

Early History of the Bar

Richard Dore, the first free attorney to arrive in New South Wales, was immediately appointed as Judge Advocate in 1798 replacing the first Judge Advocate David Collins, an officer of the Royal Marines. Ellis Bent, called to the Bar in Lincoln's Inn in 1805 was appointed Judge Advocate of the Colony in 1809.

On his appointment he proposed that competent lawyers be made available to assist the Court, as there were no resident attorneys, solicitors or barristers in New South Wales. Lord Bathurst replied that solicitors should be encouraged to make the long journey to the Colony but not so for Advocates as there was no need for their services. After 1809 the Judge Advocate allowed Crossley, Eagar and other emancipists to appear for litigants in the Civil Court. These emancipists had been trained as solicitors or attorneys prior to deportation, and after release, were the first to represent clients in the New South Wales Courts. The early lawyers in the Colony were not widely known for their learning or personal qualities.

The 'Second Charter of Justice' of 1814 established the Supreme Court with Jeffrey Bent, brother of the Judge Advocate, the first Supreme Court Justice. After his appointment a dispute arose as to whether the emancipists had a right to appear in the new Court. Lord Bathurst directed against their appearance, except of necessity as at that time only one solicitor without a previous conviction resided in the Colony. Also at about this time two respectable solicitors, Messrs Moore and Garling had been chosen to move to the colony to provide legal services.

In 1823 the New South Wales Act of 1823 (the 'Third Charter of Justice') reformed the Court system with Francis Forbes being appointed its first Chief Justice. By Clause 10 of the Charter the Supreme Court was empowered to admit Barristers having already been admitted in the Courts of Westminster, Dublin or Edinburgh. The Courts were also empowered to admit a local person if there were not sufficient competent Barristers available, provided they were not already convicted of a crime, thus ending the claims of the emancipist attorneys. The wording of Clause 10 led to a debate as to whether the profession was prescribed to be either fused or divided. The Australian Courts Act of 1828 empowered the Judges to make laws for the admission of attorneys, solicitors and barristers and the 1834 rules promulgated pursuant to the 1823 Act affirmed a divided profession.

In 1824, Mr Saxe Bannister, an English Barrister appointed to the office of Attorney-General of New South Wales, applied to be admitted as a Barrister. His name thus appears on the roll as the first Barrister in New South Wales. The controversial William Charles Wentworth, then aged 33 was the fourth barrister recorded on the Roll. The New South Wales Barristers Board was established in 1848 with the enactment of the New South Wales Act of 1848..

Moreton Bay Penal Colony Settlement

During the period from the establishment of the Moreton Bay penal settlement in 1824 to 1840, when the penal settlement for reoffending convicts ended, the convicts were without the assistance of a legally qualified solicitor or barrister. For offences punishable by death, accused persons were transported to Sydney and dealt with in the Supreme Court.

1842-1859 Moreton Bay Free Settlement

In 1842 a Police Magistrate District was established in Moreton Bay with Captain John Clement Wickham, Royal Navy, appointed the first Police Magistrate. Capt. Wickham with two lay Justices constituted the Court of Petty Sessions and dealt with minor matters. For matters beyond the jurisdiction of the local courts the parties were obliged to travel to Sydney and be heard in the Supreme Court.

On 13th May 1850 the first Circuit Court opened in Brisbane; Justice Therry presiding. At this stage there were no local Counsel, so local attorneys, Messrs Little and Parker were granted a right of appearance. Also Sydney barristers began to follow the circuit Judge north seeking new clients. A trespass case, the first civil case heard in the Supreme Court in 1850, was *Bowerman v Mckenzie*. Arthur Todd Holroyd admitted as a Barrister in 1845 appeared for the plaintiff and the Solicitor General appeared for the defendant. Circuit Courts were held in May and November of each year, and in 1856 three circuits were held.

The Moreton Bay Supreme Court Act of 1857 established the jurisdiction of the Supreme Court of New South Wales in the Moreton Bay District, with the first resident judge, S.F Milford, who had presided as a circuit judge during the previous year. One of his first functions in 1857 was the promulgation of rules whereby Barristers of the Supreme Court of New South Wales became Barristers in the new Court, so allowing for the establishment of a local Bar. The new rules, imported from New South Wales, included a prohibition on solicitors appearing without a barrister, if one was available, for claims over £50. Milford, quickly tired of Brisbane life, and desired a return to Sydney. He resigned in February 1859, and on the same day was replaced by A J P Lutwyche, arguably, the father of the Queensland Supreme Court.

