

APPENDIX B

[Furnished 20 October 2003]

[Guidelines 3,18, 26, 27, 28, 29, 32]

NEW SOUTH WALES BARRISTERS' RULES 62 - 72

Prosecutor's duties

62. A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.
63. A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.
64. A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.
65. A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.
66. A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connection with such material) available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused, unless:
- (a) such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person; and
 - (b) the prosecutor believes on reasonable grounds that such a threat could not be avoided by confining such disclosure, or full disclosure, to the opponent being a legal practitioner, on appropriate conditions which may include an undertaking by the opponent not to disclose certain material to the opponent's client or any other person.
- 66A. A prosecutor who has decided not to disclose material to the opponent under Rule 66 must consider whether:
- (a) the defence of the accused could suffer by reason of such non-disclosure;
 - (b) the charge against the accused to which such material is relevant should be withdrawn; and
 - (c) the accused should be faced only with a lesser charge to which such material would not be so relevant.
- 66B. A prosecutor must call as part of the prosecution's case all witnesses:
- (a) whose testimony is admissible and necessary for the presentation of the whole picture;

- (b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;
- (c) whose testimony or statements were used in the course of any committal proceedings; and
- (d) from whom statements have been obtained in the preparation or conduct of the prosecution's case;

unless:

- (e) the opponent consents to the prosecutor not calling a particular witness;
- (f) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused; or
- (g) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses;

provided that:

- (h) the prosecutor is not obliged to call evidence from a particular witness, who would otherwise fall within (a)-(d), if the prosecutor believes on reasonable grounds that the testimony of that witness is plainly unreliable by reason of the witness being in the camp of the accused; and
- (i) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (f), (g) and (h), together with the grounds on which the prosecutor has reached that decision.

67. A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully obtained must promptly:
- (a) inform the opponent if the prosecutor intends to use the material; and
 - (b) make available to the opponent a copy of the material if it is in documentary form.
68. A prosecutor must not confer with or interview any of the accused except in the presence of the accused's representative.
69. A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.
70. A prosecutor who has informed the court of matters within Rule 69, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when next the case is before the court.

71. A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:
- (a) must correct any error made by the opponent in address on sentence;
 - (b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence;
 - (c) must assist the court to avoid appealable error on the issue of sentence;
 - (d) may submit that a custodial or non-custodial sentence is appropriate; and
 - (e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority.
72. A barrister who appears as counsel assisting an inquisitorial body such as the Independent Commission Against Corruption, the National Crime Authority, the Australian Securities Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with Rules 62, 64 and 65 as if the body were the court referred to in those Rules and any person whose conduct is in question before the body were the accused referred to in Rule 64.

THE LAW SOCIETY OF NEW SOUTH WALES

SOLICITORS' RULES A62 to A72

[Rules A.62-A.72 of the Advocacy Rules included in the Solicitors' Rules are in generally similar terms to the Barristers' Rules set out above. Where there are differences the relevant rule and part are set out below.]

A.66B ...and

- (j) the prosecutor must call any witness whom the prosecutor intends not to call on the ground in (h) if the opponent requests the prosecutor to do so for the purpose of permitting the opponent to cross-examine that witness.

A.67 A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully or improperly obtained must promptly:

- (a) inform the opponent if the prosecutor intends to use the material; and
- (b) make available to the opponent a copy of the material if it is in documentary form;
- (c) inform the opponent of the grounds for believing that such material was unlawfully or improperly obtained.