

The Shand family

By Andrew Bell and the Hon Justice Jacobson



JW Shand KC. Photo: State Library of New South Wales / Ron Golding

After 52 years of continuous practice, Alec Shand QC has retired from practice at the New South Wales Bar.

This event, significant in itself, is even more so when it is appreciated that his retirement brings to an end a century of legal professional lineage. A member of the Shand family has been in practice at the New South Wales Bar since the admission in the mid-1880s of AB Shand QC who also practised for over 50 years.

As a junior, AB Shand appeared in some of the earliest cases reported in the *Commonwealth Law Reports*: see *Mountney v Smith* (1904) 1 CLR 146 and *Rankin v Scott Fell & Co* (1905) 2 CLR 164. In 1912 he appeared in *The King and the Attorney General v The Associated Northern Collieries* (1912) 14 CLR 387, a case which ran for 73 days in submissions and evidence and required a further three days for the reading of the judgment. The case arose from an alleged contravention of the *Australian Industries Preservations Act 1906* (Cth). Over the following 30 years, he continued to appear regularly in the High Court.

AB Shand QC was the father of JW Shand KC, who practised at the New South Wales Bar from 1920 until his death in 1958, having taken silk in January 1943. Jack Shand Chambers is named after him. Of JW Shand KC, the *Australian Dictionary of Biography* records:

Shand became adept at compensation cases and an expert on laws of libel and contempt. He won against (Sir) Garfield Barwick in several important commercial suits and proved formidable in criminal

cases. His reputation as a courtroom tactician rested not only on his many victories, but also on his willingness to accept difficult and often seemingly impossible briefs. Tenacity and a preparedness to take risks counted in his professional success. He was appointed KC in January 1943.

In 1946 Shand defended Major Charles Hughes Cousens, a popular radio announcer who had been compelled, while a prisoner of war, to make propaganda broadcasts for the Japanese and was subsequently charged with treason. Shand cast enough doubt at the committal hearing for the charge later to be dropped. Between 1947 and 1949 he reputedly earned £12,000 from assisting government investigations, including the Air Court of Inquiry (1948) into the crash of Australian National Airways Pty Ltd's airliner *Lutana* and the royal commission (1949) into certain transactions in relation to timber rights in the Territory of Papua-New Guinea.

At the 1951 royal commission into the case of the shearer Frederick Lincoln McDermott who had been sentenced to life imprisonment in 1947 for the murder (1936) of a Grenfell storekeeper, Shand reduced a detective-inspector to tears in cross-examination and persuaded the commission that the trial had miscarried. McDermott was freed in 1952. In other notable successes, Shand secured the acquittal in 1951 of Thomas Langhorne Fleming, a wealthy grazier accused on strong circumstantial evidence of murdering his wife by lacing her beer with cyanide, and in 1954 of Shirley Beiger, a model who shot her lover at point-blank range outside Chequers Restaurant, Sydney.

Even Shand's warmest admirers saw his courtroom demeanour as unprepossessing – his style was often contrasted with that of his tall and handsome father. Jack Shand was short and stout, red-faced and freckled. He sometimes seemed to mumble, and in later life became hard of hearing. Barwick observed that 'Shand had a thin-piped voice but great vigour as an advocate and the capacity of insinuation in tone which could annoy and bring a witness into antagonism'. Others heard him as shrill and piercing, with a slight lisp. Nevertheless, he was brisk to the point of rudeness when necessary and widely acknowledged as the most successful criminal barrister in Sydney.

By the time of his last big case Shand had only a few months to live. He appeared before the South Australian royal commission in regard to Rupert Max Stuart, an Aborigine convicted in April 1958 of the brutal murder of a nine year-old girl. The commission was chaired by the chief justice Sir Mellis Napier who had earlier heard the unsuccessful appeal against Stuart's conviction. The case became a test of South Australia's criminal trial procedures and the retention of capital punishment. Shand clashed frequently with Napier. Eventually, after being stopped during cross-examination of a witness, he withdrew, in effect accusing Napier of making it impossible for a proper inquiry to be held under his chairmanship. Although Napier protested at this 'sabotage', Shand's tactics heightened public controversy and made it unfeasible for Stuart's execution to be carried out.

JW Shand QC's son, Alec Shand, was called to the Bar on 12 February 1954. His full name is Alexander Barclay Shand but he was usually

called Alec. His admission was moved by Tony Larkins QC, then a prominent silk with a large defamation practice.

Alec read with TEF Hughes. It is not thought that the pupil spent long hours in the library researching or drafting written opinions for his master. That was not the way of the Bar in the 1950s. Most of the work of the Bar consisted of appearances, much of it before juries. Even personal litigation cases were conducted with a jury.

Alec Shand soon developed a reputation as an accomplished advocate, particularly in jury trials. In those days, before the development of the paper chase, all barristers were generalists. Alec appeared in a wide variety of civil and criminal cases, both at first instance and on appeal. If he had a specialty, it was in defamation cases.

He took silk on 14 November 1973. His name was not recorded on appearance slips or in law reports as Alec Shand QC but, like his grandfather, as AB Shand QC, to whom he seems to have borne some resemblance.

The description of Alec Shand as an advocate reads much like that which is set out above for his father, except for his physical appearance and courtroom demeanour. In the latter respect, he was more like his grandfather. He was a tenacious and formidable advocate who was willing to accept briefs in the most difficult cases. He followed in his father's footsteps in his expertise on the laws of libel and contempt and he appeared in a number of royal commissions.

Much of his libel work was for the Murdoch press. In the 1970s he successfully defended the *Daily Mirror* in a famous libel case brought by Juni Morosi.

Alec's success in defamation work led him to other areas of practice, in particular to work under the Broadcasting and Television Act. He successfully obtained a review of an adverse decision of the Australian Broadcasting Tribunal thereby enabling News Ltd to obtain control

of Channel 10; see *Re Control Investments Pty Limited v Australian Broadcasting Tribunal* (1982) 39 ALR 281.

He appeared for the premier of New South Wales, Neville Wran, in the Street Royal Commission in the 1980s. He had little difficulty in persuading Sir Laurence that the premier was not on the phone. He was less successful in another royal commission when he appeared for the former minister of prisons, Rex 'Buckets' Jackson.

Alec Shand was one of the last of the true general practitioners at the New South Wales Bar. He would accept a brief in a commercial cause as readily as he would a criminal trial. Perhaps he did not relish the volume of paper generated in modern litigation, but he won cases through the force of his advocacy at the Bar table. To be cross-examined by him was harder, and longer, than spending 15 rounds in the ring with Muhammad Ali. Only the fittest and most verbally adept survived.



Ian Harrison SC, Alec Shand QC, Michael Slattery QC and Philip Selth.

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