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Experiential Learning in University Teaching Clinics: Trends in Collaborative Models to Promote Law Graduate Practice Skills

Francina Cantatore¹

ABSTRACT

Legal education in Australia has undergone significant changes over the past few years. In addition to technological advances, law students are faced with a more competitive job market and higher skills expectations once they leave university. Law Schools have tried to address these changes by preparing students for their future roles as lawyers in a number of ways, such as skills training through simulation and problem-solving exercises. Clinical legal education (CLE) in particular has played an important role in preparing students for the challenges of the real world. This paper argues that universities should be proactive in establishing partnerships to harness the expertise of industry in developing resilient and well-prepared law graduates. In doing so, law students could be exposed to real-life situations and cases to experience the application of legal theory and doctrine to legal practice situations, in a supportive environment. Additionally, law students can make a valuable contribution, and provide a useful and often much-needed community service through their involvement in Pro Bono legal work undertaken in industry collaborations.

I INTRODUCTION

The benefits of clinical legal education (CLE) in law schools have been well documented and continue to evolve with the demands of modern legal practice. There has been an ongoing focus on skills development in law students to prepare them for practice, as well as an increased emphasis on technological skills. It is challenging to provide students with the necessary skill-set in a traditional teaching setting, where a strong emphasis is placed on theory and legal doctrine. Instead, students require more experiential learning opportunities and development of practice-based skills, which can only be obtained by dealing with 'real life' cases. This paper posits that pro bono teaching clinics offer the ideal opportunity for developing students' skills-set and confidence levels in preparation for legal practice.

II CLINICAL LEGAL EDUCATION V PRO BONO PROGRAMMES

Although there is some overlap between CLE and Pro Bono programmes, as further discussed below, they have generally been regarded as 'separate and distinct entities'.² The main distinguishing factors between the two models appear to lie in the following attributes:

- Academic credit is awarded for CLE programmes,³ as opposed to purely voluntary non-reward arrangements for pro bono students;
- 'Pro bono' is voluntary work done out of a sense of professional responsibility, where the primary motivation for the work is a concern for justice or for reasons of kinship or friendship, as opposed to securing gain;⁴

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² Les McCrimmon, 'Mandating a Culture of Service: Pro Bono in the Law School Curriculum' (2003) 14(1) *Legal Education Review* 53, 54-57.

³ Adrian Evans et al, 'Best Practices Australian Clinical Legal Education' (Report, Australian Government Office for Learning and Teaching, 2012) 23.

⁴ John Corker, 'How Does Pro Bono Students Australia (PBSA) Fit with Clinical Legal Education in Australia?' (Paper, Third International Journal of Clinical Legal Education Conference and Eighth Australian Clinical Legal Education Conference, 13-15 July 2005) 5.

- CLE programmes have a *teaching* focus whereas pro bono programmes have a *community service* focus.⁵

The following two factors may be added to the list:

- Usually pro bono programmes are at no financial cost to students as opposed to academic fees being payable for CLE programmes;
- CLE programmes are required to have formal assessment procedures to produce specific learning and teaching outcomes whereas pro bono programmes generally implement informal feedback and reflective practices.

This distinction is evident in USA law schools, where some universities mandate a certain number of pro bono hours for law students as a prerequisite to graduation.⁶ The pro bono requirement is a separate component of the law degree, and can be undertaken in a number of ways and at different institutions, *one* option being clinical work.⁷ The Association of American Law Schools has made the following distinction between CLE and pro bono projects:

the principle goal of most clinics is to teach students lawyering skills and sensitivity to ethical issues through structured practice experiences and opportunities to think about and analyze those experiences. By contrast, the most important single function of pro bono projects is to open students' eyes to the ethical responsibility of lawyers to contribute their services.⁸

However, this paper proposes that pro bono projects need not exclude a strong learning and teaching focus, and that practical legal skills and ethics, as well as social responsibility, can be effectively taught within a pro bono teaching clinic with a commercial law focus. Seen from a community perspective, a primary function of a pro bono clinic is of course to provide consumers with access to legal services, but it also offers students a unique learning opportunity. .

AUSTRALIAN PRO BONO PROGRAMS

This paper takes note of successful university run law clinics, such as the Kingsford Legal Centre at the University of New South Wales ('UNSW'),⁹ which incorporates a number of different clinical subjects and is run by a staff solicitor. The South Australian law schools - Flinders University, University of South Australia and University of Adelaide - also adopt a similar model involving legal academics who also have legal practice experience and current unrestricted practising certificates to

⁵ Ibid 6.

