THE LEGAL PROFESSION IN TASMANIA

by
S. D. ROSS*

I. *A Brief History*

The practice of law in the early days of the colony was in the hands of the convicts or ex-convicts. They were the only qualified persons available but were ineligible for enrolment. In New South Wales they were excluded from practice in 1817.[1] The first two qualified non-convict solicitors arrived in Sydney in 1815.[2]

In Hobart Town the first solicitor opened office in 1819.[3] He was originally a convict, but as a result of the non-arrival of the Judge-Advocate and solicitors from Sydney, he was allowed to appear at the 1819 assizes.[4]

Under the Charter of Justice of 1823 Supreme Courts were established in both Sydney and Hobart Town in 1824. At the first sitting of the Court in Hobart Town four non-convict solicitors and attorneys were admitted. By the end of that year six more had been admitted.[5] It does not appear that any of the first admissions were barristers. In fact out of the first forty-five names on the Supreme Court Rolls only one, Algernon Montagu, was admitted solely as a barrister.[6] This is in marked contrast to the profession in Sydney where four of the first ten admissions were barristers.[7] This fact may be one of the major reasons that the Tasmanian legal profession remained fused while that in New South Wales became divided. The shortage of qualified lawyers in both colonies made it desirable to have amalgamated professions, but nevertheless the class consciousness of the barristers and judges was an important factor in bringing about the division in New South Wales. These feelings can be seen from the statement of William Charles Wentworth in relation to the taxation of a bill of costs: 'Though I have been

---

* B.A. (*Brooklyn Coll.*), J.D. (*Calif.*), M.A. (*San Francisco State*).
Senior Lecturer in Law, University of New South Wales.
The author wishes to acknowledge the constructive criticism of his colleagues, John Basten and Julian Disney.

1 "A Peep into the Past" (1970) 8 *Law Society Journal* 26.

2 *Ibid.*

3 *Court in the Colony*, (1974) Ed. J. N. D. Harrison, at p. 26.

4 *Ibid.*

5 Harrison, *op. cit.*, at pp. 32-33.

6 He later became a judge and was removed from the bench. See P. A. Howell, *The Van Diemen's Land Judge Storm*, (1964-7) 2 University of Tasmania Law Review 253.

7 'A Peep into the Past', *op. cit.*, at p. 26.

degraded against my will to a level with the old practitioners . . . here — I will never quietly allow myself to be ousted of that scale of fees to which the higher branch of the profession to which I really belong entitles me'.[8]

There was established a Law Society in New South Wales in 1843 and a Law Society of Van Diemen's Land in 1845. Neither survived for a long period.[9] The present Law Society of New South Wales came into existence in 1884.[10] In Tasmania, two separate law societies developed — the Northern Law Society founded in 1887 or 1888 and the Southern Law Society founded in 1888.[11] It was not until 1962 that a united law society was formed.[12] The Law Society receives its powers under the *Legal Practitioners Act* 1959 and subsequent amendments. The present Act is being reviewed and a new Act will probably be enacted in 1976.[13]

II. *Profile of the Profession*

The Tasmanian legal profession is the smallest of all the States in Australia.[14] It has the following composition. The private profession has 183 practising solicitors; 5 Queen's Counsels; 3 barristers; 6 Commissioners. The non-private profession has 50 State government officers (of whom 13 are magistrates); 2 lawyers work for City Councils; 3 Transportation Commission officers; 2 Hydro-Electric Commission officers; 8 Australian Legal Aid Office lawyers; 5 Deputy Crown Solicitors; 1 Registrar in Bankruptcy.[15] The private profession has not appreciably increased in size since the turn of the century,[16] but the public sector has greatly increased. Nor has the high level of education in the profession changed in this century. As at the turn of the century, more than 90 per cent of the profession today have received an LL.B.

---

8 J. M. Bennett and J. R. Forbes, 'Tradition and Experiment: Some Australian Legal Attitudes of the Nineteenth Century', (1971) 7 *U. Qld. L.J.* 172, at p. 183. See also: 'The Legal Profession and its Branches', (1970) 8 Law Society Journal 75; R. Z. de Ferranti, 'An Outline of the Historical Development of the Legal Profession in N.S.W.', (1951) 25 *A.L.J.* 298.

9 Records of the Societies have been lost and the exact date of their termination is unknown.

10 Harrison, *op. cit.*, at p. 24 and R. J. Atkins, *The New South Wales Solicitor's Manual*, (3rd ed., 1975) at p. 13.

11 Harrison, *op. cit.*, at p. 24.

12 *Law Society Act*, 1962.

