

Caesar judging Caesar

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THE LEGAL PROFESSION ACT 2006 HAS THE FOLLOWING PURPOSE:

- TO PROMOTE THE ADMINISTRATION OF JUSTICE
- TO PROVIDE FOR THE PROTECTION OF CONSUMERS OF LEGAL SERVICES AND THE PUBLIC GENERALLY
- TO REGULATE LEGAL PRACTICE IN THIS JURISDICTION, INCLUDING THE LEGAL PRACTICE OF FOREIGN LAW BY FOREIGN LAWYERS
- TO FACILITATE THE REGULATION OF LEGAL PRACTICE ON A NATIONAL BASIS.

The *Medical Journal of Australia* recently reported the insightful comment that there is no system of regulation that is 100% effective. This experience for the medical profession is demonstrated in the criminal prosecution of medical practitioners such as the high profile Jayant Mukundray Patel. This conviction was overturned on 24 August 2012 by the High Court.¹ In the Northern Territory, on 16 June 2010 Balaji Varatharaju, 29, pleaded guilty in the Northern Territory Supreme Court² to three counts of forgery, three counts of obtaining benefits by deception, and one count of aggravated assault.³ In light of incidents of this nature employers and regulators review procedures and tighten controls, but the question remains, what is effective regulation?

The history of an independent legal profession (in other words a self-regulated profession) stems from the English Civil Wars.⁴ The independent judiciary and officers of the Court were at the centre of the emergence of a parliamentary government and constitutional monarchy. Today in the Northern

Territory the Courts continue to have an oversight role which they can exercise or refer to the Society for investigation, and the *Legal Profession Act* vests much of the regulatory functions in the Society, and creates the Legal Practitioners Disciplinary Tribunal and the Admissions Board.

Below are a few markers of effective regulation:

- Works where everyone takes responsibility
- Works to protect community trust and confidence
- Works to educate the profession
- Works to communicate this effectiveness to the public

Everyone takes responsibility

Maintaining the standard of the legal profession is not solely the responsibility of the regulator. As discussed above, the Courts also play a key role, but it ought not to be only disaffected clients that turn

to the regulator when they have issues of concern and conduct such as fraud will also be a matter for the police. The members of the profession also shoulder some of the burden. In both Patel and Varatharaju, colleagues were responsible for bringing concerns to light and leading employers and regulators, and ultimately the police to investigate. This collective responsibility also applies to the legal profession. The individual practitioner's responsibility is not only about maintaining standards of personal and professional conduct, but can amount to a positive obligation to raise concerns with the appropriate authority when the conduct of a colleague sets off alarm bells. By way of example, the *Legal Profession Act 2006* s256 makes it an offence for a legal practitioner not to report trust account irregularities.

Community trust and confidence

When considering what is effective regulation it is also appropriate to reflect on the purpose of regulation. It is irrefutable that

the profession's efforts at self-regulation have not quelled the perception that the profession is self-serving and looks after its own; Caesar judging Caesar. This has been the foundation upon which alternative models of regulation have come into effect in Australia and internationally.

Her Honour Justice Jenny Blokland highlighted the importance of public perceptions in saying Varatharaju's actions "potentially undermine[d] the trust in the provision of medical services in the Northern Territory". It is the community's trust and confidence that requires that "regulation must not only work, it must be seen and believed to work," according to Roger Wilkins AO Secretary of the Commonwealth Attorney-General's Department⁵.

Whilst the Northern Territory is one of the few jurisdictions in Australia that continues to have what may be described as "self-regulation", Wilkins postulates that politicians, the media and the public simply do not believe that self-regulation works.⁶ Wilkins identifies a fundamental purpose of regulation to be improving consumer protection and promoting the interests of the administration of justice.⁷ In other words, whilst some might say that the Courts and the Society are fairly harsh critics of the legal professionals over whom they have jurisdiction, Wilkins suggests that if the public does not have confidence in the work of those regulators, then the system is failing in its fundamental purpose. Putting it plainly, Wilkins considers that if consumers do not feel protected then they aren't.

Communicating with the public and the profession

From this it can be concluded that effective regulation is not only about regulating, but also, and more importantly, it is about

communicating and informing the public and the profession about that work. How does the Society get the message of regulation to the legal profession, and importantly to consumers in the Territory? The Society is at pains to ensure the cost of regulation is kept to a minimum, but in the context of only 500-600 practising certificates, there are no economies of scale.

The Society's website is an important source of regulation messages. The website publishes the decisions of the Legal Practitioner's Disciplinary Tribunal as well as reprimands issued by the Society. The website includes information about professional development and licensing obligations. The Society also provides information sheets and guidelines to the profession and the community and reviews this information regularly. Additionally, the *Legal Profession Act* requires the Society's Annual Report to be published on the website. The Annual Report contains information about the regulatory work of the Society.

Whilst this information is of principal interest and utility to the profession, the information on the Society's website also waves the flag to consumers of legal services and demonstrates regulation in action. The website links to the *Legal Profession Act* and Regulations and also contains the Society's constitution and the *Rules of Professional Conduct*. Other information is provided directly to the profession through the e-newsletter *The Practitioner*.

The Society has also embarked on the Social Media voyage. The Society is increasingly using the Facebook page to post information, news and pictures of interest to the legal community. This is an opportunity for a closer and more interactive relationship with the Society's membership. By 'liking' the Society on Facebook you can expect to receive last minute updates for CPDs including

changes of venue or advice when a CPD is fully subscribed.

Balance is also an important communication tool. As with most interstate law society journals, *Balance* can contain information about current issues. Prepared by the Manager Regulatory Services, they cover topics such as de-identified information about matters considered by the Society. Additionally, decisions of other regulators in other jurisdictions can be brought to the attention of the profession, as may information about enquiries the Society receives.

Clearly, the above reflects efforts to communicate with the profession and it is not difficult to conclude that the public needs to know more about the regulatory work of the Society. How this can be achieved is one of the key challenges the Council will address over the coming year.

Until we meet again. ●

Endnotes

1. *Patel v The Queen* [2012] HCA 29 (24 August 2012)
2. THE QUEEN and BALAJI VARATHARAJU (Sentence) SC 21007028, 21008719 & 21008762 Unreported
3. <http://www.news.com.au/national-old/fake-doctor-balaji-varatharaju-treated-over-400-patients/story-e6frfkvr-1225835255318#ixzz1XAci25DW>
4. *National regulation of the legal profession: An agenda for reform* Roger Wilkins AO NSW Law Society Journal Article August 2009.P2
5. *National regulation of the legal profession: An agenda for reform* Roger Wilkins AO NSW Law Society Journal Article August 2009. P3
6. *National regulation of the legal profession: An agenda for reform* Roger Wilkins AO NSW Law Society Journal Article August 2009. P3
7. *National regulation of the legal profession: An agenda for reform* Roger Wilkins AO NSW Law Society Journal Article August 2009.