

1-1-2006

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Recommended Citation

McCall, Ian (2006) "Preparing for Practice: Developing Students' Understanding of Risk Management," *Legal Education Review*: Vol. 16 : Iss. 1 , Article 9.

Available at: <https://epublications.bond.edu.au/ler/vol16/iss1/9>

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TEACHING NOTE

PREPARING FOR PRACTICE: DEVELOPING STUDENTS' UNDERSTANDING OF RISK MANAGEMENT

IAN McCALL*

I INTRODUCTION

Risk management issues are of concern to individuals, corporations, government and other entities and professions in an extensive range of endeavours such as health care, credit provision, financial advising and management, corporate governance, insurance, sports administration and training and, of course, the legal profession. The 'risks' to be managed are equally varied. In this article, 'risk' refers to the risk of a complaint or a professional negligence claim by clients against a legal practitioner, the practitioner's firm or employer.¹

Many practitioners find legal practice both challenging and satisfying.² It can also be a distressing, demoralising and an inherently risky business. A complaint, even if unjustifiably made,

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¹ Although it may be assumed that in the legal profession these expressions are readily understood, consumers of legal services can find it difficult to understand the difference between a 'complaint', eg, for alleged misconduct of a practitioner and a 'claim', eg, for negligence. See, eg, 'Complaints Against Lawyers' (Issues Paper No.18, New South Wales Attorney General's Department, 2000) There are, as well, risks for those consumers, whose contact with the law and legal practitioners can be the cause of needlessly costly and painful experiences. However, the societal consequences of legal practitioners' conduct are beyond the intended scope of this article.

² Bruce MacDermott, 'Risk Management: Surviving the Stresses of Practice' (2002) 40(1) *New South Wales Law Society Journal* 50. Here the author also relies on his own perceptions and professional experience as a legal practitioner in practice for over 30 years.

let alone a claim for negligence, can be the catalyst for resentment and disruption within a firm, seriously affecting the confidence of the practitioner involved.³ Complaints and claims will almost certainly consume vast amounts of time for all concerned.⁴

If, as is likely, the *effects* on practitioners of complaints and claims against them have not changed over the years, neither, it would seem, have the chief *causes*: poor lawyer/client communication and inadequate work processing systems.⁵ Equally, there are strong signs that practitioners, in the last decade in particular, have been adopting a constructive approach by seeking the means to conduct risk-reduced practice.⁶

What then can be said about those individuals who are not yet 'launched' in the legal profession: those who are preparing for practice by completing their pre-admission practical legal training (PLT) at law school or elsewhere? In their early years in practice, the lucky ones will receive high quality mentoring and supervision. Again, if they are fortunate, their firm or other legal workplace will have installed soundly planned and implemented policies and guidelines that, if followed, should ensure the efficient and risk free management of the workplace systems and the individuals who drive them.

However, this article argues that whatever the legal environment might be, for newly admitted practitioners who have just completed their PLT course to appropriately manage the risk of potential claims and complaints, beginning practice with an understanding of risk management is important.⁷ It suggests that, in developing that understanding, it is important for PLT course designers to implement appropriate programs that will lead to students acquiring an enhanced appreciation of the need for risk management and, therefore, to their being better prepared for legal practice.

³ Bruce MacDermott, 'What To Do If a Claim Is Made Against You' (2001) 39 *New South Wales Law Society Journal* 48.

⁴ *Annual Report 2004–2005* (Office of Legal Services Commissioner, 2005) 8.

⁵ Matthew Gosling, '2005/2006 Professional Indemnity Insurance Update' (2005) *StopLoss* 4.

⁶ Since 1995 the *LawCover Risk Management Education Program* had been revised and expanded to include employed solicitors and support staff, as well as principals and has been delivered to over 17,000 participants, in New South Wales and other jurisdictions. Bruce MacDermott, 'LawCover Risk Management: Refresher Risk Management Course for Principals' (2005) 43 *New South Wales Law Society Journal* 44.

⁷ The importance of understanding risk management is recognised in LawCover's current Risk Management Education Program, the 4th module of which has the stated objective of enabling solicitors 'to understand the importance of developing positive attitudes to risk management in legal practice, to become aware of basic quality assurance techniques and to develop personal risk management strategies for their practice'. LawCover, *Risk Management Services: Risk Management Course* <<http://www.lawcover.com.au/lawcover/risk/risk.asp?pageid=44>> at 7 November 2006.

