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CONGRESS, NEW YORK, 31 AUGUST 1981

PUBLIC RELATIONS OF THE LEGAL PROFESSION IN AUSTRALIA

The Hon. Mr. Justice M.D. Kirby

Australian Rapporteur

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Date : 1 March 1981

Name of Rapporteur : The Hon. Mr. Justice Kirby

Address : 99 Elizabeth Street, Sydney, N.S.W., Australia

Nature of intervention in the questionnaire : on own behalf.

10 DESCRIPTIVE SECTION

- I -

1. Federal Organisation of Legal Profession. Australia is a federation. Regulation of the legal profession is basically a state or territory matter, not a national or federal matter. Thus in each of the states and territories of Australia there are bodies representative of the local legal profession. In some of the jurisdictions of Australia, there are separate Bar associations (representing the barristers) and law societies (representing solicitors). The Bar associations and law societies mentioned are the constituent bodies of the Law Council of Australia, a federal organisation for the legal profession of the whole of Australia. It is assumed that the questionnaire is addressed to the initiatives taken by or affecting solicitors as well as barristers. Most advocacy in courts in Australia, particularly in the eastern states, is done by barristers, in the same manner as in England.

Because of this federal organisation of the legal profession, there is no simple answer to the questions asked in the questionnaire. Public relations between the legal profession and the community is very largely in the hands of the constituent bodies of the Law Council of Australia, i.e. the Bar associations and law societies of the several states and territories of the country. Nevertheless, both at a national and sub-national level, efforts have been made of late to publicise legal information and the work of the legal profession. This has been done by:

- \* appointing public relations officers and committees;
- \* participation by elected officials of Bar associations and law societies in radio and television programmes on matters of legal importance;
- \* public comments by presidents and executive officers of the Law Council, Bar associations and law societies, where matters affecting the law, the courts, the legal profession, law reform, legislation and like issues are in the public news;
- \* participation in law weeks: several years ago the Law Council proposed the creation of a National Law Week which could be used as a vehicle to publicise legal information and encourage contacts with the legal profession. In October 1980, the Law Institute of Victoria undertook the first Law Week programme which included free legal checkups, law booths in the City Mall and at various suburban centres, debating contests and so on. Journalists from major newspapers, radio and television agreed to join the Publicity Committee which ensured a wide but inexpensive media coverage. Representatives of all the constituent bodies of the Law Council were invited to the programme with the intention of introducing Law Week throughout Australia. The Law Week Secretariat, sited in the Law Council offices, has commenced plans for 1981 Law Week and is hopeful that other jurisdictions will join the programme.

2. Public Attitudes. A number of studies have been made in Australia concerning public attitudes towards the legal profession. Some of these have been informal and organised by the media itself, e.g. public opinion polls. Others have been semi-official. Thus in Victoria, the Victoria Law Foundation, a body established by statute to research matters relevant to the law and the legal profession, instituted a survey concerning the perceptions by members of the legal profession in Victoria of themselves and their relations to the community. The New South Wales Law Foundation, an equivalent body in the State of New South Wales, initiated a research project by a researcher, Dr. Roman Tomasic, concerning similar perceptions amongst New South Wales lawyers. Within the State of New South Wales, the Law Reform Commission of that State has been requested by the Attorney-General for New South Wales to report upon reform of the organisation, discipline and regulation of the legal profession of that State. In connection with its inquiry, it has conducted hearings to receive public comments, complaints and suggestions concerning the legal profession. In Western Australia, an inquiry into the legal profession by the Honourable Mr. Justice Brinsden has also examined community attitudes to the profession.

1. Journals and Periodicals. The Law Council of Australia issues a monthly periodical, Law News. This contains news and discussion of general interest to the legal profession, with notes on technological developments of use in lawyers' offices, current legal controversies, appointments and news items. Most of the constituent bodies of the Law Council publish their own journals. These follow a similar pattern, being a mixture of news items of local interest, notes on court decisions, including advance brief court reports, notes on new legislation, short articles on legal points and personalia material.

There is a national law journal, the Australian Law Journal, published by a private law publisher. It contains advanced reports of the High Court of Australia (the federal supreme court of Australia), news items and lengthy articles on legal topics, as well as shorter notes on recent cases, legislation and material of international interest.

'Law News' is distributed, without charge, to approximately 17,000 practising lawyers throughout Australia. The publications of state law bodies are distributed to their respective members. The Australian Law Journal is distributed to subscribers. In addition to the Australian Law Journal, there are numerous other legal journals, including law reviews published by most Australian law schools and specialised legalised periodicals e.g. Criminal Law Journal, Journal of Law and Information Science, Legal Service Bulletin etc. A number of the representative bodies (e.g. the Law Institute of Victoria and the Law Society of New South Wales) produce brochures describing legal matters in simple language. These deal with such matters as conveyancing and compensation for motor accidents. They are available free on application.