13 Interview with P. M. Roach, Director Tasmanian Legal Practice Course.

14 See *Australian Financial Review*, 15 March 1975, pp. 2-3. The A.C.T. and Northern Territory have less lawyers than Tasmania.

15 Law Society List as of July 1975, provided by J. N. D. Harrison, Secretary of the Tasmanian Law Society.

16 Southern Law Society had 60 members in 1888 and the Northern Law Society had 64 members at the turn of the century. Harrison, *op. cit.*, at p. 24.

degree.[17] This is in marked contrast with New South Wales where almost half have no university degree.[18]

Although there are listed in the profession five Queen's Counsel and three barristers, there is, in reality, no separate Bar. The Queen's Counsel are all politicians and rarely, if ever, practise. The three barristers do not appear to be attracting others to join them. One of the practising barristers did convince the profession that he needed rules to guide him. Therefore, in 1972, Barristers' Rules of Practice were enacted which only apply to those members of the profession acting solely as barristers. In the early 1960's there appeared to be developing a voluntary Bar in Hobart, but it did not survive.[19] A Bar Association also exists but this is mainly made up of advocates from various firms who do a large amount of court work.

There are at present 36 barristers from other States who have taken out practising certificates in Tasmania.[20] For the most part these barristers are from Victoria and are only employed in certain large and complicated cases. An interstate solicitor may not take out a practising certificate in Tasmania unless he has 'ceased to practise in any other State or Territory of the Commonwealth in which he has practised'.[21] The reason for this requirement is to prevent large out of State firms from setting up branch offices in the State. However, the operation of this rule may in some cases restrict the availability of legal services to the public. For example, a Victorian solicitor applied for a practising certificate so as to open an office on Flinders Island where there are no lawyers in practice. He did not want to give up his Melbourne practice immediately because of the economic hardship this would cause to him. His application was refused correctly under the present law.[22] It may be in the best interests of the Tasmanian public to have this law modified to allow single practitioners to come to Tasmania while maintaining their previous office — especially to areas where no lawyers are to be found.

More than half of the profession is located in Hobart and most of the other half in Launceston, Devonport and Burnie.[23] There are very few lawyers in smaller towns. Since the cities are not large no suburban practice has developed.[24] Another interesting feature is that the vast

17 See Law Lists. South Australia has a similar situation.

18 Submission of the Law School, University of New South Wales to the Committee of Inquiry into Legal Education, January 1975. This submission shows that with the large increase in university graduates the present situation will change in the next few years.

19 M. P. Crisp, *History and Status of the Legal Profession in Tasmania,* (1968) at p. 25.

20 Law Society List. Barristers are admitted from out of state under sec. 15, *Legal Practitioners Act,* 1959.

21 *Legal Practitioners Act,* 1959, sec. 11 (2).

22 Law Society's files.

23 Law Society List has the following breakdown: South — 111; North — 48; Northwest — 38.

24 For example, Hobart has four suburban practitioners.

majority of the practitioners are in small firms (between two to eight lawyers). Solo practitioners make up a relatively small percentage of the profession.[25] Since large business corporations have their main offices on the mainland and only branch offices in Tasmania, the legal profession does not have substantial work in this area. It does do work for smaller businesses, but the main area of income is from conveyancing.[26]

III. *Rules of the Legal Profession in Tasmania*

(a) *Introduction*

The sources for rules governing the legal profession in Tasmania are the following: (1) The *Legal Practitioners Act*, 1959 and subsequent amendments; (2) The *Law Society Act*, 1962; (3) The Solicitor's Handbook (which contains the rules of practice); (4) Law Society Rulings; (5) Reported and unreported cases. In addition, if there is a problem of interpretation of the rules the Society refers to Atkins, *New South Wales Solicitor's Manual*, Lund, *The Professional Conduct and Etiquette of Solicitors, and Cordery on Solicitors.*[27] Finally, it should be noted that the Solicitor's Handbook also contains the Barristers' Rules of Practice.

