

THE USP COMMUNITY LEGAL CENTRE: COMBINING LEGAL EDUCATION AND LEGAL SERVICES IN A DEVELOPING ISLAND COUNTRY

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INTRODUCTION

Since July, 2002, the University of the South Pacific Community Legal Centre has been advising and representing clients in the Port Vila community. Each afternoon during semesters, the Legal Centre, which occupies a small premise in downtown Port Vila, accepts clients who receive advice and representation from final year LLB students under the supervision of a member of academic staff who has been admitted to practice in Vanuatu. The centre also has a full time coordinator who is responsible for the day to day administration of the Legal Centre.

The operation of the Legal Centre serves a dual purpose; it services members of a community who have little access to legal advice or to the justice system and it provides an opportunity for students to learn professional legal skills and ethics at a high level in a real practice environment.

The Community Legal Centre is, in many ways, not dissimilar to legal centres operated elsewhere in Commonwealth and common law countries. Students learn and are assessed for academic credit while learning practical skills and performing legal services in the community. The Springvale Community Legal Centre in Melbourne and the UTS Community Law and Legal Centre in Sydney are examples of legal centres based on a similar model in Australia. Other similar legal centres are located in the UK, Canada, the United States and elsewhere. Some of these centres focus on legal information, some on the actual representation of clients in disputes. Some focus on specific areas of the law and some operate in a more general legal context. More recently, in the developng world, programs which combine education and the provision of legal information and, or services have emerged. An example is the Street Law program in South Africa which, in the last 15 years, has expanded to a 16 universities.[\[1\]](#) While the USP Community Legal Centre is broadly similar to other centres, there are significant differences, in respect of the community in which the Legal Centre operates, the constraints under which it operates and what it does. These make the USP Community Legal Centre unique in the Pacific and perhaps in the world.

This paper provides an overview of the circumstances that shaped the development of the USP Community Legal Centre. It examines the present features of the Centre and the challenges it faces. Taking these into account, it examines some directions that it may take in the future. As an overview, this paper cannot cover in detail every topic relating to the Centre or to the course, Law Clinic, which is integrally linked with the Centre. Some topics such as ethics, the role of custom, and assessment are touched upon but could with stand greater scrutiny.

THE SOCIAL AND LEGAL CONTEXT OF THE CENTRE

In order to understand the challenges faced by the Community Legal Centre, it is important to know something of the unique social and legal context in which it operates.

Vanuatu is a country with significant differences from a developed country where legal clinics associated with Law Schools are common. There are approximately 200,000 people spread over an archipelago of some 83 inhabited islands. One third of the population is under the age of 15 years and the growth rate is 1.66%. The basic literacy rate of those over the age of 15 is approximately 53%. Education is a privilege enjoyed by those whose parents can find a sponsor or have the money to pay for it. There are three official languages, English, French and Bislama as well as more than 100 local languages. The economy is based primarily on small scale and subsistence agriculture. Vanuatu has no income tax and is an offshore financial centre. The population of Port Vila is estimated to be approximately 40,000 and is growing quickly due to both natural growth and the arrival of people from other islands, many of whom reside in one of squatter settlements around the urban area.

The government, which is based on the Westminster parliamentary system, is an unstable and shifting coalition of parties. Party politics is not differentiated by any discernible policy. There is an Ombudsman who has several functions including the investigation of complaints of maladministration and misconduct by leaders.^[2] Government services to the people are minimal compared to developed countries.

The legal system

There are three Supreme Court judges: two ni-Vanuatu and one who is a term appointment sponsored by the UK government. There are approximately 6 magistrates, most of whom do not have a formal legal education.

The private legal profession is small, largely conservative and has no statutory autonomy. There is no professional code of practice in Vanuatu. Lawyers do not carry professional indemnity insurance. The admission of lawyers to practise is governed by the Law Council exercising its powers under the Legal Practitioners Act Cap 119 and the Legal Practitioners (Qualifications) Regulations No 22 of 1996. The Council consists of the Chief Justice, the Attorney General and a legal practitioner who is appointed by the Minister responsible for Justice. The Law Council has power to admit and supervise legal practitioners.^[3] The Regulations of the Legal Practitioners Act provide for the hearing of complaints about lawyers and their discipline by the Law Council. However, the disciplinary rules are convoluted, largely unworkable and there is no provision that the finding of such a committee be made public.^[4] The disciplinary rules have not been utilized in recent memory and no lawyer has been disciplined by the Council.^[5]

Until recently, members of the legal profession have been almost exclusively expatriates from Australia or New Zealand. Until the establishment of the Law School at USP in 1996 the few indigenous ni-Vanuatu lawyers received their legal training in Papua New Guinea, New Zealand or Australia. Most of these lawyers have taken employment within the Public Service. Increasingly USP law graduates, most of whom have completed a post graduate professional qualifying diploma in Fiji, are entering the legal profession, in both the public and private sphere. The bulk of the lucrative legal work in the commercial and banking sector which originates from the offshore financial centre continues to be handled by the expatriate lawyers while most of the remaining work is handled by ni-Vanuatu lawyers.

The Constitution provides that French law which pre-existed independence, like UK law, still forms part of the law of the Republic except where it has been repealed or is incompatible with the independent status of Vanuatu.^[6] However, French laws are not relied upon in actual practice due, in part, to the fact that there are no fully admitted francophone lawyers or lawyers trained in civil law in Vanuatu.

The judicial system in Vanuatu includes the Supreme Court and Magistrates Court. There is a Court of Appeal which sits twice a year. It comprises judges of both the Supreme Court and superior courts from other countries.^[7] There is also an Island Court and a Land Tribunal. However, lawyers are not permitted

to appear in either court and therefore these function largely outside the scope of the legal profession.

