

The articulated clerk program: Victoria and nationally

By Paul Johnson

Introduction

The feature item "The Finished Article" in the March 2003 edition of the *LJ*, examined the current practices and difficulties with the articulated clerk system in Victoria. It also touched on possible changes to the system, including the introduction of a restricted practising certificate over a probationary year, additional to the normal articulated clerk year. However, the item examined the articulated clerk system from the perspective of "the legal profession", namely, the Law Institute of Victoria (LIV), the Board of Examiners, the Leo Cussen Institute, recruiters from large firms and legal academics, but not from the perspective of law students or articulated clerks. For current law students not due to finish their courses for two or more years, the system may be very different by the time they are ready to begin practising law. Before this happens, it is worth attempting to identify the parts of the articulated clerk system that are worth saving, the parts needing improvement, and how best to effect constructive changes to the system that retain the best features but eliminate the worst.

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Victorian Attorney-General Rob Hulls established a review in November 2003 of Practical Legal Training (PLT) courses and the articulated clerk program in Victoria. The purpose of the review is in part to determine the articulated clerk system's ongoing usefulness in its current form, as a method of "professional finishing" for lawyers following academic accreditation. Victoria, Queensland and Western Australia are the last Australian states still using the articulated clerk system. Queensland and Victoria have a "dual system" of articulated clerkships and PLT.

In the other states, the only method of obtaining entry to the legal profession following graduation in law is the PLT certificate courses run by institutions like the College of Law, St Leonards NSW, and universities such as University of Technology Sydney, University of Western Sydney and the University of Wollongong in NSW. In the ACT, the Australian National University offers a comparable course.¹ Victoria has equivalent courses run by the Leo Cussen Institute and Monash University.

From 1848 before Australian universities offered law degrees, the Supreme Court of NSW set examinations for admission to the legal profession.² It was possible to study law independently of universities, and then undertake an articulated clerkship to become a legal professional. This is still the case in NSW through the Legal Practitioner's Admission Board examinations program. Victoria ceased the equivalent program that was run through the Royal Melbourne Institute of Technology.

The Supreme Court of NSW examinations system and the articulated clerk system in Victoria are two methods by which people who otherwise would not have been able to study or practise law can do so. It is notable now that the expense of studying law at university has increased significantly in the past 10 years. The cost of completing a PLT is substantial.

Arguably, a case can be made for the retention of the articulated clerk system in Victoria because at least, in theory, it contributes to greater access and equity in the legal profession. But if so, what are the problems with the system, and how can these problems be addressed?

Problems

Law firms are of varying sizes and have different specialisations and resources. For example, how could a sole practitioner in Ouyen mostly doing wills, probate and conveyancing offer an articulated clerk the same scope of experience and quality of training as a large commercial firm in Melbourne? The large firm may have a big intake of articulated clerks each year, employ dedicated mentors, occasional trainers and lecturers, offer a wide variety of specialisations and opportunities to rotate through different departments, offices or sections of the firm.

The costs of training new staff for small firms can be a significant burden. Small firms are disadvantaged by economy of scale benefits for larger firms. It may be cheaper for smaller firms to leave the training of first year lawyers to the PLT schools, or let the student pay for their own practical training.

Students can work as volunteers at community legal services over four or five summers, and get at least part of the experience they could as articulated

clerks. Articled clerks, unlike medical interns, do not generally give back any tangible free public benefit to the community. The public will be unwilling to pay for the better practical training of new lawyers where this will, in many cases, remain a private benefit only.

There are arguably too many places in law schools for law students and too many graduates for limited positions. Although many students study law as a generalist qualification and may not intend to practice, it is often harder to obtain an articulated clerk placement than a place in a formal PLT course. PLT courses make it easier for wealthy families to fund their children's progress into the legal profession, when articulated clerk positions are static and the numbers of graduates are increasing.

The articulated clerk system in some cases may be used as a means of recruiting the best connected students. Privileged students can get positions on the basis of who their parents are, which school they went to and who they know. Selecting candidates for articulated clerk positions on the basis of family or school contacts is arguably unfair because it is not merit based.

Big city commercial firms who recruit articulated clerks may not offer the valuable "on the job" training that is so useful to new legal graduates. These firms may pay the clerks the low wages and require long hours, but without any reciprocal guarantee of good quality training for the articulated clerk.

Some law firms may not place a high enough premium on training articulated clerks. They may employ poor training methods that are not sufficiently methodical, thorough or consistent between various articulated clerks. Firms that are not willing to properly train articulated clerks can adopt the attitude of "sink or swim". Inadequately supervised articulated clerks could get disillusioned and drop out of the legal profession.

The articulated clerk system can produce inconsistent outcomes. Law firms want well-rounded independent and competent new lawyers at the end of the process, but don't always get them. The experiences of two "identical" articulated clerks in the same firm can be very different. One supervisor may "neglect" an articulated clerk while another supervisor may "fast track" the other.

Different legal training systems for first year lawyers operating in neighbouring states can cause problems.

