

Why a Resilient Professional Identity Matters



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More than a century ago, the famous American banker, J.P. Morgan, was quoted as saying, in part, that he hired a lawyer to tell him how to do what he wanted to do.¹ His statement illustrates what many clients think – the lawyer's role is limited to doing what the client wants. Put simply, the lawyer is the client's "hired gun".

As you begin your journey in the practice of law, it is useful to spend some time to reflect on what you see your role as a lawyer will be. There are many theoretical models of a lawyer's role – lawyer as moral activist, lawyer as gatekeeper, lawyer as peacemaker and so on. Whether you are a litigation or a transactional lawyer, one or more of these models may appeal to you. But the purpose of my essay is more practical. My aim is to help you reflect on why you need a resilient professional identity to meet the challenges of practice.

To a certain extent, your professional identity as a newly-qualified lawyer would have been shaped during your formative years before you entered law school, as well as by your experiences (including your involvement in community service and/or *pro bono* work) and the courses that you took at law school. Professional ethics courses undertaken during your vocational legal training would also have contributed to molding your professional identity. Even your internships with law firms may have played a part too, as a recent empirical study in Singapore suggests.²

Your legal training to date would have helped you develop a sound professional identity to tackle what lies ahead. But inevitably, your professional identity will be forged and crystallised in the crucible of legal practice. You will meet difficult clients, handle hard cases, work under immense time pressure and address all kinds of unexpected events arising from your clients' matters. Legal practice will test the breadth and depth of your professional identity.

Therefore, it is crucial that your professional identity develops a certain resilience to withstand the real-life pressures of legal practice. Resilience, in its ordinary meaning, refers to a capability to "[withstand] shock without permanent deformation or

rupture".³ However, resilience does not mean that you should stubbornly pursue a certain course of action, convinced that only your viewpoint (moral or otherwise) is the correct one. The experience and practical wisdom of senior lawyers may frequently offer better choices.

Instead, to be resilient in legal practice means that you should critically evaluate situations which challenge your existing professional identity. I will discuss three scenarios that you may encounter in the course of legal practice.

Lawyer as Hired Gun

By now, you would know that although you have a primary ethical duty to act in the best interests of your client, you also owe ethical duties to the Court and third parties which may come into conflict with, and supersede or limit, your primary ethical duty.

Suppose one day, your client comes to you and hints that he may want to do something that contradicts your duty to the Court or a third party. He also tells you that you are a "hired gun" and must do what he says. What would you do? Tight timelines and the significant fees involved may place a severe strain on you to comply with his request. A lawyer without a resilient professional identity would probably cave in to the client's request without further reflection, and face the consequences such as a loss of reputation, disciplinary action or even legal sanctions.

On the other hand, a resilient approach envisages taking a necessary amount of time to reflect on how to effectively respond to the client's instructions. A resilient lawyer would not only consider the professional rules of conduct, but also judicial expectations of ethical lawyering. The High Court had, in a decision on an application for reinstatement to the Bar, categorically rejected the notion of the lawyer as a hired gun:

... we take this opportunity to emphasise that an advocate and solicitor is not a mere 'legal mercenary' or 'hired gun'. Such a conception of the lawyer and legal practice is the very antithesis of the duty and ideals we have just set out above. It is a conception that is not merely impoverished; it technically encompasses a value, but one which is, in effect, a "non-value". Embrace of it ensures that legal practice centres (if at all) merely on materialistic concerns and/or personal pride as well as personal aggrandisement.⁴

The High Court observed that the "duty and ideals" are encapsulated in the declaration which you make when admitted as an advocate and solicitor of the Supreme Court. This declaration "signifies a duty not merely to oneself and to one's client, but also to the court and to the attainment of justice and fairness generally". Given that the practice of law is "a noble calling that, in the final analysis, serves the public", a resilient lawyer would also be mindful that "the legitimacy ... of the profession in the eyes of the public is of the first importance".⁵

Similarly, in a new book on lawyers, two American law professors have provided an interesting analogy against the lawyer-as-hired-



gun mentality. Although supporters of the hired gun model have argued that it maximised client autonomy by allowing clients to make their own moral choices independently, the authors commented that:

[t]he problem with too much client autonomy is that people can get run over. If lawyers are just chauffeurs, driving in whatever direction the client points, whoever is in the car's way is at risk. We toss our consciences out the window and speed along, but people other than our client do matter. We should at least pause to consider what will happen to the tenant we help evict or the supplier we've injured by squeezing through a loophole in a contract.⁶

A resilient professional identity therefore calls for divergent thinking in practice, which goes beyond the primary focus on the client to incorporating, in an ethical decision-making framework, the interests of other stakeholders such as the Court, the opposing party or solicitor and the public at large.

Law as a Business

This brings me to a second related scenario which may challenge your current professional identity: suppose one day, your client, a seasoned businessman, comes to you and says, "Look, young

lawyer, law is and has always been a business. So put aside your *pro bono* commitments and attend to my matter first." How would you respond to this?

Again, an unquestioning endorsement of the client's view would indicate a lack of resilience. As in the hired gun scenario, a resilient lawyer would take into account judicial views of the notion of law as a business, such as the High Court's observation in the above-mentioned decision that "[t]he practice of law is not merely a business, although, on a practical level, it is undoubtedly the case that it is simultaneously a form of livelihood".⁷

The tension between law as a business and law as a profession is well traversed in legal ethics literature. For instance, empirical studies of legal practitioners conducted in New South Wales and Queensland suggest that the majority considers the practice of law as a business rather than as a profession.⁸ Such findings should of course not be accepted at face value without understanding their context. What these surveys reveal though is a continuing debate on the effect of commercialisation on a lawyer's professional identity. Moreover, with the global shift towards permitting alternative business structures for law firms and the novel ethical issues that will arise as a result, the professional identities of lawyers are likely to undergo a severe "stress test" in the coming years.

