

'acceptable, but not entirely satisfied'

Adrian Evans

Client perceptions of Victorian lawyers.

Public attitudes to legal practitioners have been much discussed in the last decade and a popular ongoing debate is focusing on the anecdotal perception that lawyers are rapacious and self-serving, the implication being that they obstruct access to the legal system, and contribute to (a perceived) declining public confidence in the rule of law.

The deductive process inherent in these statements is of course tortuous but to the extent that lawyers are the only significant group who mediate access to justice, an empirical examination of current community perceptions about lawyers can provide some useful starting points in either debunking a myth or redirecting lawyers' energy to improving their standards. The survey described in this article¹ attempts this examination, and, taking into account the climate of public debate and prior research, offers contemporary information on specific complaints about lawyers in the context of overall satisfaction/dissatisfaction with solicitors.

Era of accountability

Landmark reports by the NSW Law Reform Commission in the early 1980s first focused attention on the relationship between solicitors and clients, especially in the area of ethical responsibilities and disciplinary codes. Despite this work, little implementation occurred. Behind the scenes, various law societies here (and overseas) were beginning to take note of a climate of public scepticism towards the legal profession. Private polls² were commissioned by the organised profession to find out what the public thought, although the motivation of the researchers often seemed to be to devise better marketing strategies for law firms. It was not clear in these surveys that defining and improving the standard of performance as such was considered a priority research objective.

Perhaps because the profession had not actually accepted this priority in the 1980s, political activity by a host of organisations and opinion formers resulted in parliamentary and ministerial references to Law Reform Commissions around Australia. Examples are the Victorian Law Reform Commission inquiries into competition and regulation, completed in 1992; the Senate Standing Committee on Legal and Constitutional Affairs (the Cooney Committee inquiry into the 'Cost of Justice' — still in operation); the Trade Practices Commission and finally the Sackville Committee, resulting in its 'Action Plan' submitted to the Federal Attorney-General in June 1994.

In this flurry of scrutiny, it is appropriate to renew the stock of quantifiable information about public perceptions, there being some possibility that opinion leaders in the profession would see such information as valuable in its own right.

The Lay Observer — Victoria

In her 1992 Annual Report, Mrs Jan King, Lay Observer to the Victorian Solicitors Board and Barristers Disciplinary Tribunal, ob-

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served that the reduction of costs and delay inherent in using the justice system was imperative if the profession were to avoid continued exposure to 'individual and collective criticism whether it is justifiable criticism or not'.

The issue of justification is of course the nub of the problem: is the inherent nature of lawyering (as the art of reconciling different viewpoints) such that dissatisfaction is inevitable, or unavoidable, or even a measure of social stability? (The concept of social stability does not appear to have any internationally accepted statistical measure, but it is logical to hypothesise that the utility of intra-national dispute resolution has a connection with social cohesion.) It may be doubted whether criticism can ever be minimised, particularly if the system of justice is becoming one of mounting imperfection! The answer probably lies in the assertion that both systemic barriers and legal attitudes play a part in public disfavour.

The problem of inaccessibility is the major legal professional issue in the wake of the final report of the Trade Practices Commission Inquiry into the Legal Profession (March 1994). The survey contained in this article may contribute to debate in the second more subtle arena of lawyers' attitudes and practices. If lawyers' approaches are better focused as a result of awareness of client perceptions, perhaps there will also be a favourable impact on access to justice. Questions put to respondents concentrated on distinguishing systemic problems from issues arising from particular idiosyncrasies of lawyers.

Comment from the regulators

The Law Institute of Victoria (LIV) has sole responsibility for professional regulation in the State, in common with nearly all Australian States and Territories. Western Australia alone has a system of regulation which is independent of the profession. The LIV is in a position to offer indirect comment on public attitudes to the profession. It has a sophisticated complaints handling mechanism which distinguishes between complaints about costs and other matters in its published reports. The LIV does not, disclose the *frequencies* in particular complaint categories, preferring to reproduce the views of complainants in two areas only: approval or disapproval with the LIV method of complaint handling; and (of more use in the current exercise) satisfaction or otherwise with the final result of the dispute.³ In general terms, those measures show only 10% to 15% of complainants as unhappy with the LIV *process* of dispute resolution and complaint handling, but the position is less encouraging when the *final result* is measured.