(b) *Admission*

The Legal Practitioners Act will probably be drastically changed in this area in 1976 by enactment of a new Act. But at the present time there are three requirements for admission into the profession: (1) A Bachelor of Laws degree from the University of Tasmania or another approved university;[28] (2) The completion of a six months skills course run by the Law Society under the auspices of the College of Advanced Education;[29] (3) The practice of law for 18 months under the supervision of a qualified lawyer.[30] During the last six months of the eighteen month period the apprentices only have a limited right of audience[31] (for example, they cannot conduct a criminal trial). Other avenues of admission into the profession are: (1) By serving five years as an articled clerk and passing the prescribed examinations;[32] (2) Admission in England, Scotland or Northern Ireland;[33] (3) Admission in any part of Her Majesty's Dominions;[34] (4) Admission in another State or

25 Law Society List.

26 Interviews with practitioners and members of the Council of the Law Society.

27 Interview with J. N. D. Harrison, Secretary, Law Society of Tasmania.

28 *Legal Practitioners Act*, 1959, as amended 1971 (No. 102), s. 13 A (1) (a). For example, the University of Adelaide was approved in 1972.

29 *Ibid.*, s. 13A (1) (b).

30 *Ibid.*, s. 13 A (1) (c); s. 32 AC.

31 *Ibid.*, s. 20B (1) (b); and the Sixth Schedule to the *Legal Practitioners Act*, 1959.

32 *Ibid.*, s. 12; see also 1971 Amendments s. 18 B (1) (a) (b), and sec. 20 B (1) (a).

33 *Ibid.*, s. 8.

34 *Ibid.*, s. 9.

Territory of the Commonwealth;[35] (5) Given to certain law officers of the Australian Government.[36]

The present system of admission has caused certain problems. Tasmania has the longest period of qualification for admission after graduation of any place in Australia. Some students have expressed dissatisfaction over the requirement of 18 months of apprenticeship and have proposed that it be reduced to six months. The Council of the Law Society has rejected this request.[37] The present system can lead to discrimination against Tasmanians. For example, if a young barrister who has practised one year in New South Wales wants to come to Tasmania, he can be admitted because he has been practising at least one year immediately prior to his application.[38] He will have spent only one year after university in practice, while the Tasmanian graduate must spend two years in order to qualify for his admission.

Another problem with the present rules on admission is that it is presently easier to be admitted if a person has qualified in England, Scotland or Northern Ireland than if he has qualified in another Australian State or Territory. If a person has been admitted in England, Scotland or Northern Ireland there is no requirement of having to practise 'on his own account' for one year.[39] A good example of this discrimination was the case of an English barrister who had been called to the Bar and then immediately came out to Tasmania. He had not read with a barrister nor practised as a barrister, nor had he served articles. In fact, he had no practical experience at all. The Court held that he was entitled to be admitted and could practise, both as a solicitor and barrister.[40] The same can be said for a person qualifying in any other of Her Majesty's Dominions, except that the Court is obliged under the Act to more carefully scrutinize his qualifications.[41] The latter could lead to a situation where someone admitted in Mauritius would be able immediately to be admitted in Tasmania, while an applicant from another Australian State would not qualify for admission. In addition, the Mauritian applicant will have spent much less time than a Tasmanian graduate in order to be qualified for admission to practice. Certain leading members of the legal profession in Tasmania feel that the standards of development of legal skills after graduation is lower in the rest of Australia. These views are based on extensive training received by Tasmanian students after graduation. In light of these views there has been some discussion on repealing provisions that allow for

35 *Ibid.*, s. 11.

36 *Ibid.*, s. 18 A (1) (a).

37 Law Society of Tasmania, Annual Report, 1973-4, at p. 4.

38 *Legal Practitioners Act*, 1959, s. 11 — (1) (b). See also *In re Button*, (1957) Tas. S.R. 309, at 313.

39 *Legal Practitioners Act*, 1959, s. 8.

40 *In re Palmer*, [1955] Tas. S.R. 79.

41 *Ibid.*, s. 9.

reciprocity between the States. Of course, if this is done the other States may restrict the right of Tasmanians to practise in their State.

(c) *Discipline and Ethical Problems*

The discipline procedure followed by the Law Society is the following:[42] The complaints are received by the Secretary of the Society. He then writes to the solicitor involved and if he is satisfied by the answer he sends a copy to the complainant. In this manner most complaints are dealt with and the file is closed. This does not mean that the complainant is always satisfied. If the Secretary is not satisfied by the reply from the solicitor the problem will be referred by the Secretary to the complaints committee. If the complainant is not satisfied with the reply given by the solicitor he or she may, by maintaining the complaint, have the Secretary in exercise of his discretion refer the problem to the complaints committee. If the complaint is by one solicitor against another, the Secretary brings the two solicitors together to try and solve the problem. If this does not solve the problem it is referred to the complaints committee.[43] The latter is composed of two representatives from each of the three districts, but only one from the district involved will investigate the complaint.[44] In reality it is not a committee but a panel from which one person is selected. This solicitor makes a report to the disciplinary committee (composed of five members)[45] and that committee decides whether or not to bring charges against the solicitor. If the solicitor is charged with a violation of the Legal Practitioners Act his case will be heard by the disciplinary committee. If a serious criminal charge is involved the case will be referred to the police.

