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JOHN CURTIN LAW CLINIC HALF YEAR REPORT

FOR THE PERIOD ENDING 30 NOVEMBER 2017

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ABOUT THE JOHN CURTIN LAW CLINIC

OUR MISSION

To enhance the education of Curtin law students and improve access to justice through supervised professional experience.

OUR OBJECTIVES

We do this by:

- creating opportunities for students to engage in professional activities in a supervised, clinical legal education environment;
- providing legal aid to small businesses;
- encouraging students to critically reflect on their roles and responsibilities as future members of the legal profession; and
- giving students training and development opportunities to develop their professional skills.

WHAT WE DO

The John Curtin Law Clinic provides advice and assistance to eligible small businesses based in Western Australia.

Under close supervision, final year Law Clinic students meet with small business clients and take responsibility for managing the matter.

Some of the issues we help small businesses with include: identifying their legal options; carrying out legal research; preparing court documents; and providing referrals.

WHAT WE DON'T DO

We do not advise on the following areas of law: Criminal; Family; Medical negligence; Migration; Personal injuries; Superannuation; Taxation; Trademarks or patent registration; Welfare; Wills and Estates; Workers' compensation.

We also do not provide representation.

Clients must attend all court hearings and appointments themselves. They must also send correspondence under their own name and letterhead.

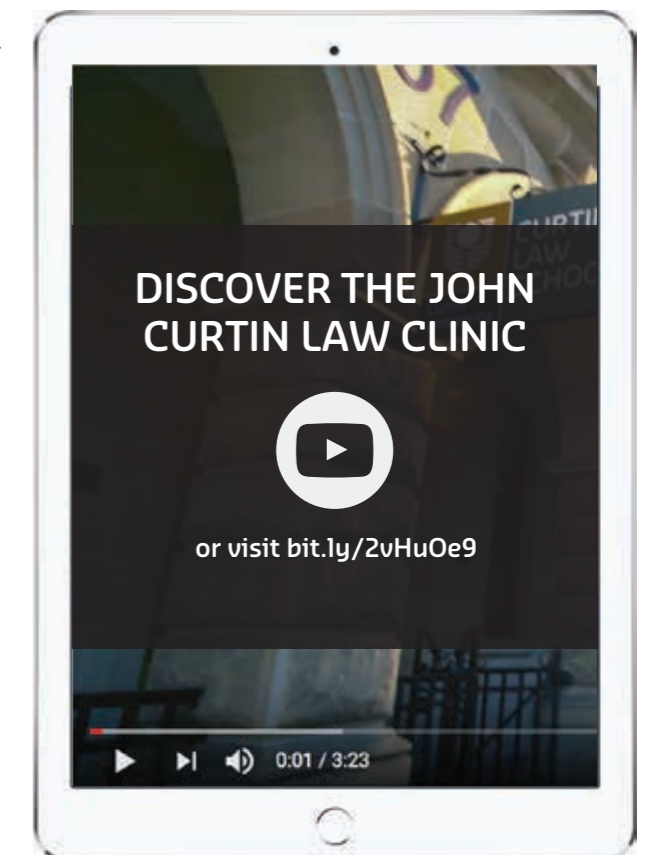
MANAGEMENT

The Director of Professional Programs, Julian Sher, has responsibility for the strategic operations of the John Curtin Law Clinic. Julian has over 40 years' experience in private practice, including as Managing Partner of national and international law practices, and at the independent bar.

The Principal Lawyer, Rosaline Tan, is responsible for the day to day management of the Law Clinic, including delivery of the Legal Clinic unit and primary supervision of students. Rosaline has over 10 years' experience in commercial litigation and dispute resolution as well as in a community legal centre in Perth.

Both the Director of Professional Programs and Principal Lawyer are qualified and experienced legal practitioners and hold current practising certificates.

From July 2017, Elana Christou assumed the role of Clinic Administrator, providing support services for the John Curtin Law Clinic.



ABOUT THE JOHN CURTIN LAW CLINIC

INSURANCE

The Law Clinic is insured by RiskCover, which is the Government of Western Australia’s self-insurance scheme administered by the Insurance Commission of Western Australia.

CONFIDENTIALITY

To maintain the integrity of confidential information received from clients and potential clients of the John Curtin Law Clinic, all Clinic students sign a “Student Participation Deed” before participating in the Law Clinic.

CLIENT AGREEMENT

The John Curtin Law Clinic has a standard retainer agreement. It sets out the main terms and conditions on which we agree to act for the client.

The Law Clinic must have received a properly executed copy of the client agreement before we start to do any work. Clinic students are responsible for explaining this document to potential clients during the initial appointment.

COSTS

The Law Clinic services are free of charge.

However, clients must still pay all other expenses related to their matter.

These include filing fees, consultant fees (if the client engages a third party such as a barrister or expert witness) and (if they are involved in court proceedings), any amounts ordered by the Court.

OPENING HOURS

During 2017, the Law Clinic was open to the public Monday to Thursday during semester.

In 2018, to accommodate student commitments and client demand, the Law Clinic will open in accordance with the Law School’s trimester teaching periods.



