DIVIDED LOYALTIES? THE LAWYER'S SIMULTANEOUS DUTY TO CLIENT AND THE COURTS.

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Lawyers are often the butt of jokes for being dishonest and willing to bend the truth to win a case for money.[1] Apparently there is a Danish proverb that "lawyers and painters can soon turn white to black".[2] Ambrose Bierce offered a definition of a lawyer as "one skilled in the circumvention of the law".[3] John Keats said that "we may class the lawyer in the natural history of monsters"[4], and Samuel Johnson, less brutally but to much the same effect, was reported to have said once about a person that he did "not come to speak ill of any man behind his back, but [he] believe[d] the gentleman [to be] an attorney".[5] To top it off, you have in me a former tax lawyer to discuss ethics, which, as it once was said by a Canadian tax lawyer, "might be said to be akin to inviting the devil to deliver a sermon on sin. A fresh outlook will be anticipated. At least it will be expected that the statement should be brief".[6]

There are times when the ethical standards of lawyers are tested and some tension found between what a client might want and what the lawyer is

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1 See http://www.lawlaughs.com/honesty/howmuch.html.

2 Maria Leach, *The Ultimate Insult* (New Holland Publishers, 1996) 94.

3 Ibid 91.

4 Ibid 95.

5 Ibid 92.

6 Attributed to Vineburg QC in S. Ross, *The Joke's on Lawyers* (Federation Press, 1996) 52.

obliged to do to uphold the law. How a lawyer is required to resolve such tensions can sometimes be quite difficult for a client, or the public, to understand. A client may wish the lawyer to conceal something which the lawyer may be obliged to reveal to a court, to a fellow colleague, or at times to an opposing party.[7] Sometimes the public is surprised to learn that a lawyer's duty is to conceal some fact which, if disclosed, would or could have an impact upon the outcome of a case.[8]

Duty to client

There are many reasons why lawyers have duties to their clients. Lawyers and clients enter into contracts and by that contract assume enforceable obligations.[9] The lawyer and client relationship is such that the lawyer is obliged to take reasonable care not to expose the client to avoidable risks of harm or damage.[10] The lawyer's role as an officer of the court also imposes upon the lawyer duties towards the client,[11] as does the lawyer's statutory entitlement to practice.[12]

The public as a whole has an interest to ensure that lawyers are looking after the interests of their clients. The public as a whole benefits from the law

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7 *Chamberlain v The Law Society of the Australian Capital Territory* (1992) 43 FCR 148.

8 See *Tuckiar v R* (1934) 52 CLR 335.

9 *Waimond Pty Ltd v Byrne* (1989) 18 NSWLR 642, 650 (Kirby P); *Hawkins v Clayton* (1988) 164 CLR 539, 574 (Deane J).

10 *Waimond Pty Ltd v Byrne* (1989) 18 NSWLR 642, 652 (Kirby P); *Hawkins v Clayton* (1988) 164 CLR 539, 579 (Deane J).

11 *Legal Profession Act 2004* (Vic), s 2.3.9; *Myers v Elman* [1940] AC 282, 291 (Viscount Maugham), 303 (Lord Atkin), 307 (Lord Russell of Killowen), 316-9 (Lord Wright), 334-5 (Lord Porter); *Rondel v Worsley* [1969] 1 AC 191, 227 (Lord Reid), 271 (Lord Pearce), 283 (Lord UpJohn); *Ziems v Prothonotary* (1957) 97 CLR 279, 298; *Wettenhall v Wakefield* (1833) 131 ER 934.

12 *Legal Profession Act 2004* (Vic), s 2.7.2.

being applied properly through professional, trained and trustworthy lawyers. The members of the public cannot possibly know all of the details of the law and generally should not be expected to do so. The public relies upon lawyers to act for individual members of the public and in that way to provide to the individuals the legal skills and knowledge which they need but otherwise lack. It is the public interest in having its justice administered properly that explains many of the rights which clients have against their lawyers and which might otherwise seem anomalous. The right of a client to maintain confidential the communications with a lawyer, for example, is fundamentally a right which benefits the community as a whole by encouraging the clients to be open and frank when seeking legal assistance.[13] It is a rule which promotes justice being administered properly.[14]

The public interest in seeing justice administered properly also explains the duties lawyers sometimes have to put aside personal values or personal preferences when deciding to act for, or when acting for, a client. The duty of a barrister is to "promote and protect fearlessly and by all proper and lawfull means the best interests" of the client[15] without regards to the barrister's self interest or to any personal consequence.[16] There are many times when I found myself as a barrister acting for someone whose values, conduct or character I found distasteful or unpleasant. The system as a whole benefits

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13 *Grant v Downs* (1976) 135 CLR 674, 685 (Stephen, Mason and Murphy JJ); *Baker v Campbell* (1983)153 CLR 52, 63 (Gibbs CJ).

