

# *The Adelaide Magistrates Court Legal Advice Clinic*

*Part B: An intimate look into how it was set up  
and how it operates.*

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In Part A of this article, Margaret Castles explains the pedagogical philosophy behind the recently established Adelaide Magistrates Court Clinic. This part examines in detail how the clinic has been set up, and how it operates on a daily basis.

## **History**

In January 2002, Flinders Law School in South Australia embarked upon a pilot Clinical Legal Education program in conjunction with Adelaide University Law School in the Minor Civil Claims Division of the Adelaide Magistrates Court.

This was an exciting conclusion to a series of discussions between this writer and numerous people and organisations, all with a view to setting up a clinical program for the Law School at Flinders. By way of background, Flinders Law School commenced its own Practical Legal Training (PLT) program in 1999. Flinders Law students are now able to complete all of their practical legal training for the purposes of being admitted to practice within their undergraduate law degree. Flinders students graduate with a Bachelor of Laws and Legal Practice (LLB/LP), and are then eligible for admission with no need to undertake further study.

The writer is the Director of the Flinders PLT program. Since setting up the PLT course in 1999, a clinical legal education program seemed a natural adjunct to the PLT program, and the writer was keen to pursue

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the idea. Flinders Law School has always had a number of links with various community legal centres, involving students on a volunteer basis. However, these associations have until now been relatively informal.

In mid-2001, an invitation from Adelaide Law School for Flinders to participate in their clinical program at the Adelaide Magistrates Court was received and accepted with enthusiasm.

After numerous discussions and liaison meetings held between academic staff from the two law schools as well as the senior magistrate and senior court registry staff, a "summer clinic" operated from mid-January until the end of February. Flinders students who had completed the topics *Evidence* and *Resolving Civil Disputes*<sup>1</sup> were invited to nominate themselves for selection in the volunteer program by completing an application form.

Participation in the clinic was not part of their university studies, but was designed to provide excellent work experience for those interested in practising in civil litigation in the future, as well as an opportunity to participate in a valuable community service.

Students were selected on the basis of their academic record and the reasons given for wanting to participate. Students who expressed a strong interest in providing a community service were given a high priority for selection.

Four students were selected from the numerous applications which were received. These four students from Flinders worked together in the clinic with four students from Adelaide University Law School. The students from Adelaide were involved in the clinic as part of their studies. They were enrolled in the "Clinical Legal Education" topic for which they had to attend the Clinic, attend seminars, and complete assessable work.

Flinders students did not have to complete the assessable exercises (such as keeping a journal and completing a special project) but they were welcome to attend the extra seminars if they wished.

The writer, one other academic from Flinders and the clinical teacher from Adelaide worked on a roster basis in order to supervise the students. All three supervisors are not only experienced lawyers who hold current practising certificates, but they are also experienced tertiary educators. This combination of experience enables supervision of students and therefore carefully considered and appropriate advice being given to clients whilst also focussing on the needs of students in a learning environment.

The Clinic could not have operated without the support of the Courts Administration Authority which has been most helpful in finding premises within the court building for the clinic to be situated. The registry

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<sup>1</sup> *Resolving Civil Disputes* encompasses the teaching of Civil Litigation Procedure and negotiation skills with an emphasis on the availability of other dispute resolution methods, eg mediation, arbitration.

staff have assisted with making appointments for clients and keeping a computerised diary of those appointments. Each morning, the first job for the students is to collect the printed diary sheet from the Registry in order to check the appointments for the day.

The clinic is the only one of its kind in Australia in that, it operates at the court and appointments are made by the court registry staff. The only other CLE course similar to this one is the Unrepresented Criminal Appellants Scheme conducted by the University of Western Australia.<sup>2</sup> However, the Adelaide clinic is totally separate from the Courts Administration Authority and is in no way part of the court, other than the fact that it is housed there. Clients are asked to acknowledge this fact in a disclaimer which they must sign before the first interview commences (see Appendix C).

Following the success of the summer pilot, the clinic now operates once a week. One of the main reasons for participating in the clinic on a trial basis over the summer was to establish the feasibility of presenting "Clinical Legal Education" as a topic for Flinders students. At the time of writing this article, a new topic proposal has now been put forward. Plans are underway for the topic to be presented in 2003. In that event, Flinders students would be participating in the clinic as part of their studies and would be completing projects which would be assessed. However, at present, the involvement from Flinders students remains on a voluntary basis.

