, an obstacle or an advantage. For a trial judge or an intermediate court of appeal, interpreting a statute is often the point where their role moves from simply adjudicating a dispute between the parties to performing a quasi-law making function. In what is orthodoxy to some and heresy to others, Justice McHugh described law making, in the sense of developing and refining legal principles, as a part of the High Court's function.<sup>17</sup> In 1993, the late Sir Anthony Mason wrote that intermediate courts of appeal should start playing a greater role in the process of developing judge-made law,<sup>18</sup> although no such role was envisaged for first instance judges. I would add that what judges at first instance in the superior courts and intermediate courts of appeal say about the meaning and application of statutes has some of the hallmarks of judge-made law. A ruling in a particular case

---

<sup>16</sup> See Gageler, 'Book Foreword' in Pearce, *Statutory Interpretation in Australia* (10th edition, 2024).

<sup>17</sup> McHugh, 'Preparing and Arguing an Appeal' (2010 Winter) *Bar News: Journal of the New South Wales Bar Association* 85 at 86.

<sup>18</sup> Mason, 'The Role of the Courts at the Turn of the Century' (1993) 3 *Journal of Judicial Administration* 156 at 162.

about the interpretation of a statute concerning the scope of, say, a tenant's rights to have pets in their building or the right to publicly protest impacts everyone's rights and obligations. Unless and until a higher court says to the contrary, what a trial judge or intermediate court of appeal says about a statute is often, in practical terms, what the statute is taken to mean.

The significance of this point to your role is how you should approach persuading a judge in a case about how to interpret and apply a statute. Too often I have been in cases where some practitioner, especially one immersed in their own infatuation with some area of the law of ancient lineage, such as equity or criminal law, treats a statute as something that violates the sacred temple at which they worship. For them, the statute is to be worked around, construed into a small ball and then despatched to a small remote island to serve out the remainder of its days. But statutes are an expression of Parliamentary will and reflective of popular sovereignty. Of the numerous principles of interpretation that are often in play, one that is sometimes overlooked is the most basic of all; making the statute hit its intended target.<sup>19</sup> The best approach at least as a start for an advocate is to help the judge make the statute do its intended job and do it in a workable and sensible way. If that is accompanied by a submission that the statute does not need or purport to do any more than that, then all well and fine. But inviting the judge down a line of reasoning that is premised on Parliament being a collection of meddlers or, worse still, a collection of muddle-headed meddlers is just bad advocacy. Judges have to live with their interpretations of statutes; barristers do not.

### **Our (Collective) Mutual Labour**

This discussion about statutes brings to mind Sir Maurice Byers' observations that the advocate and the judge are "locked together in a mutual labour: the making of the common law".<sup>20</sup> I would include ascertaining the meaning of statutes as one of the objects of that mutual labour.

---

<sup>19</sup> See *Bropho v Western Australia* (1990) 171 CLR 1 at 20, citing *Kingston v Keprose Pty Ltd* (1987) 11 NSWLR 404 at 421-424; *WHS v The King* (2025) 100 ALJR 71 at 78 [28]; 426 ALR 599 at 607.

<sup>20</sup> Byers, 'From the other side of the Bar Table: an advocate's view of the judiciary' (1987) 10(1) *University of New South Wales Law Journal* 179 at 179.

But our mutual labour is not just the work we do in our silos. The topic I want to finish on is the product of all our mutual labours and of the collective entities that are the Bar and the judiciary. The larger picture of which you and I form part.

The Queensland roll of barristers commences from 1859 when Queensland separated from New South Wales. Without that separation, there would be no State of Origin.

The first person to sign the Queensland roll of barristers was the delightfully named Ratcliffe Pring who had entered the Inner Temple in 1845 and migrated to Australia eight years later to help with his bronchitis.<sup>21</sup> Prior to the establishment of the Supreme Court of Queensland, Pring was the Crown Prosecutor for what was then known as the Supreme Court of New South Wales at Moreton Bay,<sup>22</sup> a title that I promise not to repeat. In 1880 Pring was appointed a judge of the Supreme Court of Queensland. The second person to sign the Queensland roll of barristers was an Irishman, Charles William Blakeney. In 1865 he was appointed as the first judge of the Western District Court.<sup>23</sup> He once presided over a famous cattle rustling trial from Longreach. Cattle rustling trials; the good old days.

Prior to his appointment as a judge, Blakeney was a member of the Queensland Legislative Assembly. Prior to his appointment as a Judge, Pring was also a member of the Queensland Legislative Assembly and the Queensland Legislative Council and served as Attorney-General on multiple occasions. They were not the only barristers who moved between the Bar, politics and the Bench. The twenty-ninth person to sign the roll of barristers in Queensland was one Samuel Griffith. Becoming Premier and then later Chief Justice of the High Court is a quinella that is unlikely to be repeated.

On my back-of-the-envelope calculations there have been between around 5000 to 5500 barristers in Queensland since Pring and Blakeney signed that roll in 1859, including some southern carpetbaggers who came into town after the decision in *Street v Queensland Bar Association*.<sup>24</sup> Of that 5000 or so, there are around 1200 barristers practising in Queensland as I speak. From those 5000 or so barristers

---

<sup>21</sup> Johnston, 'Ratcliffe Pring' *Australian Dictionary of Biography* (online) <<https://adb.anu.edu.au/biography/pring-ratcliffe-4416>>.