14 *Grant v Downs* (1976) 135 CLR 674, 685 (Stephen, Mason and Murphy JJ), 690 (Jacobs J); *Baker v Campbell* (1983)153 CLR 52, 66 (Gibbs CJ), 94-95 (Wilson J).

15 Butterworths, *Halsbury's Laws of England,* vol 3(1) (2005 reissue) 3 Professional Practice and Conduct, 'Duty to the lay client' [510].

16 See *Rondel v Worsley* [1969] 1 AC 191, 227 (Lord Reid); *Tombling v Universal Bulb Company, Limtied* [1951] 2 TLR 289, 297 (Lord Justice Denning); *Abse v Smith* [1986] QB 536, 546 (Sir Donaldson MR); *Tuckiar v R* (1934) 52 CLR 335.

from everyone having access to proper legal services and for some lawyers being obliged to accept briefs for clients in court proceedings.[17] Access to lawyers, legal advice and legal services provides a substantial and secure foundation upon which we can all have confidence that justice is administered properly. We can all feel more confident when accused paedophiles, rapists or murderers are convicted if they have had access to competent and robust independent legal services for their defence. The system as a whole also benefits from an obligation upon barristers to accept a brief for a client without personal conviction in the moral position or correctness of the client's case.[18] We can all feel more confident in the correctness of outcomes if we know that lawyers agree to act for clients without prejudgement of the merits and morals of their clients or of their case: it justifies our confidence in knowing that lawyers are putting their client's position independently, dispassionately and fairly in the client's interest. The lawyer must look after the client and the client's interests and it is in the public interest for that to be so. Often the client is in the vulnerable position of reliance and dependence upon the lawyer's knowledge, skill, expertise, experience, honesty and judgment.[19] The lawyer must act in the best interests of the client keeping firmly in mind the client's interest in seeking appropriate outcomes consistent with the law.

Duty to the Law

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17 The Victorian Bar, *Rules of Conduct and Continuing Legal Education Rules 2005,* r 86.

18 The Victorian Bar, *Rules of Conduct and Continuing Legal Education Rules 2005,* r 11.

19 *Tip Top Dry Cleaners Pty Ltd v Mackintosh* [1998] 98 ATC 4346; *Hurlingham Estates Ltd v Wilde & Partners* (1996) 37 ATR 261; *Hawkins v Clayton* (1988) 164 CLR 539.

The lawyer's duty to the law which creates obligations to the client also imposes a duty upon the lawyer to the administration of justice which the client may, in some circumstances, prefer the lawyer did not have. The lawyer must both act for the client as well as uphold, and not subvert, the law.[20] The lawyer must be engaged in a professional capacity and not participate in illegal transactions.[21]

The simultaneous duty which a lawyer has to the client and the law can be seen in the facts and the decision in *Tuckiar v R*.[22] In that case a barrister had been defending an indigenous client charged with the murder of a police constable in the Northern Territory. During the trial the barrister for the accused interviewed his client at the suggestion of the judge to determine whether the accused agreed with the evidence given by a witness of a confession which the accused was alleged to have made. The barrister said in open court after the interview that he found himself in the worst predicament he had ever faced in all of his legal career. The jury found the accused guilty of murder and, his counsel, between the guilty verdict and the judge's pronouncement of a sentence, informed the judge about what his client had told him when interviewed. The accused had told two different and inconsistent stories of the events, only one of which could be true. The accused had informed his counsel during the interview that the first account he had told was the true one and that the second account was a lie. Revealing this confession enabled the trial judge to accept as truthful the

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20 *Re B* [1981] 2 NSWLR 372, 381-2 (Moffitt P).

21 *Leary v Federal Commissioner of Taxation* (1980) 47 FLR 414, 434–5 (Brennan J).

22 (1934) 52 CLR 335.

evidence of a Constable McColl and also that of a young boy named Harry whose evidence the judge had doubted as truthful.

