

LEGAL ETHICS: NAVIGATING THE DAILY MINEFIELDS

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Address To Law Students

in

The Legal Theory And Ethics Course

at

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According to the Shorter Oxford English Dictionary, the word 'ethic' derives from the Greek, and relevantly refers to:

the moral principles or system of a particular leader or school of thought;
the moral principles by which any particular person is guided; the rules of conduct recognised in a particular profession or area of human life.

A study of legal ethics, or ethical principles, arises in the context of your legal studies and perhaps intended entry into the legal profession in due course.

There has been a modern recognition of the fundamental importance of ethical conduct in the practice of law. Hardly a week or month goes by where there is not a reference to some aspect of ethics relevant to an aspect of legal practice. So, for instance, in the current issue of the Law Society's monthly magazine 'Brief', August 2015, there is a comprehensive article concerning the ethical and legal obligations in mediations and other negotiations by Stephen Standing: see pages 21 to 26 of the 'Brief' magazine.

The requirements for entry into the legal profession in Western Australia are governed by the *Legal Profession Act 2008* (WA). In order to be admitted to practice it is necessary to demonstrate that a number of pre-requisite requirements have been met. The completion of legal studies is only one aspect of those requirements. It is fundamentally necessary to demonstrate that the candidate is a 'fit and proper person' to be admitted as a legal practitioner. This must be demonstrated to the satisfaction of the Legal Practice Board of Western

Australia and then to the paramount admitting authority, the Supreme Court of Western Australia: see sections 26(1)(a)(ii), 30(b)(ii) and 31(1)(a)(ii). The meaning of 'fit and proper person' is not defined in the *Legal Profession Act*. Its meaning is left to a vast body of common law.

Once admitted to the roll of legal practitioners there is more to be done in order to lawfully practise law. It is necessary for the legal practitioner to obtain an annual practice certificate and keep that practice certificate current. Failure to do that is an offence: see section 5(2), section 12 and section 37 of the *Legal Profession Act 2008*. In order to keep current an annual practice certificate, annual minimum legal education requirements need to be met by the practitioner each year. One of the fields of study to be completed each year is in the field of legal ethics. It is such a broad topic that it extends its reach to all areas of legal practice.

As a part of the annual continuing legal education requirements, each year there needs to be completed an aspect of study undertaken in relation to a field of legal ethics. There is no shortage of opportunities to participate in programmes conducted by continuing legal education providers throughout Western Australia, including by the Law Society of Western Australia and from other private recognised education providers, to enable your compliance with those minimum annual continuing education conditions.

So life in the legal profession is part of a lifetime of education.

My introductory point is that the ongoing study of legal ethics is likely to be a necessary feature of your continuing education for those who enter and remain in legal practice in Australia for the whole period of your professional lives.

Unique aspects of life as a legal practitioner

In my 2012, Australian Bar Review published article 'Between The Devil And The Deep Blue Sea: Conflict Between Duty To The Client And Duty

To The Court' (vol 35, 3 Australian Bar Review, page 252), I discuss one aspect of the somewhat unique responsibilities of a legal practitioner. That was concerning a practitioner's paramount duty to the Court over that of the practitioner's duty to the client. That obligation is seen enshrined under the *Legal Profession Conduct Rules 2010* (WA), made pursuant to the *Legal Profession Act*: see rule 5 of the *Conduct Rules*. It is found at Part 2 under the heading 'Fundamental Duties Of Practitioners'. It may be contrasted with rule 6 concerning clients and others, which follows. I will set them both out:

Part 2

Fundamental Duties of Practitioners

5. Paramount duty to Court and administration of justice

A practitioner's duty to the Court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty, including but not limited to a duty owed to a client of the practitioner.

