



## Why are we here?

### *Remarks by the Honourable Chief Justice Richard Niall at the Victorian Bar Dinner, Melbourne*

Friday 15 May 2026

I begin by acknowledging the Traditional Owners of the land on which we gather this evening, the Wurundjeri People of the Kulin nation. I pay my respects to their Elders, past and present, and to First Nations persons here this evening.

I would like to thank the Bar Council and its President, Fiona Ryan SC, for the very kind honour of being able to address you tonight. It's wonderful to be here amongst friends.

One major source of anxiety in giving these remarks is that I was to be introduced by Mark Costello. The fact that he is a friend of mine was the cause of, not an antidote to, the anxious moments I have experienced. We all know that barristers save a special venom when opposed to friends. It might be related to the two animating emotions of the Bar: schadenfreude and envy, which are always more powerful when applied to those we know.

So I am glad that Mark was so generous in his introduction. He also gave me words of encouragement. He said that I could talk for an hour on recent developments on jurisdictional error and you would lap it up, which was uncanny because that was exactly the topic I had in mind. But he then went on to explain that there were enough silks who wanted to be on the

Supreme Court and enough juniors who wanted to be silks that they would laugh and applaud no matter how bad the speech. Not exactly encouraging. But I will persevere.

Tonight, I want to ask, and try to answer, a large question. Why are we here? Not *here* here. I think there are a growing number of you who are now asking yourselves why you are *here* here. But I'm more interested in the bigger question. Why are we at the Bar? What made us sign up, and remain a member of this great and enduring institution? Why are the 45 ers still with us?

Contrary to some perceptions, I don't think it is for the money. Every article in the media which refers to a leading silk seems to refer to the daily fee, but I don't think it is the fee slip that keeps us here. Although we all wouldn't mind owning a Polish brewery.

Rather, everyone who comes to the Bar dreams of doing the big cases, of making a difference, of wining for the underdog. From the inception of the Victorian Bar, there has been a proud history of counsel being instructed in significant cases that have shaped the law in this country and left their mark on our society. Some of course are trials, others appeals. But tonight, in particular, I want to acknowledge and pay tribute to the significant contribution that our Jewish colleagues have made to the life of the Bar and in particular in cases in the High Court since Federation. It is a remarkable contribution and one that deserves celebration. It tells the story of why we are here.

A good place to start is Sir Isaac Issacs. As a judge on the High Court, he was the decisive influence in the *Engineers'* case.<sup>1</sup> For the common law silks, that was not a case about the

---

<sup>1</sup> *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129.

design of a dodgy staircase. It was a seminal case about the position of the Commonwealth in the Federation. Isaacs joined the Victorian Bar in 1882, and quickly became a leader, taking silk in 1899. A political career followed. He was a state AG in the colony and later a Commonwealth AG. He managed a full-time practice at the Bar while being Commonwealth AG. He was appointed to the High Court in 1906.

In 1931, he was appointed the first Australian-born Governor-General of Australia. The first of this Bar's two Governor-Generals, with Sir Ninian Stephen.

At Bill Coppel's bar mitzvah in 1909, the rabbi said the 13-year-old was destined to be a judge<sup>2</sup> – about which more in a moment. Before coming to the Bar, as a university student, Coppel enlisted in the First World War and in 1915 was sent to Egypt in the Army Medical Corps, and then to the Western Front. He arrived in France at the end of July 1916. On the Western front, from mid-July to early-August, the AIF suffered some 23,000 casualties of whom almost 7,000 lost their lives. When we think it is a tough time to come to the Bar, we should take time to recall those who came after the World Wars.

Despite the horrors of war, Coppel showed signs that he was headed for the inner Bar – his war diary records that he bought seven bottles of Clos-Vougeot Grand Cru at a good price.

Coppel had a slow start at the Bar due to the war and illness but soon picked up big cases. He took silk in 1945 and argued more than 90 cases in the High Court. Many of his tax cases remain important including *Shepherd*<sup>3</sup> and *Batagol*.<sup>4</sup> Coppel was briefed with Barwick and

---

<sup>2</sup> Charles Coppel, '[Charles Coppel on Elias Godfrey Coppel CMG QC LLD on the Supreme Court of Victoria](#)' (6 March 2021).

<sup>3</sup> *Shepherd v Commissioner of Taxation (Cth)* (1965) 113 CLR 385.

<sup>4</sup> *Batagol v Commissioner of Taxation (Cth)* (1963) 109 CLR 243.

