

## **REFLECTIONS ON THE OPERATION AND DIRECTION OF THE USP COMMUNITY LEGAL CENTRE, PORT VILA**

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### **ABSTRACT**

Clinical legal education is becoming commonplace in law schools, with such programs now seen as an important part of legal education. The University of the South Pacific School of Law established a clinical program, run through the USP Community Legal Clinic in Port Vila, Vanuatu, in 2002. However, in 2013 the Community Legal Centre closed, and it is unclear when it will reopen.<sup>1</sup> After over 10 years of operation it is timely to examine how the USP clinical legal education program developed and how it operated prior to its recent closure.

This paper looks at the history of the Centre, how the clinical and legal practice programs developed, and how both operated until recently. From the perspective of a past clinical supervisor and Legal Centre Manager, the paper will also touch upon the role the Legal Centre played in the Vanuatu legal community. This article then identifies a number of issues that arise in a university-run clinical program in a developing country, and concludes by making suggestions to help identify the goals of such a program, and to implement strategies to help reach those goals. Such reflections and suggestions should benefit those with an interest in legal education in the South Pacific, and all those involved in establishing, developing, maintaining and improving legal clinical education and community legal support in developing countries.

### **A BRIEF HISTORY OF THE USP LAW CLINIC COURSE AND THE USP COMMUNITY LEGAL CENTRE**

The University of the South Pacific (USP) first offered a clinical legal education course in its law degree in second semester 1997. Although it seems that it was first conceived as a live client clinic,<sup>2</sup> this 'Law Clinic' course initially ran under a placement model.<sup>3</sup> Time constraints involved in setting up the course, and the supervising solicitor's difficulties in obtaining a practicing certificate in Vanuatu, meant that the initial version of Law Clinic was one where students were exposed to practical legal situations by being placed in private and government legal offices in Port Vila. The Law Clinic course ran on this basis until 2001.

Perceived difficulties in maintaining quality in supervision of students under placement cemented the desire to move away from the initial placement model.<sup>4</sup> However, such

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<sup>1</sup> In first semester 2014 USP advertised for a new manager for the Community Legal Centre, suggesting that the CLC will reopen some time in 2014.

<sup>2</sup> See Edward Hill, 'Clinical Education in a Developing Island Community - A Unique Environment' (2000) 11(2) *Legal Education Review* 253, 257 <http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/LegEdRev/2000/10.html>.

<sup>3</sup> Interestingly, in 2013, with funding from AusAID, USP re-instigated an externships program, with students being placed primarily in government departments in order to gain work experience. However, this is not part of a law clinic program, and no course credit is given for such placements.

<sup>4</sup> The original co-ordinator of the Law Clinic, Edward Hill, refers to the difficulties in finding external placements in Port Vila, Vanuatu, where the aim was to find supervision that displayed and so engendered

difficulties are not necessarily unique to Vanuatu or the South Pacific. Wizner and Curtis, writing in 1980 about the American experience, noted that

it is extremely difficult when dealing with a multitude of outside placements, to make sure that supervision is adequate, let alone uniformly good. It is practically impossible to ensure that in field offices substantive teaching is carried out in a structured coherent manner. It is simply not an adequate solution to divide responsibilities so that substantive instruction and simulated exercises are given in the law school classroom while practical training is provided in field offices. The whole point of the clinical experience is to merge and intertwine the substantive and practical aspects.<sup>5</sup>

There was perhaps also an understanding that the creation of a live legal clinic supervised by academics from the USP School of Law would provide a significant link between the practice of law and the theory of law. The desirability of such a link was recognised by Frank as early as the mid-20<sup>th</sup> century when he noted that '[a]n interest in the practical should not preclude, on the contrary it should invite, a lively interest in theory. For practices unavoidably blossom into theories, and most theories induce practices, good or bad'.<sup>6</sup>

A change in 2001 to the Vanuatu *Legal Practitioners Act* allowed USP School of Law staff to be admitted as 'academic lawyers' and to hold practicing certificates entitling them to give free legal advice to the public. This made possible the establishment in 2002 of the Community Legal Centre (CLC) as an independent legal practice,<sup>7</sup> supervised by legal academics, and staffed by law students.

Premises for the CLC were initially found in downtown Port Vila, and funding for these premises was obtained from AusAID as part of its Vanuatu Legal Sector Strengthening Program (VLSSP). According to Ted Hill, the Legal Centre was seen by AusAID primarily as a vehicle aimed at assisting the Public Solicitor's Office (PSO) with the large amount of legal work that it was required, but did not have the resources, to perform, and that 'any educational benefit of the Legal Centre for students or as a vehicle for legal education generally was incidental'.<sup>8</sup>

In June 2002 five staff members of the School of Law at USP were admitted to practice in Vanuatu as 'academic lawyers'. As such their law practice had to be related to 'transferring practical legal skills to students',<sup>9</sup> and their admission did 'not confer on the academic lawyer the right to engage in private practice for personal gain'.<sup>10</sup>

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'practice standards of the highest level'. See Edward Hill, 'The USP Community Legal Centre: Combining Legal Education and Legal Services in a Developing Island Country' (2004) 8(1) *Journal of South Pacific Law* <http://www.usp.ac.fj/index.php?id=13270>. Hill also noted that '[t]he Public Solicitor [where many students were placed], due to the huge demand, lack of resources, and years without any continuing professional development, did not represent standards which USP students would be encouraged to aspire to'.

<sup>5</sup> Stephen Wizner and Dennis Curtis, "'Here's What We Do': Some Notes About Clinical Legal Education" (1980) *Yale Law School, Faculty Scholarship Series Paper* 1856 [http://digitalcommons.law.yale.edu/fss\\_papers/1856/](http://digitalcommons.law.yale.edu/fss_papers/1856/).

<sup>6</sup> Jerome Frank, 'A Plea for Lawyer Schools' (1947) 56 *Yale Law Journal* 1303, 1321.

<sup>7</sup> Edward (Ted) Hill was appointed in 1997 as the first co-ordinator of the USP Law Clinic program. See Hill, above n 2. In this article Hill suggests that an autonomous legal clinic was always the preferred model, but that establishing it took time.

<sup>8</sup> Hill, above n 4, 5.

<sup>9</sup> *Legal Practitioners Act* (Cap 119) Vanuatu s 18(4).

<sup>10</sup> *Ibid* s 21.

However, such staff members were also engaged in teaching other courses at the USP School of Law and so could not be at the Centre full time. Accordingly, a series of Australian Youth Ambassadors for Development (AYADs) were appointed as co-ordinators of the Centre. Such appointments were funded independently of the University.

In June 2003 the Public Solicitor's Office moved into larger premises, the refurbishment of which was funded by AusAID. The Legal Centre then also moved into and shared space with the PSO.

In 2004 the CLC moved from the premises of the PSO into a small building located on the University's Emalus Campus in Port Vila, close to the present Moot Court Building, where it remained until 2010.

From the establishment of the CLC in 2002 until the end of 2008 the management structure of the Legal Centre changed little. Legal supervision of students was carried out by USP academics holding academic practicing certificates and the day-to-day management of the Centre was carried out by supervisors appointed under the Youth Ambassadors program. These supervisors generally had a legal background.

In January 2009 a practicing lawyer from Queensland was appointed as the Centre's first full-time manager.<sup>11</sup> This position was funded by USP itself. This appointment meant that the CLC and the School of Law's Law Clinic program had an increased capacity and could carve out new directions for itself. Further, combining the roles of legal and administrative management gave wide autonomy to the manager and significant control over the style and direction of the Centre.