Legal Fees and Legal Aid

The Public Solicitor of Vanuatu is a constitutional office holder whose mandate is to provide legal assistance to “needy people”. Section 5(2) of the Public Solicitor’s Act provides that the term ‘needy person’ is to be ‘interpreted in relation to each particular case and, without limiting the generality of this expression, account shall be taken of the means of the person to meet the probable cost of obtaining alternative legal assistance, the availability of such assistance and the hardship which might result to the person if compelled to obtain legal assistance other than by the Public Solicitor.’ This would comprise probably 95% of the population. Yet the office consists of two lawyers, two secretaries and an Australian Youth Ambassador. The backlog extends over 10 years. Priority is given to criminal clients which means that many “needy” persons with family and civil cases are unable to obtain representation. Conflict of interest prevents the public solicitor from representing two needy people on different sides of the same dispute.

Legal fees for legal work vary considerably from practice to practice, often depending on whether the practice is in Vanuatu or an ex-patriate. Average hourly rates range from 2,000 vt to more than 30,000vt.^[8] A private lawyer typically charges 20,000 vatu per hour. There are no formal para-legal personnel employed in the public or private sector although some legal advice is given by trade unions and the Labour Office.

The legal system is not accessible to a large majority of the population. The cost of commencing a civil action in Magistrates Court is 8,000 vatu. Minimum wage is 16,000 vatu per month. A person employed full time for a month at minimum wage could afford 48 minutes of a lawyer’s time. He or she would have to work for another couple of weeks to be able to afford fees for filing a claim.

Apart from the judiciary in Port Vila, there is one Supreme Court judge and a magistrate who are located at Luganville, Vanuatu’s second city, located on the island of Espirito Santo. Judges and magistrates occasionally go on circuit to three or four other centres on other islands. A large proportion of the population simply lives beyond the reach of the formal legal system, being governed by traditional chiefly authority.^[9]

GETTING THERE – THE EVOLUTION OF CLINICAL LEGAL EDUCATION AT USP

The University of the South Pacific is owned by and serves 12 countries in the South Pacific region. USP’s main campus is in Suva, Fiji. However, there are extension education centres in all countries and satellite campuses in Samoa and Vanuatu. The School of Law is located at the Emalus Campus in Port Vila, Vanuatu.

The USP School of Law is relatively small with only a dozen members of academic staff. This limits the number of optional courses which can be offered at any one time. There are approximately 200 full time on campus law students in Port Vila although there are several hundred taking courses by distance education.

A major focus of the Law School in recent years is the teaching of LLB courses by internet and other modes of distance education. This is understandable, given the vast area that the university covers and the increasingly available technology for the delivery of such courses. This focus however, does not take into account learning many types of legal skills, particularly those such as interviewing, negotiation, and legal problem solving in a real life context. Given the priorities of the Law School, there has been no specific resources allocated to the development of a Community Legal Centre.

There appears to have been no mention of clinical legal education when planning for a law degree at USP began in 1994,^[10] In 1995, a senior lecturer from Sheffield Hallam University in the UK, Richard Grimes arrived on the scene for a two year appointment as Director of the newly established Institute of Justice and Applied Legal Education (IJALS) which is part of USP and is located in Suva. Richard advocated that both the law degree and a subsequent professional qualifying course include significant components of skills, particularly those gained in a practice setting.^[11] He spear-headed an initiative to approve an optional undergraduate course in the LLB program known as Law Clinic.^[12] The course went through the necessary levels of university approval in order to be structured in a way which did not require a final exam. This course was included in the 1997 USP calendar where it was described as a live client course. A new position known as Law Clinic Supervisor was created and an appointment made. However, apart from the Law Clinic course and the Law Clinic Supervisor being appointed, it took several years before the course conformed to its initial description and a community legal centre was created.

The Law Clinic course was offered between 1997 and 2002, but in a placement model whereby students spent time in various private and public law offices in Port Vila.^[13] This arrangement was due to the barriers which prevented the implementation of a live client practice setting. The major barrier was an inability of any professional academic member of the USP Law School staff to obtain admission into practice in Vanuatu. Although several members, all with overseas legal practice experience attempted on a number of occasions, and although the regulations of the Legal Practitioners Act provided for admission – either conditionally or unconditionally on a discretionary basis - the Law Council did not see fit to admit any member of the USP staff. Working through this process took years. Without a qualified lawyer to supervise students, a live client community legal centre could not operate.^[14]

In 2001, the Legal Practitioners Act was amended to provide for the registration of lawyers on staff within the USP Law School.^[15] The amended Act provides that “academic lawyers” at the Law School of the University of the South Pacific may apply to the Law Council to be registered as legal practitioners. Admission to practice in a jurisdiction other than Vanuatu qualifies a member of the USP staff to become an academic lawyer. Only persons attached to or employed by the Law School as a law lecturer or a tutor of the law program at the Law School are eligible to be registered and, once registered, cannot charge fees for any work done. The amendment provides further that any application for admission as an academic lawyer must be for purposes related to transferring practical legal skills to the students.^[16] Five members of staff applied for and were admitted as academic lawyers in June 2002.

Although the amendment to the Legal Practitioners Act and the possibility for members of USP staff to be admitted created the possibility of a live client clinic as it was originally intended, a number of practical challenges remained. One factor was the effect that the elapsed time had on momentum and priorities within the law school. Long term plans have, for several years, focused on distance education and access to laws through the internet. Skills training was included by various lecturers within the context of other subjects. With a small law school of only 12 academic members, the ability to provide the human resources to manage a legal centre presented a challenge.

