



Lawyering for change

**Seven principles of strategic legal
practice for community legal centres**

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Consumer Action Law Centre

The Victoria Law Foundation Community Legal Centre (CLC) Fellowship was established in 2003 to coincide with 30 years of CLCs in Victoria. Awarded annually, the fellowship provides a CLC worker with an opportunity to conduct independent research into issues identified in their casework and advocacy.

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Abbreviations

ACCC	Australian Competition and Consumer Commission
ALS	Aboriginal Legal Service (NSW)
BCCLA	British Columbia Civil Liberties Association
CALC	Consumer Action Law Centre
CALS	Centre for Applied Legal Studies
CLAS	Community Legal Assistance Society
CLC	community legal centre
EJA	Environmental Justice Australia
FCLC	Federation of Community Legal Centres
FKCLC	Flemington and Kensington Community Legal Centre
FLS	Fitzroy Legal Service
FRLC	Financial Rights Legal Centre
FVPLS	Aboriginal Family Violence Prevention and Legal Service
HRLC	Human Rights Law Centre
LHR	Lawyers for Human Rights
NAAJA	North Australian Aboriginal Justice Agency
NACLC	National Association of Community Legal Centres
NEF	New Economics Foundation
PIAC	Public Interest Advocacy Centre
RLC	Redfern Legal Centre
UCLA	University of California, Los Angeles
UJC	Urban Justice Center
VALS	Victorian Aboriginal Legal Service
VLA	Victoria Legal Aid
WCL	West Coast LEAF (Women's Legal Education and Action Fund)
WLSV	Women's Legal Service Victoria

Executive summary and recommendations

Give me a long enough lever and I can move the world.

– Archimedes

Introduction

Providing our clients with access to free legal services does not necessarily mean we provide them with justice. With 156,854 clients turned away from community legal centres (**CLCs**) in 2014,¹ it is clear that we cannot meet the high demand for our services with a case-by-case approach alone. There is a risk that we are not getting to, and will not ever get to, those most in need. There is also a risk that by being part of an unjust system we merely perpetuate its injustice through our work.

Community law work is not always easy. We hold the tension between limited resources and overwhelming legal need, and have the unfortunate privilege of being exposed to the inadequacies of law through our clients' stories. Yet, as the Productivity Commission highlights in its 2014 *Access to Justice Arrangements* report, it is this very exposure that makes us well placed to start addressing those inadequacies.² One way that CLCs have historically done this is through *strategic casework*³ – the use of legal cases as a social change or advocacy strategy.

Some have said that the case for CLCs integrating casework and advocacy has been 'convincingly and comprehensively made'.⁴ Academics, lawyers and bureaucrats herald its value and utility.⁵ Yet that conviction is not always reflected in practice, and in many CLCs most casework is transactional, that is, without any broader strategic value.

Given the challenging nature of our work, there is rarely an opportunity to look up from our desks and ask: Are we really using our legal work to effect broader systemic change? If so, when has our work resulted in meaningful change for our clients? When has it failed? Why? What can we learn from each other?

The aims of this CLC Fellowship project were simple: to ask these questions of a range of practitioners, draw on their insights, and then use the project findings to start a sector conversation about how we can better achieve justice for our clients. Over the first half of 2015, I spoke to almost one hundred lawyers, advocates and academics in Australia and abroad about how they did their work, what worked

¹ National Association of CLCs (NACLC) *National Census of CLCs 2014 Infographic* (2015) NACLC, 1 <<http://www.naclc.org.au/resources/NAC001%20Infographic%20Internal%20FA.pdf>>.

² Productivity Commission, *Access to Justice Arrangements – Inquiry Report* (2014) Productivity Commission <<http://www.pc.gov.au/inquiries/completed/access-justice/report>> Volume 2, Recommendation 21.1.

³ I prefer the term 'strategic' over 'public interest' as it concentrates on the intention of the parties, rather than on the contentious notion of 'interest'. However, I do use the term 'public interest' to refer to some non-Australian lawyers who do not fit within the definition of 'community lawyer' as it is used in Australia. I prefer 'strategic' over 'impact' because it is more commonly used in Australia. The term 'casework' acknowledges that much of the Victorian CLC sector's work is non-litigious.

⁴ Rachel Ball, *When I tell my story I'm in charge: ethical and effective storytelling in advocacy* (Victoria Law Foundation, 2013) 4 <http://www.victorialawfoundation.org.au/sites/default/files/attachments/VLF%20-%20CLC%20final%20report%2012-13%20_Final_web.pdf>.

⁵ See, for example, Nicole Rich, *Reclaiming Community Legal Centres: Maximising our potential so we can help our clients realise theirs* (2009) CALC 9 <<http://consumeraction.org.au/wp-content/uploads/2012/04/Reclaiming-community-legal-centres.pdf>> (**'Reclaiming CLCs'**); Federation of CLCs (**FCLC**) *The Change Toolkit* (undated) FCLC <<http://www.thechangetoolkit.org.au/>> (**'Change Toolkit'**); Liz Curran, *Solving Problems – A Strategic Approach* (2013) FCLC <www.fclc.org.au/public_resource_details.php?resource_id=2249>.

and what didn't. From these conversations I distilled seven key principles of impactful strategic legal practice.

This approach has limitations. It cannot yield a comprehensive statement of best strategic practice. Rather, it aims to offer practical insights, inspiration and ideas about how centres can introduce or develop strategic practices, drawing on a range of legal practice. The principles may appear deceptively simple, but putting them into practice will be challenging. There is no recipe for successful strategic legal work. It is not an exact science, but one of hard work, experimentation and trial and error. To meet these challenges, each principle is accompanied by practical suggestions for implementation.

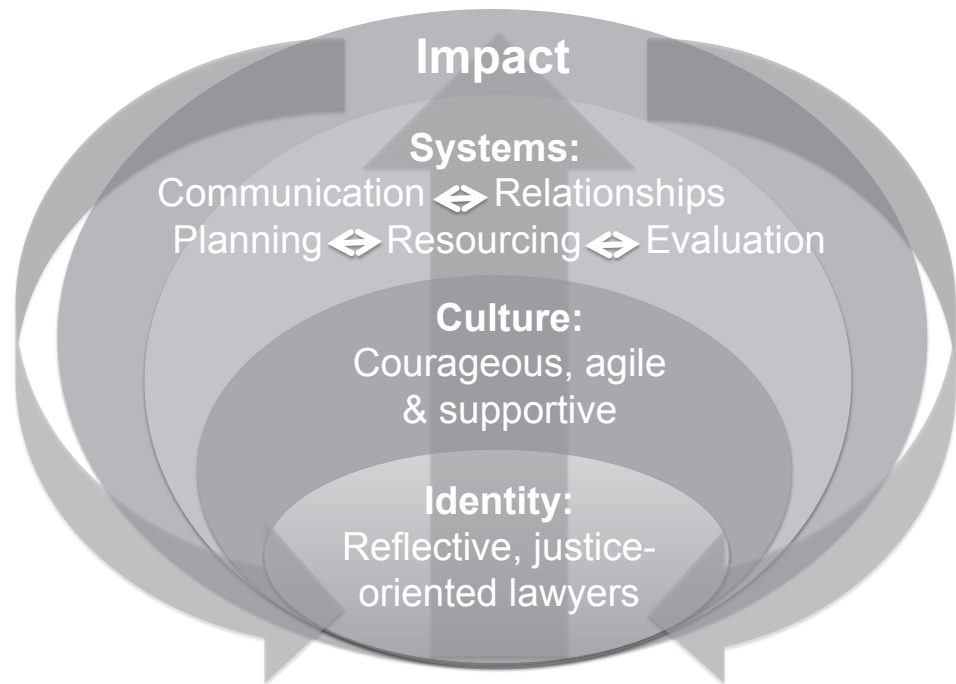
Project program

The project was divided into the following stages:

Stage	What	Dates
1	Planning	Oct–Dec 2014
2	Literature review	5–14 Jan 2015
3	Australian CLC interviews	14 Jan–19 Feb 2015
4	International interviews	20 Feb–5 April 2015
5	Report writing and review	20 April–end Sept 2015
6	Launch	Nov 2015
7	Developing a community of practice	Nov 2015–

See the **Appendix** for people and organisations consulted.

Recommendations: seven principles of effective strategic practice



- 1. CLC lawyers are reflective and justice-oriented practitioners.**
A strategic community lawyer is oriented by a vision of justice. One method for cultivating this is through reflective practice. Reflection may also assist lawyers to better grapple with uncertainty, risk and failure, which are inherent in any strategic legal practice. Lawyers must commit to taking time away from the everyday 'churn' to view their work in broader context.
- 2. Foster an agile, courageous and integrated workplace culture.**
A CLC should be greater than the sum of its parts. Therefore, CLC staff and managers must work to ensure that their centres can respond to change, manage risks, reap the benefits of diversity and build upon their strengths.
- 3. Set meaningful goals and pursue them purposefully.**
CLCs' 'performance must be assessed relative to mission, not financial returns'.⁶ It is therefore important to have a strong mission that guides the work of the practice. Yet it is not unusual for community lawyers to be doing casework disconnected from their centre's purpose. This 'spray-and-pray' approach may waste resources. Effective strategic planning is therefore essential to gather our work around a unified purpose. We can then build on this with targeted processes such as case selection and case planning (including risk management).

⁶ Jim Collins, *Good to Great and the Social Sectors* (2006) ('**Good to Great and the Social Sectors**') 6.

- 4. Resource for advocacy to maximise case impact.**⁷ To achieve strategic objectives, we need to properly resource advocacy. Advocacy done as an afterthought is likely to be ineffective. Advocacy skills gaps in the sector include media and communications, campaigning and fundraising.
- 5. You must be a good communicator to be an effective community lawyer.**
- This includes:
- a. communicating effectively with clients;
 - b. knowing how to communicate clients' and CLCs' stories to the public, including through the media;
 - c. recognising and effectively framing the systemic, or public interest, issues inherent in legal cases.
- 6. Build strong relationships with the community sector, government and client groups, to amplify our impact.** We rarely carry a campaign alone. Being able to collaborate with others within the CLC and community sectors – and to foster the trust of government, client groups and funders – is critical. This can enhance your centre's reputation, build credibility and promote your practice to clients.
- 7. Recognise that evaluation is essential.** It allows us to identify mistakes to learn from, practices to eliminate and successes to celebrate. Twinned with planning, evaluation can grow and develop our legal practice and foster a responsive culture that can inspire and attract 'evangelists', including funders, volunteers and pro bono resources.

⁷ Limited CLC funds, and threats to and constraints on CLC funding, are acknowledged. However, a detailed analysis of these issues is outside the scope of this report.

1

What is strategic casework?

Why 'casework' and not 'litigation'?

High-level strategic litigation is not always the best way to achieve social change. There are many historic and contemporary critiques of the effectiveness of using this kind of litigation to achieve social change.⁸ Strategic litigation is often glacially slow, resource-intensive and stressful (particularly for disadvantaged and inexperienced litigants); offers limited remedies; and may require enforcement to have real impact. Any court order obtained is subject to appeal or can be undone by legislation.

More importantly, most legal work conducted by CLCs never reaches the courtroom. It is comprised of complaints, demands, negotiation and settlements. This work is valuable in achieving social change. In this project I therefore acknowledge the importance of non-litigation legal work by using the word 'casework', rather than 'litigation'.

One powerful international example of strategic, non-litigation casework is the Community Benefits Agreement in relation to the Kingsbridge Ice Skating Center in New York. Originally, the Urban Justice Center (**UJC**) had agreed to assist the Northwest Bronx Community and Clergy Coalition to oppose the proposed development. However, in 2013, after an extended negotiation process, the Coalition and developers agreed to a Community Benefits Agreement. This provides for free ice skating time for local residents, sustainable building, living wages and over 50,000 square feet of community space.⁹ This has a significant positive impact on a disenfranchised area in the city.

What does 'strategic' mean?

Strategic casework is likely to have more than one objective. These may include one or more of the following (and this is not a comprehensive list):

1. Setting a legal precedent by:¹⁰
 - challenging the accepted interpretation of the current law;
 - creating new law: for example, by establishing new rights or duties;
 - ensuring that the current law is interpreted and enforced properly;
 - clarifying the meaning of the existing law.
2. Testing for truth. This includes building an evidence base for the need for change.

⁸ Historic: Gerald Rosenberg, *Hollow Hope: Can Courts Bring About Social Change?* (University of Chicago Press, 1991). Contemporary: Deborah Rhode and Scott Cummings, 'Public Interest Litigation: Insights from Theory and Practice' (2009) 36 *Fordham Urban Law Journal* 603, 604.

⁹ See, for example: Josh Epstein, 'Press Release – DLA Piper and Urban Justice Center Congratulate the Kingsbridge Armory Redevelopment Alliance on their Historic Community Benefits Agreement' (23 April 2013) DLA Piper <<http://www.dlapiperprobono.com/news/latest-news/2013/kingsbridge-armory-redevelopment-alliance.html>>; Ben Kochman, 'Developer, city finalize lease to turn vacant Kingsbridge Armory into ice center' (16 October 2014) *Daily News* <<http://www.nydailynews.com/new-york/bronx/developer-signs-lease-kingsbridge-armory-article-1.1977160>>.

¹⁰ Felicity Graham, 'Strategic Litigation at the ALS: A Review And A Roadmap For Future Challenges In The Criminal Law' (Presented at the 2014 ALS Annual Conference, Sydney, 2014) [2].

3. Informing a campaign.
4. Enhancing the leverage of social reform groups. Litigation can increase a group's bargaining power, enabling it to negotiate stronger rules or craft better outcomes for its constituents.
5. Building relationships within the sector, or with client groups or community organisations. This creates the foundations for future collaboration.
6. Creating legal 'hooks' for others to hang their hats on. Litigation may be used as a preliminary approach to enable other tactics to succeed.
7. Demonstrating a deficiency in law.
8. Opening up a public conversation.
9. Chipping away at a problem.
10. Limiting options for an opponent.
11. Requiring a public institution to account for a decision.
12. Mobilising, or organising, a group around an issue.

2

Why should CLCs do strategic casework?

There are good reasons for CLCs to do strategic casework

1. Academics say it's a good idea. For example, one four-year study of the top six practices of high-impact not-for-profits nominated 'advocate and serve' as its first best practice principle.¹¹ The researchers found that all 12 of their high-impact organisations engaged in integrated policy advocacy and direct service work. The researchers found that such integration created a 'virtuous cycle': 'the two together can create impact that is greater than the sum of the parts.'¹²
2. The Productivity Commission says it's a good idea.¹³
3. Lawyers have found that it works.¹⁴
4. Philanthropic funders (at least in the UK and US) prefer it.¹⁵
5. Most of our organisational mission statements require it.¹⁶
6. It enhances the rule of law by:
 - a. making the justice system operate more effectively by providing 'robust feedback about the impact of the law on the lives of vulnerable people';¹⁷
 - b. providing Victorians with an experience of a justice system that works for rather than against them, building their trust in it.¹⁸
7. It develops our society by:
 - a. sowing 'the seeds of discontent' required to change laws that are out of touch with society;¹⁹
 - b. fulfilling the 'moral imperative' to balance 'commitment to the alleviation of present needs with a similar commitment to altering the political landscape of the poverty community'²⁰ of the future.
8. It strengthens our democracy by facilitating broader participation in government policy-making,²¹ as well as by holding government and business to account.
9. It redresses power imbalances associated with poverty, such as 'organisational poverty'.²²

¹¹ Leslie Crutchfield et al, *Forces for Good: Six Practices of High-Impact Nonprofits* (2008) 18 ('**Forces for Good**').

¹² Ibid 33.

¹³ See above n 2.

¹⁴ This conclusion draws upon the discussions I had as part of this project.

