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Being Casual about Our Teachers.
Understanding More about Sessional Teachers
in Law

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Being Casual about Our Teachers. Understanding More about Sessional Teachers in Law

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Abstract

The literature (and data from other sources) confirm that over the past few decades, there has been a significant growth in the numbers of sessional (casual) staff employed in universities in Australia and other parts of the world. The increased casualisation has been across all universities, faculties and schools. Despite this growth there has been very little research undertaken to find out more about sessional academics. This paper concentrates on sessional academics in law schools in Australia, New Zealand and the South Pacific and attempts provide a 'snapshot' of sessional law academics by asking, 'Who are our sessional teachers in law (practitioners or postgraduate students)?' and, 'How do they contribute to the legal education of our students and how much teaching do they do?'. Understanding more about our sessional teachers is an important first step in a process by which we might devise more appropriate training and support to ensure the quality of our law schools' teaching and our students' learning.

**BEING CASUAL ABOUT OUR TEACHERS.
UNDERSTANDING MORE ABOUT SESSIONAL
TEACHERS IN LAW**

JILL COWLEY¹

The literature (and data from other sources) confirm that over the past few decades, there has been a significant growth in the numbers of sessional (casual) staff employed in universities in Australia and other parts of the world. The increased casualisation has been across all universities, faculties and schools. Despite this growth there has been very little research undertaken to find out more about sessional academics. This paper concentrates on sessional academics in law schools in Australia, New Zealand and the South Pacific and attempts provide a 'snapshot' of sessional law academics by asking, 'Who are our sessional teachers in law (practitioners or postgraduate students)?' and, 'How do they contribute to the legal education of our students and how much teaching do they do?'. Understanding more about our sessional teachers is an important first step in a process by which we might devise more appropriate training and support to ensure the quality of our law schools' teaching and our students' learning.

I BACKGROUND

There is widespread consensus that over the past few decades there has been a greater use of, sessional (sometimes called part-time, non-continuing or casual) academic staff in universities across Australia, North America and the United Kingdom.² In Australia this

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² See here, for instance, G Gibbs, 'Who Shall Teach the Teachers?' (1996) 3 *Managing HE* 20, in George Lueddeke, 'Training Postgraduates for Teaching: Considerations for Programme Planning and Development' (1997) 2(2) *Teaching in Higher Education* 141, 142; Adam Smith, Richard Whitecross and David Mills, *Professional Apprenticeship or Contract-Labour? A Survey Report on the Use of Teaching Assistants within UK Sociology Departments* (2003) The Higher Education Academy <<http://www.c-sap.bham.ac.uk/resources/publications/samples/SOCIOLOGYTASURVEYFINAL.RTF>. > at 13 October 2009; Percy and Beaumont, above n 4, 146 and Penny Basset, 'Sessional Academics: A marginalised workforce' (Paper presented at the HERDSA Annual International Conference, Auckland, July 1998) <<http://www.herdsa.org.au/wp-content/uploads/conference/1998/PDF/Global/BASSETT.pdf> > at 17 September 2009.

belief is supported by figures obtained from the Australian Government,³ which are further corroborated by a Canadian study,⁴ which reports that,

In Australia, the number of academic staff employed on a part-time basis as a share of total academic employment rose from just over 9% in 1990 to nearly 20% by 2001.⁵

Figures obtained from New Zealand Government sources covering the period 2000 - 2008,⁶ however, reveal a much more complicated pattern with a slight decrease in employment both full-time equivalent and part-time academic staff. The ratio of part-time to full-time appears steady at 36 per cent to 64 per cent.

The employment of sessional staff is acknowledged to have many benefits⁷ but it does impose a cost on full-time staff, who invariably need to administer and supervise their work. Further, it creates the *potential* for gender inequity and threats to academic freedom. Importantly, it can also lead to a diminution in the quality of teaching and learning in universities. This applies to all faculties including law. A diminution in the teaching quality in law schools is, of course, undesirable for many reasons primarily concerned with the learning of students, but it also affects university administrators who are sensitive to auditing 'failure' resulting from external regulators requiring them to 'perform quality'.⁸ It is a live issue for many legal educators, including the Council of

³Table 2.1 Number of Full-time and Fractional Full-time Staff by Work Contract, 1996 to 2008

<<http://www.deewr.gov.au/HigherEducation/Publications/HEStatistics/Publications/Pages/Staff.aspx>> at 22 March, 2010.

⁴ David Robinson, *The Status of Higher Education Teaching Personnel in Australia, Canada, New Zealand, the United Kingdom, and the United States Report Prepared for Education International. Canadian Association of University Teachers.* (2006) <http://firgoa.usc.es/drupal/filestore2/download/31869/ei_study_final.pdf> at 16 June, 2010.

⁵ Ibid at 11.

⁶ Full-time equivalent academic staff employed in public providers by sub-sector and Total staff by tenure and sub-sector <http://www.educationcounts.govt.nz/statistics/tertiary_education/resources> at 22 March, 2010.

⁷ Some of the benefits include the employment of high profile industry or professional experts, the creation of a more responsive and flexible workforce and the ability of universities to provide 'trial runs'. It should be noted that there was no evidence of instances of gender inequity, threats to academic freedom or diminution of teaching and learning quality in this study.

⁸ Alisa Percy and Rosemary Beaumont, 'The casualisation of teaching and the subject at risk' (2008) 30 (2) *Studies in Continuing Education* 145, 151.

Australian Law Deans, who recently adopted a set of quality standard measures which acknowledges that law schools' responsibilities to sessional teaching staff given the role that they play in the delivery of law programs throughout Australia.

4.6 Part time and casual teaching staff

4.6.1 The law school has defined the role and responsibilities of all staff, including part time and casual teachers who contribute to the delivery of the law course, and the responsibilities of the law school to those teachers.⁹

Issues such as gender inequality and threats to academic freedom could (and should) be pursued at greater length elsewhere. The concern for this paper is more focussed on the quality of teaching and learning in our law schools and is an argument for a greater understanding about the sessional academics that we employ in our law schools. This should lead to the provision of appropriate administrative arrangements and quality training of sessional legal academics.