6. Other fundamental ethical obligations

- (1) A practitioner must -
 - (a) act in the best interests of a client in a matter where the practitioner acts for the client; and
 - (b) be honest and courteous in all dealings with clients, other practitioners and other persons involved in a matter where the practitioner acts for the client; and
 - (c) deliver legal services competently and diligently; and
 - (d) avoid any compromise to the practitioner's integrity and professional independence; and
- (3) comply with these rules and the law.
- (2) A practitioner must not engage in conduct, in the course of providing legal services or otherwise, which -
 - (a) demonstrates that the practitioner is not a fit and proper person to practise law; or

- (b) may be prejudicial to, or diminish public confidence in, the administration of justice; or
- (c) may bring the profession into disrepute.

The position of a legal practitioner (barrister or solicitor) is therefore wholly unique among other professionals. This was recognised by Justice McHugh in the High Court in *D'Orta-Ekenaike v Victoria Legal Aid* [2005] HCA 12; (2005) 223 CLR 1, [111] - [113], which I refer to in the 'Deep Blue Sea' article at page 257. In short, his Honour said:

Thus, in many situations arising in the conduct of litigation, the common law requires an advocate to act contrary to the interests of his or her client. I doubt if there is any other profession where the common law requires a member of another profession to act contrary to the interests of that person's client ... [t]his factor alone is probably sufficient to preclude reasoning by analogy from the liability of other professions and occupations for negligent conduct.

Fundamentals of the job

Legal ethics are indispensable to navigating the daily challenges of legal practice. But any attempt at a comprehensive written codification is likely to fail. Real ethical problems are invariably subtle. Few legal practitioners are likely to be troubled by the question of whether or not it is permissible to steal moneys from a client's trust account. Anyone troubled by the negative answer to that question does not have a future anywhere - let alone in the law.

The ethical problems that emerge in legal practice are usually more nuanced.

What I propose to do in this paper is to briefly examine the underlying factual scenarios in three different classes of case - which I will briefly discuss - where legal practitioners have struck troubled waters.

Towards that analysis, it may nevertheless be helpful to keep the following five fundamental aspects of legal practice in mind:

- (a) As already mentioned, the legal practitioner owes their paramount duty to the Court. Where that duty conflicts with the interests of the client,

then it is clear that those client interests are always secondary considerations. That, of course, does not lessen the importance of the responsibilities to a client.

- (b) At base the legal practitioner/client relationship is almost always contractual. The legal practitioner will owe the client a duty of reasonable care to exhibit proper levels of skill and competence in discharging their duties. But beyond the contractual relationship there is a lot more. As you would know, the solicitor/client relationship is fiduciary in character. The legal practitioner owes obligations of loyalty and fidelity to the client. The interests of the client always come before those of the lawyer. The confidential legal professional privilege that is enjoyed by the client over legal advice in the relationship can only be waived by the client, never by the lawyer. Conflicts of interest, even potential, must be avoided. Full and frank disclosures must be made in appropriate circumstances to the client of any factors that could detract from the lawyer acting 100% in the client's interests. I could also add in this area the duty imposed by statute - not to engage in misleading or deceptive conduct in trade or commerce. Any failure to respect these responsibilities is likely to be viewed seriously by the regulatory authorities of the legal profession and by the Court.
- (c) A third feature I mention could be bracketed with the second as regards client duties and responsibilities - but it is so fundamental I have separated it out for a special mention. It is the duty of confidentiality which you owe to keep from disclosure the information given to you by a client as well as your advice to the client. This duty of confidence is wider than just catching the privileged legal advice you give. It covers all of what you learn in the lawyer/client relationship, save for what is in the public domain. Respecting this duty of confidence to your client will

inevitably render you a boring person - in terms of what you can tell friends about your professional day at the office. The truth is not that much. In these days of social media addiction, it will be a challenge to many to respect this duty of client confidentiality.

