

**Book Launch of *Learning to Litigate*
by Neil Williams SC and Alison Hammond**

**The Hon A S Bell
Chief Justice of New South Wales**

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- 1 In light of the fact that one of the authors of this book has become an international yachtsman, we have had to squeeze this launch into a gap between the Sydney to Hobart race and the Fastnet! Both races can be treacherous but stormy seas can be navigated with meticulous preparation, and meticulous preparation is a phrase which can be closely associated with Neil Williams SC and, I have no doubt, his co-author Alison Hammond.

- 2 Given its subject matter, the conception of this book is quite brilliant, with its authors at either end of their respective professional careers (if I can put that delicately). On the one hand, Neil Williams SC, highly distinguished barrister and the leader of the public law Bar in New South Wales for many years; on the other hand, Alison Hammond who still falls into that category affectionately known as a “baby barrister”, although undoubtedly a precocious one of whom great things may be expected. Thus, the book benefits from two different perspectives – avoiding the danger that can sometimes arise when the person giving the advice is out of touch with the needs and issues confronting the person to whom the advice is directed. This is decidedly not a book of anecdotal war stories, and so much the better for it.

- 3 Others have also contributed, either through commentary or past lectures, as acknowledged by the authors. They include, in respect of a chapter on criminal practice, Chief Justice Bathurst, Justice Button, the recently retired Judge

McClintock SC and Tim Game SC. Stephen Lloyd SC is also acknowledged in the chapter promisingly entitled “How to be a good junior”.

- 4 To cut to the chase, this is a book which should, in my view, be compulsory reading for all barristers coming to the Bar, not only in New South Wales but throughout the country. Although the authors are from the Sydney Bar, it is not entirely New South Wales-centric: a good example of this is the discussion of chambers. Chambers in New South Wales and Queensland, for example, are compared to the different Victorian model of Lists (with the very different financial arrangements involving the taking of a set percentage of a barrister’s gross fees). And there is a useful section highlighting different statutory pre-litigation regimes throughout the States in some areas of practice such as defamation.
- 5 And to the extent that the book is NSW-centric, and speaking non-parochially (of course and as ever), that is no bad thing.
- 6 The book should also be compulsory reading for all those barristers who have been at the Bar for a number of years but have not had the benefit of such a text. Much of it will also be of real value for those more senior barristers who assume the important role of being a tutor to readers.
- 7 Many of the barristers that I tutored had the good fortune also to be tutored by Neil Williams whose systematic discharge of the responsibility not only put me to shame but also gave me comfort the readers would turn out okay! I don’t think that any tutor could be as systematic as Neil was, but this book will stand as an excellent primer. I am sure that it reflects Neil’s practical wisdom accumulated over more than 30 years at the Bar (twenty as a silk) coupled with Alison’s contemporary insights from the perspective of a new barrister who has made her way to the Bar via a large firm and a year as Associate to Justice Virginia Bell AC.
- 8 So why am I so enthusiastic about *Learning to Litigate*, even though it made me feel a little ancient?

- 9 First, the book fills an undoubted gap in the market. To the extent that such books have been written in the past, they are now long out of date and the Bar has changed so dramatically, not just in its make-up (of which I speak so frequently) but also in terms of the nature of barristers' work, changing expectations of courts, the increased importance of written submissions, the rise of alternative dispute resolution, developments in technology, broader notions of equality and work-life balance coupled with an appreciation of the challenges of mental health, for so long a taboo subject both within the profession and the community more generally. The book is alive to and addresses all of these changes to or affecting our profession.
- 10 In a chapter entitled "advocacy-adjacent skills", there is even a section on appearing remotely and virtual advocacy. In this context, I am looking forward to Neil's explanation as to what to do when some unexpected swell hits one's yacht when addressing Kiefel CJ by zoom from below deck. The answer appears to be "buy a catamaran". But I digress.
- 11 Secondly the book is immensely practical. I tried to think of particular topics that may not have been covered but, so far as I could tell, they are all there and readily identified in both a detailed table of contents and an index!
- 12 The book even contains an extremely useful glossary of terms which may be unfamiliar to a novice, a term that could itself be included in a glossary, but which would violate the authors' encouragement of the use of plain English! The Glossary explains much legal jargon and acronyms, some of which, such as BATNA, I had never heard of. You will have to buy the book to find out what that means!
- 13 I was a little surprised by the description given by the authors to DNA, namely "Do not admit". Everyone knows that DNA is the acronym for the National Dyslexic Association.
- 14 Not only formal terms or phrases are explained in the Glossary but colloquial ones too. Amongst these, my favourite is "Hospital Pass" which the authors