What measures can we take to ensure quality legal education? First, it seems obvious that appropriate administrative accommodations are made for all sessional staff given their numbers and the important role they play in higher education. Second, all academics benefit from training which includes an introduction to the scholarship of teaching and learning in higher education.

Training can increase the extent to which teachers adopt a Student Focus...Without the support of training, teachers may move in the opposite direction and reduce the extent to which they adopt a Student Focus. A Student Focus approach is known to be associated with students taking a deep approach to a greater extent, and hence to improved quality of student learning outcomes... Without the support of training no such positive change in student learning is evident.¹⁰

⁹ *The CALD Standards for Australian Law Schools. As Adopted 17 November 2009*
<<http://www.cald.asn.au/docs/CALD%20-%20standards%20project%20-%20final%20-%20adopted%2017%20November%202009.pdf>> at 17 June, 2010.

¹⁰ Graham Gibbs and Martin Coffey, 'The Impact of Training of University Teachers on the Teaching Skills, the Approach to Teaching and the Approach to Learning of their Students (2004) 5 *Active Learning in Higher Education* 87, 98. See also Ernie Barrington, 'Catching academic staff at the start: professional development for university tutors' (1999) (Paper presented at the HERDSA Annual International Conference, Melbourne, July 1999), 2. <http://www.herdsa.org.au/wp-content/uploads/conference/1999/pdf/Barrington.PDF> at 18 September 2009. and Martin Coffey and Graham Gibbs 'Can Academics Benefit from Training? Some Preliminary Evidence' (2000) 5 (3) *Teaching in Higher Education* 385.

It is further argued that the greatest benefit comes when that training is situated within the discipline. The provision of situated training is consistent also with Mick Healey's view when he wrote that,

It is important, therefore, that the scholarship of teaching in higher education is not divorced from the content of the discipline being taught. As Rice (1995, p. vi) notes: "improvement of teaching needs to be rooted in the intellectual substance of the field".¹¹

Part of this placement in context is knowing more about the sessional teachers that we employ. The work of Anne Junor¹² and her creation of a typology of sessional staff is most informative here. She divided casual academics into several categories including postgraduate students (called Academic Apprentices (AA)), experts from outside the university (Outside Industry Experts (OIE), Retirees (R) and other Casual Academics (CA), who are 'various groups whose main work lay outside the university'.¹³ According to her study of 1337 casual academics and general staff from five universities, those casual workers who hold no other employment (CAOs) account for nearly 30 per cent of the whole. Most relevant to law schools, are the AAs, OIEs and Rs. Their combined numbers in Junor's study were 564 out of a total of 1337, which is a little over 42 per cent of the whole,¹⁴ of which AAs account for over one third. But her study looks at universities in *totum*: our interest is more specific. One question for this study is, therefore, whether AAs account for the same proportion of sessional law academics. The

¹¹ Mick Healey, 'Developing the Scholarship of Teaching in Higher Education: a discipline-based approach' (2000) 19 (2) *Higher Education Research & Development* 169, 173, quoting from Eugene Rice (1995). Forward. In Robert Diamond & Bronwyn Adam (Eds.), *The disciplines speak: Rewarding the scholarly, professional, and creative work of faculty* (pp.v-vii). Washington, DC: American Association for Higher Education.

¹² Anne Junor, 'Casual university work: choice, risk, inequity and the case for regulation' (2004) 14 (2) *The Economic and Labour Relations Review* 276, 280.
<http://www.unicasual.com.au/pdf/Junor_university.pdf> at 8 September 2009.

¹³ *Ibid*, 286.

¹⁴ Note that this closely aligns with figures provided by Judith Gappa at 42% (Judith Gappa, 'Essay Review. Teaching Without Tenure' (2002) 45(3) *Perspectives in Biology and Medicine* 449.) and Graham Gibbs at 40% (Graham Gibbs, 'Who shall teach the teachers?' (1996) 3 *Managing HE* 20, in George Lueddeke, 'Training Postgraduates for Teaching: considerations for programme planning and development' (1997) 2(2) *Teaching in Higher Education* 141).

evidence we have about our sessional staff has been largely anecdotal, but there is a general belief that there is significant difference in the profile of sessional teachers between the more generalist disciplines and the professions such as medicine and law and that AAs do not account for the same proportion of our staff in law schools.

Understanding more about our sessional law teachers is an important first step in a process by which we might devise more appropriate training and support to ensure the quality of our law schools' teaching and our students' learning and yet it is not information that is routinely gathered.

II THE STUDY

An earlier research project¹⁵ revealed that there was a scarcity of information about sessional legal academics in Australia (as well as New Zealand and South Pacific). Concerning the Queensland University of Technology, Sally Kift had written that,

From the perspective of legal education, it is particularly noteworthy that the discipline does not have access to large numbers of postgraduate students to take on the casual teaching role (though we do have some postgraduate students and they do take up positions with us). Mostly, our casual pool is drawn from the practicing [sic] profession, importantly supplemented by a number of women practitioners who have primary childcare responsibilities.¹⁶

Very little has been known about sessional teachers elsewhere. Accordingly, in order to redress this, a brief questionnaire was sent by email to all relevant departments in universities offering law programs in Australia, New Zealand and to the University of South Pacific, asking for such relevant information. It read as follows:

¹⁵ Jill Cowley, 'Confronting the Reality of Casualisation in Australia. Recognising Difference and Embracing Sessional Staff in Law Schools' to be published in (2010) 10 *QUTL&JJ*.

¹⁶ Sally Kift, 'Assuring Quality in the Casualisation of Teaching, Learning and Assessment: Towards Best Practice for the First Year Experience' (2003) *UltiBASE Articles*, <http://ultibase.rmit.edu.au/Articles/march03/kift1.pdf> at 2 July 2009.

[An article by Sally Kift] indicates that law schools do not have the vast resource of postgraduate students to do the teaching (as in the more generalist degrees of science etc) but are more likely to have many valued practitioners who give generously of their time. This certainly our experience at UNSW but I would value your input here.

- I am interested to know approximately how much teaching is done by sessionals?
- I also would like to know a little more about their profile - eg how many of them are postgraduate students and how many are practitioners?
- I have found that in law schools that offer postgraduate coursework degrees that there are often more sessional teachers employed to teach into those programs. Is that the case in your law school?