¹⁵ Rhode and Cummings, above n 8, 628–633. Interview with Julie Bishop (London, 16 March 2015).

¹⁶ Of the 23 Victorian CLCs interviewed, 19 had mission statements that called for strategic work.

¹⁷ Interview with Joel Townsend, VLA (Melbourne, 4 February 2015); Reclaiming CLCs 11.

¹⁸ Townsend, above n 17.

¹⁹ The Hon Justice Michael McHugh, 'The Need for Agitators – the Risk of Stagnation' (Presented at Sydney University Law Society Public Forum, 2005) 7.

²⁰ Reclaiming CLCs 14.

²¹ Ann Southworth, 'Conservative Lawyers and the Contest over the Meaning of "Public Interest Law"' (2005) 52 *UCLA Law Review* 1223, 1234; Ascanio Piomelli, 'The Challenge of Democratic Lawyering' (2009) 77 *Fordham Law Review* 1383.

²² Mauro Cappelletti, 'Alternative Dispute Resolution Processes within the Framework of the Worldwide Access-to-Justice Movement' (1993) 56(3) *The Modern Law Review* 282, 284.

10. It provides tangible benefits for the following groups:²³

- a. The clients: The case may empower an individual or group through an outcome – for example, if they become advocates in a campaign.
- b. The CLC: It may provide a platform for a CLC to raise its public profile, help it to attract higher-quality staff or free up CLC resources because it no longer has to assist a particular group of clients whose legal issue has been resolved.
- c. An affected group: The case may achieve broader social and legal change, affecting a large group of people. And, even if the individual case is lost, it may still result in a shift in the relevant debate and policy. The litigation may raise awareness and encourage public debate, which may in turn trigger large-scale policy changes.
- d. Lawyers at the centre and beyond: Strategic casework helps lawyers develop and refine their legal arguments, theories, ideas and viewpoints (often beyond the scope of the individual case).
- e. The legal system: The case may promote the reputation of the legal system through an improved sense of access to justice.

11. It avoids risks such as:

- a. the perpetuation of an unjust system;²⁴
- b. allowing government and corporates to ‘claim professionalism’ in its absence;²⁵
- c. a poor-quality outcome in the individual case;
- d. poor-quality outcomes in similar cases. If, for example, aggrieved parties do not routinely raise complaints of misconduct seeking compensation within an appropriate range, an institution’s standard for what is a reasonable resolution in a particular category of dispute may shift below the appropriate range;²⁶
- e. policy development uninformed by everyday legal practice;
- f. de-skilling of the sector, which has effects on the quality of legal service provision, reputation, and, consequently, on the ability of CLCs to attract and retain high-quality staff.²⁷

Social impacts of litigation

Catherine Albiston has drawn on Doug NeJaime’s work to formulate two useful typologies for considering the effects of litigation on social movements.

²³ Graham, above n 10, [3].

²⁴ Reclaiming CLCs 13.

²⁵ Interview with David Porter (Sydney, 29 January 2015).

²⁶ Ibid.

²⁷ Ibid.

This table presents litigation's internal and external effects on social movements:²⁸

	Internal Effects	External Effects
Positive Effects on the Movement	Raise consciousness and develop oppositional consciousness Form a collective identity Attract financial resources and participants in the movement	Increase bargaining power Attract publicity and public attention Provide legitimacy to a movement's claims Provide a legal remedy Provide recognition or dignity to individuals
Negative Effects on the Movement	Drain resources and divert energy from more effective strategies Potentially demobilize participants if the litigation is unsuccessful	Mobilize opponents, countermovements, and backlash Shore up the legal system Fail to produce meaningful change on the ground, resulting in symbolic victory only

Table 1: Effects of litigation strategies on social movements

²⁸ Catherine Albiston, "The Dark Side of Litigation as a Social Movement Strategy" (2011) 96 *Iowa Law Bulletin* 61, 64.

This table presents positive and negative effects of merely engaging in the process of litigation, and then of winning and losing:²⁹

	Play	Win	Lose
Positive	Publicity Raise consciousness Attract financial resources and participants Bargaining power from uncertainty (but short-lived) Legitimize movement claims by forcing courts to consider them	Legitimate claim/identity; validate the social movement Obtain a legal remedy Raise the status of a social movement organization relative to others within the movement	Raise the status of a social movement organization relative to others within the movement Cultivate a narrative of oppression that shores up collective identity and attracts financial resources Mobilize other actors Find other, perhaps more friendly, venues Network with allies
Negative	Deradicalize message or goal of movement by asking for a legally viable remedy rather than what movement participants want Drain resources Reinforce unjust system Shape movement identity consistent with conservative claim Privilege elite and mainstream participants over the 'radical fringe'	Countermovement mobilization and backlash Resistance to implementation Demobilization of participants who view the battle as won	Delegitimize the movement or its objective Potentially denigrate the movement or its identity Loss of resources with no formal legal remedy Demobilization of discouraged participants

Table 2: Effects of litigation on social movements by outcome

²⁹ Ibid 67.

3

What strategic work is being done?

Who in Victoria does strategic casework?

In 2015, I interviewed representatives from 23 of the then 49 Victorian CLCs. I was in contact with representatives from a further 5 CLCs, although I did not interview them, and was familiar with the operation of a further 3 specialist, explicitly precedent-seeking, practices. My findings were that over half of the centres I spoke to, and a little under half of those I considered overall, did not undertake significant strategic legal work.

In making that determination, I considered answers to the following questions.

1. What does the interviewee say about whether or not they do strategic work?
2. Does the centre, in substance, do casework that has strategic objectives?
3. To what extent does the centre integrate casework with advocacy?
4. Is the centre, in substance, achieving systemic outcomes through casework?

Even if the first question was answered in the negative, if there was some ad hoc work done to integrate casework and advocacy, or some broader public interest purpose behind some of the cases run, I classified the practice as 'somewhat' strategic. The exercise was intended to provide an impression of what strategic casework was done in the Victorian sector.

Here is a summary of my findings:

Is the CLC doing strategic casework?	No	Somewhat	Yes	Total
Centres interviewed	10	5	8	23
Additional centres considered	4	0	4	8
Total	14	5	12	31

Why are some centres not engaging in strategic casework?

Interviewees cited various reasons for not undertaking strategic work, or for why doing so was a challenge. Only one interviewee explicitly stated she was simply not interested in undertaking this work. However, almost half of the interviewees (11 of 23) noted the 'churn factor' – feeling overwhelmed by the demands of casework – as a key impediment. Key barriers identified were as follows:

1. The 'churn factor'. This may come as a result of, for example, the unending legal need itself, workplace culture, funders' requirements, poor technology, inefficient systems that result in arduous administrative work, etc.
2. A sense of insufficient resources.
3. A lack of confidence in litigation, which was considered a specialist skill.
4. Inexperience and lack of skills in 'non-legal' work such as communications, evaluation and reflective practice.
5. The perception that it is harder to do strategic work in a generalist context, and that strategic work is for specialist centres.

6. Funding arrangements that prohibit it.
7. Inertia and an unwillingness to change, including factors such as:
 - a. the difficulty of having to learn a new way of lawyering;
 - b. that processes are structured around individual casework, not systemic issues;
 - c. obstacles, including old structures and people who are 'truly wedded to a particular way of doing things'.
8. Uncertainty about the value of non-legal work such as planning, evaluation and reflection, coupled with a concern that it will take resources away from CLCs' 'real work'.
9. Reticence about 'using' clients.³⁰
10. Lack of interest.

Does size matter?

I acknowledge that the above numbers mask a significant diversity in centres' size and resourcing. However, despite some contrary perspectives in the Victorian sector, my view is that size and resources do not necessarily determine a centre's capacity to have an impact.³¹ Small centres, of which Environmental Justice Australia (**EJA**) is a notable Australian example, can achieve significant outcomes. Many impressive overseas centres, for example the BC Civil Liberties Association (**BCCLA**),³² and West Coast LEAF (**WCL**),³³ both in Vancouver, are staffed by five or fewer lawyers.

³⁰ Elaborated on in the discussion in Principle 1 on the conflict between client and public interest.

³¹ Confirmed in relation to nonprofits more generally, in Forces for Good, 18.

³² <https://bccla.org/about/our-office/>.

³³ <http://www.westcoastleaf.org/about/staff-board/>.

4

Best practice principles for strategic lawyering

Introduction

Two approaches to strategic work emerged from the research:

1. **The opportunistic (or 'evolutionary' or 'tree') approach.** This approach was often taken by a small group of dynamic individuals (either at a small CLC, or a sub-group within a larger centre) who proactively identified legal issues, found or built relevant legal cases that tested the issues, and then linked them to broader social movements or built up campaigns around them.

Where such an approach was employed, its success seemed to rely for its impact most heavily on the people and culture within an organisation (see Principles 1 and 2). My impression was that such groups carefully recruited or chose staff that identified with, and so could enliven, their strategic goals. The group then worked to maintain a culture that allowed its members to identify opportunities and respond to them.

2. **The planned (or 'systems first') approach.** Most often employed by larger centres, this approach involves a legal practice intentionally structuring systems and resources to achieve strategic outcomes, sometimes as stand-alone matters, and other times as part of broader change campaigns. This relies on careful planning (see Principle 3 onwards), which at times leads to bureaucracy. The planned approach was particularly evident in specialist legal centres in Victoria and in environmental law organisations worldwide.

Most practices employed a mix of these approaches. The opportunistic approach was most evident in smaller centres with an agile culture and reduced bureaucracy,³⁴ whereas higher degrees of planning were most common within larger centres.³⁵ This makes a lot of resource sense: more people require more systems to ensure a coherent and consistent approach.

However, this was not always the case. Smaller centres specialising in strategic litigation often employed a mix of opportunism and planning. These include the BCCLA and Human Rights Legal Centre (**HRLC**) in Melbourne. And some larger centres embraced a more opportunistic approach in particular circumstances.

One example was CALC's successful Do Not Knock campaign against unsolicited door knocking, run over a period of many years within a larger, more rigid structure.³⁶ Such opportunistic work may be an inevitable part of the 'long tail' of case or campaign success: the years of post-outcome implementation that can flow from a court and/or advocacy win.

³⁴ Examples: Liberty (UK); MFY Legal Services (USA).

³⁵ Examples: CALC; WLSV; Redfern Legal Centre (Sydney).

³⁶ Curran, above n 5, 30.

Principle 1: Identify as reflective and justice-oriented practitioners

Challenges with justice

Identity matters

'I was not as interested in justice as I was in winning.' These are the words of Marty Stroud, an American prosecutor, who in 2015 publicly admitted that his over-zealous prosecution of a black man, Glenn Ford, for a 1984 murder, resulted in an innocent man being put on death row for 30 years.³⁷ Mr Stroud now admits that he relied on misleading evidence, did not investigate potentially exonerating evidence, took advantage of an inexperienced criminal defence team and intentionally selected an all-white jury.³⁸

Mr Ford was released from prison in March 2014 after a judge found he was not involved in the murder. The state refused to award him compensation for the wrongful conviction. Upon his release from prison, Mr Ford was diagnosed with lung cancer and given six to eight months to live. This compelled Stroud to apologise publicly to Mr Ford, an apology that Mr Ford said he could not accept.

This story serves as a cautionary tale of the devastating results that can come from a justice system comprised of lawyers unconcerned with justice. How we view our role as lawyers within a bigger system matters. Bryan Stevenson, a leading advocate for prisoners on death row in the US, also underscores the importance of personal and professional identity in responding to the challenges of unjust systems. He posits that innovation and creativity require 'an orientation of the spirit' and 'a willingness to sometimes be in hopeless places and be a witness'.³⁹

Legal professionalism

During the Australian interviews I often came across a hesitation to do strategic casework. There was concern that strategic work would direct scarce resources away from direct legal service provision, which was prioritised. Yet this may be a false binary. Two American academics, Gary Bellow and Jeanne Kettleon, ask the following questions:⁴⁰

To what extent are the dilemmas posed by scarce resources and differential circumstances resolvable within the profession's longstanding commitment to the adversary system? To what extent is our present conception of the role and function of law and lawyers as much a problem as a potential solution?

As Jim Collins says, '[w]e must reject the idea – well-intentioned, but dead wrong – that the primary path to greatness in the social sectors is to become

³⁷ Doyle Murphy, 'Exonerated murder convict rejects prosecutor's apology: "I'm sorry I can't forgive you"' *Daily News* (New York) 20 April 2015 <<http://www.nydailynews.com/news/national/exonerated-murder-convict-rejects-prosecutor-apology-article-1.2192277>>.

³⁸ Ibid.

³⁹ Bryan Stevenson, *We Need to Talk About an Injustice* (2012) TED <https://www.ted.com/talks/bryan_stevenson_we_need_to_talk_about_an_injustice/transcript?language=en>, [12.35].

⁴⁰ Gary Bellow and Jeanne Kettleon, 'From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice', in Susan Carle (ed) *Lawyers' Ethics and the Pursuit of Social Justice: A Critical Reader* (2005) 136, 137.

“more like a business”⁴¹. Similarly, CLCs are not ‘corporate law firm[s] that help poor people’.⁴² The skills required to be a good community lawyer are not the same as those required to be a good corporate lawyer, and vice versa. Rather, our work requires a specialist skill set, not only for working with vulnerable clients, but also with and for the community.

It is this expertise that makes CLCs best suited to respond to community needs, and to take on the important issues and difficult public interest cases that a strictly ‘efficiency’ (or volume-focused) practice may not pick up. For example, Flemington and Kensington CLC (**FKCLC**) is the only legal practice in Victoria to undertake substantial police accountability work.⁴³ While there is little doubt that other public and private criminal law practices are exposed to repeat instances of police misconduct, they largely do not address them.

Paul Tremblay describes as ‘regnant lawyering’ the ‘tendency of care providers to favor the present and identifiable over the future and unnamed’, and ‘that strain of legal activity characteristic of liberal and progressive lawyers who care about social justice, but who are too enmeshed in their law oriented environment to perceive its limitations and harms’.⁴⁴ He instead argues for ‘justice-based allocation of resources away from clients’ short-term needs and in favor of a community’s long-term needs’.⁴⁵ He suggests this might require a decreased reliance on client demand for the direction and justification of a legal centre’s work.

By identifying with a narrow conception of what it means to be a lawyer, our sector may limit its ability to meaningfully respond to its clients.

Legal ethics and managing conflicts

There was a concern expressed by a handful of interviewees that strategic casework could conflict⁴⁶ with lawyers’ professional and ethical obligations, in particular with the duty to act in clients’ best interests. For example, placing pressure on a vulnerable client to pursue a high-risk test case, where they may risk losing their home, is clearly problematic. However, whether or not centres should preference clients more willing to tell their story in the media is less clear-cut.

When undertaking strategic work, we must remain alive to its unique ethical challenges, including the potential conflict between the client and systemic (or community) interest. However, hard questions, and even potential conflicts of interest, are not unique to strategic legal practice. We should not use them as reasons for not pursuing a more just and fair legal system. A concern with justice should lie at the very core of lawyers’ work, and as part of other central ethical obligations – our duty to the court and to the administration of justice.⁴⁷ We can seek to manage the unique challenges of strategic casework by encouraging lawyers to be responsive to these issues as they arise, and to discuss them within

⁴¹ Good to Great and the Social Sectors 1.

⁴² Interview with Carolyn Bond (Melbourne, 22 January 2015).

⁴³ See: <policeaccountability.org.au/>.

⁴⁴ Paul Tremblay, ‘Rebellious Lawyering, Regnant Lawyering, and Street Level Bureaucracy’ (1992) 43 *Hastings Law Journal* 947, 953.

⁴⁵ Ibid 950.

⁴⁶ Here used not in the strict legal sense, but, more broadly, in the literal sense of the word.

⁴⁷ *Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015*, r 3.

their practice. Where a conflict does arise, this should be communicated clearly to relevant parties.

