LEGAL TRAINING INSTITUTE: A PROGRESS REPORT

by
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The history of the Legal Training Institute has yet to be written. It is to be hoped that the letters and documents faithfully preserved by a succession of directors will be available for some future historian, because they provide a fascinating insight into the growth of a small training institution from early and tentative beginnings prior to independence of a small developing country having close political links with the metropolitan power which severed political control in 1975. The tensions, strains and difficulties of nurturing the growth of the Institute are evident from the documents. But anyone who reads them cannot help being conscious of the dedication and commitment of the many personalities concerned to foster the growth of an institute which could take the place of the system of articling which had traditionally been the method used to bridge the gap between academic and practical law.

The story begins perhaps with a meeting of interested parties recorded somewhat ceremoniously as 'Notes of a Meeting Held at the Chambers of the Hon. Mr Justice Clarkson on Wednesday February 17, 1971 to discuss the possibility of the establishment for the territory of an institute of practical training for law graduates desirous of practising law'. Those present were representative of the judiciary (Mr Justice G.D. Clarkson), Faculty of Law (Professor A.B. Weston, Messrs E.I.M. Nwokolo, L.K. Young), Secretary for Law (J. Greville Smith) and the Law Society (Beresford Love). It is apparent from these notes that the judges had formed the view that the current five year LL.B. course followed by two years as a 'Student-at-Law' was too long. They had agreed in principle to the proposed shortening of the LL.B. course to four years on the understanding that the two year student-at-law requirement was retained, or a full time year of training was introduced. If the latter ocurred a 'provisional' admission to practice would follow, certain conditions being imposed on an admittee before he could practise on his own account. The meeting had the benefit of information on practical training institutions in Ceylon, Nigeria and Zambia together with the 'Martin Report' on tertiary education in Australia. It was decided to investigate certain matters further: students (local graduates only), length of course, content of course, staffing, housing, management, financing. The representative of the Secretary for Law undertook to sound out Government reaction, Professor Weston to look at the new ANU scheme and possibilities being considered in New South Wales and Victoria. Further meetings of this committee fleshed out the information originally available in the light of the Ormrod Report, an extract of which is on the LTI files. The Extract from Law Notes, April 1971 includes the sentence: 'In effect most of the proposals of the Law Society are accepted in the Ormrod Report e.g. that articles should eventually be abolished, that the law degree should be followed by a vocational year of a largely practical nature'.

It had become clear that some changes to the structure of legal education were necessary and at a meeting on 31 March 1971 it was agreed in principle to seek the establishment of the one year post-graduate course in practical training six weeks to the day from the 'Clarkson' meeting. There was some discussion about the desirability of a 'localisation' course of some kind for practitioners qualified elsewhere, who sought admission in the Territory, an idea which has since sunk without trace.

The Dean of Faculty of Law, Professor A.B. Weston, provided figures projecting

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the Institute. I have spoken to a number of the members of the profession who are eager to help. It seems to me that it is to these persons, engaged in the day to day practice of the law in Papua New Guinea from whom we should seek assistance rather than lecturers from the University whose practical experience is either limited or else has been obtained in other quite different jurisdictions.

(iii) The Law Library at the University is already strained beyond its resources and it would place quite an impossible burden upon the University Librarian if the Institute students found it necessary to resort to the University for those textbooks and law reports which it is necessary for them to consult daily. It would be impracticable also to permit the undergraduates access to the Institute library. At all events greater detail should be given, before any decision is made, tending to support the proposition that the siting of the Institute would, *in fact*, lead to "a more efficient development and rationalization of the law library".

Some other possible advantages were brought out in our discussions, as I recall as to housing and allowances provided for the Institute students. Housing only has to be provided for those students who are Public Service cadets. If these persons do not wish to continue their practical training at the Institute, accommodation would have to be found for them at all events - that is, on the assumption that they remain in the Public Service. Thus the siting of the Institute would make no difference to the requirement that housing must be provided. It should be noted, however, that if the students were to be housed at the University it would be necessary for the University to expend further considerable sums to provide expanded accommodation for them, including the provision of married housing accommodation.

