

## PLACEMENT IN PLT: A THOROUGHBRED OR JUST A HACK?

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*Lawyers are at the front-line of the legal services industry. Generally, a lawyer is a person's main contact with the legal system .... Client satisfaction in legal matters depends to a great extent on the integrity and responsiveness of the legal profession.*<sup>1</sup>

### I INTRODUCTION

This paper seeks to reflect initial research arising out of a successful, competitive internal process for a Community Engagement Seed Grant at the University of Western Sydney (UWS) into Australian lawyers and the benefits or the burden the profession undertakes in the placement of a PLT student. It is a matter for the consumers of legal services to determine if placement is a thoroughbred or just a hack.

The Australasian Professional Legal Education Council (APLEC) and the Law Admissions Consultative Committee have jointly developed (2000 and 2002) competency standards for practical legal training for entry level lawyers. These standards seek to identify the observable performance required for entry level lawyers at the point of admission into practice, in a number of key performance areas. The competency standards have been drafted taking into account the following:

- National Competency Standards, policy and guidelines, National Training Board, Canberra 1991; and
- Heywood, Gonczi and Hager, A Guide to the Development of Competency Standards for Professions, Department of Employment, Education and Training, Canberra, 1992.

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<sup>1</sup> Attorney-General's Department, *The Justice Statement* Canberra, May 1995, 38.

The New South Wales *Legal Profession Admission Rules 2005*, Sixth Schedule Practical Legal Training, sets out the competency standards for entry-level lawyers in NSW. It is in the public interest and in particular the interests of clients that entry-level lawyers should only be admitted to legal practice and subsequently licensed to practice and held out to the public as legal practitioners if they have acquired the threshold competence to practice by completing appropriate academic legal, as well as post graduate practical legal training. Prior to admission future practitioners must have the knowledge, values, attitudes and skills required to practice law professionally and competently.

At the time of admission into legal practice, the admitting authority must be satisfied that the applicant can show evidence that they have achieved the requisite competence in skills, practice areas and values. See Table 1.

**Table 1: Competency Areas**

<b>Skills</b>	<b>Practice Areas</b>	<b>Values</b>
Lawyer's Skills Problem Solving Work Management and Business Skills Trust and Office Accounting	Civil Litigation Practice Commercial and Corporate Practice Property Law Practice One of: Administrative Law Practice Criminal Law Practice Family Law Practice And one of; Consumer Law Practice Employment and Industrial Relations Practice Planning and Environmental Law Practice Wills and Estates Practice	Ethics and Professional Responsibility

The LACC considers that practical legal training requires both programmed training and workplace experience. It requires an allocation of tuition hours and resources to curriculum which are appropriate as equivalent of:<sup>2</sup>

- A program of academic study at Graduate Diploma level which incorporates at least ninety (90) hours of workplace training; or
- Twelve (12) months (1800 work hours) of closely supervised full time indenture as an Article Clerk incorporating at least 90 hours of programmed training; or
- A non-award training course of at least six (6) months (900 hours) in which at least 450 hours is programmed training and at least 90 hours is workplace experience.

*'Programmed training'* means structured and supervised training activities, research and tasks with comprehensive assessment. When programmed training is delivered as distance training or in an electronic form it should be devised to require an input of time from an applicant of at least 450 hours. *'Workplace experience'* means supervised employment in a law or law related environment or equivalent unpaid engagement in such an environment.

The LACC further prescribes that those who teach in PLT courses or supervise the work of potential applicants for admission while they acquire competence in the relevant Practice Areas, Skills and Values should either have substantial recent experience practising law, or comparable relevant qualifications or experience. This is particularly important in light of the appointment of academics to law schools that often are well qualified in the theory of the law but have little or no practical experience in the law. Further, there is an identified alienation between those academics who are theoretically focused in their teaching and those who are charged with delivering practical legal training. This tension can be both positive and negative but is nevertheless a dynamic organic aspect of the modern Australian

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<sup>2</sup> <[http://www.austlii.edu.au/au/legis/nsw/consol\\_reg/lpar2005322/sch6.html](http://www.austlii.edu.au/au/legis/nsw/consol_reg/lpar2005322/sch6.html)> at 16 August 2007.

Law School which seeks to provide a quality basis of academic and practical training for future members of the legal profession.

*Lawyer's skills are an essential subject of attention in any academic study of law because those skills are part of the subject matter of 'the law' and to ignore them is to provide students with an unrealistic view of the areas they are studying.*<sup>3</sup>

Up until the mid 1970's in NSW Articles of Clerkship were the principal means of providing practical training to future lawyers. Regrettably, it became clear that all too frequently the training provided in Articles was inadequate and the profession needed to take control.<sup>4</sup> While Articles of Clerkship were problematic for the profession, the writers own period of Articles appear to be the exception to the norm.<sup>5</sup>

In 1974 the College of Law was established and provided the principal training of Lawyers in this State. Christopher Roper states that:

*Experience, however remains an essential element of the whole process for preparation for practice. The focus on the inadequacy of the training element of Articles meant that the experience element was unwittingly discarded. It needs therefore to be restored as part of the process prior to admission.*<sup>6</sup>

Roper exhaustively examines the chronology and the events of the various reviews and reports dealing with the changes in practical legal training over the years.

