

Striving for holistic service delivery in the social welfare sector. How do we improve lawyers working with others?

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Introduction

The idea that collaborative work between professions and agencies can improve social justice outcomes is not new. However, the concrete experience of many of us working together to improve outcomes for our disadvantaged clients is that collaboration is hard work and often generates only mediocre outcomes. This paper will look at the major challenges thrown up when working collaboratively, and provide some guidance for picking our way forward through this complex terrain.

Who are the main players?

If we're considering collaborative strategies for improving outcomes for disadvantaged people in our communities, our first task must be to identify all of the relevant people involved, including clients, service providers and funding bodies. The reason for this is that when we work with others, we are essentially entering into a variety of relationships. If we don't get these relationships right, it's hard to imagine that we'll derive any kind of collaborative advantage¹ from our activities; hence the first step is to map out the relational landscape we're traversing.

For the moment I will focus on service providers and funders, and simply note here that there is a great deal of diversity among the clients of those of us who are involved in working with people in disadvantage. This diversity extends not

¹ This is a term coined by Chris Huxham and Siv Vangen. See, for example, Chris Huxham, and Siv Vangen, "Leadership in the Shaping and Implementation of Collaboration Agendas: How Things Happen in a (Not Quite) Joined-Up World," 43(6) *The Academy of Management Journal* (2000) 1159.

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just to the identity of the clients and the nature of the problems that they face, but also to the strengths (both as individuals and as members of their communities) that those same clients bring with them. This is information we ignore at our (and our clients') peril. We will return to clients in the next section.

Since we're examining collaboration in the social welfare sector, I believe we should be casting our net across a broad range of organisations and individuals, each often pursuing very different agendas from very different disciplinary perspectives. However, the reality seems to be that when we're thinking specifically of legal interventions, many of us by default focus on those agencies pursuing legal or quasi-legal objectives, mostly via a funding trail leading back to State and Federal Attorneys General, Departments of Fair Trading, Corrective Services, the large pro bono firms, agencies such as the Law and Justice Foundation or even state Law Societies. From this limited perspective, the usual suspects generally include:

1. State Legal Aid Commissions;
2. Community Legal Centres (CLCs);
3. Women's Domestic Violence Court Advocacy Schemes (WDVCAS's);
4. tenant advocacy services;
5. summary and specialist courts and tribunals;
6. Probation and Parole services;
7. Juvenile justice services;
8. private law firms;
9. Family Relationship Centres;
10. mediation providers such as Relationships Australia, Centacare and Unifam;
11. advice services such as LawAccess NSW;

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12. public legal resource services such as LIAC in NSW;
13. police;
14. state and regional Law Societies.

As I indicated above, and for reasons that will become clearer in the next section, I believe that those of us involved in seeking better social justice outcomes for our clients need to broaden our horizons to include the whole range of agencies working in social welfare. For a start, this means that the funding bodies (and their expectations) become more numerous: State and Federal family and community services departments, housing departments, health departments, indigenous organisations, to name the most obvious. Most importantly however, the types of agencies and their disciplinary 'look and feel' become more diverse. In this broader context the above list of players might swell to include:

1. neighbourhood centres;
2. family support services;
3. child protection agencies;
4. hospitals and medical services;
5. mental health services;
6. aged care services;
7. disability services;
8. indigenous services;
9. Divisions of General Practitioners;
10. schools and tertiary education facilities;
11. special interest advocacy groups;
12. housing services.

This increased diversity should operate as a clue to one of the biggest stumbling blocks to effective collaborative work in the social welfare sector: the difficulty of

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establishing and maintaining effective communication across disciplinary and professional categories that include law, health, social work, psychology and education. The problems generated by this cultural diversity will be alluded to again below, but for the moment it is important to understand that diversity is not simply an issue between agencies. This is also a significant issue *within* agencies.

By way of illustration, I'll briefly describe some of the diversity within my own organisation, Elizabeth Evatt Community Legal Centre ('EECLC'). We are a small non-government organisation ('NGO') based in Katoomba, NSW. Our funding bodies include State and Federal Attorneys General, the NSW Office of Fair Trading, and, depending on current individual projects, the Law and Justice Foundation, NSW Corrective Services and the Australian Institute of Administrative Law. We employ lawyers, a social worker, a tenant advocate (as part of a collaborative tenancy project with Northern Area Tenancy Service and Macquarie Legal Centre), and court assistance workers, and rely on legal, social work and community welfare students as volunteers. Because we operate on a community management model, we are supported by a volunteer management committee comprised of local people who include welfare workers, lawyers, a local indigenous leader, a former union representative and others. For us to work together effectively, we are all constantly challenged to relate to each other with maturity, understanding and respect. These are qualities that increase our capacity to be in functional relationship with one another. I believe that our microcosmic CLC provides a window on the macrocosmic principles that operate across the entire welfare sector. So here's the main theme of this paper: the skills required for effective collaboration within and between agencies and across professional boundaries are systemic skills: they are *relationship skills*. If we want to derive collaborative advantage from our work for the benefit of our clients, we therefore need to identify, value, acquire and practice relationship skills.

