The Making of a Good Lawyer

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Before I give an outline of this session, I want to refer you all to a comment made by Mr Justice McPherson in the *Bax* case. If you're unfamiliar with the case, it involved a solicitor who had backdated mortgage documents to get a client priority in the administration of an insolvency, and who then informed a meeting of creditors that his client had a properly executed mortgage from that earlier date. Serious stuff. The solicitor was facing a strike off, so ***one*** of the arguments put on his behalf was that he was a young man – in his 20s – and that his youth was a reason to go lightly. That, and all other reasons offered for a gentle regime of measures for this solicitor's discipline were refused, and he was struck off. But, what interests me here are the judge's views about the moral development of lawyers. He said –

> The spectacle of a solicitor … falsely asserting a date for the execution of an instrument … conveys a very poor image of the honesty and integrity of solicitors and so tends to bring the whole profession and its standards into disrepute. It cannot in my opinion be excused by resorting to the explanation that the solicitor in this appeal was young and, it was said, inexperienced. In a matter like this, and perhaps in most others, *basic honesty is not a quality that is ordinarily acquired through experience, or by lengthy practice of trying one's best to be honest.*

There are two aspects to that comment that are important for this session. The first is that there is an expectation, and a right expectation, that every lawyer must clear a threshold of minimum moral dispositions – in the *Bax* case, it was truthfulness. The second, a little more debatable, is the judge's scepticism of moral development, especially the development of a truthful character. Both aspects of that comment are important threads for what we will be addressing in this session.

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In this session, we are considering what makes a *good* lawyer – a good lawyer in the ethical sense of the word 'good'.

So, ***first***, I'll spend a little time clarifying what I mean by that, as it affects everything that follows. What do we mean by the ethically good lawyer?

Secondly, how do we try to make a good lawyer before admission? In other words, what are the university law schools doing to help the moral development of law students, and to get them to the point at which they have those moral dispositions that the lawyer must have? You're all practising solicitors; why should that be of any concern to you. Well, you need to know what you can reasonably expect of any law graduates you are employing. You need to know where they will be begin from, to know where you can take them.

And ***thirdly***, how can we try to make a good lawyer after admission? Can we do anything? And so what are ***your*** responsibilities, as practising solicitors, for the ongoing moral development of other solicitors and, indeed, of your own ethical development.

That means that this session has little to do with the 'what' of ethics. In fact, I hope that the few cases I refer you to are well-known and understood. We are looking at aspects of the 'how' of being ethical.

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What do I mean by the ***good*** lawyer?

I know some of us will already start to feel uncomfortable with the language being used here. ***Students*** often feel uncomfortable with the language of morals; I have had some who have panicked, and one who became ill after a class that involved morally-charged language.

That's a bit disconcerting, as it seems to me that some of us have reached a point where we genuinely believe we can inhabit a value-less world, or a community where people can relate to each other without using the word 'ought' or 'should'. Plainly, that is a complete delusion. I have had a student who has told me that, when studying law, we ***should not*** be dealing with moral thought - we ***should not*** be dealing with moral thought! But he mercifully changed his mind once he appreciated the inconsistency of what he was saying. Making a moral claim for not speaking about moral dispositions.

Morals, what have they got to do with this? I use the terms ***'morals'***, and ***'moral development'***, for clarity, as the term 'ethics' in the legal profession is used ambiguously.

All of my colleagues on the Law Society's Ethics Committee will appreciate this, as we slide between speaking of ethics as the law and the Solicitors Rule, and of ethics more generally as the best way that lawyers should deal with each other, their clients and the public.

It is quite clear that, when courts and tribunals assess a person's fitness to be a lawyer – or to stay a lawyer, that they often do so by reference to a higher moral standard than is found in the law. Students who plagiarise have almost certainly not broken any law; yet they can find themselves being refused admission to be a lawyer. Students with a record of insolvency have not broken any law; yet they could potentially find themselves being refused admission. Certainly they will be asked questions. There are other qualities of truthfulness and reliability that we look for in lawyers, over and above the legal minimum. ***The measure of a lawyer is not the law.*** It is something more.