There are thirty two universities in Australia which offer programs of study in either Bachelor of Laws (LLB) or Juris Doctor (JD) which lead to admission as a legal practitioner.¹⁷ Degrees in law are also offered in seven universities across New Zealand and the South Pacific.¹⁸ Many, but not all, of these also offer postgraduate coursework degrees. The responses were varied, dependent on the size of the law program (including whether a coursework LLM is offered), the school's location and, in some cases, the 'age' of the law school.

¹⁷ Australian National University, Bond University, Charles Darwin University Deakin University, Edith Cowan University, Flinders University, Griffith University, James Cook University, La Trobe University, Macquarie University, Monash University, Murdoch University, Queensland University of Technology, RMIT University, Southern Cross University, University of Adelaide, University of Canberra, University of Melbourne, University of New England, University of Newcastle, University of New South Wales, University of Notre Dame Australia, University of Queensland, University of South Australia, University of Southern Queensland, University of Sydney, University of Tasmania, University of Technology Sydney, University of Western Australia, University of Western Sydney, University of Wollongong and Victoria University.

¹⁸ Auckland University of Technology, University of Auckland, University of Waikato, Victoria University of Wellington, University of Canterbury, University of Otago and the University of South Pacific.

Clearly no 'hard data' would be provided in response to this enquiry; this was not the intention of the study. What was sought was information which could confirm or deny trends and help to create a 'snapshot' of sessional law academics. Further, it is not necessary to identify those universities that did respond in order to create that 'snapshot', even though the age, size and location of the institution do bear upon the use of sessional staff.

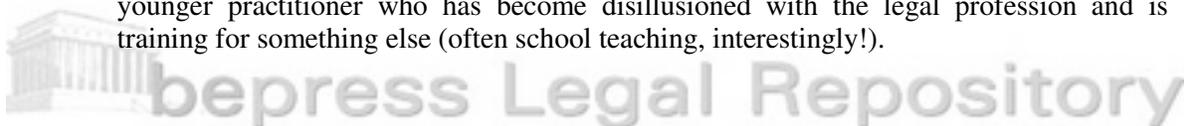
III THE RESULTS

AUSTRALIA

Of all the Australian universities that responded, one of the oldest universities (U1, located in a capital city) and has 32 full-time members of staff, who are the course convenors and lecturers. The majority of tutorials/seminars, however, are facilitated by sessional academics only two of which would appear to be PhD students. The presumption is that the vast majority are, therefore practitioners. According to the information provided, in the core courses, approximately one third of the teaching was undertaken by sessional teachers. This university also offers several postgraduate degree programs but provided no information about the involvement of sessional staff in those programs.

Another university (U2), which is located outside of the central business district CBD, reported that 'at least one long-time sessional who has just been given a contract' anticipating that she will 'make a great contribution to teaching' The Associate Dean of that same university also identified another category of practitioner/sessional law teacher

besides post-graduate students and practitioners... that of the underemployed stay-at-home mother. We get quite a lot of these and they're great - the occasional work suits them as they can fit it in around parenting, and they get to keep a toehold in the workforce. Not to mention a bit of intellectual stimulation. We've also picked up the odd younger practitioner who has become disillusioned with the legal profession and is training for something else (often school teaching, interestingly!).



In one of the newest of these law schools (U3) there are sixteen full-time staff members identified on the website. Conveniently, this school is located in the city. As reported by the teaching and learning contact, they currently teach 61 courses in three intakes a year, a number of courses being taught 2 or 3 times per year. They have a number of sessional staff (nine are identified on the website):

Adjunct academic staff – these comprise academics (some retired) who teach a whole or a substantial part of courses on a contract basis (5 courses taught by this cohort)

Contract academic staff – these comprise staff with academic experience who are contracted to teach a whole or a substantial part of courses (3 courses taught by this cohort)

Practitioners and former practitioners – employed to teach tutorials. It is estimated that about 80% of our tutorials are taught by this cohort.

At this university, most of the sessional teaching is undertaken by practitioners and former practitioners. This is partly a function of U3 being such a new law school. They only have three PhD students, which is clearly not enough to fulfil all the sessional teaching needs. These students are employed to teach into some tutorials, however, their teaching is limited so as not to interfere with their studies. It is the law school's intention to increase this cohort 'so ideally more of these students will be engaged in teaching our tutorials'. Currently, one 'PhD student is teaching 3 tutorials per week and another will teach 2 tutorials per week next term.'

The fourth university (U4), which is located outside of the CBD in that state, uses 'a lot of sessionals, practitioners from our jurisdiction and academics from other places that teach (mainly) in intensive mode.' Currently 12 of 41 electives in that law school are taught by staff external to the school. 'Most of those are intensive units taught over a week or so in the breaks, though there are some doing semester long subjects.' There were no postgraduate students in that group. 'Most are academics but some are practitioners in the area they are teaching in.' There is a strong practitioner involvement in two core units. They use 'senior and postgraduate students to tutor', and an estimated six practitioners, tutoring in units.



U5 is, again, one of the oldest of Australia's universities. The law school website shows nearly 60 full-time academics, not all of whom were teaching in the semester under study. The information provided indicates that in this period, 37 full-time academics were teaching into the (mainly) LLB program, as opposed to 56 sessional staff. Not all sessional staff were identified but of those that were (32), 21 are practitioners, nine are senior students and two are postgraduate students. There is no indication of the number of teaching hours, however, they are mostly employed as tutors. In 10 units of study, the sessional staff member is either lecturing or coordinating or both. According to this information the majority of sessional teachers at this law school are practitioners, not AAs.

Two other schools (U6 and U7) which did respond are both located in cities but could best be described as isolated. Both of these law schools indicated that they had very little assistance from practitioners - less so than other law schools. Indeed, the next university (U6, located in a capital city) reported that they were 'at the lower end in terms of usage of sessional teachers' although they have 'quite a good cohort of postgraduate students who do some tutoring in the core subjects but we rarely have assistance from the profession, other than the odd guest lecture.' This university does not offer a course work LLM program.