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<sup>3</sup>John Goldring, "Academic and Practical Legal Education: Where Next? An Academic Lawyer's Response to Noel Jackling and Neil Gold" (1987) *Professional Legal Education* 5, 105-106.

<sup>4</sup> John Goldring, "Academic and Practical Legal Education: Where Next? An Academic Lawyer's Response to Noel Jackling and Neil Gold" (1987) *Professional Legal Education* 5, 105-106.

<sup>5</sup> The writer had the privilege of being formally admitted to Articles in 1973 by the then Prothonotary of the Supreme Court of NSW, Mr John Noonan. His Master Solicitor was Devereaux L. Webber, Senior Partner of Walter Dickson & Co., Solicitors of Pitt Street, Sydney. Mr Webber was not only a professional in every sense of the word but a true gentleman and he and his two partners Forbes Pratt and Elizabeth Shirley were both generous with their time and encouragement.

<sup>6</sup> Christopher Roper The Practical Experience Component of the Proposed Professional Program in NSW. *Journal of Professional Legal Education* 10 n.2 235 at 236.

There are numerous references throughout that paper effectively reinforcing the value of work experience in a professional context.<sup>7</sup>

Work experience in a practical legal context is found in many other jurisdictions:

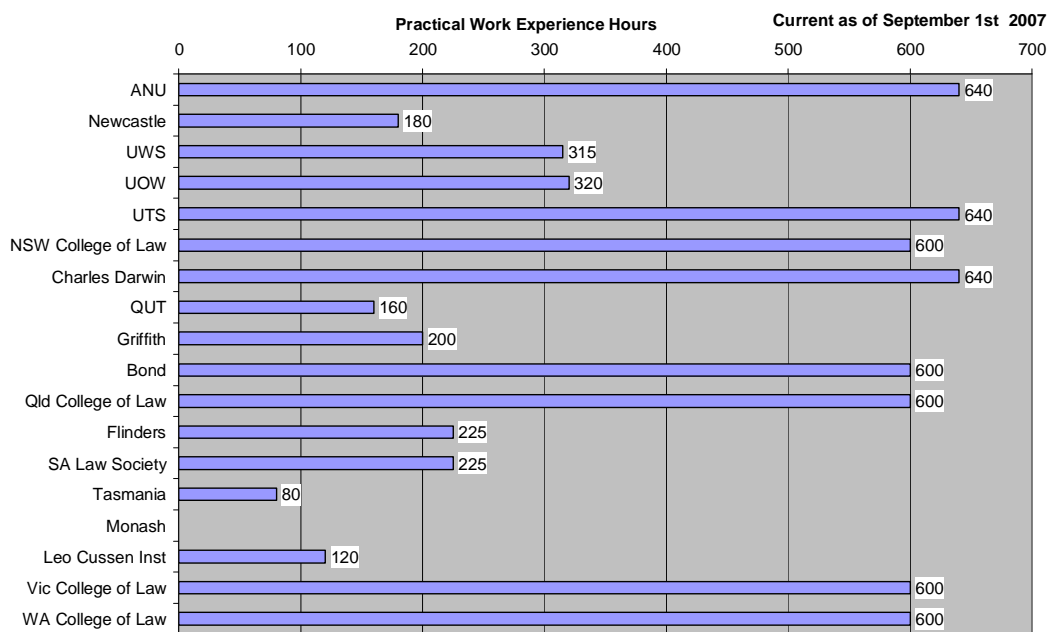
- England, Wales and Scotland - 2 years.
- Ireland – 3 years.
- Malaysia – 9 months.
- Ontario – 11 months.
- British Columbia – 9.5 months.
- Quebec – 6 months.
- New Brunswick – 12 months.
- Nova Scotia – 12 months.

Articles of Clerkship have effectively been phased out throughout Australia and the current position is the offering of Placement within practical legal training. The hours (requirements of placement) vary from state to state and it is apparent from perusing the content of Table 2 that there is little or no consistency in Australia for the time spent in undertaking work place experience. This needs further investigation particularly as we move towards a national profession. It is the author's view that future candidates for admission may effectively undertake a process similar to that known as '*forum shopping*' in determining which jurisdiction provides the best placement option.

## **Table 2: Practical Work Experience Hours**

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<sup>7</sup> Bowen Report 1979; The Martin Report 1964; Ayling and Costanzo 1984; Cooper 1985; Frank Riley 1989, Law Society NSW Reports; The Trew Report 1976; The Ormrod Report UK 1971; The Brown Report 1979; North and Purcell 1991.



Why is it that there is such a disparity between PLT providers and the placement hours to be undertaken by their students as identified in Table 2. Further research is necessary to explore this issue. Initial telephone or email enquiry to a number of PLT providers was less than helpful, very defensive boarding on obfuscatory. What do we have to hide? Surely our students, our colleagues and the public have a right to know how our students, their future lawyers are complying with the Placement requirements, as part of their overall competency to entitled them to practice.

