

The aspirational Bar

Sydney Downtown

By Justin Gleeson SC and Chris Winslow

In its quest to report upon all facets of practice at the New South Wales Bar, *Bar News* dispatches reporters from the Dark Heart of Phillip Street to interview regional barristers and discuss the issues that concern them. In doing so, we look beyond the Bar as a profession and study it as a social, political and commercial entity.

The chambers that comprise the downtown Bar have grown and benefited from the commercial maxim 'location, location, location'. In addition to lower overheads and newer office space, they enjoy close proximity to many courts, the green expanse of Hyde Park and an abundance of fine cafes and restaurants.

Despite these advantages, and their general contentment, the barristers practising there perceive themselves as being 'shut out' of key appointments and other mainstream political developments of the New South Wales Bar. These issues would not seem out of place in a regional Bar, such as Parramatta or Newcastle, but they do seem incongruous for a group of chambers that lie well within the City of Sydney. The result is an 'aspirational Bar', which craves recognition and a stronger voice in the Bar Association.

Despite a decade of consolidation, the growth of the downtown Bar may have reached its high tide mark. Like a number of other chambers in NSW, wave after wave of the government's tort law reforms must inevitably impact upon their work.

Bar News went to investigate.

The growth years

The rapid growth and diversification of the New South Wales Bar since the mid-1970s has been accompanied by the formation of new chambers. In 1949 there were 324 practising barristers. In 1962 there were 434, and by 1975, more than a decade later, that number had only increased to 670. The opening of Wentworth Chambers in 1957 and Selborne in 1962 ensured that 'Phillip Street and barristers' chambers [became] virtually synonymous¹. At the first annual general



Downtown epicentre: the Downing Centre stands on the corner of Liverpool and Elizabeth streets.

meeting of Counsel's Chambers Limited in August 1954, Sir Garfield Barwick explicitly linked the construction of a 'permanent home for the Bar' in Wentworth / Selborne with the building of 'an institution' capable of retaining to the full its role as a 'vital element in the administration of justice'. Tom Hughes QC, during a CPD seminar, described this period as the 'apogee of cohesive collegiality' for a small 'monocultural society' of barristers².

Since that time, the numbers increased rapidly, to the point where there have been for some years almost 2000 practising barristers in this state. Barristers seeking to expand their horizons spilled out of Phillip Street and spread throughout a legal precinct which encompasses the MLC Centre, Martin Place and Macquarie Street.

An important outcome of this spread was the growth of a distinct downtown Bar: a cluster of chambers in the gravitational pull of state and federal courts and tribunals

Downtown in a nutshell					
	Total	Male	Female	Silk	Junior
Henry Parkes Chambers, 10/299 Elizabeth St	32	29	3	0	32
Sydney Chambers, 13/130 Elizabeth St	24	23	1	0	24
Samuel Griffith Chambers, 18/157 Liverpool St	32	29	3	1	31
Trust Chambers, 15/157 Liverpool St	21	20	1	0	21
Ada Evans Chambers, 1/370 Pitt Street	18	14	4	1	17
Total	127	115	12	2	125

housed in the Downing Centre, John Maddison Tower and the Lionel Bowen Building. Beginning in the early 1990s its growth has been qualitatively and quantitatively influenced by the augmenting of the jurisdiction of the District Court, as well as the consolidation and relocation of registries and court facilities.

The Mason-Dixon Line

There is no boundary line on the footpath of Elizabeth Street to mark your arrival in the downtown area. To use a planetary metaphor, more than 120 barristers in five chambers are under the gravitational pull of the Downing Centre, John Maddison Tower and the Family Court's Sydney Registry on Goulburn Street. They are Henry Parkes, Sydney, Samuel Griffith, Trust and Ada Evans chambers. Another cluster on Elizabeth Street, comprising Forbes, Sir Owen Dixon, Elizabeth Street and Denman chambers, lie almost equidistant from both the Downing Centre and Supreme Court. To continue the planetary metaphor, these chambers are also under the gravitational pull of the Supreme Court, with Forbes Chambers for example, reflecting this with a higher number of silks doing appellate work in the Court of Criminal Appeal.