In the allotment of course loads among the academic staff of USP, the Law Clinic course has a weight equal to any other course. Although the Law Clinic Supervisor is officially given responsibility for the incorporation of legal skills into the LLB program, the position had been largely subsumed into an ordinary lecturer position, with responsibility for teaching other courses, some of which had no particular skills component.

After the amendment of the Legal Practitioners Act, and the application for admission by members of the law school academic staff, events accelerated. The Vanuatu Legal Strengthening Project, a three year project of the Australian Agency for International Development (AUSAID) had, in early 2002, been

underway in Vanuatu for over a year. This project involves various forms of assistance to the Public Prosecutor, the Public Solicitor and the Attorney General. After several meetings between the Law Clinic Supervisor and representatives of this program, funding was arranged for the rental of a small downtown premises for a legal centre. From the AUSAID perspective, support for the Legal Centre was seen as a way to assist with the strengthening of the Office of the Public Solicitor. AUSAID initially sought to have the Legal Centre incorporated physically within the Public Solicitor's Office. Fortunately, from an educational perspective, the limited space in the Public Solicitor's Office prevented the Legal Centre from being initially located under the same roof as the Public Solicitor.

A fundamental priority for any live client program that involves law students is to expose students to practice standards of the highest level. This is particularly so at USP where many newly qualified graduates will return to their country and assume a position of immediate authority where an experienced mentor cannot be taken for granted. Those around them will frequently assume that they know all there is to know about practice.^[17] The Public Solicitor, 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.

From the perspective of AUSAID, any educational benefit of the Legal Centre for students or its use as a vehicle for legal education generally was incidental. Additionally, AUSAID required that funding be based on assumptions that money be spent on something which would eventually be self sustaining. It was seen as an adjunct to the Public Solicitor's Office, located in another office simply because of the inability of the Public Solicitor to physically accommodate the legal centre under the same roof. Yet, without AUSAID money it was clear that funds would not be made available in the short term to set up a legal centre. AUSAID clearly expected that when the Public Solicitor moved into new, larger premises (another part of the Legal Strengthening Project which had been in the works for some time) the Legal Centre would move in as well. ^[18]

Because the community legal centre did not fit within any dedicated allotment of resources (human or financial) from the Law School and all staff positions were fully committed to other roles, it was necessary look elsewhere for a coordinator of the centre. The Australian Youth Ambassador program was already providing a Youth Ambassador to the Law School to work with legal literacy initiatives, with mooted programs and with the Law Clinic students (in placement model). The Youth Ambassador in place in 2002 became the coordinator of the Legal Centre. This position is currently filled by another Youth Ambassador, an experienced Australian lawyer.^[19]

With premises, a coordinator, some funding for office equipment and several recently admitted academic lawyers who were prepared to supervise students, the major building blocks of a legal centre were finally in place. With support from AUSAID, the USP Law School made a commitment to run the Law Clinic Course in both academic semesters rather than in only one as had previously been the case. ^[20]

The legal centre was officially opened on 19 July, 2002 by the Attorney General of Vanuatu, Ham Bulu. The opening was attended by the Chief Justice, the Public Solicitor and his staff, several members of the local legal profession, the Australian High Commissioner, representatives from AUSAID and staff and students from USP.

UP THE LEARNING CURVE

Without any practical experience in the Vanuatu legal system, a group of 15 students and 4 part time supervisors, including the original Law Clinic Supervisor began to accept clients from the day the Centre opened its doors. The centre's newly created database, filing system, forms and rudimentary precedents all began to be put into use.

As soon as it opened, the Legal Centre welcomed anyone who happened to walk in. Free legal literacy brochures on display were available for the public. Students were permitted to provide legal information on a summary basis. However, in order to accept a person as a client, they were required to present a written referral from the Public Solicitor. From a pedagogical point of view this created a need to distinguish between legal advice and legal information. Students quickly grasped the essential difference and handled visitors appropriately.

There are two reasons for the Legal Centre to accept only clients on referral from the Public Solicitor. The first relates to the structure of the USP academic year which consists of two 15 week semesters. Because the Legal Centre has been custom built around a one semester course at USP, the continuity of files between semesters and over the Christmas holiday was a concern. There was no guarantee that USP could provide any resources to maintain conduct of ongoing files when the Law Clinic course is not running. It is professionally irresponsible to take on cases and, after 15 weeks to give the files back to clients to represent themselves, get a private lawyer or wait until the Legal Centre reopens in several weeks or months. This problem has been solved by forming an association with the Public Solicitor of Vanuatu. The Public Solicitor gladly refers cases to the USP Community Legal Centre on the understanding that, if necessary, clients can be referred back during times when the Centre is closed or if it becomes inappropriate for students to handle the matter. The second reason for accepting only clients on referral from the Public Solicitor is, as already stated, its need for strengthening and support.

However, there is also a drawback in accepting only clients referred from the Public Solicitor. As an adjunct of the Public Solicitors Office, the Legal Centre has a conflict of interest if it represents a client where the Public Solicitor represents the other party. The arrangement with the Public Solicitor therefore does nothing to alleviate the problem which exists in Vanuatu when one party is represented by the Public Solicitor and the other party, who is entitled to the same representation, is practically without any recourse.^[21]

Packaging the Law Clinic course into a live client experience also presents a challenge from an educational perspective. USP operates on a semester system. There are fifteen weeks in a semester. The first week of the Law Clinic course is taken up with orientation. One week is a mid semester break. There are several public holidays each semester. This leaves roughly 12 weeks of attendance, service and learning at the Legal Centre. This is a limited time during which to build a foundation of procedures and practice skills and to develop them. It is doubly challenging given the mandate, from the donor's perspective to deliver a valuable community service.