The joint judgment of Gavan Duffy CJ, Dixon, Evatt and McTiernan JJ was critical of this conduct. Their honours said:

> It would be difficult for anyone in the position of the learned judge to receive the communication made to him by counsel for the prisoner and yet retain the same view of the dangers involved in the weakness of the Crown evidence. This may, perhaps, explain His Honor's evident anxiety that the jury should not under-estimate the force of the evidence the Crown did adduce. Indeed counsel seems to have taken a course calculated to transfer to the judge the embarrassment which he appears so much to have felt. Why he should have conceived himself to have been in so great a predicament, it is not easy for those experienced in advocacy to understand. He had a plain duty, both to his client and to the Court, to press such rational considerations as the evidence fairly gave rise to in favour of complete acquittal or conviction of manslaughter only. … Whether he be in fact guilty or not, a prisoner is, in point of law, entitled to acquittal from any charge which the evidence fails to establish that he committed, and it is not incumbent on his counsel by abandoning his defence to deprive him of the benefit of such rational arguments as fairly arise on the proofs submitted. The subsequent action of the prisoner's counsel in openly disclosing the privileged communication of his client and acknowledging the correctness of the more serious testimony against him is wholly indefensible. It was his paramount duty to respect the privilege attaching to the communication made to him as counsel, a duty the obligation of which was by no means weakened by the character of his client, or the moment at which he chose to make the disclosure.[23]

The lawyer's task in that case was to assist the client to maintain such defence as was lawfully available. The lawyer's role is generally to supply the legal knowledge and expertise needed by the client to enable the system to work properly. A conviction could not be secured if the prosecution could not prove its case. The public interest requires convictions to be secured by due process. People should not be charged or convicted on the basis of suspicion, hunch or guesswork by the courts, juries, police or prosecuting

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[23] Ibid 346.

officials. The public also has an interest to encourage an accused person to be fully frank and candid with his or her lawyer so that the client's interests can be pursued and maintained fully and properly in accordance with the law. The defence lawyer was obliged to put such defences as were available for the accused client and to test the defects and weaknesses in the prosecution's case. The lawyer was not permitted to mislead the court by putting affirmative facts contrary to the instructions given but needed to know his client's version of events so that his case could be put fairly. The public interest is not advanced by encouraging an accused person to mislead a court through conscious deceit of a lawyer but is advanced by encouraging an accused person to rely upon such defences as are legally available on the facts.

This aspect of the lawyer's duty to the law is found both in the common law[24] and in statute.[25] The content of the duty may vary as between the work and functions of barristers and solicitors,[26] but it is fundamental, and necessary, to the administration of our legal system. The law is, in very large part, administered by the legal profession. Mostly the law is applied by each of us going about our daily business lawfully, but the legal profession has the practical day to day management and application of a significant part of the law. Members of the public routinely seek the advice of lawyers and act upon that advice to regulate their behaviour, pursue rights or abandon claims. Contracts are made through lawyers regulating the rights of parties in

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24 *Rondel v Worsley* [1969] 1 AC 191; *Ziems v Prothonotary* (1957) 97 CLR 279; *Myers v Elman* [1940] AC 282; *Giannarelli v Wraith* (1988) 165 CLR 543.

25 *Legal Profession Act 2004* (Vic), s 2.7.2.

26 *Myers v Elman* [1940] AC 282; *Rondel v Worsley* [1969] 1 AC 191.

commerce, and domestic settlements are secured through lawyers dealing with family rights. The cases which go to court for compulsory determination by a judge are a very small percentage of the instances making up the total management and administration of the law and justice in any society. For such a system to work, and for the public to have confidence that it is working properly, the lawyers must uphold the law and its proper administration.

The Advocate's Simultaneous Duty to Court and Client

The advocate's simultaneous duty to court and client is particularly critical to the effective functioning of the law in court proceedings. The judge, and the integrity of the system, is peculiarly vulnerable to the advocates who appear on behalf of clients. A judge cannot undertake independent enquiries into the facts and issues of cases which require judicial determination. Judges do not have the staff, the financial resources, the knowledge or the skills to make or to order their own enquiries about the matters they need to decide cases. It is neither efficient nor proper for judges to take on such tasks. It is efficient to leave the task of evidence gathering to the parties who are best placed to know what to investigate, what matters to pursue, where to find the facts, evidence and expert knowledge that needs to be pursued, and how best to present those matters to a judge when identified and obtained. It would also be inappropriate for judges to assume those tasks because it would expose the decision maker to the criticism of having ceased to be an impartial decision maker deciding between conflicting parties and to have become, in practical effect, a partisan in the dispute. The losing party to any conflict, and the public as a whole, can have greatest confidence in the fairness of an

outcome where the process is manifestly impartial and where decisions are made by a neutral decision maker. Such confidence is likely to be maintained where the parties, including – if not especially – the losing party, have had effective control of the elements which went into the decision of a neutral and impartial decision maker.

