

# On a High

Murdoch Graduate Bruce Leishman on being Judge's Associate for Kirby J



Silence. Overwhelming silence. That was my first impression as I entered level 19 of the Sydney Law Courts Building, the Sydney home to five of the seven High Court Justices. It is not just me who has noted this, a journalist for the now defunct magazine *The Eye* noted the

fact same point in an article on the High Court published in 1999. As that journalist noted, this is serious work, and the surroundings do nothing to detract from that point. So for me, coming from Minter Ellison Melbourne, where 700 people work in an environment dictated by demanding clients, meetings and corporate lunches, the academic silence of the High Court was immediately noticeable.

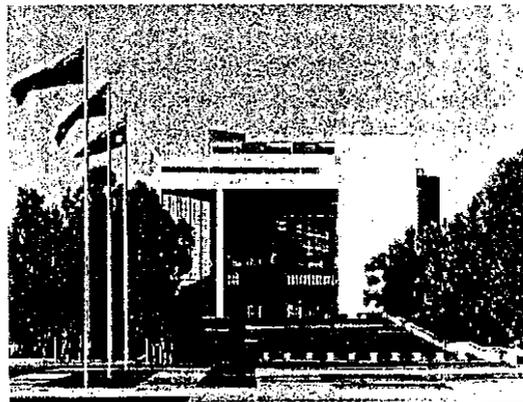
My senses were next directed to the austere surroundings of the place. Again, I couldn't help comparing the surrounds to my previous work environment, where Brett Whitley and Tom Roberts originals graced the walls, where ergonomics ruled and Scandinavian minimalism was the *cause du jour*. For a start the Sydney Law Courts Building is a relic of bad 1970s architecture – 24 stories of concrete, where windows were either considered unnecessary or simply forgotten about. I term the building, not necessarily affectionately, 'the bunker'. On level 19, the pale green walls contrast uncomfortably with an assortment of orange and brown furniture. My office, which I share with the judge's personal assistant, is a cramped, windowless den cluttered with old wooden furniture and filing cabinets. It is one of those rooms where time is immaterial – night or day, rain or sunshine – it really doesn't matter because all glimpses of the outside world are lost. Again, the sensation is that this is a place for work. Hard, unpretentious and largely solitary work.

These were my first impressions. As they say, first impressions are lasting. The Judge was in a conference on the human genome project in Hawaii during my first week, but my illusion that this meant an easy introduction was shattered by the piles of work and notes that covered my desk. However, the Judge had left a copy of the Murdoch Law School newsletter on my desk, open at the page displaying an article about my Valedictory Address. The attached note read, 'I was very proud to see this. Welcome.'

It provided a human edge to what could have been a very dry introduction to Chambers life.

I was given a few days instruction by my co-associate before she assumed responsibilities in our Canberra chambers, a position that I will take up in six months time when I become the 'senior' associate of our Chambers. Each High Court judge has two associates, one based in Canberra and one based in the judge's 'home' chambers. For five of the judges this means Sydney, although Justices Hayne and Callinan stem from Melbourne and Brisbane respectively.

My duties are an eclectic mix – a mix that includes booking flights, making tea, preparing lunches, proofing judgments and research. Never doubt the work involved in judgment production. It is painstaking work – slow and almost annoyingly pedantic. Every footnote (and, I can assure you, there are many) in a judgment is 'sourced' by either me or my co-associate. This means that every case, document, treaty etc referred to in the footnotes has to be read to make sure that it is in fact appropriate support for the point made, and that the citation is presented in the correct manner. Often the Judge will use a case to support a proposition, but not include a page reference. So begins the often time consuming task of trying to find an appropriate sentence to 'hang' the proposition on. The urge to randomly choose any page is all too great. But then one contemplates what it would be like to be unemployed, and the search resumes.



Once the judgement has been 'sourced', the editing, proofing of the text begins. It is the Associate's job to suggest changes, remove repetitive points, improve clarity and grammar. No matter how many times the judgment is read, full stops will be forgotten, incomprehensible sentences will remain. Fortunately, the Court's professional proof readers do the final edit. These are people whose eye for details is so incredibly sharp that nothing, legal or grammatical, is left unchecked. I generally leave the meeting in which their editorial suggestions are discussed red faced and deflated, for their discovery of seemingly obvious errors can make one feel most insecure.

