Evidence Bill 1994 and Evidence (Transitional Provisions & Consequential Amendments) Bill 1994

The Commonwealth Parliament passed the Evidence Bill 1994 and the Evidence (Transitional Provisions and Consequential Amendments) Bill 1994 on February 7, 1995.

The new Evidence Act, to start on April 18, 1995 (the Tuesday after Easter), will provide a single evidence law of general application for proceedings in federal courts and, by agreement with the Australian Capital Territory (ACT) Government, courts of the ACT.

Specifically in relation to the Northern Territory, the new Act will replace much of the existing Evidence law—both statute and common law—that now applies in proceedings in federal courts in the Territory.

The Evidence (Transitional Provisions and Consequential Amendments) Act will repeal the Evidence Act 1905 and the State and Territorial Laws and Records Recognition Act 1901 and make consequential amendments to some other Acts.

In view of the importance of the legislation, the Attorney-General is looking at the practicality of writing to individual barristers and law firms to inform them of passage of the Bill.

A publication that will include the text of the new Act, with a commentary written by officers of this department who had carriage of the Evidence Bill, should be available by March 10, 1995.

GI Bellamy
Senior Advisor (Legal Procedure)
Civil Law Division
Attorney-General's Department

Interesting Times

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profession appear to be continually shifting. We are now being pressured to accept detailed national rules of conduct and a national practising certificate scheme which could see practitioners from southern states working in the Territory without a need for further admission or payment or practising certificate fees.

Such a system would do away with the requirement of interstate practitioners to at least extend the courtesy of advising the relevant courts and Law Societies of their intention to practise in that jurisdiction.

The original proposal would have cost this Society approximately $72,000 per year in practising certificate and other fees. An offer was made to subsidise the Society to the extent of approximately $38,000. Following negotiations by the Executive Officer Jim Campbell and myself, there is now a new agreement to reimburse the Society in full.

The problem presently to be addressed is: where is the $72,000 going to come from? During these negotiations we received considerable support from Western Australia, Queensland and other smaller law societies.

I have at all times emphasised that the Northern Territory does not want to be subsidised. However, the commercial reality is that in the interests of a national profession, we may have to accept such a subsidy.

As you are aware, with the introduction of the Mutual Recognition Act (with the exception of Western Australia) a de facto national profession already exists. It is believed that Western Australia will shortly introduce a mutual recognition act and it is my view that with the introduction of such legislation in that state, a true national legal profession will exist. The only matters then requiring attention will be those already mentioned — a national code of conduct, common admission rules and education requirements, practical legal training and common Fidelity Fund and trust accounting requirements.

Fused profession? No thanks, we're British

According to the Commonwealth Law Bulletin, (Volume 20, Number 2, April 1994)the traditional distinction in the way solicitors and barristers are trained should be abolished under controversial proposals recommended by the Lord Chancellor's own advisory committee.

Lord Justice Steyn, who chairs the advisory committee on education and conduct, has set out the panel's views to both the chairman of the Bar and the Law Society president. The proposals, which cover every one of some 7000 trainee lawyers a year starting life in a solicitor's office, are causing a stir at the Bar and dividing judges as well as the four Inns of Court.

After six months or a year as a solicitor, lawyers who wished to specialise in advocacy might join a barrister's set of chambers and do pupillage there. The committee is impressed with what happens in Scotland, where all lawyers begin as solicitors. Lord Justice Steyn said the committee saw considerable merit and strong arguments for common training of barristers and solicitors.

The implications are far-reaching: many critics, including senior judges, believe the proposals are tantamount to fusing what has always been two branches of the legal profession. But the Bar has been given three years by the committee to overhaul its own training because of oversupply of applicants.

Robert Seabrook QC, Bar Chairman, said: "I favour some element of common education, but there should be full and open debate."

One effect is likely to be abolition of the Bar's monopoly on training through its one-year vocational course at the Inns of Court School of Law — criticised by the Director-General of Fair Trading as anti-competitive because so many applicants are turned away. There are 2000-plus applicants for 800 places. Instead, the Inns of Court would

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Letter to the editor

I act for the worker in a work health matter and was served with the usual lengthy Interrogatories by Ward Keller.

Resentful of the waste of resources in retyping this document as the first step in preparing the Answers to Interrogatories, I asked Hugh Bradley if he could let me have them on disk.