It is also this writer's view that as we advance towards a national profession there is an imperative that the real benefits that are achieved through placement are consistent throughout all jurisdictions thereby ensuring a form of standardisation and hopefully consistency and subsequent competency arising through best practice. This view is supported by Lamb and Goldring<sup>8</sup> who state that:

*The purpose of undergraduate field placement is not to teach students how to be good Lawyers (or how to be Lawyers at all) – it takes more than study at University to do that, nor is it merely to provide 'observation' or 'work experience' it is a central part of the Wollongong LLB students learning experience. Its purpose is a pedagogical one, essentially to provide a practical perspective in the way in which law operates in society.<sup>9</sup>*

The Graduate Diploma of Legal Practice (GDLP) at the UWS (unit F7034 Professional Legal Practice – Placement) likewise is complimented by the other

<sup>8</sup> Ainslie Lamb and John Goldring Professional Placement Programs in Undergraduate Law Courses *Journal of Professional Legal Education* 14 (1) 109.

<sup>9</sup> Ibid 110.

postgraduate units in the GDLP and effectively forms the linchpin of bringing theory into a practical context.

Lamb and Goldring seek to identify how each potential placement is assessed<sup>10</sup> and likewise assessment is linked to the learning aims and objectives of the UWS workplace program. The writer is currently experiencing an ever-increasing student fixation with assessment. This in a practical context is difficult to sustain, particularly if meaningful and flexible programs are to be delivered in an ever shortening time frame. Nevertheless, in every forum, every effort should be made to ensure that assessment is meaningful and is related to the learning outcomes to be achieved. How this is done in a placement context is a challenge for those charged with maintaining and developing Practical Legal training Programs.

The reasoning behind professional work placement is a requirement for admission as a legal practitioner that those students who undertake an accredited professional training course must complete a component of workplace training. The Legal Practitioners Admission Board of the Supreme Court of NSW<sup>11</sup> determines the rules & regulations for admission to legal practice in NSW.

The Australasian Professional Legal Education Council (APLEC)<sup>12</sup> has determined that professional legal training postgraduate courses must have a minimum of 90 hours of workplace training experience. The UWS Professional Legal Practice unit of professional work placement satisfies this requirement. Workplace training experience means supervised employment in a law or law related work environment or equivalent unpaid engagement in such an environment.

The overall objective of the placement program is that placement is for the student to learn from the experience and to bring the theory of their undergraduate law course into a professional & practical context in legal practice.

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<sup>10</sup> Ibid 113.

<sup>11</sup> <[http://www.lawlink.nsw.gov.au/lawlink/lpab/ll\\_lpab.nsf/pages/lpab\\_index](http://www.lawlink.nsw.gov.au/lawlink/lpab/ll_lpab.nsf/pages/lpab_index)> at 2 November 2007.

<sup>12</sup> <[http://www.cleaa.asn.au/aplec/dsp\\_aplec.cfm](http://www.cleaa.asn.au/aplec/dsp_aplec.cfm)> at 2 November 2007.

No credit points are awarded or fees imposed in respect of the course component of F7034 Professional Legal Practice, towards any degree or award of the UWS. This in itself has created problems, with no credit points this unit is seen by students to be of little value in their pursuit of credit points to graduate. No fees – therefore no value to the Law Deans and Heads of Schools apparently obsessed with income streams and commercialisation opportunities. Also there appears to be anecdotal evidence that some students may either have delayed or abandoned completing the GDLP because they have not been able to secure meaningful placement. There needs to be further research undertaken in both these regards as it appears there are always competing agendas in higher education, particularly in the PLT area.

Placement is a component of the GDLP program during which students are required to undertake legal work in a law related environment under the supervision of a legal practitioner with a current practicing certificate. A candidate for the GDLP who has completed the Bachelor of Laws (LLB) program at the UWS must undertake a total of nine weeks workplace training experience based on five days per week and seven hours per day (315 hours). No previous work experience will be counted towards the 9 weeks.

The aims of professional work placement is to provide training in a professional work place which will build on the theory, knowledge, skills & abilities acquired in the law degree program and the GDLP program; Expose students to a wide range of professional & practical skills; provide students with access to legal institutions and professional organisations; facilitate career decisions; assist students to develop an appreciation of the professional lawyering role they will have when admitted as legal practitioners; assist students to develop an understanding of the competencies required in modern legal practice; Introduce students to the benefits of applying the principles of being a '*client centred*' as opposed to a '*lawyer centred*' legal practitioner; Introduce students to the benefits of working in a professional workplace that practices the principles of '*Best Practice is Good Practice*' and is committed to a quality assurance accreditation program in the delivery of legal and professional services; encourage students to learn and graduate with the capacity to

participate actively and responsibly in a diverse and changing world<sup>13</sup>; enhance and assist students understanding of the UWS Graduates Attributes<sup>14</sup> as approved by the Academic Senate, 12<sup>th</sup> September 2003.

