

## LAWYERS AND SOCIAL WORKERS WORKING TOGETHER

### Ethic of Care and Feminist Legal Practice in Community Law

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In Australia, experimentation with, and literature on, interdisciplinary teams comprising lawyers and social workers has remained limited. This is despite the fact that many legal organisations employ social workers to support their practice. In many community legal settings, social workers work alongside lawyers in the delivery of socio-legal services. This article explores the nature and effectiveness of working relationships between lawyers and social workers in community legal centres in Brisbane, Australia. It draws on data obtained from interviews and focus groups with thirteen lawyers and eleven social workers working in community law settings. The group discussions focused on the strengths and weaknesses of collaborative models, and the features of successful lawyer–social worker partnerships. It is concluded that a commitment to feminist legal practice may be associated with positive working relationships, which hopefully will translate into successful outcomes for clients.

Since the establishment of the first community legal centres in Australia in the 1970s, lawyers have worked with social workers to deliver services to disadvantaged and marginalised individuals.<sup>1</sup> Community legal centres were intended to operate as ‘shopfront’ legal services, to provide an accessible advice and information service to community members – particularly those who would otherwise be unable to access justice.<sup>2</sup> One of the features that distinguished them from the traditional pro bono work of lawyers was that they involved partnerships with ‘non-lawyers’<sup>3</sup> in service delivery, so that individuals’ legal problems could be dealt with in the context of their broader social needs and concerns.<sup>4</sup>

Although Australian lawyers and social workers have partnered together in the delivery of services for decades, there has been little discussion of their interdisciplinary practice in the Australian literature.<sup>5</sup> Further, the unique

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<sup>1</sup> As to the origins of community legal centres in Australia, see Noone (2001).

<sup>2</sup> Australian Law Reform Commission (1999), para [7.65].

<sup>3</sup> This term is critically discussed below.

<sup>4</sup> Robertson (2001), pp 119–20.

<sup>5</sup> Only two Australian articles were uncovered in this review of the literature: Kenny and Fiske (2004) and Castles (2008). See also Swain (1989).

challenges and concerns of social workers have remained under-represented among presentations at community law conferences and forums.

This study provides an exploratory analysis of some of the issues and problems encountered by lawyers and social workers when they work together in community legal settings. The discussion is based on empirical research undertaken in Brisbane, Australia with five community legal services that employ both lawyers and social workers.

Although the initial aspirations of community legal centres included a social reform agenda and a commitment to holistic service delivery,<sup>6</sup> some social workers working in these services today believe there has been a move away from this towards an individualistic and legal-rational approach.<sup>7</sup> Of course, the experiences of individuals and organisations vary, but this – among other things – has caused some tensions to arise between lawyers and social workers. This is not to say that lawyers are uncaring. On the contrary, most of the lawyers interviewed in this study appeared to apply an ethic of care to their practice.<sup>8</sup> However, it will be seen that the organisations that reported close, supportive and successful working relationships between lawyers and social workers tended to adopt a particular feminist approach<sup>9</sup> to their delivery of services.

## **Professional Relationships Between Lawyers and Social Workers: Past Research**

### *Overview*

Relationships between lawyers and social workers have been described as sharply polarised,<sup>10</sup> hostile<sup>11</sup> and resentful.<sup>12</sup> Yet lawyers and social workers are ‘permanently, if uneasily, joined’<sup>13</sup> because there are so many settings in which they must work together, particularly within the realms of poverty law, family law and child protection.<sup>14</sup> Lawyers are not equipped to deal with the whole range of difficulties with which vulnerable clients present, and obviously most of these clients require legal advice and assistance that social workers are unable to provide.<sup>15</sup> Many commentators have concluded

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<sup>6</sup> Robertson (2001), p 119-120; Noone (2001), p 129.

<sup>7</sup> ‘Legal rationalism’ is a Weberian concept meaning an adherence to formal legal authority. It equates somewhat to a positivist approach to law, emphasising the authority of uniform legal principles: see generally, Weber (1954).

<sup>8</sup> ‘Ethic of care’ is analysed in detail below.

<sup>9</sup> This includes not only an ‘ethic of care’ orientation, but also a commitment to feminist political values related to empowerment, partnership and acknowledgement of the structural influences on disadvantage.

<sup>10</sup> Bell and Daly (1992), p 258.

<sup>11</sup> Phillips (1979), p 36.

<sup>12</sup> Dickens (2006), p 27; Preston-Shoot, Roberts and Vernon (1998), p 147; Craige and Saur (1980–81), pp 1271–72.

<sup>13</sup> Sloane (1967), pp 86–87.

<sup>14</sup> Dickens (2005), p 74; St John (2000–01); Swain (1989).

<sup>15</sup> Stranger (1996), p 1133; Craige and Saur (1980–81), p 1268; Kenny and Fiske (2004).

that these mutual gaps in service delivery are best filled through interdisciplinary practice arrangements.<sup>16</sup> However, there is universal acknowledgement that effective interdisciplinary arrangements are not easily achieved. There are many theories on why many lawyers and social workers find it difficult to work with one another.