Some of the research for this article (and the motivation to write it) arose from reading and evaluating students' accounts of their workplace experiences in critical analysis and reflective assignments completed as part of their PLT course at the University of Wollongong Law School. Parts of the students' reports that are relevant to risk management have been included in the article to support its central arguments and to provide what readers may find to be interesting accounts of students' pre-admission life in, and reflections of, legal practice.

II PROGRAM DESIGN: TEACHING & LEARNING CONSIDERATIONS

The University of Wollongong Law School PLT course (the PLT course) Professional Experience⁸ and Practice Management⁹ programs were designed to complement each other in developing students' skills of reflective practice, analysis and appreciation of the practice of law in a variety of legal environments. In planning the aims, components and delivery of the risk management program as part of the Practice Management subject, it was important to consider some significant elements in the teaching and learning process: students' approaches to learning, how assignments and assessment might be best used to drive learning, and the value of reflection in learning. It must be emphasised that the following discussion is not intended as more than very brief references to some of the issues and commentary included in the considerable literature in the complex area of student learning.

A *Students' Approaches to Learning*

There is much evidence in the literature of the need for higher education providers to cultivate a positive approach in students toward their learning.¹⁰ In endeavouring to develop that approach,

⁸ The Professional Experience component of the PLT course requires students to undertake 2 days (14 hours) of law-related professional experience each week, for a total of 20 weeks. Some of the workplaces the students attend are: Commonwealth and State departments and authorities, the Legal Aid Commission, the Courts, DPP and large, medium and small legal practices. The students can accumulate the required amount of professional experience in more than one legal environment. Some students have been in full-time employment as legal clerks for varying periods when they begin the course; on the other hand, some of the students have had no prior legal experience.

⁹ This component of the PLT course consists of modules dealing with trust and office accounting, law office management and risk management.

¹⁰ Aspects of students' approaches to learning have been identified and explored in the literature in terms of *deep* approaches (where students seek to understand), *surface* approaches (where the focus of the student is to be a passive recipient of knowledge and to memorise without seeking meaning), and *achieving* or *strategic* approaches (where students adopt whatever approach [deep or surface] they

teachers might find motivating students to learn some subjects in the PLT curriculum somewhat of a challenge, particularly where the students consider those subjects to be ‘lifeless’.¹¹ Equally, in a mostly practice-oriented course, such as a PLT course, there are many opportunities for teachers to design teaching and assessment programs that encourage the students to approach their learning appropriately and engage positively with their assignment work and so be more likely to take their learning into practice.¹²

The issue of transferability of skills is important, especially in a PLT course, one of the central purposes of which is to develop students’ skills and knowledge in their preparation for practice. It is suggested, therefore, that how students approach their learning will be affected by whether or not there is a learning environment in which they value the core aspects of the curriculum and assessment tasks and perceive them as being of significance to them in their preparation for practice.¹³ Furthermore, such a learning environment can enhance students’ learning if they are absorbed in issues of importance to them, even if some of the issues and tasks they need to complete are relatively ‘boring and unexciting’.¹⁴

B *Motivating Learning through Assessment*

Assessment plays a central role in students’ approach to learning.¹⁵ In fact, as Ramsden suggests: ‘from our students’ point of view, assessment drives the actual curriculum’.¹⁶ And, as Joughin & Gardiner point out ‘assessment . . . pervades teaching and learning and has a major impact on how students approach learning.

believe will lead to optimal results. See, eg, Ference Marton and Roger Säljö, ‘On Qualitative Differences in Learning — 1 Outcome and Process’ (1976) 46 *British Journal of Educational Psychology*; Paul Ramsden, *Learning to Teach in Higher Education* (1992) 38; Marlene Le Brun and Richard Johnstone, *The Quiet Revolution — Improving Student Learning in Law* (1994) 6–9.

¹¹ Ian McCall, ‘Breathing Life into Commercial & Property Subjects: Visiting Practitioners Creating the Right Learning Environment’ (2003) *Legal Education Review* 93, 96.

¹² See, eg, Ramsden, above n 10, 81 where he refers to this as an ‘active and long term engagement with learning tasks’.

¹³ See, eg, Richard James, Craig McCinnis and Marcia Devlin, *Assessing Learning in Australian Universities* (Centre for Study of Higher Education (CSHE), University of Melbourne, 2002) 10.

¹⁴ Mihalyi Csikszentmihalyi, *Flow: The Psychology of Optimal Experience* (1990) 44.