When I am speaking of the morals of the lawyer, I am speaking especially of the moral qualities that one could reasonably expect a good lawyer to have. This is vague, but let's begin with the standards 'that a member of the public is entitled to expect of a reasonably competent' lawyer.

This is -- at minimum -- what is required for a lawyer to escape discipline for unsatisfactory professional conduct. It is taken straight out of the *Legal Profession Act* (s 420). This is not to say that I accept that the law defines the moral standards expected of a lawyer, but it certainly shadows them, and given that we are often dealing with vagaries in this field, I think this is a reasonable place to begin. There is also a very serious school of lawyers' ethics that expects lawyers to adhere to general community standards - what the legal services commissioner calls the ordinary standards of civilized conduct - so there is quite a strong view that the moral standards of the lawyer are to some extent set from the perspective of the general community, the perspective of the general community as to what a lawyer should do.

I do emphasise that these are moral qualities directed to the practice of law. There is room for debate here, but let's just work with the four virtues that are found in the 'lawyers' compass' that Neil Watt has been presenting to solicitors around the State – truthfulness (which courts have called lawyers' 'paramount virtue'), fidelity to client, propriety (or civility), competence. These are 'thicker qualities than the rules are. And they are richer resources to mine when dealing with ethical problems. Truthfulness, fidelity, propriety and competence.

Note, this has two dimensions –

1. Ethical awareness. The ***knowledge*** of what a good lawyer is.
2. The ***conduct, practice and behaviour*** of a good lawyer

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It also has implications for the way we should approach the moral development of the lawyer. The implication is this. The strategies and tools we should have in place for improving the moral development of the lawyer cannot be made without reference to the general community. And, it means that any strategies or tools that we use should resist - what I call – cocooning.

There is now a serious body of literature on the psychological behaviour of lawyers that considers why it is that lawyers sometimes appear - even honestly - to engage in behaviour that leaves the rest of the community dumbfounded. I do not mean conduct like defending clients known to be guilty, or even taking on unjust causes. I mean conduct like, securing a successful settlement for a client or winning a case, and charging the client absolutely everything that was recovered for them, or more. We have seen a number of cases in this category. Anyone with a reasonable knowledge of English literature will recognize how this very practice was lampooned in *Pickwick Papers* - but even a knowledge of Dickens is not necessary to know that people do not consult lawyers, and lawyers don't win cases, just for the lawyer's sake or to put the client in a worse position. The general community expects lawyers to be of benefit to their clients, especially when they win!

But why does this sort of thing happen? It may be that the lawyers are just trying to get away with it. But occasionally, we get glimpses of lawyers simply having lost the ethical sensitivities that the community in general holds to. The psychologists, and the courts, have called this ethical blindness, and there are any number of reasons why it can emerge. In some cases, it is arguable that the lawyers have cocooned themselves.

- They work hard, they tend only to socialise in their work environment.
- They are under extreme pressure, and they develop a siege mentality towards outside influences, a suspicion of anyone who doesn't belong to the team.
- Former Yale law dean Anthony Kronman pointed out that some lawyers undermine their capacity for exercising good practical judgment because they don't experience what people outside the firm experience – all they do is work, they don't read, they don't travel.

I'll mention later that the larger the firm, the harder it is for cocooning to take place. But not always – *Foreman* was plainly a case where a family law section in one of Australia's largest firms was threatened, and was given almost impossible budgetary targets. The lawyers were working long hours, and so it was thought quite possible to charge half a million dollars for securing a half million dollar property settlement. Cocooning.

So, the lawyer's moral world is, to some extent, set from the perspective of the general community, the perspective of the general community as to what ***a lawyer*** should do.