⁶ See American Bar Association, *Pro Bono Publico* (2015)

<http://www.americanbar.org/groups/legal_education/resources/pro_bono.html>

⁷ Generally work undertaken as part of a clinical subject may count towards the US pro bono requirement; see, eg, New York University, *New Pro Bono Info*

<http://www.law.nyu.edu/sites/default/files/upload_documents/NewProBonoInfo.pdf>, which reveals that pro bono work in law clinics may be counted at NYU; see also Harvard Law School, *Pro Bono Graduation Requirement* (2015) <<http://law.harvard.edu/academics/clinical/pro-bono/index.html>>, which reveals clinical courses automatically qualify for inclusion in the pro bono requirement.

⁸ McCrimmon, above n 3, 58, citing Association of American Law Schools Commission on Pro Bono and Public Service Opportunities, 'Learning to Serve: A Summary of the Findings and Recommendations of the AALS Commission on Pro Bono and Public Service Opportunities' (Report, Association of American Law Schools, 1999) <<http://www.aals.org/probono/report.html>>.

⁹ See University of New South Wales - Australia, *Kingsford Legal Centre* <<http://www.klc.unsw.edu.au/>>, which provides that 'Kingsford Legal Centre's clinical legal education courses provide opportunities for law students to engage directly with disadvantaged communities about pressing legal matters. Students work to empower not just the individual client, but the community or group's interests as a whole.' At Kingsford Legal Centre, clinics are offered in Community Law, Employment Law and Family Law.

provide legal advice to clients. Similarly, the Pro Bono Centre at the University of Queensland (UQ)¹⁰ incorporates a number of different clinics in which students can enrol for academic credit (although the UQ clinic differs from the UNSW and South Australian models as there is no dedicated staff solicitor). All these models can be distinguished from the proposal outlined in this paper, which seeks to engage local law firms (often alumni of the institution) in a pro bono partnership with the university, where student involvement is not for formal academic credit.

Cognisance is also taken of the existing Pro Bono Students Australia ('PBSA') programme mentioned above. The PBSA project was developed by the National Pro Bono Centre, in conjunction with the University of Western Sydney Law School ('UWS'), and is based on the Pro Bono Students Canada ('PBSC') model.¹¹ The initiative combines education and public service, 'enabling law students to develop their legal skills and broaden their education while providing critical legal services to a broad range of community organisations that are involved in delivering services to disadvantaged people.'¹² That programme aims to involve law students in setting up pro bono programmes at universities, which provides a low cost option for student participation in various projects identified by UWS. Since its inception in 2004, the National Pro Bono Centre has provided PBSA materials to students at least 8 universities.¹³ The pro bono teaching clinic proposed in this paper differs from the PBSA model in that the proposed model is university run by members of the law faculty (not by students), in conjunction with local law firms.

Definition of "pro bono"

The Australian Law Reform Commission ('ALRC') defines pro bono work as 'legal services provided in the public interest by lawyers for free or for a substantially reduced fee'.¹⁴

Advantages for students are the ability to engage with and interview 'real clients' and deal with 'real cases', thereby developing their self-confidence and general communication skills in preparation for legal practice.¹⁵ Additionally, it is hoped that active participation in pro bono work will cultivate a sense of altruism in law graduates, which would ideally be carried over into their work ethic as lawyers. As noted above, McCrimmon cautions against this expectation that empathy will necessarily follow through into the work environment.¹⁶

¹⁰ See The University of Queensland – TC Beirne School of Law, *UQ Pro Bono Centre* (2010) <<http://www.law.uq.edu.au/uq-pro-bono-centre>>, which provides that 'The UQ clinics aim to provide students with work experience in a legal setting for academic credit. Clinics are currently run out of the Queensland Public Interest Law Clearing House, Caxton Legal Centre, the Prisoners' Legal Service, the Refugee and Immigration Legal Service, Queensland Advocacy Inc., the Environmental Defenders Office and Tenancy Law Clinic. In their clinical placement, law students spend one day per week during semester undertaking legal work supervised by lawyers.'

¹¹ See Pro Bono Students Canada, *Pro Bono Students Canada* (2015) <<http://www.probonostudents.ca/>>.

¹² See National Pro Bono Resource Centre, *Setting Up a Pro Bono Program at Your University* (2015) <<http://www.nationalprobono.org.au/page.asp?from=9&id=94>>. The page also details the Pro Bono Students Australia programme: 'The programme assists organisations that are involved in the delivery of services to the disadvantaged in the community of Western Sydney by matching law students with law-related projects that seek to enhance access to justice for disadvantaged individuals or groups.'

¹³ Email from John Corker (Director of National Pro Bono Resource Centre) to XXX, 25 May 2015: 'There are no records available of the number of students who have been engaged in this programme, but there are currently 34 students are placed on 17 projects through UWS'; see also National Pro Bono Resource Centre, *Setting Up a Pro Bono Program*, above n 36.

