

Reviewed article: Clinic, the University and Society

MARRIAGE OF CONVENIENCE OR A MATCH MADE IN HEAVEN? COLLABORATION BETWEEN A LAW SCHOOL CLINIC AND A COMMERCIAL LAW FIRM.

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The cost of clinical legal education courses has always been a challenge to law schools. In the last 40 years clinicians have developed and trialed many different innovations in clinical law, in response to increased student demand for clinical experience, and greater pressure on the legal services market. Two common models are the in house clinic and the externship placement. This article explores the idea of a ‘reverse externship’ – with private solicitors coming into an in house clinic to assist in the supervision of students on placement. It tracks the development and implementation of this initiative, and reports on both the practical challenges and the pedagogical benefits that we encountered.

INTRODUCTION

Australian law schools have developed diverse clinical legal education experiences, including partnerships with legal aid organizations, law school run clinics, and externships to community and private legal practices.²

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² Kingsford Legal Centre *Clinical Legal Education Guide 2013-2014* (Kingsford Legal Centre 2014) provides a comprehensive outline of the various programs operating in Australia at present. See <http://www.klc.unsw.edu.au/news/2012/08/clinical-legal-education-guide-2014-published>

These programs make a substantial contribution in diverse and specialized areas of legal need and policy development in Australia. The seemingly endless diminution of funding to legal aid in Australia has undoubtedly contributed to the number and variation of clinical initiatives across the sector. They have become an important facet of justice access and are now as much a part of the legal aid landscape as Community Legal Centres and Legal Aid Services. At the same time, law students and the profession are demanding more nuanced and practice focused legal education for law graduates.

Finding ways for clinical programs to expand their contribution to justice access in the community, and to better prepare students for professional life, is high on the agenda for both clinicians and law faculties. One option that has not been much explored in Australia is the partnering of private law firms and law schools within law school clinics. Rather than law students externing in private firm, private practitioners come to the clinic and participate in the supervision of students *in situ*. Melbourne Law School has recently introduced such a model into its Sustainability Business Clinic³, and there are examples of similar initiatives in the USA⁴, and the UK,⁵ but as yet this is not an established clinical model and there is little literature on the topic.

³ See Melbourne Law School *Public Interest Law Initiative* (September 2015) <<http://www.law.unimelb.edu.au/pili/pili-subjects/sustainability-business-clinic/about>>

⁴ See Alicia E Plerhoples and Amanda M Spratley 'Engaging Outside Counsel in Transactional Law Clinics' (2014) 20 *Clinical Law Review* 379,393.

In 2013 Adelaide Law School and commercial law firm Lipman Karas (“LK”) which has offices in Adelaide London and Hong Kong, commenced a partnership in the Magistrates Court Legal Advice Service (“MCLAS”) one of two Law School legal advice clinics operating as part of the Adelaide Law School Clinical Legal Education (“CLE”) Program. The purposes of the partnership were to bring solicitors who were keen to engage in pro bono legal work into the law clinic environment, to enrich students’ clinical experience, and to support the work of the Clinic in the community.

This paper tracks the development and implementation of this initiative.

First, I outline the operations of the MCLAS, and our initial responses, to this idea, identifying the preliminary policy challenges that we identified, and how we resolved these. Then I discuss the practical development of our collaboration, including the nuts and bolts of developing and implementing the partnership. Next I evaluate the benefits that the various stakeholders in this engagement have ultimately obtained, with particular focus on the pedagogical benefits for our students. In conclusion I summarize some of our key findings, and suggest ways forward for others considering such initiatives.

⁵ Queen Mary University of London operates a free legal advice centre with approximately 100 solicitors providing supervision of students on a *pro bono* basis. See <http://www.lac.qmul.ac.uk/about/index.html>

OVERVIEW OF CLINICAL LEGAL EDUCATION IN AUSTRALIA

Most law schools in Australia operate CLE programs, many through the medium of law school run legal advice clinics. Some law schools have partnered with existing legal aid or community legal services, with students undertaking their CLE experience under the supervision of the host agency, often with some supervisory engagement by faculty.⁶ Others run their own clinics as part of their undergraduate program,⁷ where students are supervised by faculty or employed solicitors. A number of law schools also offer externship programs where students may be placed at private law firms, although placements are predominantly at public and community agencies.⁸ Most universities run several programs across a number of these options, often associated with different clinical courses.⁹

⁶ For example, Australian National University, Griffith University, James Cook University, Monash University, Murdoch University, the University of Queensland and the University of Western Sydney all operate clinics within existing legal aid agencies with the involvement of some faculty staff.

⁷ For example, Flinders University, University of South Australia, Adelaide University, Griffith University, Newcastle University and University of New South Wales have services that are primarily operated by the University with university funded staff.

⁸ For example, Deakin University, Adelaide University, University of South Australia, Griffith University, University of Technology Sydney, La Trobe University, Macquarie University, Queensland University of Technology and University of New South Wales.

⁹ Adrian Evans et al 'Best Practices Australian Clinical Legal Education' Report Prepared for the Australian Council of Law Deans (September 2012),⁹ provides a structured taxonomy of the different types of programs. <
http://www.cald.asn.au/assets/lists/Resources/Best_Practices_Australian_Clinical_Legal_Education_Sept_2012.pdf>

CLE in South Australia

In South Australia all three law schools run clinical programs.¹⁰ The University of South Australia operates a legal advice service that is located on campus with outreach services to two busy suburban courts.¹¹ Flinders University operates a clinic on campus, with an outreach to a suburban court.¹² Adelaide Law School operates two legal advice clinics, one co located at the Magistrates Court in Adelaide and the other co-located at homeless center in Adelaide.¹³ All schools also offer clinical externship placements in a range of legal, community, and government agencies.