INTRODUCTION FROM THE DEAN

The John Curtin Law Clinic is approaching its first anniversary. It is a natural time to think back over what has been done and reflect upon what remains undone. The achievements are well set out in this Report. Those responsible for the daily management of the Law Clinic and the instruction of students and the provisions of assistance to citizens should be very proud

From the educational perspective, the simple truth is that clinical legal programs are not inexpensive learning tools. The US law school experience tells us to be aware of overreach. There are limits to what can be done on Commonwealth supported funding. But judiciously used, clinic places are worth every penny. To listen to clinic students describe their experiences is to feel rejuvenated. When hearing such experiences, enthusiastically told, one is easily persuaded of the Law Clinic’s value as a capstone learning experience for law students.

On 6 September the John Curtin Law Clinic received a visit from the Minister for Small Business, Paul Papalia CSC MLA and the Honourable Attorney General John Quigley MLA. The Commissioner for Small Business, Mr David Eaton, in whose debt we remain for his enthusiastic support for the Law Clinic, and the Pro-Vice-Chancellor of Curtin Business School, Professor Nigel de Bussy, also spoke. I was particularly delighted to hear a speech by one of our Clinic students, Ms Madison Scott, who spoke eloquently about the value of the Law Clinic. An edited transcript of her speech is included in this Report.

I wish all law students could experience the John Curtin Law Clinic, but of course, we would need significantly more supervisory capacity, and that means resources. But as I said in my initial Half-Yearly Report, we look forward to the day when all law students at Curtin will be required to have some experience in the Clinic before graduation.

As Dean, I remain firmly committed to that goal. There is a bottomless pit of need, if only more resources were available, and no shortage of enthusiastic students, but we have made a start.



Paul Fairall

Professor Paul A Fairall
Foundation Dean and Head of School
Curtin Law School

REPORT FROM THE DIRECTOR OF PROFESSIONAL PROGRAMS

The John Curtin Law Clinic opened its doors for business for the first time in February 2017. In some ways, its inaugural year of operation has been experimental, but I am delighted to say that our experiment has had a pleasing result.

The response from small business has been overwhelming. Patently there is huge pent-up demand in the community, from businesses who simply do not have the financial resources to engage with the justice system. Our students have risen to the occasion, not only by registering for the Law Clinic course, but also – in some cases – by volunteering for service over and above the call of duty. I am delighted to say that other students have demonstrated their enthusiasm by committing to enrol in the 2018 Legal Clinic course – almost 12 months in advance! It is especially gratifying to observe the huge level of support we receive from Curtin University – at university, faculty and law school levels. Without Curtin University’s prodigious support, this project would be an impossibility.

I extend profuse thanks to our talented and dedicated Law Clinic Manager, Rosaline Tan, without whose tireless efforts the Law Clinic would be unable to function. Her skills as a practitioner and as a practice manager have generated not only legal work of the highest quality, but they have also created an exceptional educational experience for our Law Clinic students. Her enthusiasm and leadership have contributed significantly to our achievements so far. Recently we welcomed Elisha Rose as a supervising lawyer on a part-time basis. Elisha is an experienced practitioner with her own practice. Elisha has already demonstrated her enthusiasm and commitment, further enriching the educational experience of students.

Since the commencement of the Law Clinic’s operations, it has become manifestly obvious that there is a tremendous need among the general community for our services. Bearing in mind the significant role small business plays in the economy, the Law Clinic is already making a relatively modest but important contribution, not only to the economy, but also by engendering an understanding of the administration of justice. The Law Clinic has already been able to positively and meaningfully impact on the lives of individuals who would otherwise have had no recourse.

The distinguishing feature of our Law Clinic is that students receive opportunities that are often not readily available to practising junior lawyers – even to graduate lawyers and restricted practitioners. By their interaction with clients, in a closely supervised environment, law undergraduates are challenged to develop and utilise their practical legal skills by conducting client interviews and managing client relationships, developing skills often not even acquired after some years in practice. These interactions occur in a supportive and closely monitored environment, giving Law Clinic students confidence and a distinct advantage, as they learn to apply their theoretical knowledge of the law to actual cases. They learn to use the latest legal software for file, time and document management (LEAP), simulating legal practice. They interact with some of Western Australia’s most senior and well-regarded legal practitioners, including barristers, managing partners, government lawyers and judicial officers on a structured basis. Law Clinic students have ample opportunities to experience mediations and tribunal hearings of many kinds.

The major challenges facing the John Curtin Law Clinic are: ensuring a continuation of the enthusiastic support we have received from our supporters and friends in the legal profession who are benignly, but closely, following our progress; facilitating continued engagement and enthusiasm from the law student body; and maintaining resourcing by the university. I am optimistic about our Law Clinic’s prospects in 2018 and beyond. It has an important role to play as a vehicle for facilitating access to justice, while simultaneously giving our students some additional advantages as they embark on their careers.



Finally, I offer this message to law students who may be contemplating registering for the Law Clinic course in 2018 (and beyond):

“There is no such thing as too much experience. The more experience you have, the more skilled you will become.

The more skilled you become, the better equipped you will be to help clients.