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The second point that I want to mention is the place of the *Solicitors Rule* – the professional conduct code – in all of this. And I'd describe it as almost inevitably necessary – but not sufficient. The *Solicitors Rule*, which we have only had in this State since mid-2007, sets out rules – sometimes detailed rules on relations with clients, relations with other practitioners, relations with third parties, advocacy and litigation, and general aspects of legal practice.

Following this *Rule* ***is almost inevitably necessary***. Although breaking a rule can on very rare occasions be compatible with being a good lawyer – the *Keim* case in the defence of Dr Haneef is the only recent example we have and, of course, the circumstances of that were so exceptional that it really serves as no safe precedent for rule-breaking.

But, although the Rule is comprehensive; it is not exhaustive. It is not exhaustive for two reasons –

- The common law rules of lawyers' professional conduct still apply to solicitors. Indeed, the Law Society's Ethics Committee has discovered a number of rules in the *Solicitors Rule* where there is some contradiction with the common law – eg, rule 10, rule 24.
- The rules, whether in the *Solicitors Rule* or the common law, simply don't deal with all ethical challenges that lawyers face. 'The rules run out.' What is the rule, what do you do, when in litigation you come into accidental possession of privileged documents the other side intends to keep secret. What about clients? As one partner of a large law firm put in a recent colloquium – do we represent tobacco companies, do we represent gambling companies? No rule can answer that question for you. It is nevertheless a real ethical question, and one that deserves serious moral deliberation. The rules run out, and other moral resources are needed. ***The rules are not sufficient.***

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That brings us to the making of a good lawyer. In the scholarship of lawyers' ethics, we often address the question. Can a good lawyer can be a good person? I'm not going into the details of that debate here, but I'll say that I certainly think a good lawyer can be a good person – indeed, I think that there are aspects to the practice of law that are well adapted to cultivating general moral and intellectual virtues.

However, the moral development of a good lawyer begins in a systematic way in Law School. Sure, moral development, perhaps its most important period, is in the childhood home and the schoolyard. But, it begins with a strategic orientation towards legal practice – I guess with ***program specificity*** – in Law School.

And in general, what we can say can certainly be achieved is ***ethical awareness*** – the knowledge of lawyers' ethics. Where, with Mr Justice McPherson, I wish to express scepticism, is the extent to which universities can assure anything of the ***conduct, practice and behaviour*** of graduates. My scepticism rests in the role of the university, the craft of the

academic enterprise, and the tools we have to use. And it comes to this – the role of the university, and hence the university Law School, is ***the extension of knowledge*** – and nothing else. The extension of knowledge is what we do in our research, our publication, our teaching – and in our teaching we are able to give some assurance that our students are taking knowledge with them. We can examine, and grade that. What we ***can't*** do is examine and grade genuine attitudes, risky dispositions, and honest moral commitments.

Let me give two examples.

One is student A. [Anecdote about disorganised student.] Student A failed a few subjects, but eventually got through and became a solicitor. He was struck off some years later, and the reasons don't surprise me. Poor office practices, hard to distinguish client interests from his own, or different client's interests from each other! Poor record keeping that saw appropriations take place. You get the picture.

The second is student B. [Anecdote about student who repeatedly manipulated University assessment rules.] [A colleague said] 'He worries me – if we ever have a student before a disciplinary tribunal, it'll be him'. [Anecdote continues] But then, there is my colleague's prophecy … that student B was a prime candidate for a tribunal hearing. Student B entered legal practice. He has been disciplined by a court for his conduct of litigation.

Now – what can be done by universities about students who, even at university, demonstrate qualities that undoubtedly present an ethical risk for legal practice. Student A's strike off was for misconduct that, I think, can be attributed to disorganisation. He was disorganised at university, and by all accounts was disorganised in school. However, in educational institutions there are sufficient controls, and enough help, to remind the disorganised what to do and when. Entering practice, getting a firm where no one supervises you, disorganisation as a lawyer is a personal quality that will see problems – even ethical problems – arise. The very kind of case that almost proves Mr Justice McPherson's scepticism that moral improvement – and competence is a moral quality – isn't likely to be learned.

