

assess and demonstrate the attainment of professional competence without infringing judicial independence.

LEGAL EDUCATION GENERALLY

[no material in this edition]

LEGAL ETHICS

[no material in this edition]

LEGAL PROFESSION

When the rot sets in: the disillusionment and dissatisfaction of young lawyers with the legal profession

S Raven & A Taylor

21 *Brief* (Journal of the Law Society of Western Australia) 5, June 1994, pp 6-10

Having joined the legal profession in the belief that it is special and respectable and might be reasonably lucrative, more and more lawyers seem to be becoming increasingly disheartened with the gulf that exists between the widely perceived and idealised life of being a lawyer and the reality of day-to-day life in and away from the office. The work which lawyers do is rarely stimulating and disputes that are real and complex to lawyers are, to the rest of society, inexplicable and irrelevant. To get an idea of how the legal profession feels, the authors spoke to a range of lawyers and ex-lawyers. As a result, this article is largely anecdotal.

The illusion of what it means to be a lawyer starts well before entering

legal practice, even before law school. The type of education received at law school bears no similarity to legal practice and a commonly held view is that legal education does not start until one commences practice. For instance, where at law school are law students taught that a lawyer must also be a manager, an administrator, an accountant, a secretary, a student, a teacher and a lawyer all in one?

It is undeniable that law, as a profession, is now an all-encompassing business and that what law schools therefore lack is reality. There is a conflict between the law student's original perception of law as a vocation and the solidifying reality of law as a business. Clients are uninterested in the law and want answers to their problems immediately. The client-centred approach means that lawyers devote more time to client-oriented activities, such as preparing detailed itemised accounts, attending lunches and seminars and preparing tender applications for new client - work which could be attended to through the employment of legal administrative assistants.

Too many lawyers say that their performance and value to their employer is judged solely by their ability to achieve billing targets. The situation is exacerbated by the lack of any feedback from partners and many young solicitors say they have no idea whether they are doing a good job or not. The idea of billing targets instils a sense of fierce competition between the solicitors in a firm, which destroys the possibility of the development of any team spirit. Many women complain that the firms are still run by the old boy network, where

females are subordinate to males and the best work goes to the boys.

In summary, the authors recommend that, if you dislike your area of practice, try another one. Partners should speak to their employees. Quit being a lawyer and do something else which uses your legal skills - many who were interviewed and are now working in corporate or government sector jobs enjoy going to work.

LIBRARIES & INFORMATION

[no material in this edition]

MANDATORY CLE

REVIEW ARTICLE:

Report to the Board of Governors on the evaluation and recommendations respecting MCLE for the D.C. Bar

Task Force on Mandatory Continuing Legal Education
M D Minsker (Chair), 1994

This review item is the report of a task force appointed to inquire into the feasibility of introducing a mandatory scheme of professional legal education (MCLE) for the District of Columbia Bar (USA) and devising the structure of the recommended scheme. It is noteworthy, not just because it traces the procedures followed, including the review of relevant literature and the collection of data, but also because it contains an excellent resumé of the main features of the dialogue about the worth of MCLE and its impact on lawyer competence. Of course, although many of these arguments

are now rather tired, having been rehashed over the two decades since MCLE first surfaced, nevertheless the account is a well-balanced and closely reasoned one. Furthermore, the processes followed over a period of two years of investigation, including the widespread consultation engaged in, could well serve as a blueprint for any other professional body contemplating the introduction of MCLE.

The authors recommend a MCLE program consisting of 36 credit hours accumulated over three years, as well as criteria to ensure minimally acceptable program quality, exemption for certain categories of members, a three-year reporting cycle with random audits, administration by the D.C. Bar and funding through a combination of mandatory dues and reasonable course fees. There is also a recommendation that the scheme be constructed so that in due course an assessment can be made of its impact on practice.

Although at the time the report was written 39 jurisdictions in the United States had MCLE in place, the authors acknowledge that there is still no direct empirical proof that it enhances the quality of the legal services that are delivered to clients. Nonetheless, in justification of their decision to recommend its introduction, they have provided a valuable and comprehensive account of the arguments for and against mandating CLE. They argue that this close examination of the major criticisms of MCLE has been useful from two perspectives: in helping the Task Force to gain a better understanding of the true goals of MCLE and the real justification for

it; and in providing concrete guidance in the development of the appropriate criteria to utilise in the design of any specific MCLE system to be recommended.

They admit that the costs of MCLE represent a significant burden upon practitioners and, standing alone, demand persuasive justification before being imposed on their members. However, they consider that the core vindication for MCLE lies in the fact that the profession holds itself out to the public at large as a learned profession operating under ethical rules which require a lawyer to provide competent representation to the client which in turn calls for engaging in continuing education and study to maintain that competence. They conclude that a properly run MCLE system constitutes a sensible, cost-efficient, and minimally intrusive mechanism by which the Bar can achieve that objective with all its members.