For you, the business versus profession debate will manifest itself in the realities of legal practice. A resilient lawyer will no doubt have to give some weight to making a living, but beyond that how should he or she decide when to prioritise business over profession or vice versa? Following the crowd may be an easy and convenient solution, but it does not offer a principled approach to resolving the tension.

I would suggest that a resilient lawyer should refer to the principle of “the dignity of the legal profession” as a starting point. This principle is espoused in a number of provisions in the Legal Profession Act and related rules. There are also some practice directions made by the Council of the Law Society which reflect the profession’s view as to certain types of conduct which are contrary to the dignity of the legal profession.

Naturally, the principle of “the dignity of the legal profession” does not give an automatic answer to all issues of professional identity. It is also not a static or rigid concept, and may be re-framed according to the changing cultural, social and legal environments. In addition, traditional lawyers and progressive practitioners may have different views as to what “the dignity of the legal profession” entails. In some cases, there may even be no conflict between commercialisation and what “the dignity of the legal profession” requires.

Nevertheless, through dialogue and engagement, it is possible to formulate a professional identity that can prove resilient to excessive commercialisation that challenges the dignity of the legal profession. In a speech in April 2012, the Chief Justice of New South Wales, the Honourable T F Bathurst, had proposed a “two-step process” to address challenges to ethical practice resulting from commercialisation. Firstly, the profession should “identify what remains constant”, such as the “uncontroversial and universal” duties “of fidelity, candour, good faith and care”. Secondly, the profession should openly discuss and debate “how age-old professional ethics should be upheld and reinforced in the modern world”.⁹

Dissonance

I will call the third and final scenario “dissonance”. In practice, you may find that there is often “a gap between ideal and actuality ... caused by those who do not hold fast to the highest standards of professional conduct required of them”.¹⁰ Perhaps the most striking example of such dissonance in the past decade is the “troubling patterns of legal practice” of certain Singapore law firms procuring substantial work “through referrals made by estate agents and/or credit companies”.¹¹ While referral arrangements with third parties, subject to detailed safeguards, have been expressly permitted since 2001, several disciplinary cases involving such arrangements have surfaced to the Court of Three Judges. Many of these cases evidence a disregard of the safeguards intended to ensure that lawyers preserve the dignity of the legal profession and the interests of the client.

To overcome the dissonance arising from the gap between the ethical rules that you have been taught and what happens in

practice, a resilient approach requires you not to be discouraged, and to remain steadfast to a sound professional identity. There is no shortage of role models in the profession to emulate, as the High Court has observed:

In this regard, we are heartened to note that there are lawyers who are to be found on the other end of the spectrum. They demonstrate that the ideal is not only attainable, but (in some instances) actually go beyond it. For example, they extend help to their clients beyond the boundaries of their respective retainers. Some go further: They engage in *pro bono* legal work, helping those who would otherwise (for one reason or another) fall between the legal cracks. Such lawyers epitomise what is best and noblest in the profession. It is our hope that an ever-increasing proportion of the profession will be identified along these lines.¹²

Conclusion

Building a resilient professional identity is for life. Resilience will help you to meet the challenges of unreasonable client pressures, excessive commercialisation and ethical dissonance in the course of your legal career. It is hoped that the ideas in this essay will be useful for your self-reflection on how you can be a resilient lawyer.

Notes

- 1 Susan Ratcliffe (ed), *Oxford Dictionary of Quotations by Subject* (2nd edition, United States: Oxford University Press, 2010) s.v. “Lawyers”, entry 3.
- 2 Seow Hon Tan, “Law Firm Internships and the Making of Future Lawyers: An Empirical Study in Singapore” (2014) 17(1) *Legal Ethics* 79.
- 3 *The Penguin English Dictionary* (3rd edition), s.v. “resilient”.
- 4 *Narindar Singh Kang v Law Society of Singapore* [2007] 4 SLR(R) 641 at [51].
- 5 *Ibid.* at [50].
- 6 Douglas O. Linder & Nancy Levit, *The Good Lawyer: Seeking Quality in the Practice of Law* (United States: Oxford University Press, 2014), p 198.
- 7 *Supra* (note 4) at [50].
- 8 Paula Baron & Lillian Corbin, *Ethics and Legal Professionalism in Australia* (Australia: Oxford University Press, 2014), p 13.
- 9 Chief Justice TF Bathurst, “Commercialisation of Legal Practice: Conflict *Ab Initio*; Conflict *De Futuro*” (Paper presented at the Commonwealth Law Association Regional Conference, Sydney, 21 April 2012); available at: http://www.supremecourt.lawlink.nsw.gov.au/agdbasev7wr/_assets/supremecourt/m67000113/bathurst_2012.04.21.pdf.
- 10 *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 at [81].
- 11 *Law Society of Singapore v Tan Phuyay Khiong* [2007] 3 SLR(R) 477 at [117].
- 12 *Supra* (note 10 above).

* The views expressed in this essay are the personal views of the author and do not represent the views of RHTLaw Taylor Wessing LLP.