¹⁵ The view that appropriate assessment strategies can drive and enhance the teaching and learning process is strongly supported in the literature. See, eg, Ibid; Ramsden, above n 10, 187; Le Brun et al, above n 10, 178–183; Terry Crooks, *Assessing Student Performance* (1989); Phillip Candy, Gay Crebert and J O’Leary, *Developing Life-long Learners Through Undergraduate Education* (1994) 141.

¹⁶ Ramsden, above n 10, 187.

Assessment is probably the single most important component of a subject's design.¹⁷

If assessment is an important tool in the teaching and learning process, in a course preparing students for real-world practice, such as a PLT course, the content of the assessment tasks is an essential element in that process, as is the relevance of those tasks to the students' workplaces.¹⁸ In planning assignments, it is also useful to consider the range of backgrounds of the students and the various tasks they will perform in the workplace.¹⁹ Students need direction and clear guidelines as to what is expected of them and how they are to be assessed. As James points out:

[a]ssessment is a central element in the overall quality of teaching and learning in higher education. Well-designed assessment sets clear expectations, establishes a reasonable workload ... and provides opportunities for students to self-monitor, rehearse, practise and receive feedback.²⁰

In the PLT course, the underlying teaching and learning objectives of the assignments were to develop and measure students' awareness and understanding of risk management issues. The main function of assessment was formative: to encourage students, to help them learn and prepare them to cope with risk management issues in practice; to use assessment with a 'diagnostic' rather than a summative or 'judgmental' purpose²¹

C The Value of Reflection and Self-Assessment as Learning Tools

There are numerous well-articulated perceptions of reflection in the literature. Boud, Keogh & Walker define reflection as: 'those intellectual and affective activities in which individuals engage to explore their experiences in order to lead to new understandings and appreciations'.²² They propose an insightful view of the process of reflection:

- 1 *Returning to the experience*: recollecting the salient features of the experience, recounting them to others;

¹⁷ Gordon Joughin and David Gardiner, *A Framework for Teaching and Learning Law* (2001) 48–50.

¹⁸ See, eg, James et al, above n 13, 3 and 10; where this point was clearly articulated in discussing the need to develop creative ways to assess student and to ensure that assignment tasks closely resemble problem-solving tasks students are likely to encounter and the skills they need in the workplace.

¹⁹ Le Brun et al, above n 10, 180.

²⁰ James et al, above n 13, 7.

²¹ Le Brun et al, above n 10, 181; where they describe the 'credentialing (*summative*) and diagnostic (*formative*) functions of assessment'.

²² David Boud, Rosemary Keogh and David Walker (eds), *Reflection: Turning Experience into Learning* (1985) 18.

- 2 *Attending to feelings*: accommodating positive and negative feelings about the experience; and
- 3 *Re-evaluating the experience*: associating new knowledge and integrating new knowledge into the learner's conceptual framework.²³

Schon proposes that practitioners engage in reflection in two ways: reflection-in-action (thinking on your feet, during the experience) and reflection-on-action (retrospective thinking, or thinking after the experience), pointing out that practitioners use it when they encounter unique situations and when they may not be able to apply known theories or techniques they previously learnt through formal education.²⁴ Boud endorses the worth of Schon's work in the area of reflective practice, especially where it relates to preparing students to be professionally competent, observing that he:

has provided convincing arguments for the proposition that a vital element of competent practice, in whatever field of endeavour, is that of reflection-in-action; that is, the ability of practitioners to monitor what they do as they are doing it, and make assessments of what they need to do, drawing upon both their tacit knowledge and technical skills.²⁵

Reid²⁶ and Kemmis²⁷ also suggest that reflection is an active process that involves elements of review, analysis, evaluation and application of prior learning to inform learning about practice and an 'action plan' for future experiences.

As Boud has observed, the process of reflection can also include self-review or assessment, an important attribute for professional practice not 'consciously developed by many law schools'.²⁸ In earlier work on the relative merits of typical forms of assessment, Boud acknowledged the importance of self-assessment when deployed with collaborative assessments 'by peers, staff, expert practitioners and so on':

[t]here is increasing evidence that students are able to make judgements about their own learning, and that by encouraging them to do so assists them to take responsibility for their own learning and helps develop those skills which they need to continue to pursue their learning outside the institution.²⁹

²³ Ibid.

²⁴ Donald Schon, *Educating the Reflective Practitioner: Towards a New Design for Teaching and Learning in the Professions* (1987).

²⁵ David Boud, 'Assessment and the Promotion of Academic Values' (1990) 15(1) *Studies in Higher Education* 108.