In a small state like South Australia, where there are three law schools, and many graduates seeking post-graduate legal training opportunities, there is a high demand for experiential placement opportunities. This means that externship opportunities for undergraduate law students are limited. The problem of ensuring appropriate experiences on externship in a relatively small legal services market limits the number of externships that can realistically be offered.¹⁴ This is only exacerbated by the contraction of the

¹⁰ See Rachel Spencer, Margaret Castles and Deborah Ankor 'Clinical Legal Education in South Australia' (May 2014) 36:4 *Bulletin (Law Society of South Australia)* 38-40

¹¹ See <<http://www.unisa.edu.au/Business/Law/Clinic/>>

¹² See <<http://www.flinders.edu.au/ehl/law/legal-advice-clinic/>>

¹³ See <<https://law.adelaide.edu.au/alos/about/cleprogram/>>

¹⁴ Jeff Giddings 'Extern Placements for Law Students: Out of Sight Out of Mind or Putting Students in the Picture?' (Paper presented at 1996 Skills Development for Tomorrow's Lawyers: Needs and Strategies Australian Professional Legal Education Council Sydney 1996) Conference Papers Volume 1 575-598;

legal services market,¹⁵ and has led to focusing resources into law school operated clinics, which can only cater for a limited number of students.

The Magistrates Court Legal Advice Service

The MCLAS, which is one such service, is co-located at the Magistrates Court in Adelaide. It is run by the Adelaide Law School, and is independent from the court. It provides legal advice and support in claims up to \$15000,¹⁶ in the Minor Civil (Small Claims) Jurisdiction. Litigants may only be represented in trial in limited circumstances,¹⁷ and of necessity, a semi-inquisitorial approach is often adopted by the Court in trial.

MCLAS's work includes minor commercial, contract, neighborhood, dog attacks, fences, debt, property damage, motor vehicle, minor statutory claims, consumer claims, de facto property division, strata titles, failed investments and defamation. Typical of many such services, the monetary value may be low, but the legal issues, and the evidence, can be complex. MCLAS does not enter a formal retainer with clients,¹⁸ and does not go on the court record.

¹⁵ Cynthia Baker and Robert Lancaster 'Under Pressure: Rethinking Externships in a Bleak Economy' (2010-2011) 17 *Clinical Law Review* 71, 74 -76; Nancy M Maurer and Liz Ryan Cole 'Design Teach and Manage; Ensuring Educational Integrity in Field Placement Courses' (2013) 19 *Clinical Law Review* 115, 124.

¹⁶ The jurisdictional limit is \$25000, but the clinic limits assistance to matters up to \$15000 due to the limits of the service and the inevitable complexity and risk associated with higher claims.

¹⁷ Parties may be represented by leave of the court in certain limited circumstances. See *Magistrates Court (Civil) Rules 2013* (SA) r 13 (4).

¹⁸ Clients sign a release acknowledging that the service can only provide advice, not representation, and that they agree to the condition that the service can stop assisting them at any time.

Instead, support is provided via the preparation of legal opinions and research, drafting pleadings and correspondence for clients to send,¹⁹ and exploring alternative dispute resolution options.

The service operates two days per week, with two groups of 8 students, supervised by one solicitor, each attending one day for a twelve week semester. An intensive placement occurs over summer, two days per week for six weeks, and fortnightly clinics are offered over long university breaks.

THE COST CHALLENGE OF IN HOUSE LEGAL ADVICE CLINICS

There are many systemic and financial challenges in operating in house clinical services. The value to the student of a clinical placement is significant²⁰, but the operational and teaching cost is exponentially higher than almost any other law subject²¹. Close professional supervision, premises, office supplies, IT equipment and communication technology are costly. One-off grants, in kind contributions, or sharing of existing resources with other organizations can assist, but seldom provide certainty for future planning. Commonly, grants are available for new initiatives, but not for ongoing operating expenses. This can make it difficult to sustain, let alone develop, established clinic services.

¹⁹ Sometimes referred to as “ghostwriting”.

²⁰ Proponents of CLE argue that it is an essential component of educating lawyers. See, eg, Peter A Joy ‘The Cost of Clinical Legal Education’ (2012) 32 *Boston College Journal of Law and Social Justice* 309.

²¹ Paul Campos ‘The Crisis of the American Law School’ (2012) 46 *Michigan Journal of Law Reform* 177, 192.

The ongoing cost of solicitor/faculty supervision of students, and any associated running or insurance/registration costs, poses increasing strain on diminishing law school budgets.²² Whilst most law schools accept the value of clinical programs (if not the imperative to offer them²³) the funding model for law schools creates deep-rooted challenges.²⁴ Law schools have of necessity adopted high teacher/student ratios, low contact hours, and streamlined use of technology to deliver legal education at less than half the cost of comparable tertiary degrees.²⁵ The idea of experiential, low student: supervisor ratio, learning that is the foundation of other professional university degrees²⁶ is traditionally not part of a modern law curriculum and inevitably limits law school appetite for such programs.²⁷

²² Plerhoples Spratley above n 3, 393.

²³ Professor Jeff Giddings from Griffith University points out that many law schools see their clinical programs offering an “edge” in an increasingly competitive education market. Jeff Giddings *Promoting Justice Through Clinical Legal Education* (Justice Press, 2013)136.

²⁴ Law students in Australia pay on average \$10 000 per annum for a law degree. Of this approximately \$2000 of that sum is directed to the law school. The cost of an arts degree is approximately \$6000, with \$5500 going to the school. Medical students pay the same tertiary fees as law students, but \$21700 is paid to the school. (Figures based on funding rates for Commonwealth supported university places 2014 – The Hon Dr David Kemp and Andrew Norton

Report of the Review of the Demand Driven Funding System Australian Government Department of Education (2014) Commonwealth Department of Education and Training available at <http://docs.education.gov.au/node/35537>)

²⁵ See Giddings above n 22, 121.

²⁶ For example, medicine, health sciences, nursing and social work.

²⁷ Joy above n 19, 310 points out that clinical legal education is often the first area to receive budget cuts in financially difficult times. See also Jeff Giddings ‘A Circle Game: Issues in Australian Clinical Legal Education’ (1999) 10(1) *Legal Education Review* 33.

At an ideal student/supervisor ratio of 8:1 (sometimes 6:1)²⁸ for clinic supervision, the cost of a supervisor is many times the per student cost of a lecturer teaching between 30 and 400 students at a time.²⁹ Even with university funding for solicitor/supervisor positions, most university law clinics rely upon external funding support by way of grants,³⁰ to maintain the program and develop new initiatives.³¹

There are very persuasive reasons to find ways to minimize the cost of clinics to ensure a rich and accessible experience for as many students as possible. At the same time, quality control, risk management, and the need to ensure a valuable educational experience are paramount considerations that constrain the opportunities for expansion. One way to expand opportunities is to find different ways to enlist the support of the private profession.