A brief overview of teaching allocations where sessional teachers were responsible for some teaching is as follows:

Intro to law: lectures and some tutorials by senior lecturer and professor. Other tutorials: 3 PhD students and 2 practitioners

Contract: lectures by professor. Tutorials by a graduate who has recently completed an LLM in Germany and plans to do a PhD in the UK.

Crime: lectures and some tutorials by professor and lecturer. Other tutorials by PhD student

Admin: lectures and some tutorials by senior lecturer. Other tutorials by PhD student

Corporations: lectures by senior lecturer, tutorials by PhD student

Trusts: lectures by professor. Tutorials by a graduate who has recently completed an LLM in Germany and plans to do a PhD in the UK.

Electives are generally taught by staff although about 1/3 of Family is being taught by one of our senior PhD students.

This same contact also noted that '[o]ne of the biggest challenges for our academic staff is that we do the vast majority of the marking.'

U7 is a small law school, located in a city but not within the CBD. It is one of the few law schools to offer a distance program with eighty per cent of the student cohort studying externally. Clearly this alters the dynamics of the teaching and learning of the school. There are only ten full-time academics employed. Despite this small number, they aspire to ensure that all core subjects are taught by full-time academics. Nevertheless, the learning and teaching contact indicated that they relied on three PhD students to lecture or tutor into three core subjects. It was hoped that these postgraduate students would be offered full-time employment, in which case their aspiration to 'cover' the core subjects with full-time employees would be met. They are also assisted by several senior practitioners including a judge and a retired practitioner from the Office of the Director of Public Prosecutions. These senior practitioners provide expertise in such areas as civil procedure, advocacy and dispute resolution.

U8 is a large city-based university which reported that approximately 40 per cent of the face-to-face contact in the LLB program is done by sessional teachers, mostly in tutorials. Of that cohort of sessional teachers, one quarter are postgraduate students, the rest are practitioners, not all of whom are still practicing. The percentage of practitioners teaching into the LLM program was reported to be 'much higher'.

U9 is also a large law school with thirty five full-time staff identified on the website. The university has five campuses and law is and taught over two of those campuses there is careful use of sessional staff and the teaching and learning contact indicated that,

their participation differs markedly. For instance, one of the sessionals only takes 2 tutorials over a period of 6 weeks, but others may take all of the lectures and some tutes in a course. With respect to the latter, for example, all of the teaching staff for Civil Procedure are practitioners (4) - but this is because this course is practitioner based. In most other instances where legal practitioners are involved, they are prior students of [the university] - we prefer our previous students being involved as they understand that we take a theoretical approach to teaching. However, our sessionals are mainly people who have other interests (like child care) who subsidise their incomes with sessional work -

and many of these too are former...students.

Even though this is a relatively large law school the involvement of sessional staff would appear to be small, with three PhD students, six legal practitioners, and a handful of others 'who do other part-time teaching either in other parts of the university or in other universities.'

U10 is one of Australia's newest law schools and is part of a regional university, offering both LLB and JD programs which can be studied on campus or through distance education. It is a small law school with only 20 full-time academics listed on the website. No coursework LLM is offered. Given the size of the program, and the location of the school, the number of sessional teacher/lecturers employed is very small and there is no information provided about whether these four are students or practitioners. Each course, however, appears to have several sessional academics employed as markers.

U11 is a well established, large law school in with an urban campus. As I wrote in an earlier paper, their JD program

is estimated to have about a thousand students and most teaching is undertaken by permanent academic staff (who number around 80). This school prides itself on the fact that the students are mostly taught by permanent academic staff in a seminar-class model. Where there are gaps, such as when permanent staff are awarded research grants or other leave, a small number of sessional teachers are employed. Some of these sessionals are practitioners with prior connections to the law school; a smaller number are postgraduate students with expertise in the subject area. In the Masters program, however, the majority of the subjects are taught by sessionals in intensive format, but these are practitioners or international scholars with particular subject expertise and often a long-established connection to the law school.¹⁹

Also a large city-based, urban, law school, U12 reported that a great deal of the teaching (expressed as perhaps too much) is done by sessional staff especially in the JD program and in tutorials. The vast majority of sessional teachers at this law school are practitioners or former practitioners. No concrete figures were provided apart from an indication that



¹⁹ Cowley, above n 14.

their profile is fairly evenly split between practitioners (solicitors and counsel about equal) and mothers in their 30s with young children who are seeking to escape from private practice but do not wish to be saddled with too much work in any one week.

Very few post-grad students, say about a dozen, are involved in teaching.

U13, which is located centrally in the CBD, offers a JD program only. There are only eighteen full-time staff members. All lectures are held in the evening after 5.30pm. There are no postgraduate student teachers but they employ many retired academics and working practitioners. Student numbers vary markedly from semester to semester so employing more full-time staff is not feasible. Employment of sessional staff is, however, appropriate. Student evaluations of these sessional staff are monitored in order to identify those teachers who may need assistance.

The next law school (U14) is also located within the CBD of a city and the website indicates that there thirty five staff members in the school. They are part of a business school which has adopted a policy of casualisation of academic staff. The learning and teaching contact reports that,

Our use of sessionals varies across the board. We use a lot of them in foundation units... We also use them to lecture in core units, [given that it is a] new law school. Our sessionals are a mixed bunch. We use a lot of former students, whether they have gone on to further study, or are working. Sessional work pays reasonably well and some sessionals are trying to get into academic work and this can be a useful introduction.

This contact was also concerned that practitioners are not always able to fulfil their obligations to the university – for various reasons - and that ‘many are neither teaching and learning nor research oriented and practical experience really only goes so far, especially when most graduates will never work in the profession - they don't need to hear another war story about a job they will never do.’

U15 is interesting given that it is a regional school and is one of very few regional universities to have responded. Given the numbers, the experience for this law school may (or may not) be the same for other regional law schools. However, the Associate

Head of the School (Teaching and Learning) confirmed that very little of their teaching is undertaken by sessional staff.

In our undergraduate LL.B, approximately 8% or less of our teaching is taken by sessional staff – this is in terms of lecturing core or elective LL.B units. Taking into account tutors, the figure would be around 11-12% (for the Undergraduate LL.B)

Even though their numbers are small, most of the sessional academics are practitioners.