The LIV survey method adopts a question sequence which asks complainants if they are:

- Very Satisfied
- Satisfied
- Acceptable but not entirely satisfied
- Not satisfied

with the final result of the dispute. As will be noted, the first two categories provide for clear support with the result, as compared with only one category applicable to clear dissatisfaction with the result. The intermediate category ('Acceptable (Result) But Not Entirely Satisfied') can be interpreted either as support or dismay, depending on the bias of the reader. The survey process would acquire greater integrity if the third category were redefined as 'Uncertain/Not Sure' and the fifth category added as 'Very Dissatisfied'. In conse-

quence, the LIV results provide an indirect if somewhat frosted window through which the observer can see how (complaining) clients view their solicitors' conduct.

Total complaint numbers to the LIV for the period 1991 to 1993 have fluctuated between 3331 (1991), 3422 (1992) and 2948 (1993), the last figure representing a 14% decline from the previous year. The percentage of complainants who experience varying degrees of dissatisfaction with the final result of the Law Institute settlement process (in relation to those complaints, and subject to the criticisms expressed earlier), has averaged 56% of all complaints settled directly by the Institute, and 50% of all complaints settled in the conciliation stage.

It's all in the mind

In the context of the above LIV complaint numbers, one interesting consequence of the general public survey described in this article is the comparison between the total number of complaints and the level of complaint notification to the LIV (see *Figures 20 and 21*). Although the LIV does not claim directly that the slightly lower level of reported complaints in 1993 is due to greater public satisfaction with the profession, the inference is clear. This survey suggests that a significant percentage of those clients who believe they have been ill treated do not follow up with a complaint to the LIV.

Subject to the survey methodology and its limitations, (see boxed section, p62) it can be seen that clients who have actually used solicitors, as opposed to members of the public who have heard of the experiences of others, have surprisingly high levels of satisfaction. Those who were dissatisfied were quite clear about the problems they encountered and conveyed a level of bitterness to telephone interviewers which was intense and appeared long lasting. This intense quality may go some way to explaining the persistence in the community of anecdotal lawyer 'horror stories' and the perennially favourite lawyer jokes.

Results

Degree of client satisfaction

Approximately 80% of randomly selected telephone respondents who used solicitors over the last five years were satisfied with their practitioners (see *Figure 1*).

CLIENT ATTITUDES TO SOLICITORS % of phone respondents - random poll

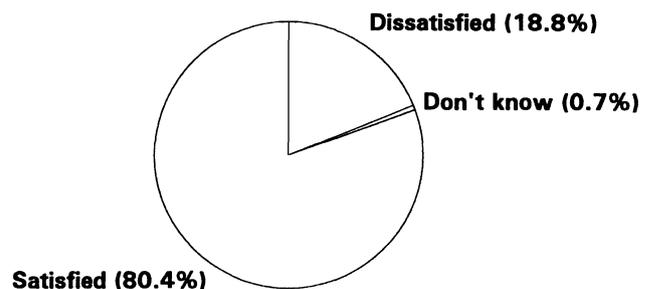


Fig. 1

The central question arising from this result is whether 4 out of 5 is an acceptable level of approval, or 1 out of 5 is too high a level of disapproval? The answer probably depends on personal bias. Although survey limitations must be kept in mind, '4 out of 5' does appear satisfactory when compared

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with the anecdotal reputations of lawyers referred to earlier. On the other hand, if one considers the high number of legal transactions in Victoria and relate this to 1:5 dissatisfaction levels, a more sceptical view of solicitors' performance re-emerges. *Figure 2* identifies the most significant problems for the 19% of respondents who were unhappy or dissatisfied with their solicitors.