- (d) Nevertheless, it would be naïve to suggest that the practice of law is not implemented otherwise than in accordance with sound business practices. Lawyers are permitted to charge for their services. Clients are expected to pay, generally speaking. There is a measure of regulation in that respect but, subject to those constraints, market forces prevail. Some legal practices are incorporated. This is permitted by the *Legal Profession Act*. Some legal practices are even listed on Stock Exchanges for the purpose of inviting subscriptions of share capital from the investing public. There is an industry built around providing litigation funding to plaintiffs for the pursuit of actions to trial, with a share of any success proceeds being enjoyed by the litigation funder. Balancing these mercantile interests against the earlier mentioned obligations will present the legal practitioner with daily challenges. In that environment, the knowledge and application of sound ethical principles is indispensable to professional survival.
- (e) As a legal practitioner, you are privileged to be admitted to a highly trusted and respected position in one of the ancient learned professions. To protect the community, only persons of good character will be accepted to daily legal practice. The privilege of admission to practice also carries with it wider responsibilities for the maintenance, education and good standing of the legal profession itself, the welfare of fellow professionals and to the wider community. Those features and obligations serve to distinguish a learned profession from a commercial business.

I now wish to examine the facts of three sets of cases to consider what they display about a legal practitioner's ethical implications, in a more pragmatic than theoretical context.

Three scenarios

Case study A

The first case study concerns the State Administrative Tribunal of Western Australia's recent determination and orders, made in respect of a Legal Profession Complaints Committee of Western Australia (LPCC) complaint concerning the practitioner Mr M, VR 112-215.

The complaint was resolved by a settlement, on the basis that the practitioner accepted he had transgressed by acts of professional misconduct concerning conduct involving his girlfriend/fiancée/wife - Ms T, who had become a legal practitioner at a different firm.

Mr M in the end, accepted a penalty of a four-month suspension of his annual practising certificate and he agreed to pay the LPCC's costs of bringing the complaint, fixed in the amount of \$12,000. As the matter was effectively settled, there are no published reasons of the SAT panel comprising President Curthoys and Senior Member Spillane and Member O'Connor.

From an ethical viewpoint, the underlying facts are almost bizarre. The practitioner was a senior associate at the material times employed by his law firm, A. His girlfriend/fiancée/wife was employed at another Perth commercial law firm, D.

Whilst they were engaged at separate commercial law firms in Perth, Ms T often sent the practitioner email requests for assistance with her legal tasks at her firm. She would send him copies of correspondence and other documents, thereby disclosing information that was highly confidential within Ms T's firm concerning its clients, or was even the subject of legal professional privilege as advice given in favour of the clients of Ms T's firm. The practitioner was aware

of the ongoing disclosures being made to him of confidential or privileged information by his girlfriend.

For the purposes of assisting her with her requests, the practitioner would often send her copies of correspondence and documents that disclosed information confidential within his firm, or to its clients being the subject of legal professional privilege in favour of the clients of law firm A. As part of the private assistance which he rendered Ms T in response to her requests he:

- (a) drafted or settled her correspondence;
 - (ii) drafted, or procured others to draft, research memoranda;
 - (iii) drafted, or settled, her pleadings, affidavits or other court documents
- and did so in the knowledge that Ms T would represent to her firm that the material which she had received back from Mr M and others at law firm A, was her own work.

In the course of providing assistance he would also routinely provide Ms T with:

- (i) precedents;
- (ii) internal legal research memoranda; and
- (iii) professional development documents

which were all the property of law firm A and provided without the permission of anyone at law firm A in this conduct.

Mr M also from time to time provided Ms T with:

- (i) copies of journal articles;
- (ii) copies of reported and unreported cases; and
- (iii) copies of statutes

when he knew this was unauthorised.

Further acts of professional misconduct which were admitted included having other employees of law firm A, such as seasonal clerks, graduate lawyers, and other legal practitioners undertake legal work for the benefit of

Ms T, including the undertaking of research and the provision of written advice. All this happened without the knowledge of anyone at law firm A.

