

Five lessons of a reader at the NSW Bar

By Jason Donnelly¹



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Introduction

Practising as a reader² at the New South Wales Bar can be extremely difficult. In this article, I will explore five key lessons, which I have learnt as a reader. It is hoped that they will provide assistance and insight to other readers or to lawyers admitted recently to the Supreme Court of New South Wales, who wish to embark upon a professional calling³ at the bar. Further, this article will seek to provide more general insights into the professional life of a reader in Sydney.

Chambers

First, a reader should secure good chambers. This will correlate to some degree with financial success as a junior barrister, but more importantly, your chambers will provide the opportunity to meet more senior barristers and expand the network of contacts with other professionals.

In this respect, the reader should undertake extensive research in relation to the proposed chambers in which they seek to secure accommodation. Many of the chambers in Sydney can be understood in a general way by examining their websites. The reader should speak with as many people as possible who may be

able to share their knowledge about the chambers in question.

In the end, the decision to secure accommodation at a particular chambers is a difficult one. For those readers who have the opportunity to choose between various chambers, the decision should ultimately be made by you. Readers should follow their heart and intuition in making the final decision about which chambers to make their home.

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Experience has taught me that the advice of others is not necessarily in the best interests of a reader. It may be well-intended, but may not always be sound. For example, the author of that advice may be out of touch with the life of a reader, that despite their seniority, the advice has much limitation.

It seems to me that a reader who does not have 'professional connections' should avoid securing accommodation at those chambers where the barristers on the floor and the clerk will not assist the

newly admitted reader to obtain work. Put differently, the reader should avoid taking chambers where all they get out of their new professional home is massive tax invoices for payment of 'chamber fees' that have to be paid on a monthly basis.

Significantly, a reader should seek to secure accommodation at chambers whereby payment of chamber fees for the first year is minimal or free. This enables a reader to build their practice and accumulate capital. Unfortunately, the author learnt this simple lesson after the fact.

As the foregoing discussion highlights, good chambers means various things: minimal or free accommodation for the first year of practice; the ability to network with barristers of high standing; the opportunity to save capital so that the reader can survive financially; and, of course, the development of a reputation as a member of a reputable floor.

Tutors & pupil masters

Secondly, it is important that the reader secures suitable tutors. A reader must undertake 'reading' in their first year of practice as a barrister. The concept of 'reading' entails a number of important considerations. Reading generally refers to a compulsory programme of post-admission practical legal training for newly admitted legal practitioners intending to practise solely as barristers.⁴

A reading programme usually comprises a 12 month period during which an experienced barrister (called the tutor or pupil master) provides instruction to the

pupil or reader in the work and ethical standards required of a barrister and arranges for the pupil to observe and assist the tutor in work.⁵

At the commencement of the reading programme, the pupil is usually required to attend a course of instruction provided by the Bar Association over a period of several weeks, comprising lectures and workshops on theoretical and practical aspects of barristers' work.⁶ In New South Wales, this programme is known as the Bar Practice Course, which effectively commences the professional obligations of a reader.⁷

Unfortunately, there is no simple answer to the question of how to secure suitable tutors. Obviously, readers should ensure they meet a proposed tutor to discuss in a frank manner what they expect from the tutor-reader relationship.

At the commencement of reading with a tutor, a number of professional obligations for the reader are invoked. The reader must attend on his or her tutors, appear as an observer with his or her tutors and comply with any reasonable directions of the tutors.⁸ Furthermore, the reader must study diligently the art of advocacy, the general work and practice as a barrister (including drafting documents, advising clients and dealing with solicitors' clients, witnesses and the public) and the proper conduct and ethics of a barrister.⁹ A reader is also obliged to study under his or her tutors, including reading and discussing briefs with the tutors.¹⁰



Unfortunately, there is no simple answer to the question of how to secure suitable tutors. Obviously, readers should ensure they meet a proposed tutor to discuss in a frank manner what they expect from the tutor–reader relationship. In turn, the proposed tutor can outline to the reader how he or she can assist the reader progress with their professional career as a barrister.

