Why one of the legal industry's fiercest fights is about job titles

It's fine for barristers to have a big old blue about their titles, but it's not fine to tie up the parliament.

MICHAEL BRADLEY

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The bar is aflame, as it often is, over the vexed distinction between QCs and SCs. South Australia's chief justice has virtually declared war on the government, and the bar is caught in the middle with its fragile ego exposed. How did we come to this fraught state of affairs?

The bar is a funny place. Attracting, depending on your point of view, the smartest or the most antisocial members of the legal profession, it remains in many ways a carefully preserved bubble of proud anachronism, separated from the grubby world of commerce and clients and unpaid bills, and by that means free to operate at the highest level of fearless independence.

There's a lot to be said for this, given the fragility of the rule of law. A truly independent, unconstrained bar is a key bulwark against corruption of our legal system. In a way, you want a priestly caste in society whose sole job it is to work the law.

Inevitably, in the rarefied air of an ivory tower, comes a degree of weirdness. Whether barristers really need to wear horsehair wigs and long black gowns in order to maintain respect is doubtful. But they cling to the garb like it's literally their last shred of dignity.

Likewise the attachment to title. Most barristers are called "juniors"; a small proportion are elevated to "silk", or senior barrister status. Historically (since 1603)

they've been called Queen's (or King's) Counsel. Metaphorically speaking, they are appointed by and serve the Crown.

In Australia, inevitably the crushingly obvious anachronism of lawyers, plying their trade 17,000 km away from their disinterested Queen, going about town with a royal title, was going to become controversial.

When it finally did, a slow wave of change swept through the profession (nothing happens quickly in the law). Starting with NSW in 1992, all of the states and territories eventually abolished the title of QC, replacing it with the rather more republican-sounding "Senior Counsel" (SC). The last aboard was South Australia, in 2008.

No sooner had the change been made, than the move to undo it got seriously under way. In the eastern states in particular, much of the bar was deeply unhappy about the loss of the QC appellation, and brilliant minds were turned obsessively to the construction of logical arguments as to why its abolition had been a Very Bad Thing.

Is it really that bad?

In truth, there isn't much of an argument to be made. The terrible unfairness visited on newer silks, having to put up with the diminutive SC title while a bunch of (ageing) silks got to retain their exclusive status as the last of the QCs, sounded to the objective ear like the playground whinging it really was, and anyway time was going to take care of the anomaly soon enough.

The old chestnut, which has resurfaced each time a state bar tries to bring QCs back, is that Australian SCs are commercially disadvantaged in overseas courts, because their title is seen as inferior to that of the QC, still appointed in the UK and other post-colonial jurisdictions (even New Zealand, the shame…). Pretty thin, but it's the best they've got.

Still, it's proved strong enough. The march back to royal forelock tugging began in Queensland in 2013, followed by Victoria a year later. In both states, the silks can choose which title they individually prefer. Almost all have elected to be QCs. Commonwealth Attorney-General George Brandis announced in 2014 that he would be bringing back QCs to the federal realm as well, although none have actually been appointed since the Howard years.

Now, the South Australian government has announced that it's turning the clock back too, after intensive lobbying of the new Liberal government by the local bar. This has caused, in legal terms, somewhat of a shitstorm, pitting the SA Supreme Court against the bar and the government. The chief justice has said that the change stands to undermine the independence of the Court, the body which appoints senior counsel.

The problem is that, under the new law (assuming it passes), existing and future SCs appointed by the court will be able to apply to the government to change their title to QC, if they want. The chief justice sees this as a scandalous interference, and warns that his judges might start demanding undertakings from candidates for SC status that they won't try to become QCs.

If that all sounds to you like a turf war in a kindergarten sandpit, that's because you don't understand just how deeply important these questions are. To barristers. Does it really matter whether senior barristers are called SCs or QCs? Or Grand Poobahs? No, not to non-lawyers nor to any aspect of the proper functioning of the legal system. It's fine of course, for the members of the bar to care deeply about it, and hardly surprising for a section of society that still wears an item of clothing called a jabot and doesn't find it at all bemusing.

It's not fine that their obsessions over interchangeable titles occupy a minute of the time of parliaments or courts. It's a royal waste.