Kitto in the *Bank Nationalisation* case, appearing in that gargantuan case in both the High Court and the Privy Council.<sup>5</sup>

Coppel thought, correctly in my view, that appointment to the Supreme Court was a crowning achievement for a career at the Bar. He was offered a role as an Acting Justice of the Court for a year to replace a Judge on leave, and then two more years followed. He declined a fourth year, thinking that the government had reneged on a promised full-time appointment. He returned to the Bar in 1953.

That year, he received a letter from Chief Justice Dixon. I want to read from part of it and then make two points. It reads:

My dear Coppel

... it will be a very great advantage to the High Court to have you appearing before it again and I cannot believe that you will not find that both your true interests and your real happiness are best served by your return to the Bar. You have a freedom of action and an independence at the Bar for the loss of which the Bench can offer no compensatory advantages that are adequate. No judge can ever experience the same influence or authority as an eminent counsel and he is never held in the same respect as such a counsel commands. And as for obtaining satisfaction from judicial work, well I can only say that mine yields none nor is the load really any lighter.

...

At all events you have my best wishes for your happiness.

With kindest regards

---

<sup>5</sup> *Bank of NSW v Commonwealth* (1948) 76 CLR 1.

Yours sincerely

Owen Dixon

Now I know that Sir Owen is our patron saint, but he does sound a bit miserable, and I assure you that although I cannot speak of the High Court, life on the Supreme Court is much more fun than Dixon suggests.

More importantly, his letter to Coppel is a testament to the important role that this Bar has long played in the life of the High Court. The High Court looks to this Bar to assist it in its work. He received a similar letter from Sir Frank Kitto.

At around this time, Maurice Ashkanasy was becoming a leader at the Victorian Bar. Born in 1901 in London, his father was a tailor's cutter from Palestine, and his mother was born in Russia. He came to the Bar in 1924 and read with Robert Menzies – they became lifelong friends. Ashkanasy was an immigrant, a labour supporter and came from very modest means. There is an important lesson there. He is a good example of the opportunities that the Bar offers and the breadth of friendship and professional connections at the Bar that span religious, political and social divides. And the importance of the Bar being open to all.

Having taken silk in 1940, he became Vice Chairman of the Bar in 1952 and Chairman the following year. In 1959, he appeared for the artist Albert Namatjira, in the High Court.<sup>6</sup> Although not a case of any great legal significance, it is emblematic of its time, and an early occasion of a Victorian barrister appearing for a First Nations person before the High Court.

---

<sup>6</sup> *Namatjira v Raabe* (1959) 100 CLR 664.

Earlier in his career, Ashkanasy also appeared in the case of *Briginshaw* for the appellant.<sup>7</sup> Now I know *Briginshaw* is an important case, but I didn't realise how important until I saw that it was being regularly cited in the AFL Tribunal.

Also appearing in *Briginshaw* was Joan Rosanove.

Rosanove was barely 17 when she began attending court in Ballarat as a clerk to her father, solicitor and barrister Mark Lazarus.<sup>8</sup> Rosanove was the first woman to sign the Victorian Bar roll in 1923 and built up a practice specialising in divorce law.

Despite her stellar reputation, it wasn't until 1965, 42 years after she had signed the Bar Roll, and following unsuccessful applications, that Rosanove was finally appointed QC. General opinion at the Bar was that she had been shabbily treated.<sup>9</sup> She was the first female QC in Victoria and the second in Australia.

Rosanove said that she had 'had to accept the fact that being a female in this day and age [she would] never be made a judge'.<sup>10</sup> Her daughter, Margaret "Peg" Lusink, who very recently passed away, would later become Victoria's first woman to be appointed to a superior court of record when she became a judge on the new Family Court in 1976.<sup>11</sup>

The next two female silks in Victoria – Lynnette Schiftan and Ada Moshinsky – were also Jewish.

---

<sup>7</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336.

<sup>8</sup> Isabel Carter, *Woman in a Wig* (Lansdowne, 1970) 11.

<sup>9</sup> *Ibid* 155.

<sup>10</sup> Victorian Bar, Women Barristers Association, '[Pioneering Women Barristers Part 1 – Joan Rosanove](#)'.

<sup>11</sup> Lauren Smith, '[An accidental lawyer](#)' (November 2018) 20 *Melbourne Law School News*.

When Ada Moshinsky arrived in Australia at the age of 7 following the Second World War, she did not speak a word of English. She was the mother of Justice Moshinsky of the Federal Court, who made his first Court appearance before he was born, at his mother's admission.<sup>12</sup> Ada Moshinsky (snr) developed a successful practice, especially in taxation and trusts, and alongside the Hon Susan Crennan, was the equal third female QC in Victoria.