The High Court sits for two weeks a month in Canberra, and for one week a year in Brisbane, Adelaide, Hobart and Perth. Hence, whilst I am Sydney based, I find myself in Canberra for roughly half of my time. Fortunately the Court has compassion and flies us back to Sydney for the weekends that fall during Canberra sittings. The fact that the most happening place that I have discovered in Canberra is the Qantas departure lounge at 5pm on a Friday afternoon perhaps says quite a bit for Canberra. I did think that I was being too hard on the place, but then last night I discovered a new initiative by the ACT Government. In the main city square, a sandwich board is proudly displayed, painted with the words "Chewy Disposal Board." Intrigued, myself and a fellow Associate stepped closer to investigate. Yes, worst fears confirmed. Meningococcal anyone?

The High Court headquarters in Canberra, built largely due to the persistence and insight of Chief Justice Barwick, are a palace compared to our Sydney digs. Not only does it have what I suspect would be one of the best law libraries in the nation (it probably helps that only a limited number of people can use it), chambers are spacious and well appointed. The architecture of the Court is brave and strong. Its influences are undoubtedly modernist, but its feel is overtly Australian. It makes a welcome change from the colonial reproductions that State Supreme Courts tend to follow. Unfortunately, the result is often that of a poor copy, perhaps at one stage seen appropriate for a mere colony in the antipodes. Walking across the large expanse of level nine of the High Court building (the level where all Judges have their Chambers) you can feel good about yourself. The silence remains, indeed it is probably enhanced by the sheer size of the place, but by this stage the silence no longer feels unnatural. It has, by this stage, become normalised.

The Canberra experience is intense – for the work remains to be done; it just has to be done outside of the hours that the Court sits. Associates who are not Canberra based generally share a serviced apartment. We arrive by court before 8am, working essentially non-stop until about 9 at

night. For many, the work continues. The chambers protocol is not the leave before your Judge. Thankfully the protocol doesn't say anything about arriving before one's judge, for in that case of Justice Kirby, my sleeping habits would have to be drastically reorganised.

One of my duties for my first six months is acting as Justice Kirby's tipstaff. A tipstaff sits behind their Judge in Court with the Authorities at the ready to be handed up when referred to by counsel. We wear a uniform consisting of a not so dapper ensemble of grey pin striped trousers and black blazers. For women, it is pearl (read: glass) buttoned silk (read: polyester) blouses and the same pin stripes, although also available in a skirt variant. Quite uncomfortable on a hot day I can assure you.

Being a tipstaff is a fantastic way to view the nation's best counsel present their cases. A relatively few number of top silks continually appear before the High Court, so you soon note their quirky styles and 'signature' traits. But as the sun streams through the windows of court room number one, you have to make sure that your mind doesn't traverse too far from the task at hand, for the point this happens is usually the exact time Counsel will refer to a case. One is immediately jolted back to their senses, looking frantically for help from other associates to determine exactly what volume number has been referred to.

The hours are long. The work can be challenging. The work can be equally boring. But if I ever feel deflated about the job, a quick walk down the corridor, past the doors displaying the names of Justice Gaudron, Justice McHugh and the like, past the portraits of Barton and Griffith, usually restores the spring to my step.

This is a privileged position. It is a no holes barred insight into the workings of one of the great foundations of our nation. A foundation that also happens to be probably the most isolated and secretive of our constitutional institutions. A sometimes flawed institution. But, then again, we are all human. However, there can be nothing more significant than the prevention of discrimination against society's most vulnerable that the law allows. Racial minorities, lesbian and gays, women. And there are many more. To see the law play its own small part (I wouldn't want to exaggerate the power of the court to alter societal prejudices) in this struggle is a powerful thing. But the court is only a small, although important, element in this struggle. It begins with us as individuals. To take the pledge of a commitment to non-discrimination; to ensure the inclusion of those most excluded in a society increasingly dictated by divisions on the grounds of race, wealth, gender or the intersection of any number of these entities. This involves a move on our part beyond mere

...to actual involvement. To effect changes in our  
...to question our values and beliefs. If we all do  
...real changes can be made.

...perhaps a majority of nations do not share the  
...privilege of an independent judiciary. In this year of  
...celebration of our nation, the strength of our judiciary  
...should not be overlooked. Our politicians largely respect  
...independence of the judiciary; a culture of corruption  
...does not exist. The court process is not used as a medium  
...of suppression of minorities or political opposition. For  
...the flaws of the court process of our nation, its power  
...to do good must be seen as a great strength of our  
...development as a nation. Our courts can be brave and  
...courageous! We must rejoice in this.

It is now time for me to don my 'tipping' uniform, gather  
...the submissions and proceed to court. To sit behind seven  
...people of such powerful intellect is a wonderful thing. It

is also a humbling experience. But we all need humbling  
experiences. It helps to keep things in perspective, not to  
become complacent and forget our aspirations, whatever  
variant they may form. Our legal education has provided  
us with great privilege. We owe it to all those that have  
suffered and who continue to suffer because of prejudice;  
all those who have worked and who continue to work to  
circumvent this prejudice, to reflect and implement the  
values of non-discrimination. But we also owe it to the  
High Court and the Australian judiciary in its entirety. We  
have much to be proud and thankful for in our young nation,  
and our judiciary should not be forgotten within this.

