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THE AUSTRALIAN SOCIETY OF ACCOUNTANTS

'THE AUSTRALIAN ACCOUNTANT'

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INTERVIEW OF THE MONTH : PROFESSIONS : WITHER?

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The Hon Mr Justice M D Kirby CMG

Over the past few years the Hon Justice M D Kirby CMG, Chairman of the Australian Law Reform Commission, has been persistently maintaining that the role of the professions is changing.

During this period, Justice Kirby has addressed members of our Society on this subject and John Day interviewed him to obtain his current opinions on the matter.

Q1. DO YOU BELIEVE THE ROLE OF THE PROFESSIONS IS CHANGING FOR THE WORSE?

A1. Its another case of the curate's egg. Some changes are for the worst, Others are for the better. Now, I realise that is a typical laweyr's two-sided answer. Let me explain. Changes for the better include the growing numbers of professionals; their greater accessability to ordinary citizens and their greater accountability to the community. Changes for the worse include the partial breakdown of the professional 'ideal'. This was the somewhat old-fashioned notion that the distinguishing feature of a professional person was that he or she ultimately put service to the client above professional gain or even professional advancement. Unhappily, the front page stories of lawyers defaulting, doctors involved in medifraud or even lawyers and accountants engaged in active promotion of tax avoidance : these have all tarnished the professional image. I suppose we are seeing the dual aspects of the growth of the professions. There are more people entering the old professions. There are more groups claiming professional status, such as computerists. With numbers you get more approachability. But the price you pay is a decline in the coherence and unity of the professions and variable quality of some of the entrants.

Q2. WHAT DO YOU SEE AS THE MAIN CONTRIBUTING FACTORS FOR THIS CHANGE?

A2. Well, I have already mentioned one of the chief factors. Professions are more numerous, visible and common. The English Monopolies Commission had to consider applications from 130 bodies claiming 'professional' status. But there are other reasons for the decline:

- * The growth of consumerism, which has meant that clients tend to be more critical and less accepting of unexplained professional judgments.
- * The growth of government, with its impact on the supply of services. As government funds a large proportion of the work of doctors (through Medicare), lawyers (through Legal Aid) and so on, the tendency for the piper occasionally to call the tune is virtually irresistible.
- * The growth of general education in the Australian community means that professionals today are advising a population more aware of the limits of the professions and more likely to know professionals from school or as neighbours and therefore more inclined to question and criticise.
- * Finally, I would mention the growing feeling in some quarters of the conflict of interest and duty that is involved in some professional associations. Trying to be both a trade union and an independent complaints-handling body at the same time is something of a strain.

Q3. WHERE DO YOU STAND ON SELF-REGULATION OF THE PROFESSIONS? SHOULD, FOR INSTANCE, ACCOUNTANTS HAVE TO PUT UP WITH ANY GOVERNMENT CONTROLS APART FROM WHAT THE PROFESSION IS SEEKING — PROTECTION OF THE NAME 'ACCOUNTANT' AGAINST USE BY THE UNQUALIFIED, AND STATUTORY BACKING FOR ACCOUNTING STANDARDS?

A3. Obviously self-regulation has a vital function in control of professions and indeed of occupational groups generally. The Law Reform Commission had to examine this question recently in making recommendations concerning insurance intermediaries. Significant defaults by insurance brokers in Australia led to calls for rigid licensing. But occupational licensing systems can be

bureaucratic, expensive to operate, anti-competitive and sometimes ineffective. Accordingly, the Law Reform Commission suggested a compromise : Registration of 'brokers'. Forbidding non 'brokers' to use that name. Prohibiting certain specified acts by 'brokers' incompatible with a primary duty to the client. Requiring trust accounting audits of broker funds received from clients : and leaving much of the detail to self-regulation rather than a large bureaucracy. I understand that the new Federal Government proposes to proceed with legislation generally along these lines. Perhaps that legislation provides a model which the accounting profession should study. I have not scrutinised the specific needs of regulating accountants. But the report Insurance Agents and Brokers (ALRC 16) represents my general thinking on an analogous question.

Q4. THE SOCIETY HAS JUST ANNOUNCED A MAJOR POLICY CHANGE. PART OF THIS ALLOWS SPECIALIST ACCOUNTANTS TO DESCRIBE THEMSELVES AS SUCH IN AREAS FROM TAXATION AND AUDITING TO MANAGEMENT ACCOUNTING. ANOTHER ASPECT IS ADOPTION OF THE NEW MEMBERSHIP LEVEL CPA -- A TERM USED IN MANY PARTS OF THE DEVELOPED WORLD INDICATING SENIORITY AND ADVANCED COMPETENCE IN THE ACCOUNTANCY PROFESSIONS.

