

dataset containing indexed digital documents. That particular dataset cannot be made available to all parties, since it will contain material confidential to the judge, and may contain material that is the subject of confidentiality orders. However a separate electronic dataset could be readily created, in the manner of a paper court book, that duplicates so much of the documents as need to be available at hearing.

Creating an electronic court book sounds complicated, but it could be very readily simplified. If not done by the court itself, then each party could be directed to upload documents by type (pleadings, affidavits, exhibits, etc) by logging into a webpage, or in due course, an app. The index would be created automatically. It would be part of a dataset which each party, as well as the associate when in court, could access (and from which the bundle could be downloaded). The documents could be updated during a hearing, by the parties themselves or, in the case of litigants who do not have the capacity, by handing documents to the Associate who could have them scanned into the dataset.

Any changes should be introduced gradually, with a trial period in a particular registry and/or practice area to iron out the wrinkles.

Suburban solicitors with access to the internet would need no additional technology to upload the documents. If they can access the internet and email they have all they need. Once the court book is created they can continue to print them, if that is their preference. The book will print with an index and page numbers that correspond with the electronic version. Or they can take the next step and go to court with a tablet or laptop.

It will require some additional resources and training, but the cost savings and increased productivity will quickly be greater than these costs.

Will it change the bar?

This edition carries an article by Penny Thew summarising aspects of the excellent ABA national conference rise2018 recently held in Sydney. Chief Justice Kiefel AC, the first keynote speaker spoke about *Change in the*

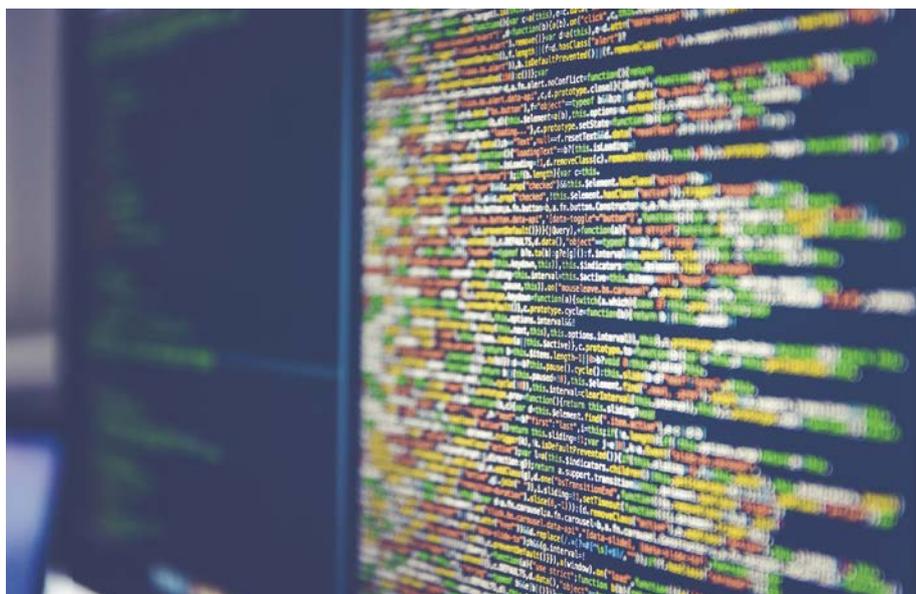


Photo by Markkus Spiske on Unsplash

Legal Profession. She noted that before kings came to the fore, the lead advocates at the English courts were the serjeants-at-law. Their demise was in part brought about by technology. They specialised in oral pleading, a skill that became unnecessary with the introduction of written pleadings.

While the chief justice echoed a prediction that the next two decades will see more change in the legal profession than has occurred in several hundred years, she nevertheless saw a future for the bar in a world of artificial intelligence. Her Honour identified that it is the human ability to evaluate complex evidence and apply legal reasoning and logic to cases with competing possible outcomes that will ensure that this edition's cover page does not come about.

The second keynote speaker, Chief Justice Bathurst AC, continued the theme. He identified how much has changed already from the time he started practice; when trolleys were only used for shopping, and phones were attached to the wall. He too saw in the near future rapid change to the practise of law with the advent of technology. He noted the Supreme Court was already doing away with the time-consuming and costly directions hearings by moving to the use of a virtual courtroom.

Bathurst CJ also predicted there will soon be a Tripadvisor-like app that rates barristers.

Baradvisor, as he dubbed it, would allow clients to rate and rank barristers in real time. I can see it now: A Bell SC, 4 stars, 'Whacked the other side. All you expect a barrister to be – Would have given him 5 stars, but we lost'.