The Objectives of the UWS Professional Work Placement are that on the completion of the professional work placement students should be able to: establish a client relationship with a focus on client identity, client needs and the context in which the client requires legal assistance; service client needs within their own limitations and the limitations of professional duties; efficiently and effectively manage time, files and office requirements; use well developed plain English written and oral communication skills; practice in a ethical, sustainable and professional manner; learn from experience; have a continuing commitment to collaborative and lifelong learning; be a reflective practitioner and demonstrate the UWS Graduate Attributes.

In order to be eligible for participation in the Professional Legal Practice professional work placement program, students must: satisfactorily complete the Legal Practice: Ethics and Management unit; and enrol in Professional Legal Practice for the session they will complete their professional work placement

The professional work placement component must be completed within 2 years of the completion of all the units in the Graduate Diploma of Legal Practice program. The writer as head of Practical legal training has granted an extension beyond two years to some students who have experienced difficulty in completing their placement. These difficulties include family bereavement, personal and family issues, personality conflicts with mentors bordering on sexual harassment and racial discrimination if not vilification.

Professional work placement can be undertaken at any of the following Australian workplaces: a private law practice; a government department or statutory authority which provides legal services; a legal department of a corporation; a community

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<sup>13</sup> *UWS Teaching & Learning Plan 2004-2008, Goal 5.*

<sup>14</sup> <<http://policies.uws.edu.au/download.php?id=189>> at 2 November 2007.

legal centre; a associate to a judicial officer of a Australian Court or Tribunal; a Barristers Chambers and such other workplace that has been discussed and approved by the Head of Program (GDLP) prior to the student's commencement of the placement.

The Head of Program (GDLP) may consider a students individual placement application on a case-by-case basis, applying the aims and objective criteria of the professional work placement program in determining the suitability of the placement. The placement unit of the GDLP will allow students to consolidate the professional education completed in their law degree and the GDLP. For those students who wish to pursue a special interest area in legal practice, this professional work placement component will extend the learning in the degree programs and the knowledge, skills and attitudes acquired in the GDLP program;

The Head of Program (GDLP) is available to assist students with professional work placement issues, including selection of areas of professional interest, professional responsibilities, Mentor selection and Professional Work Placement Report compliance issues. The Head of Program (GDLP) may consider the suitability of a students intended Mentor on a case-by-case basis, applying the aims and objective criteria of the professional work placement program in determining the suitability of the Mentor.

Resourcing constraints require students to organise their own professional work placement. Students must also organise their own Mentor and advise their Mentor of these Rules and explain to them their role as Mentor. A Mentor must be a Legal Practitioner with a current practicing certificate and has not been the subject of an adverse finding under the Legal Profession Act 2004 or the Legal Profession Regulations 2005 or any Australian or International equivalent legislation.

It is essential that students get '*on the job*' experience. With over 35 years experience in the law, experience does not always produce competence and that instruction, guidance and reflection are important.<sup>15</sup> Work places must provide a

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<sup>15</sup> The writer commenced his legal career as an article clerk in 1973.

Mentor who will provide work to do and supervise the students learning in the workplace. The Mentor will also provide constructive feedback when necessary and certify the student's completion of the professional work placement component of the unit. On completion of the professional work placement, the Mentor must sign the student's Professional Work Placement Report. There have been instances when this has become an issue requiring the intervention of the Head of Program (GDLP). For example, one mentor refused to sign the student's placement report on the spurious grounds that the student had not brought new clients to the firm during the placement period. Further, examples of harassment have involved mentors discriminating against the gender, age and religion of students. For example a male mentor commented that if the female student showed him her breasts then he would sign her placement report. Another male practitioner said to a female student of the Islamic faith that she would need to remove her veil if she wanted a placement position at his firm. Regrettably these occurrences are occurring more and more, but students decline in taking the matter further and choose to undertake their placement elsewhere without formalising a complaint.

The UWS academics and staff should: support the student in the GDLP; support the Mentor in the professional work placement; and support the professional development of Practical Legal Training in Australia. Regrettably this has not always been the case, as not all academics see value in their university undertaking PLT. They see PLT as a function of a '*trade*' or '*skills*' provider, definitely not their university. In the writers experience at the UWS there is a clear and ever present divide between main stream academia and those engaged in teaching the practical aspects of the law. Issues of course content, curricular reviews, staff resourcing, course funding, promotional opportunities are just a few of the ongoing challenges in the dynamic life of a law school delivering both the theory and the practical aspects of a legal education. This tension is not unique to the UWS; it had its genesis years ago when the teaching of lawyering skills left the profession and entered the tertiary sector.

Students will be learning by doing as well as by observing their professional Mentor. Students will also be reflecting on their own performance by completing the Professional Work Placement Report. The work placement professional Mentor

will informally assess a student's work in their Professional Work Placement Report. Students and Mentors are also invited, if they wish, to report to the Head of Program by email on their (students) progress at any time during the professional work placement. Progress reports are optional for the Mentor as appropriate. In particular, if any dispute arises between the student and the Mentor, either the student or the Mentor should report it by email to the Head of Program without delay.

