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FRAGMENTATION OR CONSOLIDATION? FOSTERING A COHERENT
PROFESSIONAL IDENTITY FOR LAWYERS

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INTRODUCTION

The first “object” of the Academy is to establish a “*broadly based*” and permanent body “*from all parts of the legal community ... to work together*” for the advancement of the discipline of the law. That object gives the Academy its unique character and accepts that there is a value in the different parts of the legal community working together to achieve the remaining objects of the Academy. More fundamentally, it adopts a holistic approach which recognises that ultimately the quality of justice administered by Australian courts and of legal services provided by the profession depends upon the health of each part of the legal community and upon their effective interaction.

In one sense, the fact of such interaction might be thought to be obvious. An individual will pass from law school into the legal profession, and for some, from there to the bench. However, here the interaction posited is not sequential, but will involve a continuing process of cross-fertilisation between the various parts of the legal community. It is upon certain ways in which that process of cross-fertilisation might be advanced that I propose to focus.

In this regards, I have been asked to give a couple of example of activities which advance the objects of the Academy drawing upon my own experiences, and to give something of a “*wishlist*” of activities which the Academy may consider. I propose to take just three examples, starting with my experience on the council and executive of the Australian Association of Constitutional Law (“AACL”).

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FACILITATING INTERACTION BETWEEN THE COMPONENT PARTS OF THE LEGAL COMMUNITY: THE AACL EXPERIENCE

One of the real achievements of the AACL has been its diverse membership which spans past and present members of the judiciary, academics, private and government lawyers, and postgraduate students of constitutional law. The enthusiasm of the members has meant that regular seminars are held at the state level, and, from time to time, national conferences. These have brought lawyers together from all parts of the Australian legal community, and have provided a stimulating environment for the exchange of ideas in a process similar to that envisaged by the Academy's objects.² In particular, I have found that the different perspectives which academics and legal practitioners bring to bear is important. As a practitioner, there is a natural tendency to view the law through the prism of a particular case and, with the pressures of practice, to read on a "*needs to know*" basis. By contrast, an academic tends to take a bird's eye view of the law, identifying broader trends and subjecting developments in the law to critical analysis in a process which is ultimately essential to maintaining and promoting a high standard of legal services.

Events held by the AACL have also provided opportunities for the building of bridges between individuals from the different branches of the legal community with interests in constitutional law – including for those just starting in the law. In this regard, one of the achievements of the AACL has been to facilitate sponsorship by law firms and professional bodies of law students in order to enable them to attend the national conferences, including the conference held last year in memory of the late Justice Selway. Students from South Australian law schools embraced the idea, and appeared to benefit greatly from attending. A similar scheme had been adopted earlier with success at another conference with which I had been involved on the role of international law in conflict situations. That was an international conference which, for the first time, brought Adelaide and Flinders Law Schools together as co-hosts.

Facilitating the participation of law students at conferences where they have the opportunity to hear senior members of the profession and academia speak, and to talk with them directly, provides a means by which those embarking on a career in

² Object (g): "To provide a forum for cooperation, collaboration, constructive debate and the effective interchange of views amongst all branches of the legal community on all matters relating to the achievement of these objects."

the law can start to feel a part of the greater legal community. It has been my experience that this kind of involvement can make a very substantial impression on students. Such schemes also engender a sense of professional responsibility among the profession for the education of those starting in the law, and not merely for those who are members of their own firm.

This is a trend which I would like to see adopted more broadly at legal conferences, and which I would encourage the Academy to consider. This might involve sponsoring law students to attend some of the Academy's discussions and conferences, or, alternatively, assisting in the sponsorship of law students to attend national conferences held by other bodies.