### *Role Confusion*

First, there seems to be a lack of understanding regarding the role of social workers and the skills they can bring to a legal practice setting. Law is an old, established profession, while social work is still in its infancy.<sup>17</sup> This may explain why lawyers, and the community in general, have limited knowledge of the kind of work in which social workers engage. Social workers insist that they have an important contribution to make, but they may lack confidence in asserting their expertise.<sup>18</sup>

In one 1967 study of the relationship between lawyers and social workers, which involved interviews with lawyers and social workers, the lawyers were reluctant to characterise social workers as ‘professionals’, and they failed to see the value of the therapeutic relationship created in the context of social work practice.<sup>19</sup> Rather, the lawyers saw social workers as agency representatives applying a ‘smattering of knowledge borrowed from other disciplines’ to complex problems.<sup>20</sup> The social workers, on the other hand, saw lawyers as aggressive, rigid and patronising.<sup>21</sup> These findings have been affirmed in subsequent research.<sup>22</sup>

Lawyers may be of the view that they can ‘do it all themselves’.<sup>23</sup> However, it is stressed in the literature that social workers can offer a significant amount of assistance to lawyers in community legal settings. For example, they can assist with interviews, crisis intervention and referrals.<sup>24</sup> They can assist lawyers to appraise the facts of the case using their skills in assessing personality and mental status.<sup>25</sup> In situations where the client is too distressed, overwhelmed or vulnerable to communicate clearly, a social worker can work with them to enable them to provide the lawyer with relevant material.<sup>26</sup>

Clearly, there is only limited understanding of the unique skills that social workers can bring to legal settings. This is exacerbated by the fact that

<sup>16</sup> Goodmark (1996/97).

<sup>17</sup> Bell and Daly (1992), p 257.

<sup>18</sup> Bell and Daly (1992), p 258; Craige and Saur (1980–81).

<sup>19</sup> Sloane (1967), p 89.

<sup>20</sup> Sloane (1967), p 90.

<sup>21</sup> Sloane (1967), p 91.

<sup>22</sup> Bell and Daly (1992), p 257.

<sup>23</sup> Galowitz (1998/99), p 2152; Goodmark (1996–97), p 244; Craige and Saur (1980–81), p 1271.

<sup>24</sup> Galowitz (1998–99), p 2126; Sherrer (1976), p 280; Craige (1980–81), p 1268; Koh Peters (1989).

<sup>25</sup> Sherrer (1976), p 280; Craige and Saur (1980–81), p 1269.

<sup>26</sup> Sherrer (1976), p 281; Kenny and Fiske (2004).

neither lawyers nor social workers receive much training in working with other professions. This means that the stereotypes of each profession that exist in the community are transplanted into the interdisciplinary context: social workers view lawyers with the same distrust as other community members do, and lawyers view social workers as ‘vague’.<sup>27</sup>

### *Different Perspectives*

Second, the methods and perspectives of lawyers and social workers differ, and this can be a source of confusion and conflict. Bell and Daly note that while lawyers have an instructive, representational and deliberate relationship with their clients, social workers use their relationship with the client to resolve problems through consensus.<sup>28</sup> Lawyers see behaviour in terms of whether it falls within legally definable standards of conduct, while social workers see behaviour as the end-product of a number of intertwined interests, concerns and influences.<sup>29</sup> Lawyers are problem-solvers, trained to think in terms of winning and losing, while social workers are ‘healers’, aiming towards an outcome that benefits as many interested individuals as possible.<sup>30</sup> Indeed, it has been said that lawyers and social workers use different languages – Phillips says that social workers use a language of ‘welfare’ while lawyers use a language of ‘proof’.<sup>31</sup>

### *Ethics*

Third, much is made in the literature of the different ethical obligations of lawyers and social workers. Lawyers’ relationships with clients involve considerations of confidentiality, legal professional privilege, conflict of interest and duties to the legal system.<sup>32</sup> In past research, social workers have complained that lawyers are obsessed with procedure<sup>33</sup> and ‘precious’ with information, and that their emphasis on following clients’ instructions may not always be in the client’s best interests.<sup>34</sup> On the other hand, social workers’ ethical obligations require them to do what is best for the client, while also taking into account the broader circumstances of the matter, including the impact of any intervention on the family and the community.<sup>35</sup> While there are some commonalities between lawyers’ and social workers’

<sup>27</sup> Bell and Daly (1992), p 257; Phillips (1979), p 40.

<sup>28</sup> Bell and Daly (1992), p 258; see also Preston-Shoot, Roberts and Vernon (1998), p 145.

<sup>29</sup> Swain (1989), p 231; Weil (1982).

<sup>30</sup> Stranger (1996), p 1149; Swain (1989).

<sup>31</sup> Phillips (1979), p 38; see also Preston-Shoot, Roberts and Vernon (1998), pp 138, 144, 148. They say (p 148) that: ‘Although law and social work often utilize the same language, it is not always clear that words have the same meaning within both disciplines.’

<sup>32</sup> Castles (2008), p 140.

<sup>33</sup> Dickens (2006), p 24.

<sup>34</sup> Castles (2008), p 125; Retkin, Stein and Draimin (1996–97), p 540; Koh Peters (1989), p 18.