Most of our sessionals are either graduates who would like to be academics, or practitioners. We have some postgraduate sessionals who are completing Masters or PhDs but this is not the majority.

As your initial comments suggest, other schools in the University have a major larger pool of Masters and PhD students to choose their sessionals from. In the Law School, this is not the case and we would recruit mainly from the profession.

U16, which is located at the edge of the CBD, did not have exact percentages available ‘as to how much of our teaching is done by casual teachers.’ However, again, she confirmed reliance on practitioners to assist in the delivery of the law program.

We are very lucky to have some excellent casual teachers who have been with us for many years.

The majority of them are not post grad students (although we do have a few of those) but are either full time or part time practitioners.

The next university (U17) is well established and large, with some eighty full-time academics. The law school is located on the university campus which is also at the edge of the CBD. The law school offers both undergraduate and postgraduate coursework programs. The Associate Dean of Teaching at that law school provided some useful and general comments about their reliance on sessional academics.

At the undergraduate level we do rely on externals to cover tutorials in some of our compulsory units such as torts and contracts but for the most part our units are run on a seminar model rather than lecture/tutorial. These externals are a combination of practitioners, PhD students and former students who are “in between” other positions, such as those who have recently returned from working or studying overseas. On

occasion we also may rely on a more senior practitioner or judge to present a guest lecture.

We rely far more extensively on externals in the postgraduate law program...such practitioners and visiting academics can often allow us to offer highly specialised postgraduate units where the subject matter may be otherwise outside our Faculty's expertise.

U18, on the other hand, is a new law school located at some distance from the CBD of the city but serving a fast growing area of population. They have several campuses but are close to a large 'satellite' CBD, which has courts and businesses nearby. The Associate Head of School (Teaching & Learning) kindly undertook an analysis of semester 1, 2010 teaching in order to respond.

Of our 157 LLB classes approximately 50% (80 classes) are taken by casual teachers.

Of our 104 service unit classes approximately 60% (65 classes) are taken by casual teachers.

Of those classes taken by casual teachers none of the LLB classes are taken by postgraduate students. Of the 65 service unit classes taken by casuals only 15 are taken by postgraduate teachers.

So in summary only about 10% of our casual teaching is undertaken by postgraduate students.

However of the remainder whether you would classify them all as practitioners giving generously of their time is debatable. Certainly some fit this description but I would describe many and probably the majority as long term casual teachers whose sole or major source of income would be their teaching. Quite a few would be mothers with a partner who is the main breadwinner.

U19 is located in an urban setting, some distance away from the central CBD. There are thirty-one full-time staff members in the law school. It offers both LLB and LLM programs. In response to the email, they indicated that there was no systematic way of identifying sessional staff at the university, nor what they teach within each faculty or school. However, they are in the process of devising a way to identify sessional teachers in order to create a university-wide framework of good practice to address such things as employment, and academic development.

U20 is a large and well established university, located in a busy urban area. LLB, JD and coursework postgraduate programs are offered. In 2010 there were approximately 440 classes across all programs (undergraduate and postgraduate). Of these, approximately

200 were taught by full-time, continuing staff members, which suggests a heavy reliance on sessional teachers, seventy per cent of which are practitioners.

According to the website there are nearly 50 full-time academics and nearly 30 sessional academics at U21, which is a medium sized law school located in a city close to the capital. Approximately 30 to 40 per cent of the teaching is done by sessional staff, almost all of whom are either current or recent practitioners, either barristers, solicitors or in other law-related areas. There are only two Academic Apprentices; one postgraduate student and one post-doctoral student. The masters programs have been primarily been taught by a full-time staff members who coordinate the programs and subjects within the program, with the assistance of experts brought in to teach in relevant areas.

NEW ZEALAND (NZ) AND THE SOUTH PACIFIC

There are six universities in NZ and one in the South Pacific offering law programs.

U22 is a large city-based law school with forty-six full-time academic staff. The summary below would appear to be consistent with other similar-sized and located law schools in Australia. The Associate Dean (Academic) from this law school provided details of their use of sessional staff as follows:

The LLB degree is a four-year programme consisting of an intermediate year (in which students take only two introductory law courses, supplemented by six courses from another degree programme – most often in arts or commerce) followed by three “professional” years.

There are few restrictions on admission to LLB Part I. Approximately 1500 students take the first introductory course (Law & Society, which doubles as a General Education course and is thus available for credit to other degree programmes) and of those some 850 proceed to Legal Method in the second semester.

The teaching of the six lecture streams in Law & Society and the three lecture streams in Legal Method is usually by full-time academic staff. Students in both courses, as well as having three hours of lectures per week in the semester, also attend fortnightly tutorials which are small-group experiences involving between 16 and 20 students per group. Tutorials groups are therefore numerous and spread throughout the week; the tutors who lead these are either senior (usually postgraduate) students or junior practitioners (recent

graduates in practice in..., including some who are judges' clerks in the nearby High Court).

Admission to LLB Part II (the first "professional" year) is restricted, and competitive. In Part II 300 places are offered annually; there are usually about 900 applicants who are considered on the basis of their recent university results in non-law courses (as a measure of their general academic ability) and their results in Law & Society and Legal Method (as measures of their legal aptitude).

Part II consists entirely of compulsory law courses, the teaching of which is almost exclusively undertaken by members of the full-time academic staff. But, as with the two Stage I courses in Part I, there are fortnightly tutorials in each compulsory course to supplement the lecture streams. Again the tutorial groups are smaller (average of 16 students per group), and again we rely heavily on postgraduate students and, especially, practitioners to lead the tutorials.

Part III is a mix of compulsory and elective law courses. Again there are fortnightly tutorials (taken by tutors who are either PG students or practitioners) in the compulsory courses. The elective courses, which have no tutorials associated with them, are taught are either by regular academic staff or by adjunct teachers.

Part IV consists entirely of elective law courses.

Of the 50 or so elective courses offered each year, approximately 40 are taught by our own staff, and the other 10 by more senior practitioners or District Court or (possibly) High Court judges. (Occasionally a practitioner and academic staff member jointly teach an undergraduate elective, but this is rare.)