No discussion of downtown barristers would be complete without at least some mention of two other key elements: the public defenders and the crown prosecutors. Although they share many characteristics with their counterparts in private practice, they will not be the focus of this article.



The founders of Sydney Chambers.

An overview of the downtown chambers

In February 1992 David Dalton founded Samuel Griffith Chambers. Soon after, Sydney Chambers was formed in the adjacent building by a committee of barristers comprised of Tony Jamieson, S Russell, A Goldsworthy, N Mayell and others from Hyde Park Chambers. They were attracted by the location, the quality of the rooms and the favourable lease,



Sydney Chambers today. Seated: Dr Tom Hickie, Peter Linegar, Ross Hanrahan
Standing: Frank Santisi, David Calverley (Floor Clerk), Leah Rowan, Anthony Jamieson, David (Sandy) Wetmore, Tom Howard, Peter Lander, Evan Smith.

which allowed for further expansion. A decade later, Sydney Chambers has 24 barristers, practising predominantly in criminal law, workers compensation and personal injury.

Trust Chambers was originally formed in King Street in the Trust Building. That is where the name originated. It was established by Woods (later Judge Woods) at around the same time, with 17 barristers, but has grown to 21 members, although a greater proportion of the work (up to 70 per cent) is in criminal law, with the balance being personal injury and workers compensation, family law and commercial.

Three years later, in January 1996, Henry Parkes Chambers was formed when two groups of barristers migrated from First Floor University Chambers and 6th and 7th Floor University Chambers in Phillip Street. Today, there are 30 barristers practising mainly in common law and workers compensation. They are spread over two floors, connected by an internal stairway.

The most recent addition to the Downtown Bar was Ada Evans Chambers, which was opened by Justice Mary Gaudron on 20 November 1998. Occupying most of the first floor of an office block opposite the Downing Centre, Ada Evans was founded by Michael Maxwell and Michael Barko, who remain in chambers to this day. The initial complement of two barristers has expanded to 18, practising in criminal law, workers compensation, industrial, employment, insurance, family law and common law.

Lower overheads and better facilities

Sitting on a lounge in the bay window of Tony Jamieson's 13th floor chambers, it is easy to gain an appreciation for downtown chambers. The view from the northeast corner of Sydney Chambers, which extends over Hyde Park, St Mary's Cathedral and on to the harbour and the eastern suburbs, is superb. Most rooms in Samuel Griffith, Trust, Sydney and Henry Parkes



130 Elizabeth Street, home of Sydney Chambers.

Chambers are external, many with views over Hyde Park or Central Railway Station and South Sydney.

The modern office buildings, which house most of the downtown chambers, offer more spacious rooms than in Phillip Street and include facilities such as basement parking spaces and loading docks. However, the primary advantage of locating outside the Phillip Street - Martin Place axis is reduced cost.

Tony Bellanto QC moved to Ada Evans Chambers in 1998 becoming the first silk south of Liverpool Street. His reasons for moving exemplify those who have established a practice downtown. 'Most of my work was down this end of town. I halved my overheads, yet had the convenience of being close to the courts.'

Ada Evans Chambers, to which Bellanto QC moved, is doubly advantageous in this respect. No 'key money' is required to buy into chambers, thereby considerably reducing the barrier to entry of any aspiring junior barrister. The downside of this arrangement is that when a barrister leaves or retires, there is no capital gain.

The lower overheads enjoyed by these chambers are derived not just from their location. In terms of business principles, the four downtown chambers have much to educate other chambers in. When they were established they managed to obtain long term leases at moderate rentals in modern offices, together with flexible bank financing. The clerks pride themselves on running on strict financial principles: Sydney

Chambers, for example, does not even permit an overdraft for chambers.

Restaurants & watering holes

For too many years downtown Sydney was synonymous with urban decay and the unfinished remnants of the 1980s building frenzy. The landscape south of Bathurst Street was pockmarked with adult entertainment shops and abandoned construction sites. These enormous craters, like disused urban quarries, were filled with stagnant ponds, buttressed with raw concrete skeletons and hoardings festooned with bill posters.

'You could say that it was seen as a less than fashionable location', said one barrister from Ada Evans Chambers, with just a hint of understatement.