On occasion, misrepresentations were made to employees of law firm A about the purpose of legal work that was being undertaken when it was, in fact, for the purpose of being provided to Ms T. Employees of law firm A were told (falsely) by the practitioner that:

- (i) the work they were doing was for a prospective client of the practitioner's firm; or
- (ii) the legal work they were doing was a pro bono matter being conducted by law firm A; or
- (iii) that a matter number would be provided at a later time for the recording of time spent undertaking the legal work commissioned at law firm A by Mr M.

That was all false. A moment's pause would surely recognise the deceitfulness of this conduct.

Further, professional misconduct included providing property of law firm A to Ms T, including items of stationery, work trays, a magazine holder, pen holder, assorted bulldog clips, a single hole punch, coloured post-it notes, a card holder, an eraser and pens.

From time to time the practitioner also utilised the printing and other facilities of his law firm A without its knowledge or permission in order to:

- (i) print copies of legislation for Ms T;
- (ii) print copies of cases, journals or other legal documents for Ms T;
- (iii) print personal documents for Ms T such as travel itineraries and, bizarrely, even their engagement invitations.

One of the more extraordinary acts by the practitioner was his utilisation of the firm's facilities without permission to 'post out the engagement party

invitations utilising the practitioner's firm mail system and facilities such that the practitioner's firm paid for the postage in respect of the invitations'.

Yet a further ground of professional misconduct concerned a scenario where law firm A and Ms T's firm were on opposing sides of District Court litigation.

In the course of that aspect of professional misconduct the practitioner had actually settled a letter of advice for Ms T which was intended to be sent out to her client, the plaintiff, in respect of those proceedings. This was in circumstances where law firm A acted for the defendant.

Later, during the development of that action, Mr M sent Ms T by email a copy of a letter of an offer of compromise in respect of the proceedings.

Analysis

The underlying facts are unusual, indeed bizarre. This was no 'Adam's Rib' situation - referring to the 1949 Spencer Tracey and Katharine Hepburn classic film.

The present facts display, very tragically, in my view, a basal violation of numerous professional conduct obligations that ought to have been blindingly obvious to a clear-headed, right-thinking legal practitioner. Vital considerations such as client confidentiality, conflict of interest, basic truthfulness and honest dealing, all seem to have been ignored.

In the end, this legal practitioner was fortunate to have only received a four-month suspension of his practice certificate. He is under the care of a clinical psychologist, deeply remorseful about and very ashamed of his conduct. His employment future is now uncertain. This is tragic. Nothing has emerged to date concerning a penalty, if any, administered to his girlfriend/wife.

Perhaps the excuse was that the practitioner was youngish and was blinded by love. That is a segue to a discussion of case study B.

Case study B - *LPCC v Love* [2014] WASC 389 (Full Bench, Supreme Court of Western Australia, Beech J, Kenneth Martin J, Edelman J)

This is another very sad case for a relatively young lawyer. Mr Love, who was a legal practitioner, was struck off under a decision of the Full Bench of the Supreme Court of Western Australia delivered on 28 October last year.

The basis for the striking of Mr Love from the roll of legal practitioners had involved an elaborate scheme, under which he had caused a web site designer to create a web site called 'applyforlegalaid.com'. The web site contained a form that appeared as a document entitled 'Legal Aid Application Form'. It looked extremely similar to an actual legal aid application form. It had the Legal Aid logo. But when a person completed the form online and submitted it, they were being effectively misled into thinking that they were sending their application for legal aid to the Legal Aid Commission of Western Australia. In fact, their completed form was transmitted by email to Mr Love. He would then complete the form adding or guessing at further details and he would then submit it online to Legal Aid himself but with, significantly, Mr Love's own law firm being designated as the nominated firm by the applicant to receive this legal aid assignment, if it was granted.