The better equipped you are, the better an investment you will be for prospective employers.”

I look forward to a bumper 2018, with full enrolments, a special educational experience and the continuation of a marvellous passion for bringing meaningful change to the lives of many in our community who have no one else to turn to.

Julian Sher
Director of Professional Programs
Curtin Law School

REPORT FROM THE PRINCIPAL LAWYER

In this second half-year of the John Curtin Law Clinic, the Law Clinic students and volunteers provided substantive legal advice on 26 matters, covering a range of commercial leasing, contract, debt recovery and other commercial issues.

Despite the smaller cohort, the work in this period was augmented by the dedicated efforts of volunteers. As well as providing initial legal advice and information, the Law Clinic assisted clients in preparing for hearings in the State Administrative Tribunal and Magistrates Court. Overall, our work equated to approximately \$110,000 in billable fees, bringing the total pro-bono contribution of the Law Clinic to almost \$230,000 this year.

In this 2nd half of 2017, it was my pleasure to supervise and work with the following Law Clinic students:

Ms Aleisha Archer

Ms Nadia Budihardjo

Mr James Carpenter

Ms Nadine Elmowafy**

Mr Joshua Muljohardjo

Ms Madisen Scott**

Ms Joycelyn Tang

Mr Rowan Ratter-Stotesbury**

**volunteers

A key pillar of the Law Clinic was its establishment within Curtin University and the Law School curriculum. Curtin Law students are extremely fortunate that the University and Faculty senior executive team, in particular, recognise the

distinctive value of clinical education. Learning by doing and reflecting allows students to develop essential skills for a range of careers, not only those seeking to join the legal profession. I would like to acknowledge and thank the staff, students and volunteers for their individual efforts and support in getting to this point. It is a noteworthy achievement for our first year and a credit to the hard work of all involved.

In particular, I would like to express my sincere gratitude to our Clinic Administrator, Elana Christou, for her efficiency and professionalism. Elana is the first point of contact for clients and her daily efforts in the Law Clinic have been critical to effectively optimising our limited resources.

Thank you to Elisha Rose, an experienced practitioner, for imparting her knowledge to the students over the course of the semester. The students benefited greatly from her experiences in learning how to manage client issues and expectations.

We are indebted to Dr Robert Cunningham of Murray Chambers who provided pro bono representation for a client under significant financial hardship. With Dr Cunningham's assistance, the client was able to achieve an exceptional resolution of a long-running dispute. Elsewhere in this Report, Law Clinic student James Carpenter reflects on his rare opportunity to assist with, and observe, those proceedings at this early stage in his career.

At the end of this Report, we acknowledge by name the members of the profession who shared their knowledge and experiences in our seminars. In an age, moreover a profession, where time is so carefully valued, the giving of time by such senior practitioners is humbly and gratefully received.

I am hopeful that experienced practitioners especially will continue to support the Law Clinic's work in this and other ways and look forward to facilitating further engagement between the Law Clinic students and the legal profession.

We continue to collaborate with the Small Business Commissioner, David Eaton, and his team at the Small Business Development Corporation. They are a passionate and inspiring group of individuals, collectively dedicated to supporting WA small businesses. We are pleased to be able to provide a complementary service and look forward to continuing this partnership.

Yet the demand from small businesses seeking legal advice is persistent and remains unmet. To date, the Law Clinic has had to decline over 200 requests for our assistance.

Therefore, from 2018, the Law Clinic will open in line with the Law School's trimester teaching periods. This is intended to accommodate both the increasing client demand as well as the students' other commitments. Each cohort of students will continue to attend the Law Clinic over a 12 week period.

I am proud of the work achieved by the John Curtin Law Clinic students in just this first year of operations. It has been a privilege to supervise such an earnest, intelligent and committed group. But I am mindful that we are just at the start. The next phase will be to ensure the Law Clinic's sustainability in preparing industry-ready graduates to make tomorrow better.



Rosaline Tan
Principal Lawyer
John Curtin Law Clinic



REFLECTIONS ON MY LAW CLINIC EXPERIENCE, MADISEN SCOTT

This is an edited version of a speech delivered to welcome the Minister for Small Business, Attorney General, Small Business Commissioner, and Pro-Vice Chancellor, Curtin Business School

Good morning and a warm welcome to our guests here today at the John Curtin Law Clinic in Perth. My name is Madisen Scott and I was a Clinic student in Semester One, and also chose to volunteer my time to help out with ongoing matters at the conclusion of the Semester.

Before partaking in the Law Clinic I had had no relevant experience in a legal firm, nor a professional business environment. My working experience involved managing a café in my local community, a small family based café in the local community shopping centre. My family had run a small business and from a young age, I was well aware of the hardships faced by those in a similar position.

Unlike other units in our Law degree, the John Curtin Law Clinic provides practical opportunities each lawyer should be exposed to during formative years. The Law Clinic exposed me to a practical reality of legal work seldom mentioned, and certainly not tested, in any other subject, namely the nuances of a client and how to manage and interact with them. University examination papers do not prepare you for linguistic or cultural barriers with clients, emotional volatility or reservedness or reluctance to impart information. These elements are all human and arose frequently in our interactions with clients.

