

---

## Survival of the fit and not so fit—How to think, act and survive as a professional in the modern world.<sup>1</sup> #

#  
#

**Rachel Spencer<sup>2</sup> #**  
**Director of Professional Programs**  
**School of Law, University of South Australia**

#  
#

Every now and again we meet or hear about remarkable individuals who have excelled in their professional lives. I am regularly inspired and dazzled by the CVs of young law students who have made admirable and remarkable achievements in their teens and early twenties. We all know someone whom we see as successful, who has achieved great things in his or career. The very fact of being in this room means that we are all successful professionals. Success should be acknowledged and celebrated.

#

But I think it is really interesting that the title I have been asked to direct my attention to today does not include the word 'success'. I have not been asked to address the issue of 'how to think, act and **succeed** as a professional in the modern world.' I have been asked to offer my views about 'how to think, act and **survive** as a professional in the modern world.' #

#

And I find that very revealing.

I find it revealing because it discloses and admits something about our professional lives that twenty years ago, even ten years ago, a gathering of successful people like this, perhaps would not have wanted or dared to admit. #

What are we admitting? It is that we have alchemised into the metaphor of the duck. You know that metaphor of the duck. It has become a cliché now, it is referred to so often, but nevertheless we have all become ducks:—#

What we show to the world is all shiny plumage and serenity on the surface of the pond, but below the water-line, we are performing the aquatic equivalent of a steeple-chase, stirring up all sorts of debris that we don't acknowledge, our bodies and minds fatigued and aching, longing to just pause, becalmed, in the middle of the pond for a while, but knowing that we have to get to the other side as fast as possible.

So we paddle and pant, hell-bent on reaching that goal, too often ignoring the other ducks that we pass on the way.

#

---

<sup>1</sup> This paper was presented at the 2011 Australasian Drafting Conference, Parliament House, Adelaide on 3 August 2011.

<sup>2</sup> For biographical notes, see <<http://www.unisanet.unisa.edu.au/staff/homepage.asp?name=rachel.spencer>>, accessed 3 August 2011.

Some days you wonder. Have I been successful? Self-help books require us to ask ourselves: *Where have I got to in the last five years? What have I achieved? What do I want to achieve in the next five years?* Well, frankly, sometimes, I think we need to remind ourselves that daily survival is a measure of success.

What have we done over the last five years? Well, we have got out of bed, every day, got ourselves and probably others dressed and ready ... we have made breakfasts, lunches, found socks and sports uniforms, signed forms, made phone calls, checked emails, remembered to put out the rubbish, fed the cat, and we have made it out the door. And we all know, sometimes **that** in itself is a remarkable achievement. Then we have made it to the train or the bus on time, or driven a car successfully through the traffic. Sometimes we have even done it without getting angry or frustrated or arriving at work feeling like we need a rest as soon as we get to the desk. Then we have made it through every day, responding to the myriad demands calmly and sometimes not so calmly; we have finished projects, written reports, prepared all those tasks that needed to be finished.

A really successful day might include a twenty minute walk in the sunshine at lunch time, eating healthy food and enjoying a chat with a work colleague. Chances are that for most of us, an average day includes a rushed exchange of acknowledging how busy we are with a few colleagues in the corridor, scoffing down some over-refined food without even really tasting it because we are focussed on the computer screen, and perking up our blood sugar levels with an excessive supply of stimulants like caffeine and white sugar.

When we get home at the end of each day, how often do we notice the colour of the sky as the sun sets, the fact that the flowers on the roadside might be in bloom or that the family pet is genuinely happy to see us? Not often, because we are too busy chopping, stirring and simmering against the clock as a hungry family demands to be fed. Or perhaps we go home alone, to an empty house, just glad to be able to close the door and feel safe inside the environment where we can be ourselves.

Or can we? These days the boundaries between work and home time are very blurred as mobile phones intrude upon our journeys home and interrupt our dinner, after which, by the way, we do a load of washing, help the kids with their homework, then check emails, perhaps make a birthday cake or a dinosaur costume, before we collapse into bed, ready to do it all again the next day! For days and weeks and months and years. And every now and again, the weeks and months are interspersed with moments of great joy and also those moments of immense loss and sadness that characterise a life. And we live through and around these moments, and carry on with the every day.