Many have written on managing potential tensions between client and public interest. Ben Hoffman and Marissa Vahsling, for example, state that ‘a human rights lawyer is not always going to be able to be “on tap,” waiting to serve whatever goal the community chooses in a given moment’.⁴⁸ They suggest a collaboration in which lawyers work with clients to ‘identif[y] and operationali[ze], a shared vision’ of justice’.⁴⁹ In this way, the two can pursue ‘a shared goal that is, necessarily, jointly informed by the lawyer’s own vision of social change’.⁵⁰ The authors identified the development and drafting of the retainer as one way that lawyers can put this into practice.⁵¹

Putting it into practice

Develop your instinct for injustice

The research found that the lawyers who were undertaking strategic legal casework were also guided by a vision of justice. When I asked Denis Nelthorpe of the then Footscray CLC what he looked for when identifying opportunities for strategic work, he responded with ‘injustice. ... And I don’t look for injustice on a grand scale ... Can you see injustice in your own backyard?’⁵² He went on:⁵³

A: I actually think we get immune to what is really unjust ... So I would also say that one of the simple things we can do ... is train ourselves to recognise injustice.

Q: What practically would need to happen for this to occur?

A: ... If we simply said to everyone ... identify the worst injustice that happened to your client, and think about anything you can do about it.

Doug Lasdon, founder of the entrepreneurial Urban Justice Center (**UJC**) in New York, had a similar response, although phrased in different terms:

We would do small stuff ... and then I would pick my bigger case. Now, how do you pick that bigger case? ... I want to be able to win. And, then, there are two ways to say it. You can say it offends my sense of justice enough for me to say – “I’m going to bring the case”, or you can say “that really pisses me off and so I’m going to bring that case.” If it pisses you off, there’s a claim.⁵⁴

Other lawyers put it in different terms, such as ‘looking at the bigger picture’,⁵⁵ thinking holistically, or ‘if it doesn’t feel right or fair then maybe there is something wrong’.⁵⁶ What is critical in these approaches is the lawyer’s identification with an ideal of fairness, or justice, that guided their work.

⁴⁸ Ben Hoffman and Marissa Vahsling, ‘Collaborative Lawyering in Transnational Human Rights Advocacy’ (2014) 21 *Clinical Law Review* 255, 266.

⁴⁹ Ibid 265.

⁵⁰ Ibid.

⁵¹ Ibid 270–272.

⁵² Interview with Denis Nelthorpe (Melbourne, 22 January 2015).

⁵³ Ibid.

⁵⁴ Interview with Doug Lasdon (New York, 3 March 2015).

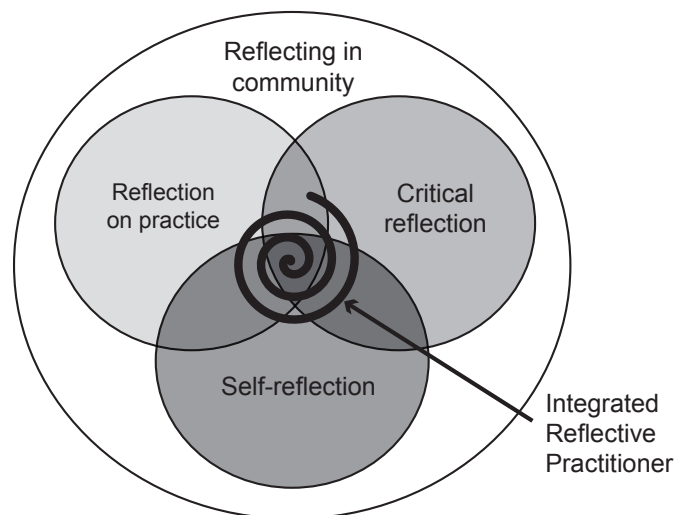
⁵⁵ Interview with Shorna Moore (Melbourne, 12 February 2015).

⁵⁶ Interview with Baljeet Sandhu (London, 19 March 2015).

Reflective practice

While Victorian CLC lawyers largely recognised the importance of systemic work, for many there was a disconnect between that recognition and their legal practice. Reflective practice may help bridge this. Other professions have historically used reflective practice to promote professional development and, relevantly, the integration of theory and practice. Research has linked reflection to developing ethical awareness and capacity, reducing stress, enhancing cultural competency and developing communication skills (including social and emotional intelligence) and resilience.⁵⁷ A key risk identified with not adopting a reflective approach is that 'professional effectiveness decreases over time because repetitive experiences or actions are not re-examined'.⁵⁸

Michele Leering, a Canadian academic and community lawyer, proposed a useful, multi-faceted model of reflective practice for legal professionals:⁵⁹



The six aspects of Leering's model are:

1. Reflection on practice: Traditional 'instrumentalist' reflection on legal skill and technique.⁶⁰ This is a reflection on *how* you practice, i.e. Do you have the right skill set to have impact through your work? Are you an effective litigator?
2. Critical reflection: Reflecting on the role of law in society and its implications, whether good or bad. This requires developing the skills to critically examine our worldview, and assumptions and frames of reference that underpin it. It may involve 'ideological critique, deconstructing knowledge, consciousness-raising, unmasking power and privilege, and creating emancipatory knowledge'.⁶¹

⁵⁷ Michele Leering, 'Conceptualising Reflective Practice for Legal Professionals' (2014) 23 *Journal of Law & Social Policy* 83, 102.

⁵⁸ Ibid 85.

⁵⁹ Ibid 94.

⁶⁰ Ibid 95.

⁶¹ Ibid 96.

3. Self-reflection: Reflection on our personal ethics, values and purpose as a lawyer. This is a 'continuous iterative process' of examining who we are, what we're doing, the purpose of our work and how we are doing it.⁶²
4. Integration of the three components above: The spiral in the above image reflects 'the need to cycle through the different forms of reflection to support their integration and to result in action, changed behaviour, and new professional expertise'.⁶³
5. Reflecting in community: Leering posits group reflection, whether within a small group of lawyers, a whole legal practice, or across the sector, as essential to ensure rigour⁶⁴ and accountability. It is only when reflection is 'shared with other people and opened up to scrutiny in a spirit of inquiry ... that it can be considered rigorous'.⁶⁵
6. Action: The reflective lawyer 'takes appropriate action based on the momentum created by that reflection'.⁶⁶ It is only through action that we consolidate our learning and progress our practice.

Recruitment and retention

Arguably CLCs should recruit and retain staff based on the extent to which their vision of justice aligns with that of the CLC. Jim Collins asserts that you must first choose the right people and only then the content of the work. He argues that if 'you have the right people, they will be self-motivated'. The question then becomes not how to motivate them but how 'not to de-motivate them'.⁶⁷

The Urban Justice Center (**UJC**) exemplifies the success of this approach. It comprises ten autonomous and independently funded legal projects, in areas as diverse as community development, international refugees and sex workers' rights. It was founded in 1984 by Doug Lasdon, who, out of a burnt-out building in Harlem, initially ran legal cases alone (with pro bono support) for homeless clients he met at soup kitchens. Now the organisation has numerous offices and a multi-million dollar budget. When Lasdon was asked how the UJC projects were selected, he responded with the Collins approach: you should hire people whose judgement and intelligence you respect, and then provide them with the autonomy, independence and support to do what they want to do. Harvey Epstein, Director of the UJC's Community Development Project, takes a similar approach.⁶⁸

You just have to have people who are basically committed to the work and know that this is how you have to get it done. Sometimes it's not just the day to day, but the longer vision stuff that matters. There are lawyers out there that care about this kind of larger social justice vision, and that's what you look for.

⁶² Ibid 98.

⁶³ Ibid 94.

⁶⁴ Ibid 94.

⁶⁵ Ibid 100.

⁶⁶ Ibid 105.

⁶⁷ Jim Collins, *Good to Great* (2001) 89 ('**Good to Great**').

⁶⁸ Interview with Harvey Epstein (New York, 3 March 2015).

Practical implementation

Individuals	<ul style="list-style-type: none">– Schedule reflective practice into your week, and commit to this. Be disciplined and systematic. For example:<ul style="list-style-type: none">• schedule an hour for reading articles on legal theory, or for doing ‘one thing extra’ on your files (such as regulator complaints);• have a post-it note at your desk on which there are three reflective questions to ask yourself at the beginning or end of the day;• consider why you are in the sector: What does this work give you? What is your role within your workplace?– Reconceptualise the life span of a legal case as ending not with the legal problem solved, but with the systemic response. If we treat our legal cases as individual legal problems, we limit our capacity to achieve justice. If our aim is to achieve change through a case that raises a systemic issue, it cannot be closed before an attempt to address the systemic problem has been made.– One practical way this can be done is by ensuring we make a regulator complaint in each case of misconduct of a department or business.
Managers	<ul style="list-style-type: none">– Learn and model reflective skills.– Encourage reflection in practice discussions when possible – for example, case intake, case planning, staff reviews and case debriefs.– Systematise reflective practice. This could involve:<ul style="list-style-type: none">• making reflective practice a core competency in the workplace. Include it in position descriptions, recruit reflective lawyers, and encourage it in existing staff;• committing the practice to a formal reflective program implemented by interested staff;• arranging training on reflective practice.– Require a regulator complaint, or other systemic response, in cases involving a systemic issue.– Ensure that staff debrief after difficult, or resource-intensive, cases, to ensure that reflections, and so suggestions for improvement, are captured.– Consider allowing paid or unpaid study leave. Formal study may allow staff to draw a boundary around casework and find space for reflection.
Boards	<ul style="list-style-type: none">– Develop a human resources policy that requires the recruitment of staff with an interest in access to justice and whose personal aspirations align with organisational goals.– Recognise the importance of reflective practice in the mission statement of your centre.– Learn and model reflective skills.

Principle 2: Foster a courageous, agile and integrated workplace culture.

It always seems impossible until it's done.

– Nelson Mandela

Introduction: on managing risk and accepting failure

The lawyers I perceived to be doing the most impactful strategic casework were also those who were most comfortable taking on challenging cases, taking risks and talking about their failures.⁶⁹ They were willing to run the hard cases in which they were not going to please everyone, would face real resistance from their opponents and would have to make difficult decisions. Having the skills and support to work through such challenges only seemed to make them more positive about their work and workplaces. While acknowledging the resource limitations of their sector, they were rarely the ones to focus too long on this.

When mistakes were made, these lawyers reflected on them meaningfully and humbly, and sought to learn from them. This resulted in ongoing development in legal skills and adaptability and, often, in turn, in the enhancement of their centre's reputation.⁷⁰ Such an approach to strategic (often challenging) work also built up their confidence to do similar work in the future. David Porter of the Redfern Legal Centre (**RLC**) said this of his work on police accountability:⁷¹

When I started looking at the formal complaints system ... people said 'there's no point', and I said 'Why not? What are your reasons?' ... They didn't have reasons, only assumptions, or bias ... [O]nce you can get a result doing something that somebody told you would fail, it influences your thinking about the next thing that comes along.

Risk management

In adopting a more risk-accepting approach, there are practical matters to consider:

1. It is important to undertake a thorough risk assessment prior to undertaking any high-risk case. This would include looking at implications for funding, for your client(s) – their costs, but also the extent to which such proceedings are likely to impact on their personal lives – and reputational effects for your centre (adverse and beneficial). Ideally this assessment is undertaken at practice and board levels, particularly with high-profile proceedings.
2. Risk of loss of future (particularly government) funding – a diverse funding mix, including from philanthropic grants, membership, crowd funding, costs awards and/or paid work (where possible) may help mitigate this risk.

⁶⁹ In 10 of the 22 'strategic lawyer' interviews, including 5 interstate ones.

⁷⁰ One example is the work that the Centre for Applied Legal Studies (**CALS**) in Johannesburg undertook in responding to the mining project near the Mapungubwe World Heritage Site over the last five years. See: Agata Wierzbowski, 'On Embracing Failure' (8 June 2015) Keeping Them Honest <<http://keepingthemhonestblog.com/2015/06/08/on-embracing-failure-the-paradox-of-public-interest-lawyering/>>.

⁷¹ Porter, above n 25.

3. Risks associated with 'bad press', including on the issue of CLC funding⁷² – good relationships with media and/or good up-front advice on defamation and injurious falsehood, may assist in mitigating this risk as it unfolds.
4. Consider the risk of *not acting*, as well as acting. This may be on the reputation of your CLC, as well as for the community.⁷³
5. It is important to ensure that where a strong or radical position is taken it has a rigorous theoretical and legal foundation so it cannot be easily dismissed.⁷⁴ You may want to consider drawing on various sources to support this foundation – such as seeking the advice of senior counsel, a firm acting on a pro bono basis, sector colleagues, academics (or other experts) or a combination.

'Master the art of adaptation'

Crutchfield and his colleagues, in their book on best practice principles of high-impact nonprofits, suggest that adaptability is required to achieve a high impact.⁷⁵ The benefits (and indicators) of highly agile organisations are:

- adapting to new regulatory landscapes quickly, whether they are changes in funding pressures or laws having dire consequences for client groups;
- taking up good ideas, and executing them over the immediate, and then the long, term (as often, good ideas have 'long tails'⁷⁶ of implementation or flow-on effects);
- seizing opportunities that arise or are only open for a brief time;
- accepting unintended consequences and using them to your advantage.

Interestingly, research indicated that organisational agility arose, to a large extent, out of the tension between opportunism and planning discussed above. An agile organisation was one that could be flexible enough to respond to change, yet which had structures in place to ensure growth is directed towards its purpose. One example of this is the story of Environmental Justice Australia (**EJA**). Following significant 2013 federal funding cuts, the Victorian Environment Defenders' Office courageously reformulated its funding structure and relaunched itself as the EJA. It treated funding restrictions not as a blow, but as an opportunity to more closely align its work with its mission. It reconstituted itself around a diversified pool of funding that allowed it greater independence and to target its resources more strategically.

⁷² See, for example, Editorial, 'Put a stop to a legal disservice' *Herald Sun* (23 April 2014) <<http://www.heraldsun.com.au/news/opinion/put-a-stop-to-a-legal-disservice/story-fni0ffsx-1226893743484>>.

⁷³ '... I think we at Fitzroy, our reputation is, and our support, is very wrapped up in being courageous ... as much as there might be a risk sometimes, it's also a great risk in becoming invisible.' Interview with Meghan Fitzgerald (Melbourne, 6 February 2015).

⁷⁴ Interview with Gregor Husper (Melbourne, 10 February 2015).

⁷⁵ Forces for Good ch 6.

⁷⁶ Townsend, above n 17.

Learn how to say ‘no’

Crutchfield and his colleagues state that agility is as much about the work you *don’t* do, as the work you do.⁷⁷ While it is important to be courageous in trying new approaches and taking risks, it is equally important to be courageous in letting go of strategies that don’t work. One helpful tool in this area is Jim Collins’ ‘stop doing’ lists. These lists are intended to assist with identifying, and eliminating, redundant practices borne more of habit than utility.⁷⁸

Harness the power of differing views

Embracing complexity makes organisations agile. Understanding complexity can be enhanced through exchanging views, within and outside the organisation. Patrick Hunderman of Legal Aid South Africa stated that one of the top three ingredients for an effective strategic litigation practice is having a ‘broad spectrum of minds looking at a case’ because, ‘let’s be honest – we don’t always agree’.⁷⁹ Felicity Graham, formerly of the NSW Aboriginal Legal Service (**ALS**), describes the productive tension that can come out of respectful dissent:⁸⁰

That key issue really spurred us into analysing the different theoretical underpinnings of the sentencing law to try to tease out some more radical ways of approaching it. And we just spent a lot of time writing, and reading cases, and discussing, and arguing with each other. There wasn’t, at all, some uniform approach by the whole team. There was a lot of dissent ... which created this intellectual ... dynamic in which there was a lot of debate, and so to push the arguments you really had to fight for your position and that developed the ideas more and more.