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Poverty Law or systemic change: just what is the work we want to do together?

I indicated above that we would return to a discussion about our clients. This is extremely important, because how we see our clients and the results we would like to achieve for them not only determines the strategies we employ in our work, but also says a lot about how we see ourselves. Given that we are discussing lawyers working with others, I will frame this issue using a legal practice question: Are we engaged in poverty law, or are we working toward systemic change?

Poverty law (or welfare law²) is an expression that has been around for a long time. Its natural home is the United States, where it originated in the 1960s. One definition is that 'poverty law is comprised of the legal statutes, regulations and cases that apply particularly to the financially poor in his or her day-to-day life.'³ For present purposes, it seems fair to say that if we accept the term 'poverty law' (and for reasons set out below it is my suggestion that we avoid using it at all) in Australian jurisdictions it covers much of the subject matter of publications such as Redfern Legal Centre's *Law Handbook*⁴, or Thomson Reuter's *Lawyers Practice Manual NSW*⁵.

Although 'poverty law' is a catchy phrase in one sense, for many of us working directly with people in disadvantage its connotations are misleading. The idea that systemic issues of disadvantage, discrimination and actual (if in many cases no longer nominal) inequality before the law are appropriately encompassed by the rubric 'poverty law' is somewhat naïve. The clearest, most obvious example that comes to my mind concerns the circumstances of more than half the members of this democracy. Notwithstanding the immense gains made by liberal feminism since the days of Mary Wollstonecraft, it remains the case that women are systematically disadvantaged in our culture. Women remain, on average,

² Amy Wax, "Musical Chairs and Tall Buildings: Teaching Poverty Law in the 21st Century," 34 *Fordham Urban Law Journal* (2007) 1364.

³ Lillian Salinger, "Poverty Law: What is it?," 12(2/3) *Legal Reference Services Quarterly* (1992) 6.

⁴ Rosemary Barry, ed. *The Law Handbook*, 10th (Sydney: University of New South Wales Press, 2007).

⁵ *Lawyers Practice Manual New South Wales* (Sydney: Lawbook Co, 2008).

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less well paid than men doing equivalent work. The average woman needs to work an additional 54 days per annum to make up for the shortfall⁶.

While there can be little doubt that the better off one is the gentler the impact of this, systematic gender bias in the very way we *do* culture is independent of finances. Similarly, the effects of racism and the issues faced by older people and people with a disability may well be ameliorated by money and made worse by poverty, but social issues of this sort are in most respects only loosely correlated to wealth. It's fair to say that the expression 'poverty law' has its roots in an uncritical, individualistic worldview that is in itself one of the big causes of systemic disadvantage in our culture.

This is a Big Claim, so let me expand a little. An expression such as 'poverty law' leads to the misapprehension that we are doing one thing when we are really doing another: in this case, fixing one problem when we may well be making another, deeper problem worse. 'Poverty' carries the implication that we have no real responsibility for the problem at hand, but that we can give or do something as objective helpers; something that will reduce poverty or its effects; something that will help people, as individuals, somehow recover from the random misfortunes of their lives. It locates our compassion and our sense of responsibility in a sort of imaginary hospital emergency ward. On this view, we are the doctors of poverty, fixing the fallout of acts of god and mortal stupidity. The implication is that if we can only get enough, say, pro bono assistance, individual legal solutions will repair our clients' lives and set them on the road to a brighter future.

But many of us working in the social welfare field are concerned with far more than simply fixing clients' immediate problems. Consider the following comments:

A career legal aid lawyer talked about her 'strong social conscience' and the impact of late 1960s and early 1970s activism on her life choices:

⁶ Australian Women Online <http://www.australianwomenonline.com/equal-pay-day/> at 10 November 2008.

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I was in university in the seventies. My family had a strong social conscience. I took [the subjects] Poverty Law and Aboriginals and the Law, and was always interested in working in these areas. ... I was interested in prisoners' rights and looking after people others hate. ... People are people; they're human beings. There's always something to be said for people. They are stupid or silly usually, not bad.

