workshop, there is now a core of senior and influential Indian law teachers who know about the contribution that Australia is making, and continues to make, to excellence and innovation in legal education.

## LEGAL ETHICS

**Ethics and legal education**
B Brooks
28 *Vict U Wellington L Rev,* 1998, pp 157–165

The present low standards of ethical behaviour and responsibility about which concerns have been and continue to be expressed are substantially due to the fact that the subject is an unrecognised and untreated casualty of the development of the full-time course of university study which is now the normal path to the law degree.

There is no part of the legal landscape which is not illuminated by ethics. That being so, it follows that ethics ought to be taught. If ethics can be taught, what is the desired outcome? What effect, if any, does formal education and training have on the ethical values and professional conduct of lawyers? A troubling answer is found in the Cotter/ Roper Report which found that: lawyers do not know the rules of professional responsibility; and/or lawyers know the rules but, when confronted with a situation, they are unable to recognise the ethical issues involved; and/or lawyers know the rules and can recognise issues but they do not have the ability to analyse the issues and come up with a satisfactory solution; and/or lawyers can do all these things, but they choose not to follow the ethical rules, because of external or internal pressures.

The formal rules of professional conduct can be learnt by rote but that is not true of the capacity to be sensitive to ethical dilemmas. To achieve this capacity requires training in ethics to have a broader focus beyond the formal rules covering a lawyer's professional duties. In other words, we expect that a lawyer will be able to identify and select and operate within a framework of professional, ethical and socially responsible behaviour and practice. What is not agreed is how lawyers, or those who aspire to be lawyers, are best encouraged to be ethical.

There are very real problems in introducing ethics into university level legal education. One powerful argument against a compulsory program is that any prescribed course would be a form of social indoctrination. Any prescription must be open-ended and flexible. The aim should be to provide a reasonable grounding in the principles of ethical professional practice, professional responsibility and etiquette. What is to be encouraged is a capacity to recognise when an ethical issue exists.

Another problem in introducing ethics into law school programs is that such programs are necessarily inter-disciplinary. Inter-disciplinary programs are resource intensive and are likely to be the most at risk when resources become scarce. Inter-disciplinary programs are vulnerable to academics becoming anxious to protect their own patch. Behind these issues lies the fact that there is a lack of teachers competent to present a program on ethics.

It is frequently asserted by legal academics that they teach ethics interstitially in each of the substantive law subjects, that they impart ethics by example, that ethics is all pervasive in the curriculum and that, therefore, there is no need for a stand-alone program on ethics. Even if the argument is conceded that a stand-alone program is desirable, the further hurdles are: the absence of research and information; the problems of designing a curriculum; the lack of materials; the need to train teachers; the resource burdens thereby imposed on the law schools; and the need for other providers of legal education to carry their share of responsibility in ensuring that lawyers are sensitive to ethical issues.

Law schools are one provider of legal education. Together with other providers they have a role to play in producing people trained in the law, who have the capacity to be able to recognise ethical problems when they arise, the practical know-how to resolve the problems and to avoid practising unprofessionally and an attitude to their work which makes ethical practice a daily habit in approaching and resolving dilemmas.

## MANDATORY CLE

### REVIEW ARTICLE

**Comparison of the features of mandatory continuing legal education rules in effect as of July 1998**
New York State Bar Association, 1998
107pp

This very useful publication, which appears annually, contains a very comprehensive analysis of the main features of the mandatory CLE (MCLE) schemes in operation throughout all jurisdictions in the United States, as well as a brief comparision with the MCLE requirements in other countries.

We learn, for example, that the current position is that 41 out of the 52 US states now have some form of MCLE prescription for practising attorneys, whereas there were 15 less only ten years ago. However, of the remaining 12 jurisdictions (including Washington DC), all but four have proposals for the introduction of MCLE under consideration and/ or specific requirements in place for new admittees.