In filling out the form before a following online submission by him to the Legal Aid Commission, Mr Love added extra information. Part of this falsely stated that the individual concerned had consulted with him and, further, that Mr Love was of an opinion that the application had legal merit. Moreover, Mr Love inserted answers to a number of questions on the form where he had not received any information from the individual applicant - who knew nothing of Mr Love's involvement.

Nevertheless, Mr Love submitted the online form to Legal Aid, knowing that it contained a declaration on behalf of the individual that the submitted information was true and correct - albeit Mr Love had not, given the deceit,

received any such information from the individual. As to that, see the reasons at [1], [8] and [10].

Almost inevitably, the deceitful scheme came to light. Ms P had completed the online form, thinking that it was an online application by her directly to the Legal Aid Commission for assistance in a family law matter. She then received a communication from the Legal Aid Commission advising her that she had been refused legal aid and telling her that her chosen lawyer (Mr Love) had been advised of that refusal decision. She was astonished, having never before heard of Mr Love. Findings of professional misconduct contrary to s 403 of the *Legal Profession Act 2008* were made by the SAT: see [2011] WASAT 13 and [2014] WASAT 84, with a recommendation to the Supreme Court that he be struck from the roll of legal practitioners in Western Australia. That result carried knock on disqualification consequences against interstate legal practice.

Analysis

A moment's clear thought about the nature of this online scheme by the practitioner should have led him to appreciate that using a similar application form and a Legal Aid logo on this web site form which he had caused to be created (without permission), was likely to be misleading. Worse than that, Mr Love would then receive the applicant's highly confidential personal information by way of an unwitting disclosure by someone filling out the form concerning their private legal affairs and requesting legal aid. This was all in circumstances where the practitioner had not been even spoken to, let alone been engaged as that person's legal practitioner. The deceitful nature of the online scheme also caused the practitioner to receive an advantage in respect of his possibly being allocated a legal aid assignment as the falsely (self) nominated legal practitioner for the job - as opposed to merely being a member of a Legal Aid panel who was randomly allocated legal aid assignments from time to time.

It is, of course, tough and competitive in daily private practice. Many lawyers just scrape by. Many don't survive in increasingly challenging times. But the very nature of this practitioner's scheme was inherently likely to mislead and deceive a person about who they were actually dealing with. Furthermore, false statements were then deliberately submitted to the Legal Aid Commission after an intervention of the practitioner. The practitioner could also hardly be in a position to express a legitimate opinion about the merits of such cases for an allocation of legal aid: see par [10] of the Full Bench's reasons.

A very sad tale of long hours, stress and depression emerged - as is frequently the case in such matters. But, as the Full Bench said at [63]:

A diagnosis of depression does not, in itself, automatically excuse or mitigate professional misconduct. Apart from anything else, it cannot be assumed that the suffering of any mental illness, including depression, is a cause of any professional misconduct, particularly conduct involving dishonesty. Further, the protective function of these proceedings must be borne in mind, particularly where, as here, the professional misconduct involves dishonesty.

The Full Bench of the Supreme Court exercises a protective function for the community - not a punitive jurisdiction over members of the legal profession. This was a sad case. In all the circumstances, however, the nature of this deceitful conduct was essentially incompatible with being assessed as a fit and proper person to remain as a member of the legal profession. The practitioner's name was struck from the roll of practitioners.

A proper appreciation of the underlying ethical responsibilities of fidelity to a client's interests would have prevented this sad outcome for a relatively young practitioner. The lesson is that slick schemes, half-truths and non-disclosures of information are always bad choices.

Case study C

The third case study contrasts effectively two distinct outcomes in the context of legal conflicts of interest for scenarios of 'changing sides'. The two

cases I contrast are, first, *Fordham v Legal Practitioners' Complaints Committee* (1997) 18 WAR 467, then the more recent second case *Ismail-Zai v Western Australia* [2007] WASCA 150; (2007) 34 WAR 379.

The latter decision sees a comprehensive discussion by then President Steytler of the Court of Appeal and Justices of Appeal Wheeler and Acting Justice of Appeal Heenan, concerning an appeal against conviction.

