

Increasing trend for QLD solicitors to outsource conveyancing

Tim O'Dwyer*

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Last month [March 2005], following the High Court's ruling on barristers' continued immunity from negligence suits, a Queensland newspaper ran a scathing editorial on lawyers allegedly being "a law unto themselves". It was suggested in passing that articulated clerks and secretaries, rather than solicitors, handled their clients' property conveyancing.

There is nothing necessarily wrong with this long-established practice provided solicitors follow the Law Society's guidance to properly supervise employees and ensure that only legal practitioners perform legal work such as advising clients, drafting real estate contracts and preparing transfers and other documents.

How solicitors conduct clients' conveyances will remain subject to question because of the public perception reflected in the editorial. But in the Sunshine State there is a dark reality more questionable than the perception.

Some Queensland solicitors have come under fire from their own Law Society, not for unsupervised conveyancing within their offices, but for subcontracting or outsourcing conveyancing matters to non-professional companies and individuals.

Ian Foote, senior solicitor in the Queensland Law Society's Professional Standards Department, has acknowledged that the Society had been aware of this "increasing trend" for some time.

"This unfortunate development by solicitors to outsource conveyancing work has arisen from the very competitive fixed-fee conveyancing market," Foote explains in a recent article in the Society's journal *Proctor*.

Some solicitors agree to handle clients' conveyances, he continues, then subcontract these to unqualified persons or companies elsewhere while applying their personal legal talents to more profitable pursuits.

"Obviously, greater fees can be generated in many areas other than doing time-consuming conveyances", Foote says.

After pointing out that Queensland's Legal Practice Act 2004 law prohibits unqualified persons from engaging in legal practice which includes conveyancing work, Foote questions whether outsourcing is "worth the risk". (Only solicitors may undertake conveyancing in Queensland because the law does not permit licensed conveyancers to operate.)

"The client thinks the solicitor is performing the work and is applying his or her legal knowledge and skills to complete the matter. However, the client is unaware of the substantial risk that has been created by the solicitor."

One Sunshine Coast solicitor even consulted the Law Society about his ethical position in a proposed consultancy with a conveyancing company. He would pay the company fees for providing a full conveyancing service, including preparation of documents and attendances upon clients. This arrangement, Foote writes, would have been contrary to the Law Society's Rules which do not permit solicitors to have fee-sharing arrangements with unqualified persons.

The Queensland Law Society does not approve of any scenario which involves the outsourcing of legal work or the preparation of legal documents by unqualified persons or companies.

Solicitors must not only apply their legal knowledge, skills and experience to every document "sent out" under their letterheads, but also approve all prepared documents and carry personal responsibility for ensuring their accuracy.

Foote gives this stern warning:

"You, as practising solicitors, cannot fulfil your professional obligations to your clients if ... your conveyancing documents are prepared by unqualified persons who are not your employees and away from your direct supervision. Further if conveyancing work is performed by persons who are not your employees, then it is not likely you would be covered by your compulsory professional indemnity insurance ... If you are unwilling or unable to perform all of your obligations to your clients, even in the

most modest of conveyancing matters, the Society recommends you decline from acting in any conveyancing work."

When Tweed Heads conveyancer Paul Sande read this, it made his blood boil. Several times Queensland solicitors had requested him to send mail to the home addresses of clerks handling files or to phone these people on private numbers.

"It is ironic," he said, "that from 1994 until 1997 the Law Society spent hundreds of thousands of dollars launching prosecutions against me."

"In my case, advising whether parties were to hold property as joint tenants or tenants in common, or simply lodging transfer documents, was deemed to be illegally acting as a solicitor. They wanted me incarcerated for these heinous crimes against their beloved and protected profession."

Sande asks, "Why does the Law Society now allow its members to profit from outsourced conveyancing while consumers erroneously believe they are protected by paying for solicitors' services?"

"If the legal profession in Queensland does not wish to undertake conveyancing properly and professionally maybe it is time to hand this work over to qualified and licensed conveyancers," he quipped.

A conveyancing price war has raged in Queensland for years with the result that the quality of service to clients has, according to one District Law Association, "slipped".

Three years ago the Law Society investigated a complaint from a solicitor who encountered a woman doing conveyancing from home for two different Gold Coast solicitors' firms while using their letterheads for her correspondence. One of these solicitors, when queried by the Law Society, defended his outsourcing on the basis that conveyancing fees were so low it was uneconomic for a solicitor to be personally involved. No disciplinary action was taken against either solicitor after the Law Society accepted their undertakings to cease the practice.

Meanwhile the Law Society received complaints last year about another Gold Coast solicitor's extraordinary outsourcing arrangement with a private company. He admitted that the company's director spent the majority of her time away from his office although her "assistant" operated from there. The director would see and advise interstate folk at the company's office before they signed up to buy investment properties. The resulting conveyancing files were managed by the company up to a certain stage before passing to the solicitor. The company's letterhead stated that it was "a division" of the solicitor's firm.

The solicitor described to the Law Society "an opportunity to expand my practice by obtaining the services of an experienced conveyancer and referrals from her real estate agents contacts." He claimed the company's "operations" were "predominantly" carried on from his premises, he had proposed to supervise this work and that one file in question indicated that "substantially most of the legal services have been provided by my firm." He acknowledged "a clumsy attempt by me to establish a conveyancing arm of my practice", but said he was unaware of the inappropriate use of his firm's name. He subsequently severed all ties with the company.

The Law Society's investigation of the solicitor's and the company's likely unprofessional fee-sharing and illegal conveyancing is still continuing almost twelve months later. The Society is also awaiting government clarification of its "jurisdictional powers" under the Legal Profession Act before commending to prosecute unqualified persons engaging in legal practice.

***Tim O'Dwyer is a Queensland solicitor.**