In 2009 to 2010 AusAID provided funds to build the Moot Court Building at USP in Port Vila. However, in recognition of the run-down state of the CLC offices on campus, and the potential under-use of the Moot Court for mooting, the building was reconfigured prior to completion to accommodate the CLC. The new combined Moot Court and Community Legal Centre building was opened on 16 December 2010.

In January 2011 the University, enthusiastic for an expansion of the Port Vila Law Clinic model, appointed the manager to establish a similar legal centre in Suva, Fiji. Consequently, in January 2011, I was appointed as temporary manager of the USP Community Legal Centre in Port Vila. That appointment ended in August 2011 when the manager returned from Fiji. The manager remained at the CLC only until early January 2012, when he returned to Australia. In January 2012 a new manager was appointed.<sup>12</sup>

The information contained in this article relates to my period of management at the Legal Centre in first semester, and part of second semester, 2011.

## **THE OPERATION OF THE COMMUNITY LEGAL CENTRE IN 2011**

### **Types of legal work done by the CLC**

The CLC provided free legal advice and representation to the general public of Vanuatu in civil matters. The CLC did not act in criminal matters.

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<sup>11</sup> Robert (Bob) Cartledge.

<sup>12</sup> The manager appointed in January 2012 was Ms Mary-Ann Vine.

Prior to my appointment at the CLC a large amount of the Centre’s work, perhaps half, was in or related to family law. However, by August 2011 this had reduced to about one-quarter of the total file load. The reasons for this reduction were perhaps two-fold. First, the introduction of the *Vanuatu Family Protection Act 2008* in late 2010 meant that the police started to take domestic violence matters directly to the Magistrates Court without referral to the PSO (and hence, by overflow, to the CLC). The Magistrates Court also took the view that the parties should not be represented by solicitors in such matters and discouraged such representation.

Secondly, as I had a generalist legal background I was interested in tackling a wide variety of matters, which perhaps contributed to the diversity in the types of matters in which the Legal Centre became involved.

By way of summary, in August 2011 the CLC’s open files could be grouped into the following categories.

Family law ( <i>including property matters, divorce, child custody, domestic violence</i> )	14	Estate/probate matters	2
Employment law	9	Matters against government/statutory corporations	2
Business and commercial disputes	8	Defamation	1
Matters dealing with land issues	7	Building dispute	1
Claims for damages following assault and battery to the person	6	Other ( <i>client seeking return of a whale’s tooth</i> )	1
Debt recovery	4	Matters where orders for accounts were appropriate	1
Motor vehicle personal injury matters	3		

Employment-related matters seemed to be a growing field.<sup>13</sup> There were also a number of disputes relating to land, some of which we acted in. However, we tended to shy away from matters involving disputes between competing custom owners.<sup>14</sup>

<sup>13</sup> Such matters ranged from claims against employers for failing to pay the compulsory Vanuatu National Provident Fund (VNPF) entitlements due to their employees. The VNPF, which is essentially a nationalised superannuation scheme, requires compulsory contributions from employers and employees. We also had matters relating to claims for unpaid wages and severance entitlements and for money in lieu of notice following dismissal. A couple of matters involved claims or potential claims against the Vanuatu government and government statutory corporations for unlawful termination of employment in breach of the provisions of Section 50 of the *Employment Act [Cap 160]*. Section 50 of the *Vanuatu Employment Act* provides that an employer may dismiss an employee without notice and without having to pay their accrued severance allowance where the employee had committed ‘serious misconduct’. As the severance allowances in Vanuatu are generous, and accrue yearly, dismissal under Section 50 without accrued benefits can cause severe financial detriment to the employee while saving an employer considerable amounts of money. However, under Sub-section 50(3) the employer is not to dismiss the employee unless ‘the employer cannot in good faith be expected to take any other course’. Accordingly, Sub-section 50(3) can be used by a sacked employee to argue that the dismissal was unlawful where the deprivation of benefits caused by a dismissal for serious misconduct is large compared to the nature of the alleged serious misconduct.

<sup>14</sup> The phrase ‘custom owners’ refers to the traditional native owners of the land, who are so recognised by the customs and traditions of the land. In 2011 the CLC did take instructions in some complex land matters, the most notable of which involved the eviction by the Sheriff’s office of some 300 people from land close to Port Vila. This was likely to be primarily an action against the Sheriff’s office on the basis that, in carrying out the conviction, it acted beyond the powers given to it by the eviction orders. In doing so the Sheriff had burned

Further, disputes over land ownership were often interwoven with actions for assault, trespass, alleged black magic and the like. For instance, the CLC acted in one matter concerning alleged assault and trespass, which also involved bringing a cross-claim seeking damages for the old common-law action of 'trespass by cattle'. This claim related to damage allegedly caused by a neighbour's chickens continually encroaching onto our client's property. There was also a suggestion from our client that the other side practiced witchcraft.

The CLC also handled a number of commercial disputes, some of which were complex. Adding to the inherent complexity of commercial matters was the fact that parties tended to wait a long time before going to lawyers, and written agreements, or even a developed commercial understanding between parties, were generally non-existent.

### **The extent of representation**

In its early years the CLC gave legal advice to clients who were referred to the CLC by the PSO. Where necessary the CLC commenced legal proceedings on behalf of those clients. However, the legal representation would generally end there, and the matter was returned to the client. This was thought to fit well with the usual 15-week semester. Appearing in court on behalf of the client was not seen as necessary: 'At this stage of its evolution, the Legal Centre does not regularly represent people in court. From an educational perspective advocacy in court is not necessary.'<sup>15</sup>

However, by 2008, and certainly by 2011, matters were being handled by the Legal Centre from beginning to end, including court appearances and hearings if necessary.<sup>16</sup> Such representation was made easier by the existence of the full-time lawyer manager who held a practicing certificate. Students attended court with the managing lawyer to observe, but they could not themselves appear for the client in court.

Handling matters from the beginning to their conclusion meant that the CLC had ongoing and long-term commitments to its clients. This process also enabled students to be involved in all stages of a legal matter, including attending court, for which the students showed great enthusiasm. Attending court with the manager and client gave the students firsthand exposure of how the courts in Vanuatu actually worked, and also allowed them to have a greater connection with the client. This second element seemed to benefit both the student (in giving them a sense of value from their work) and the client (in having a familiar face about).

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down dwellings and destroyed crops. The eviction then left more than 300 people homeless, and, perhaps more importantly, removed from them the gardens on which they relied for both food and as source of income. In 2011 a letter of demand was sent to the government, and available evidence in relation to damages was being collected. However, when the writer was in Port Vila in early 2013 he came across the clients, who told him that the matter had not progressed since the end of 2011. The CLC also acted in some matters concerning disputes about who was to receive rent from the government over parts of land that were leased by the government. A revenue stream from the government was a good way to ensure such a dispute.

<sup>15</sup> Hill, above n 4, 7.

<sup>16</sup> For instance, in March 2011 I appeared in the Supreme Court before his Honour Chief Justice Lunabek for the hearing of a matter involving a claim for personal injury following an assault on our client with an axe. The PSO acted for the defendant and appeared to be defending the matter, although no defence or evidence was ever filed by the defendant. Affidavit evidence was prepared in support of the client's case. A settlement was then reached in court with the defendant largely accepting the quantum claimed by the claimant. Two Law Clinic students attended court with me and the client.