So, remembering that my brief was to discuss how to think, act and survive, as a professional, let's think now: How **should** we be thinking and acting?

To start with, what we really should be doing is acknowledging that we actually do all this, and we don't give up and we keep doing it. We should recognise and celebrate that we are pretty incredible just for sustaining that lifestyle, and that this is true for our professional colleagues as well. Fit, or not so fit, we have survived. Survival is the new success.

Just getting through the day as a professional involves stamina, fitness and coping mechanisms that were not required in such large volumes a generation ago. Remember what work was like, even ten years ago, before we allowed technology to transform our lives into a series of responses and reactions to never ending beeps and polyphonic ring tones. Have you noticed that people can't even go jogging any more without their mobile phones strapped to their heads. It's ridiculous. When did everyone suddenly decide that we all have to be accountable to everyone and available, all the time?

I was at the Festival Theatre last week to see Paco Peña and his Flamenco dance company, and, during the most vibrant and beautiful flamenco music and dancing — it was utterly transfixing to watch the feet of the dancers, the swirl of the dresses, and the intensity on their faces — during this moment of such fervent beauty — I was distracted by the glow from a mobile phone screen. The woman sitting in front of me was sending a text.

**Survival tip number one: stop being available all the time.** Michelangelo would never have completed painting the ceiling of the Sistine Chapel if he had had a mobile phone. Just do one thing at a time. Turn the phone off when you are doing a specific task. Focus on where you are and what you are doing. If someone really needs to talk to you, they will ring back later.

We have all been to time management seminars. We have all been to motivational presentations. We have all read books like *The Seven Habits of Highly Effective People*<sup>3</sup> and we have all made resolutions as the fireworks have exploded and the clock has quietly ticked over into another New Year. But in considering how to 'think, act and survive as a professional in the modern world' I would like to focus on that word 'professional'. What does it mean to be professional? When I teach this notion of professionalism to my students I look first on what it means to be a member of a profession.

Back in the Middle Ages, the three original professions were recognised as divinity, law and medicine.<sup>4</sup> By 1933 sociologists had decided that there were in fact five professions: divinity, law, medicine, education and armed service. Gradually, everyone started to want to be known as a 'professional'. So the sociologists looked at this and in the 1950s and 60s, the traits theory of professionalism became the accepted way of identifying whether or not someone was a member of a profession as opposed to a 'trade'. The traits theory was all about identifying traits or characteristics of those who belonged to a profession.<sup>5</sup>

According to the traits theory, if you had certain attributes, or **traits**, then the job you did was in fact a profession.

---

<sup>3</sup> Richard Covey, *The 7 Habits of Highly Effective People*, Free Press, 1989.

<sup>4</sup> See Ysiah Ross, *Ethics in Law: Lawyers' Responsibility and Accountability in Australia* (5th ed), LexisNexis Butterworths, Australia, 2010 at 57. Notably, the medical profession did not include surgeons. In medieval times they were ranked with shoemakers, masons and glaziers, lower than barbers who sometimes did their job — hence the blood red stripes on the traditional barber's pole.

<sup>5</sup> A M Carr-Saunders and P A Wilson, (1933) *The Professions*, Oxford, Oxford University Press; William J. Goode (1957) 'Community within a community: the professions', *American Sociological Review*, 20, 194-200; C. Greenwood (1957) 'Attributes of a Profession', *Social Work*, 2, 45-55, all cited in Roach Anleu, *Law and Social Change*, London: Sage, 2010 at 83. See also Ross, above, 58-59.