Jim Collins provides the following advice on allowing the truth to be heard:⁸¹

- lead with questions, not answers;
- engage in dialogue and debate, not coercion;
- conduct autopsies without blame: understand failures, why they occurred, don’t pretend they didn’t happen;
- build ‘red flag’ mechanisms: adequate responses to information you can’t ignore, such as high drop-off rates or litigation failure rates.

One interesting and related area that may be under-utilised is the degree to which CLC lawyers collaborate with academics on case strategy and approach (discussed further in Principle 6). Differing views between practitioner and theorist may create a fruitful friction that allows new thinking.⁸² WCL in Vancouver, for example, canvasses the various academic feminist perspectives relevant to a case in its preliminary case analysis to ensure it has captured and responded to the complexity that they may raise.⁸³

⁷⁷ Forces for Good 170.

⁷⁸ Good to Great 74–78.

⁷⁹ Interview with Patrick Hunderman (Johannesburg, 1 April 2015).

⁸⁰ Interview with Felicity Graham (Sydney, 30 January 2015). Also: Good to Great 74.

⁸¹ Ibid 74–78.

⁸² Graham, above n 80.

⁸³ Interview with Kasari Govender (Vancouver, 24 February 2015).

Shared ownership

To support a range of views, and be able to transition a large group of people quickly between projects, organisational unity is required. This ensures that everyone feels valued, even when their area of work is not front and centre. Activities such as strategic litigation carry with them significant resource burdens and inconveniences that may undermine such unity. A legal proceeding may suddenly require an urgent injunction application, which monopolises a centre's sole photocopying facility for hours. Such inconveniences may seem trivial, but if unmanaged they may have significant effects on workplace harmony.

One way to ensure that such inconveniences do not result in discord is to facilitate shared ownership of projects, including litigation, within the organisation. To meet the organisational disruption of a photocopier being occupied for hours at a time there may be a collective decision to accommodate that inconvenience. To foster a sense of shared ownership, an internal communications strategy may be necessary to provide the 'opportunity for people to raise any issues and concerns they have, so ... [that the decision has] been made by everyone on board'.⁸⁴

⁸⁴ Fitzgerald, above n 73.

Practical implementation

- Individuals**
- Embrace the possibility of failure.
 - Challenge yourself to try something that you don't feel ready to do.
 - Develop a 'stop doing' list.
 - Work more with others with differing views.
 - Consider integrating academic theories, or seeking academic or expert input, into your casework.
-

- Managers**
- Avoid discouraging innovation on the basis of non-transparent rules.
 - Allow staff to make mistakes. Encourage them to debrief, particularly on difficult projects, and discuss lessons learnt.
 - Consider how you resource individuals' 'passion projects'.
 - Consider how risk is, and should be, managed within the organisation. Who embraces risk and who is averse to it? How can these two groups support each other?
 - Develop open and transparent systems for risk management, including rigorous planning in larger strategic litigation cases.
 - Do not compartmentalise innovation.
 - Allow for, and listen to, differing views, and foster debate on issues where reasonable minds may differ.
 - Consider internal communications strategies for large projects or litigation that risks organisational disunity.
-

- Boards**
- Consider how your funding mix supports innovation and agility.
 - What space and resources are available for strategic work?
 - What level of risk do you accept? Is it appropriate for the centre's work?
 - What systems are in place to build shared ownership of board decisions?
-

Principle 3: Plan our work and act with purpose

We are here for a purpose. We are not here merely to exist.⁸⁵

Risks of not planning

If, as Jim Collins says, an organisation's greatness can be assessed according to its ability to fulfil its mission, then the lack of a meaningful mission can carry serious risks. There is not only a risk that your CLC will be unable to meaningfully measure, and so broadcast, its success. It may also result in missed opportunities and wasted resources by way of a 'scattergun'⁸⁶ or 'spray-and-pray'⁸⁷ approach to legal service provision.

Many Victorian interviewees described their work as 'reactive rather than proactive'.⁸⁸ The 'churn' is an evident contributor to this. There was frequent acknowledgement by lawyers of the tension between hitting the casework 'sweet spot', and remaining alive to its broader impacts. Some lawyers also spoke of CLCs (sometimes their own) that allocated resources according to expediency, or lawyers' preference, rather than need or systemic impact. For example, some CLCs would preference familiar areas of law such as divorce, body corporate and fencing disputes over more complex areas such as housing eviction.⁸⁹

A lack of planning may mean that systemic impediments to justice simply go unseen. For example, when Shorna Moore commenced work at Wyndham Legal Service (**WLS**) in 2012, she found that many disadvantaged clients from the far reaches of the City of Wyndham had for a long time not been reaching the service. This was not because they had no legal needs, but because of poor public transport and infrastructure links. This finding led to WLS's work on the proposed integrated justice precinct project in Werribee.⁹⁰

Setting goals does not mean you have to turn away from community legal need or direct service work. Nor does it require remaining goal-focused to the exclusion of everything else, when 'something else – wider, deeper – may be considerably more interesting and important'.⁹¹ Yet it does mean using resources intentionally, so that, when a recurring or systemic problem presents itself, you can respond with the best option 'rather than one remaining last-ditch effort'.⁹²

1. Make your mission, and strategic documents, meaningful

A meaningful mission statement is critical to focus the work impact of a CLC. If CLC staff understand, and are committed to, the vision of the organisation, this can assist in unifying their efforts. It may also enhance a sense of camaraderie and

⁸⁵ Brendan Sydes, presentation at Progress Conference, 7 May 2015.

⁸⁶ Interview with Felicity Millner (Melbourne, 23 January 2015).

⁸⁷ Alan Chen and Scott Cummings, *Public Interest Lawyering: A Contemporary Perspective* (2013).

⁸⁸ Confidential.

⁸⁹ Confidential.

⁹⁰ See Agata Wierzbowski, 'The Future of Access to Justice ... Starts in Werribee?' (2015) Right Now <<http://rightnow.org.au/writing-cat/article/the-future-of-access-to-justice-starts-in-werribee/>>.

⁹¹ Ryszard Kapuscinski, *The Shadow of the Sun* (Penguin, 2008) 24.

⁹² Millner, above n 86.

workplace satisfaction. A democratic and inclusive process for arriving at your mission is recommended. A clear mission also allows for meaningful evaluation, which in turn allows for greater organisational accountability.

An organisation's mission statement and strategic documents are ideally owned, and understood, by its staff. Yet research revealed that many Victorian CLC lawyers were unfamiliar with, or disengaged from, these documents. One interviewee said that for a long time her centre's strategic plan had been 'a very old document' with which few were familiar and that as a result there was 'chaos around [their] strategic goal'.⁹³ This had resulted in the centre expanding, and developing policies and processes, that were disconnected from its purpose. This, in turn, had fostered a culture of organic, and so arbitrary, case selection.

The interviewee continued that:⁹⁴

No-one had really understood [the previous case intake guideline] for a long time. This folklore understanding of what the case selection guidelines were had evolved in the collective understanding of the organisation, but no-one had actually read the document for a long time.

As a first step, it is suggested that an organisation commit time to undertaking an inclusive and democratic process of strategic planning. A key component of this is to decide on a meaningful mission that can guide the planning process. A strong mission can allow for more meaningful priority setting, campaign planning and organisational systems planning.

2. Use effective strategic planning frameworks

Strategic, campaign and project planning are complex and specialised areas that fall outside the scope of this project. There are many useful planning tools available in these areas, some of which are listed in the online *Change Toolkit* chapter on planning.⁹⁵ One approach discussed in the *Toolkit*, and used by many legal and non-legal organisations internationally, is a 'theory of change' model of planning. This seeks to identify the social change that your organisation is pursuing and then structures the work of the organisation around it.⁹⁶

Commonly identified stages of strategic planning include:⁹⁷

1. Scoping (as below).
2. Defining the goal: identifying the intervention point(s) of greatest impact.
3. Developing a strategy for action that:
 - a. identifies potential collaborators;
 - b. establishes criteria for measuring outcomes and long-term impact (see also Principle 7: Evaluation);
 - c. allows for monitoring of progress and modification in light of experience.

⁹³ Confidential.

⁹⁴ Confidential.

⁹⁵ *Change Toolkit*, chapter entitled 'Planning Your Work'.

⁹⁶ Govender, above n 83.

⁹⁷ Rhode and Cummings, above n 8, 631–2.

3. Scope for advocacy

How do we currently identify systemic issues?

CLCs currently identify systemic issues in the following ways:

- community engagement and consultation;
- research;
- consultation with academics and other experts;
- internal discussions or brainstorming;
- referrals from community organisations or other referrers (who are well-placed, due to the volume of their work or other factors, to identify systemic issues);
- through the collection and analysis of internal casework data.

These interrelate with the two broad methods by which CLCs find clients:

1. Reactive: For example, where a centre provides an untargeted advice service direct to the public, through which it can then identify strategic issues and cases for intake.⁹⁸ In addition, or alternatively, it may receive referrals from, or through collaborative work with, other community organisations.

The UJC Community Development Project works exclusively for community organisations and their clients, allowing those organisations to do the work of identifying disadvantaged groups hoping to use the law to effect change. This has the advantage of working with large groups of clients already united behind a campaign, rather than having to do this unifying work from scratch.

2. Proactive: This approach acknowledges that the most disadvantaged will not necessarily be organised or find their way to a direct advice service. Therefore efforts must be made to find particular groups of clients. This approach includes undertaking research on unmet legal need, targeted outreach and clinic work such as medico-legal partnerships.⁹⁹

Some CLC lawyers advised that there were insufficient resources to properly resource the work of identifying systemic issues. Options for overcoming this difficulty include, for example:

- Systematising the requirement for data collection – for example, by requiring the case lawyer to set out the case's systemic impact in file-opening and file-closing forms.
- Collaborating with academics, or other better-resourced organisations, on issues-scoping exercises.
- Accepting recommendations or referrals on systemic issues from a particular community partner (for example, through a medico-legal partnership) or an advisory group.
- Using politics, business and other non-legal volunteers to undertake data analysis and provide advice on systemic issues. One historic example of this is Nader's Raiders (see below).

⁹⁸ For example, CALC and MFY Legal Services.

⁹⁹ See below, n 194.

Nader's Raiders: In 1968, consumer advocate Ralph Nader organised seven students and recent graduates to investigate the activities of the US Federal Trade Commission (**FTC**). The Raiders issued the outcome of their investigations in a 185-page report in January 1969. It called for a total revamping of the FTC and received extensive press coverage. As a result, President Nixon asked the American Bar Association (ABA) to appraise the performance of the FTC. Ultimately the students' report – and the ABA appraisal that followed – sparked a congressional investigation and a major overhaul of the agency. The success of the group established a pattern for subsequent student teams that would work with Nader on similar projects. This included in areas such as mine safety, the health hazards of air pollution, and the oversight of the food industry by the Food and Drug Administration.¹⁰⁰

4. Use effective systems planning: case selection

Case intake

Many generalist and specialist CLCs use a consensus-based (or at least consultative) process for deciding which case files to take on. This allows them to ensure that resources are allocated to the most pressing cases in an accountable manner. Different centres employ different processes in undertaking this task. Some of the approaches taken were as follows:

- CLAS in Vancouver used a 'social determinants of health' approach to case selection. The determinants come out of research that has found that social determinants, such as stable income or stable housing, have greater impacts on health outcomes than the quality of health services or lifestyle decisions.¹⁰¹ CLAS would therefore select its areas of work and cases based on what would most positively affect these determinants. For example, in its tenancy work, it would elect to focus on ensuring stable housing for disadvantaged communities rather than on issues around residential tenancy bonds.
- Women's Legal Service in Victoria uses a simple matrix to assess cases for intake,¹⁰² which considers the barriers to access to justice in the particular case against its likely impact, individual and systemic.

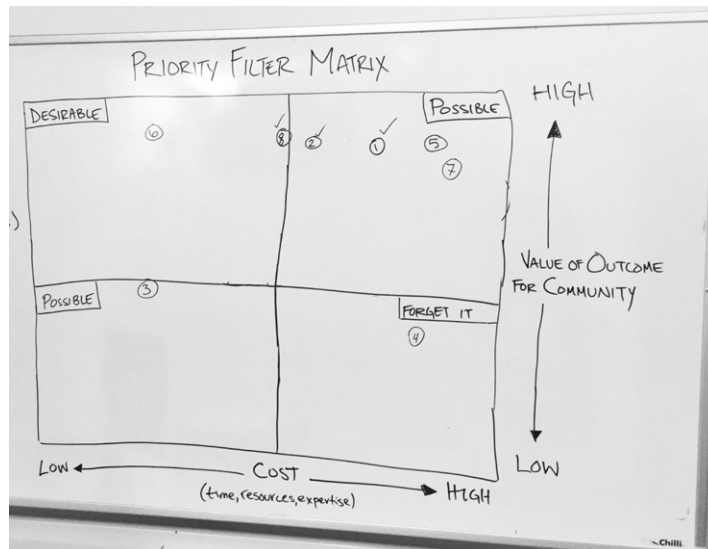
Impact	3	High	Very High	Very High
	2	Medium	Medium	High
	1	Low	Low	Medium
		1	2	3
Barriers				

¹⁰⁰ Centre for Study of Responsive Law, *History of the Centre for Study of Responsive Law* (undated) <<http://csrl.org/about/>>.

¹⁰¹ See, for example, the Canadian Facts website (<http://www.thecanadianfacts.org/>) which lists 14 key determinants or the World Health Organisation website (www.who.int/social_determinants/en).

¹⁰² WLSV, *Guidelines for Taking on a Case* (undated) WLSV <womenslegal.org.au/files/file/Final%20-%20External%20Casework%20Gudelines%20Policy.pdf>.

- Financial Rights Legal Centre (**FLRC**) in Sydney also uses a priority filter matrix for campaign planning, comparing cost (in terms of time, resources and expertise) of a campaign against its anticipated impact. This could equally be used in the case intake setting.



FRLC Board, 29 January 2015. © Agata Wierzbowski, 2015.

- CALC conducts a weekly case intake meeting, at which cases are selected, based on case assessment guidelines. These guidelines require consideration of the following:
 - vulnerability of the client (with a broad, specified definition of vulnerability)
 - systemic impact, including: How does it align with strategic priorities? What can be achieved through the case?
 - Who else can assist?
 - What are the consequences of not assisting?
 - Do we have expertise?
 - Merits?

Selection for strategic litigation

There are additional factors to consider when deciding whether to conduct larger, more resource-intensive strategic litigation proceedings. These include:

- Internal v external factors: Chen and Cummings find that the following factors may 'enhance the possibility of success' in strategic litigation:¹⁰³
 - Lawyers must 'have the resources to pursue litigation effectively'. This may include litigation expertise and administrative capacity to undertake resource-intensive tasks such as complex discovery.

¹⁰³ Chen and Cummings, above n 87, 216–17.

- Reformers' legal and political strategies should be coordinated toward the same goal.
- The 'right asserted is a negative one designed to protect voluntary activity' (and therefore the need for bureaucratic enforcement is lessened). This suggests that asserting a 'negative' right, such as to free speech for example, may yield more success than asserting a 'positive' right, such as to an adequate standard of healthcare.¹⁰⁴
- The 'extent of rights saturation in group members'.
- The 'receptivity of the judiciary to the right asserted'.
- A 'supportive political and legal culture'.
- The mechanism of legal enforcement.
- A 'strong political organisation and monitoring resources'.
- Choosing opponents: In some cases it may be appropriate to select "target" institutions/defendants whose illegal practices affect a significant number of the program's clients'.¹⁰⁵
- Should we choose our clients? There were mixed views on the extent to which this is, and should be, an important consideration in case selection. Nevertheless, the following factors were taken into account by some centres when selecting clients for large strategic pieces of litigation:
 - Costs risks: There was a consensus that we should not select cases that will expose clients to significant costs risks.
 - Alignment of client objectives to organisational/campaign objectives: That the client is concerned with the public interest element inherent in the litigation.¹⁰⁶
 - Resilience: That the client understands and accepts the likely stresses of litigation. This also looks at what supports the client has, whether within a family, by way of support workers, or within a community.
 - Storytelling: Choosing a client who is sympathetic and relatable,¹⁰⁷ and someone 'who would allow us to tell the problem in public. Picking someone who exemplifie[s] the real-world impact of the policy in a way the public would understand.'¹⁰⁸
 - Standing: In jurisdictions where institutional clients had standing (all international jurisdictions visited), organisations would often opt for a mix of institutional and individual clients, to allow the longevity of the case and a wide mix of legal questions to be aired.

