

## Keynote Speech at the Launch of the 2022 William Ah Ket Scholarship

Owen Dixon Chambers, Melbourne,

29 June 2022

Thank you, Dr Michelle Sharpe.

Your Honours, your former Honours, ladies and gentlemen:

I begin by acknowledging the traditional owners of the land on which we meet here this evening, the Wurundjeri people of the Kulin nation and I pay my respects to their elders past and present.

I was honoured to be asked to launch the 2022 William Ah Ket scholarship<sup>1</sup> and I am very happy to be here tonight, in this company and in this place with which I have, and feel, many associations.

William Ah Ket, the first person of Chinese ancestry to practise at the Victorian Bar, is a very important figure in the history of the Bar and, more broadly, in the history of the legal profession in Australia.

I first came to know about William Ah Ket soon after I joined the Victorian Bar some 30 years after William's death, but my knowledge of him was very incomplete. As a result of the research and writings of Dr Andrew Godwin, and some others, we now know much more about the achievements of this remarkable man.

We also have the advantage of access to learned presentations made in connection with the William Ah Ket Scholarship by two Chief Justices, The Hon Susan Kiefel AC, Chief Justice of the High Court of Australia and The Hon Ann Ferguson, Chief Justice of Victoria. Their speeches and other valuable resources are available on the website of the Asian Australian Lawyers Association and I am very grateful to have had access to it; it would be good if this important repository could be more widely known because it is a valuable resource. The Association's website also contains links to the winning William Ah Ket Scholarship Papers and to entries of

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<sup>1</sup> The topic for the 2022 scholarship:

*In "Woman in a Wig: Joan Rosanove QC" (Lansdown Press, 1970) at 13, Isabel Carter wrote that 'A Melbourne barrister, Mr Ah Ket, a friend of Mark's (Joan's father), said to her: "You and I have both chosen the wrong profession. We will never satisfy our ambitions. Neither of us will ever be made a judge, you because you are a woman, I because I am Chinese. We should have done Medicine."'*

*The Australian legal profession and judiciary are lagging behind in cultural diversity, at least by comparison with certain other professions. What structural improvements can be made to the Australian legal profession and/or judiciary to bridge the cultural diversity gaps and break down persisting cultural barriers?*

three of the runners up. These are very important pieces and those of them that I have read are, if I may say so, outstanding.

In these remarks this evening, and against the background of what has now been published about the notable career of William Ah Ket, I will speak of my own encounter with his memory some 30 years after his untimely death and then about another encounter that took place somewhat more recently.

My first encounter was in my early weeks at the Bar as a very young reader in the chambers of that great advocate Edward Lloyd, known to all as Woods Lloyd and later of course Lloyd QC.

At that time, early 1964, and as it was when William Ah Ket came to the Bar, there was no course of formal instruction for those signing the Roll of Counsel. One read in the master's chambers for six months and for the first two months could not accept any briefs. In this briefless period one sat in the master's chambers and followed him around (it was virtually always "him" then) when he appeared in court, watching his advocacy, watching others and listening to the master's comments. One also devilled pleadings, and opinions.

And one listened to the stories, of which there were many. They were often about triumphs or disasters; they told one what to do and when to do it and, especially, what NOT to do and when not to do it. Also of course they gave examples of how to do correctly what one needed to do.

They were very illuminating tales – illuminating still when stripped of their embellishments - and I was lucky that my master was one of the great tellers of stories. So also were some of his close friends at the Bar, from whose tales I also learned. Some judges would tell stories too, at lunch in the then-called Common Room on the top floor of the recently opened Owen Dixon Chambers.

It is interesting to reflect upon these tales; were they fair and did they reflect a reality? My answer is that for the most part they were fair and they did reflect a reality. Where they involved disasters in court they were certainly instructive. And, on reflection, those who were the subject of the few stories that were about nasty people probably deserved what was said. (One favourite, which I won't tell this evening, was about a judge who made racist comments about a "New Australian" Plaintiff. It was not the first occasion this judge had behaved this way but this time he received a wonderful whack from the jury when it delivered a large, but just holdable, verdict to the deserving Plaintiff, right in the teeth of the judge's biased summing up.)

I was interested to find, in undertaking some research about William Ah Ket's colleagues in Equity Chambers in the early 1930s, that the editors of the Australian Dictionary of Biography make significant use of stories and other anecdotal material in some of the entries, about lawyers.

It was through an anecdote that I first encountered William Ah Ket.

I have had some hesitation about telling the tale but have decided to do so because it was how, within a month or two of coming to the Bar, I learned about one of its eminent and historic figures.

And also, curiously, the story tells much more than might at first appear. I would argue that such stories should not be excluded from the historical record; of course they need to be treated with care, but then so does much other material. I should add that I believe the story to be broadly supported by other sources. I should also add that I have recently become aware of other versions but they are broadly consistent in their essentials

As we know, William Ah Ket had a broad and successful practice and one day it took him to the goldfields – it was probably to Bendigo – with a brief in a case of commercial fraud. He was briefed for the Plaintiff, who was seeking compensation for the loss suffered as a result of the fraud.