Student B's is a clearer case. Here was a student who was aware of a loophole. … Here was a student who exploited it to the full. … A student who is prepared to manipulate the *form* of rules but violate their spirit is a high risk. A risk of being a lawyer who will break the rules if the incentives are great enough. And so he proved. But while academics can withhold references for students like that, there are few other tools available to enable us to make it harder for them to become lawyers. An academic's 'horse sense' that a student has poor moral dispositions, an intuition that the student was problematic, are not adequate grounds to prevent a student's admission. Certainly no more adequate than a lawyers' intuition or feeling that the solicitor on the other side seems a bit shady would be as a ground for formal complaint.

We simply do not have tools that can assess moral dispositions. And so, put another way, the university has refined and effective tools for changing minds; it has no control over the

change of hearts. It is true that the university experience often sees profound moral change in the student – but in no circumstance are we equipped to ***direct*** the shape of that moral change. Students come to university being one kind of person, and they are often likely to leave being someone else. We do change people, especially young people. But they are as likely to be transformed into libertines, as they are into evangelical Christians, as they are into social democrats, as they are into studied conservatives.

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Now, I want to give an account of what is happening in the universities. When many of us here were law students, or approaching admission as articled clerks, a course in ethics was not even creditable to the law degree, and we had to do a small course in legal professional ethics and another one in bookkeeping as postgraduate miscellaneous subjects – something required for admission as a solicitor, but not of sufficient rigour to be worthy of academic credit. We may have had a lecture from the Chief Justice about doing 'the right thing' or, later on, a haphazard sequence of senior practitioners who gave lectures on pet topics. When I did it, we had three different barristers speak about the barrister's favourite topic – the cab-rank rule. But no one spoke about the admissions process or the disciplinary system.

Those days are over, and anyone here who was finishing a law degree sometime from the later 1990s on will have had a very different experience.

There are a number of reasons for this. Especially since Watergate – which implicated a number of lawyers – there has been an explosion of legal research and scholarship on lawyers' ethics, and it has become a large and sophisticated field of legal writing. Australia had its own public scandals – WA Inc, Fitzgerald – which, although not involving as many lawyers, raised the sense that ethics education for professionals needed to be elevated. The inclusion of professional conduct as one of the 11 areas of academic knowledge that the uniform admission rules required for admission as a lawyer – one of the Priestley 11 – saw law schools across the country steadily add ethics courses as areas of study to be taken as seriously as equity, evidence, or administrative law. It is now mainstream, and although some laws schools still have to conscript people to teach it, there is a large number of academics who are devoted exclusively to teaching and writing about lawyers' ethics as an expertise.

As a consequence of these trends, the Council of Australian Law Deans – CALD as we call it – has included a strong focus on lawyers' ethics in its proposed minimum standards for Australian law schools.

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So, the legal requirements. This is the Priestley area of knowledge. It's cast in alternatives, but the first covers everything.

Professional and personal conduct in respect of practitioner's duty: (a) to the law; (b) to the Courts; (c) to clients, including a basic knowledge of the principles of trust accounting; and (d) to fellow practitioners.

There is no more detail for anything, except the trust account.

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You will note, for the trust account, that it includes an understanding of both the legal requirements – the regulation of client money and the discipline and liability that follow the mismanagement of client money – ***and*** the accounting.

You can also see how dated these requirements are becoming – no one these days would sensibly set exercises in the recording of mortgage investments, since it is now breaking the *Solicitors Rule* for solicitors to be involved with them.

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And then there are the CALD minimum standards.

I should explain what these are. They are an effort, on the part of the Council of Australian Law Deans, to indicate what minimum standards should be expected of any law school in relation to –

- The quality and content of law degrees
- The adequacy of academic staffing
- Academic freedom
- The law library
- The expectation that academics conduct research
- The autonomy, governance and budgeting of the school

The idea, at present, is that law schools can subject themselves to voluntary audit, and if meeting the minimum standards, secure CALD recognition that they do. As you might expect, almost every law school will do this. It's an effort at self-regulation to avoid having still more federal government regulation of what law schools are doing.