An effect of this reality, and of these objectives, is that the judge relies heavily upon what lawyers advance on behalf of their clients. It is in that sense that the decision of the judge, and the integrity of the system, is vulnerable to the advocates who appear on behalf of clients. Judges need to be confident about what they are told by the lawyers on behalf of their clients.

In *Giannarelli v Wraith* Mason CJ said:[27]

> The peculiar feature of counsel's responsibility is that he owes a duty to the court as well as to his client. His duty to his client is subject to his overriding duty to the court. In the performance of that overriding duty there is a strong element of public interest. So, in *Swinfen v Lord Chelmsford* Pollock CB, after speaking of the discharge of counsel's duty as one in which the court and the public, as well as the client, had an interest said:
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> > "The conduct and control of the cause are necessarily left to counsel ... A counsel is not subject to an action for calling or not calling a particular witness, or for putting or omitting to put a particular question, or for honestly taking a view of the case which may turn out to be quite erroneous. If he were so liable, counsel would perform their duties under the peril of an action by every disappointed and angry client."
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> In the result the Court of Exchequer concluded "that no action will lie against counsel for any act honestly done in the conduct or management of the cause".
> The performance by counsel of his paramount duty to the court will require him to act in a variety of ways to the possible disadvantage of his client. Counsel must not mislead the court, cast unjustifiable aspersions on any party or witness or withhold documents and authorities which detract from his client's case. And, if he notes an irregularity in the conduct of a criminal trial, he must take the point so

[27] (1988) 165 CLR 543, 556-7.

> that it can be remedied, instead of keeping the point up his sleeve and using it as a ground for appeal.
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> It is not that a barrister's duty to the court creates such a conflict with his duty to his client that the dividing line between the two is unclear. The duty to the court is paramount and must be performed, even if the client gives instructions to the contrary. Rather it is that a barrister's duty to the court epitomizes the fact that the course of litigation depends on the exercise by counsel of an independent discretion or judgment in the conduct and management of a case in which he has an eye, not only to his client's success, but also to the speedy and efficient administration of justice. In selecting and limiting the number of witnesses to be called, in deciding what questions will be asked in cross-examination, what topics will be covered in address and what points of law will be raised, counsel exercises an independent judgment so that the time of the court is not taken up unnecessarily, notwithstanding that the client may wish to chase every rabbit down its burrow. The administration of justice in our adversarial system depends in very large measure on the faithful exercise by barristers of this independent judgment in the conduct and management of the case. In such an adversarial system the mode of presentation of each party's case rests with counsel. The judge is in no position to rule in advance on what witnesses will be called, what evidence should be led, what questions should be asked in cross-examination. Decisions on matters such as these, which necessarily influence the course of a trial and its duration, are made by counsel, not by the judge. This is why our system of justice as administered by the courts has proceeded on the footing that, in general, the litigant will be represented by a lawyer who, not being a mere agent for the litigant, exercises an independent judgment in the interests of the court.

It is inevitable that judges rely heavily upon what counsel tells them. It is the lawyers for the parties who have prepared and know the facts and issues relevant to the case. The judge must inevitably rely upon the lawyers assessment of what issues are relevant and what the facts are. The practitioner is the intermediary between client and decision maker simultaneously assisting both by sifting for each what is needed to achieve an outcome in the clients interests but consistent with the law. The client needs to know that the lawyer is putting reliably the best case that can be put. The court needs to know that the best case that can properly be put is being put. The clients legitimate interests would not be advanced by the lawyer misleading the decision maker. The client’s legitimate interests are best secured by the lawyer focusing upon that which the law permits the client to

obtain on the evidence available.

Taking Impermissible Advantage of an Adversary's Error

The lawyer's duty to uphold the law will sometimes require the lawyer not to take advantage of an adversary's error even though the lawyer may not have caused the error and the person who made the error has his or her own lawyers upon which advice is being sought. In *Chamberlain v The Law Society of the Australian Capital Territory*[28] a lawyer, acting for himself, was found to have committed professional misconduct by deliberately taking advantage of a mistake made by the Commissioner of Taxation. The Commissioner had assessed Mr Chamberlain to tax for $255,579.20 but mistakenly sued Mr Chamberlain for $25,557.92. It seems that someone put the decimal point in the wrong spot with the result that the court proceedings commenced by the Commissioner against Mr Chamberlain was for $230,000 less than it should have been. Mr Chamberlain was aware of this mistake and took advantage of it by getting the Commissioner to sign terms of settlement and to consent to judgment for the smaller amount mistakenly claimed. Mr Chamberlain gave evidence that his reason for doing this was his expectation of putting himself in a better bargaining position for when the Commissioner would eventually realise the error and seek to recover the larger amount.