From this general proposition, the authors go on to deal with the question of the existence of 'scientific proof' that MCLE maintains or improves lawyer competence. They recognise that jurisdictions adopting MCLE have done so without relying on any empirical demonstration of a particular relationship between MCLE and an improvement in attorney competence. However, they point out that any research to test this relationship is likely to meet a number of conceptual hurdles, including achieving agreement as to the definition of 'quality legal services' and establishing elaborate mechanisms to control for the abundance of extraneous variables. They doubt that a research design could be constructed for a study that would

insulate its results from the numerous challenges to its validity and reliability as a measure of lawyer competence.

In the absence of scientific proof, they present a justification for the acceptance of opinion evidence from practising attorneys attesting to the improvements they obtained from MCLE participation. Their argument is a circular one, which many might reject as unsustainable. All of us, as lawyers, know that attendance at properly run CLE programs can provide us with useful knowledge that we are capable of retaining and putting to good use in our field of practice. *'Therefore, the value of continuing legal education programs in enhancing lawyer competence can be accepted simply on the basis of our own experience, without the existence or non-existence of any empirical proof whatsoever.'*

The report then examines the question of whether mandation of CLE requires specific empirical justification, with reference to three factors: the numbers of attorneys not participating; whether mandation will significantly increase participation levels; and whether those who participate because of mandation will actually 'learn'. One interesting and probably valid observation is that MCLE is most effective with those attorneys who do not participate in MCLE activities but acknowledge their value, explaining their non-attendance by virtue of the press of competing professional or personal circumstances or the lack of conviction that there are enough truly worthwhile CLE activities relevant to their practice.

Other major criticisms are then probed at some length. MCLE

systems as designed and administered are not rationally linked to the stated goals of enhancing lawyer competence. They do not require lawyers to attend programs that are related to their particular fields of practice. They do not require that lawyers be tested at the conclusion of CLE programs to determine whether or not they have 'learned' what the program teaches. An attempt is then made to counter each of these arguments, while acknowledging that it is inappropriate to conceive of MCLE as a panacea for the goal of lawyer incompetence. Wisely the authors realise that in planning for the introduction and ongoing administration of a MCLE scheme the focus should be upon making the lawyer an ally in the task of pursuing the collective goal of continued maintenance and enhancement of lawyer competence. This should be done by constructing a system which provides lawyers with a maximum range of choices and opportunities and then reliance should be placed upon them to discharge their professional obligations.

Two remaining areas of criticism are addressed: whether MCLE can be justifiably construed as an insult to the lawyer and whether it is essentially a public relations ploy designed to head off more drastic reforms that would be considerably more unpalatable, thereby deceiving an unsuspecting public. Finally in this chapter of the report the authors look at the evidence to assess MCLE's role in reducing the incidence of ethical and malpractice claims against lawyers. They conclude that MCLE will not reduce the frequency of ethical complaints because education will have no influence on intentional misconduct, seemingly ignoring the

important potential for using CLE to affect attitudinal change and aid the practitioner to recognise and respond appropriately to ethical dilemmas. They also do not consider the evidence sufficiently clear-cut to conclude that MCLE will in fact reduce the number of malpractice claims.

The report then examines the nature of the CLE marketplace and issues of cost and the availability of quality programs, before elaborating upon the principal features of the MCLE system they recommend for their jurisdiction. These chapters (V and VI) reveal a proposed scheme which displays admirable attention to administrative detail, while recognising the practical difficulties arising during implementation.

In this reviewer's opinion the MCLE Task Force report demonstrates a well-considered approach to the thorny problem of whether to mandate CLE within a particular jurisdiction, despite the groundswell of opposition that this proposal will normally stimulate. It also highlights the importance of engaging in a process of proper consideration and consultation before the decision is reached. One could but hope that all professional bodies had been as scrupulous at the feasibility stage of MCLE introduction. It will be of considerable interest to see if the D.C. Bar adopts the recommendations contained in the report.

Editor

OTHER DISCIPLINES & PROFESSIONS

[no material in this edition]

PERSONALIA

[no material in this edition]

PLANNING AND DEVELOPMENT

Quality assurance in practical and clinical legal education: a brave new world

M Tzannes

12 *J Prof L Educ* 1, 1994, pp 57-68

A recent survey conducted by the Graduate Careers Council in Australia revealed that law graduates scored the teaching of law at the very bottom of the 'good teaching scale' and law was the second lowest performer in the scale of 'satisfaction by field of study'. There is an urgent need to improve teaching in the discipline of law and quality assurance in legal education may be the means to achieve this.

Quality assurance (QA) goes further than either quality control or course evaluation. In the business environment, 'quality circles', where employees sit around a table to discuss the system as a whole, are used to alert management to any potential problems. This gives a 'bottoms up' input to the management process. QA can be defined as a commitment to excellence by everyone in the organisation, which is achieved by teamwork and a process of continuous improvement,