The situation is rather different with our postgraduate programme which is similar to [another large Australian law school] (though on a smaller scale). Approximately 200 postgraduate students are taking our masters degrees (LLM, MLS) or PGCertLaw. Of the 30 or so taught masters courses offered annually, usually 18 – 20 are taught intensively (over five days) by prestigious academic visitors. The other 10 – 12 are usually semester-long courses taught by our own regular academic staff.

U23, which is another city-based and large law school, also provided generous information about their reliance on sessional academic staff. Interestingly all the sessional teachers at this university are practitioners (the 'adjuncts are all members of the profession: some in private practice, some in government practice, and - very occasionally - some from another faculty at this University (eg Commerce)'). There are no postgraduate student teachers. In answer to the question about approximately how much teaching is done by sessionals, the contact responded saying that,



We use a fair number of adjuncts (ie "sessionals") to assist in the delivery of our 300-level (ie undergraduate) LAWS electives, and the delivery of some of our Honours and other post-graduate seminars.

300-level electives

Of the 37 electives which we are offering in 2010, over trimesters 1, 2 and 3 (each trimester being of 12 weeks: in round terms, March - June; July - October, November - February), 9 are being offered by adjuncts. Of those 9 electives, 4 are offered by a team of adjuncts, rather than by an adjunct sole. The teams range from teams of 2 people to a team of 5.

Postgraduate offerings

We're using two adjuncts to offer course at postgraduate level this year (see below)

In answer to the question about their profile:

Of those nine 300-level electives offered by adjuncts this year, the breakdown is -

Business Associations: one practitioner in private practice with one of NZ's largest firms

Resource Management: one practitioner in sole private practice

Privacy: one practitioner in sole private practice This practitioner is also an ex-Faculty member.

Ethics: one lawyer from the public service (in this instance, from the State Services Commission)

Civil Procedure: a team of three lawyers in private practice with one of NZ's largest firms

Banking: a team of three lawyers in private practice with one of NZ's largest firms

Legislation: a team of 5 lawyers in public service (Parliamentary Counsel's Office)

Dispute Resolution: a team of three comprising one District Court Judge, one lawyer, and one mediator (not a lawyer)

Law and Economics: Professor, Chair of Economics, School of Economics and Finance.

Postgraduate seminars

In these types of courses, the lecturer/adjunct might deliver a couple of substantive lectures in the first couple of weeks, and the students then research, write, and present (both orally and in written text) a research paper. Those being offered by adjuncts this year are -

Censorship: a 2-trimester course of seminars offered by the Chief Censor.

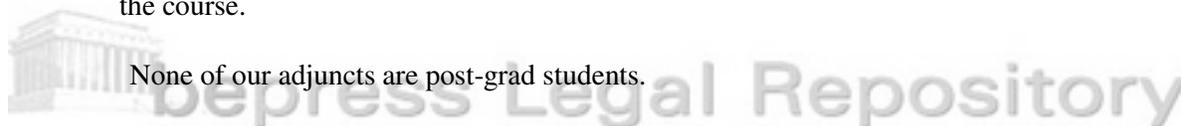
International Criminal Law: a 1-trimester course of seminars offered by Brigadier of the NZ Army.

This is an unusually small number of postgraduate seminars being run by adjuncts. We usually have more.

General points

We only use adjuncts to cover papers which we feel must be offered and in respect of which we don't have anyone on the Faculty in that year with expertise or capacity to offer the course.

None of our adjuncts are post-grad students.



The teaching and learning contact reported that law school only has a small LLM coursework offering, most students preferring to complete a research degree, which does not attract large numbers of sessional staff. Where postgraduate intensives are offered, however, these tend to be taught by sessional teachers.

U24 is a very small law school- arguably in a class all of its own. Given its location and size they 'do not have many sessional academics, but do have some part-time tutors who may be practitioners, graduates or other suitably qualified people. They can only be used for tutorials and not even for marking and there is only 4 of them.' Consequently they do not contribute to much of the teaching. In the past they have also had 'what we call graduate assistants, being postgraduate students who assist teachers in small ways but [these have] now been replaced by the employed sessional tutors.

IV SOME ANALYSIS

Not all of the law schools contacted responded and were able to provide information about their reliance on sessional teaching academics in the offering of their programs. There is information from 24 out of a possible 39 law schools available, which is approximately 61 per cent. There are many reasons for this. First it was an inquiry that demanded time to respond and most (if not all) academics are time-poor. This situation is further compounded if the academic is given carriage of matters learning and teaching within the school and is expected to carry also a heavy teaching load. Second, it would seem that law schools are often reluctant to reveal such 'sensitive' information. Third, it is not always possible to provide current data. The numbers of sessional staff vary from semester to semester and from year to year. Ultimately, though, there is sufficient reliable information, which allows for general findings and for the determination of trends if not absolutes.



AUSTRALIA

The inquiry began with my own university, which is both large and urban. If we look at the figures from UNSW and use Anne Junor's typology there is a different demography operating to the university as a whole. During the last semester of 2009, there were 80 professionals employed as sessional staff, of which only nine (approximately 1/10th) can be described as Casual Academics Only (CAO), whose teaching loads vary from several hours a week to a full-time load. According to Anne Junor's figures, this cohort made up approximately 30 per cent. The difference here is significant.

At UNSW, the AAs, OIEs and Retirees make up the other 90 per cent. There are seven Academic Apprentices - all PhD students. Several formerly full-time members of staff are now sessional academics (six). They are the Retirees. Approximately 75 percent (the vast majority), however, are OIEs. They are barristers or solicitors either in private practice, working within the court system or a government agency (eg Australian Securities and Investments Commission (ASIC), the Public Defenders Office, Crown Solicitors Office, and the Offices of Public Prosecutions (State and Commonwealth). There are several members of the bench, most retired, one still serving, and including a retired judge from South Africa. Twelve are visitors from overseas and/or academics from other universities, as well as two from the United Nations. As with many other law schools, within the undergraduate programs, sessional teachers are employed to teach the large core subjects but less so for the smaller elective courses. It is hard to estimate but more than 30 per cent of the teaching is done by sessionals for the undergraduate programs. Within the LLM coursework programs however, there is an even larger employment of the outside experts, especially for the smaller very specialised courses. More than 40 per cent of these courses are taught by sessionals.