The most interesting aspect of this procedure is that the Secretary of the Society, who is at present a layman, exercises a large share of the discretionary power in the system. His role as a conciliator is most unusual, but probably quite useful because of the smallness of the profession. There is probably no other Law Society in Australia that makes use of a layman in the disciplinary process to such an extent. In fact, the use of laymen in the disciplinary process of law societies has only been a recent development. It has been adopted in the United Kingdom under the *Solicitors (Amendment) Act*, 1974.[46] The procedure in Tasmania is unlike that in the United Kingdom in that it is unofficial. The lack of control over the layman, including a detailed description of his duties and powers, could lead to an abuse of the discretionary power.

Since the profession is quite small in Tasmania, the number of complaints is not numerous. During the period from June 1973 to June 1974

42 Interview with J. N. D. Harrison.

43 See Law Society of Tasmania Annual Report, 1973-74, at p. 2.

44 Interview with J. N. D. Harrison.

45 See Law Society of Tasmania Annual Report, 1973-4, at p. 2.

46 See S. D. Ross, 'The Solicitors (Amendment) Act 1974 (U.K.); Its Relevance to Australia', (1975) 49 *A.L.J.* 268.

there were 45 complaints made to the Secretary of the Society.[47] For all of 1974 there were 54 complaints. These complaints were in the following areas: 27 delay; 12 negligence; 2 legal aid refused; 2 laymen acting as solicitors; 2 conflict of interest; 2 costs; 2 solicitor complaining of another solicitor because of delay; 5 miscellaneous.[48] Although this number is small very few of these complaints were against the same solicitor. Thus the figure of 54 represents approximately 25 per cent of the total private profession. Of course, many of the complaints are based on lack of knowledge by laymen about legal skills and legal procedure, but at least in the area of delay serious problems do exist. Rule 4 (1) of the Rules of Practice 1970 states: 'A practitioner shall at all times do his best to complete within a reasonable time, business entrusted to him by a client'. The Law Society has pointed out that many of the complaints concerning delay are justified. It stated: 'The failure of solicitors to attend to matters in which they accept instructions and to answer clients' letters and generally to keep clients informed of progress with their affairs is to be deplored... Practitioners should endeavour to be prompt in their attention to clients' affairs not only for the sake of a good public image, but also because persistent delay by a solicitor can amount to misconduct meriting the taking of proceedings against that solicitor before the Disciplinary Committee.'[49] This is strong language, but the statistics do not point to strong enforcement by the Society. Since the Tasmanian Law Society was formed in 1962 only four members have been disciplined by being struck off the rolls — all for trust account defalcations.[50] Delay and negligence are the two largest areas of complaints and no one has been disciplined (fines, suspensions or struck off the rolls) by the Society for these abuses.

The Law Society has made an effort to protect the public against defalcations and negligence by members of the profession. The Society has an insurance policy that covers each solicitor for up to $40,000 in case of misappropriation of funds.[51] In addition, each solicitor must have a fidelity bond for $40,000 before he receives his practising certificate.[52] This sum is too low considering the size of defalcations that have taken place. The Society has also illegally required every solicitor to take out professional negligence insurance of $100,000 before a practising certificate will be issued.[53] Even though there is no requirement under the law for them to do so, the peer pressure of a small legal profession has resulted in 100 per cent compliance with the request. The

47 Law Society of Tasmania Annual Report 1973-4, at p. 5.

48 Law Society files.

49 Law Society of Tasmania Annual Report 1973-4, at p. 5. For an interesting New South Wales case in which a professional misconduct was found because of gross negligence delay) — see *In re Moseley* [1925] S.R. N.S.W. 174.

50 Interview with J. N. D. Harrison.

51 Interview with J. N. D. Harrison.

52 *Legal Practitioners Act* 1959 s. 54. See also ss. 55 & 56.

53 Interview with J. N. D. Harrison.

requirement of having compulsory negligence insurance is a desirable step forward in the protection of the public. There is presently a Bill being presented to Parliament in the United Kingdom that will result in compulsory professional negligence insurance for all members of that legal profession.[54] It would seem to be appropriate for the legal profession in Tasmania to enact similar provisions, and change a de facto situation (although illegal) into a de jure one.

