

Cab Rank Rule Helps Maintain Impartiality

Writing in the *Law Times* of 13 February 1996, Peter Goldsmith QC and Michael Beloff QC have to say about the cab rank rule for lawyers:

"The 'cab rank rule' is as important an element of the Bar's code of ethics as can be found; it has indeed received the sanction of statute (in negative form) in s.17 of the Courts and Legal Services Act 1990. It means, as Lord Mackay, then Dean of the Faculty of Advocates, said in 1978: "An advocate has to represent people even though he did not like their views, and whether they had legal aid or not."

Why is it so vital? The words of Lord Erskine, uttered in 1792 in justification of his defence of Thomas Paine (the English-born philosopher who supported the French Revolution), are relevant almost two centuries later: "From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in the court where he daily sits to practise, from that moment the liberties of England are at an end."

It is a matter of constitutional importance that the advocates cannot pick and choose their clients on political grounds, on the popularity of the client's cause, or on whim. In certain Commonwealth jurisdictions, with a fused profession, there have occasionally been real difficulties in finding lawyers prepared to represent an unpopular dissenter from prevailing political orthodoxy. It is *not* for the advocate to prejudge the merits or otherwise of a client's case (although he or she may, of course, advise the client as to his chances of success); that would be to usurp the rule of the judge or jury.

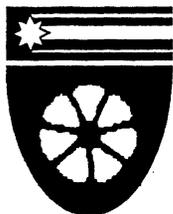
The most disreputable litigant is still entitled to proper representation. Lord Pearce in 1969 pointed to the reality if it were otherwise: "It is easier, pleasanter and more advantageous professionally for barristers to advise, represent or defend those who are decent and reasonable and likely to succeed in their action or defence than those who are unpleasant, unreasonable, disreputable and have an apparently hope-

less case. Yet it would be tragic if our legal system came to provide no reputable defenders, representatives or advisers for the latter, and that would be the inevitable result of allowing barristers to pick and choose their clients."

Finally, the rule enhances consumer confidence in the reality of access to the best justice that private or public money can obtain; and in the impartiality of advice received, uninfluenced by perceived personal or political predilection on the barristers' behalf.

Advocates can decline to accept instructions on various grounds: lack of time; lack of adequate remuneration (if the case is privately funded); lack of experience in the particular field; lack of time to prepare; conflict of interest; refusal to participate in the proposed deception of the court. But he or she cannot do so because the client or the client's cause fail to pass muster with a section of the electorate or even with their elected representatives.'

— *Commonwealth Law Bulletin*, July & October 1996.



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