¹⁰⁴ Many have criticised the division of 'positive' or 'negative' rights as a false dichotomy – see, for example, Amartya Sen, 'Freedoms and Needs' (2004) (10 and 17 January) *The New Republic* 31, 32.

¹⁰⁵ Reclaiming CLCs 16.

¹⁰⁶ Interview with Ben Hoffman (New York, 4 March 2015).

¹⁰⁷ Bevan Warner, 'Maximising Value Through Strategic Advocacy' (Presented at International Conference on Access to Justice and Legal Services, London, 2014) 15.

¹⁰⁸ Townsend, above n 17.

- Remedies and compliance: Is a successful case outcome enforceable? How? This was particularly significant in South Africa, where there were poor mechanisms for ensuring compliance with court orders, particularly by the state. The view taken by Doug Lasdon of the UJC was that ‘law reform’ cases are preferable to ‘practice’ cases. In other words, cases with specific, quantified remedies (for example, there should be 200 not 1000 people in a shelter) should be preferred over those that do not, as the implementation of remedies is relatively easier to monitor and enforce.¹⁰⁹ It was not his view that ‘practice’ cases should not be pursued, but, rather, that more careful planning and work is required to pursue them.
- Settlement: Courts are more ready to award damages to compensate for loss, than to give injunctive relief requiring institutional change. Settlement options, however, are not so limited. Therefore, consider whether the optimal solution to your client’s problem may be more effectively achieved through a creative settlement agreement rather than a court order.¹¹⁰ Remedies that may be more readily available through settlement include organisational practice reform, health and environmental monitoring, and environmental remediation. For example, the Public Interest Advocacy Centre (**PIAC**) assisted a blind client to settle a discrimination lawsuit she had brought against Coles supermarket on the basis that Coles make improvements to its shopping website so that it would be more accessible.¹¹¹

5. Use effective case planning

Planning the conduct of a case in advance, including its integration with your centre’s broader policy work, may help avoid disconnections between policy and casework priorities: ‘the problem of having, depending on your point of view, the tail wagging the dog, or vice versa.’¹¹² This may be particularly beneficial in cases where an enticing settlement offer is anticipated.¹¹³ Strategies to ensure that the systemic impact of a case is captured prior to such a settlement offer include the following:

- seeking instructions on whether a client would settle on confidential terms ahead of time, to be able to plan the case better;
- up-front planning of your advocacy strategy *together* with your legal strategy;
- doing your advocacy work, such as issuing a regulator complaint or media release, early on, and well before any confidentiality undertakings contained within a settlement agreement;¹¹⁴
- be the drafter of the settlement deed where possible, and work to minimise the restraining effects of confidentiality and other restrictive clauses.

¹⁰⁹ Lasdon, above n 54.

¹¹⁰ Hoffman, above n 106.

¹¹¹ <http://www.piac.asn.au/news/2015/02/coles-agrees-make-online-shopping-site-more-accessible>.

¹¹² Interview with Helen Matthews (Melbourne, 10 February 2015).

¹¹³ Porter, above n 25.

¹¹⁴ *Ibid.*

Practical implementation

Individuals – Plan the advocacy strategy for your strategic cases in advance (with others, where possible), particularly where there is an expectation that they will settle.

**Managers
Boards** – If your CLC's strategic planning incorporates the principles above – well done!

– If not, consider undertaking a staff satisfaction survey that includes questions on the extent to which your staff understand and engage with your organisation's mission and strategic direction.

– If your strategic documents have remained static for many years, consider reinvigorating your process of strategic planning, with the assistance of an external consultant if required.

Principle 4: Resource for advocacy

You've got to know where your skills lie, and you need to understand who you need to do the job really well.¹¹⁵

Disclaimer on limited resources

Money matters, funding arrangements and funders' expectations (both public and private) can greatly shape our work. I acknowledge the limits of CLC resources, the conflict inherent in opposing government when we are funded by it, and the current and historical threats to government funding to CLCs for advocacy, as opposed to transactional, work. These are unavoidable challenges. Further, research suggests that comparable, if different, tensions arise with different categories of funding.

CLC resources are always likely to be outstripped by demand. Therefore, further work needs to be done on developing fundraising capacity within the sector and, more broadly, on strategies to protect the capacity of CLCs to advocate. These issues, however, fall outside the scope of this report.

While these challenges are likely to persist, I am confident that we as a sector will continue to manage our resources and funders' vacillating expectations as best as we can. In the meantime, as Marshall Ganz suggests, it is useful to 'find ways to compensate for resources with resourcefulness'.¹¹⁶ Therefore resourcefulness is the intended (albeit limited) focus of this chapter.

Sector skills gaps

One US study found that there are two fundamental critiques of public interest law practice. First, while legal work can be a useful tool in systemic change, it 'cannot itself reform social institutions'.¹¹⁷ And second, an 'over-reliance on courts diverts effort from potentially more productive ... strategies and disempowers the groups that lawyers are seeking to assist'.¹¹⁸ The result was 'too much law and too little justice'.¹¹⁹

Integrating strategic casework with advocacy can overcome both these critiques by, for example, publicising the legal work done and implementing its outcomes. However, advocacy will not be effective if it is an unpaid afterthought to casework. Yet the research found that the 'afterthought' approach to advocacy was not uncommon in the Victorian CLC sector, and that many CLC lawyers thought they lacked those 'non-legal' skills necessary to bolster the impact of strategic legal work. These were as follows:

- communications and media, including, increasingly, social media and 'civic-tech' (the use of new technologies to facilitate civic engagement);

¹¹⁵ Interview with Trish Cameron (Melbourne, 17 February 2015).

¹¹⁶ Marshall Ganz, 'Leadership, Organization and Social Movements', in Nitin Nohria and Rhakesh Khurana, *Handbook of Leadership Theory and Practice* (Harvard University Press, 2010) ch 19, at 20.

¹¹⁷ Rhode and Cummings, above n 8, 604.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

- campaigning and advocacy,¹²⁰ including community development, education, law reform advocacy, stakeholder engagement and other skills.
- fundraising;
- administrative support.

Providing support for clients through advocates or case workers:

A non-legal support role that has proved essential in some centres is that of the litigation support officer or caseworker. FKCLC used specialist youth workers called Walking Alongside Officers to provide personal and administrative support for young disadvantaged migrant clients in a large, racial profiling proceeding. Along a similar vein, at Seniors Rights Victoria lawyers work together with an advocate on each case to ensure that the older person is best supported to deal with the mix of legal and non-legal issues they are facing. Brimbank Melton CLC is trialling a tripartite mixed-model of service delivery in its Mortgage Wellbeing Clinic, in which a lawyer, a financial counsellor, and a social worker (if required), work together to provide holistic early intervention support to those experiencing mortgage stress in the Western suburbs of Melbourne.

Build it into budgets

If there is no budget allocation for the advocacy and communication work that publicises and implements the strategic value of our legal cases, there is a risk that this work will go undone or not be done to a sufficient standard. This means we lose opportunities to achieve better outcomes for our communities. We as a sector must find ways to:

- (a) ensure that current funding arrangements properly resource advocacy work, and, where they don't, consider alternative funding arrangements;
- (b) build advocacy, media and administrative support work into our strategic plans and budgets to allow staff members that have the interest and expertise to do the work.

Models for resourcing advocacy

We can resource advocacy in various ways, including:

1. Creating advocacy-specific roles. If you do not have the expertise, hire people that do (most likely non-lawyers).
2. Training interested, capable, existing staff in relevant skills and ensuring they have sufficient time to complete the work.
3. Considering alternative resource options, for example pro bono partnerships, to supplement the skills shortage.
4. Collaborating with other community organisations that have the relevant expertise. For example, if your CLC does not have media and campaigning expertise, you may choose to work with a campaigning organisation that does.

¹²⁰ Reclaiming CLCs 21.

5. If you do not have sufficient budget, one option is to hire an experienced fundraiser to assist or adequately train existing staff in fundraising and provide them with the time and space to source funding.

On fundraising

Before considering investment in additional fundraising activities, it is important for CLCs to consider how best to use existing resources. This is important for the following reasons:

- Fundraising is often difficult, resource-intensive and not very successful. Therefore, if you hire specific fundraising staff, ideally they should be raising funds to pay for their own activities, as well as for additional centre activities.
- There is always a risk a funder will seek to shape CLCs' work according to its needs and priorities, regardless of whether it is public or private.
- We should accept additional funds where to do so closely aligns with our mission. We should avoid pursuing funding where to do so risks undertaking activities marginal to our mission.

Integrating practice

The research confirmed the value of effectively integrating lawyers and non-lawyers within an organisation. As Scott Cummings, a public interest law academic at UCLA, states, 'a lot of the most robust and rich social changes come when there is deep interaction and integration between [policy and casework] spheres, so they can play off of one another'. He advocates the following collaborative approach to planning litigation within a campaign strategy:¹²¹

[B]ring together people from all the different domains – law, policy, media, organising – and ... develop a strategy in which all of these people play an important role, and all of these people have been at the table from the outset and are thinking about different aspects of the overall plan. Those are the most powerful and meaningful social change processes. Where people are together, and there is input from all of the key stakeholders up front, and people know their particular role.

A key risk of non-integration acknowledged by some was that an advocacy officer, or team, would not understand the issues arising out of practice, and so become 'some siphoned off section ... separate from the real issues on the ground that need to be pursued'.¹²² Yet while integration is idealised, putting this into practice is sometimes difficult. What emerged from the research was that deliberate and ongoing work on the part of management and staff is required to hold open the space and opportunity for integration to occur. This can be done in various ways, including the following:

- Selecting one or more staff members to do both policy and casework to facilitate an exchange between the two areas.¹²³ Ideally, such staff members will want to do this mix of work, have the skills required, and have strong interpersonal skills to build the relationship between the two areas.

¹²¹ Interview with Scott Cummings (Los Angeles, 10 March 2015).

¹²² Graham, above n 80.

¹²³ This model is employed at, for example, WLSV.

- Ensuring caseworkers participate in policy intake meetings and policy workers attend casework intake meetings (where applicable).
- Holding regular ‘integration’ meetings, either at the management and/or staff level (possibly around projects).
- Seating policy and caseworkers together.
- Ensuring that information can be freely exchanged between various parts of an organisation. Seek your clients’ consent to do this, where required.
- Training caseworkers on relevant policy skills (such as media skills or writing case studies), but also training policy workers on updates in law.
- Ensuring that social events are not segregated along workflow lines to allow for informal exchanges of views.

Lawyers doing advocacy and legal work

Benefits

A key advantage of lawyers doing both advocacy and legal casework is the immediacy of the integration of these two aspects of work.¹²⁴ The RLC in Sydney aims to harness this direct integration through the structure of its legal practice. As a generalist service, in 2008 it restructured to operate largely as a series of specialist clinics in the following areas: domestic violence, tenancy and housing, employment law, discrimination, consumer credit, police accountability and international student advice. Each specialised area, many of which are run by only one paid solicitor (supported by volunteers at advice clinics and pro bono resources as required), is expected to undertake casework as well as community engagement and law reform work.

This expectation is reflected in the solicitor position description when the RLC is recruiting staff, and each specialist area reports to the board every two months against Key Performance Indicators (**KPIs**) related to each aspect of their work.¹²⁵ Jo Shulman, CEO of RLC, says that this model of operation was made partly due to funding constraints, but also to acknowledge that ‘the expertise really lay with the [lawyer] specialists within the area’.¹²⁶ This has assisted with recruiting justice-oriented practitioners: ‘people come to work [at RLC] because it’s different from Legal Aid. We’re not just seeing client after client ... we ask them to take a step back, and really look for broader issues.’¹²⁷

RLC aims to support their staff in doing this mix of work in the following ways:¹²⁸

- The generalist legal team works in a dynamic open-plan area that enables the exchange of ideas.
- The centre has flexible work arrangements, including working from home and time in lieu, to allow staff the space they require to get ‘thinking work’ done.

¹²⁴ Moore, above n 55.

¹²⁵ These include: community legal education; media enquiries; presentations/publications/public speaking engagements; invitations to participate in decision-making processes/round tables; policy submissions; law journal/Hansard/inquiries; court citations; and other systemic work.

¹²⁶ Interview with Jo Shulman (Sydney, 29 January 2015).

¹²⁷ Ibid.

¹²⁸ Ibid.

- At each monthly staff meeting there is training attached to non-casework KPIs.
- The RLC Communications Officer supports lawyers' advocacy by, for example, sending lawyers relevant news articles and asking for comments, suggesting tweets, and assisting in drafting press releases and communications plans.

Challenges

The key challenges with lawyers undertaking advocacy and legal work link back to the discussion of legal professionalism and ethics in Principle 1. These challenges include:

- Generally, there is a real resource risk that where a lawyer is responsible for casework *and* advocacy, the immediate demands of casework could overwhelm those of advocacy.¹²⁹ Alternatively, where unskilled or uninterested lawyers are tasked with advocacy, there is a risk that this is completed only half-heartedly or at a low standard.
- Working on an advocacy campaign may pose a conflict for a lawyer who has responsibility for a high-profile piece of litigation. This includes the risk that your opponent makes accusations of fabricated evidence, hyperbole, or unmeritorious legal claims being raised as part of an advocacy goal.¹³⁰
- Lawyers are limited in the language they can use publicly about the legal work they are conducting. This includes 'limitations based on norms of confidentiality and privilege that we have with our clients',¹³¹ and rules around court procedure (for example, the limitation on the use of discovered documents set out in *Harman v Secretary of State for the Home Department* [1983] 1 AC 280).
- The related risks of undermining the legitimacy of the litigation and the related campaign, as well as the credibility of organisations involved with them.

For this reason, a lawyer who has conduct of a large-scale piece of strategic litigation may not always be well placed to undertake significant amounts of advocacy. There is no single solution to this quandary; it is a risk ideally managed with sensitivity and transparency. In some instances, partnerships with other organisations that can undertake the bulk of the campaign or advocacy campaign work may prove valuable (see Principle 6: Relationships, below).

Practical implementation

-
- Individuals** – Where you are responsible for a mix of advocacy and casework:
- Ensure that your advocacy does not pose a risk to the professionalism required in your casework.
 - Commit to giving advocacy the time required to do it properly. Be wary of the immediate demands of casework overwhelming your workload.
 - Be honest about any skills gaps you have. If you require training in a particular area, ask for it.
-

¹²⁹ Cameron, above n 115.

¹³⁰ Hoffman, above n 106.

¹³¹ *Ibid.*

**Managers
Boards**

- Always build advocacy into budgets. In doing so, be aware of the relationship between funding bodies and the way you work. Work with funders to ensure that your centre's vision and approach is not stifled by funders' criteria.
- Work to 'create a coordinated infrastructure to support good strategic outcomes'.¹³² To do this, your centre may want to reorganise its structure, systems and processes. This may require external expertise, up-front resources and time.