...When asked why she represented the unpopular, [another participant] responded with a single word: 'Injustice'. She explained:

When I see injustice I get fired up about it. The injustice is compounded by the category of being called 'unpopular'. ... Someone in society sets up these rules — some are in the 'in crowd' and some are in the 'out crowd'. It seems so arbitrary. ... I supposed of course it's to perpetuate power.⁷

These lawyers have identified not merely individual problems, but systemic issues, and the emergency ward obviously isn't the right approach if we want to deal with systemic issues, because it hypnotises us into a potentially toxic form of social inertia. Here's a more accurate (albeit somewhat harsher) analogy: we are all actually behind the wheel of a figurative semi-trailer that continues to run down our clients as they are crossing the road. Many of our clients are actually in the way of the sort of culture that we all benefit from (those of us who are more privileged at any rate, and that certainly includes all educated middle-aged white guys like me). Now the sensible thing to do when driving a big truck is *not* to put one's foot on the accelerator and run over more and more people, all the time saying 'we must put greater effort into making hospital emergency wards work better.' The sensible thing to do is to put one's foot on the *brake*. The really wonderful, deeply human thing to do is to stop the truck, hop out and have a chat to the person on the road; to form relationship.

⁷ Abbe Smith, "Defending the Unpopular Down-Under," 30(2) *Melbourne University Law Review* (2006) 522.

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I've heard that not so long ago, one of the shopkeepers on the main street of Katoomba was disturbed by the sound of someone shouting just outside her door. She went to investigate, and found a raging woman bellowing abuse at her two small children cowering by the kerbside. The shopkeeper turned to her assistant and asked her to bring the children into the shop and see that that they were cared for. Then she delicately took the children's mother by the arm and gently said: 'Let's go and have a cup of tea, love.'

This shopkeeper's behaviour sounds subversive to me; subversive because the idea of forming relationships and building community is subversive in the context of our highly individualistic culture. But to form relationship we need to start recognising who we really are and what we are really doing. This involves a willingness to critique, to compromise, and a preparedness to engage with each other around issues of power. As Catherine MacKinnon pointed out long ago, "Feminists have noticed that women and men are equally different but not equally powerful."⁸ Difference in itself is not the issue; the issue is where the power falls, and who's involved in pushing it that way. An understanding of this requires an ability and a willingness to non-defensively engage in an assessment of who has power where; obviously this analysis will work better if we include ourselves and our own interests in the mix.

If we want to work together to gain collaborative advantage in a social welfare context, I don't think we have a choice but to take up this sort of challenge.

Another of the drawbacks of following a poverty law approach is that as lawyers we tend to think up solutions to problems that are not exclusively legal problems. Say a client presents with a problem that has a legal component. We tend to jump to a legal solution, though it may well be that the deeper problem is non-legal or systemic, and the best solution is, say, a social work intervention. A big challenge to us as lawyers working in a social justice context therefore is that we might need to identify the legal issues and the potential pitfalls for the client, and then allow a non-legal process to unfold. It takes some humility to regard oneself

⁸ Catharine A MacKinnon, *Feminism Unmodified: Discourses on Life and the Law* (1987) 51.

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as part of a team rather than as The Advocate. We know that the legal system disadvantages some members of the community by its very nature, so sometimes people need to be supported to work outside the system, not to penetrate deeper into it.

I hesitate to raise the somewhat indelicate (and rarely whispered) truth among those of us who rely on the support of the large pro bono firms that the practice of law is generally a business, if not actually a large-scale corporate enterprise. It is difficult to reconcile this pursuit with social justice concerns. However generous the support of the major law firms, that support is nonetheless targeted and highly selective and generally addressed to the emergency room rather than to the broader social problems that underlie disadvantage (and to which, directly or indirectly, law-as-big-business contributes).

Something to think about if we're interested in more than band-aids.

What are the problems of working together?

I've reproduced below a table from a paper by Chris Huxham and Siv Vangen entitled *Ambiguity, Complexity and Dynamics in the Membership of Collaboration*⁹, which gives a very good summary of some of the key confounding issues that lead to what these two authors call 'collaborative inertia' among collaboration members.

Summary of dimensions of ambiguity and complexity:

Ambiguity

Ambiguity in membership and status

- Members' perceptions of who else is a member vary
- Members' perceptions of each other's status in the collaboration vary

Ambiguity in representativeness

- Members are confused over the degree to which an individual representative is representing an organization
- Members are confused over which organization, organizations or other constituency is being represented

Complexity

Complexity in structure

⁹ Chris Huxham, and Siv Vangen, "Ambiguity, Complexity and Dynamics in the Membership of Collaboration," 53 *Human Relations* (2000) 778.