Returning to Ashkanasy – he sought preselection for Labour for a Senate seat, up against another of our silks, Sam Cohen KC, who was a popular and very able industrial silk. In 1961, Cohen was victorious in the hard-fought preselection battle and became the first Jewish senator in Australia. At the inaugural lecture in his honour, Bob Hawke described Cohen as having ‘constructive, compassionate, outgoing exuberance’ and ‘concern not for himself but rather for the needs of others’.<sup>13</sup> His daughter Sue Cohen was a member of our Bar and a very able and accomplished judge of the County Court.

Bill Kaye was another fierce advocate whose practice covered an enormous range of work including common law, matrimonial cases and he assisted in many inquiries. He was another person whose studies were interrupted by War Service, serving in the Royal Australian Navy during World War One.

Early on in his legal career, he developed a reputation as a powerful advocate and as a fierce and relentless cross-examiner, which earned him the nickname “the white pointer”. He appeared in cases in the High Court against Coppel – one of which was a matrimonial case in

---

<sup>12</sup> [Ceremonial Sitting of the Full Court for the Welcome of the Honourable Justice Moshinsky](#) (11 November 2015).

<sup>13</sup> Bob Hawke, ‘Masada, Moscow and Melbourne’ ([The Inaugural Sam Cohen Memorial Lecture](#), 6 October 1971).

which Coppel led Joan Rosanove. After Coppel, who was appointed as an acting judge, he became the first Jewish Judge of the Supreme Court when he was appointed in 1972. Of course, his son Justice Stephen Kaye has also had an outstanding career at the Bar and is an ornament to the bench.

The 70s and 80s saw the emergence of a number of extraordinary Jewish barristers at the Victorian Bar. Alan Goldberg had an enormous commercial practice and appeared for *Rodney Croome*<sup>14</sup> in the High Court, a challenge to Tasmania's laws which criminalised homosexuality, and which led to their repeal. He appeared in the seminal competition case of *Queensland Wire*.<sup>15</sup>

Ron Merkel has argued a vast number of cases before the High Court, including in 2007 as counsel for the plaintiff in *Roach*<sup>16</sup> – a critical case about voting rights and the franchise, which returned the right to vote to thousands of incarcerated Australians.

In *Kruger*,<sup>17</sup> Fink couldn't get the High Court to find that laws which allowed Aboriginal children in the NT to be taken from their families were invalid, but the case revealed the horrific impact of this practice on the Stolen Generation, which was a step towards the Apology just over a decade later.

Jeff Sher is a legend of the Bar. He argued cases in the High Court on defamation in *Gutnik*,<sup>18</sup> common law and criminal law.

---

<sup>14</sup> *Croome v State of Tasmania* (1997) 191 CLR 119.

<sup>15</sup> *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd* (1989) 167 CLR 177.

<sup>16</sup> *Roach v AEC and Commonwealth of Australia* (2007) 233 CLR 162.

<sup>17</sup> *Kruger v Commonwealth* (1997) 190 CLR 1.

<sup>18</sup> *Dow Jones & Company Inc v Gutnick* (2002) 210 CLR 575.

In the High Court, Jeff Sher appeared in *Wik*,<sup>19</sup> intervening for the Northern Land Council and the Central Land Council. Sher also appeared in *Povey*,<sup>20</sup> as counsel for an airline, in which he successfully convinced the High Court that the cramped conditions of airline flights resulting in DVT was no ‘accident’, which somehow excluded them for all liability and, one assumes, secured him an upgrade on flights for life.

Our great orator Jeremy Ruskin regaled this dinner a few years ago with stories about his skills in court that revealed the power and brute force of his advocacy.

And of course there was Ron Castan, who often appeared in the High Court, most famously as lead counsel for Eddie Mabo. He appeared in so many leading cases: *Kowarta*,<sup>21</sup> the *Tasmanian Dam* case,<sup>22</sup> and *Salemi*.<sup>23</sup> In a powerful address at the annual dinner of the Australian Jewish Democratic Society in 1993, Castan spoke of racism and discrimination in this country, observing that ‘[i]t does seem to me that as members of the Jewish community and as members of the wider Australian community, we have an obligation to concern ourselves with larger issues as well as those issues within our own community.’<sup>24</sup>

In the recent ABC series on the High Court which dealt with four of the most important High Court cases, three out of the four were argued by one of Goldberg, Merkel or Castan.

---

<sup>19</sup> *Wik Peoples v Queensland* (1996) 187 CLR 1.

<sup>20</sup> *Povey v Qantas Airways Ltd* (2005) 223 CLR 189.

<sup>21</sup> *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168.

<sup>22</sup> *Commonwealth v Tasmania* (1983) 158 CLR 1.

<sup>23</sup> *Salemi v Minister for Immigration & Ethnic Affairs (Cth)* (1976) 137 CLR 388; (1977) 137 CLR 396.

