



Melbourne's bar loses star appeal

Matthew Drummond

When the battles for BHP and other celebrated takeovers were fought tooth and nail through the courts, the powerful advocates who led the Melbourne bar outshone their learned friends in Sydney.

Two decades later, the changing fortunes of the two cities have reversed the positions. Now the southern capital's commercial bar boasts just a handful of stars of the calibre demanded by top corporations.

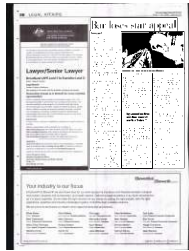
"The upper echelons of the Sydney bar have greater depth than the Melbourne bar," said Leon Zwier, a partner at Arnold Bloch Leibler.

Another Melbourne-based litigator said: "A lot of the stars have gone."

As well as the empty spaces at the top of the Melbourne bar, those working their way up the ranks are finding times hard, and clerks privately admit business is quieter than ever. In effect, the Melbourne bar has gone pear-shaped. The lack of work at the bottom has forced the Bar Council to cap new admissions at 100 a year, while there is no cap in Sydney. Meanwhile, Melbourne's law firms are increasingly flying top Sydney silks south to fight their biggest cases.

The concentration of financial services and media companies in Sydney, together with the collapses of HIH and One.Tel, appeared to

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have caused significantly more commercial litigation in Sydney, Allens Arthur Robinson partner Paul Meadows said.

“As a consequence you would expect the commercial bar in Sydney to be more visible and to be growing more rapidly. Although many Melbourne barristers practise in NSW courts.”

Take Toll Holdings’ hostile bid for Patrick Corporation. Alan Archibald, QC, and Allan Myers, QC, the undisputed leaders of the Melbourne bar, were initially called on to fight the biggest case to hit Melbourne’s courts in 2006. But neither was available to appear at hastily organised hearings.

Toll was forced to drop its second choice, Neil Young, QC, when he was appointed as a judge on the Federal Court and Patrick had to bring in Tom Bathurst, QC, from Sydney.

Mr Bathurst has again just been briefed to fight another Melbourne case because Mr Archibald was unavailable and the lawyers refused to use anyone else from Melbourne.

The cause of the problem, many point out, is that commercial litigation has shifted to Sydney, leaving less work for up-and-comers on which to cut their teeth.

The names that once dominated Melbourne’s chambers were Archibald, Myers, Hayne, Hulme, Charles, Young, Nettle, Finkelstein and Merkel. Most have gone to the bench and some have retired. Mr Myers works part-time and Mr Merkel has recently returned to chambers but will not be doing commercial work, leaving only Mr Archibald.

“The Sydney bar is stronger and it has been for a long time,” conceded one commercial silk

who works in both cities. “There has been a drift of commercial work to the Sydney bar because there’s been a drift of commerce and industry to Sydney.”

The sentiment is underlined by figures compiled by Melbourne University’s Centre for Corporate Law and Securities Regulation which show that in the area of corporate law the NSW Supreme Court dominates the rest of the country. Last year, 348 corporate

law judgements were handed down, compared with only 59 in Melbourne. The Sydney registry of the Federal Court is also busier – delivering 91 corporate law judgements compared with 57 in Melbourne in 2005.

According to figures from the state bar associations, there are 1602 barristers on the roll in Victoria compared with 2121 in NSW.

Some silks blame Melbourne’s genteel nature for the drop-off in work. “It seems to be more popular to pursue litigation to the bitter end in Sydney and not settle. Melbourne people are too polite,” one said.

“Big national law firms have their centre of gravity in Sydney.”

“Secondly, Sydney is deal city, so deals that come unstuck are more likely to be litigated there. Thirdly, you have more of a mediation culture down here. There’s a much greater emphasis in a Melbourne courtroom on directing the parties to go to mediation.”

The vice-president of the Victorian Commercial Bar Association, Albert Monichino, dismissed as fickle the debate on whether the Melbourne bar was as strong as Sydney’s, and he

stressed that there was plenty of alternative dispute resolution work for Melbourne barristers.

Unlike Sydney, mediation was not seen as a sign of weakness in Melbourne, he said.

“The court list is not a reflection of how much court activity there is, and it’s not doom and gloom because if it was we wouldn’t have 80-plus people coming to the bar each year. There’s work,” Mr Monichino said.

Victorian Bar chairman Kate McMillan, SC, also dismissed the suggestion that the Melbourne bar had become weaker. “In the commercial silks department, it’s a very distinguished list,” she said.

Some say the decline of the Victorian Supreme Court is partly due to perceptions of its judges. “It pains me as a Victorian to say this, but I think the perceived quality of the NSW Supreme Court has been greater than the perceived quality of the Victorian Supreme Court for quite some time,” one silk said.

And perhaps the lawyers are partly to blame.

“The big national law firms have their centre of gravity in Sydney. If they have their chance, they will try to commence proceedings there,” said Charles Scerri, QC.

But Melbourne’s top litigators, who decide which barrister’s pigeon hole receives the all-important brief tied in pink string, remain hopeful for the future. “There is a pack of seriously bright and up-and-coming senior commercial counsel,” Mr Zwier said.

“The big three might be inaccessible because they have got so much work, but you do have an up-and-coming group which is getting there,” he said.



Melbourne's bar council has had to cap new admissions.

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