

APPENDIX I  
*(referred to in paragraph 8)*

**Bodies and individuals who provided us with views and information**

Association of British Chambers of Commerce

Auditor of the Court of Session

British Institute of International and Comparative Law

British Insurance Association

Chartered Institute of Patent Agents

Committee of Scottish Clearing Bankers

Confederation of British Industry

Consumers' Association

Crown Office, Scotland

Director of Administration, City of Edinburgh District Council

Director of Administration and Legal Services, Cumbernauld and Kilsyth  
District Council

General Dental Council

General Medical Council

General Optical Council

Glasgow Bar Association

Institute of Actuaries

Institute of Civil Engineers

Institute of Directors

Law Society of Scotland

Lord Advocate's Department

Lord Justice General and Lord President (Lord Emslie)

National Federation of Consumer Groups

Presiding Special Commissioner of Income Tax

Royal College of Veterinary Surgeons

Royal Institute of British Architects

Royal Institution of Chartered Surveyors

Scottish Courts Administration

Scottish Home and Health Department

Scottish Law Agents Society

Scottish Legal Action Group

Society of Solicitors in the Supreme Courts of Scotland

Stock Exchange

Six firms of solicitors

Two individual members of firms of solicitors

APPENDIX 2  
(referred to in paragraph 44)

**The rules and practices of the legal profession  
in other countries**

**Introduction**

This appendix contains information about the restrictions in other countries, supplied by the Faculty of Advocates for the Commission or, in the case of certain Australian states, obtained by the Commission. Though some of the material was obtained during 1974, it is all believed to be still accurate.

**Australia**

**I New South Wales Bar Association**

*Queen's Counsel Rules:*

'57. A Queen's Counsel may appear on the hearing of a case in which he was retained or briefed as a junior for a fee appropriate to a junior counsel but he may refuse to do so.'

'64. A QC other than a permanent Crown Prosecutor or Public Defender may not appear for a party without a junior barrister but he may, if he chooses, appear without a junior in a trial or indictment of a person not being a corporation or on a plea by such person after indictment or under Section 51A of the Justices Act or for the purpose of making representations to any administrative or legislative body.'

Note: Rule 64 was substituted on 26 October 1972 for a rule in the following terms:

'64. Queen's Counsel may not appear for a party without a junior barrister, but it is not a breach of etiquette for him to appear without a junior at a criminal trial.'

**II The Bar Association of Queensland**

It is the practice of the Bar of Queensland that a QC does not appear in any Court of Law without junior counsel. However, where he appears elsewhere as an advocate (eg in tribunals) while it is desirable that he should have a junior, there is no rule of the profession requiring him to do so, unless a junior has been employed in the preliminary proceedings.

In practice a QC does not undertake the work connected with steps in the action before trial. Preliminary work is done by junior counsel but it is proper for a QC to meet his junior in consultation to advise and settle pleadings. What part the junior takes in the trial is a matter for arrangement in each case. If more than one junior is briefed, their respective shares in the whole work are also a matter of arrangement.

**III The Victorian Bar**

*Statement by the Honorary Secretary of the Victorian Bar:*

'The traditional two counsel rule which requires Senior Counsel to appear with junior counsel applies.'

#### **IV South Australia**

The Master of the Supreme Court has advised that it is Court practice to require Senior counsel to appear with junior counsel.

#### **V Western Australia**

There are no written rules requiring a Senior Counsel to appear with junior counsel. However, the Registrar of the Supreme Court has advised that this practice is always followed.

#### **VI The Law Society of Tasmania**

Rule 3 of the Rules of the Law Society of Tasmania provided:

'3. A Queen's Counsel will be expected to observe the following rules namely:

(c) He shall not appear in any Court of Law without a Junior Counsel.'

#### **Canada**

*Statement by a leading Queen's Counsel practising in Toronto as a Barrister and Solicitor:*

'In Ontario we do not have a "Two Counsel Rule". I am not aware of a comparable rule in any other province either.

I am entitled in Ontario to insist as a consideration of my retainer that I be authorised to engage the services of a junior member of the profession for the purpose of assisting me. If the client did not choose to incur this added expense I would be entitled to decline to act on his behalf.'

#### **Irish Republic**

A Senior Counsel/Silk cannot plead in court unless he is instructed with a junior. The rule is confined to litigation in court and does not cover the appearance of counsel at administrative tribunals.

#### **New Zealand**

*The Queen's Counsel Regulations 1955:*

'5. Except when acting for the Crown, a Queen's Counsel shall not (except in Chambers) appear

- (a) In the Supreme Court or the Court of Appeal or any other Court that is not an inferior Court unless junior counsel appears with him;  
nor
- (b) In any inferior Court except upon special retainer and for a fee of at least ten guineas:

Provided that this regulation shall not apply to an appearance for a person who is party to the proceedings as a poor person or as a person to whom legal aid is granted under any Act.'

## Northern Ireland

*Statement by the Secretary to the General Council of the Bar of Northern Ireland:*

'Broadly speaking, the two counsel rule is the same in Northern Ireland as in England and Wales.'

## Rhodesia

*Rules of the Bar of the High Court of Rhodesia*

### X. SENIOR COUNSEL

- (b) No Queen's Counsel or Senior Counsel shall appear without a junior in any trial action in the High Court:

Provided that Queen's Counsel or Senior Counsel may be briefed without a junior in any case in which he was engaged before taking Silk. Queen's Counsel or Senior Counsel shall be considered to have been engaged in a case if he was briefed at any stage in the proceedings, but not if he has merely advised before the institution of the proceedings or on the prospects of an appeal. For the purpose of this rule, an appeal shall be considered as part of the original proceedings.

### XI. LEADERS AND JUNIORS

- (b) If two Senior Counsel are briefed, one may be briefed as junior to the senior, but he himself must have a junior.'

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Printed in England for Her Majesty's Stationery Office by Harrison & Sons (Hayes) Ltd.

18626 Dd 163702 K28 7/76