All students in voluntary placements are covered by a personal accident and public liability insurance policy provided by the University of Western Sydney, only whilst they complete their studies. A letter can be provided by the Practical Legal Training Centre, School of Law on request, confirming the UWS Insurance arrangements.<sup>16 17</sup>

At UWS the Professional Work Placement Report must be annexed to the Rules and must be completed by the student personally in their own hand writing in either black or blue permanent ink. Regrettably there have been occasions of plagiarism of student's reports resulting in misconduct findings and the requirement for handwritten report is an attempt to reduce the '*cut and paste*' conduct.

The UWS placement model seeks to provide a form of self assessment in relation to the reflective Professional Work Placement Report which is subject to verification by the student's mentor. Regrettably there is little or no provision for feedback to the student by way of assessment as to whether or not the placement has been successful or not. The only yardstick in terms of assessment would appear to be universally taken as – '*does the student meet the competency standard or not*'? The lack of resources at the UWS for the GDLP generally makes it difficult to effectively measure the commitment given to the importance of placement as a learning experience. The writer is of the view that the LPAB is also unaware of the level of benefit or burden that placements have on the profession, as there is no clear research on this point to date. There is an inconsistency between the rhetoric

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<sup>16</sup> <[http://www.uws.edu.au/about/adminorg/academic/fo/insrnc\\_student](http://www.uws.edu.au/about/adminorg/academic/fo/insrnc_student)> at 2 November 2007.

<sup>17</sup> <<http://careerhub.uws.edu.au/documents/articles/DIYWorkExperienceGuide.pdf>> at 2 November 2007.

and the reality in the feedback, assessments and learning experiences achieved in placements from a UWS perspective. For example, some students seek out paid placement work whilst others can only secure unpaid placement work and their feedback reflects this difference. Those in a paid position appear to experience greater accountability in what they do, whilst there is a more casual approach to the work undertaken in the unpaid positions. Assessment is the same for both groups, but is this fair and equitable? It is a matter for urgent review, there needs to be a better way to measure the outcomes of placements.

The issue of valid assessment in PLT placement is an issue that is yet to be fully researched and understood. This is particularly important as we move towards a national profession.

*It is not a simple task to develop lawyer competence. A competent lawyer must be able to reflect the values of the profession and be skilful in a number of personal and professional areas in what is an increasingly specialised and competitive market.*<sup>18</sup>

Associate Professor Kay Maxwell states that:

*Learning in PLT involves acquiring not only a knowledge of an ability to perform defined legal tasks but also an understanding of an ability to function within the legal professional culture.*<sup>19</sup>

Maxwell identifies that:

*This cultural or tacit knowledge is most effectively acquired through personal experience<sup>20</sup> which, for many part time and distance students, will be acquired through work experience undertaken while studying. However, for students without workplace experience, “personal experience will be limited to the experience that they receive in the simulated work environment that is provided in the PLT program. Other opportunities to*

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<sup>18</sup> Review of Practical Training in New Zealand, p32.

<sup>19</sup> <<http://ausweb.scu.edu.au/aw04/papers/refereed/maxwell/>> at 16 August 2007.

<sup>20</sup> Robert J Sternberg, et.al (2000). *Practical intelligence in everyday life*. Cambridge; Cambridge University Press.

*acquire knowledge of the legal culture, for example by active observation<sup>21</sup> and social interaction,<sup>22</sup> are also necessarily based either in the workplace or in the physical educational environment.*

It is this writer's view that the requirement for students to undertake a formal placement as part of their practical legal training provides this 'personal experience' which Maxwell describes and is what Thornton<sup>23</sup> refers to as the 'social' in far more complex pedagogical terms of the learning experience. Interestingly, Maxwell in commenting on creating a sociable environment as part of PLT refers to both on campus training as well as work experience. It is the writer's view in particular, that the work experience or placement provides an invaluable opportunity for students to undertake the social context of conversation in the broadest possible sense.

*What is needed for good learning is a wide range of deep 'conversational' exchanges which involved authentic practice and rich discussions among teachers and groups. As well, individuals need to be engaged in similar 'conversations with self' as, for example, through self reflection and self monitoring of activities.<sup>24</sup>*

The term social is not simply limited to the pursuit of worldly pleasures alone, but a deeper understanding of the interconnectedness of learning to practice in which this writer believes is achieved in a meaningful and purposeful placement.

Are PLT providers alone in dealing with placement issue? No we are not. NAFEA<sup>25</sup> was formed in 2004 to represent tertiary administrators engaged in the logistical placement of students for field experiences. Membership of the Association now includes administrators and academic staff from disciplines such as nursing, medicine, law, human services, human movement studies, and

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<sup>21</sup> Jean Lave & Etienne Wenger (1991) – *Situated learning: Legitimate peripheral participation*. New York: Cambridge University Press.