These figures from UNSW accord with the responses that were received from other law schools. The overwhelming majority of the sessionals employed in our law schools are not the postgraduate students (or AAs) but the OIEs – the practitioners who reportedly

bring with them particular subject expertise.²⁰ The practitioners, however, are diverse. Some are still practising; some have retired; some are merely taking time out. Many of them are former practitioners and have child care responsibilities and find sessional academic work agreeably flexible. Further, the practice of law is not monochromatic. Law practitioners can be judges or other adjudicators, barristers, solicitors working in the private profession or in government agencies (eg Legal Aid) etc etc. They are all working as sessional staff in our law schools providing tuition in 'core' subjects and in specialised areas for LLB, JD and LLM degree programs.

There are differences, also, between the bigger (usually older) law schools and smaller ones. Logically, it also makes a difference where the university is located. The bigger (and older) city-based universities have greater access to a pool of expert practitioners. Perhaps also, these older universities have had the advantage of being able to build up valuable relationships with these practitioners over a long period of time as many of the practitioner/teachers are also their alumni.

Reliance on practitioners to teach law is not new given that law has not always been taught in universities. It is claimed that in Australia, there has always been a

particularly close link between legal education and the legal profession. The legal profession in colonial Australia was initially comprised of persons who had been admitted in Great Britain or Ireland or who had passed examinations conducted by professional authorities and (in the case of solicitors) undertaken articles in Australia.²¹

The traditional English model was that there was a clear separation of barristers and solicitors; barristers being educated at the Inns of Court and the solicitors being apprenticed or articulated as clerks. There were two distinct levels of legal education and training. For the barristers, legal education had been provided by the Inns of Court in London, however,

²⁰ There are always exceptions, of course. Both U6 and U7 were less reliant on practitioners.

²¹ Michael Chesterman, and David Weisbrot, 'Legal Scholarship in Australia' (1987) 50 *Modern Law Review* 709, 710. See also Linda Martin 'From Apprenticeship to Law School: A Social History of Legal Education in Nineteenth Century New South Wales' (1986) 9 *UNSW Law Journal* 111.

[a]ttendance at these Inns, and the quality of education offered, waxed and waned over the centuries. The articled clerk was dependent upon the prowess and personality of his master.²²

The reality is that, historically, few practitioners in either Australia or England were university educated. The first law school in Australia was established in the University of Melbourne in 1876, however, it is claimed by Chesterman and Weisbrot that even though the number of law faculties (and attending students) grew during the twentieth century in Australia,

It was not until 1968 that yearly admissions to practice [in NSW] tipped in favour of university graduates, and even in 1978 nearly one-third of admittees were without university degrees.²³

There are also some parallels here with the development of medical education and the ‘tension’ between practitioners/clinicians and academia as to the direction of professional education. But this is not a critique of those relationships or the merits of arguments from either side. Rather this is an attempt to understand more about those whose presence in law schools is often taken for granted.

As to the extent of our reliance on sessional academics to teach into our law programs, the responses provided by the various law schools also provide some evidence that, as a group, sessionals in our law schools carry heavy teaching loads. There is no hard data here, but several law schools provided sufficient information for reasonable estimations to be made. U8, for instance, reported that approximately forty per cent of the face-to-face contact in the LLB program is with casual teachers, mostly in tutorials and that the percentage of practitioners teaching into the LLM program is ‘much higher’. At U1, where the figures were provided for the undergraduate program, approximately one third

²² Jill Cowley, ‘Recognising and valuing teaching excellence in law schools and teaching-intensive appointments’ (2008) 1 (1 & 2) *JALTA* 275, 284.

²³ Chesterman and Weisbrot, above n 20, 711.

of the teaching hours for the core courses in the first semester have been conducted by sessionals.²⁴ U8 and U1 are both older, established city-based universities.

The picture is somewhat less clear for the newer universities. U18, for instance, is one of Australia's newest law schools. It is located some distance away from the central CBD but close to a 'satellite' CBD, courts and business hub. According to the information received from this law school there is a heavy reliance on sessional teachers who take nearly fifty per cent of the classes in the LLB program. The proportion is even higher for the delivery of 'service' unit classes where approximately sixty per cent (65 classes) are taken by sessional teachers. This would seem to be the exception, however, because of this university's location. Most of the other, newer, universities do not have the same ready pool of sessionals, either because of they are remote from courts (and hence practitioners) or because there has been insufficient time to build up relationships with practitioners or to 'grow' their own.²⁵ U10 and U15, for instance, are both regional, small and new. Neither employ many sessional teachers, indeed U15 reported that it relies on sessional teachers for only eight per cent of its classes. U6 and U7 are not new but can both be described as isolated which appears to ensure that they do not employ large numbers of sessional academics.

Overall, sessional teachers are apparently contributing a great deal to the teaching of core LLB/JD courses. The response from U14 (a new, small law school within the CBD of a city) would appear to be typical when the learning and teaching contact indicated that the division in which they are placed has adopted a policy of casualisation and that,

Our use of sessionals varies across the board. We use a lot of them in foundation units... We also use them to lecture in core units, [given that it is a] new law school.

²⁴ There were approximately 4,500 teaching hours available in the teaching of the core LLB courses, of which approximately 3,000 were conducted by full-time staff members and 1,500 by sessional staff.

²⁵ The older, more established universities, have vast numbers of graduates who are now practitioners, many of whom are happy to maintain relationships with their own institution by teaching.

It contrasts with U11, however, which is located in the same city. U11 only offers a JD program but

prides itself on the fact that the students are mostly taught by permanent academic staff in a seminar-class model. Where there are gaps, such as when permanent staff are awarded research grants or other leave, a small number of sessional teachers are employed.

The heavy reliance on sessional staff to teach into core subjects as reported by many schools is surprising and it has real implications for our first year students. It is not too fanciful to assume that for a large number of our new first year students, they are confronted by sessional staff who are also new to the experience. The fact that most of the sessional teachers in our law schools are practitioners also raises the issue of the availability of such teachers for student consultation, which was identified as an ongoing area of concern by Kerri-Lee Krause and others in the 2005 report into the first year experience of university students.²⁶ Busy practitioners may or may not have the time or a dedicated space at the law school for student consultation and yet this is critical, particularly for first year students.