The Commissioner of Taxation is a very experienced litigator and had his own lawyers acting for him in the litigation against Mr Chamberlain. It was the Commissioner, or someone acting for the Commissioner, who made the

[28] (1992) 43 FCR 148.

mistake. Mr Chamberlain, however, took advantage of the mistake by arranging for terms of settlement to be signed and for consent orders to be entered. The full court held by a 4-1 majority that Mr Chamberlain's conduct constituted professional misconduct notwithstanding that the mistake had not been his, notwithstanding that his opponent was represented by his own lawyers in adversarial proceedings, and notwithstanding that Mr Chamberlain was in this instance acting for himself personally rather than as a solicitor for another client.

The case found against Mr Chamberlain depended upon the *Guide to Professional Conduct and Etiquette* adopted by the Council of the Law Society of the Australian Capital Territory in September 1984 which, by paragraph 20.2, provided:

> If a Practitioner observes that another Practitioner is making or is likely to make a mistake or oversight which may involve the other Practitioner's client in unnecessary expense or delay, the Practitioner should not do or say anything to induce or foster that mistake or oversight *and* should, except where so doing might prejudice his or her own client, draw the attention of the other Practitioner to that mistake or oversight.[29]

The terms of the paragraph reveal the tension which exists in adversarial proceedings when a lawyer sees an opponent making an error. In adversarial litigation it is sometimes acceptable for a party to take advantage of an opponent's mistake, and sometimes there may even be a duty on a lawyer to do so. Black CJ considered that notions of fairness and common decency explained the drawing of the line between admissible and impermissible

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29 Ibid 154.

taking of advantage of an opponent's mistake.[30] His Honour said:

> Whilst in some circumstances it may be in order to take advantage of a mistake, in other circumstances the attention of the practitioner should be drawn to a mistake or oversight. But, in any event, where there is a mistake that may involve the other practitioner's client in unnecessary expense or delay the practitioner should not do or say anything to induce or foster that mistake. To induce or foster such a mistake would be detrimental to a relationship characterised by courtesy and fairness that ought to exist between members of the legal profession. A relationship of that nature … has as its justification not merely in social or ethical *mores*; it has an additional justification referrable to the public interest, in that courtesy and fairness contribute materially to the effective and expeditious performance of legal work …[31]

Duty of Independence

Another aspect at the heart of the simultaneous duty to court and client is the lawyer's duty of independence in the conduct of a trial. I have already referred to the duty of candour and honesty[32] and the duty not to mislead the court[33], but the duty of independence has much practical content in the day to day conduct of proceedings in a court on behalf of a client. The lawyer in court cannot be the "mere mouthpiece" of the client.[34] The lawyer is required to exercise independent judgment and is personally responsible for the conduct and presentation of a case in court.[35]

A barrister who signs pleadings does so in part as a voucher that the case is not a mere fiction[36] and thereby provides an assurance to the court that the pleading accords with the rules and upon the facts alleged contains a cause

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30 Ibid 155.

31 Ibid.

32 *New South Wales Bar Association v Livesey* [1982] 2 NSWLR 231.

33 *New South Wales Bar Association v Thomas* (No.2) [1989] 18 NSWLR 193.

34 *New South Wales Bar Association v Punch* [2008] NSWADT 78; The Victorian Bar, *Rules of Conduct and Continuing Legal Education Rules 2005,* r 16.

35 Butterworths, *Halsbury's Laws of England,* vol 3(1) (2005 reissue) 3 Professional Practice and Conduct, "Barristers Duty in Court" [550].

36 *Great Australian Goldmining Co v Martin* (1877) 5 Ch D 1, 10 (James LJ).

of action. The preparation of the evidence for trial also requires lawyers to exercise independent legal judgment to assist the court in reaching the correct outcome. The guiding principle is that the evidence presented to the court should be that which is necessary, relevant, admissible and probative; in other words, that the lawyer tenders evidence which in the lawyer's independent judgment is considered to bear upon the question in dispute, is admissible in evidence and will assist in proving the case for the client.

A practical application of these considerations occurs every day when lawyers prepare affidavits and witness statements for court proceedings. The role of the lawyer is not to create evidence which does not exist and, therefore, must always exercise care to ensure that what is prepared to be tendered in evidence does not inadvertently become the lawyer's "spin" rather than the witness' actual evidence. A lawyer may not school a witness in the evidence to be given.[37] In *Re Spedley Securities Ltd (in Liq); Reed v Harkness* Bryson J said;

> It would be quite improper to school a witness in what evidence he should give but on the other hand it is not improper for his legal advisors to interview a witness before he gives evidence in litigation between parties and to ascertain what the witness will say in relation to relevant matters, relevance being ascertainable from the pleadings, particulars, any affidavits and from other sources including, during the conduct of the hearing, the oral evidence of other witnesses. The gap between schooling and examinee and the proper conduct of a conference is obvious enough and legal advisors who cross that gap would be liable to sanctions, including professional discipline and the exposure in the course of the examination and in public of what had taken place. Any idea that there is to be no conference between an examinee and the legal representatives whom he is entitled to have appears to me to be quite wrong and it is not to be expected or required by the court that before a person comes to be examined he

[37] *Re Spedley Securities Ltd (in Liq); Reed v Harkness* (1990) 2 ACSR 117, 127 (Bryson J).

> should not direct his attention to relevant matters, and that his legal representatives should not do so, in conference or otherwise. Legal representation would be ineffective unless legal representatives were to take the examinee's statement about such matters as could be seen to be relevant, point out papers which could be searched out and examined, and otherwise generally consider the examinee's position, in relation to whatever was known about his position, from whatever source it was known and whether or not that source included evidence which had been given at the public examination of another person. Schooling, drilling or colouring the evidence of an examinee would of course be quite wrong, as any legal representative must know.[38]

The line between impermissible schooling and permissible assistance is a line which is well known to legal representatives. Sometimes that line may seem unclear but its existence is not and mostly what is permissible and impermissible is easy enough to determine. The lawyer must not distort the evidence of the witness. It is permissible, and useful, for the lawyer to interview a witness for the purpose of determining what evidence the witness is likely to give in court. It is also permissible for the lawyer to explore the evidence which the witness might give by showing the witness and other evidence in the case to find out from the witness what his or her evidence about those matters is or would be. What is impermissible, however, is for the lawyer to instruct the witness about the content of the evidence which the witness would give in such a way as to change the evidence itself whether by fabrication, modification, concealment or "spin".

The lawyer also has duties in relation to the law to which attention should be drawn in court. The lawyer has a duty to inform the court about the law whether in favour or against the interests for which the lawyer appears.[39] A

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38 2 ACSR 117, 127 (Bryson J).

39 *Glebe Sugar Refining Company Limited v Trustees of the Port and Harbours of*

barrister may have a duty to draw attention to erroneous statements of the law in a judge's charge to a jury.[40] These obligations may all be inconvenient for the client's interests but they are fundamental to ensuring that the system works well.

Reputation

There is a practical side to many of these obligations which help to maintain them. In *Re Spedley Securities Ltd (in Liq); Reed* v *Harkness* Bryson J referred to the sanction of exposure in the course of an examination in public of any schooling by a lawyer of an examinee.[41] The risk to a lawyer of a loss of reputation is very serious. Indeed, if you think about much of what I have said, a lawyer's effectiveness for his or her client depends upon enjoying a reputation of maintaining the appropriate standard of behaviour required for legal practitioners. The lawyer who loses the reputation of independence is likely to be less effective in court. The lawyer who develops a reputation for lack of candour or openness is less likely to be effective in court because a judge is more likely to be on guard about the reliability of what the lawyer says. The lawyer who is not open and candid with his or her professional colleagues is likely to be less trusted and will find it more difficult to secure the confidence of colleagues when seeking to conclude agreements or resolve disputes. The reputation of a lawyer is fundamental to the lawyer's task.[42]

Greenock (1921) 125 LT 578, 579 (Lord Birkenhead LC).

40 *R v Southgate* [1963] 1 WLR 809.

41 2 ACSR 117 at 127.

42 Good name in man and woman, dear my lord, / Is the immediate jewel of their souls: / Who steals my purse steals trash; 'tis something, nothing; / 'Twas mine, 'tis his, and has been slave to thousands: / But he that filches from me my good name / Robs me of that which not enriches him / And makes me poor indeed. Shakespeare, *Othello*, Act 3, Scene 3.