Another consequence of handing matters from beginning to end was that the legal practice workload of the CLC continued all year round, whether or not students were present at the CLC as part of the Law Clinic Course.

### **Student numbers and ‘firm days’**

By 2011 the Legal Centre was operating as a full-time legal practice, and it was open from 8.30 to 11.30 am and 1.30 to 4.30 pm. It was staffed by the manager, with 24 students enrolled each semester in the Law Clinic course.<sup>17</sup> Further, an Australian volunteer worked at the CLC as co-ordinator of the Legal Literacy Program, and from time to time assisted the Law Clinic students with their files and in dealing with clients and acted as temporary manager while the manager was away.<sup>18</sup>

Prior to 2009 students had only been required to attend the Centre for three hours in the afternoon of their allocated firm day, but by 2011 students were required to attend the clinic one six-hour day a week.

The intention was to divide the students into five groups, with each group attending the Centre for one full day. In this way the idea of a daily ‘firm’ was retained. However, in practice, in order to accommodate student timetables, some students would miss part of their allocated firm day and make up the time on other days. Also, student numbers were not even on all days, with some days having up to six students, and other days three or four student. Generally, about four students on a given day was a good number, enabling good contact between students and the clients.

### **Supervision**

In the first week of each semester the students received orientation into the practices of the CLC. This was done in both small groups and with a session in ethics conducted by one of the academic staff from USP.

The ethics session was interactive and used a number of scenarios for the students to think about and comment on. The aim of the session was to engage the students and have them thinking about ethical difficulties that were likely to arise in practice. Matters dealing with office procedures, meeting and interviewing clients, allocation of existing files and expectations in relation to file management, were dealt with in small group sessions, organised for each day’s ‘firm’.

Daily firm meetings then continued throughout the semester. In 2010 it had been the practice of the Law Clinic Program to hold a weekly Friday morning meeting at which all students

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<sup>17</sup> Interestingly, Professor Adrian Evans and others, in their 2012 review of clinical legal education in Australia, noted that ‘[c]linical supervisors who also have academic positions have research and publication obligations. To allow those obligations to be met, the clinical supervisor-single student ratio for clinical academic supervisors in live-clinic clinics is no higher than eight such students working with one full-time supervisor per semester/clinical period. If clinical supervisors do not have research and publication obligations, then higher ratios may be negotiated.’ Evans does not suggest where this higher level may be, but it is unlikely that it would be as high as 1 to 24! Adrian Evans et al, *Best Practices – Australian Clinical Legal Education* (September 2012) 26 [http://www.cald.asn.au/assets/lists/Resources/Best\\_Practices\\_Australian\\_Clinical\\_Legal\\_Education\\_Sept\\_2012.pdf](http://www.cald.asn.au/assets/lists/Resources/Best_Practices_Australian_Clinical_Legal_Education_Sept_2012.pdf).

<sup>18</sup> Ms Anusha Goonetilleke was the volunteer who worked at the CLC during this time. Ms Goonetilleke was an Australian Youth Ambassador for Development, funded by the Australian Government through AusAID. Her role was primarily to further develop the CLC’s Legal Literacy Program.

doing the course would attend. However, by 2011 the increased student numbers meant that such meetings were becoming excessively lengthy, and the size of the meeting did not promote detailed scrutiny of individual client files. Consequently, this practice was abandoned in 2011. Instead, the firm responsible for a particular day would start the day at 8.30 am with a firm meeting. In that meeting, each file would be discussed and suggestions and instructions given by the manager in terms of what was to be done next on any given file. This ensured closer oversight of all files. These small group meetings gave all students within a given firm the opportunity to become familiar with the matters being handled by other members of their firm and to discuss issues that arose within this small group setting.

During the semester the students were required to bring drafts of documents (letters, pleadings, etc) to the manager for comment and correction. In this way students became accustomed to the task of editing and the need to ensure that the finished product was as close to 'best practice' as possible. Students were also encouraged to speak with the manager in relation to any matters of concern. The manager would assist the student to identify the legal issues and give the student some direction in relation to where to search for the relevant law; the student would then carry out that research. Where appropriate, students were asked to discuss matters dealing with certain areas of law, such as local land law, with academic staff from USP who had expertise in such areas.

When new clients attended the CLC they were usually interviewed by at least two of the students present at the clinic on that day. Generally, the manager was not present at this initial interview. The students would obtain initial instructions and have the client sign a retainer agreement. While the client was still at the CLC the students would then speak with the manager regarding the new client and his or her legal problem. The manager might then suggest further details or information that was required and ask the students to obtain it from the client. If the matter was urgent the manager would sometimes then sit in and take over the interviewing process. Though this practice removed the students from being the focal point of the interview process, it did ensure that full and appropriate instructions were obtained and that the appropriate course of action could be immediately decided upon in consultation with the client. This ensured that the best interests of the client were not compromised and that the matter could be progressed quickly.

If the matter was less urgent then no initial advice would be provided. Rather, the student or students who had carriage of the matter would prepare a written letter of advice. This letter would then have to be approved by the manager (this often involved many drafts) before being collected by the client. As there is little effective postal service in Vanuatu, the client would normally collect this letter from the CLC. Usually, this would enable the students to sit with the client and give further explanation of the written advice. This was particularly important if the client was not able to read English.

### **File allocation and management**

At the beginning of the semester all open files were distributed to students. At the beginning of 2011 the Centre had about 65 active files, so each student was assigned two or three files. Some complex matters, and ones involving a significant workload, were given to two or three students to handle co-operatively. New client files were generally allocated to the students who saw the clients when they first came to the CLC.

It was the students' responsibility to ensure that files were complete, chronological and concise. The intention was that the files would reflect 'best practice'. Practically, this meant that court documents were separated from other documents, and duplicates and unnecessary

drafts were eliminated. Such organisation enabled both the student and the manager to quickly work out the matter's status and what relevant information was before the court. With a constant semester-by-semester changeover of students, this type of record-keeping was crucial to maintaining proper oversight of files.

### **The need to progress matters**

A continuing theme of the course, highlighted in both the first-week orientation of the students and throughout the daily morning student meetings, was the need to think and plan ahead in relation to where matters were heading, and to ensure that matters moved along and did not 'fall off the rails'.

There are many impediments in Vanuatu to speedy resolution of matters through the court system. Such difficulties include court delays in sealing and returning documents for filing, loss of documents by the court, the courts failing to issue written instructions in accordance with orders made orally at mentions, the ease of obtaining adjournment of matters, the failure of both other practitioners and sometimes the magistrates to attend court when required, the failure by practitioners to adhere to timetables for filing of statements and other documents, and the failure of practitioners to properly plead cases.

For example, in one Magistrate's Court matter in which the claimant was represented by the Public Solicitor's Office, the CLC wrote to the PSO requesting that further particulars be provided of a claim (for trespass and assault) because the claim as pleaded failed to make out a cause of action against one of the defendants. As there are no rules in Vanuatu providing for an order that further and better particulars be provided, the only power available to the court was to make the claimant file an amended claim.<sup>19</sup> This was then ordered, but it took the filing of three amended claims, and a change of personnel at the PSO handling the matter, until an amended claim was filed that actually alleged a proper cause of action against the second defendant. This meant delays of a number of months and numerous additional court appearances.

