

Challenge or Cancer; the Impact of Competition Policies on the Professions

The Annual Dr David Williams Lecture delivered at King's College, St Lucia on 8 October 2002 by the Hon Alan Demack AO, Queensland Integrity Commissioner.

When I entered King's College as a fresher in 1953, the College was situated at Kangaroo Point. From River Terrace, the skyline of the central business district was dominated by the City Hall clock tower. Trolley buses ran along Main Street. Chermside was the northern limit of urban housing, and the tramlines along Gympie Road ran between rose gardens.

Our orientation week began with a gathering of freshers on the Kidney Lawn in front of the old Government House. There were thirteen first year law students. All Faculties were correspondingly smaller than you will be used to in 2002. I don't recall discussing the matter, but I suspect that all of us were delighted to begin the educational program which would allow us to enter a profession. Professional people were generally held in high regard in the community.

Five years later when I was admitted as a barrister, and commenced practice, a newspaper photographer called to my chambers to take photos. These were not embarrassing mug shots, but ones which were quite recognisable, if one was involved in a case which caught the newspaper reporter's ear.

Today the situation is quite different. It seems that each profession carries some public stigma. Different people have different explanations for this. I am prepared to

assume that to some extent the pervasive nature of competition policies is part of the problem. To give some point to this paper I will give some reasons for this opinion.

First, the professions offer more than goods and services to the community. Their members each offer their own combination of skills and experience to the exercise of their professional work. This involves in part the exercise of personal judgement arising from their relationship with their client. These factors are absent when a consumer purchases laundry detergent or a television set or has plumbing repaired. Professional services cannot be guaranteed the way laundry detergent can be.

In other words, it is unhelpful to compare the offering of professional skills and judgement with the marketing of a product. However, this has been ignored, and advertising, which was unheard of among professional people fifty years ago, is now commonplace. While false and misleading advertising is unlawful, it is difficult to draw the line between a degree of puff which can be tolerated and assertions which do mislead. All advertising encourages the enthusiastic description of the goods or services available, which may raise client expectations to levels which cannot be met.

A third issue which seems to flow from the competitive market is an overemphasis upon the "bottom line". Quality is often enough sacrificed in order to cut costs. This can have a devastating effect when professional skills and advice are offered.

However, it is unlikely that there will be any significant change in our attitude to competition policy. The purpose of this paper is to encourage all who are hoping to enter the professions, and those who are already in the professions, to respond to the

challenge that this raises. If professional people succumb to the temptation of thinking that they are simply marketing products, then the community will lose a very beneficial resource. Yet the temptation is severe, as Plato's Athenian observes: -

My dear Cleinias, only a small part of mankind - a few highly-educated men of rare natural talent – is able to steel itself to moderation when assailed by various needs and desires; given the chance to get a lot of money, it's a rare bird that's sober enough to prefer a modest competence to wealth. Most people's inclinations are at the opposite pole: their demands are always violent demands, and they brush aside the opportunity of modest gain in favour of insatiable profiteering.¹

How then should we begin to steel ourselves to moderation? First, by a determination to seek the truth. This might seem to be such an obvious thing as to require no emphasis. A news item in the Sydney Morning Herald on September 9, 2002 demonstrates that this is not so. It contained the following facts: -

Screening of resumes is becoming big business in Australia as some job seekers resort to blatant lies to beat others or cover up a history of corporate fraud and failure.

One in four CVs contains lies, said Geoff Stockton, the owner of Personal Risk Management (Australia) – including false university qualifications and board directorships.

Seeking truth should not be a difficult concept for Kingsmen to accept because of the College motto – “Veritas vos liberabit” – the truth shall make you free. However, finding the truth is never easy. We have a continuing debate about global warming. Those who hold the opinion that the earth is getting warmer because of the effect of greenhouse gases appear to be more numerous than those of a contrary opinion. Gathering evidence and interpreting it is a task for trained minds. But if the truth is to

¹ The Laws by Plato, book II, Penguin edition p.457

set untrained minds free from fear and doubt, the interpretation of the evidence must be expressed in plain English.

For years, lawyers have been urged to use plain English, and that is entirely reasonable, because the use of language as a means of communication requires nothing less. But the same is required of all professional people. Each discipline develops its own language, and this can easily prevent the communication of its ideas and theories to people untrained in that discipline.

