

# tHe bAD ReAder<sup>1</sup>



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Some of you will already know, probably too well, that I hail from God's country – 'Old' South Wales. After being called to the Bar over there and having developed a stronger-than-average enjoyment of Australian soap operas, I arrived in New South Wales in the hope of being transformed into a smoothie-drinking surf Adonis. Instead, I ended up at the NSW Bar. I have now been practising here for (gasp) 14 years.

To begin with, I had limited experience of how justice was administered here<sup>2</sup>, but a few years after my admission I started to receive phone calls from colleagues. After they communicated their surprise that I managed to slip through the Bar Association's careful filtering process, they asked me to chat to their readers about how I developed a practice here from nought. I think the theory was (and probably still is) that if this Welshman can sustain a practice at the NSW Bar, then anyone can. They might be right. Nevertheless, over time, I pulled together the fragments of those conversations and started to commit them to paper. So here they are.

What follows is less an account of how to develop a 'successful practice' (whatever that phrase means) and more a rough-and-ready guide about what *not* to do as you start your new career as a barrister at the NSW Bar.<sup>3</sup> In other words, its aim is to expose how to be a bad reader. The theory is that it can be a useful exercise to explain how to approach things badly so new readers can navigate their way successfully.

Consequently, the bad reader:

## Will use chambers infrequently

As a reader, you're now a sole trader and can keep your own hours and work from home in your favourite sweatpants, right? Well, it is not as easy as that. It may be necessary

for you to work from home occasionally – especially if you have parenting or other personal obligations. If you fall into this category, then don't forget to keep your clerk apprised of your movements. This doesn't ordinarily warrant being tracked with an AirTag; a simple email to your clerk will suffice. However, until you are sufficiently senior, 'WFH' for prolonged periods of time will probably stunt your professional development and may later contribute to anxieties about workflow.

The Bar is a wonderful and collegiate profession. Starting out, you have the gift of paying no (or little) rent. Use it as much as your circumstances allow. You will be amazed at how often you are briefed by just being 'around'. Your professional development will also be enhanced by the Bar's open-door policy: pick the right moment and your new colleagues will workshop legal problems, give you direction, and discuss traps for young players when appearing before certain courts. Doing this casually in person is far preferable to an impersonal phone call or a Zoom meeting, and it will help you develop professional relationships. Practical tip: when approaching colleagues to workshop problems, have an answer to the problem in mind. Only the bad reader will want others to solve the problem for them.<sup>4</sup>

## Is like the Scarlet Pimpernel<sup>5</sup>

Don't be elusive. Be seen by *everyone*. Arriving in chambers for the first time can be daunting. Be bold and take the initiative. Introduce yourself to your new colleagues. You can even go to other floors and visit barristers you have come to admire. Admittedly, I probably went too far when I started baking for a few of them. Although they did seem to like the bottles of wine. But seriously, offer to help senior juniors or silks prepare a forthcoming speech or undertake research for them. If you can, offer to do some or all of it pro bono. In saying that, don't obviously let yourself be exploited. In the UK, a pupillage is divided into two six-month periods. The 'first six' is the non-practising period:<sup>6</sup> the pupil shadows his pupil master and devils (for free) to develop experience and confidence before they are let loose in the practising 'second six'. It is obviously different here. Nevertheless, on reflection, I think that 'first six' mindset helped during my reading

year. I offered to draft a speech and perform some research pro bono for the likes of Bruce McClintock SC. My only intention was to further my defamation experience. I not only achieved that aim, but it eventually led to my involvement in the Bar Association's Defamation Law Committee. While that didn't immediately help my bank balance, it was nevertheless priceless because I was seen by all the movers and shakers in my chosen area. I should also quickly point out that it did ultimately yield paid work in the form of a brief to appear in the High Court as second junior. I remain very grateful for those opportunities. My point is that if you are generous with your time and show willingness to help or learn, you will be seen and reap the rewards. It takes a village to raise a baby barrister, after all.

Related to this, consider having a professional online presence. While you will be launched on your chamber's web page, a social media presence is now considered essential by many (but not all) in the profession. If your professional network is relatively small, this might be important to you. If you have, or intend to create, a social media profile, then you must familiarise yourself with the relevant conduct rules<sup>7</sup> and the Social Media Guidelines for Barristers.<sup>8</sup> Keep your professional posts factual and informative. Additionally, lest it not be obvious, don't publish anything defamatory or in contempt of court. It has happened. If in doubt, ask tutors, colleagues, or your clerk for help. You know it's time to step away from the keyboard and have a KitKat when your intended post resembles Trump's: 'I'm very highly educated. I know words. I have the best words.' Always assume a judge may read that post one day.