## Training

Before seeing any clients, all students are involved in a structured program, commencing with an introductory training session. This training includes:

- Interviewing, especially how to deal with difficult or emotional clients;
- Drafting (with a focus on letters and pleadings);
- Ethics, especially confidentiality, privilege, conflicts, duties to the client and to the court; and
- Administrative procedures (opening and closing files, conflict register, responsibilities of students and supervisors).

All students have already completed intensive courses in legal skills as part of their degree. Legal skills teaching has always been an integral part of the curriculum at Flinders and expanding it into Clinical Legal Education (as well as Practical Legal Training for admission purposes which is

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<sup>2</sup> See *CLE Guide 2001/2003*, 23.

separate from the clinic) has been a natural progression.

The supervision procedure is rigorous. Supervisors strive to maintain a balance between allowing students to have responsibility over their work, whilst at the same time ensuring quality service to clients and adequate safeguards, including for insurance purposes. Strict quality control measures are in place in relation to oral advice, written advice and any documents (eg pleadings) which are drafted.

In addition to the advisory aspect of the clinic, students are also involved in other activities such as observing trials and mediations, and conducting research. This broadens their skills and makes them more familiar with court processes.

Following the success of the summer clinic, the writer and the original organiser of the clinic, Ms Margaret Castles for Adelaide University Law School, successfully applied for a grant from the Law Foundation of South Australia to continue to run the clinic. From April through to August 2002, the clinic was run in "caretaker mode" by volunteer students from Flinders, supervised by the writer and two other Flinders staff<sup>3</sup>. Adelaide students and a supervisor from Adelaide will be involved during semester 2.

## Role of the Clinic

The clinic focuses on "self-help" for clients, rather than taking over their representation. Once an appointment has been made, a student will be allocated to each client. Some students prefer to operate in pairs, some prefer to work individually. At the initial interview, the student will find out as much information from the client as possible. A "Client Record" form must be filled out (See Appendix D). The client is provided with an "Information Sheet" (See Appendix B) about the clinic, and the student must make sure that the client understands that document. The client is then asked to sign a notice confirming that he or she has understood the role of the clinic (See Appendix C).

Once the student has obtained the client's story, the student must report back to the supervisor. At this point, the client must wait for the student to return, or may prefer to make a further appointment to come back the following week. The student then "de-briefs" the interview with the supervisor who helps the student to work out what action might be necessary and what advice should be given.

The supervisor must initial all notes made by the student to confirm that the supervisor has read them. The supervisor will also make notes on a pink "Supervisor's notes" page. This page is pink for easy reference later if necessary. (See Appendix E).

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<sup>3</sup> All hold current practising certificates

Some research may be necessary, whether of substantive law or in relation to procedural issues. It is often tempting for the supervisor at this stage to just tell the student the answer, instead of getting them to research an issue. However, as we tell the students, it is not just a matter of knowing the answer to this particular question. It is about teaching them how to find out the answers, so that in future practice they are equipped with the skills to find out the answers to certain kinds of questions, which reference texts or internet sites to use, even how to find the Supreme Court Library!

If a conflict check has not been done prior to the interview (which is preferable) one must be done at this point. If a conflict exists, the students must alert the supervisor immediately and if necessary, advise the client that unfortunately the clinic is unable to assist because of the conflict. In such a case (which is rare but it has happened) the clinic gives alternative suggestions to the client as to where else they could go for advice.

At the next interview, preliminary advice will be given. Sometimes, the file may be closed at this point. Some clients have a hearing date for a matter already and simply want advice in relation to how to present their case in court. Others may require more complex advice as the matter progresses. In some instances, students assist with drafting pleadings and letters, although these are never filed or sent on the client's behalf. The clinic provides advice but not representation. Students might prepare a statement of claim but it is the client who will file it. Similarly, a student might prepare a letter for the client to send, but the letter will be in the client's name and signed and sent by the client.

## Supervision

There is a high level of supervision. Students may not give any advice at all without discussing it at length with a supervisor. This one-on-one teaching promotes learning as well as ensuring compliance with the *Legal Practitioners Act* (SA).<sup>4</sup> Margaret Castles has described the level of supervision in Part A of this article.