¹⁴ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000) 304.

¹⁵ These advantages are common to both CLE and pro bono work.

¹⁶ McCrimmon, above n 3, 68.

In Australia, the National Pro Bono Aspirational Target provides an incentive for law firms to engage their staff members in pro bono work,¹⁷ which may be an advantage for work seeking graduates with past pro bono experience, should a firm have a strong pro bono focus and value a pro bono ethos in potential employees. It has been shown that engaging with volunteering opportunities can be a personally transformative experience,¹⁸ and it has also been suggested that volunteering is strongly linked to: 'a values based approach and enhances an individual's leadership and teamwork skills, including resilience, courage and recognising one's impact on others (which) augment the suite of employability skills that may have been more explicitly honed through other activities.'¹⁹ All of these attributes contribute to a strong and diverse employment profile in a law graduate and accord with a number of the TLOs for LLB and JD degrees,²⁰ as mentioned above.

It has also been recognised that some of the benefits offered by pro bono involvement may distinguish graduates in employment, such as increased skills, real-world experience and community engagement.²¹ A university run pro bono teaching clinic is the ideal venue in which to develop these attributes.

OVERLAPPING OBJECTIVES

Despite the distinctions recognised above between pro bono and CLE programmes, it is clear that there is an inevitable overlap between the two models. Both models generally rely on placements or partnerships with community organisations or law firms,²² also sometimes referred to as 'externships', and both facilitate dealings with 'real' clients and cases.²³

This paper contends that there is merit in both models – the CLE model which is for academic credit, and the more informal pro bono programme without formal academic credit - but that a 'hybrid' model incorporating both pro bono work and specific learning and teaching outcomes provides students with an optimum practice-based learning experience. Furthermore, if such a program is conducted at the university premises, rather than externally, the benefits become even more pronounced due to the interaction of students, lawyers and academic staff in the Faculty environment.

III THE BOND LAW CLINIC

NATURE AND SCOPE OF THE CLINIC

The Commercial Law Clinic ('the Clinic') at Bond University serves as an example of a pro bono teaching clinic which incorporates an effective service learning model. Bond University clinical subjects have been offered consistently as part of the LLB and JD curricula,²⁴ endorsing the practical benefits offered to students by the clinical experience. The Bond Law Clinic was established to complement the existing clinical training programmes within the Bond University Law Faculty.

¹⁷ See National Pro Bono Resource Centre, *National Pro Bono Aspirational Target* <<http://www.nationalprobono.org.au/page.asp?from=8&id=169>>, which provides that the National Pro Bono Aspirational Target is a voluntary target that law firms, individual solicitors and barristers can sign up to and strive to achieve the target of at least 35 hours of pro bono legal services per lawyer per year.

¹⁸ Kinash et al, above n 1, 12.

¹⁹ Ibid.

²⁰ Kift, Israel and Field, above n 21, 14.

²¹ Shelley Kinash and Linda Crane, 'Global Graduate Employability Research' (Draft Report, Business20 Human Capital Taskforce, 2014) 28-29.

²² See generally Evans et al, 'Best Practices Australian Clinical Legal Education', above n 4, for a discussion on CLE; see also National Pro Bono Resource Centre, *Information Paper*, above n 15, for a discussion on pro bono resources.

²³ Ibid.

²⁴ Currently on offer at the university are the following clinical electives: Clinical Legal Placement, the Family Law Practice Clinic and the Administrative Law Clinic.

Further, the Clinic sought to offer students the opportunity of undertaking pro bono legal work within the sheltered environment of the law school, under the supervision of experienced legal practitioners. The Clinic is held at the Faculty premises and students are supervised by academics (who attend to the administration and running of clinic sessions), and volunteer legal practitioners (who supervise students in client interviews and settle draft advices).²⁵

Bond Law Clinic was an initiative that challenged existing models of CLE programmes and pro bono services, by merging pro bono service and experiential learning in a commercial law context. The Clinic was launched subsequent to the final Evans report,²⁶ but the report nevertheless provided evidence that the Bond Law Clinic would be unique and distinctive.

The Clinic was designed with this distinctive difference after auditing and reviewing Bond University graduate outcomes, which revealed that applied experience with commercial law is a necessary employability attribute for students entering commercial law practice.²⁷ The Clinic provides a valuable service to qualifying small business, non-profits and entrepreneurs throughout Queensland, entities and persons who would typically not be accommodated by Legal Aid or most other community legal centres. Currently 95 per cent of the two million actively trading businesses in Australia are regarded as small businesses under the *Corporations Act 2001* (Cth) ('the Act'). This is a large sector of the Australian economy, which does not traditionally have access to free legal advice.²⁸ The Clinic provides free basic legal advice to these entities in relation to issues such as business structures, leases, debt recovery, intellectual property, sale and purchase of business advice, franchising and general commercial law matters.

