
Wal's Legacy: QUT's Practical Legal Training Course

Allan Chay*

QUT's Graduate Diploma in Legal Practice (the Course) was set up in 1978 at the request of the Queensland Law Society. Over 700 aspiring solicitors have completed the Course over the past 20 years, most going on to practise law in the private legal profession.

The Course leads to an award of a Graduate Diploma in Legal Practice (GradDipLegalPrac) by the University and it satisfies the practical training requirement for admission as a solicitor of the Supreme Court of Queensland under the *Rules Relating to the Admission of Solicitors of the Supreme Court of Queensland*. The Course provides practical legal training in an institutional clinical setting as an alternative to the 'on the job' training provided by articles of clerkship, which is still the most common means of practical training in Queensland. Four times as many students enter articles as enter the Course each year.

The Course provides the first part¹ of the practical training stage in the Ormrod² continuum of legal education and training.³ The second part is provided by a graduate's first year of supervised practice in employment. The Ormrod model is a relevant paradigm through which to view and understand the role of the Course in an aspiring lawyer's formation. Although the Ormrod model has been superseded in the discussion of legal education at a theoretical level,⁴ it still provides an accurate depiction of what actually occurs in mainstream practice in legal education and training in Australia.

* LLM Qld, Solicitor, Assistant Dean, Legal Practice, Faculty of Law, Queensland University of Technology.

1 Legal Practice Course Assessment Committee *Report on the Proposal for Reaccreditation of the Graduate Diploma in Legal Practice* QIT Brisbane 1983 at 8.

2 *The Report of the Committee on Legal Education* Command Paper No 4595, Her Majesty's Stationary Office London 1974 (the Ormrod Committee report).

3 The Ormrod continuum being an academic stage followed by a practical stage followed by a continuing education stage.

4 For example see the *First Report on Legal Education and Training* by the Lord Chancellor's Advisory Committee on Legal Education and Conduct, Her Majesty's Stationary Office 1995 (theACLEC report).

The move to set up the Course followed the establishment of similar courses in New South Wales, Victoria, the Australian Capital Territory, Tasmania, and South Australia. In those jurisdictions, the establishment of a course usually followed an investigation initiated by the local law society or admitting authority on the effectiveness of articles as a means of providing pre-admission practical training.

The Pearce Report⁵ documents wide spread dissatisfaction with articles of clerkship over a long period of time prior to the establishment of practical training courses. That dissatisfaction arose from concerns by practitioners over – an apparent lack of connection between a clerk's academic study at law school and her or his on the job training as an articulated clerk; the lack of time or ability that some principals apply to training their clerks; and some clerks being exposed to a narrow area of practice only while in articles.

Practical legal training courses provide aspiring solicitors with a structured course of training in the practice of law. That training is provided by staff who have 'unlimited'⁶ time to spend on students' training and supervision and who are skilful trainers as well as being skilful practitioners.

While many changes have been made to the Course since 1978, and particularly after its 1993 re-accreditation by the University, the Course remains recognisable as the one that the late Wal Hutchinson set up in 1978 under the guidance of Tom Cain, the Foundation Dean. Most importantly the Course maintains its 'learning by doing' approach to teaching and learning and its commitment to inculcating ethics and professional values through expecting students to demonstrate ethics and professionalism in every aspect of their participation in the Course, right down to attendance and attire; and its reliance on the practising profession in its teaching program. Over 80 practising lawyers selflessly contribute to the Course's program each year as teachers, consultants and authors of teaching materials.

The Course has been in the fortunate position from its inception until last year of not having change forced upon it to deal with press of student numbers, funding crises or interventions by the profession or government. The Course's staff have had the opportunity to develop and refine the Tom Cain and Wal Hutchinson model over two decades.

The original objectives of the Course were those adopted at the Australian Professional Legal Education Conference in 1974. Those objectives stress the development of professional values, skills, and technical and procedural competence in designated practice areas. The objectives explicitly state that their intention is to prepare students as general practitioners rather than as specialists.

5 Pearce, Campbell and Harding, *Australian Law Schools: A Discipline Assessment of Commonwealth Tertiary Education Commission* AGPS Canberra 1987 Volume 2, Chapter 3.

6 Pearce reports that the philosophy of practical legal training courses might be (as stated in the Freadman Report):

[The course] would attempt to provide the breadth and depth of instruction that might ideally be expected to be received by a clerk, serving articles in an office with a wide practice under the supervision of a principal with unlimited time for instruction.

