OFF BALANCE

BY PRESIDENT TERRY GARDNER

Interesting Times

ADVERTISING

Following representations from numerous members of the profession and after receiving several submissions from members, the Professional Conduct Rule dealing with advertising and use of the words "expert" and "specialist" (or derivations thereof) was considered by Council at a meeting on February 23.

After considerable discussion, Council resolved to recommend to the Chief Justice that the following rule be substituted for the current rule 3.1.

(1) A practitioner may advertise in connection with his or her practice provided that such advertising:

(a) is not false in any material particular;

(b) is not misleading or deceptive or likely to mislead or deceive.

(2) The onus shall be upon any practitioner who claimed that he or she was a specialist or an expert in a particular field of practice to prove, if required, that the claim was not false, misleading or deceptive.

The proposed rule is based on advertising rules now in use in many states of Australia.

MINIMUM WAGE FOR ARTICLED CLERKS

This matter was also considered by Council at its last meeting, with the submissions and opinions of members being considered.

Due to the diverse opinions of members and the difficulties perceived in implementing a scheme of minimum wages for articled clerks, Council resolved to take no action at this time.

I would like to thank all those practitioners who took the time to make submissions to Council and assure them that their views were considered when reaching the above decision.

CENTRE FOR SOUTH-EAST ASIAN LAW

During the current sittings of the Legislative Assembly, a Bill was presented and passed allowing for the Attorney-General to direct the Fidelity Fund Committee to allocate monies from the fund to:

(a) assist in the conduct of a scheme for the provision of legal aid;

(b) assist and promote legal education and legal research on such terms and conditions as the Attorney-General thinks fit.

I believe that this amendment to the Legal Practitioners' Act has been made to allow a grant of $700,000 to the Northern Territory University (NTU) for the purposes of establishing a South-East Asian Law Centre.

It is yet to be established whether such a centre will be successful in obtaining the goals envisaged by the university.

I believe that when making grants of this nature in future, the NT Government or Attorney-General should seriously consider the urgent need for the establishment of a post-graduate course of practical legal training at the university's School of Law.

Members are also aware of the critical need to supplement the limited number of places for articled clerks in the Northern Territory and I believe that a scheme similar to that in NSW, involving a combination of articles and practical legal training, should be promptly introduced in the Territory.

I also believe that as the NTU is responsible for turning out such a large number of law graduates, without a great prospect of gaining articles, it is that institution's responsibility to assist its graduates in obtaining admission to practise the profession which they have chosen and for which they have been trained.

NATIONAL PROFESSION

Over the last few months there has been a great deal of publicity, particularly in the southern press, concerning the need for a national legal profession.

This interest has arisen from the large number of reports and investigations (some necessary, some unnecessary) of the legal profession.

Certain groups apparently believe that if the legal profession "toes the line" and removes border differences, all other professions will follow meekly.

I believe there is a great need for a national profession and the Society has supported this view at recent meetings of the Law Council of Australia.

Such a concept includes a national code of conduct, common admission rules and education requirements, practical legal training and common fidelity fund and trust accounting requirements.

I also agree with the concept of a national practising certificate. However, due to proposals put forward by certain south-eastern states, the agreed grounds for a national

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Evidence Bill 1994 and Evidence (Transitional Provisions & Consequential Amendments) Bill 1994

The Commonwealth Parliament passed the Evidence Bill 1994 and the Evidence (Transitional Provisions and Consequential Amendments) Bill 1994 on February 7, 1995.

The new Evidence Act, to start on April 18, 1995 (the Tuesday after Easter), will provide a single evidence law of general application for proceedings in federal courts and, by agreement with the Australian Capital Territory (ACT) Government, courts of the ACT.

Specifically in relation to the Northern Territory, the new Act will replace much of the existing Evidence law—both statute and common law—that now applies in proceedings in federal courts in the Territory.

The Evidence (Transitional Provisions and Consequential Amendments) Act will repeal the Evidence Act 1905 and the State and Territorial Laws and Records Recognition Act 1901 and make consequential amendments to some other Acts.

In view of the importance of the legislation, the Attorney-General is looking at the practicality of writing to individual barristers and law firms to inform them of passage of the Bill.

A publication that will include the text of the new Act, with a commentary written by officers of this department who had carriage of the Evidence Bill, should be available by March 10, 1995.

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profession appear to be continually shifting. We are now being pressured to accept detailed national rules of conduct and a national practising certificate scheme which could see practitioners from southern states working in the Territory without a need for further admission or payment or practising certificate fees.

Such a system would do away with the requirement of interstate practitioners to at least extend the courtesy of advising the relevant courts and Law Societies of their intention to practise in that jurisdiction.

The original proposal would have cost this Society approximately $72,000 per year in practising certificate and other fees. An offer was made to subsidise the Society to the extent of approximately $38,000. Following negotiations by the Executive Officer Jim Campbell and myself, there is now a new agreement to reimburse the Society in full.

The problem presently to be addressed is: where is the $72,000 going to come from? During these negotiations we received considerable support from Western Australia, Queensland and other smaller law societies.

I have at all times emphasised that the Northern Territory does not want to be subsidised. However, the commercial reality is that in the interests of a national profession, we may have to accept such a subsidy.

As you are aware, with the introduction of the Mutual Recognition Act (with the exception of Western Australia) a de facto national profession already exists. It is believed that Western Australia will shortly introduce a mutual recognition act and it is my view that with the introduction of such legislation in that state, a true national legal profession will exist. The only matters then requiring attention will be those already mentioned — a national code of conduct, common admission rules and education requirements, practical legal training and common Fidelity Fund and trust accounting requirements.

Fused profession? No thanks, we're British

According to the Commonwealth Law Bulletin, (Volume 20, Number 2, April 1994)the traditional distinction in the way solicitors and barristers are trained should be abolished under controversial proposals recommended by the Lord Chancellor's own advisory committee.

Lord Justice Steyn, who chairs the advisory committee on education and conduct, has set out the panel's views to both the chairman of the Bar and the Law Society president. The proposals, which cover every one of some 7000 trainee lawyers a year starting life in a solicitor's office, are causing a stir at the Bar and dividing judges as well as the four Inns of Court.

After six months or a year as a solicitor, lawyers who wished to specialise in advocacy might join a barrister's set of chambers and do pupillage there. The committee is impressed with what happens in Scotland, where all lawyers begin as solicitors. Lord Justice Steyn said the committee saw considerable merit and strong arguments for common training of barristers and solicitors.

The implications are far-reaching: many critics, including senior judges, believe the proposals are tantamount to fusing what has always been two branches of the legal profession. But the Bar has been given three years by the committee to overhaul its own training because of oversupply of applicants.

Robert Seabrook QC, Bar Chairman, said: "I favour some element of common education, but there should be full and open debate."

One effect is likely to be abolition of the Bar's monopoly on training through its one-year vocational course at the Inns of Court School of Law — criticised by the Director-General of Fair Trading as anti-competitive because so many applicants are turned away. There are 2000-plus applicants for 800 places. Instead, the Inns of Court would

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