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Maintaining the ethic of service

By Nigel Stobbs

This issue of Precedent is concerned with professional legal ethics. In my view, professional ethics are rules about how you do your job, based on moral principles. By virtue of the nature of the work they do, the reputation of the institution through which they are admitted to practice (the court), and the consequences that can flow if they act inappropriately or incompetently, lawyers are under constant scrutiny in all aspects of their lives. Errors, omissions or misdeeds in both their professional and their personal lives have the potential to damage them, their clients, the profession itself and the court. We ought never to take for granted the trust the public places in us to preserve the integrity of the legal system itself, especially in times when that system may be under threat, either from without or from within.

In Queensland, lawyers (and arguably the court itself have come under attack recently from the government, with allegations that they are out of touch and even that they deliberately obstruct justice. One representative group of lawyers who offered a seemingly quite objective and reasonable view that 'mandatory sentencing has the practical inevitability of arbitrary punishment, as offenders with quite different levels of culpability receive the same penalty'¹ received the heated response from the state's premier that such observations were based, not on the objective professional views of those expressing them, but on a subjective lack of understanding of how sentencing policy was (allegedly) required to comply with particular articulations of public opinion. He said of these critics that:

'They are living literally in an ivory tower. They go home at night to their comfortable, well-appointed homes, they talk amongst themselves, they socialise together, they don't understand what my team and I understand, and that is Queenslanders have had enough.'²

In an environment where support from government cannot be guaranteed, and where outright attack is possible, it is beholden on lawyers to be especially vigilant to not portray themselves or the profession as a whole in a poor light. Reinforcing stereotypes of lawyers as acquisitive and elitist individuals who have little regard for the wider public good is all too easy when even the tiniest of minorities of lawyers choose to do the wrong thing.

Spigelman CJ, writing extra-judicially, warned us some years ago to be continually mindful of the inevitable tension between law as a profession and law as a business, asserting that:

'If lawyers are treated as if they are only conducting a business, then they will behave accordingly to an even greater degree than they do now. The ethic of service which emphasises honesty, fidelity, diligence and professional selfrestraint may, progressively, be lost.'³

Since the enactment of the Australian Solicitors Conduct Rules 2012 and the creation of a national legal services market, the practice of law has become more complex, in terms of both opportunity and risk. The recasting of the regulatory environment was designed to provide more transparency and value for the consumers of legal services, to create more opportunities for law firms in terms of structure and collaboration with other service providers, and to make Australia more competitive in the international legal services market. There is, of course, no reason why the fiduciary nature of the relationship between lawyer and client cannot be fully reconciled with the less restrictive commercial environment of business at large. But that is an environment where service providers compete with each other by pursuing a predominantly self-interested agenda to turn a profit, and we should always be on guard against the pressures in that environment to exclude the ethic of service.

Notes: **1** Statement by the Judicial Conference of Australia on the Vicious Lawless Association Disestablishment Act 2013 (Old) www.justinian.com.au/storage/pdf/JCA_VLAD_Oid.pdf **2** Donna Field and staff. 'Newman's Swipe at Judges "Unprecedented. Reprehensible"', transcript, ABC News, 25 October 2013. **3** James Spigelman [Former Chief Justice of the Supreme Court of NSW] 'Are Lawyers Lemons?: Competition Principles and Professional Regulation' (2003) 77 Australian Law Journal 44. 50.

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