An interesting recent development has been the production of legal service directories in three states (Victoria, Queensland and South Australia). A directory is shortly to be produced in New South Wales.

The use of video films to communicate to laymen is being experimented with. The Fitzroy Legal Service, advising disadvantaged clients, has prepared a video tape to describe social security appeals procedures. The Family Court of Australia has prepared a video tape to explain the court procedure for the dissolution of marriage. The Law Foundation of New South Wales has produced a number of 'Eagle Books' for use in schools in teaching community legal education. It has also produced a popular broad sheet 'Legal Eagle' which describes and explains problems and legal solutions in simple and vivid language.

1. Traditional legal ethics in most parts of Australia limit contact between practising lawyers and the press, radio and television. Generally, the permission of the head of the relevant Bar association or law society must be had for public participation by lawyers in any circumstance in which their professional qualifications will be referred to. Nonetheless, such approval is more readily given now than previously. The President of the Law Council and the Secretary-General (Chief Executive) of the Council quite frequently issue press releases, appear on radio and television, particularly in relation to current news items of legal concern. At the time of legal conferences, this is also done. Presidents of Bar Associations or Law Societies appear on radio talk-back programmes and other like programmes to explain the profession to the community. In the course of such activities, the services of lawyers and their importance for a free society are frequently referred to. In Sydney, an energetic President of the Young Lawyers now has a regular radio programme.

2. Means of Communication. So far, involvement in communications has been by:

- (a) issue of press and news releases by representative bodies;
- (b) responding to news stories by giving interviews;
- (c) involvement in talk-back radio and other community programmes;
- (d) appearances on television;
- (e) addresses to public meetings, conferences, dinners and the like.

3. Officers. In the case of some of the larger law bodies, e.g. the Law Society of New South Wales and the Law Institute of Victoria, public relations officers have been employed who were formerly working journalists. Normally, however, these activities are performed by honorary officers.

1. Advertising Campaigns. This has not been done generally in Australia. There have been particular advertisement campaigns related to special problems. The development of 'do-it-yourself' land conveyancing kits in New South Wales has led to a series of advertisements, designed to call to the attention of citizens the dangers of engaging in land title conveyancing without the skilled advice of a qualified lawyer. In 1980 in October, the Law Institute of Victoria (the body representative of solicitors of that State) organised a Law Week. During the course of that Week, publicity was given in the media to the work of lawyers and the variety of matters upon which they could give assistance to the community. By arrangement with the Law Institute, a free legal

'checkup' was offered. Under this, new clients were offered the advantage of free advice in an initial interview of half an hour, during which they were able to check their legal needs (if any) and to secure advice on the costs of any services found to be needed. This was an experimental venture. Preliminary reports suggest that it was highly successful. It may later be tried in other States. The Law Institute of Victoria is currently conducting a 'Tel-Law' programme, under which the public can telephone a special number to obtain general advice on a variety of common problems. The programme is well advertised and preliminary indications are that it is proving very popular. So far as is known, only the Queensland Law Society (representing solicitors of that State) has engaged in institutional advertising. With the support of the Law Foundation of New South Wales, a film series has been produced by Film Australia for instruction of secondary school students in certain commonly occurring legal problems. The teaching of law-related subjects in Australian secondary schools has become an extremely popular educational option during the past decade. In one State (Victoria) it is already the third most popular optional subject in the course curriculum.

2. Legal Congresses. Legal congresses are held regularly in Australia. They do provide a focus for public discussion about the law and legal problems. They are generally accompanied by a media concentration, interviews with lawyers and representatives of the legal profession. The influence on public opinion is uncertain. Media coverage of the law in Australia tends often to be unsympathetic, possibly as a result of the failure of lawyers, until recently, to communicate through the media concerning their discipline and the profession of law. In addition to congresses organised by the Law Council of Australia and state representative bodies, special interest conferences are held by particular groups. For example, the Legal Service Bulletin has organised major conferences on the law relating to industrial safety and the criminal justice system.

