

Remarks of  
the Honourable Marilyn Warren AC  
Chief Justice of Victoria  
On the occasion of the announcement of  
the appointment of Senior Counsel of and for  
the State of Victoria  
on Friday, 7 December 2012  
Banco Court  
Supreme Court of Victoria

The Court conveys its congratulations to each of the new Senior Counsel.

For the family and friends of the new silks I will explain a little of what has happened before today.

There were until 28 November 2012 a total of 1,924 Barristers in Victoria. Of that number 234 were senior counsel (211 men and 23 women). From this year's announcement the number of senior counsel increased to 253. There are also four senior (non-Bar) advocates.

The process of appointment required the completion of an onerous application form. An applicant was required to certify that the information provided in the application was correct. The applicant was also required to set out areas of practice and extensive details of cases in which the applicant had appeared in the last 18 months. For most applicants the completion of this section of the form ran to some pages. The applicant was then required to set out supporting reasons as to why the individual believed he or she was a suitable candidate for appointment. There was then a requirement to set out any complaints history, that is, disciplinary matters or any finding of professional negligence or notification to the professional indemnity insurer, any costs order made against the individual that was occasioned by his or her conduct and any bankruptcy details. Thus, the application form was very probing. Next the applicant was required to nominate four higher court referees. The judges are

those individuals before whom the applicant had conducted a case. Finally, the applicant was required to nominate two non-judicial or professional referees.

I received 71 applications for appointment as senior counsel this year, five of whom were women. Upon the closing of applications for appointment a new process was introduced this year as a pilot. I appointed, with the support and agreement of the Bar Council, a preliminary evaluation committee chaired by former Judge of Appeal of the Supreme Court, the Honourable Stephen Charles QC. The preliminary evaluation committee included the Chairman of the Bar, then Ms Melanie Sloss SC and the Senior Vice-Chairman now the Chairman, Ms Fiona McLeod SC together with Mr Richard Stanley QC, Mr Patrick Tehan QC, Mr Jonathan Beach QC, Ms Debbie Mortimer SC, Mr Peter Rashleigh (partner, DLA Piper) and Ms Joanne Cameron (partner, King & Wood Mallesons)

each of whom was appointed by me. A singular difference this year in addition to the Preliminary Evaluation Committee's involvement was the inclusion of two senior lawyers, Mr Rashleigh and Ms Cameron, to provide advice on the selection.

The Preliminary Evaluation Committee were provided with a full set of all 71 applications. The Committee in turn contacted the professional referees nominated by each applicant. The next step was to identify those applicants who met the selection criteria. The criteria are:

1. Public identification of standing and achievement in the administration of justice.
2. Exhibition of excellence, learning, skill, diligence and experience.
3. Integrity.
4. Independence.
5. Standing in the profession.

After receiving the professional references the PEC embarked on extensive discussions. Eventually a list of individuals who met the criteria was submitted to me.

I express my deep appreciation to Stephen Charles for chairing the PEC and all of its members for their extraordinary work.

After the PEC process, I in turn, assisted by judges within the Supreme Court, considered all applications, that is all 71 applications, and sought judicial references for those individuals whom I considered warranted consideration for appointment as senior counsel.

The references provided by judges to me with respect to applicants are treated with the utmost candour by judges.

Frank observations are made about counsel who have applied for silk.

I am able to say that the senior counsel for 2012 achieved support from their peers but, in particular, strong support from those before whom they have practised, namely, the judges. In addition to the judicial referees it has been my continued practice to consult with the heads of jurisdiction of the higher courts: the Chief Justice of the Federal Court, the Chief Justice of the Family Court and the Chief Judge of the County Court together with the President of VCAT. I also consult the Chairman and Senior Vice Chairman, and this year the Treasurer, of the Bar, the President of the Law Institute of Victoria and other leaders including the Solicitor-General for the State of Victoria and the Director of Public Prosecutions for Victoria.

Within the Supreme Court extensive consultation occurs about the applicants. Ultimately after this long and rigorous process the individuals are identified and today we see the outcome.

I will now speak a little about the new senior counsel.

Broadly they practise in the three principal areas of the criminal law, the common law and commercial law. There is also some specialty apparent across the new silks: expertise in evidence and constitutional matters, taxation, naval and military law, town planning and, in particular, construction law. I will come back to the areas in a moment. The most senior and oldest senior counsel is Mr Monti, (I hope he will not mind my mentioning this) he is 66 years old. However, his appointment as the most senior of the senior counsel for 2012 is not a reward or recognition for an individual on the edge of his retirement.

Mr Monti has an active practice in the personal injury and common law areas. Like his fellow silks appointed this year he is expected to be a leader of the common law Bar.