In recent times, however, downtown Sydney has enjoyed a renaissance. One by one the abandoned construction sites have been replaced with towering apartment buildings, premium grade office complexes and shopping arcades. There is a growing vibrancy in the streets surrounding the Downing Centre. Barristers in downtown Sydney say they now enjoy easy access to a range of affordable, cosmopolitan cafes and restaurants which rivals, if not surpasses, that which is available to their counterparts in Phillip Street. Traditional favourites such as The Hellenic Club, Diethenes and Capitain Torres are now jostled by scores of laksa bars sushi trains and Italian cafes.

This urban regeneration and renewal will culminate in the completion of the mammoth World Square development and the redevelopment above the Masonic Centre, both of which are expected to attract a number of medium to large solicitors' and accounting firms as tenants.

A close knit group

The downtown chambers are a close-knit community. Nowhere is that more apparent than in relations between the clerks. Deborah Da Silva, clerk of Trust Chambers, clerked in



Samuel Griffith Chambers.

Phillip Street before coming downtown. She comments on the sense of informality and co-operation with David Calverley, Jenny Lewis and the other clerks downtown. District Court judges and Local Court magistrates regularly attend social functions hosted by the chambers. Sydney Chambers invites judges and magistrates to informal social functions each month, and judges are included on many guest lists at chambers Christmas functions.

Issues

In most downtown chambers at least half of the barristers are practising in criminal law. This fact alone ensures that issues such as legal aid fees are of greater concern to members of the downtown Bar. In chambers such as Samuel Griffith, where a high proportion of work is funded by legal aid, the long-running campaign to increase barristers' fees was closely followed.

Another issue, which perhaps impacts differently upon downtown chambers, is direct access. Although there is general agreement that direct access briefs are workable in situations such as pleas in the local court, downtown barristers offer only lukewarm support for direct access in more substantive matters. They criticise the added burden which it places upon clerks. As one barrister explained to *Bar News*, 'In direct access situations there is the real risk that the barristers' clerk can become the de facto solicitor's clerk. That places the clerk in a hopeless situation'. The clerks we spoke to were quick to concur with this criticism. 'As the first point of contact you are taking statements from people and witnessing affidavits', an added responsibility they felt they could do without.



Tony Jamieson, head of Sydney Chambers.

In addition to the large amount of criminal work, many downtown barristers practise in the Family Court and it is there that direct access is perceived to be a source of more problems. Tony Jamieson can discern a growth trend in fathers applying for access to their children, but 'where a father files an application himself and then sees a barrister, the barrister must deal with ill-prepared affidavits'.

Struggling to be heard

Beneath their outward signs of contentment, there runs like an undercurrent among downtown barristers the belief that they are under-represented in at least three important aspects of the functioning of the New South Wales Bar:

- Appointment of senior counsel
- Appointment to committees
- Election to Bar Council

Silks

Aside from the contingent of senior counsel among the ranks of public defenders and crown prosecutors, and if the chambers in mid-Elizabeth Street are excluded, only two silk, Tony Bellanto QC and Ian Lloyd QC (both of whom obtained silk before moving downtown) can be counted among more than 120 barristers in the downtown chambers.³ The relative dearth of silks in the downtown Bar is what opinion pollsters would call a 'hot-button issue'; a topic which is almost certain to elicit a response.

Those we spoke to were quick to point out that it is much more than an issue of prestige or status. 'It is an enormous logistical problem', said one head of chambers. Others we spoke to agreed, saying that it was a 'very cumbersome' process, involving multiple trips back and forth across Hyde Park. A downtown junior might walk uptown to a conference with a silk at 8.00 o'clock, return to a District Court call over at 9.30 (and wait some time), then return uptown to the silk's chambers where the client had been waiting, only to return to the District Court if the matter was called on. Some of those who spoke to *Bar News* said that briefing a silk really was not worth it.

At one time or another, Henry Parkes, Sydney and Trust Chambers have all attempted to entice senior counsel to relocate downtown, largely to no avail. This is despite the widespread belief among those interviewed that there would be ample work for any silk bold enough to make the move, not to mention the numerous benefits of location and quality and cost of accommodation. One only needs to ask Tony Bellanto QC.