²⁸ Evans et al above note 8, 27 suggest an even lower ratio of 4:1 in a busy “live client” advice context.

²⁹ Giddings, above n 22, 322.

³⁰ The Law Foundation of South Australia operates a benevolent grants process to support justice access initiatives in South Australia. It has been a constant support to the clinical programs operated by all three universities in SA by both seed funding for new initiatives and ongoing financial support. Without this support, the development of new initiatives, not to mention the maintenance of day to day services and community education work, would not be possible.

³¹ Giddings above n 22, 145 points out the importance of outside funding to clinical programs in Australia.

The traditional externship model

The most common way for law firms to participate in CLE is via externships, where law firms take one or more students on an experiential placement³². There are both financial and educational advantages with externship programs.

An extern program is much cheaper than an in house clinic, because there is no expenditure on supervisor/faculty salary.³³ In a diverse externship based program, a rich variety of social justice issues and work types can be incorporated in to the teaching component.

In a mixed CLE program, where students are placed both at in-house clinics, and on externships with private firms, the inclusion of private practice placements facilitates classroom exploration of different models of legal practice, and helps the class to consider professional values and ethics across the public/private divide.

Of course externships can be an educational failure if the firm or agency is not equipped to engage in the educational process with the students.³⁴ For that reason detailed guidelines have grown up around the management of

³² Griffith University; La Trobe University, Macquarie University, Queensland University of Technology, Southern Cross University, University of Newcastle, University of New South Wales, University of South Australia, University of Adelaide, Wollongong University all offer externships with private firms as part of their varied CLE offerings.

³³ See Baker and Lancaster above n 14, 83.

³⁴ Joy, above note 19 322 ; Roy T Stuckey and others *Best Practices for Legal Education: A Vision and a Roadmap* (Clinical Legal Education Association, 2007) 155 emphasize the need for clinical experiences with a high level of autonomy, and recognizes that not all externships will permit this degree of deep learning.

externship placements, so that students do receive educational experience consistent with the goals of the CLE program³⁵. It is also necessary to ensure that equitable work principles are not compromised by unclear placement expectations.³⁶

In a crowded legal marketplace, looking to the private profession as a source of externship experience is often quite difficult:

- Firms are already overburdened with Graduate Diploma of Legal Practice or Practical Legal Training students seeking professional placement and give priority to those students over undergraduates;
- Busy private practitioners can find it very difficult to supervise a clinical placement student effectively – finding time to mentor, educate, and patiently develop a student's skills can be a real challenge in a busy legal practice;³⁷
- The imperative to bill inevitably impacts upon the capacity of a private firm or solicitor to host students, in direct contrast to a CLE or government agency where there may be more flexibility to justify time spent on supervision and education;

³⁵ See Maurer and Cole above n 14, 132-135.

³⁶ In Australia there has been significant concern about the exploitation of students eager for work experience in the legal and other professions. See Andrew Stewart and Rosemary Owens *Experience or Exploitation Report for the Fair Work Ombudsman 2013* (University of Adelaide 2013) 43-44.

³⁷ Barbara A Blanco and Sandy L Buhai 'Externship Field Supervision: Effective Techniques of Training Supervisors and Students' (2003-2004)10 *Clinical Law Review* 611, 612.

- Few private practitioners will permit students to interview clients alone or actively participate in interviews. In many CLE programs client contact is critically important;³⁸
- The range and nature of work can be limited and unpredictable in a private practice setting, meaning that a relatively short placement (typically one day per week spread out over 12 weeks) may be unluckily devoid of variety or interest; and
- Supervising a CLE student is different to supervising a young lawyer, and the quality of supervision in private practice can be variable.³⁹

A DIFFERENT APPROACH: BRINGING PRIVATE PRACTITIONERS INTO THE CLINIC

Another way to engage the private profession with CLE is to include private lawyers in existing clinics. Instead of students in ones or twos being placed with a private firm, members of the private profession can come into the in-house clinic environment – a sort of ‘reverse externship’.

Alicia Plerhoples and Amanda Spratley operate a transactional legal clinic in Georgetown USA. They have introduced visiting supervisors from the private practice into this clinic, in response to some of the challenges outlined above. In their recent evaluation of the engagement of outside counsel in a the

³⁸ Evans and others above n8, 5, 15, emphasize the importance of interaction with and responsibility for real clients as part of clinical experience.

³⁹ Blanco and Buhai above n 36, 621, 623 Giddings above n22, 89.

clinic⁴⁰ they suggest several reasons a law school clinic can benefit from the inclusion of outside solicitors.

Firstly there is the direct justice access advantages that arise from the capacity to extend the breadth of services;⁴¹ secondly, there is the opportunity to leverage community legal resources- particularly by linking with private solicitors who may also be in a position to do *pro bono* work for the clinic community.⁴² In terms of educational outcomes, the involvement of different legal experts expands the depth and breadth of work students can engage in,⁴³ and enables students to engage with multiple styles and methods of lawyering in developing their own professional identity.⁴⁴

On an institutional or faculty level, connecting with the profession can enhance institutional relevance in the community,⁴⁵ and the professional support offered by expanded collegiate connections creates a richer and more realistic professional environment for faculty supervisors, who can find limited relevant support within faculty for practice/clinic dilemmas.⁴⁶

There are advantages for private solicitors who want to engage in *pro bono* work as well. The common problems that supervisors of externs encounter -

⁴⁰ Plerhoples and Spratley above n 3.

⁴¹ Ibid 383.

⁴² Ibid 386.

⁴³ Ibid 387.

⁴⁴ Ibid 388.

⁴⁵ Ibid 389-390.

⁴⁶ Ibid 390.

lack of time, lack of focus, pressure to bill,⁴⁷ are removed when the solicitors leave their own office and come to a clinic – they are physically separated from the daily pressures of their own practice and able to focus on their supervisory role without distraction. At the same time, their time commitment is predictable, being limited to the hours they will spend at the clinic.

These factors provide persuasive reasons for private practitioners to become involved as supervisors in a law school clinic.

