

Ethics Handbook: *Questions and Answers* by Russell Cocks

Law Institute of Victoria, Melbourne, 2004, 186pp, \$65.

By Peter Carter

This handbook is an excellent guide to most practical ethical dilemmas facing solicitors. It is not an intellectual treatise on ethical theory, of which there are many. Its value lies in its practicality. In addition to commentary, it contains the Law Institute of Victoria's (LIV) rulings and resolutions on a wide range of matters.

Cocks practised as a solicitor for 13 years and lectures in legal practice and ethics at Deakin University, Melbourne. As he points out in his introduction, the work does not address specific duties of advocates. The author describes the lawyer's three duties as being those to the client, to the court and to the profession, and he traverses the major issues in each field.

By far the majority of the handbook is devoted to the lawyer's duty to the client. This is no doubt because the majority of LIV rulings, and of disputes, are about matters relating to the lawyer-client relationship. Retainers, costs, liens and conflicts of interest are all comprehensively dealt with.

The book will be an essential reference for all Victorian solicitors. It is well set out and practitioners will be able conveniently to find considered answers to most of the dilemmas that may confront them.

It is also useful for lawyers in other states, although there are some matters that are permitted in Victoria and not in others and vice versa. For example, at p166 in a discussion about advertising and business operations, the author says, 'A lawyer is entitled to write to a doctor suggesting that the doctor refer the doctor's patients to the lawyer for legal advice.' Then follows the LIV Ethics Committee ruling on the subject. In Queensland, for example, such a letter would be an invitation to the doctor to commit a breach of Chapter 3 of the *Personal Injuries Proceedings Act 2002*.

The Law Council-developed Model Rules of Professional Conduct and Practice, adopted in several states and under consideration in others, contain different provisions to those applying in Victoria. Nevertheless, some matters are identical, and there is commonality among all ethical rules.

The chapter dealing with judicial process contains some issues not commonly dealt with. In discussing the lawyer's duty to ensure that the legal process is not abused, Cocks cites rulings on inappropriate uses of devices such as letters of demand, engaging private investigators and causing delay.

The common thread among his collection of rulings on abuse of process is the lawyer's duty to act fairly and to fairly represent the facts

and circumstances.

In relation to causing delay, Cocks provides the following practical articulation:

'A lawyer cannot issue proceedings, or conduct those

proceedings, on behalf

of the client in such a way to intentionally cause delay to the proper determination of the rights of the parties to those proceedings.'

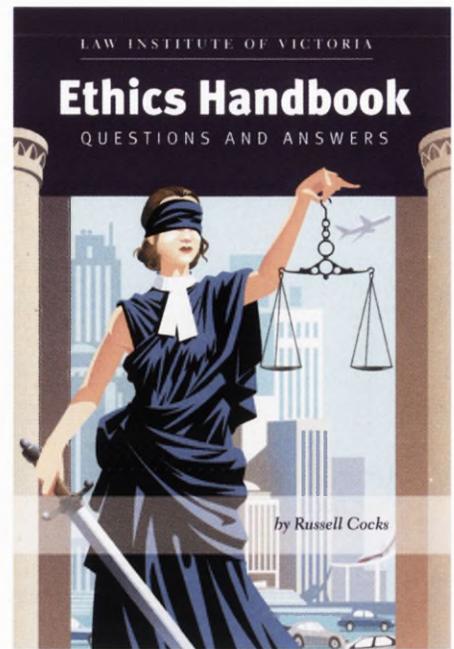
The subject of the lawyer's duty to the profession is restricted to 14 pages. On the subject of relationships with colleagues, I was hoping for more than the statement that 'the existence of a professional relationship between lawyers requires lawyers to respect relationships with other lawyers and with their clients'.

Likewise, the work does not consider the lawyer's duty to the public. In terms of a handbook, this is not surprising, as this is not a matter referred to ethics committees for rulings.

It must be noted that the Model Rules of Professional Conduct and Practice are themselves sparse on the subject of relations among colleagues, and silent on the lawyer's public duty. Yet conflicts among colleagues, and how lawyers relate to the community are the two most prominent areas under which the profession will be judged by the public and commentators in the future. Law bodies must maintain comprehensive codes dealing with inter-professional relations so that the public can see we comport ourselves in the way we profess others should behave.

And for our calling to be properly understood in the contemporary setting, it is vital to take our public duty to serve the law seriously, never overwhelmed by popular opinion.

As a handbook, the work is an important practical tool. It is an easy read. For those states where no professional conduct commentary exists, I would also commend it as a valuable reference. It goes to greater depth of analysis than, for example, the *Queensland Solicitor's Handbook*, which merely sets out rulings without discussion of their ethical basis. ■



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