## Expects a ready-made practice

Whether you have made it to top commercial or specialist chambers or not, don't expect to be presented with a ready-made practice. The NSW Bar is very different to the UK in that regard. There, clerks rule the roost and control your diary, especially for the pupils. If a junior barrister is double-booked, the clerk will arrange for the pupil to cover one of the briefs. That is not necessarily so here. Very often, clients (whether sophisticated or not) just want their 'go-to' barrister. Economic considerations might prevent a reader from being instructed. Similarly, top national law

firms have a strong idea about who they want in their barrister team (mainly led by client expectation). Senior counsel can have little choice in the instruction of baby barristers. There are, of course, exceptions. So, treat any win of that nature as a bonus. As a former tutor of mine, Michael Heath, was fond of saying, ‘Welcome to the NSW Bar ... you eat what you kill!’ Hopefully, if you avoid the pitfalls discussed here, you will be kept well satiated.

### Says ‘no’ all the time

Developing your practice takes time and patience. Despite also being a reader to one ATS (‘Sandy’) Dawson, who was famously known as ‘his Prominence’ before he took silk and was very supportive, it still took me about four years before I appeared regularly in the defamation lists. Consequently, I had to be a jack-of-all-trades. My chambers at the time had a strong reputation for commercial and IP work. Consequently, I mainly accepted instructions in commercial, property, equity, and banking. It all stood me in good stead. However, I wanted to specialise in defamation. But you must walk to the mountain before you climb it, and all that. While commuting to the mountain, take on as much work as you can (even if you’re a specialist) – especially if it gets you on your hind legs in the first year or two. So, do accept instructions to appear in lower courts or tribunals. Treat it as an exercise in advocacy (or negotiation, or drafting, or whatever the case may be) and relationship building. The more air miles the better. You will develop crucial skills. Nail the work as best you can. You will find your groove.

### Says ‘yes’ all the time

Huh? How does that work? At first blush, this might sound contradictory, but it’s not. If you honestly don’t have capacity and another brief would prejudice your practice or other professional or personal engagements, then of course you may say ‘no’ to it. No one will think the less of you, and it’s obviously preferable to deliver the goods with respect to the work you’ve already got. Your reputation is, after all, your most valuable asset. However, if you’re considering rejecting work because you think the brief is outside your experience and comfort, see if you can workshop it through with your tutors, clerk, or colleagues first.<sup>9</sup> I frequently went into my tutor’s room in my reading year resembling Private Percy in *Blackadder Goes Forth*: ‘Permission for lower lip to wobble, sir!’ But a problem shared etc, and with some support, you will be surprised at what you can do. Afterwards, you will have earned a sense of pride, and

your confidence will have increased – even if it does take you a few days to recover in the corner of a darkened room. If your concern relates to the management of time, it’s always worth inquiring whether there is any flexibility – including when it comes to devilling work for other barristers. But if you really can’t make it work, whatever the reason, don’t forget to personally thank them for the opportunity and explain why you regrettably cannot accept the instructions this time. Don’t be a sycophant about it. Although do take the initiative and ask your clerk whether someone else in chambers, or another reader, has capacity to take the brief. Don’t forget that you are developing relationships with not just your solicitor clients, but also with your colleagues (including other readers). The beneficiary of your philanthropy will always appreciate it.

### Has no sense of direction

Reasonable minds might differ about this. Some say you should start as a generalist. That is, after all, consistent with saying ‘yes’ to everything in the first year or two. It also gives you a fallback if things don’t work out as a specialist (due to a change in legislation, for example). However, this can be easier said than done. In the first few years of practice, you may have to regularly educate yourself about a new area of law before even reading your instructions. You may also be opposed to more specialised counsel with a better rapport with (typically) the list judge. It might not suit everyone – especially those at the tax and IP Bar who worked out long ago that their beach house won’t pay for itself. I am, of course, joking, but on balance – and having regard to my own experience – a bit of direction is no bad thing. You can always re-assess and change course later. But sailing with a rudder is, I think, preferable to seeing where the wind takes you. However, ultimately, it is your practice. If you are unsure what direction to take, regularly consult your tutors, clerk, and colleagues, analyse the data points, then make an informed decision. You may always revisit your decision.