<sup>24</sup> Ron Castan, ‘[Native Land Title in Australia: Reflections on Mabo](#)’ (Speech, Australian Jewish Democratic Society, 1993, reprinted by Monash University Castan Centre for Human Rights, 2022).

The influence of Victorian Jewish barristers has also been profound in the criminal law. Joan Rosanove's brother Jack Lazarus was a towering figure and leader of the Criminal Bar. Lillian Leider was a storied criminal trial advocate, taking silk in 1992 alongside her friend and colleague Betty King. And of course there is Robert Richter. Who wouldn't want a nickname like "the Red Baron". He argued *Pantorno*,<sup>25</sup> *Pollitt*,<sup>26</sup> *Rogerson*,<sup>27</sup> and *Lawless*<sup>28</sup> in the High Court.

In Sydney, they will always tell you that Sir Frederick Jordan was the greatest judge not to be appointed to the High Court. And in Victoria the names Leo Cussen and Tom Smith are often discussed in the same way. To that august list can be added Mark Weinberg. Weinberg was an outstanding barrister and judge. As counsel he appeared before the High Court in cases such as *Grollo v Palmer*,<sup>29</sup> *He Kaw Teh*,<sup>30</sup> *Coco*,<sup>31</sup> *Osland*,<sup>32</sup> *Nicholas*,<sup>33</sup> and *Polyukhovich*.<sup>34</sup>

I have already noted that Isaacs and Cohen were in the Federal Parliament. I would also like to acknowledge the work of Mark Dreyfus. And Linda Desau who was an excellent Governor of this State and together with her husband Tony Howard, a great supporter of our Bar.

Of course I have left many out.

---

<sup>25</sup> *Pantorno v The Queen* (1989) 166 CLR 466.

<sup>26</sup> *Pollitt v The Queen* (1992) 174 CLR 558.

<sup>27</sup> *R v Rogerson* (1992) 174 CLR 268.

<sup>28</sup> *Lawless v The Queen* (1979) 142 CLR 659.

<sup>29</sup> (1995) 184 CLR 348.

<sup>30</sup> *He Kaw The v The Queen* (1985) 157 CLR 523.

<sup>31</sup> *Coco v The Queen* (1994) 179 CLR 427.15.

<sup>32</sup> *Osland v The Queen* (1998) 197 CLR 316.

<sup>33</sup> *Nicholas v The Queen* (1998) 193 CLR 173.

<sup>34</sup> *Polyukhovich v The Commonwealth* (1991) 172 CLR 501.

To what extent Judaism played any role in their professional lives is not known to me. Some may have objected to being called out as a Jewish barrister. And I am conscious that harmful stereotyping can be found in praise, not just festering in harmful tropes. And there is a sense of awkwardness in paying this tribute on Shabbat which means a number of our colleagues are unable to be with us.

But it can't be a coincidence that such a small group within our society have had such a profound and positive influence on the Bar and the work of the High Court.

When I look across that list of advocates, their diversity stands out. They defy being typecast. They can't be put in a single box.

Some were observant in their faith, while others lived secular lives.

They did not share politics: Lazarus was a lifelong communist, Issacs a committed protectionist, believing in tariffs and duties. Liberal and Labor preselections were sought by various of them.

Their areas of practice differed markedly, covering the full spectrum of work in the High Court.

Their style of advocacy varied enormously from the bookish to the masterful cross-examiner.

Some came from relative affluence; others arrived as refugees or came from families who had been decimated by the Holocaust.

In each of their fields they made a difference. Three of them – Isaacs, Rosanove and Castan – have sets of Chambers named after them.

It is obvious that they share hard work, ability and a commitment to justice. Three great attributes of the Victorian barrister.

I am not so naive that I do not see that privilege continues to play a role in life at the Bar. But when I look across the century and more that this Bar has contributed to the life and work of the High Court, I also see that merit, ability and industry play a much greater role. And the benefit of diversity in all its forms.

I have said before that the two great emotional states of the Bar are schadenfreude and envy. On a less cynical note, I am sure that pride in the Bar and in the work that you do remains a strong driving force to join and remain at the Bar.

It is my expectation that this Bar will continue to argue the big cases in the High Court; just not from my judgments please. The burden now falls on you to continue this great tradition.

We should all be proud of being members of this great Bar. Tonight, I pay particular tribute to our Jewish colleagues, and I do so at a time when many I am sure have felt exposed and anxious. I hope that the collegiality of the Bar is a source of comfort and strength.

The barristers I have mentioned and many that I have not, remind us of the importance of ability, hard work and commitment to justice.

And a bit of chutzpah doesn't hurt.

Thank you for listening.