In doing so, you may use the following process:

- Consider what strategic work will meaningfully enable your centre to fulfil its organisational mission and strategic objectives.
 - Undertake an audit of your centre's skills, and map these against the skills required to achieve your strategic objectives. Consider the following skills in particular:
 - media and communications
 - advocacy and campaigns
 - community development, education and outreach
 - fundraising
 - administration.
 - Work with your staff and board to reform your processes so that they work for your centre.
 - If existing staff don't have the required skills, your options include:
 - training interested, existing staff in the relevant areas, and ensuring they are given sufficient capacity to complete the work;
 - sourcing alternative resources through pro bono partnerships (for example to supplement the skills shortage);
 - collaborating with other organisations that have the expertise;
 - fundraising for new positions, and recruiting new (legal or non-legal) staff skilled and interested in undertaking this work.
 - Promote integration of different teams to allow them to support and build each other up. This may be done by:
 - seating advocacy officers together with caseworkers, where this is feasible;
 - encouraging the 'cross-pollination' of ideas between different groups through, for example, social events.
-

¹³² Warner, above n 107, 18.

Principle 5: The power of good communication

All I have is a voice
To undo the folded lie.

– WH Auden

On communicating with clients

Listen to hear, and advise to be understood

At its core, being a good lawyer requires listening carefully to your client's instructions and advising them in a way they understand and can engage with.¹³³ This task may require additional skills and competencies when working with vulnerable and disadvantaged clients, such as:

- working with interpreters;
- cultural awareness (particularly in relation to Aboriginal clients);¹³⁴
- simple, plain-English writing;¹³⁵
- 'drawing the law' – using diagrams and pictorial representations to explain legal concepts;¹³⁶
- working with clients with mental health issues;
- suicide-prevention training and related competencies.

Client engagement in legal process

Many CLCs aim to empower their clients through enabling greater understanding of, and participation in, the legal system. There is international jurisprudence and academic writing on why effective engagement and participation of clients in the legal process is important to human rights legal practice.¹³⁷ Academic theories such as collaborative,¹³⁸ democratic,¹³⁹ rebellious,¹⁴⁰ third dimension¹⁴¹ and emancipatory lawyering¹⁴² aim to challenge and transform economic and social

¹³³ Interview with Fay Gertner (Melbourne, 11 February 2015).

¹³⁴ See, for example, Richard Trugden, *Why Warriors Lie Down and Die: Towards an Understanding of Why the Aboriginal People of Arnhem Land Face the Greatest Crisis in Health and Education Since European Contact* (Open Book Howden Design & Print, 2000); Ben Grimes, *Strong foundations for community based legal education in remote Aboriginal communities* (October 2011) NAAJA <<http://www.naaaja.org.au/wp-content/uploads/2014/05/Strong-Foundations-NAAJAs-Legal-Development-Methodology.pdf>>.

¹³⁵ See, for example, the 'Plain English Dictionary' produced by NAAJA, Aboriginal Resource and Development Services and the Northern Territory Aboriginal Interpreter Service, available at: <<http://www.ards.com.au/dictionary/legaldictionary/categories/index.htm>>.

¹³⁶ Interview with Jonathon Hunyor (Skype, 20 January 2015).

¹³⁷ See, for example, the South African Supreme Court's comments in *Doctors for Life International v Speaker of the National Assembly et al.* [2006] 6 SA 416 [118]–[234].

¹³⁸ Hoffman and Vahsling, above n 48.

¹³⁹ Piomelli, above n 21.

¹⁴⁰ See, for example, Gerald Lopez, 'Living and Lawyering Rebelliously' (2004) 73 *Fordham Law Review* 2041.

¹⁴¹ Lucie White, 'To Learn and Teach: Lessons from Driefontein on Lawyering and Power' (1988) *Wisconsin Law Review* 699.

¹⁴² Sarat and Scheingold quoted in Chen and Cummings, above n 87, 99.

arrangements through the act of lawyering itself. This often includes the critique of 'top-down' or lawyer-centric legal communication.

If you choose to adopt an empowerment-lawyering approach, this is likely to require a radically different approach to communication with your clients than what you have been taught to do in law schools or practised in private firms. For example, you may consider your clients' broader social context and experience with institutions when developing methods for best communicating with them.¹⁴³ This approach may also involve developing your ability to communicate concepts to clients in a way that they can engage with meaningfully. When working with disenfranchised communities, this may require a long-term community engagement strategy through which trust, and understanding of the relevant legal concepts and strategy, is built up over time.¹⁴⁴

Telling clients' stories

Afoko and Vockins state that stories are effective devices in advocacy because we 'process arguments presented in stories differently.'¹⁴⁵ This is because stories allow us to 'become more interested in issues that do not affect us personally, more likely to change our minds and less skeptical – we literally suspend disbelief.'¹⁴⁶ Rachel Ball's excellent CLC Fellowship Report on storytelling¹⁴⁷ sets out principles of ethical and effective storytelling in (particularly legal) advocacy. Beyond this, the traditional tropes of storytelling apply.

By telling a client's story of injustice ethically, and publicly, clients 'can have their story affirmed.'¹⁴⁸ Similarly, stories play a central role in restorative justice and reconciliation processes. One example is the August 2013 'People's Hearing' held by FKCLC in collaboration with other CLCs and agencies.¹⁴⁹ This hearing provided people who had experienced racially motivated policing with the opportunity to tell their stories in a public hearing.

The CLC story: building our brand and inspiring evangelists

So many people have not heard about CLCs. So many people that need our services ... And even when we are mentioned in the media, it's kind of an aside.¹⁵⁰

External communications

Beyond communicating well with and about our clients, it is also essential that CLCs are able to communicate effectively to their target client group and to the

¹⁴³ See, for example, the discussion of building trust with Aboriginal communities in Principle 6 below.

¹⁴⁴ Hoffman, above n 106. See also: Principle 6: Relationships.

¹⁴⁵ Carys Afoko and Dan Vockins, *Framing the economy: the austerity story* (11 September 2013) 6 New Economics Foundation (NEF) <<http://www.neweconomics.org/publications/entry/framing-the-economy-the-austerity-story>>.

¹⁴⁶ Ibid.

¹⁴⁷ Ball, above n 4, 48. See, also, Patrick Reinsborough and Doyle Canning, *Re:imagining change: an introduction to story-based strategy* (SmartMeme, 2008). Available online.

¹⁴⁸ Graham, above n 80.

¹⁴⁹ HRLC, *Racist stereotypes and profiling corrode trust and hinder police* (16 August 2013) HRLC <<http://hrlc.org.au/racist-stereotypes-and-profiling-corrodes-trust-and-hinders-policing/>>.

¹⁵⁰ Cameron, above n 115.

public about what they do. And while the conversation about telling our clients' stories was sparked by Ball's 2013 report, the discussion on how we celebrate our own successes, internally as well as publicly, is only now starting.¹⁵¹ Being able to do this may have the following benefits:

- raising awareness of CLCs' services among client groups and referring agencies;¹⁵²
- ensuring current and future funders are reminded of CLCs' continued importance;
- enhancing our credibility and reputation among opponents, which may improve negotiating power;
- enhancing our reputation within the legal profession and more broadly (which may increase our ability to attract high-quality staff,¹⁵³ volunteers and pro bono resources).

Internal communications

Internal communications strategies may also be valuable, particularly when working with volunteers and pro bono lawyers, as well as for permanent team members. By becoming more involved with the broader purpose of your CLC's work and the values driving it, people are more likely to be inspired and transformed by it. 'People will help more if they are seen not as means to an end, but as empowered individuals.'¹⁵⁴ This is what Crutchfield calls 'cultivating evangelists'.¹⁵⁵

Embracing the media

While there was an acknowledgement by Victorian CLC lawyers that media skills are a necessary component of CLC work in the research interviews, there was also a general lack of confidence around working with the media. Basic media skills include the following:¹⁵⁶

- writing a media strategy
- knowing what the media want and how to communicate with them
- managing the media
- preparing your message
- preparing guidelines for print media releases

¹⁵¹ To read more in this area, see the 'rules of engagement' in Forces for Good.

¹⁵² I was recently at a launch of a CLC colleague's report, when at the end of the formal presentation, a woman rose up and asked: 'I am a magistrate of 17 years ... Can I refer litigants direct to your centre?'

¹⁵³ Felicity Graham, former Principal Solicitor of the ALS, and instructing solicitor in the High Court case of *Bugmy* stated that: 'In the post-*Bugmy* era, the number of [job] applications that we got went through the roof. ... Over a three-month period ... we had 150 applications, which is unheard of ...'.

¹⁵⁴ Forces for Good 86.

¹⁵⁵ Ibid 95–103.

¹⁵⁶ Largely drawn from PIAC's website: <<http://www.piac.asn.au/training/public/media-skills-training>>.

- making the most of social media, including Twitter, Facebook, and blogs
- setting up and doing radio interviews
- preparing for TV interviews.

This area of work is outside the scope of this project and my expertise. Some basic media tools, and links to training and trainers, can be obtained through the online *Change Toolkit*.¹⁵⁷ The one area I will focus on, by discussing ‘framing’, is how to prepare your message.

Framing

What is framing?

‘Frames’, like stories, help us understand the world. They are ‘like mental shorthand – a quick way for us to understand the world based on existing preconceptions’.¹⁵⁸ American academic George Lakoff ‘argues that framing is a powerful means of persuasion because once people hold a frame strongly enough, they will reject facts that do not fit with it’.¹⁵⁹ Therefore, it is unsurprising that when asked what progressive public interest lawyers can learn from the conservative legal movement in the US, academic Scott Cummings was quick to answer: (re)framing. On this he stated:¹⁶⁰

Generally, [conservatives] have been more effective in framing what they are doing in ways that resonate better with contemporary American values. That matters profoundly, because much of [public interest law work] is about persuading people of the justice of your cause ... There is something about positioning their work within the dominant narrative of social justice in the United States that the conservatives have managed to do really well.

Since the 1970s, the US conservative legal movement has moved away from aligning itself overtly with business interests and towards a deregulatory political agenda by using litigation framed through a libertarian or civil rights lens. This includes, for example, the use of litigants seen sympathetically by the political left, such as people of colour working toward economic development.¹⁶¹ The pro-gun lobby had also sponsored academics to prepare legal theories and constitutional law arguments that could be deployed before the US Supreme Court to expand the Second Amendment right to bear arms.¹⁶²

Framing for the public

Examples of effective framing of strategic legal cases in the media are as follows:

- *He never stood a chance*: The High Court of Australia in the case of *William Bugmy v The Queen* [2013] HCA 37 conducted by the ALS found that the significance of Aboriginal disadvantage should not diminish as a mitigating

¹⁵⁷ *Change Toolkit*, chapter entitled ‘Working with Media’.

¹⁵⁸ Afoko and Vockins, above n 145, 8.

¹⁵⁹ Ibid.

¹⁶⁰ Cummings, above n 121.

¹⁶¹ See Steven Teles, *The Rise of the Conservative Legal Movement: The Battle for Control of the Law* (Princeton University Press, 2010).

¹⁶² See *District of Columbia et al v Heller* 554 US 570 (2008); Adam Winkler, *Gunfight* (Norton & Co, 2011).

factor in criminal law sentencing over time. The case provided the opportunity for the ALS to tell William Bugmy's story of Aboriginal disadvantage. Felicity Graham of ALS describes this as follows:

We spent a lot of time ... really trying to paint a picture for people. For most people, William Bugmy's life experience is a very foreign one. Wilcannia is, I think, it is out there in the forgotten land. People don't really interact with what is going on in remote Australia and what is going on in those communities. Painting a picture of his life ... was an important part of the overall strategy ...

We [s]tarted quite young in his life. He was first arrested when he was 12, for jaywalking. He was first locked up when he was 13. He hasn't spent any adult birthdays in the community ... Despite being locked up basically throughout his whole life, he can't read and write. His aunty, Julie, who was on SBS on *Insight*, was asking this question about 'how can that really be?' He has been in some form of state care, or state custody, for most of his life, they had been responsible for him, and he still can't read and write?¹⁶³

- *How do we support people out of poverty?':* The Vancouver Community Legal Assistance Society (**CLAS**) worked in a coalition of community organisations to successfully oppose new legislation that would claw back single mothers' welfare payments where they received child support. Solicitor Kendra Milne states that the coalition chose this campaign because:¹⁶⁴

[I]t created a different kind of conversation publicly. Traditionally, the conversation in the media has been leftists saying 'raise the rates' and everyone else saying these very negative, and very stereotypical [things about welfare recipients]. And this got its own momentum going in the media, and was a really good conversation about how do you support people out of poverty. Do you make it so terrible they have to pull themselves up by their bootstraps? ... That probably doesn't make so much sense for kids. It probably makes sense that they have enough food to eat.

The coalition worked to build targeted relationships with the media, and carefully crafted their messaging by workshopping one-sentence message pitches with as many organisations (including those with communications staff) as possible.

Advocating to decision-makers

You need to have that adult conversation with government where you say ... We are not pursuing this because we like to have a fight. We are pursuing this because there is a larger systemic issue.¹⁶⁵

Just like speaking to the public, framing can be used to aid communications with your opponents and decision-makers. Consider the following approaches:

- When pursuing litigation, your messaging may include the following:
 - It is a need that we are seeing repeatedly: there is systemic issue, and this is demonstrated by robust evidence.

¹⁶³ Graham, above n 80.

¹⁶⁴ Interview with Kendra Milne (Vancouver, 23 February 2015).

¹⁶⁵ Townsend, above n 17.

- This is a need that has come to us. We haven't sought to confect something.
- There is genuine ambiguity about the law and how it applies. There is a legal question to be resolved.
- Drawing attention to the way in which broader social policy goals will be impacted by the litigation or better satisfied through a particular litigation outcome.
- Articulate a clear evidence-based position, using data to demonstrate that a problem is systemic rather than the result of a rogue individual.¹⁶⁶ A spread of casework narratives across locations can assist in making this argument.¹⁶⁷
- Choose to have 'adult conversations' with your opponent. Be clear about what litigation you're pursuing, and why, and 'neither be abashed about pursuing the litigation, nor ... needlessly inimical, or aggressive'.¹⁶⁸ Your purpose is to advise your opponent: there's a fault with your system.
- Consider whether you want to speak in your opponent's language. This may include framing issues in terms of reputational risk, litigation cost (or maintaining the status quo), or adverse precedent.¹⁶⁹ My impression was that many American organisations, for example MFY Legal Services, had more developed systems for quantifying the economic cost of two alternative legal outcomes than those in Australia.

There is, of course, a significant risk with framing an issue in your opponent's language, rather than creating your own, alternative frame: the risk of reinforcing values that ultimately are fundamentally opposed to your centre's broader purpose. For example, simply framing police brutality cases in terms of adverse precedent and cost may undermine rather than encourage police values that minimise violence and encourage respectful treatment of the community.

When advocating to government, you may also consider the following points:

- Think carefully about who you talk to about these issues and when.
- Consider informality: Consider when the flexibility of an informal coffee meeting may be more influential than a structured, pre-planned, formal meeting.¹⁷⁰
- Look for 'circuit breakers':¹⁷¹ Take the opportunity to build relationships with new authorities – ministers, department heads or other leaders – as these may present opportunities for partnerships where previously there were none.
- Be empathetic: Have some empathy for people in government who have to make hard decisions about the allocation of resources.¹⁷² This can sometimes

¹⁶⁶ 'No government is going to outlay the funds for a new agency unless there is comprehensive proof of the failings of the current one. So the complaints that fail have strategic value in demonstrating the inadequacies of the current structure.' – Porter, above n 25.

¹⁶⁷ Sandhu, above n 56.

¹⁶⁸ Townsend, above n 17.

¹⁶⁹ Porter, above n 25.

¹⁷⁰ Moore, above n 55.

¹⁷¹ Nelthorpe, above n 52. Also: Interview with David Cote (Johannesburg, 2 April 2015).