The traits of a member of a profession were said to include things like:

- formal education to acquire specialised knowledge and skills
- self-regulation
- membership of a professional association
- the commitment to a service ideal
- the provision of a greater good for society
- collegial authority vested in a code of ethics.<sup>6</sup>

It is this last trait that I think is particularly important when it comes to determining the notion of professionalism: **the existence of a code of ethics**, or the adherence to ethical standards. Traits theorists maintain that members of a profession have a relationship with each other, usually described as ‘collegial’<sup>7</sup> and that relationship is regulated by an ethical code. ‘Members look to each other for professional recognition, control and protection.’<sup>8</sup> This notion of ethical collegiality is at the heart of survival of the fit and the not so fit.

A couple of years ago, in 2009, the Law Society of South Australia conducted a survey of legal practitioners in relation to what were described as ‘**work life balance**’ issues.<sup>9</sup> The overwhelming conclusion that was evident from the survey responses was that this “work-life balance” struggle continues within the legal profession. No surprises there...

I was involved in the implementation of the survey and in analysing the responses. I was particularly moved by some of the responses to the survey<sup>10</sup> which included extensive feedback about the reality of work-life balance policies and what ‘work-life balance’ actually means to those in the practising legal profession. I am very skeptical of that tired old cliché, ‘work/life balance’. One survey respondent wrote, “I don’t think I’ve ever seen a [law] firm that doesn’t claim to have a great work life balance. If you don’t believe me, just google their websites.”<sup>11</sup>

But what does ‘work-life balance’ really mean?

First of all, it is about work hours. There was plenty of feedback from survey respondents indicating that the requirement to have a physical presence in the office either very early, or very late, or both – is still firmly entrenched in law firms. There were responses to the survey that indicated that young practitioners in particular feel pressured to stay back late and often do so, even if they have finished all their work. They will sit at their desks surfing the net and pretending to work because the office culture is that working late is the acceptable thing to do **in order to succeed**.

---

<sup>6</sup> See Roach Anleu, *Law and Social Change*, London: Sage, 2010 at 83. See also Roscoe Pound, *The Lawyer from Antiquity to Modern Times*, Minnesota, West Publishing Co, 1953 at 95: ‘a group pursuing a learned art as a common calling in the spirit of public service’ cited in Su-Po Kao, ‘The Legal Profession as an Intermediary: A Framework for Lawyers in Society’, 7 (1) *Legal Ethics*, 39 at 51.

<sup>7</sup> See Malcolm Waters (1989) ‘Collegiality, bureaucratization, and professionalization: a Weberian analysis’, 94 (5) *American Journal of Sociology*, 945, 956, cited in Roach Anleu, above, 84.

<sup>8</sup> Roach Anleu, above, 84.

<sup>9</sup> Law Society of South Australia, *Law Society Bulletin*, September 2009.

<sup>10</sup> *Lawscape 2009*. See Law Society of South Australia, *Law Society Bulletin*, September 2009.

<sup>11</sup> *Lawscape 2009*. See Law Society of South Australia, *Law Society Bulletin*, September 2009.

Prospective employers tell law students that they like to recruit graduates who pursue hobbies and other interests external to the law, in order to be 'well-rounded'. This, they say, makes them more likely to be able to relate to clients. What we need to make sure of is that when those well-rounded graduates start work, that the outside interests that helped to form those graduates and contributed to their attractiveness as employees are allowed to continue and flourish.<sup>12</sup> Let's encourage our employees to continue with those amazing achievements that are listed on their CVs.

**Survival tip number two: Do not hide the fact that you have aspects to your life other than work. Go home!**

What sometimes happens is that many workplaces offer co-curricular activities and employees are encouraged to join the social club, or the corporate cup team or participate in the pub crawl or go on a staff picnic. While this can be seen a positive way of improving staff morale, it can also be an additional burden that staff have to factor into their time.

If you are looking to balance work and life, you do not want to eliminate your existing hobbies and pastimes, and substitute them with yet more time spent with people at the office.<sup>13</sup> Do you spend your free Saturday catching up with friends or doing something you want to do, or do you relent and agree to go paintballing with the people from the office? Or attend the corporate box at the football to 'network' with the very people from whom you need a break?