Returning for a minute to global warming, it is important that the debate about the evidence and the inferences from the evidence be conducted openly. It is a scientific issue, and so is properly debated in scientific circles. However, the issue concerns us all, and the response made to the issue depends in large measure upon the general support of the whole community. This support can only be gained if there is a clear understanding within the community of the issues involved. The current expressions of opinion about the Kyoto Protocol suggest that there may be little general understanding of the issues involved.

Another issue of great public importance where professional people must seek the truth and tell it plainly is the cost of health care and the resourcing of procedures that bring great benefits to small numbers of people. The issue has been around for some years, but it is rarely made the subject of debate. This is probably because the costs and benefits are plain to see, and the contentious issue is finding the resources and allocating them. We tend to do this using the squeaking wheel test. If the wheel is not squeaking, it can be ignored. When the noise is not tolerable, help is at hand.

The twentieth century was described as the century of the common man, later the common person. Part of the expression of this egalitarianism was the recognition that if the dignity and integrity of each person is to be respected and protected, the state must accord rights of various kinds to its citizens.

However, there is little point in according rights to individuals unless some tangible benefits flow from the rights. In Australia and throughout much of the world, giving tangible benefits from rights generously accorded by democratically elected legislatures has been the price that the members of those legislatures have to pay to ensure re-election.

We have begun to see that the price is also borne by the community. We have had a squeaky wheel debate about public liability insurance and medical indemnity insurance, but the result seems to be an increasingly complex set of rights and responsibilities that can be pursued in increasingly diverse ways. For example, we now have in Queensland three separate Acts of Parliament establishing the procedures that are to be followed if a person suffers a personal injury. The Acts are the *Personal Injuries Proceedings Act 2002*, the *Work Cover Queensland Act 1994* and the *Motor Accident Insurance Act 1994*. The emphasis is now less upon the rights of the injured person and more upon the concerns of the insurer of the person who has caused the injury. This seems to be a roundabout way of saying that injured people have come to be treated more generously than is just. However, if that issue was publicly debated, it was drowned under cries about the cost of public liability insurance. Another instance of the squeaking wheel solution.

These three issues - global warming, the cost of delivery of health services and the cost of upholding individual rights, will continue to affect all professions, and all professions have an obligation to elucidate the facts involved so that informed decisions are made and accepted by the community. However, we need to go beyond understanding the true facts which are involved. We need also to identify the social purpose underlying the issue. Here we come upon the other word which must increasingly guide the thinking and acting of professional people. That word is justice. We need to be committed to doing justice.

We may all have a cluster of ideas which express what we think of when we speak of justice. You may think it is not something you need to worry about, yet justice is about relationships. It is about the relationship between the government and the citizen, and about the relationship between citizens. This concerns the way the professional person treats clients as much as the way the client is treated by the government. For the teacher, it may concern class sizes; for the medical practitioner, it may concern a patient's access to particular procedures; for the engineer, it may be incorporating safety features in road design. In each such case, seeking a fair result for the children, the patient or road users will require not only a clear understanding of the true facts but a strong commitment to justice.

None of this is really new. Seeking truth and doing justice have always been at the heart of the obligations any member of any profession assumes. In the free market economy which competition policy protects, the inner disposition to seek truth and to do justice exposes the corruption of the market which Amos of Tekoa identified 2750

years ago. Amos was one of those people in the Old Testament of the Bible whom we call minor prophets. His analysis is very relevant today.

The importance of an inner disposition was seen by Aristotle as the foundation for ethical decision making. He said: -

But virtuous acts are not done in a just or temperate way merely because *they* have a certain quality, but only if the agent also acts in a certain state, viz. (1) if he knows what he is doing, (2) if he chooses it, and chooses it for its own sake, and (3) if he does it from a fixed and permanent disposition.²

If we seek truth and do justice for their own sake, and if our fixed and permanent disposition is to seek truth and to do justice, competition policies should give us, in Plato's words, "the opportunity of modest gain", while we enjoy the freedom that truth and justice make possible.

"Veritas vos liberabit!"

² Ethics by Aristotle, Penguin edition p. 97