Letters to the editor

Lawyers Realty Group

In South Australia there are moves by some members of the legal profession to establish a so-called Legal Realty Group. In this State, the existing real estate Legislation leaves practitioners exempt from specific licensing as is required for other participants in this activity.

Within some States the development of conveyancing is taking away further ground from the legal profession and there may be some interest in the grass root development that is beginning to emerge here. The Property Committee of this Law Society sees some possibility of regaining ground from a competitor by moving into the Real Estate area. This has been a reaction to the fact that Real Estate Agents are actively involved in the Contracts for the sale of real estate; conveyancing and the remainder of land offers documentation is also fast slipping away from the public perception of what lawyers "do".

In Britain real estate sales are still quite commonly conducted by solicitors. It is accepted practice for solicitors to advertise and negotiate sales as well as to prepare contracts and to execute the conveyance. Some of our members believe there is no reason that practice cannot occur here as well. Particularly our suburban and country practitioners see some attraction for reintroducing such a service by being able to deal with vendor or purchaser and to consequently avoid the problem of competing with conveyancers for referrals from Real Estate Agents.

Should there be sufficient interest, it is envisaged that a programme might be set in train to provide assistance to enter the marketing arena and to provide joint advertising under a common banner, for example "the Legal Realty Group"

I would be grateful if you could convey the message in this letter to your members with a view to establishing whether there would be interest nationally in such a claw-back exercise. I would be happy to coordinate any responses and to establish some action in this area if it was felt that this was an opportunity that could be investigated at National Level.

Barry Fitzgerald
Executive Director
The Law Society of South Australia.

Contingency Fees

I enjoyed reading John Neill's views expressed on pages 1 and 3 of the November edition of *Balance* concerning contingency fees. I share John's views. Since the enactment in the Legal Practitioners Act of the existing legislative scheme concerning fee arrangements, I have believed that such an agreement might be utilised for an arrangement which remunerates a legal practitioner in a manner which varies dependent upon results, provided that it is substance was reasonable in all circumstances.

It is interesting to note that the profession is importuned by various social forces including those that are allegedly the champions of free market economics and yet when it comes to the possibility of lawyers enjoying the free market economics, for some peculiar reason bodies like the old Trade Practices Commission feel the market should be controlled. I am of course cynically referring to the proposed 25% limit on any fee uplift.

I recommend that the profession, through your council, become more active about measures to anticipate the inevitable that are likely to emerge in this jurisdiction in the near future, in relation to the issue of contingency fees. If we do not respond to this aspect of the 1994 Trade Practices Report, a perception of resistance may develop. There is an opportunity to provide a prompt non-legislative, non-political and non-controversial response to the perception that there is a need to introduce contingency fees. We could achieve that by the formulation of a Law Society of the NT recommended form of 'contract for the provision of legal services". Most comparable professional bodies e.g. architects and engineers already have such a document. In formulating that document we could usefully address a number of matters of common contention between the profession and clients whilst crafting a contractual code to regulate contingent fee uplifts, no cure no pay arrangements and perhaps other features of the relationship. The document might be drafted with an eye to the supervisory powers of the Supreme Court of the NT and even possibly in a form on which the Court has been consulted and has expressed approval in principle.

Once the general nature of the document and the terms and conditions thereof, had been formulated as a recommended model, it may well serve as a means of the profession introducing a self regulated variety of contingency fee arrangements without the need to involve government, legislation or indeed any other source of input.

Whilst about the task, the drafting committee might make an attempt to tidy up a range of issues that trouble practitioners such as liens on files, interest on unpaid fees, verification of claims, and indeed the very commonplace circumstance of the need to reassign work (within a firm) to a successor practitioner on the original practitioner becoming unavailable due to resignation etc.

I would be willing to offer my commitment to serve on such a committee and recommend that myself, John Neill and John George would be the most suitable members of the profession in Darwin to undertake the work. I have notified Mr George and Mr Neill of this suggestion and I look forward to a response in the New Year.

A.G. James
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An Apology

In the October edition of Balance, we published a letter from Jon Duguid of NAALAS regarding the Payment of Proceedings Costs. However, the name of the letter's co-writer Kate Halliday was omitted. Credit where credit is due- our apologies Kate.