Delays were also caused by transfer of matters from the Magistrates Court to the Supreme Court,<sup>20</sup> and also due to the substantial difficulties in maintaining contact with clients and obtaining timely instructions.

These problems were compounded by the nature of the Law Clinic program itself; with the rotation of students in each semester; as well as the fact that each student, while enrolled in the program, was usually only at the Centre for one day a week.

All of these factors meant that it was not uncommon to find files that had progressed little over many months, or even over a whole semester, and sometimes longer. To combat these difficulties emphasis was placed on students actively pushing matters forward, and it was stressed to the students that it was *their* personal responsibility to do so. In this way the importance of the lawyer's obligation to the client was highlighted.<sup>21</sup>

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<sup>19</sup> See Part 4 of Rule 11 of the Vanuatu *Civil Procedure Rules 2002*.

<sup>20</sup> One matter was so transferred after a cross-claim was filed seeking an amount of damages in excess of the jurisdictional limit of the Magistrates Court. The transfer order was made in October 2010 but the matter was not listed in the Supreme Court until April 2011.

<sup>21</sup> Several strategies were suggested to students to try to advance files. These included obtaining as many details from the clients as possible at the time of initial instructions and, if possible, obtaining a full statement and

Students were encouraged to plan ahead for the next step and to set definite time limits within which a particular step was to take place; if those limits could not be met, then to take the next step. Further, that next step should be aimed at bringing the outstanding matter to a head, as continual letter-writing to opposing parties or solicitors who never responded was seen to be of little benefit. The students were encouraged to set deadlines in correspondence (or otherwise) and to act if deadlines were not met. The pushiness of such an approach was in many ways contrary to the natural respectfulness of the students and their understanding of how things generally work.

Central to this approach was an underlying emphasis on the obligation and need for the lawyer to act promptly in the client's interests, despite the delays inherent in the system. Only by agitating against such delays could the client's interests be best served. Often such continued agitation required much resilience from both the student and the manager. It also required constant vigilance on the manager's part over all of the students and all of their files, to try to make sure that no matter was allowed to lie idle.<sup>22</sup>

This emphasis on progressing matters, together with a focus on the ethical aspects of good professional practice, reflected the mostly practical approach taken at the CLC to clinical education rather than a broader approach focused on matters such as policy development. This perhaps indicates both the state of development of the legal profession in Vanuatu, which lacks some of the long-standing traditions and some aspects of professionalism found in more sophisticated jurisdictions, and the perceived need to raise the level of professionalism within the legal profession in Vanuatu.

That said, the need for a clinical legal education course to put a large emphasis on practical matters is widely recognised, and should not be undervalued. As Stuckey notes:

The important role in-house clinics perform in assisting students in transitioning from law school to practice cannot be overstated. Many students leave law school to enter solo or small firm practices. Exposure to robust and well run office management systems is critical for students' professional development as effective, responsible

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details of all likely witnesses at that time. When the client had not contacted the CLC for some time the student was encouraged to make numerous and continuing efforts to contact the client and thoroughly review the file for other possible contacts for the client. If delays were caused by the court or the other party, the students were asked to follow up with the court or the other party. At times this meant going personally to the Magistrates Court to seek the return of documents that had been filed or sealed copies of orders that should have been made. It would also involve chasing lawyers for the opposing side who may have failed to provide requested information or to do some other required step.

<sup>22</sup> One example of the delays and difficulties that were apparent in some matters involved a matter where a judgment debt had been obtained more than seven years earlier but had not yet been enforced. During that lengthy period there had been several writs issued, but the Sheriff's office had never acted effectively on any of the writs. A further writ was issued in 2010 and was due to expire in July 2011. In early 2011 there were letters written to the Sheriff's office chasing action on the writ, and then threatening to file a writ of *mandamus* against the Sheriff's office should it continue to fail to carry out its obligations to enforce the writ. Eventually, in June 2011 the Sheriff made a seizure under the writ, and sent notice that goods had been seized and would be auctioned to satisfy the judgment debt. However, as the original writ was due to expire prior to the auction of the goods, an application then had to be made to the Magistrates Court to extend the expiry date of the writ. Although the court delayed in dealing with this application, it did eventually make such orders (albeit some two days *after* the writ was said to expire). Had it not done so, another entire year would have gone by without achieving anything on this particular file.

practitioners. Many students in these settings adopt the management systems they experience in their in-house clinics to their own practices upon graduation.<sup>23</sup>

### **Other work done at the CLC: the Legal Literacy Program**

As well as looking after their allocated files, the students were also required, as part of the Law Clinic course, to assist with the general organisation of the CLC office and to help with the Legal Literacy Program.

The Legal Literacy Program (LLP) ran for a number of years and involved several activities, including the production of information brochures, school visits,<sup>24</sup> island visits,<sup>25</sup> weekly radio broadcasts,<sup>26</sup> and a weekly newspaper article.<sup>27</sup>

The core work of the LLP had been establishing and publishing, and then maintaining and updating, legal information brochures.<sup>28</sup> These brochures had been drafted by Law Clinic students over the years as part of their work in the Law Clinic course. Indeed, this type of work was a useful tool to occupy the students when they had insufficient client files to work on.

Over time these brochures were translated from English into French and Bislama,<sup>29</sup> and were made available from the Legal Centre, the Public Solicitor's office, in courts, and from various government legal offices and NGOs in Port Vila and beyond. By 2011 over 100 separate brochures in English, French and Bislama had been created and published. Consequently, keeping these brochures up to date became a large task.

By March 2011 it became clear that the amount of work then being done by the LLP made it difficult for that program to be effectively run by the LLP co-ordinator with the assistance of only the students who were doing the Law Clinic course. Accordingly, in late March 2011 a decision was made for USP to employ some later-year law students to assist with the Legal

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<sup>23</sup> Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* (2007) 193 <http://lawteaching.org/resources/books/bestpracticesforlegaleducation2007/stuckey-roy-bestpracticesforlegaleducation2007.pdf>.

<sup>24</sup> This program, known as 'Law Club', was a six-week program where the legal literacy coordinator and some of the CLC students visited schools in Port Vila and provided a two-hour weekly session for students aimed at increasing their understanding of how the law worked and the role of the courts and Parliament. Twenty to 30 school students attended each Law Club.

<sup>25</sup> In 2011 Ms Goonetilleke, along with part-time local student employees paid for by the Vanuatu Legal Sector Strengthening Program's (VLSSP) LLP funding, travelled to Santo, Ambrym, Malekula and the Maskylne Islands to deliver LLP workshops. These workshops were largely based on brochures that the CLC had developed and also involved large community forums. The aim of these workshops was to increase the community's awareness of the law. These workshops were very well received and requests were made that they be repeated.

<sup>26</sup> The LLP under Ms Goonetilleke continued the broadcast of the weekly radio programme 'You and the Law' through Radio Vanuatu. The broadcasts were pre-recorded and were generally delivered in Bislama.

<sup>27</sup> Each week Ms Goonetilleke arranged for a CLC brochure to be rewritten as an article and published in *The Independent* newspaper. The same topic was published for three weeks: once each in English, French and Bislama.

<sup>28</sup> These brochures covered topics such as the Constitution, divorce, domestic violence, child maintenance, child custody, information about the Public Solicitor's Office, prisoners' rights, the right to vote, freedom of religion, how to make a claim in the Magistrates Court etc.