<sup>35</sup> Retkin, Stein and Draimin (1996–97), p 545. As to social workers’ ethics, see Australian Association of Social Workers (2010). See also Congress and McAuliffe (2006); Butler (2002).

ethical obligations – particularly regarding confidentiality<sup>36</sup> – the divergences are significant and, as Castles says, they go ‘to the very heart of the way the professions perceive their roles’.<sup>37</sup>

### *Addressing the Tensions*

Commentators differ in their views on how these tensions might be resolved. As one of Bell and Daly’s participants observed, a satisfactory relationship depends upon ‘mutual respect for each other’s specialised knowledge and expertise; openness in areas of ignorance; clear understanding of each other’s role; and awareness of boundaries’.<sup>38</sup> Bell and Daly suggest strategies such as joint training days, role-plays and formal clarification of role boundaries and expectations to improve working relationships between lawyers and social workers.<sup>39</sup> Craige and Saur suggest that ‘considerable time’ should be spent within community legal services educating lawyers about the social worker’s ‘special skills and the unique role he or she will play in the program’.<sup>40</sup> Further, it has been suggested that universities should be responsive to the fact that their future graduates will need to work with others. Law schools, it is argued, should teach practical lawyering skills, including interviewing and counselling,<sup>41</sup> while social work students should receive some legal training so they can recognise a legal problem within the web of social and emotional difficulties with which clients present.<sup>42</sup>

Lisa Strange suggests that social workers should submit themselves to lawyers’ practice restrictions – that is, that they should act in a manner that is consistent with, and prioritises, the client’s legal interests.<sup>43</sup> This is justified on the basis that the social worker has chosen employment in a legal organisation, and therefore must accept the limitations that go with that role.<sup>44</sup> She also argues that any training that social workers undergo should be focused on enhancing their legal knowledge and teaching them to argue, and support the presentation of, legal cases.<sup>45</sup> This article, however, will offer an alternative suggestion.

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<sup>36</sup> Galowitz (1998–99), p 2135.

<sup>37</sup> Castles (2008), p 141; see also Retkin, Stein and Draimin (1996–97), p 556.

<sup>38</sup> Bell and Daly (1992), p 260. See also Preston-Shoot, Roberts and Vernon (1998), pp 139, 149.

<sup>39</sup> Bell and Daly (1992), p 261; see also Johnson and Cahn (1992/93), pp 230–31.

<sup>40</sup> Craige and Saur (1980–81), p 1272.

<sup>41</sup> Goodpaster (1975–76), pp 13–15; Glennon (1991–92), pp 1179–81; Galowitz (1998–99), p 2143.

<sup>42</sup> Phillips (1979), pp 32, 41.

<sup>43</sup> Stranger (1996), pp 1154–55; Galowitz (1998–99), p 2138, although she adds that where the lawyer is employed by a social services agency, the issue is more complex.

<sup>44</sup> Stranger (1996), pp 1154–55. See also Sherrer (1976), p 279, who states that ‘the primary function of these agencies is a legal one, and social workers offer an ancillary service’.

<sup>45</sup> Stranger (1996), p 1159.

## **Brisbane Lawyers' and Social Workers' Comments About Interdisciplinary Practice**

### *Research Methods*

Between September 2011 and February 2012, focus groups were conducted with lawyers and social workers at five community legal centres in Brisbane. These organisations were selected to participate because they employed at least one social worker, in addition to lawyers. Due to the small size of the community legal sector in Brisbane, the organisations that participated in the research will not be identified. However, it can be said that, together, they deal with a wide range of legal issues and participant groups, including males and females, the young and the old, Aboriginal and non-Aboriginal people. Of course, all predominantly provide services to low-income or otherwise disadvantaged people.

At each organisation, all the lawyers were interviewed together, and the social workers were interviewed together. This was to ensure that each professional group felt able to speak freely about their experiences with one another. Group interviews, rather than individual interviews, were conducted so that shared experiences could be related, evaluated and reflected upon with colleagues who had a shared frame of reference. Of course, there are some limitations to this approach – for example, participants may exaggerate or modify their views based on those of the group. Ethical clearance for the study was obtained from the University of Queensland's Behavioural and Social Sciences Ethical Review Committee.

A total of 24 individuals participated – thirteen lawyers and eleven social workers. The participants were mostly female (75 per cent), and indeed all but one of the social workers were female. This is consistent with the over-representation of women as employees of community legal centres.<sup>46</sup>

The discussions were semi-structured in nature, and the same trigger questions were used in each group interview. Participants were first asked to outline the nature of the lawyers' and social workers' roles within their organisation, to establish whether there was any overlap in those roles, and to describe how they dealt with this. They were then asked to explore the nature of their collaborations and to identify any strengths and weaknesses in their organisation's approach. They were also asked whether they felt there was anything the two professional groups did not understand about each other.

The qualitative data yielded was analysed using Miles and Huberman's methods.<sup>47</sup> In particular, recurring patterns and themes were coded, and analysed.<sup>48</sup>

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<sup>46</sup> Federation of Community Legal Centres (Victoria) Inc and Community Legal Centres NSW Inc (2011), p 2.

<sup>47</sup> See Miles and Huberman (1994).

<sup>48</sup> Miles and Huberman (1994), pp 55–58, 252–53.

## Results

### *A Place for Both Professions*

The nature of interdisciplinary practice, and the effectiveness of collaborations, varied markedly between the organisations that participated in this research. Participants invariably put these differences down to the individual personalities of team members, and the distinct organisational culture of their service.<sup>49</sup> As a result, it is difficult to generalise about the experiences of social workers and lawyers within these organisations.

However, some response patterns were identifiable. Overall, the vast majority of participants agreed that there was a place for both lawyers and social workers in community legal practice. The participants cited a number of reasons for this. First, it was said that in community law it is difficult to separate the legal from the social. As one social worker remarked:

I think you've got to look at how the social situation's impacting on the legal mess and vice versa and I suspect that is, for some solicitors, rather hard to get your head around, whereas it's not a matter of simply ticking boxes and now this is a legal problem. From my point of view as a social worker, you can't really separate them out.

