

John Kelly <JohnKelly@foleys.com.au>✉

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To: Foleys List <Foleys@foleys.com.au>

A very important message from the Chairman of Foley's List

2 Attachments, 18 KB



19 April 2013

Memo to all members of Foley's List

Dear Members,

The criticisms of the silk appointment process reported in the ***Australian Financial Review*** this morning and attributed to Damien Cremean are unwarranted and founded upon a false predicate. As I have previously written in my paper *"The Institution of Senior Counsel"*, the process of appointing silk is not an administrative process and nor would such a process be suitable. Cremean's criticisms fail to appreciate that pursuit of a standard of excellence has been safeguarded in Victoria by the Chief Justice of the Supreme Court assuming responsibility for the appointment of Senior Counsel in and for the State of Victoria. In assuming this responsibility, the Chief Justice has ensured that the public of Victoria has not been subjected to the vicissitudes of influence and pressure which can beset well intentioned but politically susceptible committee systems.

In making appointments the Chief Justice is assisted by the Judges of the Court and of course is guided by the profession through a broad consultation process. In addition the Chief Justice routinely confers with the Chief Justice of the Federal Court, the Chief Justice of the Family Court, and the Chief Judge of the County Court and the Bar. The Chief Justice has the benefit of each applicant identifying the Judges which that applicant considers will support her or his application.

As always there will be imponderables, that is because excellence is being pursued. Sometimes aspirants will be required to wait longer than they think is fair, others will have to wait for those ahead of them, some will be left as junior counsel so that there are able advocates of that rank available to the public. No one is defeated by the process.

Demands for "transparency" in the process are as misleading and untenable as they are unwarranted. There can be no rational suggestion that the process involved in the Chief Justice's determination of who is to be appointed is not well known to the profession, and particularly well known to those who make application.

Where people put themselves forward for appointment they are inviting assessment. And if we are to pursue excellence those assessments might be blunt and they may be adverse, but that does not render them any the less worthwhile. If they are irrationally adverse they will lack influence. If they are consistent with others then they can be accepted as rational and whilst not welcomed by the applicant are required by a process and an institution which rests upon the pursuit of excellence.

The contention that careers are made by appointment, cannot withstand close analysis. The concept that those not regularly conducting difficult and important cases before they are appointed will, upon appointment, immediately commence to do so and at the same time be able to charge higher fees simply because they have been elevated is not the reality.

At the Bar, as happens wherever any organized group of persons unite to pursue similar aims and aspirations, leaders emerge. This is our experience right from our earliest memories of the schoolyard. It happens in corporations, it happens within unions, it happens within community organizations and in sporting clubs. Do we demand revelation of every step taken in the appointment of the captain of the Australian Test team or the Wallabies? And would the shareholders of our public companies be better served by insistence that no person could be appointed CEO unless they had satisfied criteria requiring them to have conducted so much community service etc, and otherwise subjected themselves to a process where the views of any board member upon a particular

candidate could be published far and wide? The expectation in each of these instances is that excellence be pursued and that candidates be adjudged according to a standard of excellence.

Foley's List is resolute in its support of the principle that it is more than appropriate that the appointment of Senior Counsel in and for the State of Victoria be made by the Chief Justice. As onerous as the task is, among the many heavy burdens which lie upon the shoulders of the Chief Justice, it is essential to the standing of the profession and the rule of law that the Chief Justice make such appointments. We are, each of us, officers of the Court.

Foley's List fully supports Chief Justice Warren in this respect and publicly acknowledges the enormous contribution which Her Honour makes to the rule of law and the wellbeing of the Victorian community in continuing to make appointments.



Michael D. Wyles

----- End of Forwarded Message