<sup>22</sup> Gregory Rathjen (1976) – The impact of legal education on the beliefs, attitudes and values of law students, *Tennessee Law Review* (44), 85.

<sup>23</sup> Professor Margaret Thornton, ANU College of Law "The Dissolution of the Social in the Legal Academy" April 2007.

<sup>24</sup> Kay Maxwell *ibid* n22 at p.4

<sup>25</sup> <<http://www.nafea.info/about.htm>> at 2 November 2007.

engineering. The primary aims of NAFEA are to facilitate a national forum for field administrators at tertiary institutions; to provide a networking and support reference point; to act as an advocate to raise awareness of the role of fieldwork administrators; and to lobby on member's behalf on field placement issues at a national level.

At the NAFEA Annual Conference in Adelaide 2006<sup>26</sup> Rachael Spencer<sup>27</sup> who presented a paper '*Current Issues in the Practicum in Law*'. Spencer analysed a range of issues which arose with law students in relation to practical legal training noting that at Flinders University placement includes 225 hours of work experience in a legal office. Spencer raised issues of equity at various levels. She sought to identify the experiences of students with children and other dependants that are faced by students working full time at their placement. It is this writer's view that placements are a '*whole of society*' issue, which requires further research as to the interconnectedness between the various relationships involved.

Other key note speakers at the NAFEA Annual Conference in Adelaide 2006 were Catherine Koener and John Harris<sup>28</sup> discussed the higher education sector's involvement in school based mentoring programs as a strategy for university community engagement that creates an engaged teaching and learning environment. This writer believes that this research may have implications that PLT providers may find useful in reviewing their own placement programs. According to MacCallum and Beltman '*mentoring focuses on explicit action by the mentor to assist the young person to reach their goal*'.<sup>29</sup>

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<sup>26</sup> The 2007 Annual NAFEA Conference will be held at James Cook University Townsville Queensland (7-9 November 2007).

<sup>27</sup> Director of Practical Legal Training, School of Law, Flinders University.

<sup>28</sup> Inspired Learning: Creating engaged teaching and learning environments for university and school students through university to school mentor programs.

<sup>29</sup> Judith MacCallum, and Susan Beltman (2002) *Role Models for Youth People: What makes an effective role model program?* National Youth Affairs Research Scheme, Australian Clearinghouse for Youth Studies, Hobart Tasmania p.8.

After an extensive literature review spanning over 26 years, there appears to be no consensus of a definite definition of mentoring.<sup>30</sup> Mentoring Australia<sup>31</sup> defines effective mentoring as:

*A relationship that focuses on the needs of the mentee; that fosters caring and supportive relationships; that encourages all mentees to develop to their fullest potential; and is a strategy to develop active community partnerships.*

Koener and Harris identify that:

*There is a large body of research emerging out of the United States, where formal mentor programs have been operating for a hundred years. The research came out of a concern that mentor programs were becoming more prevalent without the accompanying rigor of empirical research to determine if the participants really do benefit. What those benefits actually are and also to develop benchmarks and models of good practice for existing and new mentor programs.*<sup>32</sup>

In Australia there is little or no empirical research on the benefits or burden on mentors or those undertaking placement within the context of practical legal training. It is the writer's submission that there is an urgent need for empirical research to be undertaken so as to identify the benefits or the burden to both mentors and mentees in a practical legal training context.

The writer will undertake a pilot project in 2008 and survey the Nepean Hawkesbury Regional Law Society to identify the level of satisfaction or otherwise, of the legal profession with placement students. The pilot project may indicate the need for further research involving the Law Society of NSW, which is presently

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<sup>30</sup> Helen Colley (2003) *Mentoring for social inclusion; A critical approach to nurturing mentor relationships*. Routledge Falmer, London p.30.

<sup>31</sup> Mentoring Australia (2000) *National Benchmarks for Mentoring Programs Preliminary Information*.

<sup>32</sup> Catherine Koener, and John Harris, Acquiring Basic Legal Skills and Knowledge. What and Where? *Journal of Professional Legal Education Vol. 12 No. 1 at 1*

reviewing the admission protocols associated with overseas practitioners and placement forms part of that review process.

Research by John deGroot<sup>33</sup> sought a consensus view of the characteristics which leaders of the Queensland legal profession considered best described a competent lawyer. The study focused specifically on Solicitors in private practice and deGroot acknowledges that his findings therefore have their limitations. Nevertheless sixty five (65) characteristics were identified in describing a competent lawyer. These characteristics were divided broadly under the headings: Knowledge; Skills; Values/Attributes; and Other Attributes/Abilities.

Eight core characteristics that described a competent lawyer were identified: Knowledge of Legal Practice and Procedure; Knowledge of Substantive Law; Attention to Professional “Housekeeping” Matter; Enthusiasm for Dedication to “the Law”; Client Oriented; Fact Gathering/Analysis Ability; Orientation to Practical Solutions to Clients’ Problems; and Proficiency in the Professional/Ethical Dimensions of Legal Practice.

