The nature of legal training

The law is a very "hands on" profession. Most lawyers would probably say that the majority of their knowledge has come from "on the job" learning. This is not surprising.

The training of those who wished to become practising lawyers was originally taken care of by the Inns of Court and similar institutions in London, effectively through apprenticeships. Although degrees in law were available early on from Oxford and Cambridge their original form concentrated upon Roman Law and did not lead to a practical legal qualification.[1]

The apprenticeship model was followed in the early years of colonial Australia, with law departments in Australian universities not being established until the end of the 19th century. For some time after this, the law schools retained a practice focus as most staff were practising lawyers employed to teach on a part-time basis. This remained the case until the 1950s.[2]

The second half of the 20th century saw the rise of the academic law degree as the threshold qualification for legal practice in most jurisdictions, although an abbreviated apprenticeship was retained through the system of articles of clerkship.

As the importance of the undergraduate degree has increased, so has the tension between the perceived competing aims of a liberal university education and the attaining of a set of vocational skills. For some time this was ignored until, after the Pearce report in the 1980s, there was a push to integrate skills and clinical legal education into the undergraduate degree. The value of this is taken for granted these days.

It was inevitable that, with all this focus upon the LLB, attention would soon turn to the practical qualification required to gain admission as a legal practitioner. We are soon to see enshrined, in the rules made under the NT Legal Practitioners Act, the requirements for the Priestley 12, which will require candidates for admission to demonstrate that they have mastered a range of competencies in subject and skills areas. One way to do this is via a post-graduate course such as the Graduate Diploma in Legal Practice to be offered jointly through ANU/CDU, commencing in March 2004.

It would be a mistake, however, to assume that practical experience is no longer valued. This is made explicit in the GDLP program, which allows substitution of electives for up to a further 60 days of approved legal work placement (20 days is mandatory for all students). Although the quality of training provided by the articles system was varied (and sometimes poor), it did have the unparalleled advantage of teaching the articled clerk how to operate in the office environment; how to "manage a file", if you like. No university course can do that well.

It will be necessary for all students completing the GDLP to engage in a placement of at least 20 days. That means that places will be sought in legal offices for these students. In addition, firms and government offices will take on graduate clerks who will do up to 80 days of legal placement for their GDLP. Traditionally, Territory firms have been generous in taking on students, as articled clerks or otherwise. One hopes that this commitment to development in the profession will continue.

Each law firm or office is (or should be) a "learning community". It may be that what is learned is not written down, but research in other industries has shown that this does not mean that there is not a structured approach to the learning that goes on in organisations, particularly where the induction of new members is concerned. There is no reason to believe that the law is any different. Further, the learning communities themselves form part of the larger learning community of lawyers, locally and in other jurisdictions.

When you take on a student you will be required to think about education and training issues such as mentoring and induction. There will be requirements placed upon the student to engage in reflection and journal writing as aids to learning in the workplace. These activities need to be supported.

A student or graduate clerk is more than just a person to carry the books or fill the fridge (although I wouldn't suggest that these tasks are beneath them!). They are a young professional who requires support and positive mentoring.

Organisations should work at ways of actively contributing to a learning culture and stamping out practices which militate against this. For example, the role of time sheets, whilst holding an unassailable place in management of legal firms, needs careful appraisal in this context.

The most important training of young lawyers takes place in the workplace. This is supplemented by the formal educational course they undertake. A blend of the two is the "gold standard" in pre-admission training. Indeed, this approach should carry over into the first years of practice and beyond, as supported by the CLE program.

Whilst one-to-one mentoring is important, firms also need to make positive efforts to involve students, particularly those on shorter-term placements, in office activities. It is of course important that there are opportunities to undertake "real" tasks and to get feedback. This does not mean just letting them get on with it. There is an expectation of direction and supervision appropriate to the task in hand. Working as part of a team is, where possible, the ideal.

It is also important that placement

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Gender Law Reform cont...

their skills of persuasion to gain the consent of a much younger person, a person who is still discovering their sexuality, into having sex with them," Ms Carter said.

Despite careful consideration, the Government rejected the proposed change.

"The reason that we are not supporting the approach of going to a differential is that it is arbitrary. You will inevitably end up with situations where an adult is three years and 11 months older than the victim or four years and one month older, and they will be treated in totally different ways, even though they may be very similar in age," Dr Toyne said.

Anti-Discrimination:

According to the Attorney-General the purpose of this bill is "to remove or modify illegal distinctions based on a person's gender, sexuality or de facto relationship with another person. By doing this the bill will provide greater protection and equality for all Territorians".

It eliminates the provisions that allows for discrimination on the basis of sexuality for work involving caring for children. The bill also removes some of the exemptions currently given to religious bodies, but does not go so far as to stop religious schools discriminating on the basis of sexuality or religious belief when employing teachers.

The area of concern in this bill is the proposed amendments to the *Criminal Records (Spent Convictions) Act*. Under the changes irrelevant criminal records held by police will be able to be released (only under specific circumstances, principally for work involving the care or instruction of vulnerable people) to a potential employer with the person's consent.

"To be clear on this, it is the irrelevant criminal record, which is things like spent convictions or charges that were not proceeded with, those areas rather than the actual criminal record of the person, in other words, convictions that continue or are currently on the person's record," Dr Toyne said.

This would allow unproven abuse accusations to be accessed by potential employers, and as a potential employee who would actually have the right to refuse. Particularly when employers would be allowed to discriminate against applicants on the basis that they refused to allow access to this information.

De Facto:

Effectively, this wide-ranging bill changes the definition of a de facto relationship in every piece of relevant legislation. The definition has been broadened to include heterosexual de facto relationships, same-sex de facto relationships and Aboriginal traditional marriages. Determining factors will include the duration of the relationship, whether a sexual relationship exists, the degree of financial dependence or inter-dependence and the public aspects of the relationship.

The legislative changes will also address the following areas:

* Bringing the rights of children from same-sex families into line;
* Property and superannuation dispute resolution after the breakdown of a de facto relationship; and
* Recognising same-sex partners in areas where the de facto partner has the right to be informed of certain things (for example by the police or medical staff).

Despite wide-ranging reforms, same-sex couples will still not be allowed access to adoption or reproductive technology. In what appears as something of a contradiction, the Government has also introduced changes to allow females partners to be listed on a child's birth certificate as mother and parent (instead of father) when the child is born via IVF.①

The nature of legal training

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students have the opportunity to experience "legal culture" (Territory style!) and to learn by interacting with a range of other lawyers. There is more to the Friday night around the boardroom table than just drinking all the Bundy! These informal social settings are valuable *learning opportunities*. So, drag out your old "war stories" and drink up! It's all in a good cause.

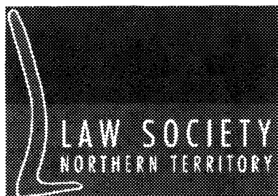
Meredith Day
Lecturer - CDU Law School①

(Endnotes)

[1] Brand, V., "Decline in the reform of Law Teaching?: The impact of policy reforms in tertiary education" (1999) 10 Legal Education Review 109 at p. 111

[2] ibid.

Why not use the Law Society's boardroom for your next meeting?



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