Through the Law Clinic, I have improved extensively on my oral and written communication skills which, in turn, allowed me to better cater to the individual needs of each client. I strongly remember my first client – I don't know if there was more fear in my eyes or those of the client! At times, I feared the interview was at risk of lacking

any coherent structure as the client continually jumped between issues and events he had experienced in the past, and those that were still occurring. Many of these events were unrelated however and, at the end of the day, he essentially wanted to know his rights and obligations as he was, as he put it, 'on his last legs'. This is the heart of the Law Clinic's work: providing small businesses with an understanding of their legal position, which they would otherwise be unable to afford in their circumstances.

Fast forward to the end of the Semester and I felt as though I had grown in confidence. My oral communication and interview skills have developed profoundly, I am able to confidently engage with clients, ask effective questions and have a sense of assurance that I am using my legal knowledge and skills to assist the client.

Client interviews are one part of the work of students in the Law Clinic; the research and formulation of written advice is another huge element of our practice. My written communication skills have, in the past, been dense and 'fluffy' to the point that my writing has been confusing or, at times, detracted from what I am trying to say. Through mentoring and guidance in the Law Clinic, I consistently sought to refine my writing skills. I learned that using academic and legal jargon in letters of advice to a client wasn't necessary. Instead, the client needs to understand in plain English what to do.



"This unit ignited my passion ... participating in the Law Clinic was the best decision of my law degree. The practical aspects of the course and the ongoing mentorship have provided me with the skills I believe will only lead to better success in the future."



Administrative tasks expected in a law firm were also simulated including time recording, file management and regular meetings with our supervisor. The entire Clinic experience is one I believe every law student should have the opportunity to undertake.

In closing I would like to thank Rosaline for all her guidance and mentorship, it has had an integral role in my securing a position in the Federal Circuit Court with Judge Lucev. This experience has provided me with confidence in my own abilities, something I lacked throughout my entire university studies. Before commencing this unit I was struggling to motivate myself to engage in my studies, and was in a position where I had no interest in my studies. This unit ignited my passion, and I say this honestly. In my time at the Clinic my mother made the comment that for the first time in over two years I talked about something - the Clinic - with a sense of pride and enjoyment. So thank you to Ros for helping me find why I wanted to begin this degree in the first place.

I maintain that participating in the Law Clinic was the best decision of my law degree. The practical aspects of the course and the ongoing mentorship have provided me with the skills I believe will only lead to better success in the future.

Thank you for taking the time to join us today. I hope you are as proud of the John Curtin Law Clinic as I am, and I only hope this continues to grow. Both Julian and Rosaline are incredible role models, and should be well applauded for the hard work they have undertaken to make this a reality

Madisen Scott
Clinic Student
Semester 1 cohort

REFLECTIONS ON MY LAW CLINIC EXPERIENCE, JAMES CARPENTER

This is an edited version of a speech delivered to thank the Law Clinic's supporters

The John Curtin Law Clinic is one of the best experiences that I have had while at Curtin Law School. I have met with clients, drafted letters of advice and I have also received the opportunity to see all that work put into practice. Mid-way through the semester, an opportunity arose for one of the Law Clinic students to attend a mediation convened under the Small Business Development Corporation Act. It was clear to me that this was a rare opportunity I as a law student had to grasp with both hands

The Law Clinic had already provided letters of advice to the client and assisted her with quantifying her claim. Dr Robert Cunningham volunteered his time and skills by acting as our client's counsel during the mediation. I created a brief to counsel which included a chronology, summary of facts and legal issues, and annexed key documents. I also attended a meeting with counsel where he discussed various strategies in approaching the mediation itself.

On the day, I was also almost denied entry into the mediation itself because one of the parties changed their mind at the last minute. Dr Cunningham made submissions for me to stay and the client did not complain about time being spent on this issue, the mediator was also very supportive of my presence at the mediation. This support was a great encouragement and allowed me to assuage any doubt that I had about my presence at the mediation.

Once the mediation started and all the issues had been laid on the table the true negotiations began, and I began to truly appreciate the benefits of a skilled mediator. The mediator steered the mediation so that the parties spent time discussing matters that were likely to lead to a resolution and did not waste time focussing on issues they would never be able to agree on. I also realised that the process only really works if both parties are willing to compromise. While that might sound trite it rang true seeing it in action.

Nothing can really prepare you for the realities of dealing with a client. Be it witnessing them breaking down in the initial interview because they are going to lose their house or deciphering the relevant facts from the torrent of information they present you. This has been one of the greatest departures for me from my experiences so far. Law students need to learn the theory of the law as it is what underpins the work that they will do throughout their careers. However, the experience provided by the John Curtin Law Clinic is something that could not be taught in the classroom it can only be effectively learned by experiencing it firsthand. In an academic or theoretical context, the facts are necessarily reliable so the student can focus on the legal issue in question. In real life, this is rarely the case. The skills you develop at the John Curtin Law Clinic by meeting real clients face to face prepares you to better analyse the facts that you are given and identify the pertinent legal matters in real life.