For me, surviving as a professional means retaining those aspects of myself that make me what I am. It means retaining my interests and keeping in touch with friends who are not a part of my work life. Sure, we all make many friends through work and we enjoy the company of our work colleagues. But we don't necessarily want to spend all our time with them, especially our 'out of work' time. Collegiality does not necessarily mean spending more time with work colleagues. To be truly collegial means to recognise and honour the inherent value of the humanity of others. This means recognising the totality of the people we work with, and acknowledging that everyone has external interests and the right to pursue those interests.

**Survival tip number three: Stay in touch with your friends and your humanity.**

Let us not forget that the practice of law, whatever form that takes, is inherently about justice. Has the practice of law forgotten about justice? Have those senior practitioners who insist on their staff 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 and colleagues? Acting in the best interests of clients should not 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.

---

<sup>12</sup> *Lawscape 2009*. See Law Society of South Australia, Law Society Bulletin, September 2009.

<sup>13</sup> This view was articulated by one of the respondents to the Lawscape Survey, see *Law Society Bulletin*, September 2009.

The philosopher Alain De Botton says that work-life balance is nonsense and that you can't have it all. I actually think that he is right. To really succeed in one area of life, you have to concede ground in another area. Cadell Evans could not have won the Tour de France if he had to take children to school every day, and take them to sports practice, and go to parent-teacher interviews; he could not have succeeded if he had to look after a sick parent, or a disabled sibling, or he drove taxis at night time. It is just not possible. Like Cadell Evans, we have to make choices about our personal and professional lives, and the choices are usually based around how much time we have or how much time we decide to devote to the different aspects of our lives.

Charles Dickens was a brilliant author but he was a lousy husband and he was utterly negligent as a father. Dame Roma Mitchell, often referred to as an inspiring role model, was a gifted lawyer and a perspicacious and inspiring judge but let's not forget that she was single with no children. She had time to be brilliant. She wasn't fishing for socks behind the sofa every Monday morning.

Now, I in no way wish to diminish the achievements of these outstanding people who were or have been nothing short of brilliant in their careers and whose success deserves to be celebrated and admired. But my point is, that success and survival are about making choices. As Alain de Botton claims, 'any vision of success has to admit where it's losing out on, where the element of loss is.'<sup>14</sup> No-one is brilliant at everything. We have to make choices. We can choose to have an immaculate house, with sparkling kitchen benches and perfectly tidy bedrooms, but if we do, we are unlikely to then have the time or the energy to be at work for ten hours a day.

So we might be searching for socks or we might be reading three newspapers before breakfast, or writing poetry, or jogging ten kilometres, but whatever we do is largely because we choose to do that. The **survival** part is all about acknowledging our choices and not allowing others to dictate what our choices should be.

I agree with Alain de Botton that it is not possible to be successful in every element of our lives. You can't perform at your best professionally if your mind is on what to buy a ten year old for a birthday present or you would rather be having lunch with your friend who has just arrived from overseas. Because the ten year old's present is important. And so is the relationship with your friend.

But our work is important too. That's why we do it.

So how do we maintain that focus at work? How do we align all the choices that we make?

Some of the best advice I ever received as a young lawyer was during some advocacy training. One of the barristers who was running the session is now a Justice of our Supreme Court. His advice was that if you get given a file and you have to go down to court, and if you only have five minutes to read the file, you **devote** that five minutes to that file. Or you might have five hours. You dedicate that five minutes or five hours to working on that file, and you focus on that file and nothing else. The time we have to do

---

<sup>14</sup> See Alain De Botton, *A gentler, kinder philosophy of success*, video recording, available at <[http://www.ted.com/talks/alain\\_de\\_botton\\_a\\_kinder\\_gentler\\_philosophy\\_of\\_success.html](http://www.ted.com/talks/alain_de_botton_a_kinder_gentler_philosophy_of_success.html)>accessed 3 August 2011.

things is never long enough. But deadlines allow us to organise the time that we have, and work as best we can within that time.

So if you want to go and buy a birthday present or watch your daughter play netball or have lunch with a friend, and that leaves you only two hours to complete something at work, you devote your entire being to that task for those two hours, and work really hard for that time. And then when it's done, you go and buy the birthday present you have to buy, or you go to watch the netball game, or you meet your friend, and you devote the time you have allocated to doing that. You turn off the phone and you **watch** the netball game.