Although the Tasmanian legal profession refers to other sources such as Atkins, Cordery and Lund (see above) for solving most problems of professional misconduct there have been several rulings by the Society and some important cases have been decided by the Supreme Court. There is a famous case in which Albert George Ogilvie, K.C., a former Attorney-General, during an election campaign in public speeches spoke of Mr. Justice Crisp as 'a gentleman in whose eyes I have never had any favour from the time when I began to get his decision upset....' He was held in contempt of court but no sanction was imposed by the court nor were any disciplinary proceedings for misconduct brought by the Law Society, probably because he withdrew his remarks and apologised to the Judge.[55]

The rulings and cases fall into two areas. The first is attracting business unfairly. The Society has adopted special rules in dealing with radio and television appearances and the writing of articles. Under Rule 12 of the Rules of Practice 1970 a practitioner can appear on television or radio or write an article in relation to a non-legal subject without receiving prior authorisation. But he may not make any reference to his legal profession or to his qualifications. If the subject involved is one of a legal nature the practitioner must obtain prior authorisation, unless he wishes to remain anonymous. Members of the Society who are elected officials, campaigning for an elected office or discussing business of the Society are exempt from these requirements.[56]

Under Rule 3 a solicitor cannot perform work for a fee less than that fixed by appropriate scale of costs for that work, nor can he share profits from his practice with a non-practitioner. The Council of the Society also has issued two special rulings: (1) In no circumstances *whatsoever* should one practitioner write direct to the client of another practitioner;[57] (2) A firm's Christmas cards should only be sent to other practitioners.[58] Finally, there is an unreported case which holds that a solicitor cannot solicit the clients of a partnership when the partnership is in the process of being dissolved.[59] It is obvious that these rules are for regulation of

54 Private correspondence with J. M. D. Hoyle, Senior Assistant Secretary, Law Society (U.K.).

55 *R.* v. *Ogilvie*, [1928] Tas. S.R. 69.

56 *Rules of Practice* 1970, rules 12 and 13.

57 Newsletter No. 28 of the Law Society of Tasmania, 30th August, 1966.

58 Newsletter No. 46 of the Law Society of Tasmania, 10th March, 1968.

59 *Bushby* v. *Palmer*, [1964] Tas. S.R. N.C. 8 318 40/1960.

behaviour of members of the profession towards each other and not towards the public. These are rules that benefit the profession, but not the public.[60]

The second area is that of solicitor-client relationship. In Tasmania a serious problem of possible conflicts of interest arises because in a large number of conveyancing transactions the solicitor involved acts for both parties.[61] This practice is not illegal nor regarded as unethical but there can be cases where the solicitor will be dealing unfairly with one of the parties. In relation to this practice the solicitor involved will still collect the same fee from each client for the work that he has done.[62] It is patently untrue that the solicitor does the same amount of work in these situations. The public should derive the benefit of lower costs if the practice is permitted. But the profession should develop stricter rules in these situations so that the public does receive adequate representation.

The Council of the Society has ruled 'that a solicitor is not guilty of a breach of the Rules of Practice, when approached by a person for finance, he makes a condition that he acts for that person in the purchase as well as in the mortgage'. (*sic*)[63] Obviously, if the solicitor approached a member of the public this would be against the rules of the profession. But this rule is overcome by the practice of having real estate agents acting as intermediaries. At least the client benefits from the fact that he is able to obtain finance, but he is placed in a position where he has no real choice of solicitors. This practice of obtaining finance is one important source of income for the profession in all Australian States, but the role of the lawyer as a middleman for obtaining funds does not enhance the public image of the profession.

---

60 In an interesting article entitled 'Professionalism and Professional Ethics', by B. Maley, in *Social Change in Australia* (ed. D. Edgar, 1974), at pp. 391-408, the author examines and classifies the professional codes of the Australian doctors, architects, engineers and lawyers (N.S.W. only). He comes to the conclusion that they have a common moral theme which is the central tenet of the Judao Christian ethic — kindness, charity, honesty, decency, responsibility, duty, unselfishness, respect for the rights and dignity of other men etc. Since these are very general terms they do not give the public very much protection, but they are there to reassure the public that the profession is maintaining high standards. The author shows that the codes are mainly concerned with relationships between professional colleagues rather than the profession's relationship with the public. He finds that the professions are not 'prepared to act comprehensively and whole heartedly to enforce standards of public service or to establish the machinery for receiving and investigating complaints that would be an essential part of it'.

