A View from the Legal Profession

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The discussion concerning the role and future of paralegal professional workers is an important one for the legal profession. The profound changes which have taken place within the legal profession over the last decade have resulted in a giant stride towards specialisation and economies in the delivery of legal services. These trends have seen areas of expertise and skill in much demand where previously there was little or no such demand at all. The almost complete computerisation of the significant law firms, Land Titles Offices, Corporate Affairs Commissions and other public instrumentalities has seen within the market place an acute shortage of those with significant legal skills able to service these changing requirements. So also has there been a need in libraries, researching and of course litigation support in all its variety. The result, of course, is that in all of those areas where the shortage has been most acute, salaries and wages of those paralegal professionals, certainly in New South Wales, have been very high indeed and in many cases well in excess of salaries paid to lawyers undertaking ordinary legal work.

Also, because of the high rewards of private practice, the Public Service legal departments, the Public Solicitor, the Director of Public Prosecutions and various departments of government such as the Department of Lands have seen the beginning of a most significant trend, the hiring of paralegal staff to undertake much of the work previously undertaken only by lawyers admitted to practice. This policy of hiring of paralegals to undertake such work has resulted, in part, from a drive to reduce costs. Although it may be a matter for separate debate, there is, real doubt about the likelihood of such an objective being achieved or achievable in the medium or long term. This matter will be discussed later in this paper.

The concern by paralegal professionals to achieve recognition, accreditation, and reward is, in part, an explanation for the holding of this conference. For practising lawyers such a study offers a valuable opportunity to examine and understand the rapidly changing face of our own profession.

The Law Society of New South Wales represents a wide variety of legal practitioners from small and large country practices through to the giants of the city. Within the smaller practices the role of the paralegal is familiar and continuing. Whole sections of practice are often effectively managed by paralegal professionals. Conveyancing has long been the subject of claims that lawyer involvement is minimal and in other areas similar assertions continue to be made. Where such work is effectively discharged by paralegal professionals the rewards are high, sometimes very
high. In the larger firms because of the existence of specialised departments, a wide variety of support functions are uniquely available in the interstices of those vast organisations.

**Likely Directions**

The description of the variety of work presently being undertaken by paralegal professionals does not take far any critical assessment of the likely directions for paralegal professionals. Some of these will now be dealt with.

Firstly, the future role of paralegal professionals is most clearly on the agenda in discussions about the future of legal aid and the cost of justice. Although this is but one of the many areas of paralegal professional work it is significant because of the public attention given to it. However, the research and opinion has been noticeably disappointing and not very encouraging. The national Legal Aid Advisory Committee Discussion Paper is one example. The proposals in that paper are so vague as to be unhelpful. Other research looks at the provision of services to the poor and speculates upon the quality of those services if provided by paralegal professionals and often concludes without any specific or even helpful findings. In other words much of the limited literature on the subject is descriptive rather than prescriptive often with the warning that paralegals cannot be seen as a cheap alternative to employing lawyers but rather as an alternative method of service delivery.

Secondly, on the legal aid and cost of justice issue, there can be discerned attempts by authors in the area to apply, with the best intention in the world, the view that paralegal professionals will be an important way of continuing to hold up the flag in the provision of legal services to the poor. But the problem is of another kind and it is a problem which was referred to by Param Cumaraswamy, a past president of the Malaysian Bar Council and reported in the Law Institute Journal:

> There is, today, a growing concern over the deterioration of standards in the profession. It is lacking in commitment and is becoming too commercialised. This is a universal problem. If the situation is not arrested and improvements sought, the profession will become the target of further public criticism thus undermining public confidence in lawyers . . . (Cumaraswamy 1989).

A similar observation was widely reported at the beginning of the law term in New South Wales when the Catholic Auxiliary Bishop of Sydney referred to the dangers of the commercialisation of the profession.

We must not allow the discussion of paralegal professionals to cloud the problem which it is the job of the legal profession to accommodate and resolve.