### Refuses to network

It was once considered a faux pas for barristers to network and market themselves. Those days are long gone. Join associations or groups to broaden your network. Go to CPD seminars, write articles, use social media, and present as much as you can. Law firms are generally open to holding practical seminars for junior lawyers. Arrange to present something on a recent case, evidence, or practice and procedure. The sooner you get in front of key people, the sooner they will

consider instructing you in your own right. If you initially have few legal connections, like I did, then contact leading solicitors in the area you’d like to practise in (whether you know them or not). Ask them if you can pick their brain for five minutes over a coffee. That said, use your sense and don’t harass them, and it’s probably a bad idea to ‘shirtfront’ them! You will often get a positive response, and the meeting can sometimes go for longer. When you meet them, at least have a few questions prepared about a recent case they were in, ask for tips, and then listen carefully. Best case, they will take an interest in your career.<sup>10</sup>

### Asserts their brilliance

You may have a university medal from a prestigious university, hold an Oxford BCL, and be lauded as a future star. But, unless you have been treading the pavement around Queen’s Square or Liverpool Street or been on circuit for a few years, you have little meaningful advocacy experience and still less experience in the dark art of handling unpredictable clients, witnesses, judges, and magistrates. To be blunt, no one likes a know-it-all, and no one likes being told to suck eggs. Especially from a new kid on the block or one who is critical of others. Talking of which, never under *any* circumstances be rude to or critical of court staff. It will meet with disaster. If you’re not easy to work with, you will lose work – even if you’re utterly brilliant. Solicitors would prefer working with someone reliable, responsive, and hardworking.

While I am on this topic, choose your language carefully in your communications with your instructors and opponents. If you must deliver bad news, speak with your instructors privately before communicating it to the client. In the heat of the moment, we are all prone to a rush of blood to the head and make mistakes. If you are being led, always present as a united team to both your professional and lay clients. If you think your leader has made a mistake, gently give them an opportunity to correct it by seeking to clarify an aspect of their advice. If you are measured and reasonable (dare I say, kind) in your language (including in written work), you will endear yourself to all and have a better professional life.

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## Is unreliable and can't control the noise

Solicitors and senior counsel need to rely on you to generate documents on time. The more reliable you are, the more they will tend to involve you. If there is a deadline, stick to it. If you can't, then manage expectations.<sup>11</sup>

Shortly after being admitted here, I asked a senior counsel of some repute what he considered the attributes of a good junior to be. He replied, 'Someone who can take care of all the noise.' In other words, a good junior should consider notices to produce, subpoenas, correspondence, the preparation of short minutes, drafting the bare bones of submissions etc to be their remit. Don't wait for the invitation, just get on with it. Always discuss your role with leaders, because some are more proactive than others. If in doubt, ask questions of your leaders, tutors, or clerk.

## Won't learn from failure

You won't always kick goals. Far from it. You will have off-days, you may lose the unlosable case, and sometimes may even want to scream into a pillow. If you're like me, you might tend to beat yourself up for days after an unsuccessful outing. A legendary senior counsel in London once told me, 'After a good day, there is no better job in the world. But after a bad day, I wonder why I do this job.' Even the best is prone to making mistakes. It's not the end of the world, and it is almost always fixable. Remember that the learning curve is often found in failure, not success. Chalk it up to experience and, as Michael Caine once put it in an interview, try to 'use the difficulty'.<sup>12</sup> Mind you, he quickly added that 'difficulty' should always be avoided if possible. But the inevitable will happen. So, when it does, consider how you can turn that mistake to your advantage. If you can use it a quarter of a per cent, you are ahead.

## ENDNOTES

- 1 I am very grateful for the comments and contributions provided by my clerk, Jackie Charles; my former clerk at 5 Wentworth, Sarah Tiffen; Jeh Coutinho (clerk, Banco Chambers); colleagues Michael Heath and Callan O'Neill, each of whom expressed typically robust views about starting practice as a generalist barrister; as well as Dr Amanda Sapienza, Winsome Hall, Lewis Hamilton, Amanda Wallace, and Sophie Yates.
- 2 Full disclosure: I was a barrister in England and Wales for about seven years. I spent about four months of that time in Sydney, observing the courts as a Pegasus Scholar. I subsequently worked for a hot second at Clayton Utz and a boutique family law firm, as well as undertaking an LLM at Sydney University (which I commenced a few months before my reading year).
- 3 I have clearly pinched this idea from the brilliant article 'How to lose a case' by Edmund King KC (look it up if you haven't seen it). King himself confessed that he got the idea from *Sedley's Laws of Documents*.