<sup>22</sup> See, eg, *Moreton Bay Supreme Court Act 1857* (NSW).

<sup>23</sup> Bell, 'Charles William Blakeney' *Australian Dictionary of Biography* (online) <<https://adb.anu.edu.au/biography/blakeney-charles-william-3012>>.

<sup>24</sup> *Street v Queensland Bar Association* (1989) 168 CLR 461.

spread across 157 years there has been 1 Governor-General,<sup>25</sup> 4 Governors of Queensland,<sup>26</sup> 3 Premiers of Queensland,<sup>27</sup> 3 Federal Attorney-Generals,<sup>28</sup> 17 State Attorney-Generals, numerous members of federal and state parliament including one current federal member and 2 state members, 8 High Court Judges,<sup>29</sup> including 4 Chief Justices of the High Court,<sup>30</sup> a Chief Justice of the Federal Court,<sup>31</sup> every Chief Justice of Queensland and, as I said, the overwhelming proportion of Supreme and District Court judges as well as Federal Court judges based in Queensland.

What those figures, and the comparable figures for the New South Wales and Victoria Bars show, at least in my humble opinion, is an extraordinary rate of progression to public office from one professional group. In one sense that is not surprising given the Bar's working tools are laws and language but, whatever way you toss it up, the State Bars including and especially the Queensland Bar are an academy of government, a sort of Hogwarts for the State.

When the Bar is understood in this way then concerns about the composition and culture of the Bar are not just issues for a private club; they are matters of public interest. That is not just because the Bar provides vital services for the public or sometimes stands between the State and its citizens, but also because the Bar can be a gateway to the future exercise of State power. Ensuring that everyone gets a fair crack at being a barrister, in terms of both who they are, where they came from and how much it costs, ensuring that the Bar fairly reflects the public it will serve and who, to a significant extent, it will govern, and ensuring that the members of the Bar learn the right lessons along the way is not merely a mission statement for a private organisation; it is a public imperative.

One important aspect of this role of the Bar as a public institution is in reinforcing important values to their members and to the public. Barristers acquire important values in professional practice and take them with them into public office. In my

---

<sup>25</sup> Dame Quentin Bryce.

<sup>26</sup> Sir Alan Mansfield, Sir Walter Campbell, Dame Quentin Bryce and Paul de Jersey.

<sup>27</sup> Samuel Griffith, Thomas Byrnes and Thomas Ryan.

<sup>28</sup> James George Drake, Sir Littleton Ernest Groom, George Brandis QC.

<sup>29</sup> Samuel Griffith CJ, Charles Powers J, William Webb J, Harry Gibbs CJ, Gerard Brennan CJ, Ian Callinan J, Susan Kiefel CJ, Patrick Keane J.

<sup>30</sup> Griffith CJ, Gibbs CJ, Brennan CJ and Kiefel CJ.

<sup>31</sup> Keane CJ.

experiences barristers are people of every shade of political opinion although the common theme is that they are all anarchists. But barristers share a common language and common values and that means something. From running case after case and without necessarily being conscious of doing so, barristers learn about the importance of equality before the law, due process, the avoidance of generalisations and the need to focus on individualised justice.

For example, the cab rank rule is often maligned but the only valid criticism that can truly be levelled at it is that it sometimes is not honoured; the purpose of the rule, namely to ensure legal representation is available to all, including the unpopular, cannot be seriously questioned. In fact, most barristers honour the rule and honour its spirit, not so much as cab drivers or even Uber drivers, but in driving a bus on their usual routes of practice and picking up those passengers who want to get on (although the fares can vary). Practising as a barrister in that way reinforces those values I just mentioned. Complying with a duty to defend the rights of whoever jumps on their bus, especially the marginalised, tempers the hard edges of even the most committed ideologue; over time they will start to see things from the perspective of others. There are many valid critiques of a barrister-dominated judiciary, but right now it is a model that holds up well in comparison to certain overseas judiciaries that are dominated by lawyers who, if they did practise, were able to pick and choose their clients to suit their own agenda and never had a real client with a real problem, much less never faced the task of persuading a judge or a jury to step into their client's shoes.

Through their practice, barristers come to understand the importance of the rule of law in the sense of government under law, which can only exist with an independent judiciary and a legal profession bound by ethical duties to each other and the courts. I say that because when a barrister is presented with an exercise of public power, including by a judge, the first question they ask is "what is the source of that power", the second question they ask is "what are the constraints on that power", and the question they never ask is, "if I contest this exercise of power will it adversely impact upon me". Throughout this process the barrister never stops to ponder the constitutional foundations of their own thought processes; they just know what to do and do it.

These values, instinctive as they sometimes are, are shared with the other arms of the legal profession and the courts and, through those institutions, with the public. From time to time these values and those who apply them are attacked, usually not directly but indirectly, and often from different perspectives. One day they are labelled conservative or even reactionary. Another day they are labelled progressive or, if the critics are really cranky, woke. In fact these values are universal, or at least they should be.

These common values are truly the output of our mutual labour. Please keep toiling.

Thank you for listening. Good luck with the conference.