The time available during a semester, the academic background of the students, the practice background of the supervisors and the priorities of the Public Solicitor all affected the type and amount of work that the Legal Centre undertook. The Public Solicitor who was under pressure from a number of fronts expressed a preference that the Legal Centre focus on civil and family cases. Narrowing the scope of work done by the students at the centre in this way was entirely acceptable given the steep learning curve that not only the students but also the supervisors and coordinator would be engaged in.

Preparing the students

Although Civil Procedure is a course at USP, it is an elective and has not been offered since 2000. The Legal Centre handles only civil matters. This means that students begin learning civil procedure at a very basic level at the same time that they are representing clients. In some ways therefore, the Law Clinic course is a course in applied civil procedure. Making a virtue of necessity, this also becomes a justification for focusing many of the learning skills which focus on the early stages of a civil case. These include interviewing, letter writing, completing pleadings, drafting affidavits and initiating proceedings. Other skills involve legal research into substantive areas, particularly liability and damage issues, witness management, quantifying damages and some negotiation. Issues relating to evidence and proof also arise

at an early stage and the clinical experience provides a basis for this. These areas provide a major focus of the course.

At this stage in its evolution, the Legal Centre does not regularly represent people in court. From an educational perspective advocacy in court is not necessary. As indicated, a very rich learning environment exists in the stage between initial interview and the close of pleadings. From a competence perspective, it is easier to do a good job if learning is focused on one stage of proceedings, particularly when the time frame is 15 weeks. Exceptions exist. Some applications such as an ex parte application for a domestic violence protection order move from initial interview within a matter of hours or days. These are well within the competence of students and several have enjoyed success in representing clients in respect of these orders. As more files mature and as the Centre becomes more experienced with other aspects of practice, further court applications can be anticipated.

Exposing students to a law practice and expecting them to learn and at the same time provide a professional service to the public through legal representation within 15 weeks makes it necessary to “front load” the course with instruction. Before any student begins work with real clients or files, it is mandatory that the student attend and participate in 4 intensive training sessions. These provide a basic understanding of the work of a lawyer and provide some assurance that students will recognize the essentials of legal ethics and professional practice before they start work.^[22]

The Law Clinic students are divided into 5 “firms” of 3 students each. Each firm is assigned to be on duty at the Legal Centre one afternoon of the week. Supervisors also supervise on a specific day. The only two people whose responsibilities cut across all of the firms are the Law Clinic Supervisor who coordinates the course and directs the Centre, and the Legal Centre Coordinator. From a client’s perspective there is a firm of 3 students who are available only on one day of the week. Clients see only members of that firm. Although some referrals and communications on behalf of clients pass from firm to firm during the week, essentially firms operate largely as discrete entities in a parallel fashion. Within firms, students are encouraged to allocate work among themselves and to cooperate as a team. Different supervisors take slightly different approaches to the ways that they guide students as they proceed with the conduct of a file.

The Law Clinic class (that is all 5 firms) meets together once a week for a two hour on-campus session. This session is flexible in its content and serves a number of purposes. Generally however, it is an opportunity to share experiences and learning. There is little need to use hypothetical examples to illustrate ethical issues, procedures or substantive issues. The work of the firms during each week provides more than sufficient points for discussion. As the semester moves along, these sessions revisit cases specific issues in cases for progress reports. Students often make presentations as firms – outlining for the rest of the class various issues that they are dealing with. Feedback from other firms is solicited. Students are keen to share the experiences of their files and to learn of what other firms are doing. Guided by the course coordinator, this discussion often becomes a fruitful problem solving session, integrates the work of the various firms and gives each student an overall perspective on the work of the Centre. In many ways, these sessions resemble some actual law partnerships where, at the end of the day partners and associates gather in a collegial atmosphere to discuss cases. In order to maximize the experience, it is best for the coordinator to resist the urge to control the exact content of each weekly session.

Assessment of students is based on a journal, participation at the weekly sessions, participation at the Legal Centre, and the production of a legal literacy brochure (discussed below). Assessment is an issue which is especially challenging without any final exam and where each student learns from a different experiential base.

Adjusting to Practice

The working relationship with the Public Solicitor has been cordial with few complications in the referral of clients. Clients are referred to the Legal Centre on a daily basis – initially at a rate of 2 per day. Intake is adjusted for each firm from week to week in accordance with its capacity. Quality of work is always stressed over quantity. The number of potential clients is more than the Legal Centre can deal with. Despite the short semester, only a few files have been referred back to the Public Solicitor at the end of semesters. Files are either closed or are able to be maintained by staff and the coordinator during semester breaks.

The Centre opened with only a few rudimentary forms and reference materials. Part of the learning process for students and staff has been the development of procedures within the Centre. Students are encouraged to offer suggestions for the better administration of the Legal Centre taking into account professional responsibility to clients, the nature of the practice and efficiency. This has been a useful learning experience. As the Centre enters its third semester, the forms and file precedents are becoming more refined – but are not considered to be final. The overall approach to file management is that the students should learn to manage a caseload with meticulous care. Anyone should be able to open any file and determine what the file is about, what has to be done next and when it must be done. Recognized procedures are adhered to and a central office diary contains dates to bring files forward, filing dates, limitation periods etc.