Or you buy the gift or you meet your friend. Whatever you choose to do, you devote your entire being to that choice. You don't do it in a half-hearted way, feeling guilty about the choice you have made.

**SO: Survival tip number four:** Acknowledge the existence of choices, make a choice, and stick to that choice. Don't feel guilty about the choice. Don't fret about the choice. Just acknowledge it, and then devote however long you have to that task.

And then move on.

OK, so sometimes this doesn't work. Sometimes we have to spend extra time at work. We have to work late or miss lunch. But on an everyday level, we can make these sorts of choices. I try to allow a certain amount of time to do certain tasks, and do them as well as possible in that time, then enjoy moving on to the next task. The key is to do each task in a mindful and reflective way. For me, self-awareness and reflective practice are the keys to survival as a professional.

Reflective practice is not a new concept.<sup>15</sup> The idea of reflecting upon and learning from our own experiences is an important part of professional life. But learning how to be reflective in order to really make the most of our experiences comes from self-awareness and what is now being called ***mindfulness***.

Mindfulness can not only make us perform tasks better, but to highlight our enjoyment of them. Mindfulness in the context of the legal profession is a relatively new phenomenon but it is really taking off in the United States. If you are interested, if you google ***mindful lawyers***, you will reveal a huge number of websites all about this.

Mindfulness has its roots in meditation. It is reputed to lead to more effective delivery of legal services **and** increased professionalism and lawyer well-being.<sup>16</sup> Even for the most sceptical amongst us, total focus on the task at hand is an appealing concept, and that is really what mindfulness is all about.

---

<sup>15</sup> See Donald Schon, *The Reflective Practitioner: How Professionals Think in Action*, New York: Basic Books, 1983 and Donald Schon, *Educating the Reflective Practitioner: How Professionals Think in Action*, San Francisco, Jossey bass, 1987.

<sup>16</sup> For some examples, see <http://wacontemplativelaw.blogspot.com/>; <http://www.wsba.org/Resources-and-Services/Lawyers-Assistance-Program/Groups/Mindful-Lawyering>; <http://westallen.typepad.com/idealawg/2008/09/contemplative-lawyers-some-mindfulness-resources.html>; [http://www.google.com.au/search?sourceid=navclient&aq=0&oq=mindful+lawyering&ie=UTF-8&rlz=1T4SUNA\\_enAU269AU289&q=mindful+lawyering](http://www.google.com.au/search?sourceid=navclient&aq=0&oq=mindful+lawyering&ie=UTF-8&rlz=1T4SUNA_enAU269AU289&q=mindful+lawyering).

Mindfulness is not a skill that occurs naturally. It is something that you have to work at, and I am going to invite you to participate in a short exercise which demonstrates what mindfulness means.<sup>17</sup> I would like to acknowledge Professor Richard Roe from Georgetown University for this idea.

I'd like you all to take a grape.

Look at this grape as if it is the first time you have ever seen one. Describe it.

What temperature is it?

Describe its surface texture. Describe its weight.

Think about its scent.

How do you feel about eating it?

Now prepare to eat it in a mindful way. Just hold it against your lips.

Don't bite it yet!

Now put it in your mouth. Don't chew it!

Roll it around in your mouth.

Now chew it slowly. Focus on its taste and texture.

Be aware of your desire to rush to eat it and swallow it. Resist that urge to eat it quickly.

Be aware of your intention to swallow it before you actually swallow it.

Notice how it goes to back of your mouth before you swallow it. What else do you notice?

Follow it mindfully as it moves towards your digestive system.

How was this different to the way you normally eat grapes? Was it better? What were you conscious of anything that you might not have been aware of before?

This technique of mindfulness can be applied to any task that we perform. It's all about being in the moment, and using that total immersion in the moment to perform our best within the time that we have, to achieve the best results.