Early experience of visiting supervisors in clinic

The Adelaide CLE program places approximately 32 students each semester,⁴⁸ of which 22 are placed in Law School operated or affiliated clinics, 8 are placed with community law centers/legal aid offices, JusticeNet⁴⁹ or government agencies. We place a small number of students on externship with private practitioners when their capacity permits, or when there is a particular need for *pro bono* legal work.⁵⁰

⁴⁷ Blanco and Buhai above n 36, 616-620. Jeff Giddings' recent survey of supervisors as part of an Australian Office of Learning and Teaching National Fellowship also indicates that supervisors find balancing their own workload with effective supervision consistently challenging. <<https://www.griffith.edu.au/criminology-law/effective-law-student-supervision-project/survey-results>> under heading Supervisor Surveys - Overview

⁴⁸ The program operates over three semesters, with a smaller number of students in the intensive summer semester where placement is two days per week over 6 weeks.

⁴⁹ JusticeNet is the South Australian equivalent of a public interest law clearing house – it processes applications for legal services on the basis of merit and means, and links clients with a large cohort of private practitioners prepared to act on a *pro bono* basis.

⁵⁰ For example, from time to time we have a surge in externships to firms working on refugee appeals, or in other areas of particular need.

The operation of the two legal advice clinics is the most costly aspect of the program, and the sort of pressures discussed above mean we are always looking for more cost effective ways of operating. Over the life of the CLE program at Adelaide Law School we have had several flirtations with engaging with the private profession in our clinical program, primarily with a view to cutting the costs of supervision.

At one of our clinics, the Adelaide Legal Outreach Service (which caters primarily for homeless and disadvantaged people) we invited community lawyers and private practitioners to participate as *pro bono* supervisors. The practitioners who volunteered to assist with supervision were experienced in community law, well suited to the supervisory/education role by virtue of their existing work in the community sector, and familiar with our client demographic. They did not need extensive training in dealing with our client base, or the notion of how an advisory service operates. Like most busy practitioners, they could not afford the time to be trained in clinical pedagogy,⁵¹ but having experience with law students on placement at their own agencies and in some cases teaching experience, were well equipped to interact effectively with students.

However, we encountered significant practical challenges. Firstly, the introduction of visiting supervisors brought home to us how important

⁵¹ Plerhoples and Spratley above note 3, 408 - 409 acknowledge this reality, suggesting that at the very least outside supervisors should have some induction to the model and ethos of the clinic.

continuity of supervision was both for educational experience and client service. Many of our cases take weeks or months to resolve, and it was time consuming for students to have to acquaint a new supervisor with details of a case and the reasons for strategy adopted a week or so previously with a different supervisor. The process of explaining a case to a third person is a valuable exercise for a student, providing a forum for reflection, review, and justification of decisions made, but the educational value of this exercise was eclipsed by the time it took for students in a challenging environment to acquaint visiting supervisors with often complex case histories whilst clients waited for advice.

Whilst visiting supervisors brought a fresh perspective to the clinic, and expanded the students' exposure to different practice styles, philosophies, experiences, and practices, this benefit was overshadowed by the difficulties of interposing visiting supervisors into the existing day to day operation of the clinic.

When Adelaide based international commercial law firm Lipman Karas raised the question of involvement in MCLAS, we welcomed the opportunity to revisit ways to develop a more structured partnership between a clinic and a private firm.

Policy concerns with a commercial/clinic partnership

Our first thought were of the potential disconnect between the practices and ethos of a “high end” commercial law firm and a grass roots legal advice service.

It is no historical accident that law school clinical programs are most commonly connected to community and legal aid environments. The CLE movement has its roots in contribution to public interest/community work, and this is reflected in the objectives of all Clinical programs in Australia which uniformly acknowledge commitment to *pro bono* principles, social justice, and service to the community as key program objectives.⁵² These objectives are mirrored in CLE coursework which explore themes of justice access and socio/legal equity alongside the development of professional skills and values.

There is an obvious commitment to key values reflected in clinical programs in the range of formal *pro bono* activities with which many law firms now engage.⁵³

Even so, beneath the surface lie significant cultural differences. The imperative to bill is an overwhelming feature of private practice, as is the

⁵² Mary Anne Noone ‘Time to Rework the Brand ‘Clinical Legal Education’ (2013) 19 *International Journal of Clinical Education* 341, 352.

⁵³ See National Pro Bono Resource Centre ‘Fourth National Law Firm Pro Bono Survey Final Report’ (Report, National Pro Bono Resources Centre (Australia) December 2014) <https://wic041u.server-secure.com/vs155205_secure/CMS/files/cms/4th_National_Law_Firm_Pro_Bono_Survey_2014_Final_Report.pdf>

need for time efficiency and outcome focus. These imperatives are diluted in clinic, where time management (rather than time recording) is flexible to ensure students have time to explore and reflect on tasks, and where we will often spend significant time assisting a client to find and access other (non-legal) remedies.⁵⁴ In addition, many clinics intentionally adopt non-adversarial values as part of their client service model.⁵⁵ We want our students to learn about different approaches to practice, but we foresaw an inbuilt disconnect between the way our different practices worked that might cause challenges in the clinic.

Whilst lawyers ascribe to the same overarching ethical values, and seek to provide high quality contextual service that is responsive to client needs and interests, there are many different approaches. The imperative to “leave no stone unturned” in pursuit of the clients’ legitimate goals pervades adversarial legal practice. In clinics where we work on very low level disputes for self-represented clients, we are highly attuned to the need for a pragmatic and economical use of court process commensurate with the matters in dispute.

Most in-house clinics adopt frankly social justice focused practice models, and teach according to those values. Whilst many law firms have in-house *pro*

⁵⁴ Michael King, Arie Frieberg, Becky Batagol and Ross Hyams *Non Adversarial Justice* (Federation Press 2nd Ed 2014) 248. This difference is one of the reasons private practitioners are attracted to clinical *pro bono* work – it offers the opportunity to explore legal practice and social justice in a broader context.

⁵⁵ King et al above n 53, 249.

bono programs,⁵⁶ social justice does not pervade the day to day work of the office as it tends to do in a clinical practice.⁵⁷

Like many large firms in South Australia, LK already had a well-developed *pro bono* program. Engaging in this clinic offered LK a novel and different way to have input into a broader *pro bono* initiative – hands-on involvement in educating law students, providing sustained professional and case management support to an existing enterprise, and providing a consistent and supported *pro bono* opportunity for staff.⁵⁸ The teaching and mentoring role that solicitors engage in contributes to their own professional development. Other advantages include the opportunity to develop strong relationships with final year law students for recruitment purposes,

Despite the significant differences between a big commercial law firm and our small clinical service, the partnership seemed to fit our values and had the potential to expand our services into the community. We also recognize that very few of our students will end up working in the community/legal services sector. Many of them will end up in private practice, and we felt that a

⁵⁶ For example via Housing Legal Clinics, or JusticeNet, or Public Interest Law Clearing Houses in various states in Australia.