²⁶ Barbara Reid, 'But We're Doing It Already: Exploring a Response to the Concept of Reflective Practice in Order to Improve its Facilitation' (1993) 13(4) *Nurse Education Today* 305.

²⁷ Stephen Kemmis, 'Action Research and the Politics of Reflection' in David Boud, Rosemary Keogh and David Walker (eds), *Reflection: Turning Experience into Learning* (1985) 139.

²⁸ David Boud, *Enhancing Learning Through Self Assessment* (1995).

²⁹ Boud, above n 25, 110.

In a similar vein, Johns notes:

reflection enables the practitioner to assess, understand and learn through their experiences in a personal process that usually results in some change for the individual in their perspective of a situation or creates new learning for the individual.³⁰

It is suggested that each of these theories of reflective practice may be relevant at various stages of professional experience and coursework in a PLT course. Similarly, the actual experiences of PLT students in those endeavours are also an important part of the students' learning. Kolb described an experiential learning cycle consisting of experience, reflection, making sense of the experience, and planning ways of acting that would be applied to future experiences.³¹

When designing the reflective learning aspects of the risk management program of the PLT course, it was considered that there were valuable teaching and learning concepts inherent in the theories of reflective learning and experiential learning that could be applied to planning the assignments. Thus, part of that planning suggested the assignments should require the students to truly reflect on their experiences, ie, to not only note details of events and their experiences but also to record their thoughts about them and the learning they took from them.³²

III THE RISK MANAGEMENT PROGRAM AND ASSIGNMENTS

The central argument of this article is that in preparing students of PLT courses for practice, it is important to enhance their understanding of risk management issues. The body of educational theory described above informed the teaching and learning strategies that were designed to achieve that purpose in the PLT course: devising appropriate and achievable assignment goals, implementing realistic and relevant assessment methods, and encouraging students to adopt reflective practice. It was anticipated that, by employing those strategies, the students would be appropriately equipped with not only a heightened recognition of risky behaviour and work patterns but also the additional confidence and skills to contend with the challenges and pressures of legal practice when they were admitted.

Thus, the principal objective of a major assignment (the workplace systems assignment) was to increase the students' awareness of the many work processing systems in diverse legal environments that are designed and employed to create efficiency and

³⁰ Christopher Johns, 'The Value of Reflective Practice for Nursing' (1995) *Journal of Clinical Nursing* 4, 2330.

³¹ David Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (1984).

³² Sylvina Tate, *Using Critical Reflection as a Teaching Tool* (Occasional Paper 4, Centre for Health Sciences and Practice, 2004) <<http://www.health.ltsn.ac.uk/publications/occasionalpaper>> at 7 November 2006.

promote the avoidance of professional negligence claims. Then, at a personal level, another important assignment (the self-management assignment) encouraged them to:

- focus on and examine their own work and time management practices and those of the people with whom they work;
- identify and reflect on the positive aspects of those practices, such as risk aware attitudes, the ability to plan and prioritise their work and effectively communicate with clients; and
- detect and react to areas in need of improvement.

The risk management program is delivered in the PLT course as part of the Practice Management subject in a mix of seminar sessions, discussions and specific risk management assignments. Risk management issues pervade assignments in other litigation and commercial/property subjects in the course.

A Introductory Sessions

The risk management orientation begins with a series of lectures and discussions, including an interactive presentation by a representative of LawCover.³³ From an educational perspective, this part of the PLT course program is significant in encouraging the students to actively engage with the subject, as noted by Ramsden.³⁴ It achieves this by establishing ‘up-front’ the significance of risk management and its relevance to the work and situations the students can expect to encounter during their PLT course and, later, in practice. The introductory session interactive discussions have also revealed much about the students’ knowledge and perceptions of risk management and their understanding of its importance in legal practice.

B Assignments

1 Workplace Systems Assignment

The advantages of the systems and strategies discussed in the introductory sessions are reinforced in an assignment requiring the students to identify workplace systems, including those related to risk management, in their professional experience workplaces.³⁵ With the

³³ The risk management orientation seminars have been expertly presented by representatives from LawCover with great effect, firstly by Margaret Conners and, since her retirement in 2000, Bruce MacDermott.

³⁴ Ramsden, above n 10.