<sup>29</sup> Bislama is a contact language, a type of pidgin English that also incorporates French and words from local languages. Bislama is recognised in the Constitution of Vanuatu as one of the country's three official languages, along with English and French, and is the language used by most ni-Vanuatu from different islands or tribal groups to communicate.

Literacy Program.<sup>30</sup> This more easily enabled the objectives of the LLP to be achieved (and hence for the external funder to be satisfied), but did lessen the involvement of students doing the Law Clinic course in the ongoing implementation of the Legal Literacy Program. Consequently, by late 2011, the students enrolled in the law clinic program had little involvement in the LLP.

### **Student assessment**

In 2011 the course assessment involved four written tasks, making up 50% of the course mark, with the balance of the course mark based on the student's overall performance in the daily tasks he or she was required to carry out (based on factors such as attendance, standard of the files, standard of work done on the files, effectiveness in handing the client files, enthusiasm and effort). As students were in contact with the manager throughout the semester, this assessment was formative.

The written assessments were:

1. A court report: the students were required to attend sittings in the Magistrates Court and Supreme Court and write a brief report about their observations, what the case or cases were about, and whether this experience met with students' expectations;
2. A letter of advice relating to one of several fact scenarios that were provided to the students; and
3. The drafting a statement of claim and a statement in support based on the same facts as the letter of advice.

As with the nature of the supervision of the students, these assessment tasks focused on developing practical legal skills. Perhaps due to the high student/supervisor ratio, and the concentration on running a legal practice, there was no inclusion of any self-reflective assessment element in the assessment process.

Further, the students were also required to do a mock court appearance, which in first semester was marked, but in second semester was assessed on a satisfactory/not satisfactory basis only (to make the exercise more of an interactive learning experience, rather than an assessment task). At the end of the semester all students would be given a grade,<sup>31</sup> as was required in all USP law courses.<sup>32</sup>

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<sup>30</sup> This additional funding, which came from AusAID funds, was to implement the LLP program rather than to pay for Ms Goonetilleke. Ms Goonetilleke's position was funded by the Australian Volunteers for International Development (AVID) program. Initially about six such students were employed on a casual basis, working a combined total of about 30 hours per week. These students were employed to assist in the LLP only, and did not help to manage the CLC in general nor to deal with CLC clients or files. All of these students were ni-Vanuatu. Although employed by USP, these student positions were paid from funds that came to USP from AusAID through the 2010 and 2011 VLSSP funding. Their employment also fulfilled AVID's requirement for the volunteer to have a local counterpart, with the aim of building the capacity of locals to act in and implement such programs.

<sup>31</sup> Grades were A+ (>84–100), A (78–84), B+ (71–78), B (64–70), C+ (57–63), C (50–56), D (40–49) and E (<40).

<sup>32</sup> As Evans et al note: 'There are legitimate differences of opinion as to whether clinical casework can be fairly graded or is best left to a pass/fail assessment. A hybrid approach is to allocate students to 'unsatisfactory', 'satisfactory', and 'highly satisfactory' categories'. Above n 17, 23.

## **THE RELATIONSHIP WITH THE VANUATU PUBLIC SOLICITOR'S OFFICE**

### **The historical connection**

As already noted, the USP Community Legal Centre had been connected with the PSO ever since the CLC was established. The CLC obtained clients by referral from the PSO and received financial support from time to time from AusAID, which was interested in supporting the PSO. At one stage the CLC had even shared offices with the PSO.

This historical connection with the PSO was known and appreciated by the judiciary, and was reflected in my 2011 urgent application for a practicing certificate. Part of the supporting affidavit stated:

The CLC does not charge its clients for its legal services. All of the clients of the CLC are referred to the CLC by the Public Solicitor's Office, after being means tested. As such the CLC has an important role in the administration of justice in Vanuatu by providing advice to and representing the less well off people of the community, who may, but for the CLC, go unrepresented.<sup>33</sup>

My application for a practicing certificate was moved by Mr Jacob Kausiama, the then-Public Solicitor.

On 15 March 2011 the Chief Justice issued a practicing certificate to me as an 'academic lawyer'. These connections with the Public Solicitors Office were further entrenched by the following conditions imposed in that practicing certificate.

- (a) The holder of this certificate shall only act on causes or matters referred to the C.L.C. by the Office of the Public Solicitor of Vanuatu.
- (b) The holder of this certificate shall not engage in any legal work of any description other than legal work necessarily connected with the causes and matters referred to the C.L.C. by the Public Solicitor's Office.
- (c) The holder of this certificate while in Vanuatu for his employment as the Temporary Manager of the Community Law Clinic (CLC) shall not hold himself out as a lawyer entitled to practice in Vanuatu, nor shall he accept any other brief from any other person apart from the briefs referred to the CLC by the Public Solicitor's Office.<sup>34</sup>

### **The PSO referral system**

Before the CLC could act for a client, he or she was required to obtain a referral from the PSO. Sometimes prospective clients would come to the CLC with a referral from the PSO. If not, the students would carry out an initial interview. Sometimes a problem might be solved by the provision of information, such as might be contained in the brochures that were put out by the CLC. On other occasions the matter would require the Centre to begin to formally act

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<sup>33</sup> Paragraph 4 of the Affidavit of Michael Gregory Blaxell, seeking that my application for a practicing certificate be dealt with urgently. Sworn and filed in the Supreme Court of Vanuatu on 11 March 2011.

<sup>34</sup> Supreme Court – Republic of Vanuatu, Temporary Practicing Certificate, Practicing Certificate No. 1 of 2011, signed by Chief Justice Lunabek, dated 15 March 2011.

for the client. In those cases, the client was sent to the PSO for a referral before the CLC could act.

The PSO was responsible for all means-testing of clients that it referred to the Legal Centre. This removed from the Legal Centre the difficult task of having to assess which potential clients met the PSO's means and asset tests, or (which would have been even more difficult) having to develop its own guidelines as to who it would act for. Simply, once a client had a referral from the PSO the Legal Centre took the referral at face value and acted for the client.<sup>35</sup>

The underlying motivation behind these measures was an understanding that the CLC was not set up to act in competition with the local lawyers, but rather to serve people who would otherwise struggle to obtain legal representation. It was and continues to be in the interests of maintaining good relationships with local lawyers and the profession as a whole to understand and respect this division. This model, with the CLC acting for only the less well-off members of the community, is also the basis upon which many community legal centres run by universities operate.<sup>36</sup>

Before the Legal Centre had a full-time manager who was also an admitted solicitor, the connection with the PSO was seen as important because it allowed files, if necessary, to be returned to the PSO during mid-semester and end-of-year breaks.<sup>37</sup> However, with the advent of the full-time lawyer manager, this became less important.

There were some other consequences of the referral system from the PSO.

The CLC had little control over the type of matters in which it acted. Generally, what the PSO referred was what the Legal Centre got. That said, through the course of 2011 clients often came directly to the Legal Centre without a PSO referral. Such clients seemed to have been influenced by word of mouth, and perhaps were also enticed to the CLC by the weekly general advice column published in *The Independent* newspaper.<sup>38</sup> Although those clients would then have to seek a PSO referral, such referrals generally seemed to be given.