I note that it is not only Australian courts that are  
displaying signs of braveness; see the decision of Judge  
Jean-Jacques Gomez of the Tribunal de Grand Instance de  
Paris in the case of *LICRA & LIEJF v Yahoo! Inc and Yahoo  
France* for one such example of law adapting, perhaps  
uncomfortably, to the challenges of a new legal paradigm



## Life at the Top with Justice Kirby

(1) Where and when did you study law?

I am still studying law. I study it every day. But my  
formal studies began at the Law School of the University  
of Sydney in 1958. The undergraduate degree took four  
years. Later, over another two years, I took my Masters  
Degree in Law. But for the lawyer, study of law ever  
ends.

(2) What is your most memorable moment at Law  
School?

My most memorable moment came when I took a day  
off (a rare thing for me). In my absence young Murray  
Gleson nominated me for the Students' Law Society.  
He thus unleashed what he has described as "a  
juggernaut of student politics". I went on to become  
President of the Law Society, President of the  
University SRC, President of the Sydney University  
Union and Student Senator.

(3) When you graduated from law school, where  
did you see yourself in twenty years time?

I probably saw myself as a barrister on the way to the  
bench. In fact I was appointed a judge 12 years after  
graduation.

(4) If you had not studied law, what profession would  
you have chosen?

Historian. My greatest triumph at school was coming  
first in the State in Modern History. I have often thought  
I would have been a better historian than a judge.  
Perhaps you agree?

(5) What do you regard as your funniest courtroom  
experience?

Humour in courtrooms needs to be kept under control.  
A witty word to relieve tension is fine. But with W S  
Gilbert, I think the "judicial humorist" needs to be  
placed on my little list. For clients, courtrooms are  
very serious places and lawyers need to remember that

(6) What is your greatest career achievement?

It is still to come.

(7) What is the most essential quality of a lawyer?

A desire to contribute to justice. A willingness to work  
hard. Loyalty to the clients, the court and professional  
ideals. Integrity and a ceaseless desire to reform  
imperfect laws.

(8) What do you feel is the most pressing legal  
issue of today?

Translating the fine aspirations of the law so that they  
are available to ordinary Australians. On the  
international scene, building an effective rule of law  
and strong and just international institutions.

(9) If you could change one thing about the  
Australian Legal System what it would be?

Introduce a constitutional Bill of Rights.

# ASSOCIATE

## Working at the High Court

What appears below is not a broad explanation of what an associateship is like, as that depends so much on which Judge the associate works for. Therefore, the account is specific to my experience as an associate to Justice Michael Kirby of the High Court.

Amongst other things, media liaison, legal research, making speeches, answering the phone, dealing with United Nations bodies, sitting in Court observing barristers in action, making travel arrangements, being a member of a small and tight team. You name it, this job has it. But, due to the variety and extensive involvement of Justice Kirby in both judicial and extra-judicial work, the hours are long. And don't expect the public service benefits of flextime etc. The job is held "at the pleasure of the Justice" and involves being a personal assistant as much as a legally-trained associate.

The job is made up of two distinct elements - the admin and the legal. The first is about making sure the Judge's professional life

runs smoothly. That's the personal assistant role. Time-consuming tasks and attention to detail are essential, as it is a real challenge to coordinate the Judge's incredibly full diary. The second is involvement in the judgment production process, which includes editing, proofing and research. But be under no misapprehension, Justice Kirby writes his own judgments. That should be obvious from the themes that emerge from reading them.

Both parts of the associateship are rewarding. In addition, merely being in, and involved with, the High Court is an amazing experience. It has revealed the workings of the Court as a collection of very intelligent legal minds, each with their own approach and philosophical foundations. The Judges, associates and other staff are an eclectic bunch. The opportunity to meet public figures, people of international and national standing, make it an exciting and vibrant workplace. And, like in all positions, what is taken

from the experience reflects what is put in.

The position of Judge's associate is short-term, only 12 months, so it's a perfect way to begin a working career, or an interesting kind of break from private practice or another legal job. It's an excellent opportunity to hone skills, stretch the mind and see the inside of a public institution that can have a profound influence on the legal framework of the country. Take a chance and send in an application when you see the ad (sent to every law school in the country). You may get an interview with a very interesting and well-respected man. You may be surprised, like I was, and get the job.

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