

# To be or not to be

The Leopard told Tancredi, "If we want everything to remain as it is, it will be necessary for everything to change". The legal profession has always had an antipathy to change. The success of our advice and the adherence to precedent has usually been based on the lack of it.

One belief that has survived at least two millennia is that the practice of law has a special place in society which sets it apart from other professions. That is not surprising as the belief has almost exclusively been held by lawyers. Does it have any merit? So far it has been a huge commercial success. Until recently the legal profession had cornered the market in matters of money concerning death and property. For many centuries those were the only two things worth fighting about in a courtroom. The proliferation of rights and obligations that have been recognised in the wake of successful liberal democracies, has expanded the variety of people and interests seeking resolution in the courtroom. In the late twentieth century that expansion was met with corresponding efforts to reduce the role of lawyers.

As the fireworks exploded overhead and you scrabbled around in the esky in a desperate search for the corkscrew, I dare say you did not give any thought to the question that the new millennium has thrust upon us, namely, "What is a lawyer?". Who would? Apart from the inanity of thinking about such a thing on New Years eve, the answer is blindingly simple. Look up a dictionary. However things have gone a little further than that as we are a profession in the midst of having to answer that question for ourselves.

The role of the legal profession in society has always been controversial. Most people don't like lawyers unless they need one. Most people in conflict with authority insist that it is their inalienable right to consult one. Sometimes a lawyer, attempting to defend lawyers may be heard to refer to the "Great Common Law Tradition" as if somehow that explains and justifies the pre-eminence of the profession. The truth is that the history of the law is littered with corrupt or incompetent judges, shysters and drunken benchers and reads more like the "Canterbury Tales" or "Tom Jones"

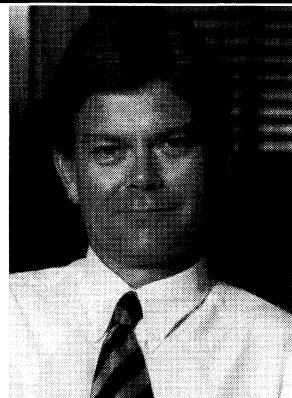
than the development of a distinguished vocation. Even surrounded by historical debris of a highly embarrassing, though fascinating, nature, the legal profession can turn to the observance of a code of conduct as defining its difference from the secular trades around it. Of course things have been very mixed up with theism for the last two thousand years but the idea of a code of conduct goes back much further.

The belief that lawyers were required to maintain an appropriate standard of etiquette in order that the justice system could function properly began to emerge in the time of Cicero. Then it was regarded as appropriate that key witnesses were rehearsed before giving evidence but it was a professional offence to plant one's own witness amongst those of one's own opponent. One of the best advocates of Rome, Valerius Licinianus was exiled to Sicily for professional misconduct. His crime was the violation of a vestal virgin. He was not the only luminary to fall foul of the dictates of his own profession. Down through the ages lawyers have been harshly dealing with their own kind if they step out of line.

In 1861 Edwin James QC became the first senior counsel to be disbarred "and have his name struck off the books of the Society of the Inner Temple". One of the offences committed by James was the acceptance of a bribe to go easy in the cross-examination of an important witness. James went to the United States and conducted lectures on the subject of Garibaldi.

The code of conduct or professional etiquette, as it was once known, and the manner of its enforcement has very much determined the development of legal practice and public confidence in the independence of the profession.

As the twentieth century rolled over we have been busy trying to determine how the acceptance of the Multi Disciplinary Practice and the travelling practising certificate are likely to alter the shape of the legal profession. In some quarters there is a concern that these new ideas, which are in their final stages of implementation (the Draft Bill for the National Legal Services



**President, Jon Tippett**

Market will be introduced into the Legislative Assembly in the February sittings), will bring with them a malediction to the profession here in the form of huge legal corporations that have hitherto been southern based. The assumption being that the local profession will be obliterated. My response is they are already here. The sense in national arrangements for our profession has been self evident for decades. The problem now is how to ensure that the professionals working within this new structure are lawyers and not some hybrid entity that begins life with a law degree and slowly evolves into a legal executive complete with carpet bag, laptop and accompanying legal witticisms.

The answer will be found as it has always been in the manner in which the legal profession deals with its own. The blue print for that is to be found in the National Code of Conduct to be administered by the Law Society of each state and Territory. However there is little point in adopting a restructured code of conduct unless a complaints procedure is in place that can efficiently administer it.