Those objectives remained unchanged until 1994 despite the Pearce Committee's⁷ 1987 recommendation that they be re-examined because:

- (a) they 'tend to emphasise the mastery of practice...without looking at the reasons why certain practices are followed and asking what might be the better practice in given circumstances';⁸
- (b) any practical understanding of the work of a solicitor is based on subjective values and 'any statement of aims and objects should make this clear';⁹ and
- (c) they should acknowledge the limit of what can be taught by practical legal training.¹⁰

The objectives were rewritten in 1994 having regard to Pearce's comments and to the fact that the Course has always sought to provide students with something more than just skills training and procedural mastery. It provides students with a theoretical basis for practice¹¹ (for example by examining how different views of the lawyer-client relationship will affect how a lawyer approaches the task of interviewing clients). It also helps students to develop conceptual understandings of the underlying structures (or frameworks) of the legal transactions they are exposed to in the Course. This leads to students developing transferable skills and knowledge. When students enter practice they can do more than just replicate the specific transactions they encounter in the Course. They can also (within limits) work out how to approach 'unfamiliar' transactions.

The new objectives did not signal a shift away from the Course's aim of preparing students for generalist practice. Pearce considered that such a shift was needed to accommodate the changing career destinations of graduates. Pearce's view of career destinations is backed up by annual graduate destination surveys which show that Course graduates are as likely to find employment as specialists in private law firms, or government, as they are of finding employment as general practitioners. We believe that a general grounding in practice is the best preparation we can provide students who want to become specialists. We are also:¹²

... philosophically orientated toward generalised training for a generalist licence, recognising that non-specialist practising certificates are currently issued in all Australian States and Territories, with attendant implications for community expectations of threshold competence in a range of practice areas.

7 Pearce, Campbell and Harding *Australian Law Schools: A Discipline Assessment of the Commonwealth Tertiary Education Commission*, *supra* n.5.

8 *Ibid*, para 20.41.

9 *Ibid*, para 20.42.

10 *Ibid*, para 20.45.

11 See generally G Blasi 'Teaching Lawyering as an Intellectual Project' (1996) 14 *Journal of Professional Legal Education* 65.

12 From the Australasian Professional Legal Education Council's *Vocational Preparation Standards* Australasian Professional Legal Education Council 1997.

During the 1993 review, other models of professional legal training were examined to see if they might be more effective than the Tom Cain and Wal Hutchinson model in achieving the Course's objectives and QUT's teaching and learning goals.¹³ Those other models included skills based models and placement models. The review team found that skills based models, such as that used by the Law Society of British Columbia's Professional Legal Training Course,¹⁴ work best where students coming into the program have workplace experience and are aware of the contexts in which legal skills are applied. Placement models, in which students are provided with institutional training integrated with relevant workplace experience, only work where you can secure a sufficient number of suitable placements for all your students. A suitable placement being one in which the firm is prepared to assign work to students on the basis of the student's training needs rather than on the needs of the firm. We do place our students in law firms for a few weeks to give them some real life experience, but we do not consider it practical or desirable to attempt to convert the Course to a true placement program in which students alternate between the University and a firm several times.

The outcome of the 1993 review was that the original experiential course model was still perceived to be the most practicable and effective means of achieving the course objectives and preparing graduates for professional practice in the 1990s. The core of this model is a reliance on 'learning by doing' to facilitate the acquisition of knowledge, understanding, skills, attitudes and values. Chief among those values are a commitment to ethical practice and a commitment to continuing self development.

The learning by doing approach has students carrying out tasks and solving problems which simulate those that they will encounter in their first years in practice. Those tasks are identified from surveys of graduates and from consultation with members of the legal profession. Situating a student's learning in those tasks provides students with 'context' for their training and it helps to make them 'job ready'.¹⁵ They do not have to spend their first weeks in practice working out how to apply abstract knowledge and skills to the tasks their employers assign to them.¹⁶

The paramount teaching and learning vehicle is the current matter which involves students in carrying out simulated legal proceedings or transactions.

13 QUT's *Teaching and Learning Development Strategy 1993-1997*.

QUT's *Teaching and Learning Goals 1993-1997*.

Faculty of Law's *Teaching Profile (Strategic Position Statement)*.

Faculty of Law's *Teaching and Learning Profile, April 1992*.

14 D A Cruickshank 'The Professional Legal Training Course In British Columbia, Canada' (1985) 3 *Journal of Professional Legal Education* 111.

15 A Tobin 'Criteria for the Design of Legal Training Programs' (1987) 5 *Journal of Professional Legal Training* 55, 56.

16 As Tobin says, graduates of professional training courses need to be 'able to do as opposed to simply knowing'. Nelson's surveys of College of Law graduates and their employers show that both groups expect that graduates should be able to carry out a range of basic tasks immediately on entering practice - J Nelson *New Directions for Practical Legal Training in the Nineties* College of Law 1988.

Students find current matters both stimulating and challenging. Current matters are designed to encourage self-reliance (through making students find out certain things for themselves) and to encourage time management skills (through expecting students to complete each stage of a matter by a designated date).

The Tom Cain and Wal Hutchinson model is implicitly supported by Roper's¹⁷ theory of course design, de Groot's¹⁸ research into lawyer competency, and Stewart's¹⁹ and Carter's²⁰ writings on curriculum development.