The CALD standards deal with curriculum, and you'll see that much is said about lawyers' ethics. This slide shows the first iteration, and, as you might guess from my comments about the university's limited abilities to change hearts, this worried me. In fact, it scared me.

How can any law school prove that it produces law graduates that have ***internalised*** the values that underpin the principles of ethical conduct and professional responsibility. There

is no sense in setting a standard for graduates unless you can assess and measure it, and a person's internal values are immeasurable. We can certainly aspire to making graduates good, and set the curriculum in ways that hopefully habituate students in virtue, but we cannot ***guarantee*** that – and this standard was looking for a guarantee. A noble aspiration, few who have thought much about ethics education would think it could be guaranteed.

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So, this was pointed out to CALD, and we got a change. It's a compromise, but one that brings university law schools back to the achievable. Sensitivity and awareness – effectively knowledge – is all that is expected. Internalisation of values? Only so far as is practicable. And as we asked CALD how this could be measured, and they could give no answer, I think this is an aspiration only.

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So, what have we got, and what can you expect of Queensland law schools. I appreciate that many of you will recruit from interstate, but let's keep it manageable and see what the six law schools in Queensland – Bond, Griffith, James Cook, QUT, University of Queensland, and University of Southern Queensland – are providing in ethics education before admission.

All universities provide a course that enables students to meet the Priestley requirements in the law degree. There is a strong tendency these days to make it compulsory. One law school has the professional conduct course as an elective; in practice, almost all students will do it. However, as one law school makes it an elective, you always need to check the graduate's academic record to see if they qualify for admission. So long as they have that course, you can expect that students will ***know*** –

- The structure of the profession
- The regulation of the profession, including the process for complaints and discipline
- How a retainer is made. Cab-rank obligations for the Bar. Cost agreements, and methods of calculating fees.
- Standards of competence – ie, standards dictated by the law of negligence
- How to avoid conflicts of duty and personal interests, and how to avoid conflicting duties. Information barriers are almost inevitably covered.
- Trust account management.
- Duties in litigation – including duties relating to witnesses, and guilty clients.
- Confidentiality and privilege.

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From that point, law schools might do more. There are two that do no more than the minimum required for admission. However, four schools – in one way or another – address

ethics in a thicker sense, and introduce students to moral thinking – especially thinking within moral traditions like liberalism, social democracy, feminism and ethics of care, Aristotelian virtue.

In addition, there is the extent that law schools will, if at all, adopt a pervasive approach to the learning of ethics. In other words, that students are expected to learn ethics at different point in their studies so as to deepen their knowledge, and have the curriculum replay, repetitively, the significance of ethics in legal practice. So, for instance, you might see something more of conflicting duties in a course in equity, something more of a lawyer's duty of care in torts, something of criminal defence ethics in criminal law and so on. This is normally done to promote habituation – repeated exposure to the values of a good lawyer so that, hopefully, it will transform ethical understanding into ethical behaviour. It is an approach that makes ethics – the aim of knowing what it is to be a good lawyer and the aim of becoming a good lawyer – a major theme of the whole degree. Again, you will see that most Queensland law schools are heading that way. Two law schools address ethics in two courses; two law schools are consciously taking a full pervasive approach and have as much ethics learning as possible threaded through the degree.

Naturally, if the CALD standards for law schools are to be met, pervasive approaches will become the norm. I expect that you will see more of this.

If a law school addresses moral theory, you can expect that graduates will ***know*** that ethics is more than compliance with rules and will be conscious of broader moral thinking and virtues like truthfulness, and fidelity to client interests, moral self-restraint.