An interesting feature of the USP Community Legal Centre is that it is overwhelmingly made up of expatriates. Of the 15 students, 5 supervisors and coordinator, only 3 people during the first semester of 2003 were Ni-Vanuatu. Most of the students come from other Pacific Island Countries and the ex-patriate supervisors are from Canada, Australia, New Zealand and Nigeria. This has created a need for those involved in the Legal Centre to adapt to learn not only the law in Vanuatu but also gain insights into the society in which it operates. It is also necessary to address the issue of standards. Practice standards vary in Vanuatu and across the Pacific. Law Clinic students will find themselves in a variety of different professional circumstances in a variety of countries. The quality of legal services varies enormously. Legal services in one country might not be appropriate or attainable in another. It is necessary, when dealing with the USP Community Legal Centre to establish some ideal standard that should be met. This standard, insofar as professional ethics and client service goes has been set at that which would be expected of a lawyer in a country like Australia or New Zealand.^[23] However adjustments are required and anomalies exist.

For supervisors perhaps more than students, it has taken some adjustment to “Pacific time”, the mentality that things will happen sometime but don’t need to be hurried. This mentality permeates the legal and judicial system. It takes more time than expected for letters to be answered, phone calls to be returned and meetings to be arranged. Dealing with these exigencies presents a learning challenge to students who have had to be encouraged not to simply “go with the flow” which could result in next to no progress on a file in a 15 week semester, but to move the file along and think of ways to deal with communication problems. In this way, the file management of the Legal Centre is at variance with its environment. Students have responded well to the challenge to be pro-active in case management.

Many clients have no postal address and no telephone. Most of the streets in Port Vila have no names. Some clients live in villages in remote islands. They make a trip to Port Vila and then return or have a relative come to seek representation on their behalf.^[24] The difficulty in locating and communicating with clients is a challenge that most lawyers in more developed countries do not have to deal with. After “losing touch” with several clients early in the operation of the Legal Centre, some elaborate ways of maintaining contact with clients have been developed. Fortunately, many clients turn up each week to inquire about their files in any event.

Language presents a challenge to the effective operation of the Legal Centre. The lingua franca of

Vanuatu is Bislama, a type of pidgin English. Spoken quickly, it sounds to an English speaker like a completely foreign language. The spoken language among staff and students at the Legal Centre is English. Only a minority of clients are fluent in English. Only a minority of students (those from Vanuatu - mostly ni-Vanuatu and Solomon Islands students) are fluent in Bislama. Dealing with the language gap has been a challenge. The students who speak fluent Bislama are distributed among the firms so that each firm has at least one student who is fluent.^[25] The remaining students and supervisors are able to speak some Bislama.^[26]

The situation is different with written communications. Initial retainer agreements and information are available in English and Bislama. However, all other written communications are in English. This is necessary even in cases where the client, student advisor and the client speak Bislama as it is necessary for a supervisor to approve all correspondence. Corresponding in English is consistent with the practice of the Public Solicitor and seems to present relatively few problems to clients who are either able to read English or have someone who can translate it for them. In most cases where written advice is being given or instructions are being taken, written communications are backed up by oral confirmation in any event. The Legal Centre is unable to offer services in French (apart from legal literacy brochures). On the other hand, no-one has had to be turned away because of this.

The “foreign” face of the Legal Centre has, for the most part, not affected relationships with clients. Clients seem to be pleased to be represented at all and nobody has resisted being interviewed or advised by a law student who is not from Vanuatu. However, this is not universally the case when it comes to parties opposed to the Centre’s clients. In one contested case over ownership of land, the party opposed to the Legal Centre’s clients challenged the Legal Centre’s legitimacy in being involved in the matter at all. The opposing party wrote scathing attacks on the legitimacy of foreign students and foreign supervisor to be involved in the dispute in any way. Repeated written and oral communications focused on this issue. Fortunately it did not appear to affect progress with the case. However, it is something that the Legal Centre can expect to encounter occasionally, particularly in relation to issues which relate in some way to custom, as many land disputes do. Presumably private ex-patriate lawyers would encounter the same phenomenon occasionally.

The work of the Centre – some features

The introduced legal system in Vanuatu is not as universally applied or as taken for granted as is the case in developed countries. Customary law retains a large role and, in some ways conflicts with the introduced legal system. This is despite several Constitutional provisions which, on their face create a contrary impression. Among them is Article 51 of the Constitution which provides:

Parliament may provide for the manner of the ascertainment of relevant roles of custom, and may in particular provide for persons knowledgeable in custom to sit with the judges of the Supreme Court of the Court of Appeal and take part in its proceedings.

However, this does not happen in practice. The Constitution also provides for a National Council of Chiefs but this council is given only consultative duties and does not have any legal powers.^[27] However, although their authority is not part of the legal system, the decisions of Chiefs carry considerable weight; sometimes more weight than decisions of the courts. People are generally slow to ignore the decision of a Chief. The work of the Legal Centre repeatedly touches on the conflict between the introduced legal system (within which the students exclusively work) and customary practices and authority. This presents interesting practical and ethical problems.

One prevailing custom in Vanuatu is that of bride price. When a woman is married in custom (which often occurs along with a legal marriage), tributes in the form of traditional goods and more recently in the

form of cash are paid to the family of the bride. Chiefs assume authority in connection with setting bride price and in dealing disputes relating to them. Where an agreement is made for the marriage of a woman, an agreement about bride price is made. The bride is not a party to the agreement. She is the consideration. From the perspective of the legal profession, an agreement about bride price is not legally enforceable. However, in practice these obligations are taken seriously and, when a couple separates, the husband or the husband's family usually seeks a return of bride price. Many such disputes find their way to the door of the Legal Centre. It is difficult to explain to a claimant in such a dispute that although an obligation to return part or all of a bride price is widely recognized, the Legal Centre cannot represent him. Such a client is usually referred to the "Chief" to deal with the problem.

