

# Book Review

## Ethics in the Law - Lawyers' Responsibility and Accountability in Australia

Stan Ross

Butterworths, 1995

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We live in times of increasing concern about the ethics and principles of practice. Not only the judges of the High Court concern themselves with changes brought by the practice of law becoming businesslike and client-orientated. Practitioners with any sense of history of the role the profession has played within society, and the relations between fellow practitioners, are concerned with changes which threaten the contribution the profession has made to the maintenance of a stable and relatively harmonious society.

When asked to provide a review of this text I accepted, expecting the exercise to be both enjoyable and rewarding. The breadth of coverage and handy summation of authorities in a variety of areas make it worthwhile, but the author's attitude and the manner in which much of the material is presented is a cause for angst in a practitioner seeking a ready reckoner or quick guidance.

Remembering the price Mr Leo Schofield had to pay for describing some pitiful serve of lobster (who remembers now whether it was cooked, off or tasteless?), one is conscious of the need to be circumspect.

Stan Ross is well placed to compile relevant material for *Ethics in Law in Australia*, having been the co-founder in 1973 of a UNSW course subject *Law Lawyers in Society*. The course resulted in the publication of *Lawyers* in 1977 (and 1986), of which Ross was co-author with Julian Disney, John Basten and Paul Redmond. This new text is an update of that earlier work; a chapter on *Tax Ethics* is a compilation of another work by Ross, *Ethics for Tax Practitioners*.

An overview is given of the formalities and controls of the legal profession in Australia, admission to it and discipline within it. The usual categories of consideration of the relationship of the practitioner with clients are addressed (care, confidentiality and conflict), and the relationship of the practitioner with the courts (fairness and candour).

Unfortunately, this new text omits coverage of topics of regular concern to practitioners - fees, advertising, legal aid and contempt.

Unfortunately, the text is flawed by typographical errors and errors of blocking. There are also regular intrusions of a textbook nature - factual scenarios followed by *Discuss*. Whilst much is repetitive of the original publication *Lawyers*, nonetheless the areas covered have been expanded to cover up-to-date authority and articles. There are interesting references to US, UK and Canadian decisions and the ABA model code.

Some of the opinions and observations of the author are

wrong, or at least misguided. For example:

*Lawyers guard with vigilance their special knowledge and try to prevent the dissemination of this knowledge throughout the mass media.*

*... Peter Clyne never showed any contrition or understanding that he had done wrong. In November 1981 Clyne circularised members of the Bar with a lengthy affidavit, supporting his application for re-admission, in which he acknowledged that the judgments relating to his being struck off the Rolls were correctly based.*

*Barristers' clerks have the authority to accept briefs for the barristers and to mark the fees. This may have been a rule of practice 20 years ago, but has long since gone.*

*One of the justifications (for the rule that barristers who settle a case immediately before trial will usually receive their full fee for the first day of the trial) is that it reduces the likelihood of failure by barristers to inform clients of a settlement offer. This is because they would lose their fee if the offer is accepted and the trial aborted. Most would regard this as a nonsense.*

*The modern version (of the basis of the rule of legal professional privilege) is that the privilege serves the interests of clients to obtain effective legal advice. Rather, it serves the administration of justice in allowing both the innocent and guilty to obtain advice in all circumstances.*

*Should every interest be heard? For example, do nazis, serial killers or child pornographers have the right to present their views and have lawyers represent them? Practitioners do not present the views of their clients - rather, they represent them within the strictures of the legal system - luckily we have not got to the point of adopting the view of William Kunstler, who only represented *clients he loved*.*

If one puts aside the unease and discontent caused by the errors and partiality, the book is a useful update (in part) of the original publication. □ Peter McEwen