Roper proposes that the structure of a legal practice course should reflect three layers of legal practice (tasks; skills, and problem solving) and proceed 'by peeling away these layers'.²¹ Wal's model exposes students to these layers but at no stage does it separate tasks, skills and problem solving into distinct sequential activities. Rather, it is made up of layers which each contain an integrated mix of tasks, skills and problem solving. In each layer there is however a different emphasis on various elements of the mix.

In the first weeks of the Course the emphasis is on tasks and building the skills needed to carry out those tasks. In subsequent weeks, as students gain familiarity with tasks and need to focus less on the mechanics of tasks, their attention is turned to identifying the generic skills they are using in those tasks and the underlying frameworks of transactions and legal proceedings. In the closing weeks, the focus is on ensuring that students can synthesise their knowledge, skills, and values to perform the roles that the public expects of lawyers, which Carter²² identifies as: problem solver; facilitator of dealings; adviser; and representative.

Each layer of the Model also requires students to demonstrate proper professional conduct. de Groot's²³ research identifies 'proficiency in the professional/ethical dimensions of legal practice' as the highest ranking core characteristic of lawyer competency in the view of senior Queensland lawyers.

One change that was made to the Tom Cain and Wal Hutchinson model in the

17 C Roper 'The Legal Practice Courses - Theoretical Frameworks and Models' (1988) 6 *Journal of Professional Legal Education* 77.

18 de Groot identifies eight core characteristics of lawyer competency:

- . Proficiency in the professional/ethical dimensions of legal practice
- . Enthusiasm for/dedication to 'the law'
- . Client orientated
- . Attention to professional 'housekeeping' matters
- . Knowledge of the substantive law
- . Fact gathering/analysis ability
- . Orientation to practical solutions to client's problems
- . Knowledge of legal practice and procedure

See JK de Groot *Producing a Competent Lawyer: Alternatives Available* Centre for Legal Education, Sydney 1995.

19 R Stewart *Curriculum Development for the Practical Legal Training Course* College of Law 1979.

20 N Carter 'Recent Developments in Practical Legal Training in New South Wales' being a paper delivered at the CLEAC Conference 1992.

21 Roper *supra* n.17 at 85.

22 Carter *supra* n.20 at 5-6.

23 de Groot *supra* at 127-130.

1993 review was that the highly structured Course curriculum was made less rigid. This was achieved by changing the structured clinical hours per week from 35 (7 hours x 5 days) to 28 (7 hours x 4 days). Students now to attend the Course during normal working hours 4 days each week but they are expected to spend at least another day each week working on current matters and exercises outside the structured clinical hours. Having an unstructured working day each week shifts more responsibility on to students to plan and regulate their own time and work. This provides a good preparation for practice. It also gives some students the opportunity to work with a law firm one day a week if they can manage that and still complete the work required by the Course.

The Course is now preparing for its next 20 years and it is facing several new challenges in the process. Students enter the Course less well prepared than they were in the past due to recent changes to the solicitors' admission rules which have halved the number of compulsory subjects for admission. We now have to teach conveyancing practice to students who have not studied Securities Law, Drafting, Land Contracts and Revenue Law. While the modern law degree provides students with the ability to self-learn the law they do not learn in law school, the Course's intensive clinical program allows little time for students to engage in remedial self-instruction.

At the same time, we have to prepare students for practice in an environment that is becoming more complex, changeable and demanding due to increases in legislation, government requirements, economic pressures, and community expectations.

This all comes at a time when the government's commitment to funding vocational training is significantly weakening and we are under increasing competition from shorter subsidised courses in New South Wales and the ACT. The federal government is committed to a policy of withdrawing public funds from post-graduate vocational training.²⁴ Law graduates who want institutional practical legal training are likely to have to pay for it themselves in the future, unless the profession provides financial support or the Course receives a subsidy from trust account interest, as now happens in New South Wales and Victoria.

We have turned to the profession to help us meet these challenges. Early this year, a committee of three QUT staff, a student and 5 practising solicitors, including the Chair of the Solicitors' Board and the Chair of the Law Society's Education Committee, reviewed the Course and made recommendations on future funding, length and content. The committee recommended that if continuing public funding cannot be secured for the Course beyond 1998, student fees will have to be introduced. The Faculty will keep any fee as low as it can through a faculty subsidy and a continuing reliance on the generosity of the many practising lawyers who donate their time and expertise to the Course each year.

The committee also recommended that the length of the Course be shortened

24 Except for teaching and nursing.

to 26 weeks to allow two courses to be run each year and to reduce the cost of attending the Course for students. The committee considered that strategies could be adopted that would allow the reduction in length to be effected without a corresponding reduction in scope, depth or quality. Those strategies will be effected within the framework set up by Wal Hutchinson under Tom Cain's guidance and which has become Wal's continuing legacy to the aspiring solicitors of Queensland.