describe as “an ostensibly simple piece of work, often a court appearance received on short notice, which is later discovered to be far more complex or difficult than as originally represented.”

- 15 One omission from the Glossary is that it does not contain the variety of terms used to describe those barristers who *give* hospital passes! The dignity of the occasion prevents me from venturing some suggestions.
- 16 There is unfortunately also no explanation of “windbag”, “hack” or “Old Darling” even though Rumpole has not yet been cancelled, to the best of my knowledge.
- 17 Another priceless entry which *is* in the Glossary, and will be especially useful for non-cricketing barristers, is the description of the term “Sledging” which the authors explain as:

“[m]aking disparaging comments designed to interrupt or unsettle your opponent while they are speaking in court. A form of bullying sometimes used by more senior advocates of limited abilities in an attempt to discourage their opponents.”

May I just say, for the record, that I would never describe my friend Tony Bannon SC as being of limited ability! He is a very able sledger indeed!

- 18 In the context of sledging and the Glossary, the authors could usefully also have included “*sotto voce*”, which was my own preferred mode of sledging when at the Bar, although as Jim Spigelman would readily attest, my “*voce*” was not always so “*sotto*”. But I digress (again).
- 19 Thirdly, the book has a fresh and direct style, and its structure makes it very easy to navigate. It is divided into three broad sections: Part I – Becoming a Litigator; Part II - Techniques in Advocacy; and Part III – the Bigger Picture.
- 20 In the first Part, considerable detail is provided about coming to the Bar, which for many is an undoubtedly large and daunting decision. This book will do much to demystify the process, and for this reason alone, it will make a career at the Bar more accessible for many. The authors address and answer a host of

questions about pathways and practicalities, including the merits (or otherwise) of first working as a solicitor, the advantages of a year or two as a tippy or judge's associate, finding chambers and tutors, the financial side of it all, the role of a barrister's clerk, explaining how chambers function, how work (hopefully) emerges and what the young barrister can do to hasten this process, the pros and cons of specialisation and pivoting between areas of practice. There is also an extremely useful chapter on legal research.

- 21 Many questions of ethics and etiquette are also addressed in this part of the book, but in a refreshingly practical and intelligible way. In that regard, this book highlights the value and importance of the Bar's 'open-door' policy, and how that can assist juniors with knotty questions. I once said to one of my readers, now a leading tax silk, that my door was always open. He said, "I know but you're never there!". I hope that this was just a cheap gag at my expense although there may have been an air of truth to it! Fortunately, that reader also read with Neil Williams.
- 22 The second part of the book in many respects follows the anatomy of a case from the perspective of junior counsel, ranging through topics such as taking instructions, advising on prospects, the commencement of proceedings (including considerations of jurisdiction, originating process and pleading), interlocutory matters and appearing at directions hearings and on motions (properly described as the "bread and butter" for junior litigators), preparation and marshalling of evidence including witness conferences, examination, cross-examination and re-examination, and written and oral advocacy.
- 23 Obviously junior juniors should take every opportunity they can to get on their feet but they should never lose sight of the context: a routine motion or fight over a subpoena does not require either a written treatise, reference to the *Magna Carta* or an extended oral address. Judges appreciate concision and cut through in busy procedural lists. The authors advise that when a judge says "I don't need to hear more from you on this or that issue", the judge means it.