This experience has also shown me the importance of legal services to support the community, including representation. The clients' proximity to events and their strong emotional involvement makes it near impossible for them to clearly express their legal argument when the time comes. In this case, I believe the client achieved an outcome that was considerably better than she would have

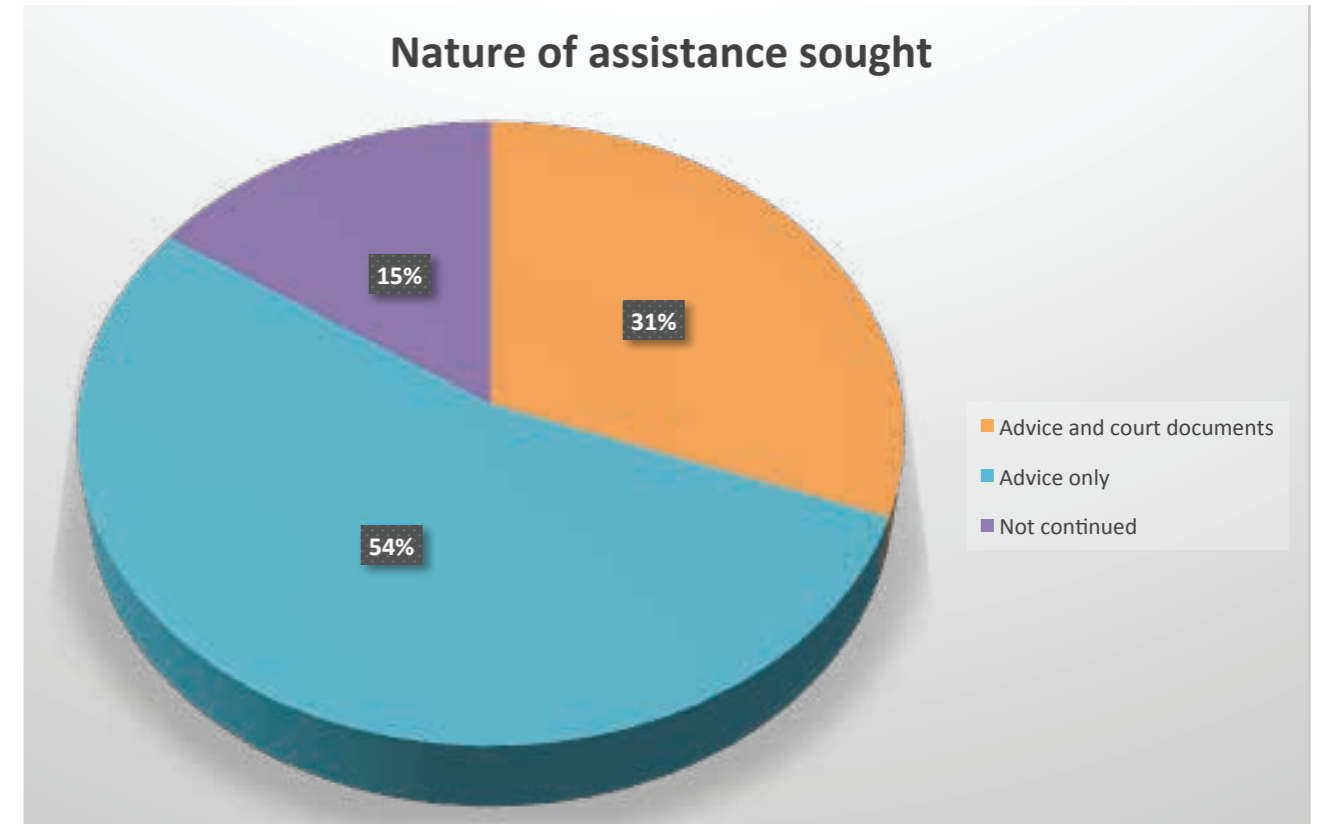
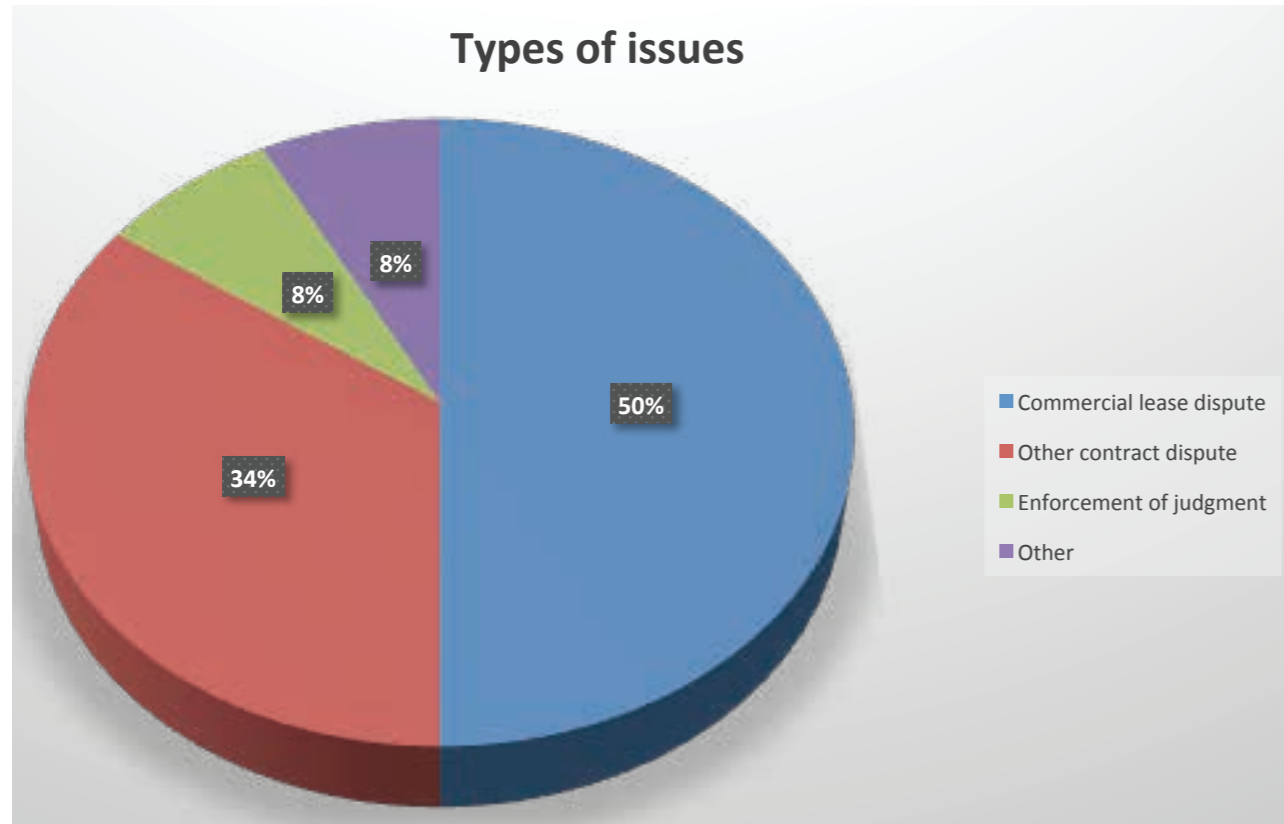
been able to obtain if she had not had legal advice and representation. For me, the experience further reinforces the need for legal services like the John Curtin Law Clinic because without our help the client might have been taken advantage of as she wouldn't have understood, or been able to enforce, her rights. As a law student this was an incredible insight into a process that is usually conducted behind closed doors and I sincerely thank Curtin University, the SBDC and the John Curtin Law Clinic for the opportunity.