Second, the participants recognised that each profession's deficiencies were, at least in part, supplemented by the other's strengths. The social workers valued the access that they had to high-quality, accessible and fast legal advice for their clients with legal difficulties. The lawyers valued the opportunity they had to refer to the social worker their clients with complex needs and emotional difficulties, and the clients for whom no legal remedy was available. Both professional groups recognised that the law could not offer a solution to all clients, and that for some clients the legal problems would recur if their social problems were not addressed. As one social worker said: 'If you don't have the social work side, then the legal side is really just a Band Aid.'

Third, some of the participants said that working with the other professional group had contributed to their professional development. For example, one lawyer said:

I feel like having social workers around helps me to appreciate what might be accomplished by, yes, sort of broadening the scope of what I'm interested in hearing from clients. Instead of just going, 'No, stop talking about that, that's not relevant'.

Many of the social workers said they had acquired substantial knowledge of the law and the legal system through their work in community legal settings. One said:

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<sup>49</sup> A similar finding was made in another study on lawyers and social workers' interdisciplinary practice: see Bell and Daly (1992), p 259.

We have sort of been chucked into this legal world so we've got to get our head around some, a lot, of legal stuff that other [social workers] do not have to cast their mind to at all ... a lot of [other social workers] just don't know and we think "how did they not know that?!"

Yet, despite overall support for each other's presence, it could not be said that harmonious interdisciplinary relationships existed between lawyers and social workers in all of the organisations. There were a number of recurrent difficulties associated with interdisciplinary practice that were raised in the groups. They included a lack of mutual respect and valuing of each other's roles; differences in professional approaches; and conflicts in ethical rules.

### *Lack of Respect for, or Value of, Each Other's Roles*

One of the most common complaints from the social workers in this study was that they were not valued as professionals in their own right by their legal colleagues. In four of the organisations that participated in this research, the social workers reported that the lawyers with whom they worked had at times treated them as 'second-rate', 'bag-holders', paralegals and support people, rather than professional social workers. Most poignantly, in two of the organisations, the social workers expressed resentment at the term 'non-lawyer'. One said: 'I'm not a "non" – I could call you a non-social worker.' Another said: 'We're first-class social workers, we're not second-class lawyers.'

In at least two of the organisations, the lawyers did make comments that devalued the work of the social workers. Indeed, one of the lawyers said they would prefer working with paralegals to social workers, and other lawyers in that organisation agreed that the lack of administrative support they received meant that they would certainly benefit from the presence of paralegals. In another organisation, the lawyers insisted that there was nothing the social workers did that the lawyers could not (and did not) do themselves. They said:

There's nothing extra that a social worker's going to be able to achieve that I've [sic] already done.

Anything that she's doing is something that I have done in the past myself.

I don't know that I understand exactly what they do.

Among both lawyers and social workers, there was an acknowledgement that stereotypes of both lawyers and social workers existed, and affected relationships between the two professions. Predictably, lawyers tended to be stereotyped as 'unfeeling', 'arrogant', 'risk-averse' 'alpha types' while the social workers were stereotyped as 'bleeding hearts', 'touchy-feely' 'lefties'. The social workers felt that the community in general was not well informed about what their role was, and that naturally this included lawyers. Generally, they felt misunderstood and under-valued.



Interestingly, having a flat pay structure did not ameliorate this sense of inequality that social workers experienced. At most of the organisations interviewed, lawyers and social workers were paid at the same rate, and they all claimed to have no organisational hierarchy. Three of them were even coordinated by social workers rather than lawyers, and all of them had substantial social work representation on their management committees. Yet formal equality did nothing to equalise the relationships. One lawyer said:

While the idea is to be equals and peers about everything, in practical reality, I don't think lawyers feel comfortable in allowing that to happen. But social workers find it as well because they feel like 'we're not being treated as equals'.

There were only two organisations in which the lawyers did not say anything to devalue the work of the social workers. In one of these, the social workers did not complain about feeling under-valued, but in the other they did. In the organisation in which the social workers felt under-valued but the lawyers expressed that they did value their work, the lawyers were cognisant of the fact that there was a danger that social workers might feel under-valued within the organisation. One of the lawyers had a theory about why this might be the case:

The social workers are playing a really important role but not a role that is absolutely visible and therefore isn't perhaps as acknowledged by the other players. Whereas lawyers very rarely go along to play that sort of supporting role for some of the other work that the social workers are doing ... there isn't the same sense that you're getting that same sort of back-up from the lawyers.

The lawyers said that ensuring the social workers felt valued was an ongoing struggle for their organisation, but something they did pursue.

There was only one organisation in which there existed an extremely harmonious and supportive working relationship between the lawyers and social workers. The lawyers in that organisation said that they had learned a lot from the social workers with whom they worked, including how to listen, how to interview and what might be done outside the legal system to assist clients in situations where the law could not provide a solution. One of these lawyers said:

I don't think I could imagine practising without a social worker, for a whole range of things, not just the individual client stuff. That whole sort of community development front, that whole thought of trying to change the system to stop more people – you can never have enough resources to meet the need. But if you can reduce the need by doing some more structural stuff – I think, having worked with social workers for such a long time, that's what we've really learnt.

