

Improving quality costs a lot of money; not improving quality costs a fortune

Introduction

This article will discuss the use and necessity of a strong quality policy for lawyers. First of all, why and for whom. Subsequently the question of what is covered by quality or rather *integral* quality? For whom is this important and what are quality improvement methods? And why too little is happening within this scope and why innovation fails to materialise.

Quality for whom?

1. First of all for the client, whether he is a private person or an entrepreneur. Which immediately takes us to a specific dimension: the customer's perception. The image the lawyer has of himself often differs from the client's perception. This is insurmountable if the service provider is insufficiently aware of this (image 1). At the same time, it is an obvious contradiction, especially for the private client who will be affected by strong emotions and who does not dispose of any objective parameters for his judgment.

The latter is also a problem when choosing the right lawyer, i.e. the information dissymmetry. There is only transparency when there are unequivocal and useful criteria. See example: (image 2).

2. For society, usually represented by the authorities, but also represented by the National Bar as a body governed by public law for the general interest. In line with this, also interest groups such as the Consumers' Association, employers' organisations, patients' associations, etc. The authorities actually have to contend with structural conflicts of interest. On the one hand, they are financiers of legal aid. On the other hand, they are often the opposing party and they are also regulators with more or less far-reaching involvement depending on the political views of the time. In any case, the authorities must mirror the National Bar on existing social views as was done by the Bar Committee initiated by the Lower House, after which it should be doubted whether the Dutch National Bar is sufficiently flexible or does not protect its status too much.
3. Last but not least, the lawyers and their firms.

The lawyer too fills several roles. He is a "hero of the state under rules of law" or a knowledge worker or an entrepreneur and unfortunately these roles are not very compatible.

And then there is the concept of the office. Since Anglo-Saxon influences gained momentum in the beginning of the nineteenth century, industrial organisational views have played a major role. Although the number of sole proprietorships is on the increase rather than decline, the idea still prevails that the lawyer is more than a person who applies his knowledge of "legislation and law". He also has to possess skills that ensure the correct application of knowledge. In addition, he has to be a practice manager and an entrepreneur (image 3). This is easiest in a well-organised office of sufficient scale, sufficient possibility for specialisation and layers of knowledge. With attention for both the primary and the secondary business processes.

What is integral quality?

55 years of Counsel Act have resulted in a strong development of the legal profession's organisation and consequently of quality. The yearbook *Wet- en Regelgeving* (legislation and regulations) now has 611 pages, with primarily the Counsel Act with 12 Byelaws from the Dutch Bar Association (NOvA). In addition, guidelines and codes (of conduct) and finally the chapter Practice Management.

The arrival of the previously mentioned Anglo-Saxon office approach has given the larger firms in particular a more structural interest in office organisation. The input of professionals from other professional groups has resulted in a much healthier working base for the lawyers, i.e. the organisation of their offices. This does not actually necessarily only apply to the large firms, but also to the smaller firms that are open to this. However, neither the General Council nor the supervisory bodies in their organising work and regulatory power have taken the organisational form of the office as an independent addressee. The lawyer's strict core of knowledge and behaviour forms reference points for regulations. Not the office, which is left to his own insight and to market forces.

The latter is a limitation from a self-enforced interpretation of tasks by the Dutch Bar Association, which puts many lawyers in mostly modest firms at an unbridgeable distance from mostly well-organised and specialised legal assistance insurers, trade unions and such like.

Neither the Counsel Act nor European legislation and regulations nor European legal precedents were in the way of the General Council pursuing a policy that is aimed more at offices. The Council of Deputies did not demand serious attention for it either. The great diversity of the professional group and the focus on defending own interests are to blame for this.

Specific quality initiatives

The processes surrounding lawyers and their offices can be captured in a circle. The assessment of the effectiveness and quality of output and outcome has been outlined in six dimensions, represented as blocks on the appended drawing. (Figure 4)

Block 1: Complaints management

The Dutch Bar Association tries to separate the value for money complaints from the disciplinary complaints. In order to do so, the Dutch Bar Association entered into an agreement with the National Dispute Resolution Committees (including notaries and hospitals, but also tilers and parquet flooring fitters) to have complaints of a simple nature settled at consumer level.

Firms who have joined this trajectory on a voluntary basis are required to have an internal complaints officer.

Block 2: Client satisfaction/client evaluation

The Dutch Bar Association has subsidised the development of a digital customer satisfaction tool as developed by the SKIR (centre for quality assurance for legal aid initiatives). However, this tool is in poor demand.

Block 3: Information-based knowledge

So using and comparing quantitative data.

This is left to the firms. I do, however, know of two financial benchmarks (from Netlaw and from Viadicte) and some banks perform branch studies that they publish. The Dutch Bar Association has its own system.

Block 4: Audit

Legal aid lawyers were obliged to undergo a national audit in 2003 and 2007. This will not be continued in 2010, because it would not produce anything innovative. The Dutch Bar Association consequently does not opt for continued development and further stimulation, but discontinues this tool that was initially received with a lot of scepticism but eventually with sufficient appreciation. The Dutch Bar Association seems to avoid making this compulsory for the entire sector, not just for the legal aid customers. Then also not for legal aid.

The peer review is also part of the fourth block. Viadicte has developed a powerful tool for this. In my presentation at the Wellington Conference in April 2009 I will be able to discuss this in more detail. The Dutch Bar Association is holding back from embracing Viadicte's two successful pilots.

This will hopefully happen soon. The hope is also that specialist associations, as for personal injury, family law and insolvency will embrace the peer review at a specialist level. Requests to this effect on behalf of Viadicte are being explored as enclosed positions. Brave administrators might soon volunteer.