In those days barristers went on circuit by train, as indeed I fondly remember from the 1960s when I went on circuit myself.

Down at Spencer Street Station, dressed of course in a suit and with his briefcase, William Ah Ket took his seat in a first-class compartment on the evening train to Bendigo. Perhaps his blue circuit bag was in the luggage rack above him.

There were six seats in the compartment, three on each side, facing each other. William sat alone on one side reading his papers. Seated opposite were three noisy, unpleasant, men.

William kept to himself but the men wanted to provoke him. They used the stereotypical racist language of the time: “You likey live here?” “You likey fish and chip?” and other “you likey’s.” It was dreadful behaviour but William just kept his cool and simply ignored them. When the train reached Bendigo the parties went their separate ways; I like to think that William stayed at the Shamrock Hotel– Diamond Lil’s as it was later known to those who stayed there on circuit- almost opposite the courthouse. Surely he must have stayed there.

The next day the men encountered William Ah Ket again but this time it was in court.

There the three men discovered, to their horror, that the man they had teased and insulted in the train the night before was a barrister. There he was, in wig and gown, at the Bar table; a person of authority. Moreover, he was counsel for the Plaintiff - their opponent.

When the Defendant’s case was presented and it came to their turn to give evidence the men from the train did not fare well. The last witness was the man who had been the most offensive of the three in the train; he fared very badly indeed under cross-examination. In fact, under William’s cross-examination, he was done for. Utterly undone, one might say.

When what seemed to be the last question had been put and an unconvincing attempt made to answer it, William Ah Ket did not resume his seat immediately. Instead, he paused for a moment – the nature and length of the pause would have been important and William would have got it just right. Looking at the uncomfortable witness, William had one last question; politely he asked: “You like cross-examination?”

When I told a story to someone a few years ago they said it was implausible.

Now for the important inferences that I would draw and use to argue that the story is indeed plausible. The first inference to be drawn is that the trial was being conducted without a jury; it was a civil action for fraud against the men who sat opposite William in the train. It could not have been a jury trial - as one of the stories would have it - because no-one, and certainly not William, would have risked making that comment in front of a jury.

But the fact that, according to the story, he did say it before a judge in a civil action indicates that he had - and knew that he had - a very high standing before the judge and in the profession generally. Otherwise he would not have dared to do what he did. But because he had such stature, he was able to do it, and with dignity and effect, such that it became part of the legend.

I don't think the story is implausible and, most importantly of all, it was not told as an implausible tale; it was told as a true story and one that respected William Ah Ket. I should add that, on one version, William affects the stereotypical accent used against him; in the version I prefer he uses his so-called "educated" accent. No doubt his client won the case.

Of course I then learned more about William and was keen to do so. I learned that he was an excellent barrister. I learned that his parents had arrived in Victoria from China in the 1850s, during the Victorian gold rush. We knew what school he went to - that was part of the story - and, most importantly, that Bob Menzies considered him to be a very good advocate. Not only was Menzies a legend at the Bar, about whom there were many stories, but at that time he was still Prime Minister. We knew too that William Ah Ket had appeared frequently in the High Court and, I think, that he had appeared as a junior to Owen Dixon KC.

That knowledge came to me in 1964. About 15 years later I renewed my acquaintance with William Ah Ket in a very pleasant, if perhaps mildly eccentric, way.

In 1980 or thereabouts we were of course in the pre-digital age and the law was to be found in books. The chambers library was an important resource for a barrister's practice and many chambers were lined with books

Some of us built up collections of nominate reports because we liked their history, their antiquity and the sense of continuity that they gave. From time to time, when someone left the Bar, sets of these reports, often in a bad state and sometimes falling to pieces, would become available. I don't recall them ever having a price - they were simply free to a good home and if they did not find a good home they were, presumably, just dumped. Often in need of expensive rebinding, there was no market for them.

One day, in the early 1980s, a collection of nominate reports became available somewhere on the 6th floor of Owen Dixon Chambers, quite possibly in the chambers of Ken Marks QC who had been appointed to the Supreme Court. Some of the reports had belonged to Sir Reginald Smithers and others to another great figure at the bar, Dr E G Coppel QC.

One set, a particularly interesting set of Adolphus and Ellis's Reports, bore the stamp "W Ah Ket. Barrister at law." The stamp was at the top of the page, indicating that William Ah Ket

had owned the reports before E. C. Coppel, whose stamp “E C Coppel, Barrister at Law, Equity Chambers,” followed. As we shall see, there is an added reason to suppose that the reports passed from Ah Ket to Coppel.

The reports also have a connection to Ireland, to the Munster Circuit, to a journey by sea some 170 years ago and to the establishment of the Supreme Court of Victoria. They thus have another connection to the heritage of the Victorian Bar.