¹⁷² Townsend, above n 17.

be hard work, and acknowledging this reality may be a useful starting point in advocacy.

- Prepare to let go of your ego: Success is where government takes up your idea, and heralds that idea as its own.
- Be aware of the risks of engagement with government:
 - Be mindful of the ‘in between’ place of community lawyers. Simon Rice describes the place of CLC lawyers as somewhere between the state, and its opposition, at the ‘junction between reform and revolution’.¹⁷³ This is a delicate balance to hold in advocacy. As one interviewee put it, on the one hand her organisation sought to ‘create political space for [the state] to be able to make changes’, and on the other, it sought to ‘hold their feet to the fire, so they can’t now tout this one change as their anti-poverty strategy for the next decade’.¹⁷⁴
 - Be careful about the relationship getting too close. ‘There is a risk of being overly managed as a stakeholder, which means you may not be able to step away to see, or critique, what that organisation is doing.’¹⁷⁵

Practical implementation

Individuals	<ul style="list-style-type: none"> – Develop your media skills, for example through online media skills resources, such as the <i>Change Toolkit</i>.¹⁷⁶ – Connect to FCLC media and communications resources. – Link in with other media experts within the sector. – Practice: for example, volunteer to be the media contact on a media release.
Managers	<ul style="list-style-type: none"> – Consider what media resources you have, and what you need, to meet your strategic objectives, and work to fill any skills gaps. – Build communications work into structures. Make sure your team considers media opportunities up front (for example, when you are at the point of settlement negotiations it may be too late for media coverage). – Require your staff to develop the skills to identify and frame systemic issues through storytelling and case studies.
Boards	<ul style="list-style-type: none"> – Consider a communication skills audit in your centre.

¹⁷³ Simon Rice, ‘The Challenge Of Remaining “Unfinished” In The Campaign For Justice’ (Presented at the National CLC Conference, 2010) 6.

¹⁷⁴ Milne, above n 164.

¹⁷⁵ Ibid.

¹⁷⁶ See above n 5 for link.

Principle 6: Build strong relationships. Community trust, effective collaboration and partnerships will amplify your impact.

And so if there was a central insight, it is that relationships precede action. So you need strong relationships before you can do any other hard work.¹⁷⁷

Client trust is important, particularly in Aboriginal communities

Trust is like a forest. It takes a long time to grow and can burn down with a just touch of carelessness.¹⁷⁸

Fostering the trust of your clients is paramount. This is particularly important when working with Aboriginal clients, as was emphasised by staff from all four of the Aboriginal legal centres that I spoke to.¹⁷⁹ As Meena Singh, then Acting CEO of Victorian Aboriginal Legal Service (**VALS**), highlighted, the importance of building trust may stem in part from the Aboriginal community's general distrust of law and legal mechanisms:¹⁸⁰

It is very much a cultural shift for people to talk about [their legal problems]. To say 'I'm going to put this in writing and effectively re-live it. ... In criminal law matters, someone else is always driving the process ... you are very much a passenger in the process, and a lawyer is the one taking you through ... It's very different with civil law, which is very much rights-based. And you are taking it upon yourself to exercise those rights. For an Aboriginal person who may have been hit up against the law for so long, to then turn around, and say 'the law is actually something I can use proactively' is a really crazy, wild concept.

Unfortunately, as 'the law is often seen as a really negative space'¹⁸¹ by many Aboriginal people, time is required to establish relationships from which legal action can flow. NAAJA works to build the trust of community by:¹⁸²

- Employing Aboriginal staff as client service officers to be the 'bridge' between clients, client services and the courts.
- Taking the time to build cultural competency. This includes in the use of interpreters, and better communicating legal processes – for example, through 'drawing the law'.
- Improving staff retention, so that 'people know their NAAJA lawyer'.
- Building a reputation for reliability by being prepared to take on more 'minor' legal or paralegal matters that are important to clients. First, this is 'runs on the board', which means that the client is more likely to return when another legal issue next arises or 'send along family'. Second, it also avoids confusion around

¹⁷⁷ Interview with Dan Vockins (London, 18 March 2015).

¹⁷⁸ David Horsager, *You can't be a great leader without trust* (24 October 2012), Forbes <<http://www.forbes.com/sites/forbesleadershipforum/2012/10/24/you-cant-be-a-great-leader-without-trust-heres-how-you-build-it/>>.

¹⁷⁹ NAAJA, ALS, VALS, FVPLS.

¹⁸⁰ Interview with Meena Singh (Melbourne, 17 February 2015).

¹⁸¹ Ibid.

¹⁸² Hunyor, above n 136.

what the service may or may not be able to assist with. Such uncertainty may drive away clients, particularly ‘if people lack that bi-cultural competency, and they don’t understand how government fits together, and why we can help with one agency but not another, or with one issue that may or may not be a strictly legal issue, but not another’.

- Getting results – more ‘runs on the board’.

Working with members of other disenfranchised communities may require similar trust-building. For example, the Act for a House project lead by Denis Nelthorpe aimed to assist private tenants in apartment blocks with repairs, working building by building, rather than client by client. However, when tenants were approached by the scoping team they were scared of antagonising their landlords and real estate agents over repairs and so the project never proceeded.¹⁸³ This may have been in part due to the lack of established relationships with the project team.

The principles of effective client communication discussed in Principle 5 are also relevant. For example, choosing your mode of communication may be important in establishing, or maintaining, trust. In two projects – a research project on default judgment debtors¹⁸⁴ and the evaluation of the West Heidelberg tenancy rights project – written contact made with clients was inappropriate and received a very low response. This may have been because such contacts presented more like an extension of a harassing bureaucracy than as assistance.

Community engagement strategies

As Kasari Govender of WCL has highlighted, an essential ingredient for a successful community law practice is to ensure that ‘the voices of the people who you are impacting with your work are represented’.¹⁸⁵ This is ‘continually hard work’ and you should ‘never ... be content that you have you actually achieved that, because chances are you haven’t.’ In addition to effective communication and trust with clients, your CLC may wish to formalise and coordinate its approach to communication with its community or communities.

One example of such a strategy is the Community Engagement Policy¹⁸⁶ produced by the CALS in Johannesburg. Its aim is to broaden ‘the traditional matrix of legal ethics of lawyer, client, and legal activity ... [to] include indigence, power differentials between client and lawyers, collective rather than individual clients, and non-traditional lawyering tactics.’¹⁸⁷ The policy sets out the benefits of effective community engagement as facilitating responsiveness, legitimacy and capacity building within the community itself, which in turn drives systemic change.¹⁸⁸ The principles of the policy include:

¹⁸³ Nelthorpe, above n 52.

¹⁸⁴ Eve Bodsworth, *Like Juggling 27 Chainsaws: Understanding the experience of default judgment debtors in Victoria* (2013) CALC 66 <<http://consumeraction.org.au/blog/2013/07/22/report-like-juggling-27-chainsaws-understanding-the-experience-of-default-judgment-debtors-in-victoria/>>.

¹⁸⁵ Govender, above n 83.

¹⁸⁶ CALS, *CALS Community Engagement Policy* (2014) CALS <http://www.wits.ac.za/files/25gim_168271001427097717.pdf>.

¹⁸⁷ *Ibid* 11.

¹⁸⁸ *Ibid* 12–13.

8. Clear instructions based on informed decision-making ...
11. Regular and accessible communication ...
13. Transparency and sharing of information ...

‘Nurturing nonprofit networks’¹⁸⁹

A single CLC has the potential to amplify its effects through strengthening collaboration within the CLC sector and the not-for-profit sector. Academic studies have confirmed that ‘nonprofit groups find significant benefits in collaboration’.¹⁹⁰ The possible benefits include:

- Established networks that can help the sector work together better at times of crisis.¹⁹¹
- Collaborative solutions, which are required to address the complex, and far-reaching, problems that CLCs work on, such as family violence, homelessness and youth poverty.¹⁹²
- A coalition forming a critical mass to strengthen a campaign and help ensure its success.
- Stronger networks, through which we can better share resources and expertise. For example, one organisation may contribute media and community-organising skills, while another may bring legal and policy advocacy expertise.
- Partnering with a non-legal organisation, which may better allow your CLC to ‘keep the protective bubble on the litigation, but keep the advocacy going on in the meantime’.¹⁹³
- Stronger relationships that may improve the quality of intra-CLC referrals.

Forms of partnership, collaboration and coalition

These include the following:

- Multi-disciplinary legal practice: This may involve a medico-legal partnership,¹⁹⁴ which integrates legal practice with health service provision. Otherwise, it may involve a model of holistic service provision, such as the Brimbank Melton CLC Mortgage Wellbeing Clinic, in which a lawyer, financial counsellor and social worker work together to assist those in mortgage stress.
- Memorandums of Understanding (MOUs): An inter-centre agreement intended to formalise, and/or simplify, an area of collaboration. This may be an agreement about how a class of cases is divided between the centres (for example, regarding inter-state matters) or for a referral pathway (for example, where a specialist lends its expertise to a generalist centre in a particular area of work).

¹⁸⁹ Forces for Good ch 5.

¹⁹⁰ Ibid; Chen and Cummings, above n 87, 147.

¹⁹¹ Vockins, above n 177.

¹⁹² Forces for Good, 178–9.

¹⁹³ Milne, above n 164.

¹⁹⁴ See Linda Gyorki, *Breaking down the silos: Overcoming the Practical and Ethical Barriers of Integrating Legal Assistance into a Healthcare Setting* (2014) Winston Churchill Memorial Trust <https://www.churchilltrust.com.au/media/fellows/Breaking_down_the_silos_L_Gyorki_2013.pdf>.

- Community organisations as clients: In some instances, and particularly in environmental law, another organisation may have standing to be your client in strategic litigation.
- Coalitions: Working together on a particular campaign, project or legal action. This has the potential to overlap with the notion of 'law and organising', below.
- Law and organising: This is 'the delivery of legal services in service to or support of an organising approach to solving problems and creating change', as opposed to direct service or advocacy. One example of this model is employed by Make the Road New York,¹⁹⁵ a membership-based organisation for working class and new immigrant communities with an embedded legal service promoting justice. Its legal work is guided largely by the decisions of its members' committees, formed around issues of concern such as tenancy, employment law and LGBTI rights.
- Co-location or merger of centres: This is a recent trend in the Victorian CLC sector, with three CLCs merging to form Western CLC, and CALC recently co-locating with two financial counselling peak bodies, FCA and FCRC. Another example is the EJA, which is located in a building with many environmental organisations. While many are supportive of this trend, there are concerns in the sector around to what extent this may limit centres' ability to be responsive to the legal needs of local communities.

Building a coalition on an issue

The following considerations may be helpful when building a coalition: ¹⁹⁶

- Don't rush into anything. Learn how to assess interpersonal dynamics, and know what is going on in a group. Understand what the motivation and skill sets of various individuals and groups are. This may take time.
- When choosing partners, look for organisations that have:
 - objectives that are aligned to, or at least compatible with, your centre's;
 - commitment to the cause, and the demonstrated ability to get the job done;
 - media and fundraising capacity, particularly where your centre lacks this;
 - good communicators who can 'get other people involved and on board, and can moderate between extremes'.¹⁹⁷
- Be aware of the tensions that may be caused by partnering with one organisation but not another, or how friction may result between two or more of your partners if they have incompatible objectives. You may have to find way to communicate about these matters to resolve them – for example by way of an MOU.

¹⁹⁵ Interview with Marika Dias (New York, 4 March 2015).

¹⁹⁶ Fitzgerald, above n 73.

¹⁹⁷ Ibid.

When working in coalition, it may be useful to:

- Clearly delineate shared goals, the extent to which goals may differ and the roles of each person or organisation. You may do this by way of an MOU to ensure transparency and accountability.
- Consider agreeing upon a communication strategy for the coalition as a whole, which includes a process by which the group agrees upon its key communications messages.
- Depending on the size of the project, consider undertaking a thorough risk assessment up front, and prepare to manage risk proactively. For example, when running litigation as part of a coalition that includes a broad mix of not-for-profit organisations, prepare to manage the risk of ‘mixed messages and inaccuracies in relation to the litigation’.¹⁹⁸
- Be prepared to invest time in relationship management. This will likely include regular meetings, check-ups, and contacts, to ensure all parties feel updated and included.¹⁹⁹
- Be aware of the complexities of litigating from within a more complex arrangement than the usual client–lawyer relationship. This may mean the client relies on the advice of the lawyer and a community group that may complicate your role.²⁰⁰

¹⁹⁸ Milne, above n 164.

¹⁹⁹ Epstein, above n 68.

²⁰⁰ Ibid.

Practical implementation

Individuals	– You don't have to work with everyone. Maybe just start with a few affiliated, like-minded groups or services, and go from there.
Managers	
Boards	<ul style="list-style-type: none">– Be deliberate and thoughtful with relationship management. Intentionally cultivate positive relationships with key stakeholders. If litigation will undermine such a relationship, only pursue that litigation strategically.– Maintain open dialogue with funders and government.– Consider collaboration with other CLCs, or other organisations, on a campaign or small project, such as building up a referral pathway.– Cultivate relationships with allies that can support the work you do:<ul style="list-style-type: none">• academics and other experts;• volunteers (including students) – learn to engage, and support, them better;• pro bono partners;• litigation funders;• industry allies;• media.– Pay attention to which methods of approaching our clients work and which ones fail. This may include outreach, targeted legal education sessions or 'train-the-trainer' sessions.– When making a strong statement, rigour will help maintain credibility.– Experiment with new ways of communicating with other CLC lawyers to share knowledge and skills, and to allow for greater mentorship and support between centres.– Praise the regulators when they do their job well.– Consider when informal discussions may foster stronger relationships.– Work to build up trust with client groups over a long period through consistency and reliability.– Don't forget internal relationships. Have an internal communications strategy where there is change or a joint difficulty to overcome. Celebrate successes as they occur.

Principle 7: Evaluation is essential

What matters is not finding the perfect indicator, but settling upon a consistent and intelligent method of assessing your output results, and then tracking your trajectory with rigour.²⁰¹

Benefits of evaluation

There are also some good reasons for undertaking evaluation:

- Improving your practice: Well-designed evaluation can assist with understanding your centre's strengths and weaknesses, and give you clues on how they can be amplified and diminished for greatest impact. If you know which parts of your work result in the impact that you are seeking, this can make it easier to achieve and maintain success.
- Identifying blind spots and unintended consequences: Well-designed evaluation can reveal unintended consequences of your legal practice, not just what you expected.
- Demonstrating value in a credible way: If your evaluation is well designed, others are more likely to take its results seriously. If a well-designed evaluation process shows that your practice is effective, you're more likely to be able to convince funders, and the public, that your centre is a good investment.
- Better understanding of your community (and/or external agencies): Evaluation allows you to better understand your clients, your community and other organisations, and thus the external factors that influence the impact of your centre. This can help you to identify these factors, and either correct for them or devise methods to manage them.
- Improving job satisfaction: For example, if a CLC can reliably demonstrate to its staff how changing its processes allows it to make a greater impact on access to justice, this has the potential to increase job satisfaction and staff wellbeing.

Challenges with evaluation

Meaningful impact measurement also presents challenges, including:

- It is resource-intensive.
- It often requires data analysis and other tasks outside the ordinary legal skill set.
- Measuring things that are valuable, for example the systemic impact of a representative complaint, or the impact of 15-minute advice on someone's wellbeing, is difficult given multiple causes and intervening factors.²⁰²
- There is a risk that measurement can alienate clients and erode trust: 'it's a strange way of dealing with people, all these forms'.²⁰³

²⁰¹ Good to Great and the Social Sector 8.

²⁰² Interview with Susie Steed (London, 20 March 2015).