REASONS FOR CLIENT DISSATISFACTION
1993 Survey -- Victoria

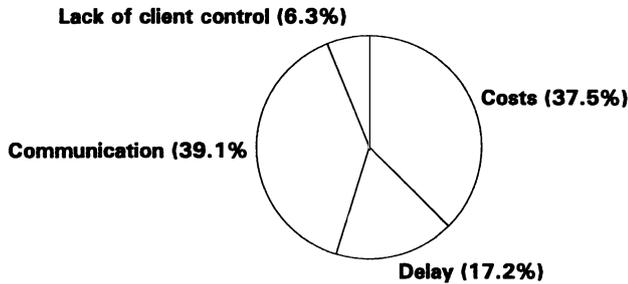


Fig. 2

Characteristics of respondents to questionnaire

Respondents to the written questionnaire (as distinct from the random telephone poll) were classified by broad criteria such as age, occupation and so on, and then asked detailed questions about their relationships with their solicitors. *Figures 3-6* offer a snapshot of this group and their perceptions.

RESPONDENTS -- AGE GROUP

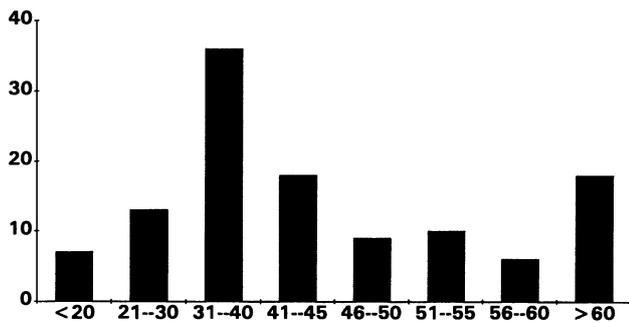


Fig. 3

Most respondents were in the 31-40 age group, suggesting that the years 31-45 cover the years when most legal services are contracted. Most respondents came from metropolitan Melbourne, but reasonable representation from rural Victoria was also evident.

RESPONDENTS--OCCUPATIONS

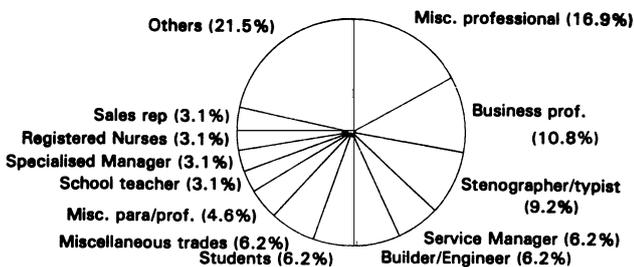


Fig. 4

RESPONDENTS-ORIGIN

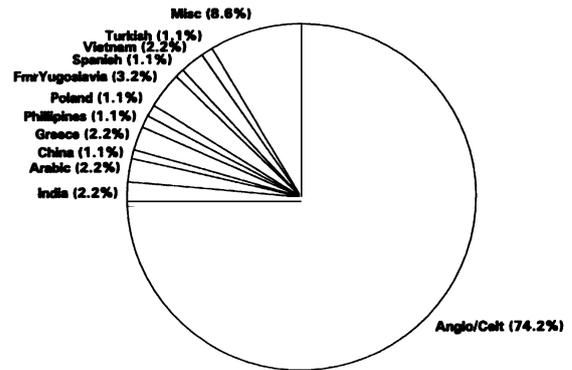


Fig. 5

TYPES OF LEGAL PRACTICE
Sources of respondents to Survey

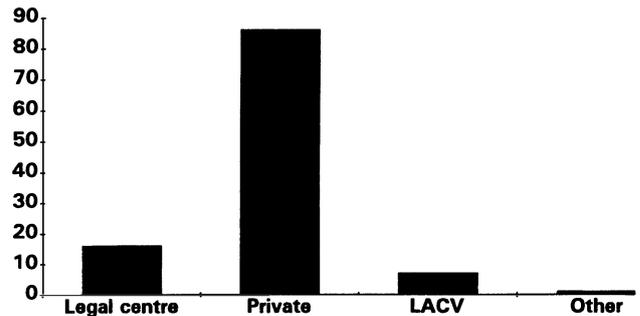


Fig. 6

Respondents covered a wide range of business, professional, trade and non-employed sectors and were predominantly of English-speaking background, with the highest single category composed of miscellaneous professions. They were the clients of both public and private providers of legal services.