Note, I am not claiming that we are making people of character. Let's remain sceptical. The pervasive approach – taking a leaf from Aristotle's *Nicomachean Ethics* – is hoping that the repetition of knowledge will translate into a disposition of character. We are aiming for that – but we can't assess it or guarantee it.

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Having emphasised that the Law Schools have an essential role in developing moral ***knowledge*** – I now want to look at how we must continue the project of making good lawyers after the graduate is admitted to practise. And here, I want to address the role that you – the practising solicitors – have in the moral development of the new lawyer.

Here, there is a significant shift. In the Law School, moral development – to the extent that it can be assisted, is the responsibility of a public institution geared to education and with a range of objectives for itself and its students. It is largely an open society. Now, after admission, moral development is the responsibility of private practices geared to providing legal services and remaining viable – making money. The organisation in that sense is targeted, and all involved in it are properly focused on meeting the target. And that changes what can be achieved, and the nature of the risks.

So far as ethical development after admission is concerned, there are two important issues. Reinforcing ethical knowledge, and mentoring. I am not here as an academic to speculate how you, practising solicitors, should be helping the ethical formation of the good lawyer. But there are many empirical studies on this now, and I'm simply going to sketch some key features of what we know about the role of the employing law firm in the early period of a lawyer's professional career.

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Reinforcing knowledge of lawyers' ethics. In Law School, we instruct, demand reading, set assignments, examine, and grade in ethics. Our graduates revisit all of this, and again get assessed, in practical legal training. But we know that they'll forget it. We know that inflicting the trauma of examination does not reinforce the principles of fidelity to the client like the first time a conflicts check leads the young lawyer to turn down a potential client. We know that no reflective essay will reinforce the ethic of truthfulness like the first time you must terminate the retainer of a litigation client who insists that you not list disclosable documents.

Ethical knowledge has to be revisited; it has to be re-learned. So, after admission we can do two things to ensure this.

First, we can all have the *Solicitors Rule* handy. In American studies on the ethical deliberation of lawyers, it is generally found that *most* lawyers do ***not*** consult the professional conduct code even when they are conscious that they are making ethical decisions. I've mentioned that the *Solicitors Rule* does not come close to being an exhaustive statement of lawyers' professional obligations. But if it deals with the situation, it is best to follow it. We can make sure that all solicitors have a copy – a hard copy – to hand so that it can be consulted. Even if it doesn't deal directly with the situation, the *Solicitors' Rule*'s Statement of General Principles can be a strong indicator of what an ethical attitude to a problem might be, and of the lawyer's moral priorities when making choices.

Secondly, there is continuing professional development – in-house and externally. And, now, the requirement that at least one CPD point be taken in ethics, and one point on the trust account – which I think is an important aspect of ethics – every year.

Thirdly, you now have the Australian Lawyers Ethics website, which will be a larger resource for information and the development of knowledge.

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But perhaps even more important is good mentoring. We know this is ***the*** critical experience in the moral formation of the lawyer. Study after study – interview after interview – reinforces how important lawyers found mentoring in the early years of practice to be – and if

it was a ***good*** experience with a mentor, how much that is valued. And, ***that***, actually suggests that we have reasons to be more optimistic than Mr Justice McPherson for what kind of ethical development can take place in practice.

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There are a few things we can say about mentoring.

First, mentoring is best when it takes a holistic approach to practice. It is not there just to answer questions about moral dilemmas.

- It assists in negotiating career progression.
- The mentor helps the young lawyer to make wise choices about her future.
- The mentor helps in understanding the actual practice of legal work.
- The mentor helps in learning how to get and keep clients; how to make money.

Ethical issues are embedded in all of these, and they are best learnt in the context of all else that needs to be considered in a law practice.

Secondly, we should note the distinction between formal and informal mentoring.

- ***Formal mentorship*** takes place in a structured program organised by the law practice. It is often an aspect of some sort of appraisal system that is consciously regarded as being more for developing staff than for assessing staff performance. The mentor is assigned, in better programs by matching the suitability of the senior and the junior lawyer. As they are – in one sense ***in***voluntary – formal mentorships are often only about six months or a year long.

