

Practice after personal injury

In 2002 the Bar Association, through the Personal Injuries Litigation Committee, set up a pilot scheme in which barristers whose practices would be eroded by legislative changes to motor accidents, workers compensation and personal injury law could be mentored by senior practitioners in other areas of practice. The aim was to give them assistance and practical experience to enable them to redeploy their skills.

That project has since evolved into the Practice Enhancement Scheme. On 27 July 2004 Tom Bathurst QC and Anna Katzmann SC presided at a well-attended CPD forum in the Common Room, aimed at explaining how this important Bar Association scheme operates. As a follow up, Terry Ower interviewed Tom Bathurst QC for Bar News.

Terry Ower: Thank you for agreeing to talk to *Bar News*. Perhaps I could begin by asking you how you first became involved in the Practice Enhancement Scheme.

Tom Bathurst QC: I thought it was important that the Bar Council did something for people who, through no fault of their own, had a substantial decline in work. I've got some connections in the commercial and other areas which I thought may be of assistance to deal with it.

Terry Ower: I understand that the project began life as the 'mentoring scheme' and is now the 'practice enhancement scheme'. Has the scheme been operating for very long?

Tom Bathurst QC: The scheme started a year or so ago and then subsided a little bit. The Bar Council resurrected it early this year and we publicised it. I've had a substantial response from people who want assistance and what I might say is a pretty satisfactory response from people who are able to give it. It takes time to match people in those circumstances and, let's be honest about it, there are some occasions where it's not going to work, but we think it's a worthwhile project.

Terry Ower: Do people who are interested, first have to approach the Bar Association?

Tom Bathurst QC: People interested need to approach me or the Philip Selth direct. What I do is to get a CV from them, try and have chat to them and seek to place them with someone who I think may be able to assist. But it has to be done to some extent individually because you're dealing with people with different levels of seniority, ambitions and expectations and give those people opportunity to deal with those expectations.

Terry Ower: Sometimes are those expectations unrealistic? I heard anecdotally of someone who approached you and said that they were just interested in doing special leave applications.

Tom Bathurst QC: There's been one or two of those, but there's nothing you can do about that except explain that those expectations are unreal. The other thing in that regard

that has to be made clear is that the scheme is not a guarantee of employment at all nor is it a guarantee to restore the level of work that some people had before. What we hope it does is provide an opportunity for people who have been affected by tort reform or for that matter people who have seen their practice decline for any reason, to get into a new field in which they are interested and hopefully succeed in it but sooner or later it becomes a matter for them.

Terry Ower: I attended the seminar the other night that was held at the Bar Association and you prefaced your remarks by saying that you hadn't done a personal injury matter in 20-odd years.

Tom Bathurst QC: That's right.

Terry Ower: Has that been a disadvantage to you in dealing with people in the scheme?

Tom Bathurst QC: No, I don't think so. What I was at pains to emphasise was that our basic skills are advocacy; they cut across the whole spectrum of litigation. Because of the volume of work in personal injury there was a degree of specialisation. What I was seeking to convince people...explain to them, that, given the right opportunity, advocacy skills would transcend over a whole series of areas. So, in those circumstances, people who were practising in a limited field should feel capable of expanding their practice.

Terry Ower: Tom, you mentioned at the seminar there had been 35 odd referrals to date of which there had been about 20 placements and some pending, has there been any feed-back at all that you've had from those that have been placed?

Tom Bathurst QC: No

Terry Ower: Is there any structure for any feed-back to occur at this stage?

Tom Bathurst QC: No. Although I don't think that's a bad thing. I'd like to see feed-back over 5 - 6 months when it's just more likely to sort itself out. There are still a considerable number of people who I haven't placed which I'm trying to do

at the moment. It takes a bit of time because you've got to find people willing and able to assist and I'd hope by the end of the year we would have a really good idea of how it's going.

Terry Ower: Is this largely something that you're doing yourself or in conjunction with Anna Katzmann SC or are others involved?

Tom Bathurst QC: Anna's been an enormous help because she knows people who need to be involved in the scheme and has used her contacts to get potential 'masters' involved. I'm doing a lot of it by myself.

Terry Ower: In terms of the co-operation you've had from some floors, is it fair to say that on some floors you get more co-operation than others?

Tom Bathurst QC: I try to deal with individual barristers so that issue really hasn't arisen.

Terry Ower: Of the people that you've placed so far, have they had a specific desire to go into a different area of law?

Tom Bathurst QC: By and large they've nominated a number of areas they want to go into. A lot want to go into, which they think are associated with personal injury in particular, industrial law, and some forms of administrative law. A lot of them merely want, and you can understand this, to expand their practice and they're not being too fussy about what field of law it is. I think it's a good thing because when I came to the Bar, probably many more years ago than most, the best training barristers had was to ply their skills in any number of diverse areas. I think it's very encouraging that people are facing up to the fact that they may need to do that.

Terry Ower: Have you always had a fairly diverse practice at the Bar rather than specialising in any particular area?

Tom Bathurst QC: I initially practised in a wide range of fields, including personal injuries litigation and family law. I can't say that I have over the last 20 years. One of the great advantages for people of my vintage was that it was expected that no matter where you came from you'd go out and do those things and hone your skills as an advocate. You weren't immediately slotted into any particular field. It is more difficult, I think, at the present time. Those who started out in a particular field *a fortiori* would find it difficult to get out of that field.

Terry Ower: If you had just one piece of advice to give to someone who's a personal injury specialist looking to enhance their practice, what would that advice be?

Tom Bathurst QC: Three related matters; get as much exposure as you can; recognise that the cases you might take aren't perhaps of the same quality of law or command the same fee as you were doing; and thirdly, tell people that because of what's happened you're interested in going into a different field.

I'm amazed that some find it necessary to maintain a pretence to solicitors that there hasn't been a decline in work. Clearly there has and those solicitors themselves are attempting to develop other areas of work.

Terry Ower: So therefore, you believe it's a good strategy to attempt to diversify into the same areas that those solicitors are developing?

Tom Bathurst QC: Of course. It is most important to maintain old contacts as this is the most likely basis for future work.

Terry Ower: Isn't there a problem with that approach in that it is more likely for solicitors finding their way in a new area to seek out counsel who are already established experts in the new area rather than those they have used in the past?

Tom Bathurst QC: Yes, that will certainly happen. However, that does not mean that people should give up on their old solicitors.

Terry Ower: Tom, thank you for your time. I'm sure we all hope the scheme is successful.



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