TYPE OF LEGAL PROBLEM

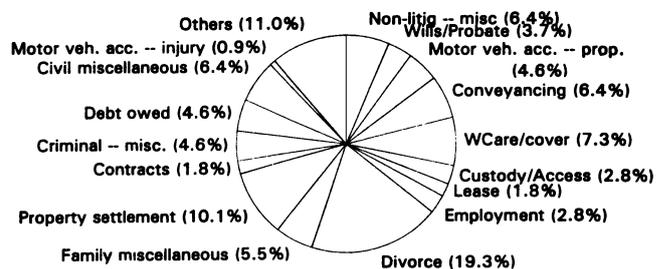


Fig. 7

Considerable diversity of problem types was evident, with highest frequencies recorded in family law (particularly divorce), conveyancing, workers compensation and miscellaneous civil disputes (see *Figure 7*).

Detailed perceptions of clients

Over one-third of respondents had between \$100,000 and \$500,000 at stake in the legal problem for which they had sought assistance, with dollar amounts fairly evenly represented (see *Figure 8*).

With the random telephone poll it was not practical to differentiate the related but separate issues of problem outcome and satisfaction levels. This analysis was possible in the detailed questionnaire phase, and provides some support for the view — illustrated in a comparison of *Figures 9 and*

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10 — that these respondents were giving adequate consideration to their answers to the questionnaire.

DOLLARS AT STAKE IN LEGAL PROBLEM

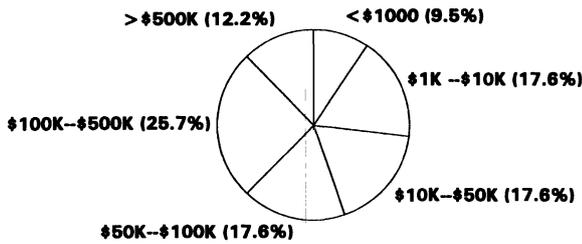


Fig. 8

OUTCOME OF LEGAL PROBLEM
Favourable to respondent?

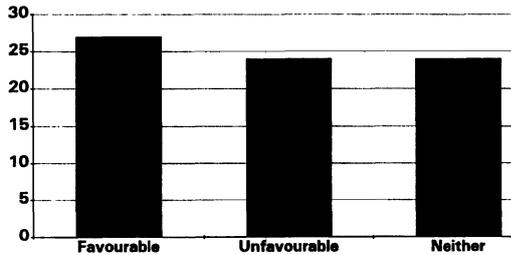


Fig. 9

SATISFACTION WITH OUTCOME
Variation in respondent's views

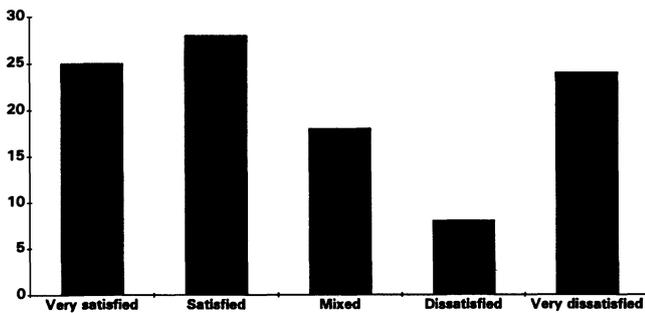


Fig. 10

Respondents were almost identically balanced in their attitudes to the *outcome* of their legal problem, in that they felt the *result* was favourable, unfavourable or neither in equal proportion; however their levels of *satisfaction* were more polarised, with larger numbers being more satisfied with the result than not. This comparison suggests that respondents differentiated to some extent between the outcome (objective viewpoint) and their satisfaction (subjective viewpoint) and may have recognised that the latter question (which appeared later in the questionnaire) reflected their more fundamental viewpoint.