- ***Informal mentorship.*** This is a spontaneous relationship that the law practice itself does ***not*** organise. The young lawyer is a genuine protégé of the mentor. There is a mutual regard for each other. The mentor is an active sponsor of the young lawyer's career, and is much more likely than a formal mentor to use influence on the protégé's behalf. North American studies show informal mentoring relationships often lasting as long as six years which, as we all appreciate, is enough to establish a secure career.

It is evident that informal mentoring is much more satisfying, and much more effective in the socialisation of the young lawyer and the inculcation of practical moral reasoning.

It is also well known that women have fewer opportunities for informal mentoring – partly because of the underrepresentation of women in senior professional ranks and partly because of gender barriers between potential male mentors and female protégés. This is precisely why efforts are consciously taken in Women's Lawyers Associations to provide for mentoring. It is also why, even if formal mentoring is not as effective for either career

progression or ethical role-modeling, women are seen to be primary beneficiaries of formal mentoring programs.

This is why Fiona Kay recommends formal mentoring programs, that can consciously build cross-gender relationships. These programs begin at the top, where partners or firm leaders learn the importance of good mentoring for establishing ethical role models and, accompanying that, job satisfaction. Further, because it is critical to the making of good lawyer, that partners or firm leaders see formal mentoring itself as an ***ethical*** obligation that ***they*** have within the profession, and as an ethical obligation to perpetuate an ethical culture.

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And that leads me to conclude on one aspect of mentoring.

Where does the young lawyer in a small practice get good mentoring? Well, quite possibly from the solicitor or solicitors who employ the young lawyer – but studies show that mentoring – and especially informal mentoring based on mentors and protégés who actually like each other, is generally easier and safer in larger firms. I'm going to extrapolate reasons for this. However, we do know that, although solicitors in large law firms often report lower levels of personal autonomy and job satisfaction than solicitors in small firms, they consistently report higher levels of satisfaction with mentoring and collegiality. The reasons?

First, lower transaction costs. To find a mentor inside the firm usually does not require that you physically leave the office, or that you meet the hurdles of getting advice without breaking confidentiality, or that you confront different strategic expectations. There are more accessible opportunities for mentoring, especially informal mentoring, in a larger firm.

Secondly, the risk of poor mentoring is spread. If the transaction costs for securing ***good*** mentoring are low, the transaction costs of securing ***bad*** mentoring are low as well. But the larger the firm, the more partners, and the ***less*** likely that the damage caused by one or two poor examples will be perpetuated. The real danger comes when the firm is large enough to make it easy for young lawyers to secure in-firm mentoring, but small enough to make it difficult to muffle the influence of one or two poor examples in the partnership – that is, small enough to create a cohesive, but ethically impoverished, culture in the firm. Cocooning, sometimes an inability even to see what the community generally regards as substandard behaviour.

All of this means it is harder for young lawyers in the smaller firms to get adequate mentoring – certainly the best kind of ***informal*** mentoring. There are higher transaction costs for them to secure external mentoring, but we could make a few suggestions –

First, informal networks should be encouraged by involvement in professional associations and professional sub-groups – like Women's Lawyers Associations, District Law Associations. Not surprisingly, when we look at professional associations and sub-groups

these days, we see a much higher representation of small-firm lawyers than we once did. That's no surprise – it is the natural outworking of the small-firm lawyer's need in practice for collegiality and assistance.

And ***secondly***, the development of personal networks with lawyers outside the firm should be encouraged by the employers. The employers in the small firm need not see this as a failing; they can see it as a form of managing ethical risk. Of avoiding cocooning. And ensuring that they are properly engaged with public attitudes and expectations. They can also take heart that the young lawyer who enjoys good collegiality is more likely to experience constructive role-modelling of ethical behaviours, and much more likely to be satisfied in their work.

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