Similarly, in the context of child custody disputes, custom is an important part factor. Custom within the country often dictates that upon a marriage break-up, a child will go with one or other of the parents. Advising clients concerning custody involves assessing the extent to which this factor is important in assessing a child's best interests or the extent to which it can be weighed in competition to a child's best interests. Family legislation is not helpful. Precedents are not plentiful. Notions about rights to a child feature also as justification in cases where a parent or a parent's relatives abscond with a child to another island. Often Chiefs are the best resort in dealing with these types of disputes.

Another practice demonstrates how custom and modern lifestyles can mix and result in unique legal problems. In custom, children are sometimes given to other members of a family who have no children or have no children of a particular sex. In one such case, a woman in a de facto relationship gave her baby son to a niece. The niece entered a common law relationship. This ended with the niece's de facto husband taking the child to his island. The birth mother sought the return of the child. The matter was finally sorted out by the Chiefs in combination with correspondence from the legal centre on behalf of the mother.

Not uncommonly Chiefs order a separated woman to return to her husband, even in the face of abusive treatment. The Legal Centre has been involved in such cases on behalf of the woman. In one case, the woman unhappily complied with the Chief's order with the husband and instructed the student advisors to stop working on her case despite being advised that the Chief had no legal authority to make such an order. There is no ethical dilemma in this as long as the woman is advised of her legal rights. However, what about the case of a man who is told that he has no legal rights to force his wife to return but that he might consider going to the Chiefs, knowing that this might result in an order that the woman return to an abusive relationship? Does this entail an ethical issue for a lawyer?

Port Vila has very few places to refer clients apart from the Chiefs, ministers and priests or family members. This places it sharply in contrast to most legal centres in larger jurisdictions.^[28] Vanuatu has no psychiatrist or mental health facilities, no place to lodge consumer complaints, no tenants' rights groups, no groups for seniors or welfare rights groups. Granted, many of these would be irrelevant in Vanuatu where there is no workers compensation and no welfare. On the other hand there is no place to refer someone who is so upset he is threatening to get a gun and kill his de facto wife's current de facto husband for failure to reimburse him for the money he spent on her during 12 years.

Many times the only referral is the Chiefs. They are a network largely invisible to the legal system. They have developed some dispute resolution systems within Port Vila and traditionally have done so throughout the country. Chiefs commonly make orders which, on their face are unconstitutional. An example is an order banning someone from Port Vila and ordering the person to return to his or her island. Sometimes, kidnapping and forced travel are used to enforce these orders. Another example is where a Chief orders a woman to return, against her will, to her husband. The referral of a dispute to the Chiefs may be effective from the perspective of a client but at the same time raise ethical issues for a lawyer.

There is a prevalence of defamation claims, often about accusations of witchcraft or adultery. Despite a

lack of authorities, clients often approach the Legal Centre with a fixed idea of what their case is worth in terms of compensation. Student advisors are required to disabuse the client of the fixed notion and explain risks and uncertainties. Assessing general damages in Vanuatu is a challenging proposition. There are no domestic reference sources and few local precedents. General damages in Magistrates Court which has a monetary limit of 1,000,000 vatu (approximately A\$15,000) is a particularly difficult task. Assessing damages becomes as difficult as it would be if every case was to be held before a jury which was invited to assess damages “at large”.

Although most cases involve disputes of one sort or another, some involve only advice. In one case, a student advisor spent a significant amount of time during the semester attempting to definitively advise a client about the right to be buried at sea in Vanuatu. Although this case might be trivial in many people’s minds, it provided a rich learning experience for the student, not in terms of the ultimate answer (yes, it is legal to be buried at sea in Vanuatu) but in terms of working through the various government departments (Environment, Health, Fisheries), none of whom had a definitive answer.

Contempt of court does not necessarily have the same deterrence or consequences as it has in some more developed jurisdictions. Where, in Australia and other established countries, a finding of contempt for deliberately failing to abide by an injunction could be expected to have immediate and dramatic consequences, circumstances in Vanuatu are different. In Vanuatu, one cannot automatically assume that the threat of contempt is likely to have a deterrent effect or that the judicial system will react vigorously in response to contempt. This affects the tactics of dispute management and client advice.

Legal literacy initiative

Although at present they are largely co-extensive, it is important to distinguish the Law Clinic course from the Community Legal Centre. The course uses the Legal Centre as a vehicle for learning, but not entirely so. The course has other aspects, not directly associated with the Legal Centre. Each student in the course is required to engage in a legal literacy initiative which involves writing and producing a brochure. Each of the brochures deals with one legal topic of broad relevance or interest in the community. This obligation operates in parallel with the other work that students are involved with although some of the topics of some brochures coincide with cases which are being handled by their authors. This component of the course is given 25% of the overall assessed value.

Given the very low level of legal literacy and the limited access which ordinary people have to the justice system, the production of brochures serves a useful community function. The demand for brochures is great and is limited by resources. The topics of the brochures are broader than the types of cases which the Legal Centre handles and include such topics as rights of prisoners, right to vote, freedom of religion as well as topics which concern the types of cases which students handle such as custody rights, maintenance, how to make a claim in Magistrates Court etc. There are presently over 40 brochures available to the public.^[29]

The production of brochures requires students to identify a topic, devise a series of questions about the topic, identify an audience and produce text without legalese. It is something of a challenge for some students to resist the temptation to write in an essay format – some first drafts of brochures contain long descriptive sentence and even footnotes. Brochures are formatted and edited at USP and are produced using technology supplied by AUSAID as part of the Vanuatu Legal Strengthening project.