It is important to note, however, that supervision also involves the usual issues of legal practice management: monitoring files, management of files, record keeping, maintaining a diary etc. A Policy and Procedures Manual is currently being written as a joint project by both supervising staff and students. The high level of one-on-one supervision not only ensures that clients are provided with correct advice, but it also makes participation in the clinic a collaborative experience for both students and supervisors. It is very much a team effort. Students are encouraged to express their ideas about the way the clinic is run, as well as discussing

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<sup>4</sup> See Division 2 and Division 3 of the *Legal Practitioners Act* (SA) 1981.

their individual files with each other.

In addition, students are encouraged to embrace the idea that it is “their” clinic, and that any ideas they have are welcome. There is an “ideas” page pinned up on the notice board. Students and supervisors are encouraged to write down any ideas they have which may assist with the smooth running and enhancement of the clinic. Such ideas may range from how to arrange the stationery cupboards to questions to ask clients in interviews, layout of forms and all of the policies and procedures.

## **Jurisdiction**

The clinic operates only in relation to matters commenced in the Minor Civil Claims division of the Magistrates Court. This jurisdiction covers claims of up to \$6,000 in monetary value<sup>5</sup>.

Some examples of the types of matters which have come before the clinic are:

- A dispute relating to a boundary fence which was allegedly put back in the wrong position;
- Car accident property damage;
- Defence of a claim by an insurance broker for their fees;
- Travel insurance claims;
- Building disputes;
- Debt; and
- Conversion of property

Sometimes there are clients who come to the clinic who do not have a legal problem or whose claim is beyond the jurisdiction of the Minor Civil Claims Division of the magistrates court. Where possible, those clients are referred on to other agencies who are likely to be able to help them.

## **Service to the public**

The clinic fills a gap in legal services which are available to the public. As legal aid is not available for civil matters (other than telephone advice), there are many users of the court system who benefit from the availability of free legal advice. Many clients require advice on court procedures or what an order made by a magistrate really means. Others seek help in issuing or defending proceedings.

In a jurisdiction where paying nearly \$200 an hour for advice is often deemed unwarranted given the size of the claim, many litigants shy away

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<sup>5</sup> See *Magistrates Court Act (SA)* s10A., s10A.1 and s38.

from making an appointment with a law firm. Lawyers may be reluctant to take on a matter which may involve many hours of work which may ultimately only be paid for at a rate much less than their hourly rate. In these days of meeting ever-increasing monthly budgets, acting for a litigant with a minor civil claim is unattractive. The Clinic therefore plays a vital role in providing a service to the public whilst not "taking away" work from the practising legal profession.

## Educational Value

The educational value of the program is inestimable. Students who apply to be involved say things like:

I liked the idea of working with other student colleagues and with staff from Flinders Law School

Law has been fascinating but, at times, frustratingly impractical and to get some hands on real practical experience would be fantastic.

I would also like to be involved as the program assists the community – helping those who do not have the legal knowledge they need would undoubtedly be a worthwhile and rewarding experience.

I believe this clinic is a step forward in our legal system providing aid where it is needed.

While I now have a basic, theoretical understanding of the court processes, I feel that the clinic will strengthen my understanding and assist me in cementing the concepts.

Currently, the students from Flinders involved in the clinic are volunteers. Their work does not form any part of their degree<sup>6</sup>. There is an argument that making involvement in the clinic part of the course will lessen the impetus of the pro bono ethic; that students will only do it to count towards their degree and will not put much weight on the community aspect of being involved. On the other hand, it could also be said that those who do it on a voluntary basis are not as committed as those who must attend in order to pass the topic. Volunteers can leave the program at any time; there is no sanction for getting in late or leaving early, or not turning up at all. Clearly, if a student's attitude is such that the clinic or the service provided may be impaired in any way, the student could be asked to leave. However, in the majority of cases with only a couple of exceptions, all students involved so far on a volunteer basis have demonstrated great

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<sup>6</sup> Plans are underway for a formal topic "Clinical Legal Education" to be introduced in the near future.

community spirit and a desire to be involved as part of a team.

One very noticeable aspect is that the students work more effectively when there is a large number. They respond very well to interaction amongst the group and enthusiasm is contagious! As a supervisor in an educational setting, there is great satisfaction in watching students discuss their experiences with each other, and learning from each other.

As the students from Flinders are currently all volunteers, they are not assessed on their work. The students from Adelaide University who attend the clinic as part of a formal topic are assessed. Adelaide students are also required to attend seminars as part of the topic. Flinders students are invited to attend these seminars but are not obliged to go.

