

Without Prejudice

CLIENTS AND CONDUCT

THE OFFICE OF THE LEGAL SERVICES COMMISSIONER

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CONFERENCE OF REGULATORY OFFICERS 2011

By Steve Mark, Legal Services Commissioner (NSW)

On 13 and 14 October 2011, the Office of the Legal Services Commissioner and the Law Society of New South Wales jointly hosted the 2011 Conference of Regulatory Officers (CORO). CORO consists of statutory regulators, law societies, bar associations and admission bodies from each state and territory that are involved in the regulation of the Australian legal profession. The annual Conference provides an opportunity for regulators to meet and discuss emerging issues for the legal profession and developments in regulation. It allows representatives from each state and territory to highlight trends or issues emerging in their jurisdiction, as well as generating discussion and debate.

The focus of CORO 2011 was to address the future of legal services in an evolving global marketplace. New technologies and globalisation are continually reshaping our perspective of the landscape of business. This is particularly pertinent for the legal profession, with new and developing technologies profoundly impacting the way that practitioners are engaging in legal services, providing legal services and marketing their services to the public. The Conference considered questions such as:

- With so many technological changes occurring, what impact will these have upon the future of the practice of law?

- What implications do new technologies have for the ways in which clients access legal services?
- Are traditional regulatory structures and rules responding?
- What is the way forward?

This year, for the first time CORO was streamed live through the CORO website (www.coro.com.au) to the offices of each Australian regulatory body. This allowed regulatory members from across the nation to interact via text message, tweet or email, posing questions to speakers and panellists in real-time. Over the course of the Conference, we heard from

a number of eminent speakers, including the Hon. Robert McClelland MP, Federal Attorney-General; the Hon. Greg Smith SC, Attorney-General for New South Wales; Mr Laurie Glanfield, Director-General; and Ms Elyn S. Rosen, Commission Counsel for the American Bar Association Ethics 20/20 Commission.

CONFERENCE OF REGULATORY OFFICERS 2011 *continued*

The Sessions

21st Century Legal Practice – The US Experience

Ms Ellyn S. Rosen, Commission Counsel for the American Bar Association Ethics 20/20 Commission delivered a keynote address for CORO 2011. Ms Rosen's presentation discussed the trends and practices in the delivery of legal services in the 21st century. She highlighted the innovative approaches that firms are taking in relation to client service and delivery of legal services. Ms Rosen also reflected upon the innovative approaches law practices are taking in terms of technology and management.

Virtual Law Practices

Virtual law practices are a primary illustration of how new and developing technologies are being utilised by legal practitioners, and characterise a shifting paradigm from the traditional model of legal practice and delivery of legal services. The panel, facilitated by John Briton, Legal Services Commissioner of Queensland, provided an insight into the practical implications for practitioners utilising virtual law practices. Virtual law practices are increasingly emerging within the profession, both internationally and domestically. This is largely due to their ability to reduce substantial overheads by eliminating the need for paper files and office space in favour of a completely digital platform. They also reflect consumer preferences, with many clients pleased to retain and instruct practitioners through e-spaces.

Mr Andrew Perry, Solicitor Director of legal.consult (www.legal.consult.com) and President of the NSW Society for Computers & the Law, discussed how fundamental changes in information and communications technologies are changing the practice of law. Mr Perry highlighted the critical factors for maximising the impact and reducing the risks associated with these innovative new applications of technology that are powering the rise of virtual law practices. Ms Allyson Gagliardi, Principal of Odyssey Lawyers (www.oddessylawyers.com), Queensland's first virtual law practice, discussed the operation of their virtual law practice, which allows clients to access online and mobile legal services. Ms Gagliardi highlighted how practitioners can utilise technology in the delivery of legal services, with particular focus on the benefits to clients who live in remote locations or do not have the time to visit a practitioner's office.