⁵⁷ A survey completed as part of Professor Jeff Giddings' Effective Law Student Supervision Project in 2014 suggests that there is considerably less focus on social justice issues in private practice hosted externships. See 'The Effective Law Student Supervision Project Major Findings – Supervisor Survey'

<http://www.griffith.edu.au/__data/assets/pdf_file/0005/700439/major-findings.pdf>

⁵⁸ See National Pro Bono ResourceCentre 'The Australian Pro Bono Manual' Part 1.4 Promoting a Pro Bono Culture for a more detailed discussion of the many benefits for law firms engaging in *pro bono* work.

<http://www.nationalprobono.org.au/probonomanual/page.asp?sid=1&pid=20>.

partnership with solicitors engaging in *pro bono* work would model these values.

At the same time, we needed to consider the subtle messages that this partnership might deliver –that clinic work is “bargain basement” compared to the service that might be obtained through a private firm, or that clinical practice is unrealistically “ivory tower” in nature.⁵⁹

Another issue related to values and ethos was the risk that students might perceive the visiting solicitors as “real lawyers” in a way that might adversely impact upon the credibility of the clinical supervisors. Clinic hierarchy is often discussed in terms of the negative impact of hierarchical structure on students,⁶⁰ but we were also concerned that the engagement with visiting lawyers did not undermine the role of our own supervisors. We demand diligence and professionalism from our students, but we also create a professionally nurturing environment. Law students, no less than the community, are attuned to the dominant media portrayal of the lawyer as confident, decisive, directive and indeed, sometimes ruthless.⁶¹ We deliberately challenge these assumptions within the CLE program.

⁵⁹ See Stuckey, above note 33, 198.

⁶⁰ Wallace J Mylniec ‘Where to begin: Training New Teachers in the art of clinical pedagogy’ (2011-2012) 18 *Clinical Law Review* 505, 508.

⁶¹ See, eg, David M Spitz ‘Heroes or Villains? Moral Struggles Vs Ethical Dilemmas: An Examination of Dramatic Portrayals of Lawyers And The Legal Profession in Popular Culture’ (2000) 24 *Nova Law Review* 725, 727.

Potential benefits of clinic/private engagement

Ultimately, we decided that the pedagogical reasons for developing a partnership outweighed our concerns. We particularly valued the following opportunities:

- Expanding supervisory capacity: more supervisors available to spend one on one time with students on complex case work and challenging tasks;
- providing some “time out” for the clinic supervisor to work on policy/management issues;
- Raising the profile of our service within the broader legal community
- Extended pedagogical benefits for our students by facilitating engagement with different professional teachers/mentors from different backgrounds; and
- Developing a community of practice around the work done at the clinic, through formal professional/collegiate links.

We determined to keep the risks and concerns that we had identified at the forefront of our minds during development of the collaboration, and to explore any concerns as planning progressed.

Implementation of the partnership

Having considered the broad questions of ethos and values, we then turned to the day to day practicalities of developing a partnership, which I will deal with in turn. These include:

- Integrating visiting supervisors within the clinic model
- Memorandum of Understanding (“MOU”) between the parties
- Insurance
- Management of potential conflicts of interest
- Supervision training
- Partnership management

Integrating visiting supervisors

MCLAS operates two days per week, from 9.00 am-5.00 pm. Each day 8 students are supervised by one solicitor. In the morning, students work in pairs to interview one or two clients. In the afternoon, students do follow up case work.⁶² Clients self-refer, or are referred through the court process, or from other services. Unlike many duty solicitor services, MCLAS offers ongoing support to clients in civil matters, and may work with a client over weeks or months.

⁶² Where time permits, clinic students also observe court, and all students work on a major justice access project that is part of their assessable work. They also maintain clinic policy guidelines, resources, update case notes and other resources.

The clinical supervisor engages with students at all stages, although does not attend client interviews. Students see clients in pairs, without supervision, and consult with the supervisor during the interview before substantive advice is given. All follow up-work is signed off by the supervisor.

There are no offices at MCLAS. The clinic is situated in one large room (a disused courtroom) with students working at large tables, and the supervisor sitting “on the bench”⁶³ for case consultations, and in the larger area at other times. The supervisor is very much in a “helicopter” keeping an eye (and an ear) on everything that is going on. This enables constant tracking of learning needs, student dynamics, and work progress.

We decided that we would start with a modest proposal to minimize disruption to clinic operations. After introductory training and development covering the nature of the clinic, the role of supervisors, and the pedagogy of feedback and clinical learning models, LK solicitors would attend in pairs, one afternoon per month. We were concerned that the “organized chaos” of the morning sessions, with 8 students seeking direction on up to 6 clients, posed too much of a challenge, and that participation in the less busy afternoon case work activities would enable some structure to be built around these afternoon sessions. This is discussed further in the section on building a teaching partnership.

⁶³ Not in any attempt convey hierarchical dominance! It is the only workable option given the layout of the room!

Memorandum of Understanding

Plerhoples and Spratley, in their report of engagement of outside counsel in a transactional law clinic⁶⁴, suggest an exhaustive memorandum of agreement⁶⁵ which provides detailed instructions about every aspect of the interaction between clinic and outside solicitors, correctly pointing out that leaving things to “work themselves out” is likely to lead to problems in the future.⁶⁶ We were of the same mind, but decided to develop a much simpler MOU that reflected our goals and intent (as well as some of the critical organizational details that related to risk management and insurance) but that did not set out chapter and verse of the arrangement. We also found that whilst preemptive description of our goals and proposed working model was needed, we could not detail the precise working relationship on important matters of risk management until we had unraveled the insurance challenges that our partnership presented.

Our MOU canvasses:

- The combined educational and justice access goals of the clinic and the intent of the partnership;
- The nature of work that LK solicitors will be involved in;
- Protocols for managing potential conflicts of interest;
- Protocols for file responsibility and oversight;

⁶⁴ Above n 3.

⁶⁵ Ibid 425.