²⁰³ 'The problem is that in practice, you're asking people to fill in more forms, tick more boxes, and the whole thing becomes, in an odd way, the thing that you were trying to get away from.': *ibid.*

- What is useful for our CLC to measure may be different from what our funders want us to measure. Our equations of value may be incompatible,²⁰⁴ and sometimes it is too resource-intensive to do both.
- The value of our work is too diffuse and complex to be quantifiable.

What are you evaluating?

Various components of CLC legal practice may be evaluated, including:

- general casework practice;
- the delivery of legal advice through outreach, clinics or telephone advice services;
- policy advocacy, or law reform, projects;
- large pieces of strategic litigation, evaluated as a discrete project;
- community legal education and other engagements.

Be clear about why are we evaluating

Measurement without purpose is like a car without wheels – a frame that will never reach a destination.²⁰⁵

It is important to design your evaluation system so that it delivers *useful* information. Some organisations use a ‘theory of change’ method to focus the evaluation process on impact rather than output. This requires that a centre agree upon its theory of change (see Principle 3). Once this is set, it is possible to design metrics that try to measure the sought-after change.

For example, the evaluation question that guides Dr Liz Curran’s evaluation of the CALC advice line is: ‘Are we providing an appropriate service to our core demographic that gets them the outcomes that they need?’²⁰⁶ The purpose here is to improve the quality of service for CALC’s ‘core demographic’ – vulnerable and disadvantaged clients, as defined by its case intake guidelines.

The question acknowledges that with this target demographic sometimes ‘life gets in the way’, and even the best advice may not yield the legal outcome sought. Process is as important as outcome, and therefore the *appropriateness of the service* is a useful measure of quality. Do clients feel heard? Did they understand the advice? Can they act on it? Did they feel comfortable with asking questions? The evaluation is conducted over the phone, rather than in writing, to allow for clients with different literacy levels.

Common evaluation purposes include:

- Does our practice, or a particular program or intervention, cause a particular change? For example, are we influencing public (or institutional) thinking?

²⁰⁴ Lasdon, above n 54.

²⁰⁵ Nabihah Kara and Matt Forti, *Making Measurement Work in Large, Complex Organizations* (23 December 2013) The Bridgespan Group <<http://www.bridgespan.org/Blogs/Measuring-to-Improve.aspx#.VPaYNsYmCLg>>.

²⁰⁶ Interview with Tom Willcox (Melbourne, 13 February 2015).

- What element(s) of our practice were responsible for the change?
- If we try a new method of practice, what happens?

What will we measure? Decide on metrics

What you measure will depend on your purpose and resources. Generally speaking, quantitative analysis – such as asking how many files are closed in a year – will only take you so far. Quantitative analysis is relatively simple and cheap to undertake, and can be useful in tracking changes in simple variables over time. For example, RLC measures the impact of its community engagement and law reform work through reporting on these activities to the board bimonthly, using a set of established KPIs.²⁰⁷

However, it is relatively narrow and superficial, and cannot capture complex relationships or variables, such as the social value, impact or effectiveness of your service. Therefore, RLC combines its quantitative evaluation with qualitative evaluation, surveying external stakeholders on its impact and influence every eighteen months. These stakeholders include other CLCs, NGOs, government and Legal Aid. RLC then uses information from both processes to develop its practice.

Further, quantitative analysis cannot capture the nuances of large, complex pieces of litigation, which run over a long period of time and involve many interconnected influences and players. Therefore, internal evaluation of complex projects and large pieces of litigation may be better undertaken through processes such as group reflection or appreciative enquiry (a method of asking positive questions with the aim of strengthening the ‘capacity to apprehend, anticipate, and heighten positive potential’²⁰⁸), rather than measuring performance against KPIs.

How will we evaluate? Designing evaluation methodology

Without adequate resourcing and up-front planning, evaluation will be neither effective nor useful. Therefore, when designing your evaluation methodology, it may be useful to consider the following:

- The matter of timing. When is it most useful to measure impact? And over what period? In some cases, it might be necessary to look at the historical perspective for meaningful data, particularly when measuring the impact of litigation as part of a long-term social change campaign. In such cases, evaluation may occur by way of a ‘thick, descriptive, case study’ derived from the historical record.²⁰⁹
- Who should we be asking? While peer review may be an effective influence measure, it may not be appropriate for finding out the extent of community engagement, for example. For this, speaking to your clients and their representative bodies will be necessary.²¹⁰
- Link the casework outcome to the advocacy outcome: What may be most relevant to evaluate is the social impact of the casework. This may be whether

²⁰⁷ See above, n 125.

²⁰⁸ Appreciative Inquiry Commons (undated) <<https://appreciativeinquiry.case.edu>>. ‘Being an enquirer is a much different skill than being an advocate’: Interview with Michele Leering (Skype, 6 February 2015).

²⁰⁹ Cummings, above n 121.

²¹⁰ Epstein, above n 68.

your practice can ensure the defendant's compliance with the court order, for example.

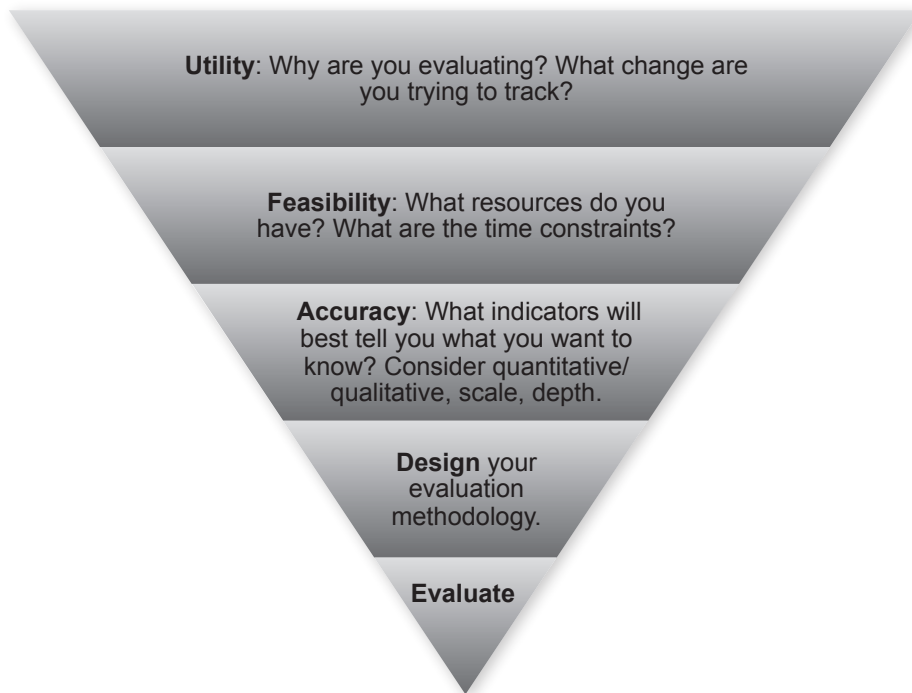
- External factors, such as program structure, funding structure and participants' schedules, may shape the evaluation timing or program.²¹¹
- Plan case-specific metrics or evaluation exercises: With a large piece of strategic litigation, consider establishing case-specific metrics at the outset. If ticking boxes will not be useful, incorporate a group debrief or reflection upon its conclusion.²¹²
- A tiered approach: Where resources are limited, you may adopt a tiered evaluation approach that focuses resources on only a few areas of greatest value to your practice. This may allow your centre to pilot an approach to evaluation that can be fine-tuned later. One approach is to undertake the minimum quantitative evaluation required on the majority of cases, but a more in-depth evaluation of a targeted portion of your cases. This could be:
 - your most high-profile or resource-intensive litigation;
 - a random selection of case files;
 - cases run as part of a particular project;
 - decided by the seriousness of the issue. For example, a delay in understanding whether a violence prevention program is effective may cost lives.
- Consider an ecological approach: The ecological research model describes five levels of influence on behaviour: individual, interpersonal, organisational, community and policy.²¹³ This has been used by WLSV to develop an evaluation methodology for its Stepping Stones program on economic abuse, in which influence is measured on three levels: at the individual, community and policy level.
- Method of communicating to participants: Emailed questionnaires will not be suitable for most CLC clients. Rather, telephone or in-person discussions may be more appropriate.
- Path of least resistance: Some things are easier to measure than others. You may choose to target your evaluation on what is more easily measured. For example, remedies such as compliance with a court order may be easier to measure than more complex social processes such as the likelihood of recidivism or social cohesion.
- Measure only what is necessary: If a question is not relevant to your evaluation purpose, remove it. Eliminate redundancies.

²¹¹ Anon, *Selecting an Appropriate Design for Evaluation* (undated) Community Toolbox <<http://ctb.ku.edu/en/table-of-contents/evaluate/evaluate-community-interventions/experimental-design/main>>.

²¹² For example, EcoJustice and CLAS.

²¹³ Interview with Emma Smallwood (Melbourne, 10 February 2015).

Narrowing evaluation methodology²¹⁴



Practical implementation

Individuals	– Treat evaluation as a component of reflective practice. Build it into your everyday practice.
Managers	<ul style="list-style-type: none">– Build evaluation into project, campaign and large test-case planning.– Consider learning from other sectors that do evaluation better<ul style="list-style-type: none">– for example the health sector, which has a longer history of incorporating evaluation in its work.– Is it possible to collaborate with academics or researchers to evaluate key projects?
Boards	– Would it be useful to request evaluation reports from your centre on particular components of centre practice?

²¹⁴ Some factors draw on the final diagram in: *Change Toolkit* chapter titled 'Evaluation'.

Conclusion

Injustice anywhere is a threat to justice everywhere.

– Nelson Mandela

Since the inception of the Victorian CLC sector in the 1970s, one of its fundamental purposes has been the achievement of access to justice, particularly for vulnerable and disadvantaged communities. This purpose, and the Victorian sector, has its roots ‘within a transnational history of protest, social change, and civil and legal rights movements’.²¹⁵ In pursuit of this goal, Victorian community lawyers have a proud history of providing an excellent, necessary, value-for-money legal service. However, where we run a case that solves a legal problem but leaves a systemic problem unaddressed, our job may be only half-done.

As Sargent Shriver once said: ‘[m]ore lawyers is a long way from more justice’.²¹⁶ Similarly, providing our clients with *access to free legal services* does not ensure that we provide them with *more justice*. If the CLC sector wants to reconnect its everyday work with its purpose of achieving meaningful and long-lasting access to justice, it must re-embrace strategic casework as part of its core operation. Strategic casework can be incredibly rewarding and fulfilling work for CLCs and their lawyers. But, more importantly, it has the potential to achieve significant social and legal change, and ensure that government and business better serve the interests of the community. There is still much work to be done.

²¹⁵ Jude McCullough, *Justice for All: A History of the Victorian CLC Movement* (2011) 2 <[http://www.fclc.org.au/cb_pages/files/Justice%20for%20All%20History%20Booklet%202011\(1\).pdf](http://www.fclc.org.au/cb_pages/files/Justice%20for%20All%20History%20Booklet%202011(1).pdf)>.

²¹⁶ Sargent Shriver, quoted in Bellow and Kettleson (1978) above n 40, 138.

Appendix: List of interviewees

Interviewee	Organisation
Victoria, Australia	
Louisa Bassini	West Heidelberg Community Legal Service
Sue Brown	Southport Legal Centre
Carolyn Bond	Consumers Federation Australia
Nicole Bieske	Inner Melbourne Community Legal
Melanie Dye	
Victoria Mullings	Peninsula Community Legal Centre
Diedre Griffiths	Villamanta Disability Rights Legal Centre
Felicity Milner	Environmental Justice Australia
James Bennett	Tenants Union of Victoria
Ben Cording	
Gabrielle Marchetti	JobWatch
Tamar Hopkins	Flemington and Kensington Community Legal Centre
Anthony Kelly	
Joel Townsend	Victoria Legal Aid
Nicole Rich	
Annie Tinney	
Annie Davies	Youthlaw
Anna Radonic	
Meghan Fitzgerald	Fitzroy Legal Service
Helen Matthews	Women's Legal Service Victoria
Emma Smallwood	
Abigail Sullivan	
Fay Gertner	Monash Oakleigh Legal Service
Joanne Carlton	Broadmeadows Community Legal Service
Flora Culpan	
Shorna Moore	Wyndham Legal Service (now Western Community Legal Centre)
Jenni Smith	Footscray Community Legal Centre (now Western Community Legal Centre)
Gemma Cafarella	
Catherine Hemingway	
Denis Nelthorpe	
Matt Carrazzo	Brimbank Melton Community Legal Centre
Gregor Husper	
Gerard Brody	Consumer Action Law Centre

Interviewee	Organisation
Tom Willcox	
Jillian Williams	
Meena Singh	Victorian Aboriginal Legal Service
Jenny Blakey	Seniors Rights Victoria
Trish Cameron	Eastern Community Legal Centre
Laura Vines	Family Violence Prevention and Legal Service
Dale Gerner	
Philip Cottier	St Kilda Legal Service
Jessica Richter	Centre for Innovative Justice
Fiona McGuthrie	Financial Counselling Australia
Rachel Ball	Human Rights Law Centre
Malvina Hagedorn	Refugee & Immigration Legal Centre
Liana Buchanan	Federation of Community Legal Centres
Darwin, Australia	
Jonathon Hunyor	North Australian Aboriginal Justice Agency
Philipa Martin	
Sydney, Australia	
Jo Shulman	Redfern Legal Centre
David Porter	
Alexandra Kelly	Financial Rights Legal Centre
Alexis Goodstone	Public Interest Advocacy Centre
Camilla Pandolfini	
Felicity Graham	NSW Bar (previously of NSW Aboriginal Legal Services (Western Region))
Toronto, Canada	
Michele Leering	Community Advocacy & Legal Centre
Vancouver, Canada	
Melina Buckley	Researcher
Aleem Bharmal	Community Legal Assistance Society
Kendra Milne	
David Mossop QC	
Carmen Cheung	British Columbia Civil Liberties Association
Kasari Govender	West Coast LEAF (Women's Legal Education and Action Fund)
Devon Page	EcoJustice
Tannis Braithwaite	BC Public Interest Advocacy Centre

Interviewee	Organisation
New York, US	
Larry Schwartzol	American Civil Liberties Union
Kevin Cremin	MFY Legal Services
Harvey Epstein	Urban Justice Center
Doug Lasdon	
Marika Dias	Make the Road New York
Ben Hoffmann	Columbia University
Erika Dailey	Urban Justice Society Initiative
Scott Cummings	UCLA
Alex Kelly	This Changes Everything
London, UK	
Julie Bishop	Law Centres Network
Roger Smith	Freelance journalist
Dan Vockins	New Economics Foundation
Baljeet Sandu	Islington Law Centre
Ruth Hayes	
Wendy Pettifer	Hackney Law Centre
Susan Steed	University of Bristol
Damon Gibbons	Centre for Responsible Credit
Sarah Clarke	Public Law Project
Rachel Knowles	Centre for Access to Justice; Just for Kids
James Welch	Liberty
Johannesburg, South Africa	
Naseema Fakir	Legal Resources Centre
Carien van der Linde	
Magauta Mphahelel	Ithuseng Credit Solutions
John Stephens	Section27
Mark Heywood	
Violet Kaseke	
Willie Scholtz	Legal Aid South Africa
Patrick Hunderman	
Louis Snyman	Centre for Applied Legal Studies
David Cote	Lawyers for Human Rights
Tashwill Esterhuizen	Socio-Economic Rights Institute of South Africa
Annelie de Plessis	Probono.Org

“Victoria Law Foundation recognised a need in the community legal sector for staff to reflect on their practice, conduct research or improve or renew their skills. The foundation provided the necessary funds via their Community Legal Centre Fellowship to address this need. They then provided excellent support to help me create a useful resource manual for the sector.”

Rachna Muddagouni

2006/2007 CLC Fellow



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