BUT SOCIETY MEMBERS ARE BEING ASKED TO COMMIT THEMSELVES TO A MINIMUM NUMBER OF HOURS OF PROFESSIONAL DEVELOPMENT OR EDUCATION TO MAINTAIN THEIR SPECIALIST DESIGNATION OR TO BE A CPA.

DO YOU GO ALONG WITH THE CONCEPT OF MANDATORY CONTINUING EDUCATION FOR PROFESSIONAL PEOPLE AFTER THEY ARE INITIALLY QUALIFIED AND ESTABLISHED IN THE WORKFORCE?

A4. Generally speaking, I favour specialisation within professions. The medical professions has it all over the legal and accounting professions. Medicos have been specialising for years. No-one would think of going to an ophthalmologist for open heart surgery. Our laws and the technology of business are changing so rapidly that we must facilitate similar specialisation in the legal and accounting professions. But the price of specialisation will be an acceptable means, which is not anti-competitive, that authoritatively determines specialties and those who qualify. And we will need to ensure that those in the speciality keep up with the latest laws, technologies and community values. Again, the medical profession, with its colleges, fellowships, regular seminars, distributed literature, sound and video recording, shows the way. Life for accountants and

lawyers is still not meant to be easy. Because of the rapid increase in law making (more than 1,000 Acts of Parliament were passed in Australia last year) we need more and better continuing education for professional people. I think it ought to be compulsory for those who specialise, at least. But how it is done, at what intervals, for what duration and by what techniques : these are matters of legitimate continuing debate. By the same token, the notion that you can get a 'ticket for life' in today's changing world is plainly unacceptable.

Q5. BY AND LARGE IT WOULD APPEAR THAT ACCOUNTANTS FAVOUR THE RETENTION OF RESTRICTIONS ON THEM REGARDING ADVERTISING — NOT ALLOWING THEM TO PAY FOR THE PROMOTION OF THEIR SERVICES TO THE PUBLIC.

YET THERE SEEMS TO BE A CALL FROM THE COMMUNITY AT LARGE FOR PROFESSIONAL PEOPLE TO EXPLAIN MORE OF WHAT THEY DO. DO YOU FAVOUR UNRESTRICTED ADVERTISING BY A PROFESSIONAL OR DO YOU BELIEVE THAT RESTRICTIONS SHOULD CONTINUE TO EXIST? NATURALLY, IT IS AN ETHICAL QUESTION AS WELL AS ONE INVOLVING COMPETITION BETWEEN PROFESSIONS, ONE OF IMAGE AND ONE OF COMMUNICATION.

A5. Obviously what is needed is a balance between the decorum of professionals themselves and the community's right to have important information. A balance can be struck which opens the professions, such as law and accountancy, a little more than at present. For example, rules can readily be introduced permitting advertising but limiting its size, its nature (to informative advertising); its content (so that it does not attack fellow professionals or degrade the professional image) and even its medium (such as limiting television advertisements). Many people in the community are afraid to cross the professional threshold. They are often unduly fearful of the initial fee of the professional. If we are to be concerned about such people, we must break down this fear. It is a curious fact that the legal and accounting professions are busily engaged in advising on the compliance of corporations to the letter and spirit of the Trade Practices Act. Yet, for the most part, they are not themselves bound by that Act and fall outside its disciplines. Advertising will come. We should therefore be concentrating our minds on the conditions that should be imposed. The report of the New South Wales Law Reform Commission on the Legal Profession points in the right general direction.

Q6. SO IN SUMMARY, WHAT DOES THE FUTURE HOLD? WILL WE SEE A DECLINE AT THE RATE YOU HAVE INDICATED IT HAS BEEN TAKING PLACE THUS FAR OR DO YOU SEE SIGNS THAT THE PROFESSIONS ARE TACKLING THE PROBLEM, REFORMING THEMSELVES AND ARE LIKELY TO EARN HIGHER STATUS AND RESPECT.

A6. There will be no going back to the blind faith of the community in the professional. The growing role of governments in funding professional activity, including that of accountants, will undoubtedly influence calls for greater government regulation in the name of the public interest. There is a need for an interplay between independent professionals and the government. Growing public accountability beyond the profession is inevitable. It is the price of government gold. But it will be important for the professions to argue for, and earn respect for, a degree of independence and self-regulation. I believe they will do this better if they allow a community voice in the bodies that govern the professions. Systematic arrangements for continuing professional education and the introduction of informative advertising and a greater willingness of professional leaders to speak through the public media : these are the best antidotes for envy, antipathy and the headline stories about professionals who fail. Most professional people in Australia are hard working, highly educated people of talent and dedicated concern for their clients. If you are asking 'Will we go back to the 'good old days' of the God Professional?' the answer must be that we will not. There are too many of us and our human foibles are now all too visible. But I think there is plenty of evidence that the Australian professions today realise the need for reform and are taking steps in the right direction. Not before time!

THANK YOU, MR JUSTICE KIRBY