⁶⁶ Ibid 419-410.

- Explicit reference to our respective insurance arrangements; and
- Communication and problem solving mechanisms.

The MOU is partly aspirational, but contains step-by-step instructions for day to day management of critical processes to ensure that they are followed precisely. Thus the MOU forms part of our risk management strategy, given the insurance issues that inevitably arise in a collaboration of this nature.

Insurance

Professional indemnity insurance was inevitably the biggest hurdle. As part of the University of Adelaide, clinics are covered by University insurance. Practitioners in SA are insured under a professional indemnity scheme through the Law Society of SA. Both parties' brokers were far from convinced that any liability arising from work done by a visiting volunteer supervisor at the clinic would be covered by University insurance. LK were understandably concerned that in the event of a claim, they would be exposed by virtue of having been briefly involved in a matter at some stage.

One approach was to make all work done at the clinic by visiting solicitors subject to sign off and review by the clinic supervisor. We felt that this would entrench an unrealistic hierarchical approach, and failed to reflect the collegiate purpose of the partnership, and the expertise of the solicitors involved.

In any event, the professional indemnity insurance provided to law firms in South Australia requires them to demonstrate control over all work done by firm solicitors. This means that LK partners must retain organizational oversight of all work done by their solicitors in the course of supervision or supporting case work at the clinic, just as would be the case for work done within the firm, *pro bono* or otherwise. Although for reasons of service consistency the clinic supervisor often has the final approval on outgoing work, legal responsibility cannot be shifted even if the clinic supervisor “signs off” on all work.

To manage this, our MOU specifies that LK will maintain a file with details of all clinic matters worked on, along with copies of instructions provided by LK solicitors, letters sent under the authority of LK solicitors, and other relevant matters, so that partners of the firm can review the quality of the work undertaken by any LK solicitor on a clinic visit.

We also included in our MOU specific reference to role: that solicitors from LK work independently alongside the MCLAS supervisor, but in a collaborative and consultative way. This is consistent with our experience that overarching familiarity with the case, and the jurisdiction, by the supervisor is an important aspect of maintaining cohesive supervision and service, and visibly models good collaborative practice between professionals.

Conflict Management

Whilst LK and MCLAS have a very different client bases and are unlikely to encounter conflict, the possibility cannot be excluded. Our MOU contains detailed conflict protocols.

Details of all clinic clients and opposing parties are provided to LK to cross check for conflict. Additionally, each day that LK practitioners attend the clinic, an updated list of matters and a list of new clients for that day is sent to LK.⁶⁷ In the event of conflict, the clinic supervisor ensures that LK do not have any involvement with that file. So far there have not been any conflicts.

Pedagogy – preparing private solicitors to supervise clinic students

Once these practical issues were sorted out, we turned to the question of educational integrity of the initiative. The nature and quality of supervision is critical to successful clinical learning. New clinicians know how to practice law, but not necessarily how to engage in the supervisory/teaching process.⁶⁸ Although a wealth of scholarship and practical guidance has grown up around training clinicians for supervision,⁶⁹ with formal post-graduate

⁶⁷ Part of our intake procedure includes advising clients of this process and seeking their consent.

⁶⁸ Justine A Dunlap and Peter A Joy 'Reflection in Action : Designing New Clinical Teacher Training By Using Lessons Learned From New Clinicians' (2004-05) 11 *Clinical Law Review* 49, 53; Plerhoples and Spratley above n3, 408.

⁶⁹ Mylniec above n58, 505 outlines the complexity of this task, and a variety of approaches and models developed in recent years.

training now available,⁷⁰ it is inevitable that informal and unstructured approaches to training supervisors will continue.⁷¹ Our own experience with various supervisors moving into our two legal advice services has been that a combination of supported training (materials, meetings, formal learning) and unstructured, needs-based and flexible collegiate mentoring have worked effectively. Engaging our visiting solicitors in lengthy training program was not realistic.⁷² However both partners were committed to ensuring an effective supervisory relationship between visiting practitioners and students. There were obvious synergies between LK's existing structured process for mentoring and support of their own legal staff and the pedagogy of clinical supervision, that meant we were "on the same page" from the outset. Solicitors from LK were for example familiar with ideas like structured feedback,⁷³ and mentoring relationships. However we recognized that the visiting solicitors were not preparing for a career in academia as clinical supervisors, and our training processes had to be relevant and achievable. This pragmatic approach is reflected in the US where training of externship supervisors does not require separate training sessions, but may consist written materials about the purpose of the program, manuals and 'tip sheets'

⁷⁰ The University of York in the United Kingdom and Georgetown University in America both offer post graduate clinical teaching degrees.

⁷¹ Dunlap and Joy above n 67, 53. See also Evans et al above n 8, 17,19 indicating that the Australian Council of Law Deans also recognizes the importance of "in clinic" integration of supervisors to the clinical program.

⁷² The sort of structured training program that, for example, Mylniec (above n 58) proposes for new clinicians was just not achievable in the context of visiting solicitors.

⁷³ See for example Stuckey above n33, 176.

and basic guidance on providing feedback and supporting learning.⁷⁴ We also believed that our insights into the pedagogy of supervision would benefit LK in their mentoring program.⁷⁵

We appreciated that there would be challenges for private practitioners coming into our clinic environment. In extensive surveys of the experiences of new clinicians in the late 1990s/early 2000's Joy and Dunlap identify some of these challenges. We expected, correctly as it transpired, that key challenges to our visiting practitioners would be ceding responsibility to students, knowing when (or how extensively) to intervene, and balancing the needs of the client with the educational goals of the clinic.⁷⁶ The clinical supervision model calls for restraint. The clinician has to put aside the decisive activist temperament that typifies many lawyers and let the student interrogate the issue, and explore responses. There will often be much more latitude in terms of time efficiency and attention to options in clinic in order to meet educational outcomes; a significant amount of supervisor/student interaction will involve the supervisor assisting the student in developing both autonomy and reflective practice, rather than a more directive and task-focused approach.

⁷⁴ James H Backman 'Where do Externships Fit? A New Paradigm is Needed: Marshalling Law School Resources To Provide an Externship for every Student' (2006) 56 *Journal of Legal Education* 615, 635-636.

⁷⁵ Plerhoples and Spratley above n 3, 408 identify familiarity with clinical teaching pedagogy as a critical aspect of successful supervision.