Although historically the Legal Centre had not acted in matters where the PSO represented the other party due to a perceived potential conflict of interest,<sup>39</sup> by 2010 that concern was no longer considered an impediment. Accordingly, as the PSO and the USP Community Legal

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<sup>35</sup> From about March 2011 the CLC requested that the PSO provide to each referred client (and hence to the Legal Centre) a letter on official letterhead confirming that the individual had been referred to the Legal Centre by the PSO and that that person met all of the PSO's asset and income tests. The aim was for all such letters to be retained in the client's file so that the fact of the referral could be verified if necessary. Prior to this a 'referral' from the PSO had been a small tear sheet with the client's handwritten name. The CLC was not obliged to act for anyone referred by the PSO and would decline to do so if the matter appeared hopeless, meritless, or of a type in which the CLC did not want to act. Whether to act was the decision of the manager.

<sup>36</sup> Community legal centres generally work to assist disadvantaged members of the community, as noted on the Australian National Association of Community Legal Centres website. 'Community Legal Centres (CLCs) are independently operating not-for-profit, community-based organisations that provide legal services to the public, focussing on the disadvantaged and people with special needs.' 'Community Legal Centres' [http://www.naalc.org.au/cb\\_pages/clcs.php](http://www.naalc.org.au/cb_pages/clcs.php). Generally, university community centres operate within such a framework.

<sup>37</sup> See Hill, above n 4, 6.

<sup>38</sup> Such articles were prepared by Anusha Goonetilleke and were generally a reworking of the brochures published by the CLC.

<sup>39</sup> See Hill, above n 4, 7.

Centre were the only two institutions in Port Vila offering free legal advice,<sup>40</sup> it was not uncommon to find them acting for the two parties on either side of a dispute.<sup>41</sup>

### **Cutting ties with the PSO?**

In March 2012 it was reported in the *Daily Post*, in an article titled ‘USP’s Legal Aid service challenges the big law firms’, that the Community Legal Centre would take clients directly, and presumably without a referral from the Public Solicitor’s Office.<sup>42</sup> However, the idea of ‘challenging’ existing law firms is at odds with the historical connections with the Vanuatu PSO, and the Law Council’s view of the role of the CLC as shown by the restrictions placed on academic practicing certificates.

The 2012 external review of the Law School recommended that the connections with the PSO be re-established. This recommendation seems to be based on drawing parallels with the referral system used in the newly established Fiji USP Community Legal Centre (which was based on the Vanuatu CLC), rather than on any deep understanding of the historical connections between the Vanuatu CLC and the Vanuatu PSO. In any event, Recommendation 58 of the review report provided:

The Panel recommends that the Head of the SOL [School of Law] should, as soon as possible, take steps to re-establish the relationship between the Emalus Community Law Centre and the Vanuatu Public Solicitors Office, including establishing a referrals process.<sup>43</sup>

It appears that by late 2012 the CLC had largely reverted to taking clients only by referral from the PSO.

As the CLC wound back its operations in 2013 the clients of the CLC were, where possible, referred back to the PSO. Where a conflict existed and the PSO could not act for the client, the client was advised to seek representation from a private lawyer. If the client couldn’t obtain such representation, he or she was given some initial assistance to get the matter underway. For instance, in one matter, where funds held by a solicitor on trust for a client had been taken by the solicitor’s bank in order to pay the solicitor’s debts, the client found it difficult to get another lawyer in Port Vila to take the case against a fellow practitioner. A claim was prepared and given to the client to file himself.

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<sup>40</sup> Another organization, the Advocacy and Legal Advice Centre (ALAC), also exists in Port Vila. However, its focus is on anti-corruption rather than general legal advice. See ‘What are the ALAC in the World Doing?’ *Daily Post* (Vanuatu) 18 June 2012.

<sup>41</sup> Such matters often arose when the PSO commenced proceedings on behalf of its client, while at the same time obtaining for their client *ex parte* interim orders restraining the defendant from some act. It was not uncommon for magistrates in Port Vila to make orders *ex parte* at the commencement of proceedings, often based on what appeared to be scanty evidence. The reluctance of Australian courts to make orders *ex parte*, and the heavy obligations for full disclosure placed on the party seeking such orders, did not seem to exist in Vanuatu.

<sup>42</sup> See Bob Makin, ‘USP’s Legal Aid Services Challenges the Big Law Firms’ *Daily Post* (Vanuatu) 27 March 2012.

<sup>43</sup> David Farrier et al, *Review Panel Report for the School of Law Faculty of Arts, Law and Education, The University of the South Pacific* (August 2012) (unpublished) 64. Panel members Professor David Farrier – Chair, University of Wollongong, Associate Professor Allan Chay, Queensland University of Technology, Professor Stephen Colbran, Central Queensland University, Professor Michael Meehan, Deakin University, Mr Michael Takabwebwe.

## **OTHER OVERSIGHT, MANAGEMENT AND DIRECTIONAL ISSUES**

### **Guidelines as to matters in which the CLC should act**

There were no written guidelines as to what types of matters the CLC would or would not handle. For instance, early in my involvement with the CLC I was informed that the CLC didn't handle disputes relating to custom land claims. As I understood it, the reasoning was that such disputes are very complex, requiring a deep understanding of the areas and peoples involved, and tended to drag on for years. Such considerations have merit. However, as stated above, the CLC did act in matters that were tangentially related to land.

In the absence of written guidelines or a committee or other body overseeing the actions and decisions of the manager, it was up to the manager to decide whether the CLC would act in particular matter. Practically speaking, there were no constraints on what type of matters the CLC could take on.

This raises the question of who should decide the types of matters in which the CLC should act. Should this be left to the then-manager, who traditionally has been appointed from outside Vanuatu, and consequently is likely to have little understanding of the local dynamics and legal system?

For example, how would a newly appointed manager decide, without reference to guidelines, whether the CLC should act in matters against the Vanuatu government? And should the CLC be involved in politically sensitive matters such as constitutional matters arising after an election? If such a matter was referred to the CLC, should the CLC take the case if the outcome could result in the removal of the government? That is, should sensitivity to the local political landscape be a consideration as to whether or not to take on particular cases?

Placing such wide discretion in the hands of the manager of the Centre, who is then expected to make decisions on whether to act with no reference to guidelines and little practical oversight of the manager's actions, is fraught with danger. Ideally, the manager should be able to refer to written guidelines when making such decisions. Further, it would be useful for there to be a consultative panel or management committee to which the manager could refer when making potentially controversial decisions. The existence of written guidelines, developed by a management committee charged with the long term oversight, direction and management of the CLC, would greatly improve consistency in approach, which in turn would help to strengthen government and NGO trust in the direction and actions of the CLC.

The need for such structures is understood and supported by Stuckey et al.

There should be clear, written guidelines regarding who has the authority and responsibility for making decisions about case intake and representation, including the role of the law school administrators, nonclinical faculty, and the clinical faculty individually and collectively.<sup>44</sup>

### **A wider mentoring role for the Legal Centre?**

One of the aims of the CLC was to expose the students to 'real' legal work and to give them an understanding of how legal matters do, and should, operate. Necessarily, that means that the students are not only given information and instruction about what they should do, but

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<sup>44</sup> Stuckey, above n 23, 194.

also observe how other lawyers in Vanuatu, as well as the courts in Vanuatu, act. Often what they observe is far from the ideal or ‘best’ legal practice.