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- There can be complex hierarchies of collaboration
- Individuals and organizations are often members of multiple partnerships with overlapping membership
- Departments of an organization may become involved in partnerships independently of each other
- Collaborations often have complex structures involving partnership staff, executive committees, working groups and so on

Dynamics

Shifting membership

- Government policies and other forces cause demise and reforming of organizations
- Individual representatives come and go or change their role within their organizations

Shifting purpose

- Government policies and other forces lead to refocusing of collaborative purpose (and hence of membership)
- Mismatches in members' agendas lead to continual negotiation of purpose (and hence the possibility of changing membership)
- Learning from past activity and completing agenda items also leads to continual negotiation

The pace of change

- Changes can take place frequently, rapidly and sometimes imperceptibly

In addition to these issues of ambiguity, complexity and dynamics, I have already mentioned that the cultural, and to a large degree linguistic, differences between disciplines, professions and sectors can frustrate our attempts to work together. But are these limited to obvious cultural differences? I think not. It appears that underlying apparently straightforward professional cultural issues there are often more complex, subterranean issues of power and trust operating¹⁰.

How can we improve the chances that we will work together well?

I've already put my cards on the table. The key is in the development of relationship skills. Certainly this is not the only factor, for as Huxham and Vangen note in a separate paper,

[...]leading across the full range of activities and processes that need to be addressed to drive a collaboration forward holistically is ... highly resource consuming.¹¹

¹⁰ For further detail, see Mark A MacDiarmid, and Tracey A Willow, "To Coerce Or to Collaborate: Human Rights Lawyers Relating With Other Professions," 33(2) *Alternative Law Journal* (2008) 86.

¹¹ Huxham, and Vangen, above n 1, 1171.

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But for most of us working in social welfare positions, resources are scarce, and in the context of deliquescing global financial markets they will no doubt remain so for a long time to come. So we have to do the best we can in the face of the unfortunate truth that there seems to be a high correlation between successful collaborations and intense resource investment.

All is not lost, however. Given that we are talking about *relationships* when we are contemplating working with others, the greater our virtuosity in relationship, the more likely we will succeed in obtaining the outcomes we are seeking. Certainly it seems to me that many of the complexities referred to in Huxham and Vangen's table above are examples of communication failures. Accordingly, lifting the benchmark for relationship skills such as clear communication, genuine consultation and constructive conflict resolution will increase our chances of success.

So do we as lawyers have these skills? In NSW about a quarter of complaints against lawyers relate to communication issues¹², so we probably need a bit of skilling up in this area. Unfortunately, in spite of the complaint statistics and the fact that all laws are essentially directed at the governance of human relationships, as a profession we place little emphasis on acquiring or improving relationship skills.

In an effort to address this issue, the Combined Community Legal Centres Group of NSW ('CCLCG') recently negotiated the delivery of a two-day communication skills training package to senior lawyers and managers of Community Legal Centres from across the state. The training was generously conducted pro bono by leading organisational consultant Paul Donovan, who is also working with representatives of CCLCG to make this training an ongoing feature of professional development in NSW CLCs. It's my opinion that any lawyer involved in providing advice or support to disadvantaged clients, or in attempting

¹² NSW Office of the Legal Services Commissioner's 2005/06 and 2006/07 Annual Reports <http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_index> at 10 November 2008.

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collaborative work in the welfare sector (whether as part of a pro bono program or otherwise) needs to undertake training of this sort.

What sort of research program would be useful?

People in the social sciences have been throwing themselves against the collaboration barricades for years, but we lawyers are still essentially newcomers to this area. While many of the lessons learned in the social sciences apply equally to collaborations with a legal focus, there is still one area in particular that could do with some more work, namely the specific issues that arise when lawyers and non-lawyers work together.

EECLC recently received funding to conduct an early intervention child protection strategy with a focus on improving the level of understanding and functional communication between parents and child protection authorities at the early stages of a process that can often lead to the removal of children. The first stage (which is still ongoing) of this project involves a broad process of consultation across our four local government areas with those agencies and individuals that might be remotely interested in expressing an opinion on child protection practices. One of the areas we are paying particular attention to concerns the relationships between lawyers and non-lawyers. Early data is intriguing, and suggests that there is a pronounced cultural divide that strongly influences individual workers' and lawyers' strategies when dealing with each other in child protection matters. Narrowing that divide may go a long way to improving outcomes for our clients.

I would hope that if we attend more to empirically mapping out the dance between lawyers and other professionals, some additional useful ways of increasing our leverage in social welfare collaborations will emerge.

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Conclusion

Effective collaboration is hard work. All of the issues that arise in any other kind of relationship arise within collaborative settings, along with the added demands of navigating organisational complexity, interdisciplinary differences and the topography of systemic disadvantage. The commitment of substantial resources to a collaborative project certainly helps, but at bottom we need to work on developing high levels of interpersonal skills. Devoting some effort to mapping out the specific cultural and linguistic differences that operate between lawyers and other professions seems to be one promising way of improving our traction in social welfare collaborations.