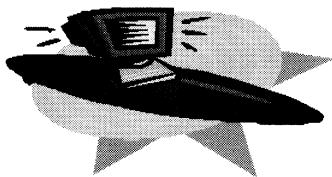
Many of you will be aware that the provisions of the *Legal Practitioners Act* as they relate to the system of dealing with complaints needed a considerable overhaul. Steps towards that end are well advanced and I expect that suggested amendments to the Act will be before the Attorney-General within the next few months.

Shortly the Council will be considering the status of the professional conduct rules to be the subject of the new legislation. As presently drafted the amending Act contemplates that the professional conduct rules will have regulatory status under

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# Cyberlex

by Jason Schoolmeester



I thought I might start this year off with a collection of useful or interesting web sites. These have been compiled from a variety of lists, indexes, awareness emails and the like.

**Centre for Corporate Law and Securities Regulation and the Faculty of Law at The University of Melbourne:**

<http://cclsr.law.unimelb.edu.au/index.html>

This is a must for those with a keen interest in corporate law and securities. The site boasts a collection of corporate law judgments and a complete archive of the Corporate Law Bulletin. The Bulletin is distributed by email and subscription is free. Both the Bulletin and the judgments have search facilities. The site is supported by State Supreme Courts and the Federal Court as well as some notable law firms, namely Blake Dawson Waldron, Clayton Utz, Gilbert & Tobin, Mallesons Stephen Jaques, Phillips Fox.

**Parliamentary Handbook of the Commonwealth of Australia (1999)**  
<http://www.aph.gov.au/library/handbook/index.htm>

Everything you need to know ranging from biographical information on parliamentary members, committees and office holders, Referendums to statistical information on the make up of parliament.

**Fast Company**  
<http://www.fastcompany.com/homepage/>

A new discovery for me, but I have flagged it for regular visits. An online magazine full of interviews, case studies and articles about new and innovative techniques and the companies that are creating them.

## Indigenous Law Bulletin

<http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/ilb/>

Operating since 1981 this Bulletin has provided research and reporting on the relationship between Indigenous people and the law. Now there are selected issues on the internet from the years 1995 and 1996.

## The Death Clock

<http://www.deathclock.com/>

Ever wondered when your time will come? For the morbidly curious, the Death Clock, will make a prediction.

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the Act. That is presently the case in a number of jurisdictions. In New South Wales, for example, only the Law Society may draft professional conduct rules and unless vetoed by the Attorney-General they acquire legislative effect.

The importance of a well regulated profession is critical to the meaning and relevance of legal practice beyond this cycle of change. The new legislation will enshrine the understanding that legal practitioners are officers of the court and as such are subject to the inherent jurisdiction of the court. Parochialism should never have a place in determining the essential principles that shape and guide the practice of law. A code of conduct that ensures and facilitates the lawyer's duty, amongst many others, to stand be-

tween the individual and the state is a practical tool of inquiry and the embodiment of a commitment to liberty. A lawyer is an individual who shares that code. The rest is business.

Unfortunately codes don't of themselves instill or maintain either idealism or enthusiasm. That is where the complaints procedure of which I have already spoken comes in. The only way to maintain a standard is to ensure that as far as possible people who fall within the definition of legal practitioner adhere to it. The public must know that complaints are attended to swiftly and efficiently. We offer the public trust and honesty as part of the service. There can be no quarter if it is not given. Perhaps it is time to consider whether to publish the names of offenders and the nature of each offence in this magazine. Certainly as soon as the present structural changes have taken place figures relating to breaches of the professional conduct rules should become readily available.

The changes that are taking place in our profession should have the effect of not only causing us to look outward, but also, to take a good long look at who and what we are. They should cause us to focus on what over many centuries has really made us different from other professions and to value that difference as a strength to be perpetuated.

The Leopard was right. In order to retain an independent profession cradled in the precepts that we revere we have to change and in doing so preserve them. Of course when the Sicilian nobleman said those words he had in mind the impending arrival of Garibaldi.

This legal year looks pretty interesting already. The InformationTechnology committee has only been in operation for about three months but already a web site is under construction. Preparation for law week is underway and interesting ideas are being thrown about. If you have anything to contribute send an email to Sam Kilvert. If you have any gripes about what is taking place or what you believe is taking place in the Society do the same, perhaps we will publish a few. Break from tradition. Give a damn. Welcome to 2000. I hope it is a big year for everyone.