DeGroot sought to identify where the skills and knowledge were first acquired and where should they be acquired and if acquired through a PLT course where such a course should be located. This writer’s intention to comment on those findings associated with the characteristic ‘*fact gathering/analysis ability*’. DeGroot’s 1991 data identified that those practitioners who had undertaken the two (2) years Articles of Clerkship prior to admission credited ‘*general experience in practice*’ as very important (68% compared with 46% of full-time law students). It is this writer’s opinion that those practitioners who undertook a form of Articles of Clerkship which is not dissimilar to the placement requirements under the current arrangements for work experience, had a better grasp of fact gathering and analysis ability enabling them to identify the legal issues raised by a fact situation and in particular an improved ability to ascertain relevant facts compared to their full-time counterparts who did not have the opportunity to undertake Articles. Placement is the modern day equivalent albeit shortened to the form of Articles of Clerkship and

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<sup>33</sup> Acquiring Basic Legal Skills and Knowledge. What and Where? *Journal of Professional Legal Education* Vol. 12 No. 1 at 1.

it is not surprising that students clearly identify their time in general practice as very important.<sup>34</sup>

This writer will work towards further research in the area of identifying what the legal professions experience has been in relation to placement as there has been little research in this area apart from deGroot's work. A number of academics have cautioned against Universities adopting a '*trade school*' approach response to commercial pressure, for example Professor Thornton of ANU.<sup>35</sup> Regrettably, they fail to recognise or at least state, the value to the student, of the placement experience, either professionally, personally or intellectually. Their narrow world view, valid as it is, misses the opportunity for them to see students starting out on a journey as life long learners through their placement.

It is the writers experience that during most placements students are effectively left to undertake self directed or autonomous learning, which is based upon the principles of individual independence, life long learning, adaptability, resourcefulness and personal initiative. These qualities are thought to be of increasing relevance in a changing world.<sup>36</sup> Students who develop the ability to learn independently and interdependently do transfer their skills into practice.<sup>37</sup> Self directed learning can however, be presented as a justification for economic rationalism especially a reduction of staff to student ratios. The basis for adopting teaching and learning strategies that promote self directed or autonomous learning is:

*...cost cutting reflective of political struggles rather than a positive choice for change in the interests of the learner and professional education.*<sup>38</sup>

Regrettably comments from students following the placement are that many self directed learning experiences are interpreted by the student as a '*go away and get on with it*' strategy in particular in a professional context with a busy supervisor or

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<sup>34</sup> Ibid n22

<sup>35</sup> Elizabeth Peden and Joellen Riley Law Graduates' Skills – A Pilot Study into Employers' Perspectives *Legal Education Review* 2005 Vol 15 No 1 & 2 p 87-124 at p 89.

<sup>36</sup> Imogen Taylor *Developing learning in professional Education, Partnerships for Practice*, Society for Research into Higher Education Open University Press Buckingham, 1997 p.5-6.

<sup>37</sup> Ibid n39

<sup>38</sup> Ibid n39

mentor. This is a weakness of the current placement process that requires further research and in particular, consideration of appropriate analysis to further identify the issue and options.

Experienced based learning can be defined as learning in which the learner is directly in touch with the realities being studied. It is contrasted with learning, in which the learner only reads about, hears about, and talks or writes about these realities. Experiential learning typically involves not merely observing the phenomenon being studied, but also doing something with it, testing the dynamics of that reality to learn more about it, or applying the thing learned to achieve some desired result.<sup>39</sup>

Placement in the practical legal training context is a good example of experienced based learning in that a common element is the '*emphasis on direct contact with sources, people and settings rather than on vicarious awareness*'.<sup>40</sup>

Spencer and Monahan<sup>41</sup> apply a model for experienced based teacher education and seek to apply it to the learning of legal skills and, in particular, PLT. They categorise, using the model experience-based learning, as having four purposes.<sup>42</sup> It is the writer's opinion that these four purposes put in context '*the dichotomy of*

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<sup>39</sup> M Keeton and P Tate, 'A Boom in Experiential Learning' in *Learning by Experience – What, Why, How*, Jossey-Bass, San Francisco, 1978. p.2. quoted in B Anderson, D Boud, and G Macleod, '*Experience-Based Learning: How? Why?*', Australian Consortium on Experiential Education, Sydney, 1980.

<sup>40</sup> B Anderson *ibid* n 42.

<sup>41</sup> David Spencer and Geoffrey Monahan *Alternative Learning Strategies for Legal Skills and Vocational Training* No 3 *UTS Law Review* at 210.

<sup>42</sup> To experience the nature of a law firm and other law related work place provides experience for lawyers and identifies the complexity and challenge in practising law in the context of cultural, political, social, gender, and economic power dimensions. 2 To develop skills, awareness and competencies that together provides an effective and sustainable learning experience. Placement students experience both the opportunity, responsibility and realisation that they are able to work effectively with other lawyers, administrative staff and clients whilst developing into a competent lawyer. 3 Experience-based learning as provided for during placement enables students to apply, test and reconstruct theories, concepts and generalisations that have evolved and are continuing to evolve. Students through experiential learning grow professionally and are responsive to change and complexity in a real life environment. 4 Placement students gain real time feedback from both their mentor lawyer and others in identifying the role to be undertaken when admitted to practice. This feedback can be multi-dimensional coming from University lecturers, practitioners and work place colleagues.

