

Darryl Burnett

Oct 11, 2022

Dear Fellow Barristers,

This time last year, I joined with a number of likeminded barristers from a broad cross section of the Bar to run for Bar Council, united in our desire to ensure that the Bar was run properly for the benefit of all members and to be receptive to their needs. We were very proud to be elected to continue the work which had been started in 2020.

In my role as Vice President of the Bar Council, I have been honoured to assist in achieving the following:

1. reducing subscriptions for nearly all members by 5%;
2. ensuring that the Readers' Course remains a high level advocacy course taught by barristers for barristers;
3. strongly advocating for the return of in-person hearings across all State and Federal Courts;
4. keeping a tight control on the expenditure of the Bar; that is, ensuring that our money is used responsibly and for our general benefit;
5. ensuring that the CPD program delivers high-quality seminars for our members that showcase our skills at the highest level to the profession; and
6. holding a Special General Meeting for constitutional reform to make the representation of Category A on the Bar Council more egalitarian.

I want to thank all members of the current Bar Council, and in particular, Roisin Annesley KC, the current President, for their service over the past year.

While this seems like we've achieved a lot, there's still more work to come.

The Bar must always remain fiercely independent. Diligent financial management will continue to be vital, and this extends to ensuring that BCL works for, and benefits, us as barristers.

For these reasons, I am standing for election again this year on the "Members First" Ticket for 2022. The "Members First" Ticket represents a diverse cross-section of the Bar, with different seniorities, practices areas, chambers, clerks and opinions. Our team will ensure that all barristers are represented by the Bar Council.

I've **attached** a Brochure that provides more detail about the other barristers who will be also seeking your support, as well as more information about what we all want to achieve in the next year.

I would encourage you all to speak to me, and the other members of the "Members First" Ticket, about the election and the issues we all face. In particular, I'd like to invite you to come to the Essoign Club this **Friday, 14 October 2022 from 4.30pm** to have a drink and take up this opportunity.

Once again, thanks for your continuing support.

Regards,

Darryl

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Oct 24, 2022

Thank you, Daryl, for your email, which has given me much cause for thought.

The Members First team has been true to its goals, for which all who supported their initiative in 2020 should be grateful. As far as I can see no new goal is proposed by the team at this point, just maintenance of the same focus..

I stood for election to the Bar Council in 2020 – for the first time – for the same reasons that motivated the Members First team to put forward their ticket. I, and most others at the Bar, I expect, did not know that the Members First team was in the course of formation. I have not stood for election since and have no particular desire to do so. The circumstances as I saw them then required action because the Bar stood at clear crossroads. That no longer is the case, in part because of the good work done by the Members First candidates, but also because of the emphatic result of the 2020 election, which was a referendum of sorts.

Prior to the 2020 Bar Council elections I am not aware of a full slate of candidates ever having been put forward by a team that had caucused in advance. The importance of the choices before the Bar in the 2020 election made this an understandable choice for those involved in putting forward the Members First team. In the years up to 2020 each member of counsel in voting considered the merits of each candidate individually and consulted other members of counsel about the candidates unknown to the voter, before voting.

For my part I do not see it as democratically healthy for the Bar for there to be a complete slate of candidates for a Bar Council election in the ordinary course. It entails 21 candidates garnering support among the members of counsel known to each of them for the election of all of them, en bloc, in preference to all other candidates. Prima facie there is a bond of loyalty among

the team of 21 that requires no less. Just what dealings have taken place between the Members First members is unknown, as likewise is any arrangement or understanding between them going forward. The absence of transparency is troubling. In 2020 there had been substantial debate among counsel as to the direction of the readers course, the corporatist direction of Bar governance and many other matters. The goals of the Members First members were clear enough. Two years on one might be forgiven for thinking that the principal goal now is the maintenance of power.

The consequence of a full slate of candidates is a practical impossibility of other candidates achieving election unless, perhaps, they can put together a slate of 21 other candidates to wage contest. The early announcement of the Members First slate, with bios and photos circulated in a polished brochure can only discourage other worthy candidates from standing for election. This consequence is inimical to the Bar's best interests.

I am not for a moment to be taken as saying that the individual members of the Members First team are not worthy of consideration for election. My view is that the presentation of slates of candidates like this in the ordinary course can only undermine the quality of the election result and of the election process.

