

Can't get no satisfaction: the law and its customers

THIS is an edited version of a session held at the recent Commonwealth Law Conference in Melbourne. The session highlighted some themes dominating the relationships between legal service providers and customers. Facilitated by Professor George Beaton, speakers focused on what is 'right' and 'wrong' with the delivery of legal services from a range of perspectives.

As a service, the law has a range of public and private providers and various customers with diverse needs. However, it is possible to identify some common themes – access, efficiency, practicality, responsiveness, adaptability, value for money – which shape the relationships between law's customers and providers. These themes should underpin any debate as to how both parties can derive the greatest value from their relationship.

How is the legal system from the perspective of government?

Michael Lavarch, Secretary-General of the Law Council of Australia

What's right?

- Its fundamentals are viewed as operating reasonably well. The judiciary is honest, independent and diligent. The profession provides services to most when they need it.
- It is independent from executive government with the conduct of litigation in the hands of individual litigants. Problems with cost or delay can be portrayed as the trade-off for the right of individuals to access an independent system, in which the litigant largely determines the progress of matters.
- Government is a major and powerful litigant. In a system where financial clout matters, governments hold a trump card of being big with deep pockets.

What's wrong?

- Litigation in the hands of litigants can lead to inefficient use of resources. Delay and inefficiency create costs which places demand on governments.
- The legal aid system is a demand-driven programme.
- Executive government sometimes believes the legal system and judges do not understand the implications of decisions on public policy.

How is the legal system from the perspective of corporations?

Ron Pol, former Telecom corporate counsel, now legal consultant and current President of the Corporate Lawyers' Association of New Zealand

What's wrong?

- Failure to focus on *all* key elements of delivering value. In essence, lawyers need do only three things: identify what adds value to clients; deliver that value; and demonstrate they've done so. Most lawyers are pretty good at delivering value, yet few lawyers clearly identify value objectives from the outset, and fewer still effectively demonstrate the value of their contribution in terms that relate directly to client objectives rather than 'legal' outcomes.
- Failure to align law firm systems with client needs and genuine client focus. First, law firm marketing bombards clients with exhortations about 'client focus', yet many in-house counsel surveys show that generally they merely 'tolerate' the service levels of outside counsel – few are truly satisfied. Second, most firms seem to *inhibit* the ability of lawyers to deliver great client service. Law firm systems focus on such things as hourly billing rates, leverage and disbursement recovery. These are important, but they reflect factors internal to the firm and miss a key component – the client. Often the only real link to any concept of value to the client is the professional

dedication of lawyers. Mostly this is strong, but it's often *in spite of* many of the firm's systems and processes

What's right?

- Results more than sum of the parts. Working with and managing teams of professionals is difficult but rewarding and when it all comes together, it can be magic. Combining in-house strategic focus with external expertise and resources, in a process enabling real teamwork, invariably produces results that neither could have achieved independently.

How is the legal system for members of the general public in their relationship with the court system?

Professor Stephen Parker, Dean of Law at Monash University

What's right?

- The overwhelming majority of judges in Australia are conscientious, diligent and impartial. Instances or even allegations of corruption are rare.
- Australian courts seem to deliver 'justice' to a high standard, in the sense of carefully assessing the evidence and impartially applying the law.

What's wrong?

- Procedures, operating arrangements and general culture are still premised on the assumption that both sides are represented by properly-funded  to page 20

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➔ lawyers, whereas in some courts at least one party is unrepresented.

- Courts do not communicate well with their various publics about their work and their constraints. Specifically, the relationship between courts and media is problematic and could be improved.
- More generally, courts have not yet developed a clear sense of the kind of organisation they wish to be. Without this they are impeded in planning for the future.

How is the legal system for members of the general public in their relationship with the legal profession?

Janet Paraskeva, Chief Executive of the Law Society of England and Wales

Consumer expectations of services have been transformed by innovations brought to service delivery, for example online shopping or telephone banking. The public has come to expect high speed, high tech services delivered at *their* convenience.

The problem for many lawyers in Britain – particularly those providing the bread and butter services – is that small private practice firms often lack the resources needed for this kind of innovation.

However, many large organisations – retailers and banks for example – do have the resources and are keen to move into legal services. The impact on how people receive legal advice and assistance could be dramatic.

Diane Burleigh, Secretary-General, Institute of Legal Executives, England and Wales

Satisfaction for a customer of legal services is having access to legal services, delivered accurately and in a timely fashion, by appropriately qualified individuals at an affordable price. Commercial non-lawyer providers of legal services grasped this a long time ago.

'Legal practitioners' play a central role in making legal rights real. Not all are regulated, not all are good.

The myth of the traditional lawyer qualification and regulatory structure prevents a proper analysis of what level of knowledge, education and regulation is necessary to deliver customer satisfaction. It also masks the amount of legal work being done by others.

Legal executives in England and Wales are recognised as lawyers but fall outside the traditional professions. As barristers have become specialised as advocates, as solicitors have moved into work traditionally the reserve of barristers, it is the legal executive as a regulated lawyer that is moving to fill some of the gaps. The less elaborate and consequently less expensive route to qualification helps them provide services that are not profitable for firms clinging to traditionally qualified lawyers.

At a time when there are more lawyers coming into our traditional professions, there are serious gaps appearing in the provision of legal services.

How is the legal system from the perspective of indigenous people?

Larissa Behrendt, Professor of Law and Indigenous Studies, University of Technology, Sydney

The causes of over-representation by indigenous people in the criminal justice system are well documented so the trend of increased incarceration is particularly frustrating. This highlights the need to analyse why the legal system is not responding to recommendations made by various reports on the issue.

Approaches to improving the way indigenous people are treated within the legal system seem to be episodic and not concerned with structural and

substantive changes. Many of the programmes designed to improve the treatment of indigenous victims and defendants are a result of community efforts rather than a top-down push.

The overall increase in 'law and justice' issues as a political tool has resulted in harsher penalties, more prisons and tougher bail conditions.

How does legal education equip prospective legal service providers to satisfy the needs of their customers?

David McQuoid-Mason, Professor of Law, University Of Natal, Durban

The manner in which law students are taught and trained at undergraduate and postgraduate level affects the quality of the legal services delivered once students qualify.

Generally, LLB programmes in Commonwealth law faculties are based on the English model that focuses on substantive law and academic legal education, rather than on training in procedural and practical aspects of the law. The latter are seen as the remit of post-graduate practical training programmes and apprenticeship programmes.

What are undergraduate programmes doing right? Teaching students to: think (sometimes); solve legal problems; analyse and apply legal rules and principles; undertake legal research.

What are they doing wrong? Not training students to: conduct fact investigations; communicate in writing or orally; counsel clients; negotiate on behalf of clients; conduct litigation; recognise and solve ethical dilemmas.

What are postgraduate programmes doing right? Training law graduates to: conduct litigation; recognise and solve ethical dilemmas; draft documents and communicate in writing or orally; organise and manage legal work; use alternative dispute resolution mechanisms (sometimes).

What are they doing wrong? Not training law graduates to: conduct real life fact investigations; experience live client-centred counselling; promote justice and fairness; strive to improve the profession; promote professional self-development. 



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