Thirdly, on occasions the view is advanced that paralegal professionals are better able to deal with clients because they have a down-to-earth training (unlike lawyers) and are more sympathetic and less elitist. Fortunately this uninformed view is not now fashionable but its articulation does a lot of harm to sensible discussion with lawyers and is, of course, a view without any substance.

Fourthly, legal training and accreditation of paralegal professionals is much to be encouraged. But that is not quite how it should be put. Increased legal training and accreditation with specific well-focused courses is an inevitability as the demand for legal services increases and becomes more sophisticated. The demands upon lawyers are also being affected with the availability of much more significant work being undertaken by paralegal professionals. The world of legal education, not only for lawyers but for paralegal professionals will be a vastly different one by the end of this decade. The courses being devised at the University of Newcastle and especially at the
University of Wollongong demonstrate the extent of appreciation of these trends by our academics and educators. Some years ago I had the opportunity to teach a course at the Workers' Education Association, and I was astonished by the interest in a most general course by those in specialised areas. In Sydney, secretarial courses especially for legal secretaries, computer courses especially for law clerks and lawyers, and training in other areas for paralegal professionals is developing more quickly. Although it is true that the legal profession is proving somewhat slow to recognise the vital role of training and accreditation for paralegal professionals, this slowness will be well behind us in just a few years.

Fifthly, the question of accreditation does deserve attention separately from the consideration of education even though, of course, one is dependent upon the other. In certain areas paralegal professionals require a portable designation, not only for reasons of economic opportunity, but also for job and professional satisfaction. Paralegal professionals are not failed lawyers. Paralegal professionals are not generally people who are seeking to become lawyers. Paralegal professionals are not people seeking to usurp the standing or contribution to be made by lawyers. Paralegal professionals are people undertaking certain kinds of work vital to the economic well-being of the legal profession and vital to the effective delivery of legal services. The legal profession should therefore take every opportunity to support efforts being made by those on behalf of paralegal professionals who seek to obtain and develop a professional reputation, standing and respect.

Sixthly, there are many considerations applicable to professionalism of trained lawyers that are not considerations pertaining to paralegal professionals. One can refer to those paramount considerations which secure and preserve the independence of the legal profession; the responsibility to decide upon the qualifications of those who enter the profession, the self-regulating function of the profession and its responsibility for self-discipline. The independence of the legal profession is a fundamental part of the rule of law. But considerations applicable to paralegal professionals are of such a different kind that it is worth remembering, despite the intimate relationship between paralegal professionals and lawyers, the important differences between these professional groups.

Seventhly, in speaking of reduced costs when referring to the introduction of paralegal professionals, where previously lawyers were undertaking work, we may merely be recognising the fact that there is much 'work' which should not be undertaken by trained lawyers from the point of view of cost. It is muddled thinking to assert that paralegal professionals should be undertaking legal work which requires the skill, training, background and value judgments to be made only by lawyers admitted to practise. Such assertions do not aid the argument advanced in support of enhancing the professionalism of paralegal professionals and place the interests of the long-term good of paralegal professionals and the legal profession in an unnatural and misconceived collision course.

Finally, the role of paralegal professionals in attendance upon certain court hearings should continue to be significantly expanded. One of the great problems we have in New South Wales with a divided profession is the tendency of very able solicitors to give barristers much of the court advocacy and advice work. This is caused in part by pressure of practice where there is, given the chance, a preference to undertake a less demanding task such as attending a listing hearing, or call over, or attend upon a simple plea. An expanding role for paralegal professionals in the area of court attendances would provide the means by which a more commercial and efficient service could be provided to the consumer.
Conclusion

We are in an exciting area in the provision of legal services to the public. The changes we are experiencing, some dare to call revolutionary. Whether that description is, or is not, accurate the future of paralegal professionals in the provision of a wide variety of legal services is daily becoming more complex, challenging and rewarding. A conference of this kind where those who have given thought to the future directions of paralegal professional work, in all its variety, is much to be valued.

Reference