³⁵ The students are not required to complete any particular course assessment tasks in the workplace, during their professional experience placement. That said, the students’ supervisors are made aware of the types of legal work that would assist the students to complete some of the PLT course commercial and litigation assessment tasks.

consent of their supervisor,³⁶ they submit a report critically analysing workplace risk management procedures they observed.³⁷ After the students submit this assignment, a class discussion is held in which they are invited to identify the type of legal environment referred to in their report (but not the actual firm, government department or other workplace) and to describe and briefly evaluate the various workplace practices they observed. The students are encouraged to share copies of their reports with other interested students.

Many of the students' reports noted how effectively the workplace managed the client engagement, directing their attention to issues such as conflict checks, terms and scope of the engagement, client expectations, cost of legal services, and establishing client authority. The students' accounts indicated, in some cases, not only their awareness of the main characteristics of those particular workplace practices but that they were adopting the right approach to the task by identifying advantages for the clients as well as their legal advisers:

The main instrument we use is a conflict of interest database, which must be consulted immediately on engagement. We also hold regular client surveys to obtain feedback on both our substantive legal work and method of delivery. (Commonwealth Government Legal Office)

When the conflict data base is checked, the client is advised in writing of the terms on which legal aid is granted and any relevant information about the matter, including costs, limitation dates and rights of appeal. (Commonwealth Government Legal Office)

Under the firm's engagement policy, an engagement document is prepared at the commencement of an engagement or whenever there is a change in the service (that has been agreed to). The engagement letter must stipulate, *inter alia*:

³⁶ The students are advised that they must not reveal anything confidential concerning their workplace systems and to obtain their supervisor's consent before submitting their report.

³⁷ The students' accounts contained many references to and analyses of an impressive, expensive and a wide-ranging assortment of electronic systems that were utilised in the administration of their workplaces, to a greater or lesser degree. In a number of cases, the students' reports suggested that some of the users of electronic systems in their workplaces were not exploiting them to their full potential. In many instances it seemed the students' understanding of the utility (or otherwise) of the systems exceeded that of their employers. (This is not entirely surprising given, for the most part, in the author's experience, the modern higher education students' familiarity with information technology in all its forms). Although the students' accounts included here have been limited to generic workplace systems in the form of precepts, policies and personal practices that may encourage an understanding of risk management, it is readily acknowledged that there is an entire range of electronic workplace systems that may also influence that understanding. Any worthwhile examination of those systems is simply beyond the intended scope of this article. It must be emphasised that neither the students' observations, nor their commentary on them, is intended in any way as a risk management evaluation of any of the legal environments in which the students gained their professional experience.

- the terms of the appointment;
- the scope of the services to be provided; and
- an estimate of the costs and the precise terms of the cost arrangement.

This policy ensures that both the firm and the client are aware of the nature of the services to be provided and how much it is going to cost. (Large City Firm)

Generally partners in the firm allow the client to talk openly and freely. The solicitors endeavour to determine exactly what the client's expectations are. They try to ensure that they don't try to furnish the client with unreal expectations. This system seems to me to be likely to ensure client comfort and confidence in the solicitor... (Medium Sized Firm)

The costs agreement sets up the client engagement from the outset. They are in plain English and deal with certainty of the identity of the client and the client's authority. The taking and recording of comprehensive instructions that clearly show the client's authority, is something we are constantly reminded to do. (Medium Sized Firm)

The firm's procedure manual requires the client's identity to be ascertained by never accepting the word of someone that they have authority to act; always doing some preliminary research to ascertain who is your client and whether there is authority to act from others who may be involved; and you personally see all clients if more than one involved. (Large City Firm)

The students' accounts also focused on issues of client communication, such as keeping the client informed in clear correspondence, recording events in the file in comprehensive and contemporaneous file notes and managing the file so that it presents a complete and coherent picture. As noted previously,³⁸ one of the chief causes of complaints by clients against legal practitioners is poor communication. The students' responses indicate that completing the assignment sharpened their risk management understanding by indicating the importance they placed on appropriate communication between legal practitioners and clients:

I appreciate the importance of providing clients with copies of documents relevant to their case and ensuring that they are regularly kept in touch with progress and developments without overloading them with detail. In a matter I recently worked on, I ensured that as soon as the Points of Defence and Affidavits in Support were filed, copies were provided to the client and advice was provided to the client about the next steps and when they were likely to occur. (Large City Firm)

The firm is very keen to ensure all correspondence to clients is expressed in appropriate language and that letters of advice, in particular, contain advice the client will understand and show them the way ahead. (Medium City Firm)

While I have worked with members (of a Federation) for 10 years, in the last four months I have already sought to improve the way that I