61 One member of the Council of the Law Society estimated that in 50% of the conveyancing transactions the solicitor acted for both parties.

62 See also *McElligott* v. *McElligott and Kelly*, [1964] Tas. S.R. 10. In this case for divorce the counsel acted for both parties and it was held he was entitled to his usual fee from each party. The Court said: 'The duties he would be called upon to perform would not be in any way reduced because he was acting also for the co respondent.'

63 Newsletter No. 46 Law Society of Tasmania, March 10, 1968. But a solicitor cannot receive part of a commission on the sale of property by auction. *In re Two Solicitors* [1911] Tas. S.R. 78.

There have been two important Tasmanian cases in the area of solicitor-client relationships. In the case of *In re Westbrook*,[64] it was found that a solicitor has committed 'objectionable professional conduct' if he has not clearly explained a will to his client. In this case the solicitor had obtained large benefits under the will and the client was an elderly woman. The case resulted in the Law Society being reprimanded by the Court for publishing the charges against the solicitor before bringing him to Court. Chief Justice Dodds stated: 'a brother practitioner was condemned without giving him the slightest opportunity of making any defence to the charges against him. They [the Law Society] forgot the ethics of their profession, they forgot their training, that training which should teach them that they should always hear both sides of a case before they pronounce judgment.... The Law Society was perfectly right in meeting and discussing the matter... but the mistake was... publishing a report of the proceedings, which could only be calculated to do a very great deal of harm, not only in regard to the practitioner concerned, but also to the relations which subsist between the Bench and the Bar.'[65]

It can be argued that lawyers should not get any different protection from publicity than any other member of the public for alleged misdeeds. The damage to a solicitor's future career by such publicity should be taken into account. But this should be balanced against possible concealments of misbehaviour by the legal profession of its members, in order to protect them and the image of the profession.

In the second decision[66] a solicitor representing a client not of full mental development, without taking instructions from the client, prepared an answer which he read to the client and had it sworn to by himself and the client. The client was defended in the law suit without aid of guardian. The Court held that these actions constituted gross misconduct.

IV. *Legal Education*

In 1975 the Faculty of Law at the University of Tasmania commenced its new syllabus. All students will still spend four years qualifying for a degree, but the first year will be completed in any other faculty in the University. This has, of course, resulted in changing the basic requirements for the students. For example, conveyancing, equity and company law will no longer be compulsory courses.[67] The Law Society has officially accepted the changes, but is still worried about the content of the course. It stated: 'The content of the law course has also been discussed at length and the Society's representatives have endeavoured to ensure that students will receive a grounding in the basic fields of

64 (1910) Tas. S.R. 21.
65 *Ibid.*, at p. 40.
66 *Hobkirk and Another* v. *Ritchie and Others*, [1933] Tas. S.R. 14.
67 Discussion with the Dean of the Law Faculty, Professor Derek Roebuck.

law'.[68] There is a conflict developing over the content of the course between the Law Faculty and the profession. At present the profession has no control over the content of the course and a Bachelor of Laws degree from the University of Tasmania is sufficient to gain admission into the profession.[69] If the profession is not satisfied with the content of the course it could lobby the State Government to change the law.

The Legal Practice Course which is given at the College of Advanced Legal Education is now in its fourth year. It is the second oldest course of its type in Australia.[70] Its Director has had considerable experience as a practitioner, which is of benefit to the students. The main problem is that with an essentially one man operation there is a tendency for that person to concentrate on legal problems that he has experienced in practice (such as debt collecting) and/or those areas he is interested in. It would be some help to have the students exposed to more problems of administrative law, welfare law, industrial law, etc. Nor can the students make any appearances in Court. It would increase their skills if they were given limited rights of appearance, under supervision in Magistrate Courts. If the supervision were properly organized clients would not suffer from the inexperience of the students.

The following chart shows the student statistics for the Faculty of Law at the University of Tasmania from 1971-75.

	Enrolments LLB		*New Students***		*Graduates****
	Full-time	*Part-time*	*Full-time*	*Part-time*	
1971 — men	138	21	30	2	13
women	29	1	14	1	7
1972 — men	148	26	42	9	20
women	38	2	16	—	3
1973 — men	145	37	47	14	35
women	37	6	13	4	4
1974 — men	121	37	40	3	29
women	41	2	15	3	7
1975* — men	103	31	20	7	18
women	31	4	7	—	4

* New LLB rules were introduced and therefore there were few new students. The course is now three years duration after completion of one year in another faculty.

