

Dutch Initiatives in Quality Assurance

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Introduction

Having sat for eight years on the "Raad van Toezicht" (Supervisory Committee of the Bar) in 's Hertogenbosch, which is the district in which I practise, I became a member of the "Raad voor Rechtsbijstand" (Legal Aid Board) (one of the five LABs in The Netherlands) in the areas of Brabant and Limburg or, in other words, South of the rivers.

Having held this position for eight years, I became a member of the "Algemene Raad" (General Council) of NOVA (The Dutch Bar Association) from 2001 until 2005. I had already been asked earlier to hold the national legal aid portfolio and now again I was asked whether I would be prepared to take over that portfolio which had become vacant. To the astonishment of my colleagues, I was not inclined to do so. Indeed, at the end of my administrative activities for LAB, I had reached such a strong consensus with the work done by the Board, that I did not feel inclined to once again take up a purely lobbying position vis à vis the LABs. The more so as my vision of the nature and the scope of the quality efforts the legal profession should make for the citizens, linked up a lot better with the vision of the Boards than with that of colleagues on the "Algemene Raad" (General Council). That is how I felt things stood and it has turned out I was right.

I did manage, though, to get the portfolio called: Legal Practice and Quality. However, the "Algemene Raad" (General Council) continued to focus on:

1. ***the trainee lawyer training***, which is obviously a good thing;
the combination of:
 - a first training year organised by the Bar
 - working with a portfolio and maintaining the master/ apprentice relationship or, in other words, a junior lawyer with a patron
 - the intended introduction of a bar exam, also to counter the perceived declining quality of the graduates and the too big a diversity of the university education programmes
2. the ***continuing professional education (PE)***. This requirement does not amount too much. The 16 hour credits of which at least eight pertaining to the contents of your practice, every year. They are easy to obtain. The PE has led to a lively market, organisations offering courses and the by now sought-after credits logo. Without the requirement that credits pertaining to the contents of the trade have to be obtained in the professional areas in which one is preponderantly active, the PE can certainly not be called a guarantee of quality. This is reinforced by the fact that the polls in the spring of 2007 show that the lawyers in The Netherlands do not intend to be subject to a registration of preferred areas (specialisation). Therefore there is still a long way to go to develop a better access to information for the public, (removal of the information asymmetry). And the same goes for advertising of specialisations by the National Bar. Therefore publication of legal expression is not to be anticipated without mandatory legislation.
3. ***Complaints and the settlement of disputes***
On the basis of the liability standard in addition to the deontological standards of disciplinary law. It is recommended to have a complaints officer. Affiliation with the Disputes Committee of the legal profession is encouraged. The degree of cover is 25% by now, seven year after its introduction. Only 25% of the bar have signed up to as voluntary service complaints resolution system. Here again it appears impossible to make this compulsory, not even the fact that one should have a complaints officer in the most noncommittal form. The so-called College of Delegates (the Lawyers Parliament), which has to approve the ordinances, has an obstructing effect rather than a stimulating one, so that on the one hand, regulatory measures are considered to be an infringement of liberty and on the other hand, that all regulatory measures that would expel fellow professionals, be it only a minor part

of them, are countered. Sometimes one hears it said that the Bar is taken hostage by the 10% who perform the worst, most of the time working at the smaller offices.

One could argue that the Bar does not manage to reach an agreement on the quality objectives or actually not even on a definition of quality. Attempts to impose the obligation to have a complaints officer fail, and a push towards the registration of professional areas also fails. Attempts to reach an agreement on certification of specialisation or seals of approval (certainly) fail. I could also put it differently: attempts to make a start with the removal of the information asymmetry between the public and the profession fail either at the policy maker level or at the backing level. Formulating criteria in order to arrive at a level playing field appear to be prospectless, if such attempts are made at all. Nevertheless, the policy makers continue to hide behind the free market. And they do so without creating the necessary conditions.