The higher level of *satisfaction* is consistent with the results of the telephone survey of community satisfaction/dissatisfaction with practitioners (see *Figure 1*).

Fees charged by solicitors to respondents of the survey were primarily under \$5000 with the bulk between \$1000 and \$5000; but respondents were fairly clear that those fees were expensive (see *Figures 11 and 12*). When this is compared with satisfaction levels, it seems that expense may not be the

prime factor in measuring client acceptance of particular practitioners' services.

COSTS CHARGED FOR LEGAL MATTER

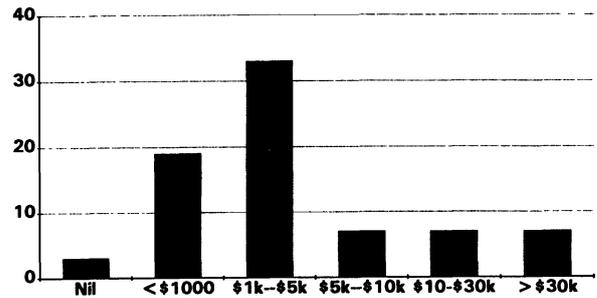


Fig. 11

WERE COSTS CHARGED EXPENSIVE?
Range of client's views

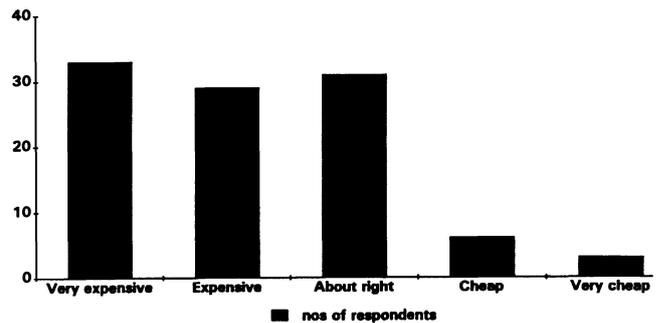


Fig. 12

WERE COSTS CHARGED EXPENSIVE?
Range of client's views

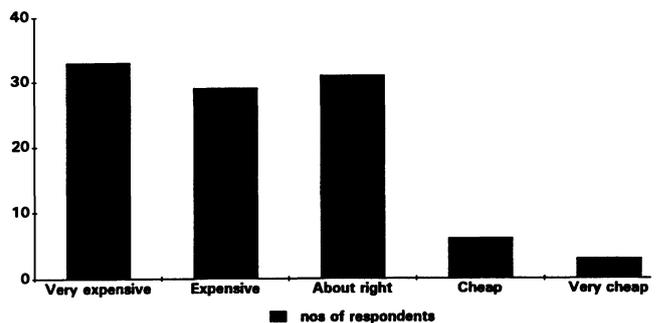


Fig. 13

WERE COSTS CHARGED EXPENSIVE?
Range of client's views

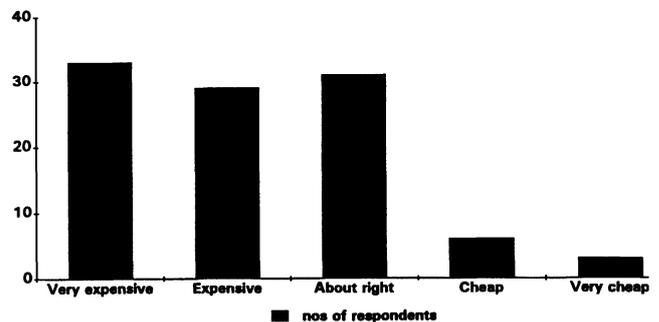


Fig. 14

'ACCEPTABLE, BUT NOT ENTIRELY SATISFIED'