This was a somewhat unusual case where the accused had faced a charge in the District Court of aggravated robbery with violence. He gave evidence at his trial and he was cross-examined.

Essentially, his defence was one of his misidentification.

It emerged after all the evidence had been completed and the jury had retired that the complainant had then informed his counsel that he had been 'nervous' whilst giving evidence because he came to realise that the prosecutor at his trial, a Mr Huggins, had previously represented him some 20 months earlier, and 'knew all about his background'.

The accused said that he had not at first recognised the prosecutor at the District Court trial (as the prosecutor had been robed and was wearing a wig - in those days). An application for a discharge of the jury was refused by the trial Judge at the time in the District Court. The prosecutor fully accepted that about two years previously he had appeared for the accused in the Court of Petty Sessions. He had then made submissions on a plea of mitigation following pleas of guilty to 10 charges of fraud, three charges of stealing and three driving offences. That was all over about 20 months before the appellant's trial. However, the accused did not pay his account to Mr Huggins. It went to debt collectors.

Consistently with the purpose of the pleas in mitigation, the accused said that he had at the time earlier disclosed to his lawyer (later his prosecutor) information about his education, work earnings and family circumstances, and

how he was 'not a thief'. The trial Judge had refused to discharge the jury. In the end, the jury convicted. There was an appeal on this conflict ground. It failed.

The Court of Appeal's reasons contain an extensive consideration of the aspects of a legal practitioner's fiduciary duty of loyalty, in a context of assessing whether it can survive the termination of a retainer. Usually, it does not. As part of that assessment, an evaluation of the use of the information imparted to a legal practitioner in circumstances of confidentiality, arose.

The Court of Appeal rejected the contention that there had been a miscarriage of justice. But Justice of Appeal Wheeler at [53] said:

I would unhesitatingly accept that the conduct of a prosecution by counsel who had previously acted for an accused could well give rise to a miscarriage of justice. Even where no specific confidential information is relevant, and even where nothing in the transcript suggests that an accused has not been able to give a good account of himself, in my view, the trial would be unfair if the prosecutor were able to cross-examine from a 'position of unfair superiority'.

In the circumstances, however, no member of the court thought that the line had been crossed in that case. The prosecutor had failed to remember the appellant. The inability to recognise the former client emphasised the brevity of their previous connection.

Wheeler JA also said at [54]:

However, whether there is such an unfairness depends upon the nature and degree of previous familiarities. It cannot arise from every former retainer, however brief, remote in time, or unrelated in subject matter.

That decision may be contrasted with *Fordham's* case in 1997, where the line was found to be crossed. The appellant had effectively moved from representing one accused to represent a different accused, within a relatively short period of time concerning the same trial. She then conducted a cross-examination of the first accused about his financial affairs and prior convictions. It was contended the cross-examination had not used confidential information obtained from the accused when he was initially her client but,

rather, was based on information supplied by a newspaper reporter during the trial and from other sources which were public. There was a finding of unprofessional conduct by the practitioner continuing to act for the second accused client as she knew or ought to have known that there was a conflict of interest between T and P and that a duty to each was likely to conflict.

Analysis

In *Fordham's* case, there emerged issues concerning the use of confidential information given to a practitioner by a former client to advance the interests of a new client, to the detriment of the first. Again, an appreciation of the stringent fiduciary duty of fidelity and loyalty owed by a fiduciary to the person whose interests they undertake to advance over their own would have resolved this ethical problem. *Fordham's* case was referred to the Court of Appeal in *Ismail-Zai*, but was distinguished: see par [24] per Steytler P and par [71] per Heenan AJA. Sometimes the line is grey. That is particularly so in so-called 'Chinese-wall' situations that you will no doubt encounter if you enter practice.

That completes the three case studies.

