HOW BEST TO BRIEF A BARRISTER

David Goodwin
Barrister
Young’s List

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Barristers’ Clerk
Young’s List

MLAANZ ANNUAL CONFERENCE
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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!”

Good for you!

And did it work?

Absolutely!

Since then they haven’t sent me a single brief!
I've had enough of these rubbish briefs from the clerks.
Pathetic cases... no money at all!

I'm going to talk to the head clerk, and show him who's boss!

Derek? Mr. Crawley sir... how can I help you?

Er... may I say how very much that tie suits you?

Thank you sir.
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


• *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
<table>
<thead>
<tr>
<th>BRAINS</th>
<th>GREY HAIR</th>
<th>PROCEDURE</th>
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<tbody>
<tr>
<td>High Diagnosis Intensive</td>
<td></td>
<td>High Execution Intensive</td>
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<td>Highly Customised</td>
<td></td>
<td>Programmatic</td>
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<td>High Client Risk</td>
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<td>Low Client Risk</td>
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<tr>
<td>Few Qualified Practitioners</td>
<td></td>
<td>Many Qualified Practitioners</td>
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<td>High Fees</td>
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<td>High Fee Sensitivity</td>
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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

- Supplier Power
- Threat of New Entrants
- Market Competitors
- Threat of Substitutes
- Customer Power
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
  • ¾ 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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