James Carpenter
Clinic Student
Semester 2 cohort



"This experience has also shown me the importance of legal services to support the community, including representation. ... without our help the client might have been taken advantage of as she wouldn't have understood, or been able to enforce, her rights."

STATISTICS AND STUDENT FEEDBACK



“
I have improved my skills and confidence when interacting with clients and been able to do so in a supportive environment.”

“
Clinic has been great because of the amount of support provided and the open door policy where we can ask any questions.”

“
The direct contact with the Clinic’s clients [has been the best part about the Law Clinic]. While it was emotionally trying at times it was worth it.”

“
I enjoyed interacting with clients from a safe space. I also enjoyed drafting letters with constant guidance and supervision. It’s an effective system to improve legal skills.”

“
Clinic has greatly helped me in understanding the practical impact of the legal profession.”

“
I am relishing the opportunity to learn from a practical perspective.”

“
I have enjoyed being able to use my education in a meaningful way to help assist people and make an impact in their lives.”

LEGAL CLINIC (LAWS3005)

STUDENT ELIGIBILITY

Enrolment in the Legal Clinic unit (LAWS3005) was by application. To be eligible to apply, students had to be an undergraduate law student and have completed Civil Procedure, Professional Responsibility and Corporate Law. They must also have completed, or be concurrently enrolled in, Trusts Law.

Some exemptions were granted in Semester 2 to allow students with appropriate other experience to participate in the Law Clinic.

TIME COMMITMENT

All Clinic students were required to attend:

- **2 full-day induction and training workshops** before the start of Semester, where they were trained on using the practice management database, Clinic procedures and legal research
- **1 weekly rostered day (9am to 1pm)** at the Clinic to meet with clients, manage files and carry out other responsibilities
- **1 weekly seminar (2pm to 4pm, Wednesdays)** to participate in practical legal workshops and lectures and to share experiences regarding legal professional practice.

WEEKLY ROSTERED CLINIC DAY

During their rostered session at the John Curtin Law Clinic, Clinic students engaged in a range of professional activities.

These included:

- meeting with clients;
- taking file notes;
- drafting letters of advice;
- drafting court documents;
- carrying out legal research;
- discussing commercial, strategic and legal options;
- time recording;
- managing files.

ASSESSMENT

Grading for the unit is **Pass/Fail** and is determined on the basis of the following components:

- File management (25%)
- Client interview (25%)
- Research report (25%)
- Written advice (25%)

REGULAR MEETINGS WITH SUPERVISOR

Clinic students have different client matters with differing levels of complexity. To ensure consistency in assessment, Clinic students attended regular meetings with the Principal Lawyer.