³⁸ See above, second page of this article.

communicate with them. For example, two changes that I have made to the way I operate are:

- taking file notes of all conversations and incidents; and
- reducing information to writing to send to clients rather than, for example, just a phone call. (Large Corporation)

Much fuss was made during the course about file notes...I now liken a client file to a jigsaw puzzle and the file notes contribute to the overall result. (Small Firm)

The various bits of the file are all there, but the story they tell is not particularly coherent. File notes detailing important things like telephone conversations are often only one line long. Observations to counsel and counsel's advices are often missing. The file is rarely in chronological order and documents are undated. (Large City Firm)

2 *Self-Management Assignment*

During their PLT course, it is important for students to learn that, although in practice they might be assisted by systems designed to ensure efficiency, the extent to which they achieve the appropriate level of efficiency in their workplace will also depend on the work habits, practices and attitudes they themselves develop.³⁹ Designing opportunities for students in a PLT course to think about how they manage work and to appreciate the value of reflection and self-assessment in their professional life can be useful in that learning process.⁴⁰

The self-management assignment in the PLT course provides those opportunities. The students prepare for the assignment by completing some reading from the course materials. The reading informs a preliminary class discussion in which the expected outcomes of the assignment are clarified: production of a *reflective* report by students rather than a mere *descriptive* diary note of their activities during a nominated period in the workplace. Assessment method is also clarified: constructive feedback related to students' efforts in reviewing and evaluating their workplace activities and experiences. The students are advised that the assignment parameters allow them to practise something that will be a vital part of their professional lives: to monitor and evaluate their own performance.

In the assignment, the students are required to direct their thoughts to specific questions about such things as planning, prioritising,

³⁹ MacDermott, above n 3.

⁴⁰ Le Brun et al, above n 10, 179 and 218; describes how the process of reflection '*which is central to self-and peer-assessment*', emphasises to students 'the importance of reflection both as process for meaningful learning and as a means for professional growth'. They also comment on the expectation that, following graduation, students need to conduct themselves like a professional 'whose work depends on the ability to assess themselves...'

dealing with interruptions, time management, and their personal work organisation:

- Did you begin the day with a plan?
- Did you prioritise your tasks at the start of the day? (ie the tasks you knew about!)
- Were you able to stick to your plan and priority list? If not, reflect on what interfered with them.
- What did you do and how long did it take?
- Reflect on the changes you might make to your work practices to improve your efficiency.

While the students' accounts identify issues that lead to personal efficiency and control in a legal environment, others related directly to such concerns as: ensuring clarity in instructions from clients and supervisors, meeting client and supervisors' expectations, dealing with competing demands for their time by supervisors (and clients, if there were clients), acknowledging their limitations, and knowing how and when to seek assistance.

The students' comments seemed to suggest that they treated the assignment as a task reflecting the world of professional practice⁴¹ and that this enhanced their interest in completing the assignment.⁴²

It is important to ensure that tasks are not forgotten. I find it convenient to write down all the tasks that need to be done in one place. This is a continuous list. What remains can be identified. The list then provides a record of work completed and a convenient way to (self) affirm that various goals have been achieved. (Assistant to Supreme Court Judge)

I find that writing a 'To Do' list each evening is very useful. Although the tasks are not always completed the following day, it's a good organisational tool as it sets out what needs to be done and minimises the risk of forgetting to complete a task on time or at all. (Medium sized firm)

Many students gauged their efficiency by the extent to which they were able to complete a task on time, where a time limit was important. They also emphasised the importance of getting the *right* task done. It is not surprising to note that students look for clarity in directions from their supervising solicitors and are frustrated if they cannot understand the task. The students' accounts noted here also reveal the worth of the reflective exercise: that they were self-assessing their time and work management skills and, in many cases, planning ways in which they might improve their efficiency.⁴³

⁴¹ James et al, above n 13, 12; noting one of the features of authentic assessment practice.

⁴² This could be because the students saw the assignment as the kind of 'real' assessment task referred to in *Assessing Learning in Australia*, referred to in James et al, above n 13.

⁴³ See Kolb, above n 31.