### **So, survival tip number 5: Think and act in a mindful way.**

When we talk about survival and success, we have to be very clear about what success actually means. Alain De Botton says that often our ideas about what it would mean to live successfully are not our own; we inherit them from all around us –from other people, from television, from advertising, from newspapers and films, from writers and radio announcers. So we should **not give up** on our ideas of success but we should make sure that these ideas are in fact **our own**, and 'that we are truly the authors of our own ambitions.'<sup>18</sup>

I think this is summed up perfectly in a poem written in 1934 by Peter "Dale" Wimbrow. You may have heard it before – it is often quoted and misquoted, and also incorrectly attributed if various websites are to be believed.

---

<sup>17</sup> This exercise was demonstrated by Professor Richard Roe from Georgetown University Law Centre, at the combined Global Alliance for Justice Education and International Journal of Clinical Legal Education combined conferences held in Valencia, July, 2011.

<sup>18</sup> Alain De Botton, *A gentler, kinder philosophy of success*, video recording, available at <[http://www.ted.com/talks/alain\\_de\\_botton\\_a\\_kinder\\_gentler\\_philosophy\\_of\\_success.html](http://www.ted.com/talks/alain_de_botton_a_kinder_gentler_philosophy_of_success.html)> accessed 3 August 2011.

I am going to read this poem as it was apparently first written. Some notes that I found on the internet<sup>19</sup> say that the word pelf in the first line of this poem means 'wealth.' The word self is often incorrectly substituted.

It was also written using masculine terminology, so we have to read it and listen to it now through a gender-neutral filter. So here it is:

When you get all you want and you struggle for pelf,  
and the world makes you king for a day,  
then go to the mirror and look at yourself  
and see what that man has to say.  
For it isn't your mother, your father or wife  
whose judgment upon you must pass,  
but the man, whose verdict counts most in your life  
is the one staring back from the glass.  
He's the fellow to please, never mind all the rest.  
For he's with you right to the end,  
and you've passed your most difficult test  
if the man in the glass is your friend.  
You may be like Jack Horner and "chisel" a plum,  
And think you're a wonderful guy,  
But the man in the glass says you're only a bum  
If you can't look him straight in the eye.  
You can fool the whole world,  
down the highway of years,  
and take pats on the back as you pass.  
But your final reward will be heartache and tears  
if you've cheated the man in the glass.<sup>20</sup>

I think that survival as a professional means being true to the one in the glass and living an authentic life. This means being able to acknowledge the entirety of ourselves and our lives. It is especially important for those of us in senior positions to acknowledge that everyone has aspects of their lives that are just as important as what they do at work.

Let me give you an example. A little while ago I attended an event at my daughter's school. It was a special showcasing of a big project they had all finished and the kids were all very excited that their parents were coming to school for this special event. During a morning tea break, I started chatting to another parent, who is a surgeon: highly respected, highly qualified, doing incredibly important, literally life-saving work. This surgeon had been invited to speak at a conference that same morning, but he had declined the invitation. He told me that he had made up an excuse because he wanted to go to this, his daughter's event at the school – but he did not tell the conference organisers that this was the real reason.

---

<sup>19</sup> See *The Guy in the Glass*, <<http://www.newagemultimedia.com/firebrace/mirror.html>>; accessed 3 August 2011.

<sup>20</sup> Available at <<http://www.newagemultimedia.com/firebrace/mirror.html>>; accessed 3 August 2011.

My view – and I told him this – is that he missed an opportunity to tell others that his life is multi-faceted. My view is that we should not hide away our family life or other aspects of our lives that are not work-related. It is up to us to make it clear that this choice is important to us. When senior people acknowledge that they have other dimensions to their lives outside of work, then that sends a message to others that this is not only acceptable, but that it is a legitimate choice.

I don't have the answers on how to think, act and survive as a professional in the modern world, other than to suggest that we need to embrace the choices that we make. Whatever choices we make to do other things in life besides work, it is important not to hide them. Hiding the parts of our lives that make us who and what we really are, is to deny our humanity. And that can never equate to success. Living an authentic life ensures not only survival but genuine success as a professional, as a citizen and as a human being.