⁷⁶ Dunlap and Joy above n 67, 62 – 64.

The experience of supervising law clerks or junior lawyers does not automatically transpose to clinical teaching, largely because of the other imperatives of non-clinical practice (efficiency, client focus, deadlines and time recording)⁷⁷. Additionally, we were aware that the visiting supervisors from LK would be drawn from solicitors experienced in supervising junior lawyers and clerks, as well as from the ranks of junior lawyers themselves. We expected different dynamics based on the career stage of the participating lawyers.

The legal profession has come a long way in understanding the importance of training mentoring and supervising solicitors, particularly early career practitioners. For example, the Queensland Law Society has a supervision guide⁷⁸ which contains relatively detailed information about motivation and education of junior lawyers,⁷⁹ guidance on structures for performance reviews, giving and receiving feedback, and even some suggested language/phrases for interaction between supervisors and junior staff.⁸⁰ Aspirational in nature, the guide is an excellent start in imbuing a culture of effective supervision. However it goes nowhere near the depth and complexity of the clinical supervisor's day to day tool kit.

⁷⁷ Ibid 67, 84.

⁷⁸ Queensland Law Society 'Guide to Effective Supervision in Legal Practice: Practice Support' (Queensland Law Society 2010).

⁷⁹ Ibid n 77 Section 3 Effective Delegation.

⁸⁰ Ibid n 77 section 8.4 Performance Discussions.

We approached the teaching partnership from the common ground of our supervision/career mentoring programs. We provided an initial Continuing Professional Development (“CPD”) session with LK solicitors, to outline the principles and practice of clinical supervision, following up with an informal review/discussion soon after the partnership started. We were then lucky enough to have Professor Jeff Giddings from Griffith University offer a supervision workshop to clinical supervisors in SA, later in the year. We plan to have two formal or semi-formal sessions dealing expressly with supervision practice each year.

In terms of the area of practice, we have jointly offered sessions to the legal community in SA, including judiciary and tribunal members, on working with Self Represented Litigants, young lawyer training and education, and mediation practice in the Magistrates Court. All of these build into our overall goal of building awareness of grass roots justice access challenges in the legal community. We intend to offer two such sessions each year to the broader legal community.

Solicitors who attend MCLAS each fortnight are debriefed by the LK coordinator soon after each visit, so we can keep track of impressions, challenges, and areas we can develop.

The teaching partnership thus encompasses both working in the clinic, and a program of professional development for all participants.

Impact of the visiting supervisors on clinic operations and educational outcomes

Having decided to go ahead our initial focus was on having an extra pair or so of supervisory hands on deck to supervise students. We hoped that this might free up the MCLAS supervisor to focus on office management and policy development. In common with many university law clinics, we have no administrative support and the day to day management and supervisory updating of resources often falls to the single supervising solicitor.

One or two LK solicitors attend on a rotating basis for half a day per fortnight, in the afternoon. The client interviews have usually finished at that stage, and follow up work is being undertaken by students.

We recognized that we would not be able to parachute solicitors into the supervision of case work, much of which had already been discussed between student and supervisor during supervision of interviews earlier in the day. Our past experience with visiting supervisors demonstrated that a degree of “helicopter” coordination would be necessary. This necessitated a change in the way the clinic was managed on “LK days”.

Instead of the 8 students focusing on the clinical supervisor for task guidance and settling work, the supervisor takes a more managerial approach. In the morning, the supervisor identifies particular case tasks that students can work on with a LK solicitor in the afternoon. These will range from file review, drafting documents or letters, research, or case analysis. This provides

an opportunity for the students to relate the story of the case to another solicitor (thus organizing their own thoughts and ideas); requires them to think about and respond to questions posed; and creates a valuable opportunity for one-on-one discussion. Where a student has a complex task or challenging case, they can have the undivided attention of a solicitor for a couple of hours to deeply explore the issue.

Allocation of work does depend in part on the experience of the particular solicitor. Sometimes instead of case specific work a complete file review of a student's file load will be undertaken. This is particularly valuable in testing students' knowledge of the detail of their case and helps them to understand the diligence and responsibility that "owning" a case, and managing a case load, entails. Responding to and later reflecting on the questions that a solicitor will fire off when reviewing a file helps students to see the critical issues and think about the responsible management of the case in a more analytical way.

These one on one interactions are additionally valuable in that they enable the students to interact with mentors and role models, to explore different perspectives and experiences. A fair bit of *ad hoc* career advice occurs! Often this leads to larger group discussion on a relevant issue – perhaps methods of dealing with a difficult client, ethics, or adversarial conduct.

Plerhoples and Spratley talk about the “chilling effect”⁸¹ of visiting practitioners. My observation of final year students is that they remain terribly reluctant to ask “stupid” questions, or to potentially appear foolish. We continually press the importance of “asking questions” no matter how obvious they might seem, and emphasize the collegiality of the legal profession. It is valuable for our students to find that practitioners from private practice are approachable, helpful, and keen to work with students to find a solution.

OUTCOMES

As is discussed below both Adelaide Law School and LK were surprised by some of the things we found, and have developed a much richer and more nuanced understanding of the potential benefits of this partnership as it develops.

Of perpetual interest to the clinical supervisor is the nature of the relationship with students. Whilst our primary focus will be the dual goals of educational experience and client service, we wear many hats - supervisor, teacher, mentor, counselor, judge, assessor, guide, and colleague.⁸² As primary supervisors, we are mindful about the limits of self-disclosure, avoiding too many (sometimes dated) “war stories”, and keeping enough professional

⁸¹ Plerhoples and Spratley above n 3, 412.

⁸² Jennifer P Lyman ‘Getting Personal in Supervision: Looking for That Fine Line’ (1995) 2 *Clinical Law Review* 211, 213.

distance between ourselves and students to visibly maintain equity and objectivity. We also strive to balance hierarchical structures necessary to manage the service, with the educational goal of vesting responsibility and autonomy with students.⁸³

Visiting practitioners enrich the clinical experience by providing different relationships. Some of them are newly admitted, experiencing the challenges of their first job, and grappling with a tight legal market. Their relationship with students is much more of a peer to peer connection. More senior practitioners share experiences that can illuminate student's understanding of legal practice, and provide the opportunity for student and solicitor to talk frankly about managing disaster ethically, working out professional and interpersonal problems, and normalizing some of the challenging experiences of legal practice.

