

Towards Barber-Surgeons of the Law?

By Jonathon Nolan, David Francis & Associates

"[sic]...Thus it happens that two men, working in different ways, can achieve the same end, and of two men working in the same way one gets what he wants and the other does not. This also explains why prosperity is ephemeral; because if a man behaves with patience and circumspection and the time and circumstances are such that this method is called for, he will prosper; but if time and circumstances change he will be ruined because he does not change his policy...."

Machiavelli, *The Prince*

Accountants, realtors and bureaucrats are making separate inroads into the exclusive parvenu of the legal profession. This should be seen as a significant problem for the profession to address. In addition, lawyers are an important part of the system of human rights we take for granted, and beyond the profession's financial problems caused by the breaking of the monopoly lawyers once held, lawyers must ensure that there is no fall in the quality of legal services, as provided by anyone. Lawyers will necessarily have to stave off encroachments orchestrated by both governments and lobby groups from semi-professional occupations.

Practice of law is a professional calling that requires acumen and continuous study. A lawyer is also further required to develop a unique outlook, at once sympathetic and objective. This compartmentalised approach allows a lawyer to develop various strategies for a client, based on different approaches to the same problem or situation. Whilst all this is axiomatic to a practitioner, it is not so readily apparent to a non-lawyer.

In addition to any other risks run by non-lawyers entering the domain of the law, a key risk is that unprofessional preconceptions will dictate grossly inadequate treatment of legal issues that arise. A simple example of this problem is the desire on the part of some real estate agents to obtain individual clauses for insertion into a blank form contract. Obviously the underlying motivation for seeking this sort of piecemeal assistance from a lawyer is that the agent wishes to usurp the role of the lawyer in preparing a quintessential legal document, namely a contract for sale of land. The old rallying cry for those seeking to usurp the functions of a lawyer is the expense involved in seeking a lawyer's assistance. But another important motivating factor would have to be professional jealousy.

Although lawyers have slipped se-

verely in their public profile, it must be acknowledged that the practice of the law still commands a measure of respect. It is therefore tempting for those who are not legally qualified to try and obtain some reflected glory from the discipline of the law, whilst also scoring points off those who truly practice that discipline. Perhaps some lawyers have encouraged this rather predatory attitude in non-lawyers by being too aloof or arrogant.

Whatever the causation explaining the current invasion of the law by non-lawyers, the ramifications of this "deregulation" are significant. With non-qualified people offering de facto legal advice on areas such as partnerships, taxation, real property, succession, tort, criminal law and contract, there will have to be a devaluing of the services provided by genuine lawyers.

The modern solution to this problem would be for lawyers across Australia to adopt or create appropriate comprehensive quality management and best practice guidelines and see that these guidelines are implemented. If multi-disciplinary partnerships become a normal part of the legal community in the future, we will see the glaring difference between the quality management environment of some accountancy firms and the "ad hococracy" that is closer to the norm in a law firm.

Traditional gags on lawyers' advertising have prevented the lowering of the tone of the profession in some instances, but on other occasions a lack of public scrutiny in the marketplace has allowed some egregious outrages to occur and the lack of perceived deterrence offered to offending lawyers has further eroded the legal profession's status. Whilst any practising lawyer may easily understand the complexities and Realpolitik of the profession, lawyers have not looked outward to the broader community to productively engage debate and control the course of public

perception in the same way that for example doctors have managed to do. Perhaps the comparison between the AMA and the national body of lawyers is not a comfortable one.

In the interests of furthering debate (that phrase will be my equitable shield!) I set out some basic management models, derived from current management training sources for non-law professionals:

Ad hococracy²

Constantly shifting jobs and responsibilities, new staff thrown in the deep end to "sink or swim"; constant rearrangement allows profit to bleed away and observers lack confidence in the ability of the organisation to see a project through to the end.

Tents

Overarching authority but unclear internal discipline; lack of coherent direction allows dynamic individuals to create their own independent workplace and be productive, but less dynamic individuals will flounder through lack of supervision.

Marketplace

Internal as well as external operations are costed in detail to provide upper management or principals with the ability to look at the hidden costs of certain decisions; the marketplace or engineering approach suits conservative or disciplinarian organisations who are able to act ruthlessly to eliminate perceived wastage.

Dreamland; Cabal; Challenge

Hierarchical laboratory approach coupled with regular "bull sessions" where nay approach, no matter how wild, will get a hearing, totally results driven, the bottom line is "results, results, results" driven by strong leadership.

Network

Informal organisation with manager being more of a spider in a web rather than emperor on a throne; work concluded largely by phone, with contacts

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Law Society Staffer Hits the High Seas

Receptionist at the Law Society's Secretariat, Fiona Halliday, recently achieved a long-term ambition to run away to sea.

Fiona was chosen to be a member of the *Young Endeavour* crew on a recent voyage and spent two weeks literally learning the ropes and getting her sea legs as this youth training vessel charted its course around the northern coast of Australia, calling into Magnetic Island, Orpheus Island and eventually claiming the little-known Rattlesnake Island for the youth of Australia.

The opportunity to sail aboard the *Young Endeavour* is available only to a select group and provides the participants with an chance to learn the rudiments of sailing a 33-metre, 2 mast, square-sailed brigantine in the most hands-on possible of manners.

The youth crew, as they are known, are taught to navigate, climb the rigging, set and furl the sails, act as galley slaves and dish pigs, swab the decks, polish the brass and in fact, do anything that is necessary to keep the crew and vessel shipshape.

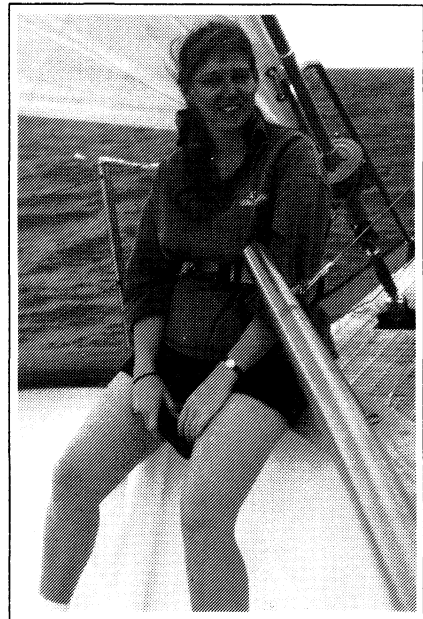
Accommodation was a bunk in a six or twelve berth cabin and each member of the youth crew was allotted a 27inch x 16 inch x 9 inch locker in which to stow their worldly belongings.

Watch was kept throughout the night in two hour blocks and Fiona admitted that the lack of sleep caused by this necessity was the only drawback to the trip.

This leg of the *Young Endeavour's* permanent voyage was staffed by 24 youth crew, 9 regular crew and 3 supers (naval personnel observing or trying out for positions on the regular crew of the vessel).

Fiona's abilities and enthusiasm for the life at sea earned her the Order of Australia Association medal, presented to one of the youth crew during the voyage and she is now a formidable mine of information about things nautical, including a somewhat colourful explanation of why toilets are called "heads" on board ship.

Whilst Fiona has now returned to the more mundane routine of dealing with mail, telephones and practitioners,



Fiona – all at sea

Secretariat staff have noticed an odd look crossing her face whenever her eyes turn seaward and it can only be a matter of time before she decides to give her sea legs another airing.

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and unofficial lines of communication replacing formal applications and official documentation where possible.

Practitioners will be able to identify the key concepts and techniques of value to them. The law has been very slow to take up many of these management styles. None of the above models are of necessity inconsistent with the ethical and professional practice of the law.

Lawyers will continue to be undervalued as long as they allow others to interfere with their profession and its quality management practices. The current assault on the legal monopoly will succeed as long as lawyers do not answer the challenges and evolve. Harsh though it may be, the practice of the law will continue to change, and improved professional management practice will

emerge not as a placebo but as a panacea. An economic conflict has already begun that will inevitably lead to the extinction of some branches of the practice of the law as it is currently known. This conflict is not chivalrous, neither is it one in which quarter will be given or asked for by the adversary. Lawyers must now respond or suffer severe financial damage and further abrogation of their professional entitlements.

"Without change, something sleeps inside, and seldom awakens.

....The Sleeper must awaken!"

Frank Herbert, *Dune*

It will always be possible to resist change using reactionary arguments, and many people see change for its own sake as a bad thing. Change is often seen as a means whereby illegitimate authority

or threats to job security are brought into a workplace³. Sometimes, such fears are justified. However, one more point about change must be made – it is inevitable.

FOOTNOTES

1. *adhocracy* is a term coined by Alvin Toffler to describe organisations in which job descriptions and titles change frequently and rashly.
2. *op. cit.*
3. Pettigrew, *The influence process between specialists and executives*, *Personnel Review*, 1974

The views expressed in this article are those of the author and are not necessarily endorsed by the Law Society of the Northern Territory.