The reader can make a judgment whether there may be any possible character conflicts between the respective parties. The reader can also make a determination of whether the proposed tutor will discharge their professional and ethical obligations which accompany their important role.

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The reader should speak to colleagues, enquiring as to any ‘senior-juniors’ who may be available to take on readers. If possible, it may be useful to speak with former readers of the proposed tutor to learn of their experiences.

It is also important that the reader enquires with the proposed tutor as to whether they intend to take on another reader at the same time. In such circumstances, it is possible that the reader might not get the same level of assistance.

Undoubtedly, the tutor–reader relationship will mean different things to different people and will be affected by many factors. For example, the level of education and benefit a reader gains from his or her tutor may be measured as much by their own expectations as by others’. In any event, the ability of a reader to secure a reliable tutor is a significant step in the proper professional development of an aspiring and newly admitted barrister.

The ‘accept all’ rule

Thirdly, a reader should not accept all work that is

offered to them. Before I was called to the bar, I was advised that a reader should accept *all* work that comes their way. In my first few months at the bar, I followed this advice. Experience has taught me that it is fraught with danger. It is not necessarily compatible with financial benefit, proper advocacy experience or a development in reputation. For example, a reader may often find him or herself in a situation of being briefed at the last moment to attend upon a directions hearing or mention. These last-minute ‘flick passes’ are characterised by lack of clear instructions about the case. The result? The reader appears in court and is unable to properly assist the court with having the matter dealt with in a meaningful way. The reader is rebuked by the bench for appearing without proper instructions. The reader has his or her reputation affected by other professional colleagues in the courtroom who may draw an adverse inference that the reader does not know what they are doing. To make matters worse, there is a very real possibility that the reader will never receive payment of his or her professional fees for appearing.

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Despite a lack of experience, readers need to make their own judgment (within the confines of the *New South Wales Barristers’ Rules*) as to whether they will accept work that comes their way. A reader should not be pressured or intimidated to accept work from another barrister merely because of their seniority.

Significantly, there are solicitors and indeed some barristers who may take advantage of readers. In that respect, such solicitors and barristers may provide work to readers with the promise of payment for services rendered, yet when the work has been completed, the reader never receives payment. In this respect, readers should be cautious when accepting work from solicitors and barristers with whom they are unfamiliar.

If possible, the reader should discuss in a general way with their colleagues the reputation of the relevant solicitor or barrister. If time permits and the reader has

major reservations with regard to accepting work from the relevant solicitor or barrister, it may be useful to check whether they have been dealt with by the Office of the Legal Services Commissioner's legal practitioners' disciplinary registrar.¹¹

The reader should also keep handy a 'black book'. That is, a record of those solicitors or barristers who failed to pay, or was very slow at paying, the fees of the reader. This is particularly useful in circumstances where the impugned solicitor or barrister attempts a repeat performance by not paying fees.

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Pro bono & speculative briefs

Fourthly, there is plenty of *pro bono* work at the Sydney bar and to some extent a reader should accept it, as well as other speculative work, in order to gain experience. *Pro bono* work of course is defined as the provision of legal services for free or at a reduced rate.

Speculative briefs involve the provision of legal services with payment being made for those services upon the condition of a particular event or circumstance occurring. For example, a barrister may agree to take on a brief on the basis that they will be paid in the event that either they are ultimately successful in court or the matter settles.

In my view, a reader should seek to have a practice which includes *pro bono* and speculative brief work. The more difficult task, of course, is seeking to balance paid work with *pro bono* and speculative briefs. In this respect, a reader should not fall into the trap of *pro bono* work equating to 60–70 per cent of their practice. The adverse implications of adopting a heavy *pro bono* practice are obvious – the reader will not receive any payment for his or her services and may expend their own capital in undertaking the work.