THE ROLE OF THE PROFESSION IN LEGAL EDUCATION

A couple of years ago, I was asked to speak at a conference hosted by the University of Adelaide Law School at a session entitled "*Life after a PhD: Academia or Legal Practice*". However, it struck me at the time that that title assumed a dichotomy between legal practice and academia which did not necessarily exist. Of course, it cannot be denied that changes in the size and structure of the legal profession, and the number and size of law schools, have changed the relationship between those institutions. Plainly, there can be no return to the days before the early 1970's when, as the ALRC explained in its report on *Managing Justice*:

*"Most 'students-at-law' already worked in the profession as articled clerks, interacted regularly with practitioners, and received mentoring from senior ... practitioners. Students organised their studies around their work responsibilities, with classes held mainly in the evening and taught mainly by practitioners, and with only a small core of full-time academics in the one law school located in each capital city."*³

Nonetheless, there are many opportunities even as an individual to participate in a continuing way in the life of a law school, including through the supervision of theses, mentoring schemes, judging moots, and tutoring. The University of Adelaide, in line with some other law schools, has also recently established an external advisory board which provides a direct line of communication between members of the legal profession, representative professional bodies and the law school.

³ ALRC 89 at para 2.115.

Interaction from an early stage between practitioners and students, both at a macro and micro levels, is an essential part of continuing the culture and values of the legal profession. Without that early contact, I fear that there may be a real danger of graduates being primarily exposed to a firm culture, without a true appreciation of what it means to be a part of the greater profession. Such contact also gives students a different perspective which assists in understanding the relevance of their studies from a practical perspective.

Interaction of this kind remains valuable even though statistics show that many who study law do not enter legal practice. The legal community's interest is first in those who do and, in any event, it is not possible to determine in advance what career choices students might eventually make. Furthermore, even education about the values of the legal profession to those who ultimately pursue other careers promotes understanding in the wider community of the legal system and the profession, consistently with the Academy's objects.

Against this background, one of the projects which the Academy might consider concerns the ways in which the legal profession, including members of the judiciary, could contribute to the life of the law schools – looking both at the kind of interaction which currently exists at a macro and a micro level, and how that might be improved. A research project of this kind may have the capacity to further a number of the Academy's objects, including promoting legal education, and high standards of ethical conduct and professional responsibility.

CREATION OF GUIDELINES ON ETHICAL AND OTHER MATTERS: THE EXPERIENCE OF THE ADMINISTRATIVE REVIEW COUNCIL

Finally, I wished to say a few words about the work of the Administrative Review Council ("ARC") of which I am currently a member. Although there are many differences between the ARC and the Academy, there are also a number of common features, and some of the projects which the ARC has undertaken may provide a model for projects which the Academy might consider.

The central role of the ARC can perhaps be summarised as maintaining oversight of the federal administrative law system.⁴ One of the most significant features of the ARC, which has enabled it to carry out this function effectively over the past

⁴ The ARC is established by s 48 of the *Administrative Appeals Tribunal Act 1975* (Cth) and its functions are set out in s 51 of that Act.

thirty years, has been its diverse membership. This currently includes the ex-officio members (the President of the AAT, the Commonwealth Ombudsman and the President of the ALRC), the heads of various government departments, and members drawn from academia, the practising profession and commerce.⁵

The ARC has been concerned to promote the underlying values of administrative law, namely, lawfulness, fairness, rationality, transparency and efficiency.⁶ Respect for these values is essential to engendering and maintaining public confidence in administrative decision-making. In practical terms, those values have been promoted by a range of different measures directed at the different players – from the preparation of guidelines for legislators, at one end of the spectrum, to advice on curricula for educating administrative decision-makers and the provision of guidelines for good decision-making, at the other end of the spectrum.⁷

In this regard, time permits me simply to raise the possibility that there may be a value in the Academy conducting projects relevant to its objects of a similar nature. For example, it might be of assistance to provide guidelines on a curriculum for teaching legal ethics. It may also be helpful to provide guidelines on the acceptance and conduct of pro-bono work.

CONCLUSION

I have suggested only three possible avenues of pursuit which the Academy may wish to consider. However, there will, no doubt, be many ways in which the Academy can facilitate interaction between the various parts of the legal community for the improvement of ethical and practising standards, and ultimately for the benefit of the broader Australian community.

⁵ See s 49 and 50 of the *Administrative Appeals Tribunal Act 1975* (Cth) in relation to the composition of the council and qualifications for membership.

⁶ See e.g. ARC, *A Guide to Standards of Conduct for Tribunal Members*, September 2001 at pp. 12-13.

⁷ Since presenting this paper, the ARC published a series of Best Practice Guides for administrative decision-making in August 2007.