

HOW BEST TO BRIEF A BARRISTER

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Barrister
Young's List

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Barristers' Clerk
Young's List

MLAANZ ANNUAL CONFERENCE
FRIDAY 12 SEPTEMBER 2014



SO I FINALLY STOOD UP TO THE CLERKS! TWO WEEKS AGO I REALLY TOLD THEM WHO'S BOSS!



I SAID "NO MORE CRAPPY BRIEFS FOR LOW PAY. JUST SEND ME THE GOOD STUFF!"



AND DID IT WORK?

ABSOLUTELY!



SINCE THEN THEY HAVEN'T SENT ME A SINGLE BRIEF!

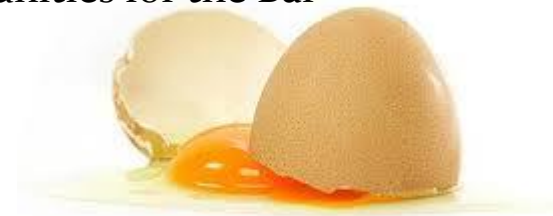






Architecture of the Session

1. Sensible steps in briefing barristers
2. Models of practice: diverse ways of working at the Bar
3. Clerking and its frontiers
4. Efficiency in the overall legal system: implications and opportunities for the Bar



Useful resources on briefing barristers

- *Working with Barristers: A solicitor's guide to relations with the Bar*, 2nd Edition, Dr Tom Altobelli, The Law Society of New South Wales (<http://www.lawsociety.com.au/cs/groups/public/documents/intercontent/026515.pdf>)
- *Preparing briefs made simple*, Anthony JH Morris, Queensland Law Society Journal, June 1991, Vol 21, No. 3, p 261
- *Briefing Barristers: Ten Ways to make the experience a happier one*, Anthony JH Morris QC, 1999 (<http://www.lexscripta.com/pdf/briefing.pdf>)



Briefing Barristers: Ten ways to make the experience a happier one

1. Select Counsel appropriate for the task
2. Discuss the matter with Counsel before sending the brief
3. Specify on the brief precisely what Counsel is instructed to do
4. Include “instructions” or “observations” as the first item in the brief
5. Ensure that the brief includes everything that Counsel will need
6. Do not “load” the brief with material that is entirely irrelevant
7. Arrange the brief in a logical order
8. Prominently highlight matters which Counsel should note
9. Arrange conferences where necessary or appropriate
10. Ensure the situation regarding fees for Counsel is clearly understood