This notion, which is said to be inevitable, is amusing but frankly horrifying. It brings to mind comments made by Julia Baird on the first morning of the rise2018 Conference: she spoke of her experiences as a prominent woman using social media – how the anonymity of the online world gives rise to the most appalling communications. I shudder to think of the misinformed, misogynistic and other downright offensive comments that might be made on any app that seeks to rate the bar, assuming it could be accessed by anyone, including witnesses, opposing parties and members of the public who read about cases in the press.

Technology continues as a major theme in this edition. Farid Assaf SC has written an excellent article providing an overview of artificial intelligence and its increasing use in the legal profession. He introduces us to IBM's Watson, a proto-type question-answering computer that foretells a not-so-distant future when computers can understand a legal question, conduct research and provide an answer.

Emma Beechey gives us a *DummiesBar*

ristler-guide to cryptocurrency and blockchain. Something you can digest and then perhaps speak confidently about with your younger relatives over the summer holidays.

We have two excellent pieces from our regular opinion writers. Geoffrey Watson makes out the case for a federal ICAC. Can it seriously be suggested that our federal politicians and public servants are immune from the temptations that have beset their contemporaries at the state level? One can well understand the nervousness of politicians to create a body that has the potential to ruin a career – but surely the benefit of exposing corruption outweighs the costs.

Anthony Cheshire examines the merits of the current standard path to the bar: i.e., first spending some years as a solicitor. He ponders whether it would be better, for some at least, to be told to come straight to the bar after graduating, rather than first spend years practising as a solicitor. He asks, provocatively: is the fact that lawyers come to the bar later in Sydney than in London a reason why our bar has a much lower percentage of women? Should the bar be encouraging all those with an interest to come earlier? And what can be done to assist them when they get here? He notes the practice adopted by the UK of the chambers providing an income to readers.

Richard Scruby and Brenda Tronson provide a very important analysis of the extent to which women at the NSW Bar appear in hearings in superior courts. Summarising the output of huge amounts of work done by the Bar Association's Equity and Diversity Committee, they confirm by charts and text that appearances by women are statistically fewer than the percentage of women at the

bar in all superior courts other than in the NSW Court of Criminal Appeal and the Family Court. That is particularly the case in respect of private (non-government) work, which of course is more highly remunerative. This fact correlates with earlier published analysis showing a significant remuneration gap between women and men at the bar. The analysis tends to support the importance of promoting equitable briefing policies. Such policies are applied by government, while their take up in respect of private work is patchy.

A must-read for senior juniors considering taking the next step is the conversation between Gail Furness and five recently appointed senior counsel. They speak about the process of applying, the day of the announcement, and, one year on, how it has affected their practice.

Belinda Baker has written a fascinating piece on the use of foreign judgments, called 'Dangerous Dicta'. She examines when it is useful to cite the decisions of foreign courts, and how to research foreign law.

As usual our recent developments team, now Victoria Bridgen, Daniel Klineberg and Belinda Baker, have collated a series of short pieces summarising recent decisions of note. Of particular interest is the decision of the Supreme Court of Nauru to permanently stay the prosecution of the 'Nauru 19', accompanied by some photos, including one of the team from the NSW Bar who represented them pro bono. There is also a summary of the Supreme Court of India's decision declaring constitutionally invalid the crime of consensual homosexual sex. It is accompanied by another fantastic illustration by Rocco Fazzari: see if you can name his pen

portraits, being four of those quoted in the almost 500-page judgment.

On the subject of illustrators, we welcome a new contributor, Jerome Entwistle, who recently joined the bar and Banco Chambers, who has penned two great cartoons in this edition. We welcome any other cartoonists, illustrators or writers who wish to volunteer contributions for future editions.

This being the Summer edition, there are a number of articles about things to enjoy during the holidays. In addition to reviews of books, there are also reviews of podcasts and even a film. Belinda Baker's review of series 3 of the podcast *Serial* is well worth reading. We may shake our heads at the US criminal system, but there are analogies to our own justice system which give pause for thought. We may not have judges that threaten to revoke bail if an offender has a child out of wedlock, but does our system also have a tendency to treat 'the usual suspects' differently and to their disadvantage?

Can I finish by thanking all those who contribute selflessly to *Bar News*. *Bar News* seeks to reflect the bar, written by the bar. It is truly a team effort. In addition to the authors, there is so much great work done by the *Bar News* committee and Bar Association staff, in particular Chris Winslow. Happy holidays!

CORRECTION

Regional Practice in 2018 [2018] (Spring) *Bar News*

By Alexander H Edwards and Ting Lim (Bar Association)

Following the publication of the article 'Regional Practice in 2018' in the 2018 Spring edition of *Bar News*, correspondence was received from members of Orange Chambers and Sir Owen

Dixon Chambers noting that they had not been included in the data presented in the article.