Thus, the Clinic is a joint effort by the Faculty of Law and local legal practitioners to provide students with a practical learning opportunity in commercial law matters and to provide assistance to the community at the same time. The objectives of the Clinic are four-fold: First, to provide students with an opportunity to engage in pro bono legal work and promote a sense of community service in Bond University law students; second, to provide students with practice-based learning to prepare them for legal practice; third, to provide small businesses, non-profits and entrepreneurs with much-needed legal advice and service, and fourth, to enable lawyers to engage in pro bono activities and provide community services and student mentoring. Although the Clinic was established as part of the student learning experience in the Faculty of Law, none of these objectives takes precedence over the other - the structure and operation of the clinic reflects a commitment to meeting each of these objectives in a consistent and meaningful way.²⁹

STRUCTURE OF THE CLINIC

Integral to the successful operation of the Clinic are its four foundational components, namely the involvement of law students, legal practitioners, academic staff and clients. The relationship between these parties is reciprocal in respect of learning opportunities and provision and receipt of legal services, which creates a mutually beneficial and supportive framework for a successful pro bono enterprise. Academics involved in Clinic sessions supervise the running of the clinic and provide students with research and administrative assistance – however, they are not involved with the client interviews and thus do not require practising certificates.

As participation in the Clinic is entirely voluntary (for students, academics and lawyers), it provides students with the opportunity to provide a community service and engage in meaningful volunteer

²⁵ The author is the Director of the Bond Law Clinic see <<http://bondlawclinic.bond.edu.au/current-students/opportunities/bond-law-clinic-program>>.

²⁶ Evans et al, 'Best Practices Australian Clinical Legal Education', above n 4.

²⁷ Kinash et al, above n 1, 6.

²⁸ Ellis Connolly, David Norman and Tim West, 'Small Business: An Economic Overview' (Report, Reserve Bank of Australia, 2012).

²⁹ Also see Evans et al, 'Best Practices Australian Clinical Legal Education', above n 4, 5.

work, whilst gaining practical work experience. The Clinic effectively integrates key elements regarded as essential objectives of CLE,³⁰ and pro bono programmes,³¹ respectively. It has a pronounced focus on *community service* and volunteering; yet it also provides a strong support for development of *legal skills* (e.g. client interviews, drafting, professional and ethical training, and high- quality practical advice for clients).

CHALLENGES AND CONSIDERATIONS

Relying on USA pro bono research,³² Corker identifies the following main issues that law schools should consider in establishing pro bono programs:³³

1. Finding the necessary funds;
2. Securing adequate staffing and space;
3. Location and structure of projects;
4. Should student participation be required or voluntary?
5. Relationship between clinical courses and pro bono projects;
6. Adequacy of supervision for students;
7. The importance of enthusiasm of law deans and faculties and rewarding the efforts of student leaders.

A key issue is balancing the four clinic “ingredients”, namely lawyers, students, clients and academic staff – enough volunteer lawyers are needed to ensure sufficient supervision, enough students need to volunteer and enough clients need to require the services offered to make the clinic viable. Academic staff involvement is also necessary in administering and running the clinic, preferably with the assistance of a professional staff member. The clinic administration team is responsible for coordinating and administering the client appointments, rostering of lawyers and academics and appointment and training of students. This can be a significant burden for academic staff. The ability to apply their volunteer hours to their firms’ National Pro Bono Aspirational Target³⁴ may be an incentive for lawyers to partner with law faculties in building a pro bono teaching clinic, and indeed, a strong industry partner can alleviate the burden of the administration team by coordinating a team of volunteer lawyers.

IV CONCLUSION

The National pro Bono Centre of Australia advocates pro bono in law schools, yet there exists a lack of pro bono clinics which are providing pro bono community services. It is evident that these clinics have significant benefits for both law students and the community at large. What is needed is more targeted qualitative research on the topic and a structured approach in universities to establish and promote pro bono clinics. The pay-off will be an increased sense of altruism and enhanced employability skills in law students, as well as value to the community. In order to achieve these objectives collaboration between practitioners and law schools should be encouraged and continuously prioritized.

³⁰ See generally Goldfarb, above n 20; Castles and Hewitt, above n 25; Curran, above n 26.

³¹ Kinash and Crane, above, n1, 28-29.

³² Association of American Law Schools Commission on Pro Bono and Public Service Opportunities, above n 9.

³³ Corker, ‘PBSA Fit with Clinical Legal Education in Australia?’, above n 5, 8.

³⁴ See National Pro Bono Resource Centre, *National Pro Bono Aspirational Target*, above n 17.