A handwritten signature on each volume tells us that the first owner was Robert Molesworth. He arrived in Victoria from Ireland, via Adelaide, in 1852. He was appointed to the Supreme Court in 1856 where he served for many years. He was later appointed as the head of the newly established Mining Court.

As the reports cover the years 1834 to 1841 it seems reasonable to conclude that Molesworth, a barrister who practised at the Irish Bar on the Munster Circuit from 1828, brought the reports with him as part of his baggage on the long voyage to Australia - some three months at sea, at least.

Mr Justice Molesworth retired from the Bench in 1886 and died in 1890. The annotations, of which there are very few, seem to be in the same handwriting as the signature “Robert Molesworth.” The next mark of ownership is that of William Ah Ket who signed the Roll in 1904.

The volumes were in rather poor condition when I acquired them and I later had them rebound. Perhaps I should have had them repaired in their original bindings - I thought of that later. Nevertheless they are in good condition and a preserved record of part of our history. On my appointment to the bench in 1991, I took the reports with me to my chambers in the old High Court building in Little Bourke Street and when the Federal Court moved to the new Sir Owen Dixon Commonwealth Law Courts in William Street the reports moved there too. They remain secure in the Federal Court.

I now turn to a very recent insight into the career of William Ah Ket. Documents that Dr Godwin has discovered include the floor plan of Equity Chambers as they were in 1932 when William Ah Ket had chambers there. The plan is remarkable for what it tells us about the collegiate group of which William Ah Ket was, for many years, a part.

Moving around the floor in a clockwise direction, William Ah Ket’s next-door neighbour was Reginald Sholl who later became a distinguished Supreme Court judge, Sir Reginald Sholl. As I continue around the floor I shall use the titles the occupants later had. Next is Sir Edmund Herring, Chief Justice of Victoria, then Justice Sir Norman O’Byrne and then another Chief Justice of Victoria, Sir Henry Winneke. Next to Sir Henry’s chambers were those of Bill Irvine, then Mr Justice Tom Smith, then Judge Len Stretton, the Royal Commissioner into the 1939 Black Saturday bushfires and much else, then Judge Jack O’ Driscoll. Next, the chambers of the famous Dr Elias Godfrey Coppel QC, for some time an Acting Judge of the Supreme Court of Victoria and of the Supreme Court of Tasmania.

Then there is a name very special to me, Sir John Nimmo. He became a judge of the Federal Court at its foundation and was my master’s master. Perhaps it was he who told the story

about his chambers colleague William Ah Ket to his reader, my master, Woods Lloyd. I knew Sir John, appeared before him (as I did before most of the others on the floor) and had the privilege, early in my time as Chief Justice, of hosting a chambers birthday lunch for Sir Reginald Smithers at which Sir John was also an honoured guest. But it keeps going – the name that next appears is that of yet another exceptionally distinguished Supreme Court judge, Sir John Barry. Then the famous Pat Gorman QC and at the end of the corridor the renowned criminal lawyer L.B. Cussen (not to be confused with Sir Leo Cussen after whom the Institute is named). Then moving up the other side of the corridor, back towards William’s chambers, there are three more distinguished judges: Judge Len Read (with whom John Nimmo read and so was my master’s master) and finally William’s other next-door neighbour, Sir Edward Hudson, a highly respected and much liked Supreme Court judge.

What absolutely remarkable company! What a remarkable set of chambers! And there was William in the heart of it. We can reflect too that William’s membership, as an Australian of Chinese ancestry, of that small collegiate group of eminent barristers would unquestionably have broadened the understanding of each of the others. Collegiate membership of that nature – belonging and exchanging – is a demonstrably effective path to inclusion and to a welcomed diversity.

And now for the distressing reflection:

Almost every single one of his colleagues in chambers was appointed to the Bench, where each served with distinction. William Ah Ket, who evidently had the respect of all of his colleagues in Equity Chambers and who was still remembered and respected at the Bar some 30 years after his death, and who was eminently qualified for judicial office, never received an invitation to accept an appointment.

We do not need to speculate why.

William himself knew why, as the quotation for this year’s scholarship essay clearly demonstrates. The man who appeared frequently in the High Court, who worked with some of the most eminent lawyers of our times, who was highly regarded by Menzies KC, a man who appeared in some remarkable cases and was himself a leader of his time, never became a judge. The inference is unmistakable and indeed he said so himself: He was never invited to accept judicial appointment because of his Chinese ancestry. To put it more bluntly: Because he was not a white Australian.

It moves me to say that, and I find it hard to do so. But it has to be said and we must not forget what happened.

Yes, there have been improvements. There have indeed been some heartening developments; but there is more to be done and this scholarship is designed to do just that.

It is designed to do so through the worthy means of encouraging research and scholarship on the part of young lawyers. In doing so it encourages them to think and write creatively on a topic of profound importance to our understanding of who we are as Australians, of what we

stand for as Australian lawyers, and how we can continue to move forward along the paths of inclusion and justice.

Michael Black  
29.06.2022