

THE HON SIR NIGEL BOWEN AC KBE

I first had a conversation with Mr Justice Bowen when he was Chief Judge in Equity and I had just been appointed Chairman of the Australian Law Reform Commission. I was going the rounds and meeting as many leaders of the legal profession as I could. He was obviously one of the first to call upon both because of his distinction as a lawyer and as a legislator and reformer.

I can still remember the highly businesslike way in which he met me and went over his thoughts about establishing a Commission to assist Parliament in reform of the law. I suspect that he thought that I was too young and inexperienced to be given such an important task. But he was courtesy itself. He had a "no nonsense" approach to my questions and made a number of very pertinent suggestions for the way I should go about my tasks.

Little did I think then that I would end up presiding in the Court of Appeal upon which he sat and as a Judge of the Federal Court of Australia which he established.

When the Federal Court was set up in 1976, I had some reason to hope that I would be appointed a Judge of it. My initial judicial commission had been in the Australian Conciliation and Arbitration Commission. I was not at first offered an appointment to the Federal Court. There was a new government. I think Chief Judge Bowen (as he was then) was very keen to ensure that the initial judges were manifestly of the highest quality. So far as he was concerned, I am sure, Michael Kirby was still on probation. Perhaps he thought that my very public role as Chairman of the Law Reform Commission was not easily reconcilable with

the Federal Court which he was aiming to establish just a notch below the High Court of Australia.

Ultimately, however, when the change of government occurred and the Hawke Government was elected, the Attorney-General was Gareth Evans. He had been a Commissioner of the Australian Law Reform Commission. He moved without delay to appoint me. I have reason to think that Sir Nigel (as he had by then become) still had reservations about my appointment. The blow was softened by the concurrent appointment of Justice Bryan Beaumont, an able Sydney barrister.

Whatever his doubts, Sir Nigel made me welcome. He swore me into office in his private chambers. I still treasure the Bible that he presented to me with his graceful confident endorsement. He had an unusual custom. He would sit in the back of the courtroom of new judges to observe them at their work. I say this is unusual for I do not know a single other presiding judge who ever did this. Generally it would be regarded as a little intimidating. But in his case, he was so senior in years and so experienced in many offices that it seemed natural enough.

I remember the first time he did it. I had slipped away from my continuing Law Reform duties to sit in an administrative law appeal. He came and sat in the back of the Court. If he was disappointed in my performance, he never said so. He left as quietly as he entered. Not a word was ever said about this. I know that I was not singled out because his visitations were legendary. They made some new judges nervous. But by this stage I had held public office for a decade and I knew that his assessments would be well directed.

From time to time, after I left the Federal Court for the New South Wales Court of Appeal, I was invited back to dinners and functions of the Court. The affection in which Sir Nigel Bowen was held, and the respect and gratitude of his judges, was palpable and well deserved. He was, to the

end of his service as a judge, a no-nonsense person. He was grave and serious and full of duty. He set high standards for himself and for his courts. I could not say that I could count him as a friend. The difference in years, the divergence in professional experience and probably some differences in judicial philosophy that came from these different lives explain that. I always felt that he was an intensely shy man whom life had pushed forward into positions of responsibility which he sometimes found uncomfortable but unflinchingly performed because he was trained at an early age to do his duty. I felt a kindred sympathy for these sentiments. Perhaps towards the end he could see this and warmed a little more to me, as I did to him.

MICHAEL KIRBY
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