Likewise, a social worker in that organisation said:

Here, [the lawyers have] got a fairly good understanding [of psychosocial issues for clients]. I think it's fairly open in terms of our communication and we do meet regularly and talk about issues and talk about issues together. There is an understanding that there's a fair bit of overlap in terms of emotional support and when the solicitor can do it and when it becomes too much and a social worker is needed.

### *Conflicting Ethical Rules*

In most of the groups, the differing ethical obligations of the two professions were also raised as a potential source of tension. In particular, conflict of interest was raised as a serious issue in three out of the five organisations that participated. The lawyers explained that where a conflict of interest arises (for example, where the organisation has provided, or is providing, advice or assistance to the other party), the person will be 'conflicted out' – that is, the organisation will not be able to provide them with legal services. To the lawyers, the response was unequivocal – the person needed to be turned away immediately, no matter how unfortunate this was for them, regardless of any lack of alternative services that might be available to assist them.<sup>50</sup> However, the social workers were deeply troubled by this. They felt that in some situations, such as where a person was seriously distressed or suicidal, they were ethically obliged to assist the person, even if there was a conflict. In at least two of the organisations, this had on occasion been a source of tension between the two professional groups. One of the lawyers described such a situation:

There was a conflict check done and the person was another party to an existing matter. So we couldn't give them any legal advice. The social worker was aware of that but decided because of the person on the phone being in extreme distress and needing support, so that something really serious didn't happen to them – the social worker then proceeded to assist them to deal with their personal crisis ... But the trouble with doing that is that it's very hard to do it without the legal training to make sure that you don't trip over into the aspects of the case... The social workers aren't trained in picking between the facts that might be part of a legal case.

The perspective of the social workers was very different. One said:

The social worker could not leave her in the situation she was in. However, at the same time, there was a solicitor on the social worker's shoulder saying 'Hang up now, hang up now'. We have a duty of care and if somebody tops themselves because they haven't been given assistance by a social worker, I mean, that is a real issue for our profession.

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<sup>50</sup> This approach is mandated by their professional rules: see Queensland Law Society, Legal Profession (Solicitors) Rule 2007, rule 4 ('Acting against a former client').

In these situations, the dilemma for the organisation was whose perspective should be given primacy. In two of the organisations interviewed, insurance was raised as the determining factor: the lawyers believed that since the social workers operated under the lawyers' public liability insurance, the lawyers' ethical obligations had to remain paramount. Also, some of the lawyers insisted that their obligations should be considered paramount because they were sourced from law, while social workers' ethical rules were merely 'aspirational'. The social workers, however, insisted that their obligations were sourced from transcendent notions of beneficence and moral/social responsibility, and they felt that these personal duties between individuals were of greater significance.

### *Differing Professional Approaches*

The two professions identified significant differences in their approaches to casework. For a start, lawyers and social workers define 'the client' differently. The lawyers in four of the participating organisations said that, as a result of their ethical obligations relating to conflict of interest, they were bound to represent the interests of one party only. In direct contrast to this, the social workers at all of the organisations interviewed said that they took a broad, systems-based approach to their work. From the social workers' perspective, this might require them to speak with family members or other agencies involved with the person. Often, the social worker will end up defining the client as 'the family' rather than the individual that has presented with the legal issue.

The lawyers were more likely to emphasise the importance of acting on clients' instructions when determining what action to take in a particular case. While the lawyers agreed that their goal was to bring about the best outcome for the client, they were committed to maintaining client autonomy. The social workers, on the other hand, were more likely to say they took a 'best interests' approach – that is, they aimed to work with the client to adopt a course of action that took all their circumstances, not just their legal rights, into account. The social workers tended to insist that interventions should be 'solutions-focused'. All of the social workers said that the problems with which individuals presented could sometimes be resolved through gathering information, listening and communicating with the parties, rather than seeking a legal remedy. They argued that a holistic approach should be taken to each individual client, where legal interventions were not considered superior or primary to social interventions.

In two of the organisations, lawyers were dismissive and disparaging of this approach. Lawyers in these organisations considered the 'best-interests' approach to be 'top down and paternalistic'. They said that while social workers' instinct might be to 'jump in there and start preventing things', they believed that social workers should learn to 'curtail their natural inclination' to this effect. They said that gathering a whole lot of 'useless' (that is, legally irrelevant) information was a 'waste of their talents', and that they should take their lead from the lawyer regarding what was relevant and useful information, and what action should be taken. Interestingly, the social

workers in these organisations reported that they had learned, or continued to try, to adapt their practice in this manner, but they generally resented this and felt that it did not bring about the best outcomes for clients. One said:

I've had to put my ego in the bottom drawer. I've had to really think about what battles I'm going to take on. Is it worth me really digging my heels in here, or am I just going to cause myself mountains of stress because I really want to unpack this with [the] solicitor?

The social workers in all the organisations indicated that their focus was on client well-being and psycho-social factors. There was a suggestion by some social workers that the lawyers, by comparison, were 'the arguers' and dealt mainly with 'facts'. Some felt that emotional factors were considered by the lawyers to be less 'objective', reliable or relevant. One social worker said:

The lawyers had to be focused on individual cases and it is very much individualised work ... I think, for lawyers, it's much more – this is your client, these are the facts, and that's the process you will follow.

The lawyers tended to emphasise the value of formal legal remedies; as one said:

We are working with a system and it's got its limitations. We need to focus on what we can do within the system ... I think [social workers] don't understand (a) the legislation we work with and (b) procedure.