The youngest and most junior of the new silks is Mr Holt and (again I hope he does not mind my mentioning this) he is 37 years old. Mr Holt principally practises in the area of the criminal law, especially defence. The ages of the other silks spread through the decades of the 40s and 50s. They very much represent the future of the Victorian Bar and profession and will be leaders in what lies ahead. I now turn to that very matter.

There may have been some comment as to the numbers of senior counsel appointed for 2012. It is the highest number during the time that I have been involved in the process. There are reasons for this. Assisted by the consultation process, including that from the Preliminary



Evaluation Committee, it became apparent that at this time in Victoria there is a developing need for more senior counsel. This is because of the shifts that have occurred in litigation.

The Commercial Court of the Supreme Court demonstrates the point. In the last financial year ending 30 June 2012 the commencement of non-corporations cases rose by 65% while the completion or finalization of those cases increased by 61%. In simple terms, there is a huge amount of non-corporations work going through the Commercial Court. Meanwhile, the Corporations List continues to grow. For those who are interested, all the facts and figures are set out in the Supreme Court Annual Report for 2011-12 available on the Court website.

[Supreme Court of Victoria: 2011-12 Annual Report - Supreme Court of Victoria](#)

In response to the commercial demand, as from 1 January 2013 the numbers of judges sitting in the Commercial Court will increase. There will be a total of six specialist commercial judges. Included in the number the Court will introduce three specialist corporation judges as from 1 January 2013: Justice Ross Robson, Justice Anne Ferguson and Justice Michael Sifris. The Court will also sit three Associate Judges in corporations matters: Associate Justices John Efthim, Simon Gardiner and Rod Randall.

The Supreme Court sees specialisation as the key to resolving corporate litigation expeditiously and efficiently. Indeed, the corporations work of the Supreme Court has grown by almost 50% in three years.

At the same time as these developments have occurred, in the Supreme Court in early 2013 Justice Jack Forrest will preside over the largest of the bushfire cases arising from

Black Saturday. A new mega court facility has been provided to accommodate the trial.

In the construction area there have been appointments of senior members of the Bar to the Courts that have warranted replacement at the inner Bar. In addition there is other significant forthcoming construction litigation.<sup>1</sup> At the same time work has been done by the Supreme Court, supported by the Attorney-General of Victoria, to facilitate the establishment of a designated arbitration centre here in Melbourne as part of the national arbitration grid.

Simultaneously, in the Supreme Court we see that common law litigation is increasing including in the regions. There has been an increase in class actions.<sup>2</sup>

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<sup>1</sup> The South Australian desalination case is in the TEC list. Anecdotally, the Victorian desalination case is anticipated.

<sup>2</sup> The Thalidomide, Timbercorp, NAB and Great Southern cases.

I am informed by the Federal Court that taxation litigation is healthy and strong here in Melbourne and that there are plenty of cases.

The federal government has announced the establishment of the Royal Commission into Child Sexual Abuse. Dependant upon arrangements yet to be announced, experience indicates that royal commissions impose a solid call on the Bar.

Thus, whilst need is not a criterion for selection, this year it has been a compelling factor that could not be ignored.

In addition I have been advised and accepted that it is desirable to appoint more silks to align the Victorian Bar into a better and more competitive position nationally.

Returning then to the new senior counsel. There are five matters I ask you to remember:

1. You have been universally recognized without equivocation as a person of the utmost integrity. Treasure your reputation.
2. Appear in cases or give advice in matters that warrant the involvement of senior counsel. There is an expectation underlying your appointment that you are needed for the more complex and difficult matters to which you will contribute your intellectual acumen and experience.
3. You are a leader of the Bar and should do the very thing that the description connotes, that is, lead.

4. Demonstrate your leadership by becoming involved in the Bar associations and committees. For example, there are many users and advisory groups across the courts where judges look to senior counsel for advice.
  
5. Judges in trials and appeals will turn to you with the full expectation that as a leader of the Bar you will always assist the court and acknowledge your paramount duty to the court.

This is an occasion of the utmost joy for each new senior counsel. However, we should all pause to remember the family and friends who have made sacrifices and provided support that has enabled each new silk to reach this position. I particularly acknowledge the partners and for those who have children, the family who have made the sacrifice of the lost hours and days of a parent ensconced

in litigation. The Court is absolutely delighted to see so many family and friends present to celebrate this significant occasion.

Ultimately, for each new silk it is a quintessentially Victorian occasion. As part of your silk apparel you carry a particular insignia that marks your prowess as a Victorian silk. Always wear it with pride.

The Court extends its warmest congratulations to each new senior counsel of and for the State of Victoria.