DID ESTIMATE MATCH REALITY?
Respondents' experience

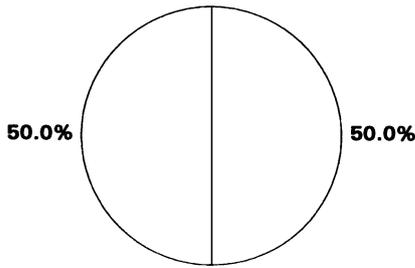


Fig. 15

More than half of accounts received were itemised, although it seems clear that the practice of delivering lump sum accounts (to 45% of respondents), where the client is unable to determine what service costs what, remains well entrenched (see Figure 13). Similarly, 66% of respondents indicated that they had not received an estimate of costs before their matter proceeded (see Figure 14). For those who did receive an estimate, about half subsequently considered that it compared favourably with the actual account (Figure 15)

The series of results has serious implications for the efforts of regulators to reduce the 'dissatisfaction rate'. A disciplinary rule of the LIV has, since 1989, compelled solicitors to provide *written* estimates of costs to clients 'as soon as practicable after first taking instructions' (Rule 12 Solicitors (Professional Conduct and Practice) Rules 1984). The rule appears to be honoured in the breach and, considering the high level of incidence of complaints about costs in the overall complaint profile (see Figure 2), the relatively low level of compliance may be considered a central cause of client dissatisfaction.

SPEED OF SOLICITOR ACTION:
Returning phone calls

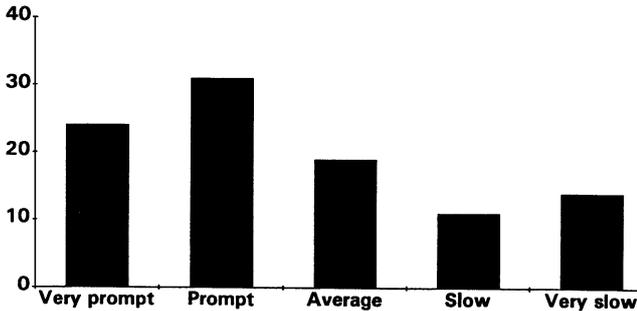


Fig. 16

QUALITY OF SOLICITOR ATTENTION:
Listening ability?

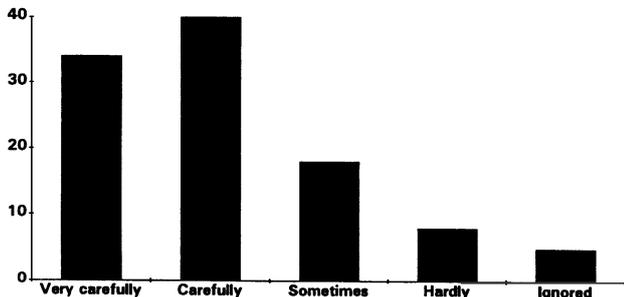


Fig. 17

QUALITY OF SOLICITOR ATTENTION
Use of incomprehensible words

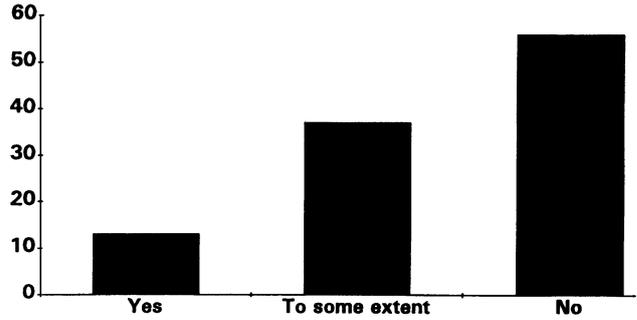


Fig. 18

A variety of measures of solicitor efficiency were queried — including promptness in returning phone calls, sending correspondence, advice as to negotiations and court dates. The chart for telephone call response times is representative of client views (see Figure 16). Similarly, respondents were generally impressed by the quality of practitioners' ability to listen attentively and did not consider that jargon was an enormous problem in communicating with their solicitor (see Figures 17 and 18).