For example, in NSW there is only PLT. In Victoria a firm has the option of using PLT for its first year lawyers, or using informal "on the job" training for its articulated clerks. There is no guarantee of the quality of "informal" on the job training

delivered to articulated clerks. This means when an “informally” trained articulated clerk from Victoria moves to a sister firm in NSW, the NSW firm is relying on the quality, consistency and effectiveness of the Victorian firm’s “informal” articulated clerk training systems.

Articled clerks might finish their clerkship with only limited practical experience, having done mainly menial jobs that should constitute a much smaller proportion of the articulated clerkship period.

Benefits

I am aware of several paralegal employees in country NSW who also study law and would like a system such as the Victorian articulated clerk system to operate in NSW. I know a paralegal employee and law student from Wagga Wagga in NSW who would consider moving to Wodonga in Victoria if an articulated clerk position were available for her there. People in this situation from NSW are disadvantaged because they do not have the articulated clerk system as another option to PLT courses. They have to either move to a city or a regional centre with a university to do practical legal training, or do correspondence courses that require periods of up to two weeks for “on campus residential” study. This inconveniently takes them away from demanding full-time jobs in small firms.

NSW country law firms often encourage paralegal employees to take up law studies. These firms would take such employees on as articulated clerks if they could. I know a paralegal employee from Lavington, NSW whose employer is paying for his correspondence law school fees. On completion of the legal study, the employer will then pay the employee’s fees for a PLT course. This employer would arguably be better off if he could employ the paralegal employee as an articulated clerk. It would be less expensive for the employer, and the employer already knows the skills and abilities of the paralegal.

Many people learn better on the job. Some people end up studying law because they obtained work as a legal receptionist or paralegal employee, showed sufficient aptitude and took up mature age law study. These people are perfectly suited to undertaking an articulated clerkship. Completing a PLT course would not offer them any more advantage.

Many students who study law straight from school will not have the practical experience afforded by articulated clerkships. Not all students are able to obtain a summer internship position with a community legal centre during the course of their legal studies. Some form of practical “on the job” experience is crucial for a new lawyer to develop competence prior to independent practice.

Unemployed or low-paid full-time or part-time law students who are finishing their courses are arguably better off if they can find full-time work as articulated clerks. Paying an extra \$5000 for a legal practising certificate, on top of their law school fees, means these students have greater difficulty paying off their Higher Education Contribution Scheme (HECS) debts.

The articulated clerk system has operated in Australia for well over 100 years. It provides a greater degree of access and equity to expand the participation of



a broader range of people in the legal profession. It provides another option for law students in Victoria to enter the legal profession.

Suggestions for the Victorian system

The articulated clerk system in Victoria could be strengthened and standardised by the adoption of the following suggestions, assuming all practical needs are met:

- Introducing greater structure for all articulated clerk positions in Victoria with independent assessment of skills and competencies similar to the Australian traineeship program. For example, the LIV could employ roving “articled clerk program assessors” who would have completed the Certificate IV in Workplace Assessment or a degree in workplace training. These assessors could be employed to assess the performance and development of skills for all articulated clerks in Victoria.
- Introducing greater standardisation of skills for articulated clerks. All articulated clerks could be assessed according to the same standardised skills assessment criteria. This could be administered by the LIV through the roving assessors of articulated clerks.
- Introducing identified specialisations for law firms employing articulated clerks. Small firms that specialise in limited legal areas could only be accredited to instruct articulated clerks in a specific range of skills. Any articulated clerk employed by these firms would not be given a legal practising certificate without demonstrating that all key competencies had been reached satisfactorily. The articulated clerk might have to do “homework” or additional work experience at another firm if appropriate or possible, to learn other essential competencies not offered by the employing firm.

- Mature-age and part-time articulated clerk positions could be encouraged through the LIV recognising part-time clerkships completed over two years as equivalent to full time articulated clerkships. This would arguably increase the numbers of articulated clerk positions available to new law graduates. It might allow greater flexibility for women with children, or mature age lawyers seeking to change careers without giving up their current position until they are fully qualified and experienced.

Suggestions for the national system

All university schools of law across Australia still using an articulated clerk system could amend their curricula to include more practical legal experience for students. If articulated clerkships are too difficult to obtain for many intending practicing lawyers:

- Identify “practising” and “non-practising” streams for penultimate year students of law schools in Victoria, Queensland and Western Australia, and require “practical” subject enrolment for intending “practical” stream students with full HECS cover.
- Introduce final year work placements in lieu of articles of clerkship, or link up with cheaper correspondence based PLT courses to follow legal studies.
- Introduce a social or “pro bono” component to articulated clerkships for articulated clerks, including one to two months of public benefit legal work with community legal services. This way, there would be a greater chance that the federal government would assist with federal funding for “on the job” training assistance programs for the legal profession. ■

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1. University of Sydney Law Extension Committee Course Information Handbook, November 2001 pp94-95.
2. Ibid p40.