Castling<sup>7</sup> addresses this issue, raising the argument that “clients may suffer as the students’ aim just becomes that of obtaining a good grade.” I agree with her contention that “the two things go hand in hand and for the students’ performance to improve in order to improve their grade the quality of the service to the client also has to improve.”<sup>8</sup>

## Interviews

Students conduct interviews with clients with no supervisor present. Some do it in pairs, others solo. Sometimes in a quiet time, if there is only one client to be seen, two students may see that client together. This in itself is a learning experience for many students as they come to terms with the different interviewing styles of their colleagues.

After the interview, the student must discuss the case with a supervisor in order to analyse the next best course of action. It is tempting for students at this point to allow the supervisor to tell them what to do, and indeed as a supervisor, it is sometimes tempting to “take over” and offer a view of what should be done. However, this is very much a part of the learning process. Students are required to work out the answers and conduct research as required. Clients are made aware that there may be a lapse of time in between the first interview and the provision of advice.

The clinic provides legal advice only, not representation. If a client is involved in a matter where a lawyer represents the other side, our students may advise the client in relation to contacting the other solicitor, but would not contact the solicitor themselves.

On a typical day at the clinic, students arrive at about 9.45 am. The supervisor will have arrived a little earlier. The first job is for a student to go to the Registry to obtain the list of appointments for the day. Appointments are scheduled between 10 am and 3 pm. Each appointment

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<sup>7</sup> Sue Castling, *Supervision and Assessment in Clinical Legal Education: Procedures and Pitfalls* contained in The Commonwealth Legal Education Association Conference Papers-Adelaide 2000.

<sup>8</sup> Castling, Above at n 7, at 11.



usually takes about an hour.

Students will see the same client on a repeat visit if possible. Otherwise, the clients are allocated to students at random, depending on who may be free, or who is busy working on an existing file.

## **Closing files**

We currently have approximately 70 files. Of these, about one third are currently active. We are now in the process of reviewing files and closing those which require no further action. About three new files are opened each week.

## **What is the primary objective?**

Grimes<sup>9</sup> argues that the first and foremost participants are the students. This philosophy is reflected in our approach. The idea of having to wait for advice to be vetted by a supervisor is not every litigant's idea of a perfect system. But the overwhelming majority of clients are happy that they are getting free advice and are also pleased to see students "getting involved" in "real life cases". Occasionally there might be a client who is not happy with the service provided. In one instance, a client wanted to know "when I will actually get to see a proper legal advisor face to face". Such clients are gently but firmly reminded that this is a learning experience for students combined with a community service; if the system does not suit their needs, they might like to consider seeking advice elsewhere. Most clients in our experience to date have been overwhelmingly grateful and have left saying that they feel much better about their matter now that they have been able to talk about it with someone.

In fact, talking is often exactly what the client wants to do. Many require reassurance that they are taking the correct procedural steps or simply need help sorting out their papers. Students are greatly empowered by knowing that they have actually helped someone.

## **Joint venture**

The clinic operates as a joint venture between the two law schools which exist in Adelaide and Flinders. The program was initially started by Senior Lecturer, Ms Margaret Castles who runs a Clinical Legal Education topic. Students enrolled in that topic may be placed in a variety of work experience situations of which the Magistrates Court is one. The Adelaide

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<sup>9</sup> Richard Grimes, *Reflections on CLE* Law Teacher 29-30 (1996) 169.

Magistrates Court was extremely supportive of the joint venture idea, providing accommodation (2 rooms and access to interview rooms) and use of registry staff time to take appointments.

Now that a grant has been obtained from the Law Foundation of SA Inc, a management committee will be set up to oversee the running of the clinic as it grows and develops. Three staff from Flinders and one from Adelaide share the role of supervisor. There is one supervisor at any given time; the maximum number of students on a clinic day is eight. There are also plans to extend the clinic to some of the suburban courts.

As a legal academic with a background in litigation practice, it has been really fulfilling watching this project grow. It has also been exciting to be part of a collaborative project with another Law School, setting up a microcosm of practice, preparing students for professional life, which for many of them, is not far away. Watching students progress from nervous volunteers, some with very little confidence in themselves, to skilled practitioners with expert procedural knowledge within a few short weeks is extremely gratifying for everyone involved. The legal profession will be enriched by the participants in this program, the community is the beneficiary of a valuable service and the two law schools have the opportunity to nurture and develop the collaborative efforts which have created this exciting new venture.