Not surprisingly, most respondents observed even better efficiency in the receipt of their solicitor's accounts (see Figure 19).

SPEED OF SOLICITOR ACTION:
Sending accounts to clients

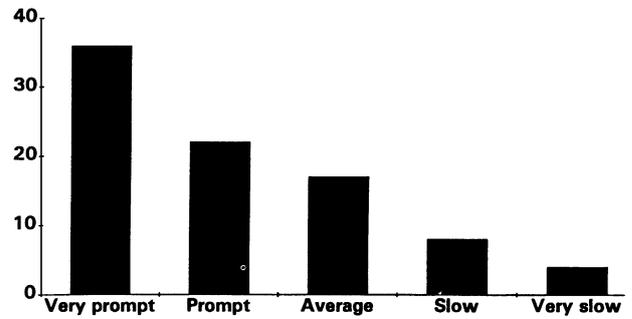


Fig. 19

For those respondents who were dissatisfied with their solicitors (19%), less than 30% lodged a formal complaint with the Law Institute of Victoria (see Figure 20); and for those who did not lodge a complaint, the majority (nearly 60%) appear to have had negative reasons for desisting (see Figure 20).

WAS COMPLAINT FILED WITH LIV?
(When client not satisfied)

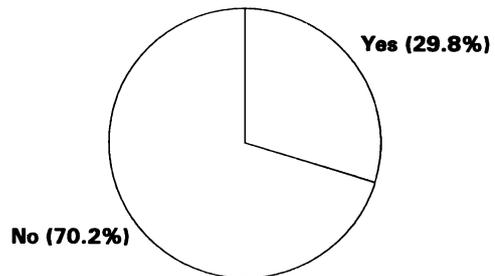


Fig. 20

It has less than heartening to observe that total complaint numbers to the LIV (2948 in 1993) may represent only 30%

of the total picture, and that only 40% of the unreported complaints could be considered as satisfactorily resolved. A critical but unresolved issue arising from these questions is the extent to which unreported dissatisfaction allows systemic problems (such as the failure to provide cost estimates) to remain hidden from the regulatory gaze of the LIV and the Attorney-General.

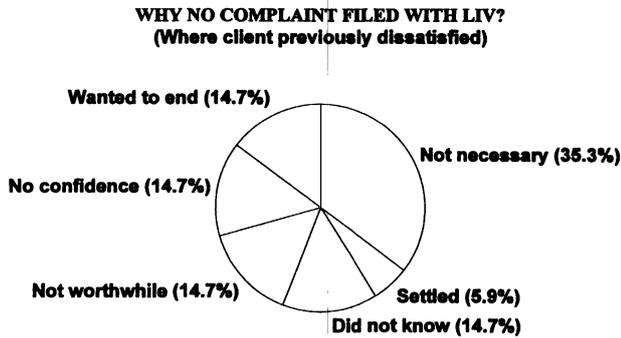


Fig. 21

Conclusion

A high percentage of respondents were reasonably well satisfied with Victorian solicitors, although they considered:

- fees to be expensive despite relatively high monetary values in the relevant matters;
- the outcome of their legal problem is/was not necessarily favourable to themselves.

They were, presumably, unperturbed by their own observations that:

- many accounts (45%) were not itemised;
- advance estimates of costs were not usual practice; and
- half the estimates provided were considered to be inaccurate.

Solicitors were perceived, in general terms, to provide an efficient service with good response times. Among those who were not satisfied with their practitioners (19%) the major problems were definitely in the area of communication and the level of costs, and many (70%) have not lodged a complaint with the Law Institute of Victoria, for a variety of uninspiring reasons.