Having said this, the lawyers' personal commitment to their clients, and their manner of dealing with them, were not questioned or criticised by the social workers in any of the groups. Indeed, the lawyers in all of the participating organisations said that caring for the client was important to their practice. They expressed genuine concern for their disadvantaged clients, and a strong commitment to ensuring their clients obtained what they considered to be the best possible outcomes. One of the lawyers said:

We actually spend more time listening and doing stuff that may not strictly be relevant, but we do it for the client's sake.

In three of the organisations, the lawyers made the specific point that they could still act in a caring manner while practising law objectively. One said:

I think lawyers do deal with the person ... I don't think that, if lawyers are dealing with the person, that that's necessarily the social worker [in them]. It just means part of your legal job is to do it.

However, in one of the organisations, the approach of the lawyers was different, and actually closely approximated that of the social workers. The approach of the lawyers in this organisation went beyond merely caring for the client, and encompassed a commitment to client empowerment, acting in partnership with clients and finding a solution to the problem with which the client was happy. Comments of the lawyers in this organisation included:

If we want to be true to what our roots are, which is to make a difference and to really improve people's lives ... I think we're very arrogant in the extreme for lawyers to think they have the one right way and to not value any other skills.

Poverty law is so much bigger than what your legal right might be. I'm not sure that we do people as helpful a service as you could if you don't do it in a context and actually look at the bigger picture.

## **Interdisciplinary Practice: Can It Work?**

### *Social Work vs Legal Practice: Overview*

It is well established in the literature that lawyers and social workers approach their casework in different ways, and this was affirmed in the present study. Lawyers, by their own admission, tend to search primarily for legal avenues of redress. They define the client narrowly as the person seeking their advice and assistance, and they consider themselves unable to work with a client who is 'conflicted out' or for whom no remedy can be found. Social workers, on the other hand, take the client as they come, with all their personal circumstances and 'non-legal' difficulties. They are also more willing to 'go where the client takes them' in that they are not necessarily seeking opportunities for legal remedies. Rather, they look at the whole picture to determine what the best course of action might be.

Most of the social workers in this research expressed fundamental disagreement with the practice methodology applied by the lawyers. At times, the criticisms were unfair. For example, as regards conflict of interest, lawyers' professional rules require that they refuse to act against a former client; disciplinary action may result if they breach this rule. Other criticisms were more justified. It is true that community legal centres were designed to offer a multidisciplinary response to the difficulties faced by disadvantaged and marginalised people that prevented them from accessing justice. This necessitates an approach that goes beyond the 'black letter' law to consider non-legal avenues of redress. It requires a creative approach to be taken to finding solutions – all the circumstances and preferences of the client must be considered, rather than just their legal prospects of success.

If social workers' and lawyers' approaches to practice are indeed polarised, the central goals of community legal practice may not be achievable. Lawyers and social workers in community legal centres must work together, and must share a similar perspective, if they are to 'remain true to [their] roots'. But is there a model of legal practice that is consistent with social workers' goals of holistic care and solutions-focused intervention? This article argues that there is, and that that model is a particular kind of feminist legal practice.

### *Law and Social Work as 'Caring' Professions*

Both law and social work are – or at least can be – 'caring professions'. This is certainly the case in a community law context, where the emphasis is on

the welfare of the people they serve.<sup>51</sup> In this study, it did seem that most, if not all, of the participating lawyers applied an ‘ethic of care’ to their work. Carol Gilligan’s initial exposition presented ‘ethic of care’ it as an ethical standpoint that focused on the connections between people, and the honouring of those connections through the caring and empathic treatment of others.<sup>52</sup> Ellmann has suggested that ‘the lawyer–client relationships called for by the ethic of care are not *vastly* different from those permitted under existing [professional] rules’.<sup>53</sup> It has been said that all superior legal practitioners exercise some ‘psychological skills’, including an awareness of others, how to meet emotional needs and how to listen.<sup>54</sup> This is consistent with an ethic of care approach to legal practice, which encourages the lawyer to develop a personal and emotional connection with their client, and ‘abandons the complete insulation of heartlessness that sometimes seems implicit in current formulations of lawyers’ ethics’.<sup>55</sup>

Adopting an ‘ethic of care’ in lawyering has been described by some as essentially ‘feminine’, in the sense that it finds its roots in feminine values such as connection, relatedness and empathy.<sup>56</sup> However, an ethic of care does not necessarily preclude a partisan or even a detached approach to some lawyering activities. As Ellman has said, having special responsibilities to clients to the exclusion of others is still consistent with an ethic of care.<sup>57</sup> And Kimberley O’Leary has discussed the line that must often be drawn between openness and maintaining professional boundaries in legal practice.<sup>58</sup> The comments of some of the lawyers in this study indicated that the act of lawyering can still be ‘liberal’<sup>59</sup> in nature, even when an ethic of care is employed in legal practice – that is, even a caring lawyer may reason in an objective and neutral manner.<sup>60</sup> The law may still be viewed as

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<sup>51</sup> Sherrer (1976), p 279. Note, however, that Andrew Phillips does not class the law as a caring profession, and he argues that social workers are more willing to disclose information to professionals who are considered ‘caring’, such as doctors and other health workers: Phillips (1979), p 40. Note also that, in her study of law and social work students, St John noted that social work students felt that part of their job was to transmit an ethic of care to their legal counterparts: St John (2000–01), pp 416, 422.