Accordingly, I ask that you, and each other member of the Members First team declare in writing as soon as possible, and before voting opens, that they will not next year (that is, in 2023) be a member of a slate of candidates to be presented for election to the Bar Council.

If the members of the Members First team are not willing to make this declaration, do they propose to seek to amend the Bar's Constitution to in ways to ensure that all candidates for election to the Bar Council stand on an equal footing or to invite wholesale change to the way in which Bar Council elections should take place in future years? Or is it to be the case that worthy and enthusiastic candidates must agree to participate with a "ticket" or suffer the consequences of not doing so if they wish to become involved in the activities of their Bar Council?

I look forward to your reply.

Regards,

Rodney Garratt

R M Garratt KC

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Oct 24, 2022.

Graham Robertson

Subject: The Tocsin Bell Rings Again

To my former colleagues,

The competition for the upcoming election has some underlying tensions.

A few weeks ago, we saw the Members First team come out with a transparent announcement to notify all members of the Bar that 21 independent members of the Bar have come together on a ticket with a common goal – standing for Bar Council in the interests of all members.

Subsequently, there has been a flurry of candidate nominations which we infer who are what the modern-day political analyst might call a 'teal' styled independent cohort; conveying an idea that they are more independent than those on the ticket. This is illogical reasoning, all barristers are independent! Of course, independents are entitled to their position but all those on the ticket are as proven as those who are running independently. I am pleased to see that many of last year's Bar Council (who have done great things for the Bar) are still on the current ticket.

Your vote counts so be careful how you vote. What we know is this:

1. Some independents criticise the ticket; but what information have they produced? Their social media posts do not give enough information about what they stand for.
2. They did not set out what experience they have nor their governance record or what their plans are if they control the Bar Council;
3. Do you really want to upset the great work done by the Bar Council in the last two years? It has come a long way in your best interests.

Whilst I'm not on the LinkedIn platform, many friends and colleagues have shown me the posts from a number of members of the Bar who say they are running as "independents". However, if one looks closely at these posts, each "independent" seems to approve of the stance of the other, so much so that there is an irresistible inference that each "independent" supports the other/s because they are aligned with their views, values and objectives.

There has been a very interesting development in recent days which you may wish to examine. Philip Hayes has delivered a series of questions to Sam Hay KC, and to his credit, Sam has responded in great detail.

When considering your vote, I strongly suggest reading the exchanges between Philip and Sam. It is a healthy debate, but it is not for me to pass on these emails, although I am sure both Philip and Sam would be ready and willing to provide you with the email exchanges if you make the request of them.

As for the Members First team, I know (from their ticket brochure) that they:

- Look to streamline and keep the governance and Bar Office economically efficient.

- Provide transparent financial management and reduce subscriptions when possible.
- Promote our members to get barristers back in Court and be a strong voice for the community about important matters of court operation and the rule of law.
- Focus on egalitarian representation.

COVID has been manifestly destructive to the fortunes of the junior bar, especially the Criminal Bar. Therefore for my part, I offer the following suggestions to members of the ticket if they succeed at the election, namely that the Bar Council establishes two sub-committees. One to pursue the interests of the junior bar and the other to do the same with respect to the Criminal Bar. I note that on the ticket is Gavin Silbert KC, a former independent Crown Prosecutor who is a man of the widest experience in the criminal jurisdiction – he would be an ideal candidate to head this sub-committee for the Criminal Bar. Tom Danos OAM has told me that there is currently a “shortage of prosecutors”, he thinks that perhaps COVID has forced young criminal barristers to change jurisdictions, a criminal sub-committee may help to remedy this situation.

Furthermore, I have been told members of the ticket are contemplating that further resources could be allocated to barristers without chambers by repurposing the library to the west of the Essoign Club to create individual spaces to enable those forced to work from home to work in the environment of the Bar. I strongly endorse this proposal that has been suggested by Paul Hayes KC and Shane Lethlean who are both Category A members of the Members First ticket.

I advocated for in 2020, a “vote for change”. In 2021, you then voted to “keep the change.” Now, you should vote “Members First” so you know what the plans are for the Bar’s future. To use a hackneyed phrase “if it ain’t broke, don’t fix it.”

The Members First team have shared their vision, set out their achievements and acknowledged the work still required to be done.

Remember *certa bonum certamen* and *caveat emptor*,

Graham Robertson
Barrister-at-Law (Retired)

(See Gowans)