What about appointments from within the ranks of downtown barristers? In the last ten years, not one of the silk applicants from downtown chambers has been appointed. True to form, in the list of silks for 2003, not one of the 12 applicants from downtown was appointed. Whereas the Parramatta Bar were quite realistic about their lack of appointees to senior counsel, there is a strongly held view that of the 120 barristers in the 'core' downtown chambers, more than a handful would be amply worthy of silk.

One senior barrister, who did not wish to be named, said that when it comes to the appointment of senior counsel, Phillip Street 'gets first bite of the cherry'. The names of applicants for senior counsel are circulated to, among other people, existing senior counsel and court of appeal judges. Downtown barristers believe appointment of silk becomes a question of familiarity - silks uptown have more knowledge of those uptown and this "tilts the balance in favour of uptown applicants".

It does appear that downtown barristers are caught in a vicious cycle. Senior juniors are appearing in complex murder and drug trials, frequently on circuit and often against a silk prosecutor.

But few would appear in civil matters before the Court of Appeal and most criminal appellate work goes to silks in Forbes Chambers.

Those with whom *Bar News* discussed this issue were quick to dismiss any suggestion of a downtown 'quota' for silk or any amendment to the senior counsel protocol. Instead, they proffered a number of practical steps, such as 'alliances' with uptown chambers in which a downtown room could be licensed for a number of years, thereby circumventing some of the logistical problems of briefing silks in the downtown. It would also give uptown barristers, including silks, more exposure to downtown barristers and their practices.

...without representation

In addition to their problems with silk, the downtown barristers in private practice believe that they are under-represented on Bar Council and on Bar Association committees, particularly in what they regard as core areas of interest: criminal law, legal aid and personal injuries litigation. Their counterparts among the crown prosecutors and public defenders are well represented, which begs the question as to whether the downtown barristers are not applying in sufficient numbers or whether it is another reason why they have been 'overlooked'. There is an onus on downtown barristers to put themselves forward for committees. Each year, the Bar Association calls for volunteers to serve on committees. The notice for 2004 was circulated on 19 November and it will be interesting to see what response there is from downtown.

Even more telling is the statistic that in the ten years since the formation of downtown chambers, they have not succeeded in getting one of their members elected to Bar Council. This is not through want of effort. On a number of occasions a 'downtown ticket' has been organised for Bar Council elections, but even where the candidate has been loyally supported by colleagues in Liverpool Street, the numbers are still not sufficient to get them 'over the line'. What is needed is recognition and support from at least a handful of members in other chambers.

In contrast to the situation with senior counsel appointments, representation is one area where downtown members feel that there should be a concerted effort by the Bar Association to broaden the membership of Bar committees and invite persons to join from outside the uptown chambers. To assist members outside Phillip Street and Martin Place, it is suggested that the association follow the lead of the Continuing Professional Development Programme, which schedules CPD seminars downtown. The Criminal Law, Legal Aid and Personal Injuries committees, if they were to succeed in gaining new members from downtown, would be ideally suited to such a move.

A further possibility would be to emulate the practice of the West Australian Bar Association, which has a clause in its constitution which reserves at least one place on Bar Council for members who practise at chambers other than those leased

or owned by the WA Bar Chambers Limited. An amendment here could, for example, guarantee one or a small number of places on Bar Council for barristers outside the uptown area.



157 Liverpool Street: home to Trust and Samuel Griffith chambers.

Tort law reform: on the frontline

It is not without irony that whilst the growth of the Downtown Bar is due to the stimulus of administrative decisions by governments to locate court facilities south of Liverpool Street, the same group of chambers may be on the front line of one of the most important professional issues confronting the NSW Bar: the impact of successive waves of tort law 'reforms' by parliament to motor accident, workers compensation and personal injury law.

However, the downtown barristers have braced themselves for this change, and feel that collectively, their solid grounding in criminal and family law cases will ensure their survival.

Conclusion

The view from downtown is that it's a great place to practise, and the chambers are well run, happy places, but more inclusiveness from the uptown Bar, and the Bar Association is called for.

¹ Bennett, JM, *A history of the NSW Bar* (Sydney, The Law Book Company, 1969) p.197.

² TEF Hughes AO QC, ['Ethics 1', Bar Association CPD Seminar, 13 November 2002.]

³ Sydney Chambers did have Greenwood QC, who unfortunately passed away in 2001.