1. Trends of Lawyers' Work. Surveys indicate that the largest part of the work of the legal profession of Australia (between 40% and 50%) is land title conveyancing. This is steady in successive surveys and is reflected in a similar proportion in surveys conducted in the United Kingdom. The provision of greater legal aid in the past decade has increased the number of persons on serious criminal charges who are now represented by legal practitioners. Changes in family law in Australia has increased the number of cases coming before the Family Court of Australia. Approximately 65% of legal aid in

Australia is currently expended in family law matters. The great bulk of court litigation in civil courts in Australia relates to accident compensation cases, viz. workers' compensation, motor vehicle accident, accidents at work because of negligence and the like. Likely changes in Australia will probably see a decline in lawyers' involvement in land title conveyancing, a possible decline in accident compensation litigation if a national compensation scheme were introduced and an increase in lawyers' involvement in administrative law litigation before the new national Administrative Appeals Tribunal and various federal and state specialised administrative tribunals and inquiries. Practice before proliferating administrative tribunals throughout Australia would appear to be an area where the demand for legal services is growing rapidly. Practitioners routinely report to the Law Council of Australia that the demand for conventional legal services (e.g. land conveyancing and uncontested family law disputes) are areas where the demand for legal service is levelling off or even falling.

2. See 1.

1. Legal Insurance. No, although particular insurance policies have been developed and the issue of comprehensive legal insurance is now being discussed between insurers, insurance brokers and representative bodies of the legal profession. Until now, most litigation and lawyers' services in Australia have been paid for by the client, by legal aid provided by the State or by other forms of legal assistance, including assistance by trade unions in the case of work-related injuries. There is some measure of speculative litigation in accident compensation and like cases. One difficulty which has so far faced employer-funded prepaid legal service schemes in Australia is the taxation implications for beneficiaries of such schemes. Decisions made by the Australian taxation authorities assert that benefits under such schemes would probably be considered 'assessable income' in the hands of the employee, on the same basis as low-interest loans, subsidised accommodation and so on, and would be taxed accordingly. This amounts to a disincentive to the offer by employers to employees of such schemes.

2. The subject of legal insurance is still under consideration by the representative bodies of the legal profession of Australia. Some interest has been expressed by certain of the representative bodies.

3. So far as is known, only one small insurance scheme has been developed in Australia and that by a major insurer as part of a comprehensive insurance coverage available to persons otherwise insured with it. No attempt has been made as yet to market the insurance in the same way as, for example, health insurance is marketed in Australia.

Some associations offer insurance with ancillary provisions for legal representation. Thus the automobile associations offer a limited legal representation in connection with automobile accidents. Trade unions have in some instances negotiated retainers with large legal firms, under which their members will receive at least initial advice on general legal problems. Comprehensive, universally available legal insurance is a long way off.

1. Representation of Law Faculties. Most of the law faculties of Australian universities or institutes include representatives of the legal profession ex officio. Such representatives generally attend but play a rather passive role, for the most part. Exceptions exist, particularly where issues arise concerning the curriculum. In such circumstances, faculty members and representatives of the profession sometimes differ. However, selection of staff, is generally done by university or faculty committees upon which there may not normally be a representative of the profession.

2. Continuing Legal Education. Most law faculties in Australia do carry on programmes of continuing legal education. The representative bodies of the Australian legal profession encourage and promote continuing legal education. In most state colleges of law are run by professional associations or have a strong involvement with such associations. They have become a focus for lectures on continuing legal education, principally topics of practical concern to the practitioner. In many cases the profession itself has taken over from the universities the responsibilities of continuing legal education. The Law Council of Australia has convened a Continuing Legal Education Administrators Committee as a means of promoting continuing legal education within the legal profession and of co-ordinating the activities in this field in the various Australian jurisdictions. The first project of the Law Council Committee is the preparation of a 'continuing legal educators' handbook'. This is to be used a training tool throughout Australia in continuing legal education. The Law Council Committee is also promoting national continuing legal education programmes to maximise resource allocation to this activity. It is also experimenting with programmes which will allow 'self-paced learning', using a variety of educational techniques. These will be available in the lawyer's practice rather than at formal external venues.



20 QUANTITATIVE SECTION

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1. Contact with Lawyers. Knowledge in Australia about the role of the lawyer is generally deficient. This is in part the result of the lack of communication by the legal profession, in part the very complexity of the law and the role of lawyers, in part the result of an unsympathetic public media and in part because many people have little or no contact with lawyers. For most people the only contact an average citizen will have with a lawyer is upon the purchase of a home. The cost of legal services, before the advent of significant legal aid, meant that much litigation was beyond the purse of ordinary citizens. This has changed over the past decade with greater availability of legal aid and a greater willingness of the legal profession to engage in public communication and to explain the work and importance of lawyers. The most extensive inquiry into community attitudes to lawyers in Australia was that by R. Tomasic, Law, Lawyers and the Community.