- 24 The authors also make a very useful and important point about raising and contesting objections to evidence, a task that will frequently fall to junior juniors. They make the point [p.160] that:

“Just because it is properly open to object to evidence, does not mean that you should. You should only object to material that has some adverse significance to your client’s case. It is entirely possible that your opponent’s objectionable material actually tends to assist your case, or that it is more valuable to allow the evidence to be admitted and to cross-examine by reference to it.

After exchange [of objections], it is appropriate to conduct conferral between practitioners to reduce the areas of dispute on which the court will be required to rule. This is highly desirable, because few judges enjoy ruling on extensive objections, and will quickly grow irritated if they perceive that the parties have not made appropriate efforts to minimise that work. In most cases, the preparation of objections, the conduct of any conferral, and argument concerning objections at trial will frequently be the responsibility of junior counsel.”

- 25 Consistent with life at the contemporary Bar, the book does not confine itself to life in the court room. Thus, chapter 12 treats the increasing role of ‘specialist forms of practice and inquiries’, with particular focus on appearing before Royal Commissions, including the work of counsel assisting, Anti-Corruption Commissions, a growth area, and special commissions of inquiry: over recent years one thinks of the inquiries into the Crown Casino, The Star, the RSL, the Ruby Princess and Justice Sackar’s current inquiry into LGBTIQ hate crimes.
- 26 The authors also refer to the unique aspects of appearing in front of parliamentary committees, coronial inquiries and the Inspector-General of the Australian Defence Force inquiries (which will often be presided over by barristers and even judges with a predilection for uniforms). The detailed and insightful commentary on these growing areas of barristers’ practice is of great value.
- 27 There is also a very helpful section on preparing for and appearing in mediations, another area of practice that has grown significantly over my life in the law. The authors don’t (but could have) pointed out that they also provide a good opportunity to meet retired judges!

- 28 As to the 'bigger picture' – the third part of the book – familiarisation with the extensive section 'How to be a good junior' will undoubtedly be appreciated by senior practitioners!
- 29 The authors are correct to emphasise the importance of and need for clear communication by junior barristers both with leaders and solicitors in relation to capacity and workflows. They put this with admirable bluntness: "Telling the silk at the last minute that you have been delayed by other matters and have not been able to start on the written work is a fairly reliable way of ensuring that the silk never recommends you, or never agrees to work with you again."
- 30 The authors conclude with a section entitled 'The Law and a Life'. It should be mandatory reading before a career in the law. It is a refreshingly honest take on the good and bad parts of life in litigation, including managing workflow and finances, the importance of planning ahead, dealing with trauma, life outside work and health and diet (noting that the authors omit the importance of party pies and pinot noir in their discussion of a balanced diet!).
- 31 There are valuable insights into the importance of mental and physical health, including the importance of family and planning breaks to recharge and refresh. This does not only apply to barristers with children but, when you do have children, blocking out holiday time is incredibly important for them, for you, for your partner and, as you become more successful, for the national and international economy!
- 32 Seriously, recharging one's batteries is essential to good performance as an advocate (and a judge). And planning good breaks is also fun, especially late at night when you are otherwise drafting submissions or preparing cross examination!
- 33 I never quite got to the stage of taking a sabbatical but the book even contains tips for how to do so. It is in keeping with this book's comprehensive nature to place such an idea into the open and eager minds of young, would-be litigators.

None of you should overlook, however, the importance of very hard work which is fundamentally what is required to be a good barrister.

- 34 *Learning to Litigate* is, as I have said, an immensely practical book, full of insight and invaluable nuggets of wisdom and advice. I thoroughly recommend it especially but not only to young practitioners and those thinking of coming to the Bar. I congratulate both authors and it gives me much pleasure to launch *Learning to Litigate*.