As to allowances, the students are now receiving an allowance not greatly in excess of their University allowance when it is considered that they are providing their own food and paying rent for such accommodation as they are able to obtain from the Government. Were the students to be housed at the University I cannot see that the allowance which they are now receiving could be reduced.

Not only, however, does it seem to me that the advantages mentioned above do not upon analysis support the suggestion to site the Institute at the University but also there are reasons which, to my mind, convincingly argue against such a course. These can be briefly stated as follows:

(a) The duty of the Institute is primarily to produce professional lawyers with a mature and responsible attitude to the practise of law, whether in government or in private practice. It is my opinion that removing the graduates from the paternal care of the University is an important factor assisting the graduates to this maturity. I have discussed this particular matter with the graduates presently attending the Institute, some of those who graduated from the Institute last year and with other law students, all of whom have the same view as mine and have stressed to me that they regard it as a matter of considerable importance.

(b) As the Institute will be assisted more and more by private and Government practitioners (mainly European, but increasingly Papuan New Guinean, of course) the Institute should be located at a site convenient to these people. The University, does not it seems to me, offer such an advantage.

(c) As the numbers of students increases, so also will their contact with not only the public but also the other practitioners. It will not really be possible for any graduate attending this Institute to feel himself an independent professional,

> nor will this impression be gathered by the persons with whom they deal or for whom they act, if they are treated like students and live and work in the University campus. I have discussed this matter also with graduates and with University law students and they have stressed to me the importance of this factor: indeed, the consensus was that this is a crucial consideration in the credibility of the Institute.

It is clear that the Institute can only properly function if it remains a completely autonomous unit with close links with the practitioners, the Government, the Public Solicitor's Office and the Judges. This principle seems to be accepted on all hands. It is also accepted, for similar reasons that the Institute must be independent of the University. It appears, to me, with the greatest respect, that the considerations which require the Institute's financial, organisational and teaching set up to be independent, lined rather to sources outside the University than to the University and operating not as a *post-graduate* course but as a *post-University* course, ought also to lead to the conclusion that the Institute should remain off the campus.

I do not for one moment suggest that those links of mutual advice and consultation which are presently operating between the University and the Institute which, I hope, will become closer in the future, should be broken, nor should their importance be diminished in any way; but my view is, put simply, that the functions of the Institute and of the University, though complimentary, are so distinct that the Institute should be a separate and distinct unit not only in other aspects but also in relation to its geographical location.

There has not been produced any evidence that there could be any economies affected by moving the Institute to the University. Accordingly other considerations take more weight than they would otherwise, perhaps, have.

> I might add that I have discussed all these considerations with members of the profession, and with Mr. Aoea, my graduates, and through them have a considerable number of law students, all of whom have endorsed the views expressed in the letter as to this whole question. With the greatest respect I would suggest that these views not be ignored unless a strong and overwhelming case is made to the contrary."
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> The precise relationship between the Institute and Faculty of Law had led in the early stages to mutual recrimination however mild. The 1973 Director Mr Lalor noted a far greater proportion of time than was desirable had to be taken up in dealing with matters of substantive law in areas in which the students knowledge was deficient. For example, no Practice or Procedure had been taught at the University and lectures in this subject occupied a good proportion of two mornings a week for a considerable part of the year. At the conclusion of this report the Director drew attention to the changed nature of the law course, from one designed to produce the lawyers required by this country to one with a specifically non-professional orientation. He felt this would have 'serious consequences'.

In his report on the Conference on Professional Legal Education held at Canberra in 1974 Mr. Adams the new Director reiterated this theme (at p.6):

> "It was the view of all attending the Conference that it is the fundamental responsibility of the Faculties of Law at the Universities to provide all the training in substantive law prerequisite to admission to the practising profession. In his powerful style Mr. Adams continued: "If it is true [and we doubted that it was] that universities are completely free to design such courses as they think fit which lead to the granting by them of a degree in law, that freedom cannot be regarded as a freedom to dictate to the community [or whomever it may be in the community

> having the responsibility of admitting persons to practice] as to the extent of the knowledge of the law which is sufficient qualification to practice. The Report also noted 'the vital necessity of regular consultation between the law schools, the profession and the staff of legal practice institutions about the content of the academic and practice courses'."

