

The Seniority Rule: A Privilege, not a Right

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Readers may be familiar with the existence of the so called 'Seniority Rule' that exists in the Tasmanian Courts. It is a simple but traditional rule that grants practitioners the privilege to be heard by the Court in order of admission to the roll of practitioners. In Tasmania, breaching the seniority rule causes serious offence, and sometimes scandal sadly this author observes that the rule is being abused by some practitioners who treat the rule as a right, and not a privilege. The purpose of this article is to discuss the existence of the Seniority Rule and similar interstate rules, and to cause practitioners to pause and reflect upon whether they have abused the privilege afforded by the Seniority Rule.

Little has been written on the seniority rule at a judicial level, however, the Victorian Bar Association, in its publication titled the 'Good Conduct Guide'¹ has stated:

"The Court may not be aware of the seniority of all members of the bar appearing before it. Counsel ought to observe seniority to ensure the Court is not embarrassed. Where the Court does not otherwise provide, then determining addresses by reference to seniority preserves an orderliness and respect for the Court."

Similarly, the New South Wales Bar, in its Bar Practise Course materials reminds trainee barristers (not necessarily junior members of the profession) of the importance of etiquette at the bar table and in the court room more generally. It makes sense, satisfactory professional conduct involves practitioners acting in a professional manner when in court. It goes without saying that practitioners that abuse the privilege of the seniority rule are embarrassing themselves, the court, and the whole legal profession.

Sadly, for an increasing number of practitioners, the seniority rule is increasingly being treated as a 'God given' right and not a professional privilege. Their discourtesy extends to directing abusive comments to junior practitioners who address the court ahead of them, the monopolisation of the chairs at the Supreme Court bar table leaving other practitioners to address Supreme Court judges from the back of the Court. Worst of all, several senior practitioners have been seen to sprint in to the Magistrates Courtrooms jumping a queue of usually half a dozen practitioners (many of whom have been waiting over half an hour) thereby cutting the queue, simply to avoid the inconvenience of having to wait for the judiciary to deal with their client's case. This is a dismal state of affairs, and is unbecoming for those involved.

This author suggests that the seniority rule, as a privilege, can and should promote courtesy, efficiency and collegiality in the court. This is best achieved when practitioners, both senior and junior, abide by the spirit of the rule, and treat one another with professionalism and respect at the bar table.

¹ Good Conduct guide Chapter 8, p122 at [8.8]