A tentative conclusion may well be that respondents to the telephone survey were more or less satisfied with their practitioners because of relatively good standards of service. As these respondents were randomly selected, Victorian clients would appear to be on the whole, more satisfied with their solicitors than anecdotal reports suggest. The qualifications to the statement developed in this article do not, on balance, allow any complacency. The Attorney-General has announced a review of legal professional regulation⁴ which contemplates the effective end of self-regulation in Victoria. If the profession is to retain a useful role in the face of the Attorney's proposals, it will need to address the causes of the 'dissatisfaction rate' creatively rather than rely on an apparently favourable 'satisfaction rate'.

References

1. Survey undertaken under an Australian Research Council Small Grant, Monash University, 1993.

2. *Attitudes to the Legal Profession in Victoria*, March 1982, Reark Research Pty Ltd; *The Public Image and Standing of the Legal Profession in Victoria*, A research proposal on the current situation and guidelines for the development of a marketing strategy, February 1987, H.J Campbell Pretty & Assoc; *Polls of the Profession and Public — Summary*, August 1987, Uniting Building Society, New Zealand; Jenkins, J., Skondaki, E. and Willis, C.F., *Public Use and Perception of Solicitors Services*, 1989, Law Society of England & Wales/Research and Policy Planning Unit; *The General Public's Perception of the Standing of Solicitors in New South Wales*, December 1989, Roy Morgan Research Center Pty Ltd.

3. Survey of Attitudes to Dispute Handling System for Solicitors, Professional Standards Department Half Yearly Report, Law Institute of Victoria.

4. 'Reforming the Legal Profession: An Agenda for Change', Attorney-General's Discussion Paper, June 1994. The Attorney has stated that too many complainants (obviously part of the 20% dissatisfied) are badgering her office and staff with demands for reform.

ABOUT THE SURVEY

A pilot survey of 20 respondents was conducted to refine a detailed questionnaire designed to identify problem categories experienced by clients already known to the researcher. Two more survey versions were trialed within the pilot group to eliminate as many ambiguities as possible in the questions.

A final questionnaire was despatched to approximately 600 potential respondents throughout Victoria co-operating private practitioners, companies, Legal Aid Commission regional offices, community legal centres and various professional organisations. It was not possible to approach most respondents directly or to follow up any lack of response directly because of client confidentiality. However, most intermediaries were of considerable assistance and their attitudes were positive. This part of the survey did not measure the number of problems, but their nature, for example costs, delay or other difficulty. It was considered reasonable survey practice to define problem types by sampling small sub-sets or cells of different groups of legal consumers. Providing a reasonable number of respondents can be located within each cell — for example, poverty law clients, company managers, middle class professionals — the total number of respondents may be considered representative of the issues, although not of the overall frequency of occurrence. In fact, 110 responses were received to this part of the survey and all were coded and differentiated using the SPSS analytical package running on digital VAX machines.

Contemporaneously, selection of random telephone numbers was begun and short telephone interviews conducted to measure the extent of satisfaction/dissatisfaction. Two questions were asked:

1. Have you used the services of a solicitor in the last 5 years?

Yes / No

2. If yes, were you generally satisfied or dissatisfied with the solicitor?

Satisfied / Dissatisfied

Some 276 respondents had used the services of a solicitor within the relevant 5-year period and, accordingly were able to respond to Question 2.

Ethical restrictions prevented the researchers from direct contact with most respondents to the written questionnaire because many were only accessible via the co-operation of participating private practitioners, regional offices of the Legal Aid Commission of Victoria or community legal centres. Follow-up to request questionnaire return was possible only through the relevant professionals. This factor undoubtedly explains much of the response rate of 1 in 6. However, the spread of responses in terms of occupation groups and geographical location was considered sufficient to measure problem types adequately. Within the telephone survey, cost constraints meant that an English language interview only was possible and that was also confined to the 03 STD area code. To that extent, the survey results can be considered representative on the broad frequency issue only for urban Victorians of predominantly English-speaking background.