My thanks to Hugh for his prompt co-operation.

This has to be the way of the future ...

Pamela Ditton,
Alice Springs

Directory of short courses

Australia's law schools are offering a wide variety of short, in-depth courses for lawyers from Australia and overseas.

The Centre for Legal Education, working with the Committee of Australian Law Deans, has published the Directory of Short Courses available in Australian Law Schools. It is available free from the centre.

Almost 120 short courses are being offered throughout Australia during 1995. These supplement the extensive continuing legal education programs offered by various bodies.

Unlike CLE programs, short courses usually deal with topics in great depth, so they cater especially for those looking for a thorough grounding in a particular area.

Some Australian law firms and government departments that have brought overseas lawyers to Australia have incorporated one or more of these courses into specially designed packages — comprising training and work experience — for these lawyers.

For copies of the new directory write to The Centre for Legal Education, GPO Box 232, Sydney NSW 2001, telephone (02) 221 3699 or facsimile (02) 221 6280.

Fused profession? No thanks, we're British

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have to validate courses at other centres. Common training centres at universities now licensed to run the solicitors' vocational finals course would probably emerge.

With work scarce and solicitors doing more advocacy, the Bar is in crisis reports Frances Gibbs (*Law Times*, 16 November 1993). The report states: "The Bar is in a state of crisis: a drastic reduction of work over the past three years has forced increasing numbers of newly qualified barristers to drop out within a year or two of qualifying, while those who struggle to stay chase fewer and fewer briefs. The difficulties of finding work are exacerbated by the shortage of both training and permanent places in chambers (pupilages and tenancies), reducing more young barristers to "squatting" temporarily in chambers which will let them in.

The shortage of work coincides with a growth in the Bar by 23% over four years, bringing it to the record size of 7,735 in October. On top of this, new entrants are starting out with bigger debts than ever before - overdrafts of £10,000 are not uncommon. Debts run up during degree course years are then driven higher with the cost of paying for the Bar's one-year vocational training course. This is falling on more students as local authorities cut back on discretionary grants: the percentage of students at the Inns of Court school of law receiving grants feel from 60.5% in 1990-1 to 39.53% in 1992-3.

The crisis has been created in part by a big fall off in the work of the courts. The volume of magistrates' courts work has dropped by 5% over two years and the percentage of cases in which the Crown Prosecution Service uses outside lawyers has been halved to 20% in the past three years. It is set to halve again over the next two years. In the Crown Court, work given to the Bar by the CPS has dropped by 10% in the past two years.

The problems were partly predictable. The Bar is starting to feel the chill effects of the government's legal reforms and its aim to increase competition in the legal services market. Faced with a fall off in domestic conveyancing, solicitors are doing much of the work that they used to pass on to young barristers.

Second, in the criminal courts, young barristers are facing increasing competition from solicitors who are preparing to do more advocacy work and are also offering to act on an agency basis for other solicitors, on attractive terms. In part, the problem in the criminal courts has been "skewed" by new Legal Aid Fees. These make it more profitable for solicitors to use other solicitors as freelance advocates than barristers.

Among the report's recommnedations are that the Bar must repackage and reorganise its services to be more attractive: one idea is that barristers act for several defendants or do more than one hearing for a fixed fee, and provide such services as offering to collect and deliver files to solicitors' offices. Barristers and clerks are urged to provide competitive quotes which can be directly compared with solicitors' charges.

Compensation for shoddy work by barristers would be available to clients under a set of proposed reforms published by the Bar. Barristers would also be expected to make public how they calculate their fees and would face tougher sanctions for long-windedness and inept advocacy in court. The new complaints procedure, in which clients could be awarded up to £2,000, is one of the key reforms put forward by a working party under Lord Alexander of Weedon QC, chairman of National Westminister Bank and a former Bar chairman. At present, the Bar looks only at complaints of professional misconduct, usually in private, and general ignores grievances of clients "who have suffered as a result of poor and shoddy services provided by barristers". The main recommendations are:

(1) the new complaints system
(2) charging methods expected to be publicised
(3) tough new standards, possibly with contracts, on turn-round time of papers
(4) probationary period for barristers; judges to take active role in reporting incompetence in court
(5) relaxation of the "cab rank rule"
(6) scrapping of the ban on barrister interviewing witnesses.