Brochures are available from the Legal Centre, from the Public Solicitors office and from various NGO’s in Port Vila and beyond. A recent initiative has been to place selected brochures in nakamals which are meeting places for conversation, and the consumption of kava, a mildly intoxicating drink widely consumed in the early evening by a large proportion of ni-Vanuatu, particularly men. Brochures disappear from the selected nakamals as fast as they are placed there.

FUTURE DIRECTIONS

The USP is on a solid footing after a year of operation. During the two semesters that the Legal Centre has been dealing with these and other issues, it has advised 163 clients and opened 89 files.^[30] In June 2003 it moved into the new Public Solicitor's Office, occupying one end of the building with a separate entrance, telephone and reception area. With the establishment of its own standards and a year of operation behind it, the Legal Centre's move into the new Public Solicitor's building does not create the same concerns as it did initially. The Centre has acquired credibility with the judiciary, at USP, in the community generally and specifically among the clients it serves. As it continues to evolve, there are a number of possible directions it might take.

As indicated, the course is 15 weeks long. If it was a year long course, students would have the benefit of engaging in more files from start to finish and be exposed to skills such as advocacy and negotiation that they are exposed to in only a limited way at present. As students in a 15 week course near the end of their semester, the increase in efficiency and productivity is quite noticeable. From a public service perspective, it is a shame that students who have just acquired a higher level of productivity should be replaced by students who are starting the learning process over again from the beginning.

Few lawyers are skilled at negotiation and some fail to appreciate the benefits of settlement. Consequently more cases than are necessary go to trial in Vanuatu.^[31] In the future, it is hoped that more emphasis can be placed on the skills of negotiation. This is something that could usefully be commenced in a simulated setting. Beyond negotiation, there is the possibility of alternative dispute resolution, particularly mediation. The civil procedure course at USP is called civil procedure and dispute resolution. When next taught, a segment could be devoted to activities at the Legal Centre. Law Clinic students, due to the conflict it would create cannot offer themselves as neutrals for the purpose of acting as a mediator. The rules of civil procedure in Vanuatu have recently been replaced with new rules. These new rules place considerable emphasis on the referral of disputes from the courts to mediation. Unfortunately, there is, at present a lack of people who can perform such services. The Legal Centre, or an associated centre could help fill this vacuum as part of training students.

As long as the Legal Centre retains a link with the Public Solicitor and accepts only referrals from that office, the Centre has a conflict in acting against any client represented by the Public Solicitor. It is possible that in the future, when the Legal Centre is able to ensure that its doors are open all year and therefore does not require a "safety net" to accept referrals when the Centre closes, that it can be made a fully autonomous practice. In at least some cases, this would provide a way of providing representation to an opponent of a party who is represented by the Public Solicitor. This could be accomplished without moving premises again due to the physical separation and lockable doors between the Public Solicitor's Office and the Legal Centre.

At present, the Legal Centre operates in an administrative limbo. Is it not part of the Public Solicitor although it is affiliated with it. It does not take orders from AUSAID although it receives funding from it, and there is no direction from the USP hierarchy of authority. Considerable latitude has been given by the School of Law. The creation and operation of the USP Legal Centre has been an exercise in adapting to what is possible. It is not the result of top down planning. As the Legal Centre is so bound up with the Law Clinic course, the Law Clinic Supervisor wears another hat as Director of the Centre. The lack of formal management structure has allowed for fast and flexible decision making. However, as it matures and takes on more roles, a more formal management structure is probably warranted.

It is possible for the Legal Centre to act as more than a vehicle for the Law Clinic Course. During June 2003, it accepted a student on placement from the Professional Diploma in Legal Practice course in Fiji during the month of June 2003. This is the month between semesters at the Law School and therefore the

acceptance of this student does not entail any capacity problems. Not only did it provide a high quality practice experience for the student but also provided the legal centre with practice capacity at a time when no student advisors were available. This form of synergy should be available in future years.

Much has been written about South Pacific law and legal systems including the role of custom. The work of the Community Legal Centre provides a useful window into the world where law, custom and lifestyles of ordinary people in the Pacific intersect. There are few such windows. Few private lawyers have the time or interest to study files and legal problems other than as a wholly expedient way of solving a client's legal problem. The Centre therefore provides a source of information which, when expressed anonymously may be useful for academics and policy makers.

CONCLUSIONS

The majority of students are sponsored by various donor agencies or by their home government. The overwhelming majority of them will find a career practising law in some capacity. This is a relevant factor in considering the value of a community legal centre at USP. This is especially so given the relative lack of experience among the indigenous legal profession in the countries of the South Pacific. Many graduates, sometimes without any practical legal training or professional qualifications, return to positions of considerable responsibility such as Public Solicitor or Public Prosecutor in their home country. They are understandably often unable to cope with the demands of such a position and, assuming they retain the position, tend to provide poor mentoring for those who follow them into practice. The more practical training that can be acquired before entering practice, the less this will be a problem. This, when considered in conjunction with the benefit to the Public Solicitor and the public of Vanuatu which occurs in conjunction with the students' learning supports a conclusion that the money injected into the Legal Centre by AUSAID represents an effective use of development funds, not just for Vanuatu but across the Pacific.

Student course evaluation forms for the Law Clinic course are overwhelmingly positive. The course has been oversubscribed since the opening of the Legal Centre. It is doubtful that the Centre will be understaffed by students due to lack of interest. It is hoped that supervisors will retain the interest and commitment to continue to volunteer their time. The Legal Centre has not sought publicity nor does it solicit clients. There is more than enough work to do in accepting referrals of civil and family cases from the Public Solicitor. Despite this, the USP Community Legal Centre is gaining recognition within Vanuatu as a useful means of blending community service and legal education.

