

# The *work-life balance* cliché: An ethical issue

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and therefore more likely to be able to relate to clients. Yet as soon as that well-rounded graduate starts work, the outside interests that helped to form that person and contributed to the attractiveness as an employee seem to be obliged to take a nose-dive.

ASR goes on to say that “[m]any workplaces feel that the solution is to offer lots of work co-curricular activities - social clubs, gym memberships, and corporate cup teams to name a few. Employees are encouraged to join these teams for an outlet. This has never made sense to me. Why, if you were looking to balance work and life, would you eliminate your existing hobbies and pastimes, and then substitute them with yet more time spent with people at the office? It makes no sense. And yet it is exactly what happens. I have several friends who have felt pressured to ‘join up’, so they look like they’re contributing, and the end result is that work becomes their life. A gradual change occurs, and one day they wake up and realise that all their non law friends (the ones who give them their non legal grounding, and in no small part their sanity) are gone, and they’ve spent the last X weeks, months and years living ‘work’, not living life. I think there is a definite ‘top down’ pressure to ‘buy in’ to this culture. The argument goes: if you aren’t willing to get on board and bleed yourself dry, then you’re somehow inferior.”

The second important point made by ASR about long hours is this: “Have you ever noticed that lawyers are one of the few professions with the perverse habit of boasting about how long our hours are? It is as if they’re trying to convince themselves that they’re happy, because if they stop for a moment to think, they’ll realise that

they missed their son’s soccer game, their daughter’s first day of school, or their best friend’s birthday.”

This is more than an observation about social behaviour and workplace culture. It is an ethical issue. Assistant Police Commissioner Luke Cornelius (Head of Ethical Standards Department, Police Victoria) recently publicly cautioned law students: “When a firm’s partner dishes up the rhetoric ... about work/life balance, be highly suspicious. Look at the partners. Do they practise what they preach? Test them on this. Are there breakfast meetings, or meetings with clients after 5.00 pm? Negotiate terms for work/life balance which will protect your humanness, for it is the love of those close to you which sustains you and provides a lens through which your practice of the law can do justice for others.”<sup>1</sup>

Commissioner Cornelius is guided by Raimond Gaita’s essay on the *Mabo* judgement:

“A concern for justice in a community should be, in critical part, a concern that its institutions enable and encourage us always to see, and in seeing to be responsive to the full humanity in each of our fellow human beings. That is why this kind of concern is called a concern for *social* justice and it is why it is so often connected with compassion.”<sup>2</sup>

Cornelius is of the view that “to do justice is to recognise and honour the inherent value of the humanity of another. For example, it is this conception of justice which lies at the heart of why I regard the protection of human rights as being

the core function of policing. Further, my understanding of social justice calls us to change those things in ourselves and society which serve to prevent others from being fully human with us, that is to build social cohesion. As with Gaita, my concern for social justice should be subject always to the test of compassion for another...Always remember that the way you treat people has consequences and your treatment of those with whom you deal will return to you, for good or ill, in equal measure for your treatment of them. This is not the first time you have heard this though. The good neighbour principle lies at the heart of many of our legal precepts and we forget it at our peril. So ... to see first the human element in every fact situation you deal with ...is the starting point for justice.”

Has the practice of law forgotten about justice? Have those senior practitioners who insist on their juniors (and not so juniors) working longer and longer hours shelved any ideals they ever might once have had about humanity and justice? How ethical is it to ignore the humanity of one’s employees? Does acting in the best interests of clients extend to working until one reaches burnout? Being an officer of the court surely does not extend to forsaking all other aspects of our own and our colleagues’ lives. Members of a profession should treat each other with respect. Respect includes due regard for colleagues as individuals who have complex and varied lives. Otherwise, the legal profession is in danger of becoming nothing more than a consortium of separate businesses.

There is another angle to this issue. Lawyers should be mindful of whether working long hours affects their competency. Burning the midnight oil may be professionally negligent. ASR wonders, “[y]ou would think that boasting about long hours is the last thing an astute business person would do. And yet lawyers do it all the time. What would you think if it were a truck driver telling you they’d driven 16 hours straight? You’d report them. And yet it is acceptable for lawyers to work long hours, and for partners in firms to allow the practice. It is a wonder that no client has asked that a record be kept of average hours worked by their lawyers, and insisted that if a lawyer has already worked a given



number of hours then they are not allowed to start that client's work until tomorrow. You can't tell me that if I as a client need a document prepared then it will take a lawyer the same amount of time in the morning as it would once they've already been working for 10 hours? I honestly feel that this is a profession that needs to examine its practices."

The final point is a health issue. The level of mental illness and depression amongst lawyers and law students has reached alarming levels which cannot be ignored. ASR also alludes to this: "We all hear of the number of lawyers giving up the law, of the level of depression in the profession, and we all say that something must be done. The bottom line though, is that too many people at the top don't want anything done, or don't want it enough. If they did, things would change. We know what the problems are, we are intelligent, and as a profession are renowned for our problem solving abilities and resourcefulness, but the problem persists. Someone once joked to me that it only takes one psychologist to change a light bulb, but the light bulb has to really, really want to change. Our profession is the same. Until those in power really want it, the problems will remain. This is a serious issue, and is causing people that the law needs, to leave the practice of it forever."



Cornelius advises that "if you ever feel like a cog (in the law machine), you ... will most likely awaken to these feelings on account of those who love you pointing to that which you yourself may have missed. Don't dismiss those feelings or advice. Take that realisation as a call to change, a call to action. You may ask, "change what", or "action to what end?" How does one break the machine and go back to compassion and justice?" Again, Cornelius refers to Gaita:

"...justice ...partly consists in the creation of institutions which ensure, to the extent that it is humanly possible, that our state and civic institutions should not be the cause of such suffering in our fellow citizens that we should be ashamed of ourselves if compassion were fully to reveal it to us."<sup>3</sup>

Cornelius suggests that "those of us who find ourselves part of the 'law machine', must be prepared to break it open to justice, so that when its workings are

revealed, the machine may be held up to the shame of fully revealed compassion."

How healthy, how just, how ethical are the practices expected in your sector of the law machine? How does work-life balance affect the scales of justice in your office? Further comment (anonymous or otherwise) is invited from readers about what "work-life balance" really means within the legal profession.

\* Rachel Spencer, was inspired to write this article by the Anonymous *Lawscape 2009* Survey Respondent and Assistant Police Commissioner Luke Cornelius (Head of Ethical Standards Department, Police Victoria).

(Endnotes)

- 1 Assistant Police Commissioner Luke Cornelius, Police Victoria, Speech to Prize Winners, Flinders Law School, March 2009, available at <<http://www.flinders.edu.au/ehlt/law/home/>>.
- 2 R. Gaita (2003), "Justice Beyond Fairness", in *A Common Humanity n Thinking about love & truth & justice*, Text Publishing, Melbourne, 2003, p. 84, cited by Assistant Police Commissioner Luke Cornelius, above, n 1.
- 3 Above, n 1&2.

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