Before reaching a decision about a *pro bono* brief, take the time to read what the matter is about. In this

respect, the writer speaks from particular experience. After only a few months at the bar, I had a phone call from an old university colleague who offered a *pro bono* brief, involving an enormous amount of work. It involved advising and appearing for a convicted murderer who had already spent many years in prison. I assumed that accepting the brief would be a waste of time, but before rejecting it, reluctantly agreed to see the brief. Upon reading the brief, it was apparent that some of the legal issues involved in the case were of such significance that on balance I had to accept it without question. This simple story illustrates a number of important points about *pro bono* work. First, the nature of the work may involve important questions of law. Secondly, involvement in the case may assist the professional development and reputation of the reader, particularly if the case deals with significant legal issues. Thirdly, the story demonstrates the point by implication that rejecting *pro bono* work without at least examining the case may very well mean that the reader loses the opportunity to be involved in a case of great significance.

Development of professional customs and practices

Finally, there is the development of professional customs and practices. That is to say, a reader should foster particular professional traits which will assist with the development of their practice. For example:

- ensuring that reporting letters are both drafted and sent to the solicitor who briefed the reader for the directions hearing, mention or motion in a timely fashion;
- returning phone calls and emails quickly;
- sending Christmas cards and good wishes to respective professional colleagues on important dates; and
- showing appreciation and gratitude to those persons who have made a difference in your professional life as a junior barrister.

There are many professional customs and practices that can be adopted by readers. They are best described as doing the small things – yet, the paradox in that

statement is that it is the small things that often make the biggest difference in the development of professional relationships.

Concluding observations

The New South Wales Bar provides an opportunity to work among some of the most gifted and hard-working members of society. Regardless of what background a reader may have had before his or her professional calling to the bar, the reader commences anew; as if to undertake rites of passage in their professional careers.

Undoubtedly, many mistakes will be made by the reader. They will not be limited to legal mistakes, but may include, for example, misconceived financial decisions. The ultimate importance of mistakes is that the reader learns from the error of his or her ways, making them the better barrister.

Endnotes

1. Jason Donnelly, BA (Macq), LLB (Hons 1) (UWS), GDLP (COL), reader (May 2011-May 2012).
2. 'Reader' means a barrister undertaking a reading programme. See Rule 116, *New South Wales Barristers' Rules*, 8 August 2011, The New

South Wales Bar Association.

3. A calling to the bar is the process by which a person becomes a member of the bar of England and Wales being an act of an Inn of Court completed when the candidate is admitted by the governing body of the Inn: *Re Perara* (1887) 3 TLR 677. To be eligible to be called, a person must have been admitted as a student member of an Inn and have satisfactorily completed prescribed vocational training and examinations. Having been called, the barrister is required to complete a period of pupillage before being entitled to practise. The expression has no exact application in Australia but is equivalent to admission by the Supreme Court of a state or territory as barrister: see *Encyclopaedic Australian Legal Dictionary*, LexisNexis, 'Call to the bar'.
4. *Encyclopaedic Australian Legal Dictionary*, LexisNexis, 'Reading'.
5. *Ibid.*
6. *ibid.*
7. http://www.nswbar.asn.au/docs/professional/prof_dev/BPC/bpc_index.php (Accessed 22/03/2012).
8. Conditions to be attached to initial (reader's) practising certificates, Provision 2, Bar Council, 15 June 2006, New South Wales Bar Association: http://www.nswbar.asn.au/docs/professional/prof_dev/readers_conditions.php (Accessed 22/03/2012).
9. *Ibid.*
10. *Ibid.*
11. Section 577 of the *Legal Profession Act 2004* (NSW) requires the commissioner to keep a register of disciplinary action taken against barristers and solicitors. The Legal Practitioners' Disciplinary Registrar can be accessed at <http://www.lawlink.nsw.gov.au/olsc/nswdr.nsf/pages/index> (Accessed 22/03/2012).



1870s PARK - SYDNEY

LIMON FIELDHOUSE



WILSON'S SQUARE - SYDNEY

LIMON FIELDHOUSE