It's important to take good notes when getting instructions from my supervisor. While I may understand what he wants me to do at the time, later on it's not so clear. (Medium Sized firm)

I often cannot read the instructions on the file I am given. This means I have to interrupt my supervisor or his secretary. This is frustrating and a waste of time for all of us. I have to make sure I get the instructions right though, if they are not obvious by looking at the file. (Medium Sized firm)

I began with a discussion with my supervising solicitor as to the tasks I need to undertake during the day. He explained in detail the files I will be working on and the tasks I have to complete. I jotted down his instructions and asked questions to ensure that I understood what he expected. (Medium Sized firm)

Conclusion: It is more important to set goals rather than immoveable tasks, as it is hard to gauge how long work will take as I am in the steep learning curve of my career. Importantly, goals also increase my motivation and give me clear direction during unexpected interruptions. (Researcher for Supreme Court Judges)

On reflection, I need to avoid jumping from one unfinished task to the next. I need to 'get stuck into' tasks that are not so interesting (Ian calls it 'grasping the nettle now!') instead of procrastinating and turning to the easier and more enjoyable tasks first. (Assistant to Supreme Court Judge)

I need to leave room for unexpected interruptions... I've learnt the importance of setting objectives for the day and completing one task before starting another. If I jump from one task to another, I can easily get confused. The important thing is to remember that there are going to be interruptions and allow time for them in my time management. (Medium Sized firm)

The reality (of time management) is this:

- it won't matter how clear your objectives are
- it won't matter if you have them tattooed on your forehead in old English script.

The fact is that someone else more senior to you will manage to have something more important and more pressing for you than any of the things you had planned for the day. Therefore I have given up depending on rigid planning technique because it simply doesn't work. The qualities I have come to rely on are flexibility, the ability to drop something and go back to it without too much time wasting getting back up to speed and most importantly keeping track of the matters I am working on. (Large City Firm)

I seem to be chopping and changing. I know I'm still learning to prioritise the tasks I'm given more efficiently. My efficiency is not assisted however when a partner gives me a task and won't even listen when I try to tell him that I'm working on something urgent for another partner. I then drop the task I'm working on. I then end up with a series of unfinished tasks and, eventually, an angry partner. (Large City Firm)

After preparing this Self-Management Analysis, I have realised that I do not plan my day effectively enough. I have a general 'To Do' list which I update as new matters arise... I realise that I should do some more detailed planning and commence a day with a plan of what I want to achieve each day. If unexpected matters arise, I should plan again and make sure I prioritise matters effectively. (Commonwealth Government Department)

The following comments also illustrated the lessons in efficiency some of the students seemed to take from the assignment. It is also suggested that they seemed to indicate how particular experiences affected them and the fact that they were learning from these experiences:

I need to ensure that I clarify what task needs to be done and assess the time it will take. On this occasion, I failed to work out the order of priority before I started. (Large City Firm)

In self-management I feel the key is knowing my own abilities strengths and weaknesses, the gaps in my learning and the things I know I can do. It's essential to be confident in those abilities and not to feel embarrassed about asking for help. In a high-pressure environment, the ability to keep calm and act in a calm and confident manner is essential ... (DPP)

Frequently I feel inadequate and inexperienced which lends itself to lacking in motivation and involves much stress. This results in self-management being compromised by the need to 'prove' myself. I instituted a weekly lunch with two other colleagues who are in exactly the same position as me but in another Division of the Court. This has led to overcoming a feeling of inadequacy. I have discovered everyone else feels the same way! (Supreme Court Researcher)

I thought of creating a 'To Do List' as suggested in the Course Materials arranging the tasks in priority. But I think that because of the way the DPP is structured, the fact that matters arrive on my desk 'out of the blue' and the almost constant 'phone interruptions makes it very difficult to follow a daily plan. I simply have to allow a definite amount of time for unplanned events. (DPP)

3 *Reflective Journal and Essay Assignments*

During the course, the students need to keep a reflective journal to record their observations about the course and their experiences in their professional placement in a critical way and to review their performance in the course and in their placement. At the conclusion of the course they must also submit a 1200–1500 word reflective paper.⁴⁴ The paper encourages the students to consolidate their learning in the course and to reflect on their progress in the course work and in the professional experience components. Many of the

⁴⁴ The students submit the reflective journal and the reflective paper as assignments in the Professional Experience component of the subject: LLB 843 — Professional Practice. The paper is assessed on the quality of the students' reflection and analysis of the total experience.

students' journals and reflective papers demonstrated that they were seeking to understand their experiences and, in some instances, that they were planning how they might tackle similar tasks in the future.⁴⁵ Several of the students' accounts also demonstrated their increased awareness and understanding, at a personal level, of important risk management strategies:

... I was required to develop many skills (during the course)... The greater benefit (of time management techniques) will come in the future, when I am required to use such concepts throughout my career as a legal practitioner. Further, by experiencing them at an early point in my life, I feel confident about tackling the demands of a career in law (Large City Firm)

As a result of my completion of the PLT course, I have become more diligent with my firm's civil litigation work.... I have learned that time is the enemy of the learning process but to panic doesn't help. I have been challenged to develop my time management skills and I now actively plan my matters so that I can meet deadlines. (Large City Firm)

There is not much I feel I can do (about inefficiency). At this stage of my career I find it frustrating that every aspect of what I do almost always involves a research element. Nevertheless, my consultation with more experienced lawyers often makes my job simpler and permits me to learn at an easier rate. At this stage of my career I think it is essential that I ask questions and sometimes appear ignorant, as it seems it is one sure way of learning more quickly! (Medium Sized Firm)

I also realise, on reflection, how much time can be spent on unplanned events and that I need to factor them into my daily planning in order to reduce pressure in meeting deadlines. I haven't consciously done this to date... (Commonwealth Government Department)

Looking back on the self-management assignment and reflecting on how I might improve my time management skills I believe my time efficiency could improve by:

- setting aside 15 minutes at the start of each day to work out exactly what has to be done, what I want to achieve by the end of the day and prioritising the tasks;
- only having on my desk the files on which I intend to work. An uncluttered desk is likely to generate clearer thoughts;
- working on one task at a time, rather than switching between a number of different tasks;
- taking the occasional break when my thoughts become cluttered; and
- setting aside approximately 10 minutes at the end of each day review my priorities list, ensure that everything important has been done and then briefly jot down the tasks that need attention the following day (Large City Firm)

⁴⁵ See, eg, Tate, above n 32, 11; in which she emphasises the importance of student health care professionals keeping a reflective diary to record incidents and suggests what should follow: 'having identified (the experience) the next step is to reflect upon it with the intention of coming to new understandings. In other words, learning from the experience in such a way that one can act, think or feel differently in similar situations'.

At the beginning of the course we were requested to complete an assignment in which we had to use a daily plan. I really didn't appreciate the importance of this until the workload from the course and my day job collided. It is amazing the difference that a little preparation and prioritising makes. I was never one to work to a plan but now I have no idea how I worked without one. (Police Prosecutor's Office)

...the course has taught me that as a practitioner I must always be conscious of the need to be a risk manager, in my practice of the law. This aspect of practice, perhaps more than any other, has been emphasised in the professional experience component of the course (Large City firm)

4 Reinforcement in Coursework

Following these initial assignments, risk management issues and strategies are reinforced throughout the course in practice-related problem solving activities, discussions and assignments. The importance of developing skills such as effective and timely lawyer/client communication and file and time management are emphasised, as well as encouraging useful legal analysis and research skills. Many students valued the significance of time management in performing all legal work and (on reflection) saw the advantage of developing and applying the organisational techniques illustrated in coursework to their work practices.

IV CONCLUSION

While the students' comments recounted here might be said to be anecdotal and based on their still evolving notions of life in legal practice, from an educational perspective they remain valid and valuable observations of their particular experiences in practice. In some instances, those experiences serve as stark reminders of the pressure of modern legal practice to which entry-level practitioners must quickly adjust when they leave behind the relative 'comfort' of time-lines and assessment in the law school environment, as well as 'clients' in assignment tasks who will never complain and never sue them.

For the students entering practice, the 'legal practice' environment will vary but a number of their accounts demonstrated awareness that, whatever the environment, managing the risk of client complaints and negligence claims involves both:

- efficient work processing systems that are designed to produce high quality work whatever the mood or state of mind of those doing the work; and
- personal qualities, such as organisation, risk-aware attitudes and the need to balance work and life.

Reflecting on students' workplace and learning experiences and perceptions can assist PLT educators to build risk management

issues into a curriculum that are relevant to legal service in a wide range of private practice, government and corporate roles. From that reflection, they can learn a great deal about factors shaping their students' attitudes to not only risk management issues but also to ethical practice and professional responsibility.

It is not surprising that, in their learning, many students of PLT courses tend to focus on knowledge and process acquisition. One of the challenges facing them is to see value in their developing awareness and understanding of risk management issues and in applying appropriate risk management strategies to their work practices. Equally, a significant challenge for PLT teachers is to find ways to assist students to develop an understanding of those issues and strategies and to accept them as part of the inescapable demands of modern legal practice. It is suggested that a risk management program of the kind described here may assist both students and teachers to meet those challenges.