Social Media Networking and Blogging

Over the past decade, we have seen the proliferation of the use and development of social media networking and blogging. Indeed, the prevalence of law themed blogs has led to the development of the now common descriptive term, "blawgs". In a digital world where practitioners can 'friend' clients, are professional and personal lines blurring? It is clear that social networking media poses an array of ethical, professional and practical challenges for practitioners.

The panel explored how legal practitioners are now using new media platforms to deepen their professional networks. Mr

Matthew Hall, Partner at Swaab Attorneys, provided an insight into the use of social media by law firms and practitioners. He discussed how law firms can manage the use of social media by employees and the issues that law firms often need to address in implementing and maintaining a social media policy. Additionally, Mr Warwick Rothnie, a practising barrister and Member of the Law Council of Australia's Intellectual Property Committee, provided an insight into social networking and blogging through his experience running the blawg 'ipwars' (<http://ipwars.com>) since October 2004. He provided an insight into the benefits of blogging and the practical considerations for practitioners.

Legal Process Outsourcing

Legal process outsourcing (LPO) is becoming a burgeoning market within domestic and international legal professions. This is currently reflected by the increasing growth in the use of legal outsourcing of legal processes and legal work, whether through on-shoring or off-shoring. Over the past decade, 'global outsourcing has become a multi-billion dollar industry.'¹ Whilst traditionally legal outsourcing was used for 'non-core business functions' and generally did not include end stage work or products directly deliverable to the client, there is evidence that these traditional parameters

¹ Aaron Harmon (2007) 'The Ethics of Legal Process Outsourcing – Is The Practice of Law a "Noble Profession", or is it Just Another Business?' 13 *Journal of Technology Law & Policy* 41., p 50. See also Evaluserve (2010) 'LPO and the Great Recession' <http://www.evaluserve.com/>, p 1. Evaluserve predicts that revenue growth from legal process outsourcing between 2010 and 2015 will increase by approximately 26 per cent.

are expanding.² There is now a trend towards the outsourcing of more 'high end' legal work.³ The discussions at this year's Conference built upon the CORO 2010 dialogue addressing the practical and regulatory perspectives of legal process outsourcing. This year, the Conference further considered the rise of 'unbundled' legal services, a distinct shift from traditional holistic legal representation. This offers both consumers and providers of legal services various options for the delivery of legal services. The Conference also addressed the rise of law firms utilising insourcing, outsourcing and offshoring for major transactions. The Conference provided an opportunity for each of the regulatory bodies to confer and debate the advantages and disadvantages of these new alternatives to traditional legal practice and the practical and ethical issues that arise.

Mr Jamie Prell, Director and Head of Corporate, and Mr Graeme Jefferson, Head of Technology, Media and Telecommunications at Advent Lawyers, provided insight into another alternative emerging for practice within the legal profession. Advent Lawyers place senior practitioners to work directly in clients' offices on transactions or providing general legal support on a fixed fee basis. They also spoke about the benefits that legal process outsourcing providers can offer to clients on volume based work such as due diligence, contract review

and litigation support where it can be processed.

Law Firm Management/Risk Profiling

An important focus for regulators is assisting law practices in appropriate management. At CORO 2011, we addressed the techniques that can be utilised by law practices to ensure effective management of their operations. Other issues that were examined and considered included the use of management systems, the benefits of conducting audits on legal practices and the use of risk profiling tools to identify appropriate target firms for intervention.

The National Legal Profession Reform Project

The Hon. Robert McClelland, Federal Attorney-General delivered a keynote address at CORO 2011. The focus of his address was the National Legal Profession Reform Project. The Federal Attorney-General highlighted how '[n]ational legal profession reforms will significantly streamline and improve the regulatory environment for the legal profession.'⁴ He also emphasised the 'driving principle in pursuing national legal profession reforms'⁵: finding the balance between the competing interests of protecting the independence of the legal profession, ensuring access to justice, and protecting consumers. The Federal Attorney-General

emphasised the benefits that the reform will have to both Australian practitioners and firms:

The reality is that Australian lawyers and firms are operating within a vastly different landscape to that under which the present system of regulation was developed. A different approach is needed if we are to remain strong and successful in the long-term. The fact of the matter is that the Australian legal services market is effectively saturated. We need a national profession to open up opportunities for growth.... It is imperative that we have the right frameworks to support the further development of the legal profession.