The importance of fitness and propriety and the adherence to ethical principles

In the 'Deep Blue Sea' article I made a reference to a very frequently mentioned High Court authority, *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279 at 286 (at page 256) of the article. I cited the observations of Kitto J about the importance of barristers as functionaries in the legal system. Even though they are well known, they are worth revisiting frequently in your future professional lives.

Sir Frank Kitto said, as regards barristers and advocates, that:

... A barrister is more than his client's confidante, adviser and advocate, and must therefore possess more than honesty, learning and forensic

ability. [The barrister] is, by virtue of a long tradition, in a relationship of intimate collaboration with the Judges, as well as with ... fellow members of the Bar, in the high task of endeavouring to make successful the service of the law to the community. That is a delicate relationship, and it carries exceptional privileges and exceptional obligations.

Sir Frank's observations are made in respect of advocates. I appreciate that apart from your (hopeful) admission day, many of you may never see the insides of a court room. That does not in any way diminish the responsibilities which you owe on a paramount basis to the court in the overall administration of our justice system.

Sir Frank Kitto's observation about more being required than simply honesty, learning and forensic ability is a very challenging daily threshold. Clearly, it is a threshold that is impossible for some.

The remarks focus upon a context of exceptional privileges and thereby a correlative exceptional responsibility that goes with those privileges of a practising lawyer. I mention in brief passing the following privileges by way of dot points:

- An immunity of the advocate for in-court professional negligence, as was explained in *D'Orta-Ekenaike* (supra). The policy considerations underlying that immunity in terms of the task being undertaken are explored in the 'Deep Blue Sea' article. But this is a significant privilege recognised in Australia, which is not enjoyed by other professionals.
- There is an absolute immunity against liability for defamatory statements which are uttered in court as enjoyed by a legal practitioner. The scope of that privilege is recognised as necessary for the lawyer to do their job properly. This can only be entrusted to those who do not abuse the privilege.
- Again from a litigation perspective, the compulsive processes which a lawyer may responsibly cause to be exercised on behalf of the client, including the compelling of the production of documents under

subpoena, the compelling of a party's adverse documents through the discovery process, the ability to obtain Mareva injunctions, now called 'freezing orders': see *Rules of Supreme Court O 52A*.

- Even more intrusively, the obtaining of a search and seizure order, formerly known as an Anton Piller order, now regulated under O 52B of the *Rules of the Supreme Court*. The exercise of those powers could easily trample across the rights of ordinary citizens if abused. But the law recognises that sometimes it is necessary to allow this in the pursuit of just outcomes in litigation.
- In the context of the daily practice of criminal law the entitlement to cross-examine complainants, including children in sexual assault cases, indeed, the lawyer's power to cross-examine witnesses generally, is of such an intrusive and possibly destructive character that it cannot be entrusted to those who are not accountable and will not accept the ethical responsibilities and limitations that are associated with its proper and responsible use.
- Finally, I mention a legal practitioner's ability in the context of civil litigation through court pleadings to put on a public record (potentially accessible by all) allegations of the most serious kind - again in a context where there is an absolute privilege against defamation within that process.

The conferral of rights to invoke these powers can only be entrusted to those who can be relied upon to exercise them responsibly. For the context of serious allegations, I dealt with that issue in a subsequent paper entitled 'Lawyers' Duties To The Court "Between The Devil And The Deep Blue Sea Part 2"' in an address to the Australian Lawyers' Alliance. A link to that paper can still be found on the Supreme Court web site: see http://www.supremecourt.wa.gov.au/S/speeches_2012.aspx?uid=8428-9927-7921-9697.

Conclusion

It has been a pleasure to deliver the address this afternoon to a group of young and emerging potential professionals. I hope to have conveyed a message that the understanding and respect for legal ethics is not some old-fashioned adherence to upholding antiquated principles of an establishment. Rather, they are an essential daily tool to guiding you safely through the tempests and pestilence that will inevitably arise for you to navigate in the professional years ahead. Good luck!