A second significant observation is that the presence of one or two solicitors provides much more flexibility in tailoring educational experience for students. The clinic supervisor can " earmark " a complex case, or a particular task, for one on one time with a visiting solicitor. This gives the student more focused attention. A student who is having difficulty managing workload might be asked to discuss their files with a LK solicitor, with a view to getting help devising a realistic "to do" list with achievement deadlines. Another

⁸³ Margaret Martin Barry 'Clinical Supervision: Walking That Fine Line' (1995) 2 *Clinical Law Review* 137, 145-151.

valuable exercise is the “case review” where a student is asked to provide a summative explanation of all of their live files (usually about 4 or 5) to a visiting solicitor, who will prompt the student to probe legal issues, process options, and ways to achieve different outcomes. This engagement is also a good way for files to be reviewed by another solicitor, and for discussion of case strategies and legal options between supervisors. It expands the resources of the supervisor.

A student struggling to see the wood from the trees can be paired with a solicitor to tease out critical issues in a case and work on an advice on merit. A student not quite grasping the rigor of managing a “real” case can be teamed with a solicitor to do a risk management review of their file. A student who needs to develop research or letter writing skills can be teamed with a solicitor to work on a specific task to develop their skills. Thinking very much “in the moment” – because these opportunities have to be developed on the run and put in place with little forward planning – the supervisor adapts to the work on hand and the educational needs of the particular students to make best use of the visiting practitioners. In a sense the clinic supervisor is adding a second dimension to her role as teacher/educator by directing the visiting solicitors into that role as best suits the needs of students.

We have also developed some structured materials to enable lawyers and students to work effectively together – including a research report pro forma and a file review/risk management check sheet. These assist in putting some educational supports in place to ensure that specific learning outcomes are met.

The presence of visiting solicitors has not, as we had rather naively hoped, reduced the workload of the supervising solicitor. Rather it has changed the dynamic of the service on LK days, and has expanded our opportunity to provide a range of different and more personally focused learning platforms for the students, as well as welcome collegiate support for the supervising staff.

CONCLUSION: MOVING FORWARD

It seems inevitable that such partnerships will evolve in different ways depending on their context, purpose and participants. Clinical programs in Australia have taken on diverse and sometimes specialist roles, guided by particular needs, and available participants and resources. Structured involvement of private solicitors within the clinical program is one more way of enriching the offerings of clinical programs. Whether in a specialist clinic – perhaps family law or transactional law for community organizations, or a generalist civil clinic like the MCLAS, private law firms, have much to offer at many levels. Ongoing partnerships such as that between LK and MCLAS are

one option, but short term or needs related arrangements may also offer opportunities for tailored collaboration.

My concluding advice:

- 1 Don't expect it to save time or money! Plerhoples and Spratley suggest that visiting supervisors can help to expand student numbers at little cost.⁸⁴ Our experience thus far is that the educational value to students is significant, but is still dependent upon a faculty/clinic supervisor managing both students and visiting solicitors. Whilst our partnership has not cost the Law School anything, there are embedded costs. Setting up and administering the partnership has taken time and commitment and a lot of thought on both sides. Managing conflict checks, visiting rosters, and continuing professional development and monitoring of the partnership is not onerous, but does take additional time. The supervisor's role has changed, and requires a different skill set to that needed on a 'normal' clinic day.
- 2 Be prepared to name and discuss the different approaches to practice in private and community law, and to be clear in discussions with students about different imperatives in different types of practice. Lawyers from different types of practice experience different demands, and different levels of risk. Be prepared to discuss these with any potential partners, so that a realistic approach to identifying and managing risks is taken.

⁸⁴ Above note 3, 391-4.

- 3 Provide structure for one on one interaction between solicitors and students –develop a research report pro forma, a risk management check sheet, or a file review protocol, to ensure that learning outcomes are met. It is valuable for students to have the opportunity to discuss a case (or career options) with another solicitor, but a deeper professional engagement can be achieved by using more structured exercises.
- 4 Maintain communication – formal presentations on pedagogy and supervision practice have been invaluable, as have informal meetings of all participants to discuss experiences and answer questions. Incorporate professional development about supervision and the legal and practice dynamics of the clinic practice as part of the firm’s regular CPD program.
- 5 Take as long as is needed to sort out the professional indemnity insurance issues. We felt that we were going around in circles for weeks between insurers, University risk management services, brokers, and the Law Society. Between the various participants in this negotiation we identified and tested every possible thing that could go wrong and teased out how we would be covered. Eventually, it was sorted out. Once it is, make sure it is recorded in written form.
- 6 Make the MOU work for you. Ours provides a constant reminder of the point of our partnership, as well as risk management protocols that can

be used to ensure our professional ethical and insurance obligations are met.

- 7 Meet regularly and not always formally – the opportunity to learn about supervision both for visitors and faculty staff in a low key collegiate environment is valuable in identifying day to day opportunities to incorporate flexible learning, and can deal quickly with any issues arising.

Originally attracted by the practical time/cost reasons for engaging in this partnership, we have found the benefits to be elsewhere.

There is strong pedagogical support for developing a community of practice in a clinical program. Our clinic is as much about discovering personal role and professional identity, as it is about learning how to “do law”. Robert Condlin⁸⁵ makes a strong case for the background learning afforded by conversation, interaction, and the impact of the “complicated mix of role and relationships” that feed into a deep educational experience for clinic students. The more we can reflect the ecology of a law office, even on a limited scale, the better we are equipping our students for their next steps.

This engagement has taken thoughtful planning, but has been introduced with relatively little inconvenience and disruption. It has not offered more

⁸⁵ Robert J Condlin ‘Learning from Colleagues: A Case Study in the Relationship Between ‘Academic’ and ‘Ecological’ Clinical Legal Education” (1997) 3 *Clinical Law Review* 337, 347.

clinical placements to our student body, but it has enhanced the depth of experience offered to our clinical cohort, and has highlighted within the legal community the value of clinical work, and the justice access challenges our legal system faces. It has strengthened the depth and breadth of the legal support that we can offer our clients by expanding the legal expertise available for complex cases.

There could never be a “one size fits all” model for such an engagement, but where interests, capacity, practice models, risk management, organizational practicalities, and commitment allow, flexible adaption of such a partnership is worth a second look.