** A revised definition was established for 1973 and subsequent years. The figures given are included in the enrolments total.

*** This figure included honours graduates.[71]

The estimates for student enrolments in 1976 were 185, for 1977 they were 205; and for 1978 they were 220. But these estimates are subject to reduction following the introduction of the new LL.B. rules.[72]

68 Law Society of Tasmania Annual Report 1973-4 at p. 4.

69 *Legal Practitioners Act* 1959 amendments 1971 (No. 102 s. 13 A — (1) (1).

70 The Australian National University started the first course.

71 The chart was prepared by R. Maloney, University of Tasmania.

72 *Ibid.*

The above figures show that the Faculty has maintained the same level of enrolments throughout the period. In addition, unlike the law faculties in New South Wales, there has been no substantial increase in the number of women students.

These are interesting statistics but what happens to law students in Tasmania after they graduate? The Director of the Legal Practice Course estimated that in the 1950's all of the graduates intended to go into practice while in 1973 the figure was down to 84 per cent.[73] Mr. J. A. Ponsonby, Careers Officer at the University of Tasmania, has given some answers in his 'Survey of Employment Destination of Law Graduates in the University of Tasmania 1964-9'. Out of the 100 graduates sent questionnaires he received replies from 76 males (17 did not reply) = 81.7%; 4 females (3 did not reply) = 57.1%. The location of current employment was: Tasmania 58 males (79.5%), 1 female; A.C.T. 1 male; N.S.W. 2 males; Victoria 5 males; other States 3 males and 1 female; overseas 4 males; 3 males and 2 females were continuing University studies. The type of employment was: University 3 males and 2 females; Tasmanian Government 6 males; other State Governments 2 males; Commonwealth Government 4 males; Commerce and Industry 3 males (all outside of Tasmania); private practice 53 males (49 in Tasmania) and 1 female.

V. *Legal Aid*

The Tasmanian Legal Assistance Scheme has been in operation since 1954.[74] The Scheme receives its financial support from the State Government[75] and until recently was the only method of obtaining legal aid in Tasmania. The practitioners are paid 80% of the normal fixed cost for the work they do.[76] There are no limitations upon eligibility for the scheme but there is a requirement that the applicant must satisfy the area committee that he 'is unable to pay such legal costs as he would ordinarily be required to pay'.[77] As a result of this approach the scheme has developed to cover all areas of law.[78] Unlike most other States in Australia legal aid is available in all criminal cases including Courts of Petty Sessions (for example, even in cases of traffic offences).[79] (It should be noted that the Australian Legal Aid Office (A.L.A.O.) has now virtually taken over the area of family law).

---

73 Legal education file of the Law Society.

74 *Legal Assistance Act* 1954. For a thorough description of legal aid in Tasmania see Australian Commission of Enquiry into Poverty, Discussion Paper (November 1974) at pp. 159-187.

75 Legal Assistance Scheme 1969 s. 6. The Australian Government gave it a grant of $61,699 in 1973-74, *Report of the Australian Legal Aid Review Committee*, at p. 135 (1974).

76 Interview with Legal Assistance Committee — Southern Area.

77 *Legal Assistance Scheme* 1969, s. 4 (1).

78 Interview with Legal Assistance Committee — Southern Area.

79 *Ibid.*

The Society has developed a voluntary Duty Solicitor scheme in Hobart and Launceston. This scheme in Hobart has a roster which lists one practitioner or firm which has the responsibility for being on duty for one week. The Duty Solicitor is required to telephone the Police Prosecutor at 2.00 p.m. every Wednesday to arrange to interview any prisoners in an interview room that is adjacent to the cells of the Police Station. At all other times, if necessary, a Magistrate, Probation Officer or Police Prosecutor will contact the Duty Solicitor. The Duty Solicitor gives reports of the interviews to the Area Committee in which he states whether or not aid is recommended. If aid is recommended he states whether it should be for a defence, or an appeal, or a plea in mitigation. The Duty Solicitor will normally take on the representation in court and general conduct of the case, but he can request that senior counsel be appointed. In addition to interviewing prisoners at the Police Station, the Duty Solicitors sometimes go out to Risdon Prison.[80] There have been discussions between the Law Society, the Tasmanian Attorney-General's office and the A.L.A.O. to have a weekly visit made to the prison under a co-operative programme. The scheme would be paid for and administered through the A.L.A.O. There has been a favourable response to this offer from the Law Society.[81]