## **Appendix A**

### **Clinical Legal Education Adelaide Magistrates Court**

#### **Application To Enrol**

Name:

Postal Address:

Contact Phone Numbers:

Email:

Law Subjects Completed To Date:

Other Degree (If Any):

Work Experience:

When Will You Complete Your Degree?

Why Would You Like To Participate In This Program?  
(Please attach a separate page if necessary)

## Appendix B

**Adelaide University Law School  
And Flinders University Law School  
Clinical Legal Education Program  
Legal Advice Clinic**

### Legal Advice Clinic – Magistrates Court

As part of its Clinical Legal Education Program, the University of Adelaide Law School and the Flinders University law School, in cooperation with the Courts Administration Authority, and with financial support from the Law Foundation of South Australia, are providing a free advice service to clients of the Minor Civil Claims jurisdiction of the Magistrates Court.

The clinic will be staffed by students under the supervision of lecturers/legal practitioners from the two Law Schools.

Advice will be available in relation to:

- Pre lodgment process
- Explaining the process and what you need to do once action is commenced
- Alternative Dispute Resolution (ADR) options
- Preparing court documents
- Assistance with drafting summons/defence
- Obtaining information and evidence to support your case
- Preparing for the court hearing
- Court process
- Settlement options

Assistance will be in the form of advice to assist persons to manage their own claims. The clinic will not take over the management of claims for litigants.

The advice will be at no cost. However litigants will be responsible for any of their own costs, including filing/pre lodgment fees, obtaining evidence, preparing for hearing. The clinic will not pay ANY costs associated with litigation pre lodgment or other processes.

The clinic is NOT part of the Magistrates Court. It is an independent initiative of the Adelaide Law School. The Courts Administration Authority has offered the use of its premises to make it easier for persons to obtain advice, and will assist clients to make appointments with the

Clinic. However the clinic operates independently from the Magistrates Court. All communications with persons seeking advice will be in strictest confidence.

Appointments will generally be made on Thursdays, and can be pre booked at the Court Registry or via the telephone advice service. No pre booking is necessary, however it would be preferred.

If you decide to seek advice from the clinic, please bring with you all the documents and papers that you have about your case. Appointments will generally be for about an hour, and further appointments can be made if necessary.

## Appendix C

**Adelaide University Law School  
And Flinders University Law School**  
supported by the Law Foundation of South Australia

### **Clinical Legal Education Advice Clinic**

#### **Acknowledgment and indemnity**

I .....

understand that I am receiving advice free of charge from students participating in an Advice Clinic as part of the Clinical Legal Education program run by the Adelaide University Law School and Flinders University Law School.

I understand that this advice is provided by law students under the supervision of a legal practitioner.

I understand that the clinic will NOT make any contribution to my costs or expenses.

I understand that the clinic supervisor may decide at any time not to provide further assistance to me.

I have read the attached information sheet/had its contents explained to me.

I understand that in providing me with advice the clinic is NOT representing me and does not have responsibility to represent me. I am responsible for representing myself.

I understand that the Advice Clinic operates independently from the Magistrates Court and the Courts Administration Authority, which has no responsibility for or control over the Advice Clinic. I further acknowledge that no liability for any action taken or advice given by the Advice Clinic arises against the Magistrates Court or the Courts Administration Authority in any circumstance.

I authorise the Advice Clinic to notify the Courts Administration Authority when it has ceased providing advice or assistance to me.

Signed.....

Date / /2001

**Authority to undertake specific action**

I hereby authorise ....., Adelaide University Law School/ Flinders University Law School Advice Clinic, to (outline nature of action authorised)

1

2

3

4

I understand that I am authorising this action so that the Clinic can assist me in preparing my own case, and that authorising this action does not alter any of the matters set out above.

Signed.....

Date / /2002

## Appendix D

### Client Record

Name

Address

Phone Numbers

(Is it ok to contact on all numbers? To leave a message?)

Nature Of Dispute

Parties/other Persons Involved

Stage Of Dispute

Date Cause Of Action Arose

Limitation Period

Conflict Check

(Has the Clinic provided advice to any of the other persons identified as parties/participants in any related or unrelated matter? If Yes, Refer To Supervisor Before Taking Any Other Action)



## **Appendix E**

**Adelaide University Law School  
& Flinders University Law School  
Magistrates Court Legal Advice Clinic  
Supported by the Law Foundation of South Australia**

### **Supervisor's Comments & Notes**

File Name:

Name of Supervisor:

Date:

