

# ...OF CATFISH AND LAWYERS

I don't think I have had to write an essay for about 20 years, so doing the President's column is a little strange for me. Those who have suffered my pleadings are likely to be as surprised as I am worried about the required length for this epistle.

I was hoping to set out a program for the next year in terms of the tasks the Law Society hopes to achieve, but I have faltered somewhat in my hope that this article will be read in the significant way I wished, given the changes in the world around us. On reflection, though, I think there is a line that can be drawn from those events that can filter down to the challenges we face in our profession and show us the importance of a couple of fundamental facts.

Internationally the terrorist attacks have changed the way we perceive the safety of our communities. Nationally the fall of Ansett has changed the security we feel with our institutions and the next federal election will no doubt agitate deeply held beliefs. Locally the election of a Labor government has changed the relied on entrenchments of business in the Territory, and the way in which we deal with our societal problems.

A significant aspect of all these events is that they seem to have taken very little time to occur. Certainly one might say that some were a long time coming and that their roots were well established in the past, but nonetheless their effect is in their occurrence. The second aspect that can be drawn from these events is that public perception and public interaction, driven by the media, are far more important than they were in the past.

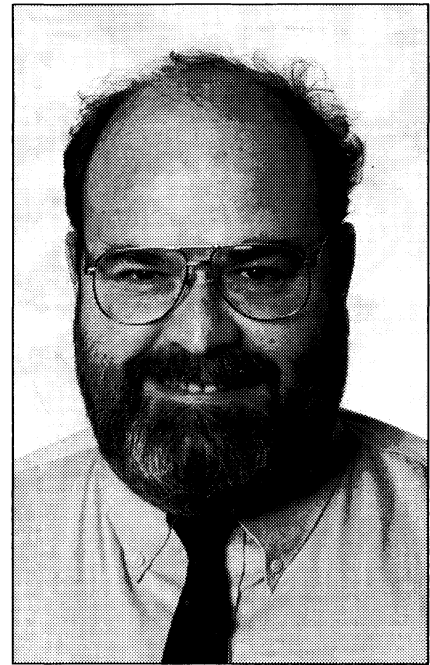
For instance, it was chilling to know that, amidst the carnage of New York City, an opinion poller was able to say that 86 per cent of Americans were in favour of retaliatory action against the terrorist organisations who perpetrated the acts before their Government were either aware of the identity of the perpetrators or had formulated anything

more than a preliminary view about what they were going to do about it when they did. Just like the invasion of Kuwait, the Falklands and Vietnam, whatever occurs will be driven to a significant extent by the "real time" views of the public. Government by knee-jerk is a frightening thing, as we in the Territory know.

How then, does all this effect our local profession? Changes to the legal profession fall within the realm of those that have been brewing for some time and are about to crest. Raising the public perception of the legal profession and being able to respond to the views of the public has been such a poor area of performance by the profession that it has allowed the spawning of the standard lawyer joke: "What is the difference between a catfish and a lawyer? One is a scum sucking bottom dweller and the other is a fish."

The changes that we expect to the legal profession are slowly infiltrating their way into our world, but the effects they will have when they fully come on stream, like the events described above, are likely to be so profound that the fundamental practice of the law will change. Already we have seen the introduction of the travelling practising certificate, and in NSW multi-disciplinary practices are permitted. Soon to come are the deregulation of the profession so as to allow the bar against providing legal advice to be at least partially lifted, the introduction of limited liability for legal firms and capping on liability for professional negligence. All these aspects were raised and discussed by the Society three years ago in a workshop at the Supreme Court. The fact that they have not appeared to have developed further locally is more likely a result of a sidestep into political issues that we have faced than any lessening of the thrust that sustains them.

What is that thrust? Leaving aside the societal issues, the sometimes quixotic economic theory of "Anti-



Ian Morris, President

Competition" is the main thrust behind the alteration of the practice of the law and without doubt the most dangerous of them all. It exists on the rock of an almost religious belief that any restriction in commerce is bad and, because of that base, is very hard to argue against.

It is not without some sense of irony that the Society made detailed submissions to the previous government concerning why the restrictions in the Legal Practitioners Act should remain. The LPA is the same sort of act passed by many governments to ensure the proper administration of the Legal Profession, having its roots in the nineteenth century, and now suffering the slings of Competition Theory. A further irony is that the theory stands contrary to the lately accepted governmental practice of keeping the legal profession out of anything that amounts to a lay court. The theory sits immutable and is not changed by the querulous backward glances of governments and business alike as they seek to distance themselves from it, muttering to themselves that it is alright as a theory, but what do you do with it?

Well, what will be done with it is that it will continue to operate as a mantra by the Torquemada of the ACCC, Professor Fels, to seek to dismantle anything that is perceived to be a

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restricted practice, notwithstanding the long held views that those practices are essential for the orderly administration of society. Since the profession is an established acceptable whipping boy we can expect that there will be a concerted effort to demonstrate the validity of the theory upon the profession.

The Society's task is to prepare the profession for those changes, and accepting that there will be changes, ensure that we can have a hand in how and when they occur. It is for that reason that this year the Society will be developing a strategy to assist in the implementation of some of the changes that flow from the workshop in 1999. I hope that when we are in a position to put recommendations before the members of the profession we continue to receive the support seen at the workshop. In the meantime, comment by any members of the profession would be welcome.

The other thrust that I referred to above is society itself. I can see fundamental changes to the profession that will be brought about by the simple economic factor that many private people and smaller companies cannot afford the cost of legal services. That is certainly the case with minor commercial disputes and debt recovery actions. Legal Aid, is the support on which the provision of criminal legal services rests and as we all know, has tended to become less available for civil matters. It seems to me that there are two developments that arise from this situation. One is the establishment of more community based legal centres that are able to assist the public by the provision of essential legal services, and the other is development of non-court resolution of disputes. As more civil disputes become unaffordable in the current system, it is likely that resorting to the courts will wither on the vine, and greater pressure will be brought to bear on governments to permit the provision of non-court legal advice outside the confines of the LPA. This will be persuasive, as the cost of administering these services will be borne by the parties, and the effect will be an affordable dispute resolution system for those who cast the votes. I can foresee the development of advocacy advice centres that are not staffed by legally qualified people providing inexpensive advice to

the public on how to issue a statement of claim, how to prepare a case and appear at a hearing. In short, minor civil matters can be another area of work that will be lost to the profession. This is galling, as the reason why the work can be lost is not that the profession is not best able to provide the service, but that the system of dispute resolution provided through the court structure is ineffective and unaffordable. It does not have to be so, and the Society will be moving to make recommendations to the government of changes that can be

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made to the system to make it more workable. Equally importantly, the Society will be investigating ways in which advice centres similar to those described above can be established in a way that will permit the profession to continue to provide an effective service to the public through the Court system, and also consider the development of dispute resolution services outside the Court system that can be sponsored by the Society.

The stand we had to take over Mandatory Sentencing and the Public Order and Anti-Social Conduct Act was both a blessing and a curse. One the one hand, it exposed the profession to unfair criticisms, even from its own Attorney-General and caused what the USA now euphemistically calls "collateral damage" amongst and between the members of the profession, but on the other hand to the public it made the Society something more than a dusty custodian of an ill-understood group of professionals. In addition, steps taken by the Society to clean up the complaints process and interact with the public through a series of

excellent Law Weeks have raised its profile and that of the profession over the last few years to a point from where further improvement in the public visage of the profession can be practically achieved..

A new Attorney-General and a new government has provided the Society with the opportunity to embark on a different course. Hopefully the Law Society will no longer have to concentrate all its energy on defending our criminal justice system. There is now scope to refocus on the legal profession and the provision of legal services to the public. The politicisation of the Law Society in recent years was a necessary but regretful event.

Following my meeting with the Attorney General I have been encouraged that the Society will have a co-operative relationship with the new Government, aimed at strengthening the legal profession in the Northern Territory to the mutual benefit of our members and the community. I am firmly of the view that the resources of the Law Society ought to be dedicated to the improvement, development and modification of the profession and that should be done in an apolitical way. That is not to say that the society abrogates its responsibility to the community to as a protector of basic legal rights but I hope that the law society no longer needs to expend so much of its limited resources in that direction.

The next series of public events will centre on the sentencing regime again, with a travelling workshop designed to assist the public in understanding the way in which the courts sentence. The workshop will start in Darwin and will travel down the track, stopping at Katherine and Tenant Creek and finishing in Alice Springs. The Society needs the support of the profession to make this series of events a success, and details of how you can help are included in this edition of *Balance*.

Of course, there will never be nice jokes about lawyers, although I guess that must have been the view of the Catfish Society before the lawyer jokes came out!