Although there is now some co-operation between the Law Society and the A.L.A.O. the Law Society did not welcome the new organization very warmly. There is some feeling that Tasmania has been inflicted with an organization that came into existence because of the poor legal aid services that were offered in Victoria and New South Wales.[82] The Law Society has asserted that its own scheme was adequately meeting the need for legal assistance and that the cost of its administration has been extremely low.[83] The Society feels that the A.L.A.O. is 'an unnecessary duplication of an adequate existing service'.[84] It is against legal aid service being provided by government legal officers because of their lack of independence. As a result the Council has stated that it would be improper and against the rules of practice for any practitioner to undertake work for the A.L.A.O. on the basis of a fee of 80% of the normal charge. It argues that it is unreasonable, that since 'public money will apparently be abundantly available for legal aid, the legal profession should be expected to subsidise it to the extent of 20%'.[85]

Even if, as the Law Society alleges, the legal aid scheme in Tasmania was more progressive and better administered than most other Australian States[86] there is evidence that there is a need for the A.L.A.O. For

80 The Duty Solicitor Scheme is described in a circular issued on 1st July, 1975 entitled *Roster Southern Area* — Court of Petty Sessions, Ref. G5-2.

81 Interview with K. Dillon, Deputy Director of A.L.A.O.

82 Discussions with members of the Law Council.

83 Law Society of Tasmania Annual Report 1973-4, at pp. 1-2.

84 *Ibid.*, at pp. 2-3.

85 *Ibid.*, at pp. 2-3.

86 Discussions with members of the Law Council.

example, 175 people received assistance under the scheme from the Northwest Coast District in the 1973-74 financial year.[87] Of course, this does not include the many people who received free legal advice from the private profession and who therefore did not apply for assistance. But even taking this into consideration, the fact that the Burnie office of the A.L.A.O. is seeing on the average 80 people a week,[88] must be strong evidence that additional or better legal aid services are necessary. One of the main reasons for this unmet need was the fact that the Law Society scheme was not widely publicized.[89] Another factor could also be that A.L.A.O. offices are more easily accessible and give more personal help to their clients. Whatever the reason the two organizations will have to co-operate in order to make a more efficient legal aid system in Tasmania. But this may only be feasible if the Tasmanian Law Society changes its attitude. In a recent submission to the Law Council of Australia, Tasmania was the only Law Society that proposed that the A.L.A.O. should act only as an advice and referral centre.[90] If they continue with this attitude the Society will block the delivery of better legal aid services, and the public will suffer.

VI. *Conclusion*

There are certain advantages in being a small legal profession. Such a profession helps to maintain an *esprit de corps* that enables more amiable settlement of disputes among its members. It provides for efficiency in conducting the legal affairs of its clients because each member can depend on the co-operation of other members. It also can help the public by bringing pressures to bear on its members to follow policy set by its governing body — e.g., requiring each member to have professional negligence insurance.

On the other side there are certain disadvantages in being a small legal profession. The profession can become too much of a closed society. It can keep the misdeeds of its members from being made public and protect those members so as not to bring the profession into disrepute. This can happen quite easily under the present procedure for disciplining members. It can also become too parochial and adopt rigid admission requirements for outsiders. This appears to be what will happen under the new *Legal Practitioners Act.*

Finally, the Law Society's relationship with the University and *vice versa* are very important. The University is the main avenue for admission into the profession. But this does not mean that the course structure should be under the control of the Law Society. The Law

87 Law Society of Tasmania Annual Report 1973-4, Appendix.

88 Interview with K. Dillon, Deputy Director of the A.L.A.O. in Tasmania.

89 Poverty Commission Report, *op. cit.*, at p. 182.

90 Y. Preston, 'Australia's big law firms are hard to find in the legal aid system', *The National Times*, August 25-30, 1975, at p. 18. This proposal by Tasmania was adopted by the Law Council of Australia and submitted to the Commonwealth Government as their own proposal.

Society will want to see that graduates have skills and knowledge that are useful in present practice. The University wants to accomplish this objective, but in addition it wants its students to develop skills and knowledge that will be of use to them in a radically changed society of the future. The Law Society through its graduate skills course and by having an eighteen month period of apprenticeship should be able to accomplish its goals without having to interfere in the policies of the University. If the Law Society is allowed to intervene in determining the University course structure, lawyers will be less able to solve the future problems of Tasmanian Society.