The article provided information drawn from records held by the Bar Association as to the numbers and location of barristers practising outside of Sydney. The article should have noted that the dataset on which it was based, relied on data each barrister nominated to the Association as their principal place of practice, and was valid as at November 2017. Members who listed their principal place of practice as a Sydney-based

chambers but who also hold a door tenancy in a Chambers outside Sydney were unable to be included in the statistics published in the article as the association does not currently collect that data.

Sir Owen Dixon Chambers - Newcastle was established in April 2016 and currently comprises 11 members.

We are told by members of Orange Chambers that it was established in 2016 and comprises six members.

Advocacy, independence and the future of the independent bar

By Tim Game SC

It is a privilege to be elected to serve as president of the oldest independent bar in Australia.

One of the immediate demands that come with the office is to be greeted with an invitation to pen a column for the Summer edition of *Bar News*. Readers of recent editions of this journal will have seen the thoughtful contributions made by my predecessor, Arthur Moses SC. I wish to thank him for his service, dedication and the tenacity he brought to the presidency. Through his advocacy, the Bar Association has informed policy debate and law reform on a wide range of issues, along with issues of specific concern to barristers and their practice. I wish Arthur every success in his next role as president of the Law Council of Australia and very much look forward to working with him and the Law Council in 2019. Thank you Arthur.

In my first week as president, the New South Wales Bar Association had the honour of co-hosting the national conference in Sydney with the Australian Bar Association. This was an opportunity to welcome colleagues from around the country and overseas. We were also honoured to hear addresses from chief justices of the High Court, Federal Court and the Supreme Court of NSW, and the attorney-general of Australia, along with many other eminent speakers. I'd like to say a little about a consistent theme that emerged from these papers.

Chief justice of the High Court, the Hon Susan Kiefel AC, began with a speech that traced the origins of an independent bar from the emergence of the Common Law courts from the 12th and 13th centuries. From that point, barristers have performed a critical role in the relationship involving bringing about the resolution of legal disputes by the Common Law courts. Despite all the trials and tribulations, the bar has long thrived as the independent interlocutor between citizen and the judicial arm of government.



Chief justice of the Supreme Court of NSW, the Hon Tom Bathurst, developed a very similar theme but in the context of the future, and with specific reference to the commercial bar. His Honour's essential point was that whatever change is wrought

If the independent bar is to survive in Australia it has to be as a unified, national profession.

by technology, including artificial intelligence, the activity of advocacy, and for that matter judging, is essentially a human one to be done by independent, trained advocates on the one hand, and independent deciders of cases, namely judges, on the other.

Chief justice of the Federal Court, the Hon James Allsop AO, drew out the essentially fiduciary nature of the relationship between the barrister and the client, and a parallel obligation to the court. His Honour also made the explicit point that if the independent bar is to survive in Australia it has to be as a unified, national profession.

The federal attorney-general, the Hon Christian Porter MP, among other things also addressed the challenges to the profession of the development of artificial intelligence, both good and bad.

Apart from these keynote speeches, there was a refreshingly intense level of presentation and engagement in each of the separate streams that took place over the two days of the conference. This included a presentation from the Hon Justice Virginia Bell AC in the criminal stream on the emergence of the

criminal jurisdiction of the High Court, with particular reference to the critical role in that regard of the NSW public defenders over a long period of time. Former chief justice the Hon Robert French AC delivered a speech in which he spoke about the abandonment of exceptionalism in statutory interpretation of tax legislation. He also demonstrated something that I had not fully appreciated, which was that much of our law concerning the construction of privative clauses comes from the taxation context.

If one wanted to summarise the overriding theme of the conference, it could be put in the words of Chief Justice Allsop: 'Without independent representation informed by the fiduciary principle and the duty to the court the protective judicial power is stunted. So, the profession, and so the independent bar, forms an integral part of the judicial process and so judicial power.' It was a privilege to be involved in such an intensely engaging activity (particularly since all the hard work and preparation for the conference had already been done by others!). I wish to particularly thank the former president of the ABA, Noel Hutley SC, and Arthur Moses SC for chairing the conference steering committee and recognise the tireless efforts of the CEO of the ABA, Cindy Penrose, and the executive director of the New South Wales Bar Association, Greg Tolhurst, and staff of both associations in planning and executing the conference.

May I take this opportunity to wish you and your family a restful summer break and a Happy New Year. I look forward to seeing you in 2019.



NEW SOUTH WALES
BAR ASSOCIATION