For instance, one case handled by the CLC involved a complaint by a client against the client’s former solicitors. The complaint sought the recovery of damages awarded to the client and paid to the solicitors. The client was of the view that the solicitors had misappropriated some of the money, but the matter was unclear. Numerous letters were written by the CLC to the former solicitors but no formal response was ever received. Because there is no effective legal disciplinary complaints process in Vanuatu, the only option then open to the client was to make a Supreme Court application requiring the former solicitors to account for the monies received. Such proceedings would have been time-consuming and complex, and may have been unnecessary if the former lawyers had simply replied to correspondence.<sup>45</sup>

The above example, and others referred to below, illustrates some of the difficulties that exist in Vanuatu legal practice. Although students are told that failure to respond to letters and telephone calls is not acceptable professional conduct, the many examples set by the local profession contradict this. Having the students in the Law Clinic program for about 13 weeks goes some way to teaching better practice, but it would be naïve to suggest that ‘best’ practice can be instilled in this short period, and not subsequently dismantled by a few months in actual legal practice, without proper, or with inappropriate, supervision.

However, a properly functioning CLC has the ability to assist not only its own students to improve their professional and ethical conduct, but also to assist the local legal profession in general. This can be done by ensuring that the CLC displays by its actions the same high standard of professionalism that it seeks to teach its students. For instance, it is important that the CLC responds promptly to all correspondence and enquiries, and also works actively to progress matters. Further, such standards can also be promoted by trying to work constructively with local practitioners to move matters forward and, if possible, towards resolution.

### **A CLC legal intern?**

One other way that could, in the long term, assist to improve professional standards in Vanuatu would be the introduction of an ‘intern’ scheme at the CLC. Each year one local graduate would be selected and then employed as a junior solicitor at the Legal Centre. That person would have to be carefully chosen, and he or she would have to be very closely supervised and mentored. This person would hold this role for 12 months, and each year a new student would be employed by the CLC.

Such a position would provide a long-term clinical experience to the intern. The length of that appointment would provide the opportunity to deeply imbed ‘best practice’ habits into that individual, and hopefully inoculate him or her against, and make less tolerant of, poor and

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<sup>45</sup> Indeed, failure to respond to letters is a great problem when dealing with other lawyers, and with the courts, in Vanuatu. There is a tendency to ignore what is difficult to deal with. The extent of this difficulty is illustrated by the writer’s own application for a practicing certificate. This application was forwarded to the Secretary of the Law Council, who was also the acting Attorney-General. No response to that application was ever received. As the matter was urgent, the writer then attempted to telephone the Secretary on numerous occasions to find out when the application would be dealt with. Over 10 messages were left but calls were never returned. The matter was only fast-tracked when an approach was made directly to the Chief Justice of the Supreme Court, Chief Justice Lunabek. The Chief Justice then facilitated the issue of the practicing certificate.

unprofessional practice. As the year progressed, that intern would be more involved in the supervision of Law Clinic students and would thus perform a mentoring role to those students. Hopefully, the position would also help to instil a greater sense of connection between the USP School of Law and the individual that continued well beyond the period of employment.

It would be critical that such junior solicitors be very carefully developed and not simply left to their own devices. On completion of the degree they would not have the capacity to handle anything but the simplest of matters unsupervised. Rather, they would have to be closely supervised, and slowly and properly nurtured and developed, and their capacity to handle matters independently properly assessed as the year progressed.

The hope is that over time such graduate employees of the USP CLC would join the Vanuatu legal profession in sufficient numbers to slowly change the general approach of the profession and help to raise professional standards. However, great care would have to be taken in implementing such a scheme—if the junior employees were not properly developed then more harm would be done than good. Nothing would be more destructive to the success of such a program than poor management, oversight and education of these junior employees. Consequently, the success or otherwise of such a program would depend almost entirely on the calibre, capacity and attitude of the CLC manager.

Further, to implement such a scheme funding would have to be found. Some conversations with AusAID and the Vanuatu Legal Sector Strengthening Program (VLSSP) in 2011 indicated that such a program could be of interest to AusAID. But much work would need to be done to implement such a scheme.

### **The need for management and legal support**

In 2011 the law manager of the CLC was the only full-time staff member at the CLC. The AVID volunteer was at the CLC full time, but her role was not supposed to be the day-to-day running of the Legal Centre, and she was not employed by the University.

A totally new group of students commenced at the CLC each semester. With a new group of students every semester, constant vigilance was needed to try to keep the students following the intended systems so that the organisation of the CLC didn't become a shambles. In the first weeks of the semester these students had to be introduced to the nut and bolts of working in the CLC. This involved getting them familiar with procedures for opening and closing files, entering file information on the computer database, knowing how to find and store client letters on the computer system, how a file was to look physically, what documents had to be given to a new client, where to find these disclosure and retainer documents in the system, where files were to be physically stored, etc. This required the provision of a lot of information to the students, and a lot of oversight. Further, at the same time the CLC had ongoing files that required work. These files also had to be allocated to the new students and the students needed to be brought up to date with those files, in some cases urgently.

In addition, throughout 2011 the CLC had some difficulties with its computer client database, which at times failed to find files that had been opened, and at other times allowed incorrect or misleading recording of information. Some of these computer problems no doubt related to the fact that various persons had been instructing the students as to how the database worked, but no one person had long-term experience of the database, and the design of the database meant that it wasn't 'idiot proof'. Errors in the system resulted.

Good legal practice and good administration of a legal practice cannot be separated. If the students are to experience a 'best practice' legal clinic, the CLC must be able to function properly from an administrative point of view. There is therefore a need to address such administrative difficulties.

Other difficulties in managing the workload at the CLC were encountered when the Law Clinic students were not at the CLC. These periods were the breaks between semesters (including exam periods) and the mid-semester breaks. In order for there to be sufficient client files to keep 24 students occupied during the semester, there had to be an ongoing workload at the Legal Centre. However, when no students were at the Centre the manager had to undertake all legal work.

One way to cope with the workload during such periods is to do as little as possible on files. However, this meant that files stagnated for perhaps six to eight weeks, or longer over the Christmas break. This is not in the best interests of the clients and does not demonstrate to the incoming students that the CLC is serious about 'best practice'. During these breaks the PSO were asked not to refer clients. While this alleviated the work load, it also meant that there were fewer fresh files when the new semester began.<sup>46</sup>

Accordingly, if the CLC is to operate as an effective and efficient full-time legal practice then additional support, both administrative and legal, is needed. Ideally, this would involve the creation of an administrative support position and a legal support position.

The first new position would be an administrative assistant at the Centre. This person would be responsible for ensuring that all of the computer systems are maintained and organised properly and would look after supply and provisioning of equipment and consumables and the general practical daily running of the Centre. If necessary, the assistant would answer phones and receive clients. He or she would also be responsible for training students in the CLC filing and computer systems and maintaining those systems in good order. Having such a person would allow the manager to more fully concentrate on the legal aspects of the Centre and the educational objectives of the law clinic program. Ideally, this person would be capable and motivated and remain at the Centre for a number of years to develop some corporate memory for the Centre.

Secondly, as already mentioned, I suggest the creation of a rolling legal intern position. In addition to the benefits of such a position that have already been mentioned, having such a person would enable the CLC to better cope with the file load in those periods where there are no students, enabling the Centre to operate more effectively all year round.