The ongoing nature of the debate about the respective role of the Law Faculty and Legal Training Institute are clear from an examination of the 1977 Council of the Institute Minutes (13/11/77) when Dr Palivala on behalf of the Faculty of Law questioned whether the present approach of giving teaching in substantive law at the University followed by a topping - up with practical training was in fact the most appropriate method of training lawyers in Papua New Guinea. He felt that 'The two aspects of training should be integrated'. Ten years later it cannot safely be said that such a view will not prevail.

Further amendments to the Legal Training Act in 1976 provided an opportunity through an examination of the second Reading of the Post-Graduate Legal Training (Amendment) Bill 1976 to gauge political responses to the Institute. The occasion for the amendments were largely procedural, to vest the Director with discretion to admit persons who had some university work to complete prior to graduation and to enable emergency resolutions to be considered and passed through the Council by written resolution. The Minister for Justice, Mr Ebia Olewale, moved the second reading and the floor was open for debate which was wide-ranging if seldom to the point of the Bill. Reference was made to the 'colonial laws of some foreign countries but we have never put into real effect any of our traditional customs. Therefore, I feel that those graduates from the university should go back to the villages and study the customs of this country.' There was a feeling that trainees were being lost to the government and should be bonded. The break-down of traditional power structures was highlighted by Mr Koriam Urekit: 'I think we are well aware that people who go to schools do not really consider their parents and other elders in the village. Graduates of today do not really consider the people at the village level. They give very little consideration to the people in the village level. They give very little consideration to the people in the villages who are really helping to develop this country.' Sir Pit Lus (Maprik) believed traditional laws should be given more emphasis. He regretted in colourful style, the increasing division between educated graduates and the ordinary people: 'In several courts in Rabaul I find that the judges and lawyers sit several floors above the people who are being tried in court. I do not know what they are doing up near the ceiling. If I was convicted in such a court I would look way up into the air to speak to them'. Such a view of the law in its western framework was widely held by most of those who spoke. Sir Pita revealed his motives at the end of his speech when he criticised the laws because by comparison with traditional laws they were not 'tough enough'. Widespread confusion at the 'imported' legal structures was expressed by Mr Damien Kereku (East New Britain): 'Today we have different types of courts which we often get confused with. One of them is the Court back in the villages. These are the type of courts that are normally by the village elders in public gathering. The other type of court is in accordance with the imported laws which our elders in the villages are very confused about.' At this point the Minister for Justice intervened on a point of order that 'we are not discussing systems of courts, village courts, supreme court or national court. The matter before us now is the amendment to the Post Graduate Legal Training Institute (Act) where we want to increase the membership of the Council. Now I would like members to know that.' The previous speaker continued, concluding with the welltrodden theme that law students should study some of the traditional laws. In response to this strong feeling amongst the politicians Mr Buaki Singeri (Kabwiun) moved a further amendment, in committee, requiring a candidate for admission to establish that he has spent a period of a least twelve months in

the field, either after or during a course of study in law, studying the customs of any community or working with any people in a community involving customary laws and the field, either after or during a course of study in law, studying the customs of any community or working with any people in a community involving customary laws and practices or other similar course of study that is satisfactory to the council. The bill was reported with this amendment and adopted. The subsequent history of the 'Singeri' amendment can be briefly stated. The instigation of a Leap (Legal Aid programme) at the Law Faculty of the University of Papua New Guinea provided the context within which law students could undertake field work over vacation periods and the Council has accepted the instigation and development of this programme as satisfying the purposes of the amendment.

Since the 1976 parliamentary debates little controversy has surrounded the Institute. The tradition of close communication with the practice courses in Australia has been continued. The Director for the time being attends the Annual APLEC Conference. There is constant attention paid to achieving a correct balance between instruction and practical work, whether exercises, assignment or group discussion. The 1975 curriculum was broken down to a total of 701 hours, 143 for lectures and 558 for exercises. This allowed 119 days at 6 hours effective work per day, permitting 3 weeks holiday in July, and 10 weeks full-time actual work in court at the end of the year. As if justification were needed the 1975 programme concludes with the note: 'It will be seen that the intensity of the course makes an intermediate holiday essential, both for trainees and the Director.' The current occupant of the Directorial hotseat would say amen to that.