Admission to the club

Grania Connors

The issue of admission to practice is a vexed question. Whether considering the criteria against which a "fit and proper person" is judged, the principal and articled clerk relationship, or the duties and obligations that attach to admission, the concept of "joining the club" is problematic.

The debate over what admission means and what standards should be attained prior to admission has been raging for years. The first paper dealing with this issue was the *Uniform Admission Rules* drafted by the Priestley Commission in the early nineties (the "Priestley 11"). The Priestley 11 was followed by the Law Council of Australia's *Blueprint for the Structure of the Legal Profession* in 1994 and the Australian Professional Legal Education Council's *Standards for the Vocational Preparation of Australian Legal Practitioners* in 1997. These various bodies have tried to define the level of practical training, the amount and content of legal education and the level of professional "maturity" which must be attained prior to being admitted.

These various groups have attempted to develop a set of admission criteria which can be implemented in a uniform manner at a national level. Notwithstanding, Australia still boasts a hotchpotch of admission requirements which varies not only from state to state but also within particular jurisdictions.

The National Issues Committee of the Law Institute has recently considered the latest proposal "doing the rounds". This paper, entitled *Legal Education, Training and Admission Requirements*, was presented by the Victorian Attorney-General, Jan Wade, to the Standing Committee of Attorneys-General in April this Year.

In summary, the paper proposes to abolish the system of articles of clerkship and admit all law school students upon graduation. A system would be implemented requiring newly admitted practitioners to practice under the supervision of an experienced practitioner for a period of two years. During this supervised period, the practitioner would be required to complete a program of further professional and practical study. Upon completion of the further study and the supervised training period, the practitioner would be entitled to an "unrestricted" practising certificate.

In short, the paper proposes to abolish pre-admission practical legal training and admit all law students upon graduation. It is hoped this will ease the current "bottleneck" of graduates vis-a-vis articles positions and allow all graduates to become fully qualified legal practitioners, notwithstanding that they may choose not to pursue a career in private practice.

The pivotal issue at the core of the paper is: what is the purpose of admission? What does (or should) admission mean? One element to admission is that the court must be satisfied that the individual is a "fit and proper person". Generally, the process of proving that one is a fit and proper person involves obtaining necessary tertiary qualifications, having some understanding of the practice of law, and undergoing peer judgment.

'...the paper proposes to abolish pre-admission practical legal training and admit all law students upon graduation...'

Whether or not one agrees with the criteria by which a person is judged, the concept of admission itself is rendered meaningless if it is "automatically" granted solely on the basis of tertiary qualifications ie when admission is not accompanied by relevant experience. The level of practical experience of the admittee is what makes admission "valuable". It is not insignificant that many young lawyers do not wish to practice permanently in private practice but seek to obtain a level of proficiency by completing Articles.

Young Lawyers does not believe that the Wade proposal will ease the bottleneck of articles. Under the proposed scheme, new practitioners must complete a minimum two year period of supervised practice, notwithstanding that they may have completed all further training requirements. The automatic granting of admission does not reduce the requirement that supervised practical training be completed, nor will it create more placements to provide such training.

The legal market is such that the number of young lawyers who receive practical training is directly related to the needs and resource demands of law firms. The fact that graduates are admitted will not increase the number of placements with law firms

which will take on and train such graduates in the practice of law. Thus, whether or not graduates are admitted automatically, a bottleneck persists. The true bottleneck of admission is caused by the disparity in the supply of and demand for practical experience. Providing admission in name only does not solve this problem. The Wade paper succeeds only in effectively extending the period of practical training from one year to two.

There is little ultimate value in admitting practitioners upon completion of their law degree merely so they can move on to other fields as "fully qualified" lawyers. In general, practitioners who currently do not practice in private can obtain Articles within their relevant work environment by being Articled to a qualified legal practitioner while performing "normal" work duties. Corporate and government practitioners are not disadvantaged by the current system of Articles.

It should also be noted that the independence of the court, as embodied in the right to grant audience, is compromised by a body other than the court having the right to grant audience as a matter of course.

The paper's suggestion that an intensive program of study be completed prior to an unrestricted right of practice being granted to a new practitioner is a double edged sword. This proposal is intended to combat the problem of disparity in the quality of articles and ensure a base standard of education and competence across the spectrum of new practitioners.

Although most lawyers would support a system which results in competent and well trained practitioners, such a proposal is problematic in that it makes no mention of how (or, more importantly, by whom) such further training will be financed. If graduates are forced to undertake mandatory study and achieve particular accreditation requirements, this will result in practitioners who are least able to pay for such further legal education being economically disadvantaged.

Should continuing education become mandatory, it must be funded by law firms. In preference to the proposed system, Young Lawyers advocates the instigation of a scheme whereby practitioners must complete a quota of CLE requirements on an ongoing basis each year.

The proposal to grant admission to practice immediately upon graduation followed by a period of two years supervision will create a situation whereby young lawyers are required to serve a period of "quasi-Articles" to gain full accreditation and recognition as a lawyer. This will have severe effects in terms of the economic position of graduates - instead of serving twelve months of training where remuneration is minimal, this training period will be extended to twenty-four months with a resultant negative financial impact.

Many of the proposals contained in the paper are vague and uncertain in detail and will produce great hardship for young lawyers throughout Victoria. Young Lawyers has therefore voiced its opinion that the proposal, in its present form, is unacceptable. Notwithstanding that national uniform admission standards are desirable, Young Lawyers do not believe that the solution presented by the Victorian Attorney-General presents a preferable system to the current system of twelve months Articled Clerkship or eight months Leo Cussen Institute training program. Young Lawyers has therefore argued that the current system be retained as the professional admission requirements in Victoria.

Many of the proposals contained in the paper are vague and uncertain in detail and will produce great hardship for young lawyers throughout Victoria.

The Law Institute has responded to the Attorney-General's paper. In broad terms, the Institute supports the proposal for uniformity at a national level. However, the Institute response highlights the fact that many small firms will be unable to finance or resource the necessary training for new practitioners and that, as a result, placements for graduates may be reduced. The Institute has also stressed the need to ensure that any proposed new system of admission does not place graduating lawyers at economic disadvantage. For example, the Institute has advocated that a graduated scale of pay is desirable should the period of supervised training be increased from (up to) one year to two years.

At present, it is unclear whether there is interstate support for a national uniform scheme of admission, nor is it clear whether Victoria will reform the current system irrespective of the support of other states.

So what does it all mean? It means the issue of admission to practice is a vexed question. Anecdotal evidence tends to indicate that the present system, although certainly not without fault, is working well. In general, complaints or requests for assistance to the Law Institute from articled clerks of Leo Cussen graduates have been minimal in recent years.

But does this confirm that the system is working? Are young lawyers happy with the level and standard of practical training they are receiving prior to admission? Is change necessary to ensure that professional education and training standards are raised? To find out all this and more, the Law Institute conducted a survey of the profession's most recent admittees. Read on McDuff ... (see page 21).

Grania Connors