Ratcliffe Pring, the first Brisbane resident barrister, arrived in 1857, though he had previously appeared in the Moreton Bay Circuit Courts. Others, including Charles Blakeney in 1859 and John Bramston quickly followed.

Separation in 1859 and Following

The first legislature of Queensland in 1859 contained a number of Barristers: including Herbert the first Premier, Ratcliffe Pring, the first Attorney-General, and John Bramston, a member of the Legislative Council. By 1861 ten barristers were competing for legal work in Queensland, eight came from Sydney with Bramston and Herbert direct from England.

After separation in 1859, a Roll of Queensland Barristers was established. This Roll records the barrister's name, his admission date and signature, all in chronological order of admission. The date of admission in Queensland of the first names on the Roll is not recorded, though the date and place of admission in their native country is noted. The first record on the Roll is, "Ratcliffe Pring, Inner Temple, 8.6.1849".

The Supreme Court Constitution Amendment act of 1861, maintained the distinction between barristers and solicitors, though solicitors were given a right to appear without a barrister for disputes up to £100. The Act further provided for the admission of barristers and the establishment of the Queensland Barristers Board. It was also provided that only barristers could be elevated to the bench.

The new Supreme Court Act of 1867 provided for an enlarged Supreme Court structure. By ss34 and 35 of the 1867 Act and by the earlier 1861 Act, the Supreme Court was empowered to make laws concerning the admission of attorneys, solicitors and barristers. The time period for a solicitor to be in practice, before being entitled to be admitted as a barrister was reduced from five to three years.

The first set of comprehensive rules relating to the admission of barristers appeared in 1866, promulgated pursuant to the 1861 Act. Any Barrister already admitted in Great Britain, Ireland, NSW or Victoria was entitled to admission as of right. Persons not already admitted could apply for admission if certain criteria were met, including, being aged over 21 years, a resident in Queensland for over three years, and did not carry on a profession, trade or any other calling. This later requirement was repealed in 1874, after agitation by Mr. Real.

The first Queen's Counsel was Charles Lilley appointed in 1868.

Between 1876 and 1886 the number of Barristers increased substantially and the increase continued slowly until the mid 1890s.

In the early years most of Queensland's practising barristers were immigrant barristers admitted in their native country. Children of the first generation who intend to be admitted as a barrister, often moved interstate or overseas to be educated and admitted before returning to Queensland to commence practice. Over time the number of admittees who obtained their qualifications through the Barristers Board slowly increased. At that time a law degree could only be obtained interstate or elsewhere. It wasn't until the opening of the Law School at the University of Queensland did university graduates dominate the membership of the bar. By 1901 the population of Queensland had reached 320,000 with over 100 Barristers on the roll with about 40 practising in country areas.

On 12th June 1903 a meeting was held by a group of Barristers in the chambers of the Attorney-General, Sir Arthur Rutledge KC, where they resolved to form a Bar Association. If the motions adopted at this meeting are a guide, the reasons for the formation of the Association relate to the perennial issues of unpaid fees and direct briefing. The diary of Arthur Feez records this meeting and other aspects of his private life.

June 12 1903,
Court at 10 in Kingston v Robt Reid & Co. when the second action was finally disposed of leave being given to compound it. Meeting of Bar Committee at 11 and at 12 I had a conference with Chambers and Smith Manager of Burns Philp & Co. Game of snooker after lunch and I played better. Bar meeting in the AG's chambers when we formed a Bar Association and passed certain resolutions. It was a fair meeting. Our wedding anniversary Fan gave me a matchbox and I her an opera cloak. Wiley to dinner and stayed yarning till past 10.30. Very pleasant and happy day.

At the meeting a provisional committee was appointed including, "the Attorney-General (for the time being), and Messrs Feez, Lilley, Shand, Woolcock, Lukin, MacGregor, Stumm and Hart (secretary)". Arthur Feez became the first President of the Association.

Those present discussed and adopted motions concerning two issues that are still important a century later, namely, the listing of solicitors who failed to pay outstanding fees and direct briefs. As to the first, it was resolved that members of the Association would not accept briefs from a solicitor if a barrister reported that fees had remained outstanding from that solicitor for more than six months.