The amount of data presented about the characteristics of the 41 current sets of MCLE requirements reveals a very complicated picture nationally, with significant variations between the states. The distinguishing features as reported

include the number of active attorneys, the year of adoption, number of hours required and the source of the MCLE rule. We are also given the reporting method and date, the provisions for exemptions from compliance and whether credits can be carried over from year to year.

There is also a section on how compliance is enforced. This outlines how delinquents are identified, including the keeping of attendance records and whether they are audited, as well as the specific features of the disciplinary proceedings that may be taken. It also contains a description of the accreditation requirements to be undergone by providers before MCLE credit can be claimed for their courses.

Obviously, there are considerable variations among the states about precisely what are the activities beyond course attendance in which the attorney can engage that attract MCLE credit. A summary table deals with credits for teaching, writing, the use of audio and videotape, computer-based education, in-house training and for other activities, as well as earning credits for special requirements such as ethics instruction.

As far as the mechanics of course accreditation in each of the states is concerned, there is a section on whether a formal accreditation application is required and such administrative details as the submission date, who should submit, whether course materials and program evaluation forms need to be supplied, whether there is an application fee, whether the course has to be formally presented and whether an attendance list is required. Fortunately, most states have adopted standardised forms and copies of a *Uniform application for accreditation of continuing legal education* form and a *Uniform certificate of attendance* form are provided.

Although the coverage appears to be both comprehensive and accurate, so far as the reader can judge, there are a couple of MCLE features which have not been clearly chronicled. For example, there are some states which have separate and distinct MCLE requirements for recently admitted practitioners, which appear not to have been described. Moreover, to the extent that states have established schemes for accrediting specialists in specific areas of practice, there will usually be a prescribed MCLE element for candidates for specialist accreditation, on which this publication is also silent. To avoid unnecessary duplication in the interests of harmonising the accreditation procedures, it is a pity that there appears to be no provision for lodging the standard application once, rather than in each individual state.

The final section presents an international supplement which lists the limited MCLE prescription in other countries. It is noteworthy that, despite the increasing popularity in the United States of mandating learning for practising attorneys, the 'MCLE movement' has enjoyed far less appeal elsewhere. Indeed, the authors seem to be claiming that they have only identified four countries or states where a comprehensive MCLE scheme is in operation: Australia (New South Wales); England (Worcestershire); the Netherlands; and Scotland, although they do not mention that there are specific MCLE requirements in England and Wales for newly admitted solicitors.

For CLE providers in the United States this book must be an invaluable resource. With conflicting MCLE requirements in different states, it could be a nighmare if you were trying to run, for example, a national conference attracting attorneys from around the country, particularly in taking the necessary steps to ensure that all participants would be entitled to claim MCLE credit for their attendance in their home state. However, it is also of considerable interest to those jurisdictions outside the US contemplating the design of their own MCLE schemes. They will be able to delve into this comprehensive summary of the main characteristics of the various American MCLE rules in order to see how others have approached these questions in order to assist with the formulation of a scheme relevant to their own needs.

Editor

## TEACHING METHODS & MEDIA

**Looking for Leviathan: students embrace and resist co-operative norms in prisoners' dilemma game**
N Razook
32 *Law Teacher* 2, 1998, pp 157–168

As an experiential device to teach students how law and law-related concepts are tied to human behaviour, the Prisoners' Dilemma is a powerful learning tool. The game's essential elements, choice, responsibility, trust, deceit and even compacts, backed by either 'a formidable Leviathan' or some lesser force, allow students to exhibit and experience a variety of behaviours that underlie legal and extra-legal concepts.

In Prisoners' Dilemma, each of the teams has to make a choice between strategy A or B and match that choice against the choice of another team. Cloaked with the information provided by simple rules, each team makes a choice and communicates this choice to a neutral player to determine its payoff based on the choice of its matched team. The object of the game is to gain as many positive points as possible. Both teams can win; both can lose; or one team can win while the other loses.

The teams play the game through three 'game series'. In Series One, teams are ignorant of their matched partner. During Series Two, teams are told their matched partner but are unable to