## Consistently prioritises work over play

Building a practice involves blood, sweat and tears. At first, you may be put in situations you find very stressful. This takes a toll on your health, so it is important to find a way of dealing with it. Whichever way you choose, you must tend your mental and physical health. Go for a walk around the block, go to that gym/yoga/Pilates class, or meditate. Treat it as you would a court appointment. Whatever floats your boat, taking a short time out doing something unrelated to work will usually improve your mood, provide perspective, generate better work product, and help to avoid burnout. The Bar Association arranges several ways to help you achieve this. To name a few, there are weekly walks around the Domain (Monday 1pm), yoga (Tuesday lunchtime) and, from time to time, sailing, golf days, bush walking, and PT sessions – refer to InBrief. Frankly, if you don't attend to your health then your practice may be sub-optimal.

It would also be remiss of me not to highlight BarCare in the above context. If you do ever feel overwhelmed, under pressure in your practice, or highly stressed about any matter (professional or personal), and you wish to discuss a matter with a professional, BarCare provides a confidential counselling service. Visit [BarCare.org.au](http://BarCare.org.au) for further information.

## Never takes holidays

This is plainly related to the above, but I think it deserves its own topic. While full of enthusiasm for your new job, and perhaps anxious about being self-employed, it is easy to focus on developing your practice at the expense of 'downtime'. While some may wear this as a badge of honour, for others no good will come of it. Failing to plan a break or two may eventually lead to you being overwhelmed by court and other deadlines. For many, it is a fast track to burnout.

Ideally, plan your break about six months in advance. The Bar is well set up for this, and timetables can be moulded accordingly. Just keep your clerk informed as well as, if necessary, senior counsel and instructing solicitors. That will help avoid last minute surprises when they receive an automated 'Thank you for your email. However, I am on a beach in Tahiti. I will read it next week'!

## Ignores financial obligations

Apparently, a barrister typically spends their money three ways: celebrating the arrival of a new brief; celebrating the end of a brief; and celebrating the receipt of their fees. I couldn't possibly comment about the accuracy of this statement. However, do your future self a solid favour: get into the discipline of putting as much of your monthly earnings to one side as you can afford (preferably 50 per cent). Then don't touch it until BAS or tax time. In the meantime, download a billing system such as Barbooks or Silq, diligently enter your time, get your invoices out at the end of every month, and get an accountant.

## Neglects their clerk

Just don't do this. Your relationship with your clerk is priceless and will be critical to the development of your practice. Regular meetings with your clerk to discuss how your practice is evolving are a must. They will help you set your fee rate, give you incredibly useful tips, and lead to introductions to barristers and/or law firms that you may come to work with regularly.

## Refuses to back themselves

Impostor syndrome is a real thing. But you have got this far; many have not. Back yourself and trust the process. Whatever you say in court, say it confidently. Just don't overdo it!

Finally, to any new reader that happens to be reading this – welcome to the NSW Bar! You have one of the best jobs going. Good luck! I have no doubt you'll be brilliant. **BN**

- 4 Don't approach colleagues for the first time in bathrooms, and don't make it weird. Just pop your head around a colleague's door and say something like, 'Hi, I am the new reader on the floor [or from x chambers] and would love to chat with you when it's convenient'. Members of chambers will always give you time when they can. However, be mindful of the demands of their practice. Convenience is key.
- 5 For any Gen Y and Z colleagues, *The Scarlet Pimpernel* was a famous musical based on a novel and set during the French Revolution. Some of its famous lyrics are 'They seek him here, they seek him there / Those Frenchies seek him everywhere / Is he in heaven or is he in hell? / That damned elusive Pimpernel'.
- 6 Although pupils may sometimes be awarded a scholarship or bursary. In top London commercial chambers this can be substantial.
- 7 *Legal Profession Uniform Conduct (Barristers) Rules 2015* (NSW):at 76–78.
- 8 <[https://nswbar.asn.au/docs/webdocs/BAR\\_Social\\_Media\\_Guidelines\\_A4\\_08May18\\_e.pdf](https://nswbar.asn.au/docs/webdocs/BAR_Social_Media_Guidelines_A4_08May18_e.pdf)>.
- 9 The relationship with your fellow readers is important. It provides support, camaraderie, and a source of information. Nurture it.
- 10 Speaking to leading lawyers in your chosen area may also give you a soft landing at any meeting or seminar held by the association or group you recently joined. You will not only know someone there, but they may introduce you to other key players.
- 11 Apologies to any senior counsel I've worked with for sending those draft submissions at the eleventh hour.
- 12 See Caine's 2002 interview with Michael Parkinson: <<https://www.youtube.com/watch?v=VXSQg1KCbw>>.