The Federal Attorney-General also drew attention to the fact a uniform national regulatory framework for the legal profession will enhance Australia's 'international competitiveness', 'improve the mobility of individual Australian lawyers' and increase consumer confidence in the integrity of the profession, whilst streamlining regulatory functions. He strongly welcomed New South Wales, Queensland, Victoria and the Northern Territory as the first participants in Australia's National Legal Profession, noting that '[e]ach of these jurisdictions has done a tremendous job in contributing to the reform process and the national benefits it will bring, while remaining strong advocates for their individual states.'⁶

² Cassandra Robertson (2011) 'A Collaborative Model of Offshore Legal Outsourcing' 43 *Arizona State Law Journal* 125., pp 129-132.

³ ABA Commission on Ethics 20/20 (May 2011a) 'Initial draft proposal on outsourcing' http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20/initial_proposals.html, p 2.

⁴ Hon. Robert McClelland, Federal Attorney-General, Keynote Address at the Conference of Regulatory Officers, 14 October 2011, last accessed at

http://www.ema.gov.au/www/ministers/mcclelland.nsf/Page/Speeches_2011_FourthQuarter_14October2011-ConferenceofRegulatoryOfficers

⁵ Ibid.

⁶ Ibid.

PAPERS/SEMINARS

GLOBALIZATION AND THE LEGAL PROFESSION, FORDHAM UNIVERSITY LAW SCHOOL, NEW YORK, NEW YORK, OCTOBER 2011

In October the Commissioner and the Research and Projects Coordinator were invited to present a paper together with Professor Laurel Terry of the Pennsylvania State University Dickinson School of Law at a Colloquium hosted by Fordham University in New York. Fordham University generously covered the cost of the trip.

The paper presented at the Colloquium analyses the different forms of regulatory models adopted by regulators of the legal profession exploring approaches taken internationally with a particular reference on the initiatives in Australia. The paper focuses on the use of 'regulatory objectives', that is, a set of objectives that define the criteria for regulation in legal profession legislation. Australia has recently adopted regulatory objectives in the new national legislation soon to

be enacted as have a number of other jurisdictions around the world.

The Colloquium presented a fantastic opportunity for the OLSC to share our knowledge of developments in Australia whilst learning from the best known regulators and academics in the common law world who shared their ideas and advice for the developments that are occurring in Australia.

The paper together with a second paper on the regulation of the legal profession will be published in an upcoming Fordham University Law Journal.

ETHICS SEMINARS IN FULFILLMENT OF RULE 42 OF THE LEGAL PROFESSION ACT 2004 (NSW)

The Commissioner, the Assistant Commissioner (Legal) and the Research and Projects Coordinator have presented numerous ethics and professional responsibility seminars to practitioners in fulfilment of the requirements under Rule 42 of the Revised Professional Conduct

and Practice Rules 1995 (NSW). Seminars were delivered to a range of organisations including the Legal Aid Annual Criminal Law Conference, law firms, in-house legal departments at organisations, regional law societies and government organisations.

UNIVERSITY LECTURES

OLSC staff together with the Commissioner and the Assistant Commissioners have delivered a number of lectures to university students across New South Wales. Over the past few months students from UNSW Law School, the University of Wollongong, the University of Technology, the University of Newcastle and Southern Cross University heard from OLSC staff about the purpose and function of the OLSC, ethics and practice and the ethical use of technology in practice.

WITHOUT PREJUDICE VIA EMAIL

As indicated in previous issues the OLSC can send out future issues of *Without Prejudice* to you via email. If you would like to receive *Without Prejudice* electronically please contact us at OLSC@agd.nsw.gov.au

Comments ? Suggestions ? Something you'd like to know more about ? Write to the editor Tahlia Gordon at Tahlia_Gordon@agd.nsw.gov.au



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