2. Prestige. Lawyers in Australia generally enjoy a high level of prestige. Public opinion surveys have consistently shown the judiciary as enjoying the highest prestige of any employment group. Barristers and solicitors are among the top occupational groups in public perceptions of prestige. A survey conducted in 1980 revealed a relative decline in the prestige of solicitors. This could relate to adverse publicity of defalcations or a tendency unfairly to blame lawyers for all of the ills of the substantive and procedural law. Solicitors have always been ranked lower than barristers in such surveys, although many group the profession as 'lawyers' or 'legal practitioners'. Prestige gradings of the professions in Australia are to be found in R. Tomasic, Lawyers and Their Work.

3. (a) It is difficult to state the specialist field of the law which enjoys the greatest prestige amongst lawyers and judges. The perceptions would differ according to the group of lawyers or judges who were asked. Probably highest would be those lawyers who are engaged in diverse practice before the appellate courts of the county, viz. the High Court of Australia and the Full Courts of the Supreme Courts of the States or the Federal Court of Australia. Traditionally, corporate, tax and commercial legal work has enjoyed status amongst lawyers, possible because of the high fees that can be commanded in that area of operations, when compared to others. Tax avoidance has lately come into much criticism in Australia and this may have affected public and professional perceptions of the status of tax lawyers.

- (b) In the eyes of the public, it is probable that the criminal lawyers enjoys the greatest status. Within the legal profession, the work of criminal lawyers tends to be grossly under-rated in Australia for the importance of the work done, the complexity of tactical and legal decisions required, and the command of procedural and evidentiary law necessary for a skilled criminal lawyer. With the advent of the Public Defender system for the representation of criminal accused in Australia, some of the public perception of 'famous criminal barristers' has declined, although there are exceptions, frequently reported in the media.

1. Problems. The listed problems inherent in the practice of the law should be ranked in the following order. The ranking does not necessarily imply that the problems mentioned are seen as very important in Australia.

- (1) The fact that lawyers are a luxury which only the rich can afford: this is still very significantly true in Australia.
- (2) The fact that the results are generally ineffectual and do not meet the needs of the client: the law and its procedures frequently deal with the symptoms of problems rather than the underlying difficulties.
- (3) Moral ambiguities attendant upon the performance of duties: lawyers until recently often regarded a concern with the state of the law as irrelevant and beyond their proper function, which was seen as simply defending a client's interests or administering the law as it is.
- (4) The fact that the preparation or professional capabilities of lawyers in general is or are deficient: the growing bulk and complexity of the law and demands placed upon young lawyers frequently evidence deficiencies.
- (5) The fact that lawyers lack the necessary independence: this is not a significant problem in Australia.
- (6) Miscellaneous  
One of the most important problems is the lack of ready institutional machinery to adapt the law quickly to the pressures for change brought about by changing social conditions, science and technology etc.

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1. Relations with the Judiciary. The relations between lawyers and judges in Australia is best described as 'normal' for a common law country. There is a general respect for the judiciary amongst the legal profession and amongst the majority there would be 'great respect'. Amongst practitioners who appear before judges, the human failings and weaknesses are detected, but without damaging respect for the institution of the judiciary. Judges in Australia tend to maintain a distance, both from the community and the legal profession, and this is regarded as normal and desirable.

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1. Judicial Symbols. Views on symbolisms such as judges' robes, language, procedure, forensic architecture and so on can only be personal. There is no general view and attitudes are changing. A small majority of the legal profession of Australia would probably favour the continuance of symbolism as at present, including the continued use of barristers' wigs, of black robes, of special legal language, of courtroom design that may sometimes frighten irregular participants. However, a sizeable minority of the legal profession would probably favour diminution of at least some of the above, particularly the abolition of the wig. A recent survey in New South Wales among solicitors favoured abolition of the wig. Surveys of the New South Wales Bar have shown a split: the majority of younger practitioners favouring retention. One judge of the High Court of Australia, for example, does not now wear the traditional wig, except on ceremonial occasions. Many new courts have been established where traditional court dress is no longer used, e.g. the Family Court of Australia. The same is true in magistrates courts. Tribunals, including important national tribunals in which lawyers frequently participate, dispense with formal court dress. The use of Latin and obscure phrases in legal language is declining, partly because the teaching of Latin in schools has rapidly receded in Australia.

30 SUGGESTIONS SECTION

- XII -

1. Better Communications. The legal profession must acknowledge the changing modes of public communication today. It must send forward representatives who can with little prior notice speak simply on behalf of the legal profession: acknowledging the need

for reform where this is shown, acknowledging mistakes of the profession where these exist, and demonstrating the vital work done by the legal profession and its value to the community. The tendency towards reticence cultivated by the gentlemanly ethics of the past should give way to better communication with the public, including through radio, television and the press.