Block 5: The conciliation board

As discussed under the first block, the dispute resolution committee or the conciliation board. The levels reasonable competence and reasonable acting lawyer are assessed here, the liability level as employed by the Supreme Court in established case law by independent professionals.

Block 6: Disciplinary court

The compliance with deontology, disciplinary rules, is tested here. The conciliation board will predominantly deal with the inner and outer circle. Deontology will mainly concern the middle circle, being integrity, being the lawyer's ethics and independence.

The so-called national audit that arises from the quality agreement that the Bar Association entered into with the Legal Aid Councils and the Ministry of Justice, we consider to be an important step towards a more targeted quality policy.

Quality in practice

In a discussion between Prof. F. Bannier, a professor holding an endowed chair for the legal profession at the University of Amsterdam, and the researchers Combrink-Kuiters and Peters affiliated with the Legal Aid Council, about Bannier's article in *Ars Aequi* from June 2008 "Legal aid: a concern for the entire Bar" (including reaction and postscript in January 2009 *Ars Aequi*) it is concluded that the legal profession's participation in legal aid is not as bad as all that and that the level of the fees (at the moment € 107 for every fixed hour) results in an adequate income.

It is fortunate that there are sufficient lawyers who provide legal aid and that they can also make a proper living from it. However, the key question is not asked, which is, looking at it from the authorities' perspective, is the money spent to its maximum extent and therefore: is the quality sufficiently high? If lawyers still participate in the system because they can make a reasonable living from it, it seems that little of the fixed hourly rate is spent on office organisation or quality processes. Besides labour costs and investments/finance charges, the general office costs of medium-sized firms amount to no less than 35%. Small firms can

make savings, but this is at the expense of professionalism and continuity.

This does not immediately mean that this fixed hourly rate should necessarily go up to the rates for the commercial firms, but it does mean that quality definitions have to be used and that it should subsequently be considered which costs are related to this quality effort, as well as what kind of efficiency has to be obtained for those efforts.

It is exactly in this area that the Viadicte Foundation has been working for years with its quality definition, quality tools, but also assistance and tools (such as IT tools to improve business management and cost effectiveness).

It is remarkable to see how all parties avoid discussing the core question; being is legal (aid), as the Bar provides it, up to standard? And following naturally from this, is this legal assistance by trade union lawyers or legal assistance insurance company lawyers in legal aid fields better compared to legal-aid lawyers but also particularly that of company lawyers compared to that of the more commercial legal profession? From the academic world, and the University of Amsterdam with its three professors for the Bar in particular, more could be expected in this field. In some branches of law, such as BOPZ (psychiatric patients) and criminal law, but also law of persons and family law, in brief the cases of the civil action monopoly, this comparison cannot be made. This makes the need for researching (good) quality even more weighty.

Peer review as an instrument

After working visits to England and Scotland and two peer review pilots in the Netherlands, I have become convinced that peer review is the most effective as well as the most professional self-stimulating quality instrument. Most *effective* because a fellow professional can review the business process as well as the application of knowledge and skills in a specific file for a reasonable fee. *Effective*: also because the management of the particular firm is subjected to a very valuable external audit.

Stimulating: because the professional or the lawyer is more than happy to learn from honest and respectful feedback. Certainly if the firm links this to positive consequences. An atmosphere of policing or settlement should be prevented and the feedback system should be well thought out. These are explicit conditions for acceptance, and therefore success.

At the conference I will discuss the content of the peer review. However, I must start with my appreciation of the Professors Avrom Sherr and Alan Patterson, who unselfishly made their knowledge, experience and insights available to a delegation of Dutch lawyers and administrators. Their ideas

have more or less been united in the Dutch pilot model and tailored to the Dutch situation.

The Viadicte Foundation hopes that the Dutch Bar Association will apply the results of the peer review pilots across the board, at least at threshold level. The specialist associations will hopefully apply the peer review system at competence-plus level.

However, this has outlined a need for choice: a specialist lawyer should certainly not be engaged for a peer review with a general practitioner. This would seem more appropriate for the application by specialist associations but for the present this does not seem necessary in these cases either. Reviewing competence may not turn into a debate or competition.

In very concrete terms, the law firms of the quality groups covered by the Viadicte Foundation have accepted the external audit and also the external peer review. Our quality round now consists of audit followed by peer review, then external customer satisfaction surveys set up in one benchmark and then again peer review in the fourth year. In all fairness, it has to be noted that the price of such a four-yearly quality trajectory, including assistance from the Foundation amounts to about € 6,000 a year. At the moment, per firm for each participating lawyer (working there for longer than one year) a monthly amount is invoiced that is equal to the proceeds of one fixed hourly rate fee for legal aid, to a maximum of seven lawyers per firm. However, a clear growth of participants is required to maintain continuity in the long term. Our State Secretary of Justice is very supportive in this matter. In her letter to the Lower House concerning budget discussions for Justice she noted that the peer review model from Viadicte will be a model for future quality policy and that preferred suppliership will play a part in this.

In the meantime, the criteria and choices made concerning files selected are reviewed in the field. Eighteen criteria concerning the business process, with regard to customer perception, communication and professional content. A choice from 2/3rd pending files and 1/3rd archived files and five for each lawyer up to a maximum of twenty a firm. The feedback system via the peer reviewer or better still through the quality committee (QAC according to Scottish model) will be completed before the summer. This completes the third and for Viadicte definitively detailed peer reviewing round.

In the meantime, from the client's perspective and from the professional's and the Bar's and Government's perspective (Bar Association and Ministry of Justice) it should be evaluated whether the right motto was used for the title of this contribution: quality distinguishes and might require considerable investment, but results in a fortune.

Guido Schakenraad (Viadicte Foundation Chairman)