[*] Law Clinic Supervisor, USP Law School, Director, USP Community Legal Centre. The author would like to thank his colleagues who have volunteered time to supervise at the Legal Centre and the Government of Australia for its support.

[1] 'Launched in 1986, Street Law has spread throughout South Africa has grown into a prominent human rights and legal education programme for all South Africans, primarily the youth. Designed to introduce the law and human rights to people of all levels of education, it provides a practical understanding of the law, the legal system and the constitution to all learners.' <http://www.csls.org.za/slintro.html> (Accessed June 2004).

[2] Despite widespread evidence and prima facie findings by the Ombudsman of corruption, there has never been a prosecution pursuant to an Ombudsman report.

[3] Section 5(1).

[4] Most people would probably require a lawyer to assist them through the process. It might be difficult to find such a lawyer in a close knit private bar. Also, the costs involved would increase the risks and reduce the overall efficacy of the process.

[5] A review of the *Legal Practitioners Act* and matters relating to admission to and regulation of legal practice in Vanuatu is currently underway under the initiative of the Attorney General.

[6] Art 95 (2) Constitution.

[7] Papua New Guinea, Fiji, Australia and New Zealand.

[8] One Australian dollar is equal to approximately 70 vatu.

[9] For a discussion of the fiction involved in characterizing Vanuatu as a country under the authority of a central government see William L. Rodman, 'The Law of the State and the State of the Law in Vanuatu' in V.S. Lockwood *et al* (eds) *Contemporary Pacific Societies: Studies in Development and Change* (1993).

[10] Guy Powles, 'Developments in Legal Education and Training in a Diverse Pacific; Criteria for Admission to Practice', Paper presented for the PILOM Conference, Apia, October 1994.

[11] See Legal Education in the South Pacific, Producing Tomorrow's Lawyers, A Discussion Paper, the University of the South Pacific, This paper was distributed widely in the South Pacific region. Copy in possession of the author.

[12] Richard Grimes, 'Culture, Custom and the Clinic' *Monash University Law Review* (1998) Vol 24, No 1, 1998 p 38. This article, effusive in its enthusiasm creates could easily create in a reader's mind the impression that the course operated in a live client practice as early as 1996.

[13] See Edward R. Hill, 'Clinical Legal Education in a Developing Island Jurisdiction – A Unique Environment' *Legal Education Review* Vol. 11 No. 2, p 253.

[14] Section 12 of the *Legal Practitioners Act* [Cap 119] provides for a potential fine of 40,000 vatu or imprisonment for up to 2 years for the offence of practising law without a license. It is a matter of speculation what the real reason for the delay in admission was.

[15] *Legal Practitioners Amendment Act* no 18 of 2001.

[16] There was no official policy discussion relating to this amendment and no member of the USP Law School was aware of the bill until the day before it went to Parliament where it was passed without a significant amount of debate. Ostensibly the amendment was seen as a way to allow lawyers at USP to fulfill a community need for legal services. The real agenda may be seen more as a way of preventing competition by a number of highly competent lawyers with the local private practitioners.

[17] A recent Public Prosecutor in Vanuatu was appointed straight from law school without even any professional qualifying course. He was given responsibility for all criminal prosecutions in the country.

[18] The existing office of the Public Solicitor was located in a very cramped and uncomfortable office in downtown Port Vila. It moved in June 2003 to a large colonial house overlooking the harbour. The house

has been completely renovated at AUSAID expense to provide suitable space to the Public Solicitor.

[19] An application for admission as an academic lawyer is pending for the Youth Ambassador who may, if admitted, assume some supervision duties in addition to coordinating the Centre.

[20] The Canada Fund, a small grant scheme for the Pacific administered by the Canadian High Commission in Canberra, also became a source of money for books, photocopier and the cost of translation of legal literacy brochures into French.

[21] A strict view of conflict may not necessarily be appropriate in the Pacific. Conflicts of interest in small jurisdictions occur with greater frequency than they do in larger centres. Ways of dealing with conflicts, short of refusing to act may be appropriate where it is the only way to ensure that everyone has access to legal advice or representation. The Legal Centre began with and maintains a very strict view of conflict of interest. However, it is foreseeable that policies will evolve to suit the realities of the jurisdiction without compromising the actual interests of a client.

[22] The sessions are: introduction to the course, legal ethics and professional responsibility, introduction to the legal centre procedures, and interviewing skills.

[23] What these standards are is not difficult to determine. Among the supervisors are practitioners from New Zealand and Australia, is Peter MacFarlane, who together with Stan Ross is the author of the Butterworths publication, *Lawyers' Responsibility and Accountability*.

[24] This practice provides a useful teaching opportunity regarding the need to act only on written instructions of a client and, if necessary to provide that instructions will be provided through an agent.

[25] This has some bearing on entrance criteria for the course.

[26] Bislama is a language that is close enough to English that with patience and care, it is possible for an English and Bislama speaker to communicate to some extent. This together with the fact that most Bislama speakers are fluent to some degree in English minimizes the challenge.

[27] Chapter 5 of the Constitution, Articles 29 to 32.

[28] The UTS Community Law and Legal Research Centre Referral Manual lists 325 different community and government agencies to which clients with specific problems can be referred.

[29] There is a limit to the number of topics which are relevant to a broad number of people. The brochure component of the course may be replaced by another assessable activity for the foreseeable future.

[30] As of June 27, 2003

[31] This statement is based upon conversations with members of the judiciary, and public and private lawyers in Port Vila.