Improving the Product. However, it is not good enough to promote skilful public relations campaigns. It is important that the product itself be worth promoting: otherwise the good effect of improved public relations will be transitory. This requires the organised legal profession to examine the unmet needs for legal services in the community and to inform the community of the things being done to meet them. Fortunately, this has been a matter of professional concern in Australia in recent years, although probably more on the part of representatives of the profession than of its mass. It is not inappropriate to say that the increase in concern with better communications and improving legal services has largely come about in Australia as a result of pressure from outside upon the legal profession rather than from initiatives voluntarily taken by the profession itself.

Interest in Law Reform. A livelier concern by the legal profession in law reform and a realisation that professionalism involves a sense of responsibility for the discipline being practised would help to promote greater community appreciation of the legal profession. At present, participation in law reform is left to a few hard pressed activists whilst most practitioners simply get on with the business of attending to their clients and earning their daily bread.

2. One of the problems revealed by legal referral services and during exercises such as Law Week is that many people are unable to identify when they have a legal problem and others identify it so late that the lawyers' effectiveness is greatly diminished. A study of problem solving in small business commissioned by the Small Business Development Corporation of Australia revealed that consulting a lawyer was ranked very low on a list of choices of preferred problem solving behaviour. An increase in consumption of legal services is a very proper by-product of assisting the community adequately to identify and confront its legal problems. Law-related education in schools and community legal education programmes such as Tel-Law are two areas where the Law Council is currently directing its attention and it is to be expected that this will result in a considerable increase in the consumption of legal services. Another by-product is the development of clients who are more readily able to grasp the issues involved in legal problems and who have high expectations of their lawyers.

1. A number of initiatives should be noted:
  - (a) The establishment of the Inner City Services Centre. This was established on the initiative of a federal minister. Large legal firms in Sydney provide help for the Centre, a sort of store-front organisation in one of the popular suburbs of Sydney. The help is provided on a voluntary part-time basis as a community service.
  - (b) The Redfern Legal Centre, a body established in a deprived suburb of Sydney, has enjoyed the support of one of the largest and most prosperous legal firms, making available manpower and resources on a part-time basis.
  - (c) Class actions. The Australian Law Reform Commission has been asked to advise on the reform of the law relating to standing in federal courts (an issue that could affect the bringing of representative and public interest litigation). It has also been asked to advise on whether class actions should be introduced in Australia. It has been suggested that the introduction of procedures of this kind would permit lawyers to appear for wider community groups in connection with issues of contemporary social concern. Tentative proposals for reform of class action have been opposed by business and industry on the basis that they would amount to litigious blackmail. The legal profession has been ambivalent in its response to the possibility of class actions. Many lawyers have opposed the notion of the introduction of contingent fees as a means of financing large-scale class action litigation.
  - (d) Advertising. It has been suggested that a relaxation of the rules against advertising by lawyers in Australia would promote better knowledge in the community of the existence of lawyers' skills and specialties, remove some of the public's inhibitions in consulting lawyers (especially financial) and promote greater legal innovation in the provision of services needed by the community. The New South Wales Law Reform Commission's inquiry into the legal profession of that State is specifically examining reform of advertising rules.
  - (e) Identifying the problem. The public's conception of lawyers in Australia and of the services provided by them has never been properly identified and evaluated. If the image of lawyers is to be improved, a prerequisite may be to determine precisely what the currently perceived profile of lawyers, in the ordinary

Australian community, currently is. Identification of those best qualified and suited to the legal profession is also an important task. But it is one for which conventional assessment may be inappropriate and is one which almost inevitably involves subjective considerations of the assessor. Before developing specific policies, lawyers will do well to obtain detailed information concerning the consumers of legal services, their presently unmet needs and their perceptions of the way in which lawyers can be of help.

2. Various specific programmes have been mentioned above. A conference organised by the Commonwealth Legal Aid Commission on the provision and funding of legal aid also examined the growing contribution of the legal profession to effective legal assistance. In many jurisdictions of Australia, solicitors are required to deposit a specific portion of their clients' trust account monies with approved bodies which pay interest to the relevant Law Society. Part of this interest is being used to fund legal aid. These funds are used to meet the costs of legally aided matters which lawyers routinely handle for a discounted fee (the discount usually being 20% of scale charges). In the State of New South Wales, an experiment has been initiated with community justice centres. These are intended to deal with quasi-legal problems and minor disputes which can be settled more readily and appropriately by localised arbitration, in preference to the courts. The community justice centres are being operated as a pilot scheme at present, and an evaluation of their success is awaited.