*experience which would be desirable for law graduates to have when entering the profession.*<sup>43</sup>

It is this writer's opinion from both professional and academic experience that you learn best when personally involved in the learning experience and that knowledge has to be discovered by yourself if it is to mean anything to you or to make a difference in your behaviour. Further that a commitment to learning is highest when you are free to set your own learning goals and actively pursue them in a given framework.<sup>44</sup>

In a recent UWS professional legal skills class, a student provided feedback, that from his perspective and in the context of the curricular review being undertaken at UWS Undergraduate Law Degree, all current theory should be replaced with experiential learning supported by theoretical input. Revolution you say? No, a student expressing his frustration in having spent years undertaking theory and only a matter of weeks being able to apply that theory in a practical context. Learning must be relevant, learning must be in context and experiential based learning particularly through professional placement programs is an excellent way to meet these objectives.

This writer's view is supported by Hunter-Taylor<sup>45</sup> who states:

*A review of the literature and personal experience as an educator within the field suggest that the type of learning involved in PLT ranges from instructive to interpretive approaches to learning. Where instructing approaches are adopted, the effective transmission of information by expert teachers is the focus. Interpretive approaches to learning involve a focus upon the individual learners understanding and recognise that each person understands differently.*<sup>46</sup>

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<sup>43</sup>Ibid n43 at p.212.

<sup>44</sup> David Johnson and Frank Johnson 1975 *Joining Together: Group Theory and Group Skills* Prentice Hall New Jersey cited in Smith n47 at p27.

<sup>45</sup> Sharon Hunter-Taylor Professional Legal Education: Pedagogical and Strategic Issues. 3 *UTS Law Review* p.59

<sup>46</sup> Griff Foley Ed., *Understanding Adult Education and Training*. 2<sup>nd</sup> Edition. Sydney: Allen & Unwin, 2000, p.p.4.

It is this writer's opinion that an effective placement provides both instructive and interpretive learning opportunities for the student. From the instructive perspective the student learns from the mentor or supervising lawyer as well as administrative support staff. From the interpretive perspective the student learns that legal practice is made up of a diversity of elements including both cultural and intellectual learning differences.

## II CONCLUSION AND RECOMMENDATIONS

The Commonwealth government in October 2007 identified an urgent need for the examination of the development, teaching, assessment and reporting of graduate employability skills..<sup>47</sup> PLT placements would be one of these skills. Further, the Council of Australian Law Deans (CALD) web site provides a guide to Australia's PLT programs<sup>48</sup> it states:

*The discipline of law has been chronically under funded since the development of the Relative Funding Model in the late 1980s.*<sup>49</sup>

It is the writers submission and recommendation that it is time for a better funding model to be developed for PLT, in particular in the area of placements. This view is supported by the CALD submission.<sup>50</sup>

It is this writer's further recommendation that there should be sustainable and recurrent (CPI adjusted) funding for placement programs within Law Schools, as the decline in social capital arising from long term under funding will severely

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<[http://www.dest.gov.au/sectors/higher\\_education/publications\\_resources/profiles/graduate\\_employability\\_skills.htm](http://www.dest.gov.au/sectors/higher_education/publications_resources/profiles/graduate_employability_skills.htm)> at 2 November 2007. The Graduate Employability Skills Report investigated; a) how universities currently develop and integrate employability skills into their programs of study; b) how universities teach employability skills; c) how universities currently assess student's employability skills; and d) how graduate employability skills might be assessed and reported upon <sup>48</sup> <http://www.cald.asn.au/index.htm> at 27 August 2007. CALD's review of the impact of the *Higher Education Support Act 2003: Funding Cluster Mechanism Submission* by the Department of Education, Science and Training (DEST)

<sup>49</sup> Ibid n51

<sup>50</sup> Ibid n51 at submission 14. ...CALD would further submit that the clinical component of legal education be properly recognised. Although only a few law schools have clinical or placement programs that are adequately funded ... nearly all law schools now have a clinical or placement component of some kind. This should be recognised explicitly in any reorganisation of the clusters and funded accordingly. It is now widely accepted that legal education should have a clinical or industry placement component, with students having hands-on experience with real clients; yet clinical programs are so expensive that only a handful of law schools have been able to fund them adequately, usually with substantial external support, to which many law schools do not have easy access.

affect Australian society for generations to come. Further research needs to be undertaken to identify both the social capital as well as the professional implications arising from the placement of law students during their PLT programs..

As there is little or no research on how the legal profession relates to the benefits or otherwise to placement, it is this writer's intention to undertake further research and to report at next years ALTA conference in Cairns, North Queensland on a pilot survey of the profession.