<sup>52</sup> Gilligan (1982), pp 6–23, 30.

<sup>53</sup> Ellmann (1992–93), p 2668.

<sup>54</sup> Goodpaster (1975/76), pp 5, 13.

<sup>55</sup> Ellman (1992–93), pp 2694, 2665.

<sup>56</sup> West (1997). Of course, it is also present in men: Menkel-Meadow (1985), pp 41; Cahn (1992), pp 1050–53.

<sup>57</sup> Ellman (1992–93), p 2681.

<sup>58</sup> O’Leary (1992), p 225.

<sup>59</sup> O’Brien (2011), p 83 describes ‘liberal’ legal practice as legal practice in which the lawyer is ‘politically immune’. The lawyer seeks instructions and provides advice to the client on their legal circumstances, but the lawyer takes no personal responsibility for the outcome of the case, and remains morally neutral.

<sup>60</sup> See Smith (1993), p 35.

transcendent, and the lawyer's advice may still be technical and detached.<sup>61</sup> In social work practice, caring and respect for persons are, of course, fundamental values.<sup>62</sup> However, social work practice seeks to go beyond this to identify the systemic causes of clients' problems and to formulate methodologies for addressing the structural causes of disadvantage and injustice.<sup>63</sup> The social workers in this study all agreed that systemic advocacy and community development were central to both their profession and their role, and many said that they felt their capacity to practise in this manner was limited by the restrictions placed upon them by their legal colleagues, no matter how 'caring' they were as lawyers. The extent to which ethic of care can address broader structural problems related to injustice and oppression is, of course, a topic of some debate,<sup>64</sup> but the comments of the participants in this study seemed to suggest that an ethic of care represented a moral framework for practice, rather than influencing the politics of their approach. Thus it seems that there may be a gap between 'caring' legal practice (or legal practice that embodies an 'ethic of care') and social work practice (to which caring and respect are central, but only part of the agenda). The nature of this gap is discussed below.

### *Feminist Legal Practice*

The law has a 'binary logic' – that is, legal reasoning is organised around a series of dichotomies, such as law and policy, public and private, winners and losers.<sup>65</sup> If a matter falls on the wrong side of the line, it is inactionable and not the lawyer's concern.<sup>66</sup> These perspectives are often said to reflect a masculine version of reality, but of course this is the subject of debate.<sup>67</sup>

Ann Scales argues that feminist legal method 'posits alternative claims to truth'.<sup>68</sup> It recognises that the law is 'absolutely political' – that it is 'not an end in itself' and does not serve as a guide to the truth or justice.<sup>69</sup> Feminist practice based on this kind of legal reasoning seeks to find a solution that takes account of the needs of all the parties, rather than just the person defined as 'the client'.<sup>70</sup> According to Scales and others, there is much more to feminist legal practice than applying an ethic of care.<sup>71</sup>

<sup>61</sup> Scales (1986); Finley (1989).

<sup>62</sup> AASW Code of Ethics, cl 3.1. See also Meagher and Parton (2004).

<sup>63</sup> AASW Code of Ethics, cl 3.2.

<sup>64</sup> See Meagher and Parton (2004), pp 15–16.

<sup>65</sup> Scales (1992), pp 19–20; see also Bartlett (1994), p 1265.

<sup>66</sup> Scales (1992), p 20.

<sup>67</sup> As to the 'different voice perspective' in the context of legal practice, see Bartlett (1994). For a critique of the 'different voice' perspective, see Cahn (1992).

<sup>68</sup> Scales (1992), p 25.

<sup>69</sup> Scales (1992), pp 4, 28.

<sup>70</sup> Menkel-Meadow (1986), p 914.

<sup>71</sup> Of course, some say it should not necessarily be assumed that an 'ethic of care' is a feminist approach: see particularly Rhode (1990), pp 624–25.

Feminist legal theory as a form of ‘outsider jurisprudence’ considers the question: If the law seeks to further the interests of those in power, how can we change it to protect those who are disenfranchised?<sup>72</sup> On its own, an ethic of care approach lacks this political focus. Far from listening to clients’ irrelevant ramblings merely out of kindness or compassion, or as a demonstration of empathy, storytelling is considered valuable because it exposes another reality and suggests alternative avenues for social change.<sup>73</sup>

It is this brand of feminism that accords with the kind of social work practice described by the social workers in this study. As one of the social workers interviewed for this research said, ‘feminist values align very well with social work values ... in terms of empowerment and recognising structural disadvantage’. This kind of feminist legal practice is ‘more sensitive to context’, and is ‘more concerned with identifying the actual reasons for decision-making’; goals are set in response to the needs of the individual client.<sup>74</sup> This is important in community law because often individuals’ experiences do not fit neatly within existing legal rules and ‘neutral’ laws may need to ‘bend’ to accommodate different realities.<sup>75</sup> Reform of the law may be required, and while successes of this kind may be slight or slow, the client’s participation is enhanced, and their understanding and acceptance of the outcome may be improved.