Obviously, creating such positions, and indeed all of aspects associated with properly running a legal practice, are not without cost. But as Wizner and Curtis note:

'In-house' clinical programs unfortunately are expensive. In order to have a viable program, a law school must commit itself to funding a practicing law office, with all of the clerical support, word processing machinery, and lawyering supplies that such an office needs. It is much less expensive to send students to law offices already in

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<sup>46</sup> In the mid-year break in 2011 these difficulties were alleviated to some extent by having two students from the University of New South Wales complete a two-week intern placement at the Legal Centre as a course in part of their own law degrees. There were numerous excellent candidates for these two positions and the two women who came to the CLC in this period were both extremely capable. This greatly helped to keep things running smoothly during this period. However, such placements cannot always be relied upon.

existence. Since we believe that ‘in-house’ are vastly superior in educational value to ‘farm out’ programs, we believe that law schools should be prepared to invest in clinical programs.<sup>47</sup>

### **The balance between running a legal practice and providing clinical legal education**

I have previously mentioned the tension between the dual roles of a community legal centre operated by a university: serving clients and educating students. A live student clinical practice must do both.

Appointments since 2008 of legal practitioners, rather than legal academics, to the CLC manager’s role (myself included) have placed an emphasis on the legal practice side of the program, with little development of the clinical education side of the program. This is not surprising, as legal practitioners, when appointed to manage a legal clinic or practice, will prioritise what they know best, which is running a legal practice. Consequently, the recent emphasis of the Law Clinic program has been on the practical aspects of legal practice: interviewing clients, managing files, drafting letters and court documents, attending court, ethical responsibilities etc. All this is good and worthwhile, but it is in many ways like a quality-controlled external placement program. That is, the students are working within a law firm and learning by observation, experience and instruction from the manager. Their focus is reasonably narrow, and centres of the immediate needs of the clients whose files they are handling. While this is by no means a bad thing, and is also a focus that should not be lost, it also displays the narrowness of the recent program.

What has been less apparent in the USP Law Clinic program is more reflective learning, where the students are asked to not only *do*, but to consider *why*, and whether things might be done better. For instance, while students doing the program gain much from dealing with clients and managing the clients’ files, they have not been asked to reflect upon how the courts and the laws in Vanuatu operate, or how they could better operate.

Having the Law Clinic program adopt such a wider focus has the capacity to not only educate and involve students in the operation of the existing legal system but to think more deeply about why that system operates the way that it does and whether the system itself could be improved. Such wider aspects of clinical legal education programs are incorporated in many law clinic programs in developed countries such as Australia, where the scope for contribution to the framework of the legal system as a whole is probably far less than in a developing country such as Vanuatu. In Vanuatu, where the local legal profession is younger and less established, and graduating students have far greater opportunities rapidly advance into positions of great influence,<sup>48</sup> the potential for students to not only be involved in the legal system but to effect change to the legal and social systems of the country is generally far greater than in places such as Australia. Yet in the past USP Law Clinic program these wider aspects of clinical legal education have not existed.

Moreover, involving local students from the South Pacific in making contributions and suggestions on the laws and the practice of local laws would invite local ownership of law reform and development. It would also—and perhaps this is the most significant advantage of

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<sup>47</sup> Wizner and Curtis, above n 5, 682.

<sup>48</sup> For example, the first legal job of one student who graduated in law in 2010 was being appointed as a Magistrate in Port Vila at the start of 2011. Also, when Ralph Regenvanu graduated with a law degree in 2010 he was already a Member of Parliament, and shortly thereafter a Minister in the Government.

widening the program—make the students understand that they have the capacity to mould the way *their* legal system operates.

If USP wants to develop this broader, and perhaps more sophisticated, model of clinical legal education, then some changes would have to be made to the way the program has operated. This could involve:

- Requiring the students to think more deeply about the nature of legal practice, and the Vanuatu legal system. Having students produce reflective journals could be a way of achieving this.
- Asking the students to reflect upon areas in need of possible law reform and then to work on promoting such law reform.
- Reducing the legal supervisor-to-student ratio to allow more time for skills-based seminars, conversations, reflection, research and the like. I suggest that a student-to-supervisor ratio of no more than 1 to 15 should be considered.
- Reducing the file load so that each student still has sufficient files to work on, but the case workload of the manager is reduced to enable the manager to more fully engage with the students in relation to these broader aspects of the law clinic program.
- Ensuring that any manager of the CLC has the skills necessary to develop these broader aspects of the program.

Of course, seeking to have students engage in such a wider program would reduce the time that could be spent dealing with the immediate issues facing clients and hence the number of clients that the CLC could represent. This would be a pity. Perhaps in an ideal world, with unlimited resources, there would be no need to reduce such work. However, when there are insufficient resources to both engage in a wider program and deal with client issues, then a decision needs to be made concerning the priorities and emphasis of the program.

Deciding whether to adopt a broader curriculum depends on what outcomes you want from the program. These are issues that the university running the program needs to address. Does the university want more students to be able to do the program, with the program being primarily instructive and practical rather than reflective? Or does the university want the students doing the program to not only deal with the immediate needs of their clients, but also to look beyond and to think about, investigate and develop recommendations aimed at solving the more substantive problems that might lie behind those immediate needs?

Fundamental to answering these questions is the issue of whether or not the university's objective in running the CLC is primarily educational, or to serve the community. These two aspects of a university-run live legal clinic are well recognised, and are often seen to create a tension between competing interests. A balance between the two interests needs to be found. Determining this balance will affect many matters, such as staff numbers, student numbers, case load, hours of operation, continuity of service to clients, and the level of autonomy given to the students at the clinic, and hence the extent of student supervision. This fundamental issue should be understood by university administration so that the focus of the CLC, and the resources needed to maintain that focus are properly understood and can be planned for.

## **CONCLUSION**

The Vanuatu Community Legal Centre and the Law Clinic Program operated by USP from 2002 to 2013 provided an important legal resource to the people of Vanuatu, as well as a very

beneficial educational tool for law students at USP. This was especially so for those students who would go on to practice in Vanuatu.

In recent years the operation and direction of the CLC have largely been left to the manager. Consequently, the focus has been primarily functional and the outcomes dependant almost wholly on the approach of the centre manager. However, for USP and the wider Vanuatu community to get maximum benefit from the CLC, there should be proper consideration given to the aims and direction of, and resources needed for, the program and the CLC. As a starting point, the following should be addressed:

- Is the primary role of the USP CLC educational or to serve the local community, and what balance should be struck between these two objectives?
- Should any law clinic program be more than a simple legal practice, seeking to engage the students in reflective thinking and issues of law reform?
- What resources does the CLC need to properly carry out its intended role and how can these resources be provided?
- Should the CLC run as a full-time legal practice? If so, what additional legal and administrative support is needed to properly do this?
- What part, if any, should the CLC have in any broader public Legal Literacy Program? How would such a role be funded?
- What structures should be put in place to ensure that the long-term objectives of the CLC are reached?

In short, what are the aims of the CLC, and what resources and structures are needed to ensure those aims are met?

These are important questions that need to be addressed for the CLC to function effectively, both from an educational and a community perspective. Simply employing a manager and opening the doors of a legal practice and putting students behind the tables without properly acknowledging and addressing these issues is liable to lead to a program that swings in and out of effectiveness. Developing a deeper understanding of the intended role of the CLC, and then providing the CLC with sufficient resources to properly and professionally carry out that role, will significantly increase the benefit the CLC provides to both the students of USP and the people of Vanuatu. Hopefully with such planning and oversight the USP Vanuatu Community Legal Centre can reopen and operate with a clear and well-planned direction, so that for many years to come it can continue its excellent contribution to both the education of lawyers in Vanuatu and the South Pacific and to the people of Vanuatu that it represents.