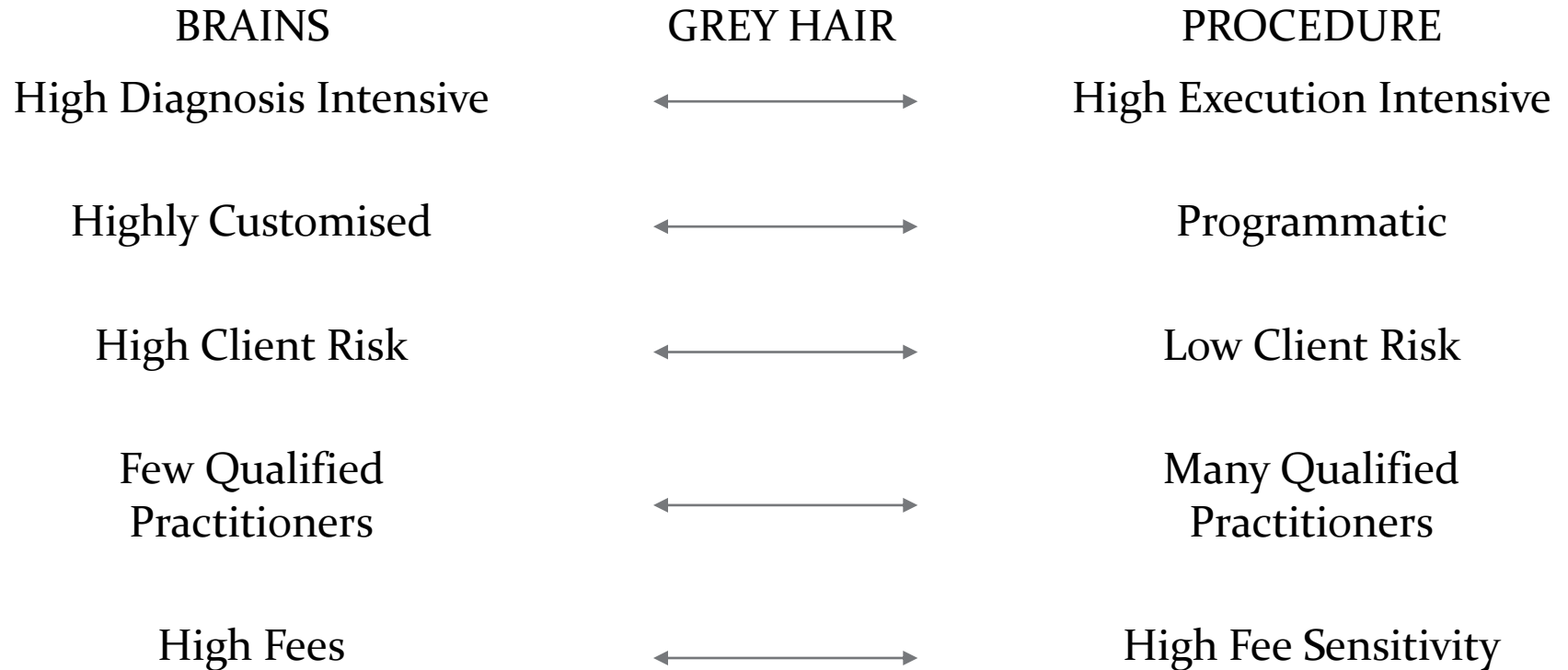


Models of practice

- The expertise practice
- The experience-based practice
- The efficiency-based practice



Spectrum of Practice Continuum



The 'Expertise' Practice

- Aligns with traditional self image of the Bar: 'elite' practitioners
- Focus on serving the needs of clients with 'frontier' problems
- The 'brain surgeon' approach

Characteristic practice development techniques: *writing articles or books, giving speeches, being quoted in the media – activities aimed at establishing credentials as an 'expert'*



The Experience-Based Practice

- The 'grey hair' approach to practice
- Makes use of accumulated experience in handling certain types of problems
- Tendency to spend less time on diagnosis and more on executing increasingly predictable (though often technically demanding) tasks

Characteristic operating style: *Great importance placed on steady relationships with clients*





Clerking and its frontiers: The role of the Clerk



How do you become a Clerk?

- Traditional Clerks
- Modern day Clerks
- My path
- The Victorian Bar



Overview of the Victorian Bar

- Barristers in Victoria
- Clerks in Victoria
- Clerks and Chambers



The Clerk: Your Navigation Aid

- Modern day support – software
- Traditional services
 - Fee negotiation/fee collection
 - Bookings
 - Marketing
 - Professional development
- Anticipatory services



Efficiency in the overall legal system: implications, and opportunities for the Bar

*Contributing to efficiency in the 'system' is imperative for Barristers if a separate Bar is to flourish, given competitive forces
- as illustrated in other jurisdictions*



Forces likely to drive future reforms in Australia:

- Analysis of ‘system efficiency’ in our legal markets
- Demand side factors
 - contractions in some categories of work
 - impetus of government reforms or infrastructure projects
 - ‘city competitiveness’ effects
 - proliferating ‘community-minded’ work
- Supply side factors
 - Law graduate numbers
 - New operating models



Forces likely to drive reforms in Australia, contd:

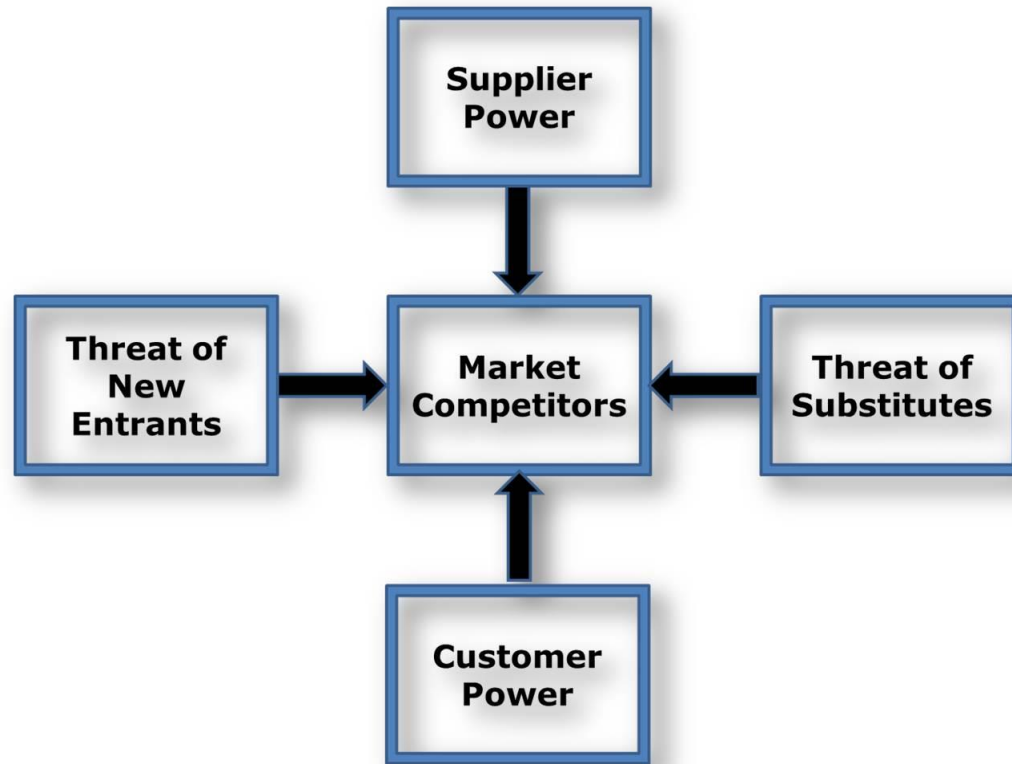
- Regulator and community attitudes
 - esteem of the profession
 - access to justice

What directions will be sought by those responsible for publicly-funded legal work?

What will the implications be for legal education & training?



Universal Rules of Competitiveness:



Porter's 5 Forces



Questions of Efficiency in legal services arise at:

1. Micro Level

- Very different operating models exist
- Client relationship management
- Continuous improvement programs
- Management information systems
- Outsourcing
- Office processes

2. Macro Level



Arguments typically advanced against Fusion of the profession:

- It would lead to loss of an independent Bar
- The specialist skills of advocacy would be lost
- The ‘cab rank’ principle would be lost
- Objectivity brought by the ‘second opinion’ function of the Bar would be diminished



Arguments typically advanced for Fusion of the profession:

- The system would be more efficient
- Costs would be reduced
- There would be less duplication of work
- There would be more continuity



Insights from England and Wales:

- Wotton: the legal services market @ 2012
- 125,000 practising solicitors
 - $\frac{3}{4}$ working in 11,000 regulated practices
 - providing 80-90% of legal services in these jurisdictions
 - the balance of solicitors work in-house
- 62 mixed solicitor/barrister practices
- *“There are now few restrictions on solicitors and barristers practising together in partnership or other permitted business structures”*



Wotton's Observations #1:

- *“At the more experienced and specialised end of the advocacy market, economic and public interest considerations favour the existence of an independent, referral-based Bar, whose services are potentially available to all law firms and their clients”*

BUT

- *“Competitive advantages and efficiencies can be gained from having a full range of dispute resolution services under one roof”*



Wotton's Observations #2:

- *“The barrister/solicitor division is increasingly anomalous in today's common law world, surviving in a handful of jurisdictions internationally”*
- *“The rationale for the distinction was originally based on higher court advocacy being reserved to Barristers”*
- *“The separation is unknown in the civil law world”*



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