This kind of feminist legal practice requires a genuine partnership between the lawyer and the client, where the two work together so closely that it is difficult to distinguish which of them is making the decisions.<sup>76</sup> This can only be achieved through mutual respect, honesty and empowerment; as Kimberley O’Leary has said: ‘The best legal representation will only occur when the lawyer and the client have attained a mutual understanding and can make decisions by consensus.’<sup>77</sup> This method of practice addresses one of the dichotomies that was raised in the interviews in this research, client autonomy and paternalism; a truly consensus-oriented approach does not involve control.<sup>78</sup>

As Carrie Menkel-Meadow suggests, if this kind of legal reasoning was adopted in legal practice, less adversarial (consensus-based) processes might be utilised more frequently, and different kinds of solutions might be implemented.<sup>79</sup> For example, in some situations, a struggle with the legal system may not be the desired goal, or capable of achieving the desired

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<sup>72</sup> Scales (1992), p 4.

<sup>73</sup> Grant Bowman and Schneider (1998), pp 253, 268.

<sup>74</sup> O’Leary (1992), pp 212, 213; see also Menkel-Meadow (1986), p 915.

<sup>75</sup> O’Leary (1992), pp 213, 214.

<sup>76</sup> O’Leary (1992), p 209.

<sup>77</sup> O’Leary (1992), p 218.

<sup>78</sup> O’Leary (1992), p 210, although it has been said that feminist legal practice can be ‘maternalistic’: see Tronto (1993), pp 170–71.

<sup>79</sup> Menkel-Meadow (1985), pp 52–54; Menkel-Meadow (1986), p 914.



outcome.<sup>80</sup> This kind of feminist approach to practice will influence working relationships because it favours non-hierarchical organisations with shared decision-making and mutual valuing of expertise.<sup>81</sup> Under this model of practice, the work of other disciplines outside the law are considered highly relevant and useful to legal practice, and to legal education. As Menkel-Meadow says, if a feminist perspective was applied to legal education: ‘Legal problems would be more likely to be seen as a “web” perhaps a seamless one, of multivariate causes and consequences, all requiring study.’<sup>82</sup> Further, conflicts of interest might be dealt with differently under alternative conceptions of client loyalty,<sup>83</sup> perhaps more consistently with the perspectives of the social workers interviewed here.

The kind of feminist legal practice described by Scales, Menkel-Meadow and others looks very much like traditional social work practice, and its values and perspectives are very similar to those expressed by the social workers in this research. Feminist legal practice that goes beyond an ethic of care to recognise the structural causes of disadvantage, accept alternative conceptions of reality and embrace non-legal outcomes may have the capacity to bridge the gap between legal and social work practice, and facilitate successful working relationships and collaborations between social workers and lawyers. The challenge for educators is to ensure that this alternative approach is put to our students – particularly those who wish to pursue a career in community law.

## Conclusion

The participants in this research made a number of suggestions as to how positive professional relationships might be fostered and maintained between lawyers and social workers in community legal settings. Most participants raised the importance of mutual respect and trust, and valuing the role that each professional group can play in service delivery to clients. In the organisations that reported more tense relationships, the social workers felt that they were not valued or trusted to undertake the interventions they considered necessary – that is, they lacked professional autonomy. The focus of these organisations tended to be on the legal outcome that could be achieved for a client and, in situations where the legal system was unable to assist the client, the lawyers’ view tended to be that work with the client should cease.

In the organisations that reported more harmonious relationships between lawyers and social workers, each professional group was aware of the skills that the other brought, and genuinely valued their input. As a result, role delineation was rarely contested. The main objectives were to empower the client to cope with the circumstances with which they were faced, to address as many of their

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<sup>80</sup> O’Leary (1992), p 222.

<sup>81</sup> Menkel-Meadow (1985), p 55.

<sup>82</sup> Menkel-Meadow (1985), p 59.

<sup>83</sup> Menkel-Meadow (1985), p 60.

concerns as possible, and to use the legal system – as well as other systems – to work in the best interests of ‘the client’.

In this research, the fact that the lawyers approached their work with an ‘ethic of care’ did not make their relationships with social workers more harmonious. Based on the comments of the participants in this study, it seems that lawyers may take a ‘liberal’ approach to their practice, remaining ‘politically immune’ and morally neutral,<sup>84</sup> but still act in a caring and sensitive manner. In the one organisation where the lawyers overtly engaged in feminist legal practice in a political sense (as described by theorists such as Ann Scales and Carrie Menkel-Meadow), the professional collaborations were successful and the working environment was supportive and collegial. The atmosphere was much more accepting, the skills of social workers were recognised and valued, and the lawyers felt no need to ‘protect their turf’.

Regardless of the tensions that existed between lawyers and social workers in some of the organisations that participated in this research, the participants tended to agree that they were providing an effective, holistic service to clients. While the participants made suggestions as to how their practice could be improved, these suggestions were mostly about improving working relationships rather than enhancing the service offered to clients. Even the most tense organisations reported receiving positive feedback from clients, and they felt that this brought the team closer together, regardless of the professional tensions that existed.

As Sherrer expresses so well: ‘A distinction must be drawn between how a social worker can help a client and how he [sic] can help a lawyer.’<sup>85</sup> If the tensions between social workers and lawyers do not impact negatively on client outcomes or perceptions of service, perhaps the quality of the working relationships between them is less important. The danger is that tensions will escalate to the point where each profession would prefer not to work with the other, and seeking funding for social workers may cease to be a priority for community legal centres. The value of social workers is that they provide an alternative perspective. If this were lost, it would be a loss to both the legal profession and clients.

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<sup>84</sup> O’Brien (2011), p 83.

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## Legislation

Queensland Law Society, Legal Profession (Solicitors) Rule 2007