nature of adventure activities themselves. There are, however, a number of considerations relevant in all situations: the timing should be as early in semester as possible; teacher/facilitator participation is important; simple to complex sequencing of skills is important; and students must be given the opportunity to process the experience through prepared debriefing sessions.

Popular skills learning techniques such as the role-play are useful but legal educators should be encouraged to continue the search for innovation in teaching. ABL gives students the opportunity to question their own behaviour, attitudes and values and discover the future potential of their own skills ability rather than undergoing a series of skills drills. This sort of learning has a deeper and more lasting effect. The future of the legal profession depends upon the flexibility and adaptability of current graduates to create roles for lawyers in changing and totally new environments.

Alternative dispute resolution and clinical legal education in Australian law schools: convergent, antagonistic or running in parallel?

M Osborne
14 *J Prof Legal Ed* 1, 1996, pp 97–108

Why do two movements which would seem to complement each other instead operate in isolation from each other? The two movements are Alternative Dispute Resolution (ADR) and Clinical Legal Education (CLE). ADR is portrayed as an answer to many, if not all, of the deficiencies of what might loosely be termed access to justice. There are many adherents in the legal education field who have invested heavily in promoting CLE. It too has been identified as a means of addressing and redressing systemic weaknesses in the way law interacts with the community.

Some of the most cited benefits of ADR fall into two broad categories of efficiency and fairness: its cost and speed, its voluntary consensual nature, the control that is vested in the hands of the disputants, its responsiveness to the need and wants of parties and its more favourable outcomes in terms of preserving relationships. The main thrust of CLE is that it gives students the opportunity to experience the 'law in action' as opposed to learning the 'law in books'. In addition, students are better placed to benefit fully from the experience because they have the time and resources to reflect and analyse. Whereas there is a noticeable lack of quantitative data concerning the benefits of CLE, ADR has the advantage of an extensive empirical literature attesting to its efficiency.

Bearing in mind the overlap of interests between CLE and ADR, the lack of discussion of ADR in the CLE literature is worth emphasising. Calver has recently surveyed the teaching of ADR in Australian law schools, adopting a definition of ADR as 'any non-curial method of solving disputes'. His stark conclusion is that 'ADR is a long way from being part of mainstream legal education' and based on his data there is a 'low level of integration of ADR within the curricula of Australian law schools.'

ADR is potentially involved in all aspects of legal education: first, from an 'academic' standpoint; second, from a professional or 'learning by doing' perspective (i.e. a CLE environment); and, finally, in various post-admittance continuing legal education forums. ADR is recognised as a professionally worthwhile specialisation or adjunct to a general law practice. The injection of ADR theory and practice in legal education might counteract traditional legal socialisation. The risks of acculturation to adversarial modes of thinking could be significantly reduced by CLE programs incorporating instruction in and practice of consensual participatory ADR techniques. However, it is the contention of this study that CLE has neglected to assimilate the *antidote* of ADR into CLE conceptual analyses and programs.

The costs involved in setting up CLE programs in law schools are a significant factor in the small number of such programs in Australia. ADR is not the only instance where CLE is restricted in the options it offers to law students; generally speaking, students participating in CLE are not allowed to follow through casework where an appearance in a court or tribunal is involved. A persuasive case can be mounted that a carefully framed Student Practice Rule, based upon North American models would benefit the student by providing an opportunity to experience court room advocacy. These benefits are equally applicable to the development of an analogous ADR Student Practice Rule.

How do or might ADR philosophical underpinnings be reflected in the rationales and practices of CLE? In this respect, ADR appears to offer much to improve desired outcomes, not just in the ADR sphere but for the totality of lawyer-client transactions. Given the emphasis on communication in ADR, the teaching and practice of ADR in CLE programs would greatly assist in producing a competent lawyer. The single greatest contribution that the incorporation of ADR would make to CLE is to introduce the idea of dispute resolution as a cooperative approach to prob-

lem-solving, rather than as competition. This is not to accept uncritically non-litigious methods for dispute resolution.

Further, not to include a significant role for ADR in CLE is to ignore the role ADR plays in legal practice. Legislatures have increasingly recognised ADR. There is an increasing acceptance and implementation of ADR processes in practice. To satisfy the demands of theory and practice, CLE would need to inculcate an appreciation of how ADR is currently used in Australia. Training in appropriate skills could be undertaken in order to develop an emphasis on settlement, rather than myopically concentrating on legal remedies and categories.

The sorts of benefits that accrue to CLE participants have been characterised as 'pragmatic-professional' — deeper learning of principle, recognition in the community, improving lawyering skills, opening doors to practice and improving lawyer professionalism. The incorporation of ADR in CLE programs would focus on the CLE participant as a future practitioner, drawing on skills recognised as central to practice: communication techniques, legal drafting, negotiation and practical legal research.

The challenge of ADR and alternative paradigms of dispute resolution: how should the law schools respond?

J Macfarlane
31 *Law Teacher* 1, 1997, pp 13–29

The dominant ideology of law school remains the study of appellate decisions and an analysis of rights-based positions and arguments constructed by two or more warring sides. Certainly the adjudicative paradigm remains central to the practice of law and it is expected that legal education should reflect this. But there should be a re-evaluation of the balance struck in the law curriculum between an adjudicative paradigm for dispute resolution and alternative, consensual, interests-based models.

Law schools have an important leadership role to play in the development and integration of ADR curricula in legal education. The values and ideas — as well as the skills and knowledge — of those entering the profession are critical to its future development and even survival. It is at law school that these values and ideas are largely shaped and where there is the possibility of re-examining assumptions and sometimes reshaping them. One such notion is the assumption that the appropriate way to provide client service in most cases is to advocate a rights-based argument on her behalf.

Although in the last 10 years there has been a real growth in ADR scholarship, discrete ADR theory courses are available in few law schools and many undergraduate courses and even entire programs touch only tangentially on any ADR processes or concepts. Yet law schools should have an important leadership role to play in the development and integration of ADR curricula in legal education.

All courses which form a part of the law school curriculum should teach not only the traditional, rights-based approach to dispute resolution reflected in case law and statute but also an analysis of how disputes arise and their possible resolution from an interests-based perspective. Where relevant, courses should include material on the types of ADR practice and process which are being adopted in this particular area of law. Law students should understand how these processes work, why they might choose to opt in or out of them and how to advise clients accordingly and how effectively to represent clients in these procedures. This raises the need to teach appropriate performance skills, as well as the need to ensure that students understand the basic principles of consensual dispute resolution and its distinctiveness from the adjudicative model.

Challenging the dominant authority of adjudicative legal precedent with an alternative conceptualisation of outcome, reached through party agreement in mediation or pre-trial negotiation, is a difficult task in a culture that assumes that by far the most important result is that determined by a judge-adjudicator. The integration of ADR into law school curricula requires that we confront the 'we know best' tradition of law school and legal practice. Examining the possibilities and consequences of interest-based solutions which reflect actual needs as well as perceptions of entitlement threatens the commitment of legal education to an adversarial form of language and behaviour. It would be a mistake to underestimate the pervasiveness within the culture of both legal education and practice of some of these objections to an interests-based approach. At least some of these objections stem from a widespread lack of information and understanding of the implications of developing ADR models for the delivery of legal services.

Client demand for dispute resolution processes which are more flexible, quicker, simpler and less expensive is driving the expansion of both government-sponsored and private ADR programs. We have to educate the next generation of lawyers to meet this demand. Aside from reflecting the changing reality of legal practice, the integration of ADR into the law