UNIT LEARNING OUTCOMES

On successful completion of this unit, students can:

- ULO1: undertake directed legal research on specific matters and analyse and evaluate the results of that research (CLO3, CLO4, CLO5, T5)
- ULO2: engage professionally and appropriately with clients (CLO8, CLO9, T5)
- ULO3: make and communicate recommendations clearly and effectively, both orally and in writing (CLO1, CLO4, CLO8, T5)

AVAILABILITY

From 2018, the Legal Clinic elective will be offered on a trimester basis in each of the Law School's trimester teaching periods.

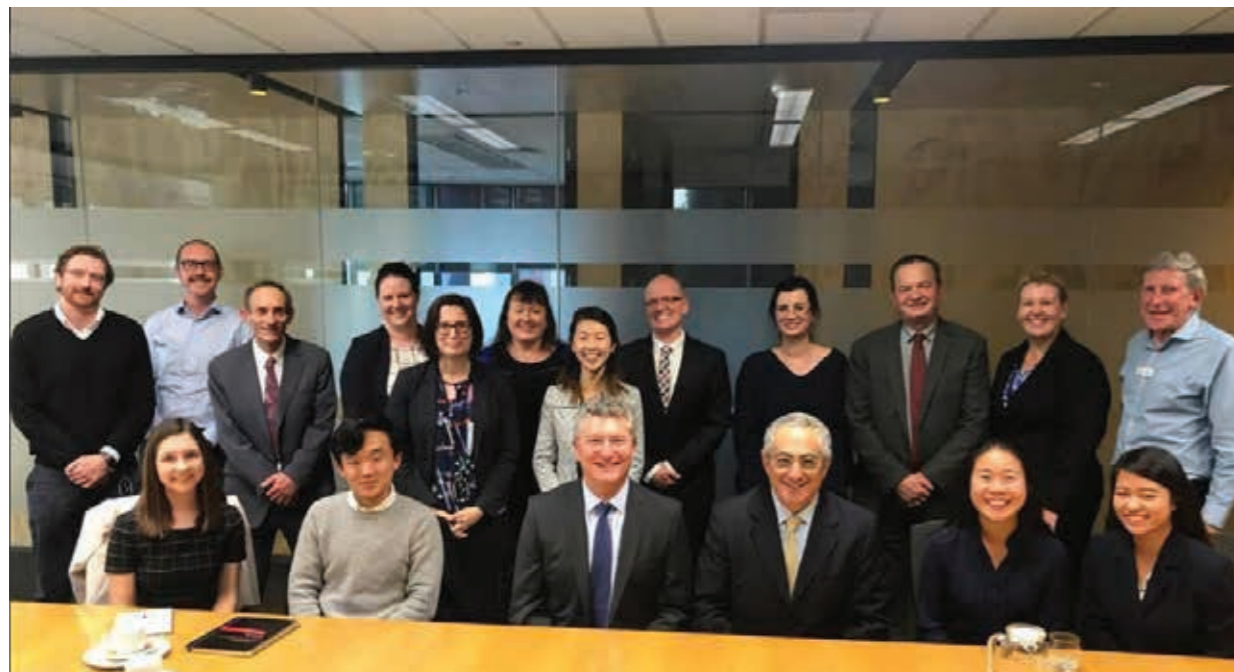
SEMESTER 2 SEMINAR SCHEDULE

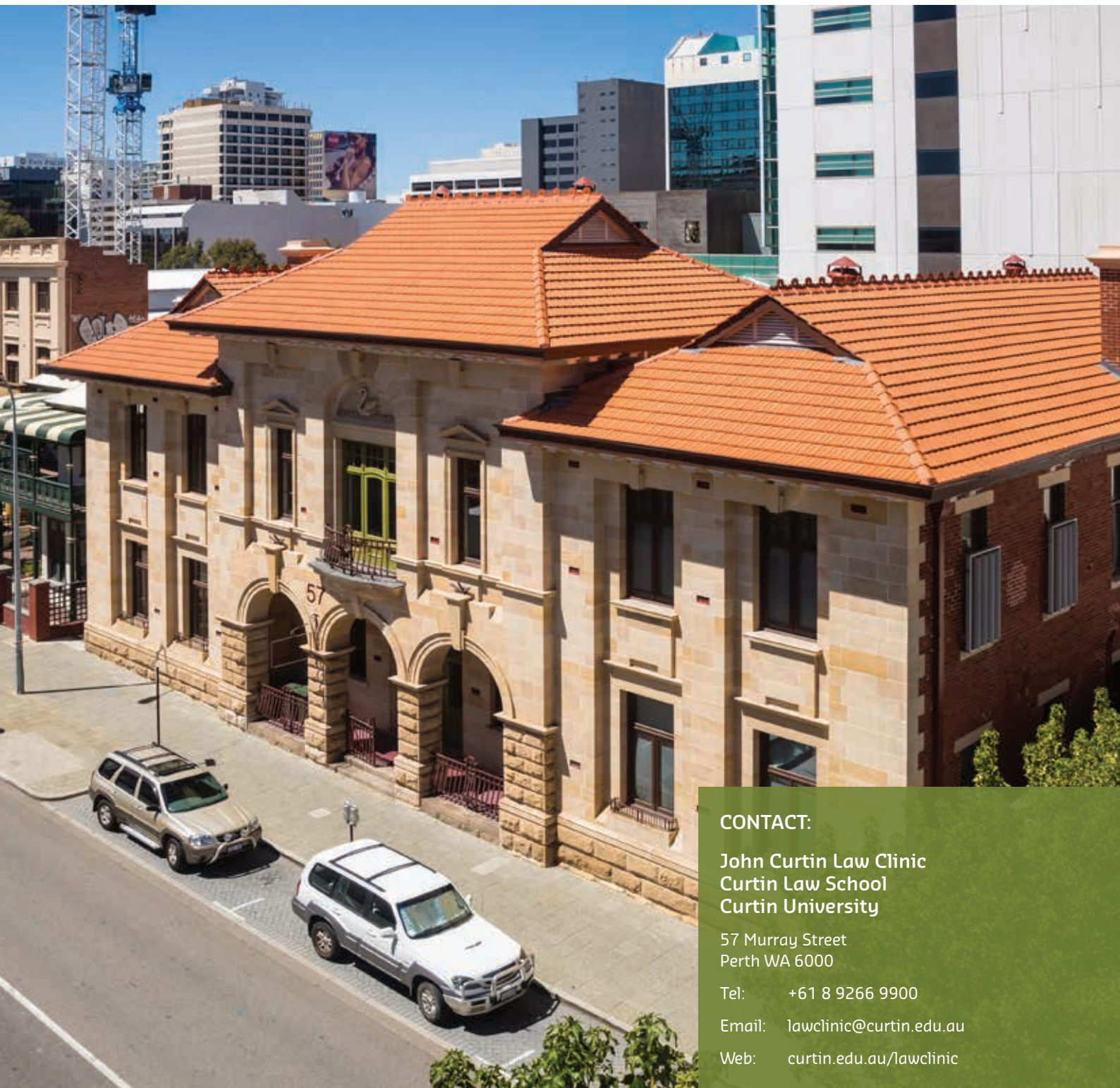
DATE	SEMINAR TOPIC	SPEAKER
23 August 2017	Visit to the Small Business Development Corporation	David Eaton, Small Business Commissioner
30 August 2017	Thinking outside the box: how to give commercially useful legal advice Written communications and Plain English workshop	Julian Sher, Director of Professional Programs, Curtin Law School
6 September 2017	Practical legal workshop on small business issues	Professor Eileen Webb, Curtin Law School
13 September 2017	Small business structures: who is your client?	Amanda Liston, Principal, Amanda Liston Legal
20 September 2017	Evidence, documents and information gathering during the client interview	Katrina Welch, Senior Associate, Kott Gunning
27 September 2017	Commercial leases and key issues for small business tenants	Lisa Legena, Manager Business Advisory Services, Small Business Development Commission Sonja Kanban, Business Adviser, Small Business Development Commission
4 October 2017	Time recording: ethical questions	Tom Darbyshire, Partner, Kott Gunning