Not quite so surprising, however, is the use of sessional staff to teach elective/specialised courses in the undergraduate programs and even more so in postgraduate programs. As the contact from U11 indicated,

In the Masters program, however, the majority of the subjects are taught by sessionals in intensive format, but these are practitioners or international scholars with particular subject expertise and often a long-established connection to the law school.

The use of sessional staff to teach small, esoteric electives is appropriate given that sessional staff can often bring knowledge and expertise that might not be available

²⁶Kerri-Lee Krause, Robyn Hartley, Richard James and Craig McInnis, *The First Year Experience in Australian Universities: Findings from a Decade of National Studies* (2005)[6.1.2] <http://74.125.155.132/scholar?q=cache:WhaaGrstFroJ:scholar.google.com/+first+year+experience&hl=en&as_sdt=2000&as_vis=1> at 13 October 2010.

through the full-time staff. It is often the difference between the offering of a course or not.

NEW ZEALAND

It is more difficult to make any generalisations given that only two law schools responded, however, according to the information provided by both these law schools, the use and identities of the sessional staff is similar to Australian law schools. It is difficult to gauge how many sessional teachers are employed, the ratio of sessional to full-time staff or the number of hours taught by sessionals. Further information would be helpful but is not to hand. Both the universities that responded are larger, older and city-based.

For U22, in Parts 1 and 2 of the LLB there is a heavy reliance on sessional teachers to lead tutorials, with less involvement in the latter parts of the undergraduate degree where electives only are offered. Part IV (the final part of the degree) is entirely elective courses, four out of five of which are taught by full-time staff members. Of the 10 elective courses that are taught by sessionals, they are 'senior practitioners or District Court or (possibly) High Court judges. (Occasionally a practitioner and academic staff member jointly teach an undergraduate elective, but this is rare.)' Accordingly, the sessionals are employed at that university early in the degree program as tutors and are mostly practitioners. The reported numbers of postgraduate student teachers are small. There is more involvement for sessionals in the LLM, however, there does not appear to be any involvement by AAs at all at this level.

Of the 30 or so taught masters courses offered annually, usually 18 – 20 are taught intensively (over five days) by prestigious academic visitors. The other 10 – 12 are usually semester-long courses taught by our own regular academic staff.

At U23 it was reported that there is a 'fair use' of sessionals (called 'adjuncts'). They are, however, like U11, only used where there was no full-time staff member with either the expertise or capacity to offer the course. Accordingly, they are employed to assist in the delivery of some law electives and some honours or other postgraduate seminars.

Importantly, at this university, none of the adjuncts are postgraduate students. They are all members of the profession either in private practice or government service.

V CONCLUSIONS

Analysis of this information results in a 'snapshot' of the sessional teachers who appear to play an increasingly important role in our law schools and in higher education generally. Particularly for Australia, the picture that we get is that they are, overwhelmingly, practitioners, and in most law schools, teaching more than 30 per cent of our classes and in some instances, 50 per cent. We are not alone. Such figures were acknowledged in the recent Bradley Report where it was said that,

An estimated 40 to 50 per cent of all teaching in Australian higher education is conducted by sessional staff.²⁷

And these numbers are not going down. As the sector becomes more casualised they will increase. Perhaps, this is just a reflection of the nature of work in the twenty-first century: perhaps it is more particularly the nature of academic work as Australian university administrators welcome

the international trend towards increased use of non-continuing staffing to mitigate the costs of moving from an elite to a mass higher education system in a context of public funding constraint.²⁸

There are many challenges presented by these findings and our snapshot. The most obvious is the need to ensure the quality of the teaching and learning in our law schools. We need to ensure proper administrative arrangements are made for them. It is a matter

²⁷Denise Bradley et al, *Review of Australian Higher Education Report* (2008) Australian Government, DEEWR, [3.1.5], [4] <http://www.deewr.gov.au/he_review_finalreport> at 8 September 2009.

²⁸Junor, above n 11, 278.

of risk management. We now know that the majority of our sessionals are not postgraduate students but practitioners with different needs, such as the need dedicated time and space for student consultation. This is an administrative matter which has real implications for the quality of their teaching and our students' learning.

We also need to devise appropriate training programs for these practitioner, sessional teachers, noting that such programs need to be 'rooted in the intellectual substance of the field'²⁹ to be effective and relevant. These practitioners may be overwhelmingly knowledgeable but they are also time-poor and teacher training events need to accommodate their needs. There is little point planning for a teaching training program at a time and place that would mean that few, if any, practitioners can attend. Doing nothing, however, is not an option, given that a large number of our new students are also being taught by sessional teachers who may also be new and inexperienced. The challenge is, therefore, to recognise and build upon their knowledge and professional experience and assist them to engage with the students. We owe them that much and only then can we enhance the quality of their contribution to the teaching and learning of the law school. As Paul Ramsden wrote,

There need never be any excuse for it: every teacher can learn how to do better. Anyone who has seen really good teaching in action will not need to invoke the exigencies of performance appraisal and maintaining academic standards as reasons for improvement.³⁰

This paper does not attempt to explore what such a training program might look like. That discussion has begun elsewhere³¹ but has further to go. What is hoped is that the information gathered from the law schools of Australia, New Zealand and the South Pacific can establish a reasoned basis for the continuation of that discussion. Other generalist disciplines provide training programs for their sessional teachers on different assumptions. The majority of their sessional teachers are postgraduate students and the structure and content of their teacher training courses is necessarily different. New

²⁹ Healey, above n 10, 173.

³⁰ Paul Ramsden, *Learning to Teach in Higher Education* (1992) 3.

³¹ See Kift, above n 15 and Cowley, above n 14.

enterprise bargaining agreements that are being concluded in universities throughout Australia may also result in a change in the involvement of postgraduate students in the future. It remains to be seen and, again, is beyond the scope of this paper. Understanding more about our sessional teachers is an important first step in a process by which we might address issues concerned with the quality of our law schools' teaching and our students' learning.