I have had the privilege during a discussion with my "Raad voor Rechtsbijstand" (Legal Aid Board) to obtain a higher remuneration for lawyers who are first challenged to deliver quality that can be checked. Challenged by me again to do so, this Board indicated that it would be willing to set funds aside for this purpose and as a result, the Viadicte Foundation was established. Some ten lawyer's offices joined forces to improve quality under the motto "Together and Guided".

Together because, based on a series of study meetings, we wanted to obtain insight into all aspects that are part of thinking about quality within the lawyer's offices and subsequently we wanted to prioritise these aspects.

Guided because we were going to call in experts, both on a regular basis and ad hoc.

In short, a group process in which we were guided by experts who would support the representatives of the offices in their occasionally difficult mission within their own ranks. The liaison offices had to be produced and trained. Thus, in the summer of 2002 the quality group started its activities. The efforts entailed that the professional group itself took the initiative and responsibility to define and make lawyer's quality recognisable. All this would not have been possible without a substantial contribution from the LAB 's-Hertogenbosch (and Ministry of Justice).

We worked hard to make sure that the quality criteria that were subsequently formulated by sympathetic lawyers were also implemented, i.e. a proper description with proper tools to introduce the criteria also in the smaller offices. These criteria are the basis for *transparency* (removal of the information asymmetry) and are also the basis for a *level playing field*, by presenting a quality "kite-mark". See www.viadicte.nl.

There is much to say on the above developments and too little time in which to do so. I will address only two of the issues concerned.

1. a ***Seal of Approval*** or "kite mark" for lawyers

We have succeeded in developing a seal of approval for lawyers, which will be granted to 15 offices in the Centre and the South of The Netherlands this year. The West of the country still shows a cautious attitude.

At the same time I note, for that matter, a need to steer this initiative also in a commercial direction via a common logo and joint activities for this office focusing on knowledge, company structures and approach to the market. I anticipate that we can initiate, in any case, stimulate a second organisation for this purpose.

2. ***Peer review***

After the report of the so-called "Commissie Advocatuur" (Legal Profession Committee) of mid-2006, a number of writers arrive at the conclusion that the Bar disregards indications with respect to a number of vital issues. I do not wish to tackle the question as to whether a new "Autoriteit Juridische Markten" (AJM) (Legal markets Authority) should be installed. But I fully agree with the recommendation that the legal profession must do more to legitimate its domain and privilege.

The difficulty that the legal profession and the "Raad voor Rechtsbijstand" (Legal Aid Board) seem to be put in, whereby any quality initiative ends in an impasse, or in any case in too weak a compromise, has, in any case in my region, been overcome by the seal of approval

project and even more by the introduction of peer review. With the support of the Legal Aid Board in the early part of 2007 Viadicte introduced a pilot peer review programme employing the peer review system used with legal aid solicitors in Scotland. Nine reviewers were trained by Professor Alan Paterson of Strathclyde University in February using Dutch criteria which were tested on Dutch files. In the ensuing six weeks eight of the reviewers assessed 135 files of 30 practitioners and at a seminar on Peer Review at Eindhoven a report back of the interim findings of the project was made by Professor Paterson, Jeroen Cliteur and Rob Creusen. We hope to complete the pilot on the coming months and then to persuade the Legal Aid Board and the Ministry of Justice to fund further programmes of peer review.

For a medium long period I will be happy if a sufficient number of offices will be prepared to work also for the less fortunate (as court-appointed attorney) with a state-of-the-art quality¹ in addition to their commercial practice. I am thinking of 20 to 30% of all hours spend by each firm² in this respect. This will guarantee continuity by means of a growing number of young lawyers in a well organised and properly equipped environment. The experienced lawyers and management will have to show a feeling for the needs for legal aid of the private client. But as is the case everywhere: involvement of the lawyer makes up 50% of the intended quality. The rest can be organised.

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¹ By 'state-of-the-art', I mean the complete level plus our seal of approval level, hopefully supplemented with the attainment in peer review of "competence plus" – the level required for English legal aid firms in terms of peer review.

² So not the way of f.i. the Californian Bar: 5% pro deo. But say 25% less paid than the commercial rates (€ 100,- in stead of € 175,-)