18 October 2017	The legal profession and the practice of law: how technology will change what we do	Tony Joyner, Managing Partner, Herbert Smith Freehills
24 October 2017	Visit to the State Administrative Tribunal	Dr Bertus de Villiers, Member, State Administrative Tribunal
25 October 2017	Employment law issues for small businesses	Joanna Vincent, Associate, Norton Rose Fulbright
1 November 2017	Business-to-business unfair contract terms law	Mark Lewis, Director, Australian Competition & Consumer Commission Filomena Mazzeo, Investigator, Australian Competition & Consumer Commission

ACKNOWLEDGMENTS

In this period, the activities of the John Curtin Law Clinic were made possible thanks to the support of many individuals and organisations. We would especially like to thank:

- Amanda Liston, Amanda Liston Legal
- Dr Bertus de Villiers, State Administrative Tribunal Member
- David Eaton, Small Business Commissioner
- Dirk Fairweather, Fairweather Litigation
- Associate Professor Eileen Webb, Curtin Law School
- Elisha Rose, ER Legal
- Filomena Mazzeo, Australian Competition & Consumer Commission
- Helen Davis, HMD Consulting
- Jacky Finlayson, Executive Director Small Business Services
- Jaya Ralph, Faculty Librarian, Curtin University
- Jim Mouzalidis, Small Business Development Corporation
- Joanna Vincent, Norton Rose Fulbright
- Hon. John Quigley MLA, Attorney General
- Katrina Welch, Kott Gunning
- Lisa Legena, Small Business Development Corporation
- Mark Lewis, Australian Competition & Consumer Commission
- Hon Paul Papalia CSC, MLA, Minister for Small Business
- Dr Robert Cunningham, Murray Chambers
- Sonja Kanban, Small Business Development Corporation
- Tom Darbyshire, Kott Gunning
- Tony Joyner, Herbert Smith Freehills





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