

THE UNIVERSITY LAWYER AS COLLABORATOR AND FACILITATOR: A STUDY IN WORK-INTEGRATED LEARNING

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Abstract

This article explores the roles of the university lawyer as collaborator and facilitator, based on a case study of risk management by Australian university lawyers in work-integrated learning (WIL) programs. The case study supports a redefinition of role to incorporate not only what university lawyers do (practices), but how they do it (methods) and why they do what they do (strategies). Collaboration is conceptualized as a risk management method of university lawyers, and facilitation as a risk management strategy. Collectively, the risk management practices, methods, and strategies of university lawyers represent their risk management framework. In particular, the case study findings suggest that articulating the roles of collaborator and facilitator may quash misconceptions of university lawyers, and thereby have the potential to improve stakeholder relationships and legal service delivery on the college or university campus.

I. Introduction

This article explores the roles of the university lawyer as collaborator and facilitator, based on a case study of risk management by Australian university lawyers in work-integrated learning programs. Despite the Australia-centric nature of the study, the literature reveals clear parallels between the prevalence, organizational structure, issues, and work of university lawyers in Australia and the USA.¹ As such, it is argued that the findings can be applied by university lawyers in the USA to evaluate, articulate and promote their roles as collaborators and facilitators in higher education.

The role of university lawyers² has been a source of academic interest since the 1970's.³ Roderick Daane, writing in this journal in 1985, argued that "an examination

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1 See Craig J. Cameron, *Work Integrated Learning: A Study of Risk Management by University Lawyers* (Dec. 2016) (unpublished Ph.D. dissertation, Griffith University) (on file with author).

2 University lawyers are also known as college counsel/attorney, university counsel/attorney, and campus attorney.

3 See, e.g., Rufus J. Bealle, *Delivery of Legal Services to Institutions of Higher Education*, 2 J.C. & U.L. 5 (1974); Robert D. Bickel, *The Role of College or University Legal Counsel*, 3 J. L. & EDUC. 73 (1974); John E. Corbally, *University Counsel: Scope and Mission*, 2 J.C. & U.L. 1 (1974); Norman L. Epstein, *The Use and Misuse of College and University Counsel*, 45 J. HIGH. EDUC. 635 (1974); William F. McCarty & William N. Thompson, *The Role of Counsel in American Colleges and Universities*, 14 ABLJ. 287 (1977); Herman I. Orentlicher, *The Role of College or University Legal Counsel: An Added Dimension*, 4 J. L. & EDUC. 511 (1975);

of the way law is now practiced on campuses will illustrate the changed role of the campus attorney and suggest further evolution is likely,"⁴ and that the effectiveness of university lawyers in executing their role "will be keyed in part to their skill in knowing how to operate on campus – an often unnoticed common denominator of a successful university practice."⁵ Robert Bickel revisited the role of university lawyers in 1993, expressing concern that it may be misperceived or criticized by university stakeholders,⁶ and stressing the importance of university lawyers to institutional management as experts in higher education law.⁷

The university lawyer's role in higher education activities may be undermined by negative perceptions of university lawyers. Clients, acting on behalf of the institution, may react negatively when university lawyers raise legal problems,⁸ or consider the university lawyer obstructive by raising questions about processes, procedures and commitments when colleagues require more immediate action.⁹ For instance, Corbally recalled an academic administrator who complained that he could not find a "can do" lawyer.¹⁰ This criticism was unfounded given the author's experience that university lawyers share a common objective with academic administrators to "get things done" on behalf of the institution.¹¹ According to Bickel, such "lawyer-bashing," based on a perception that lawyers may "debilitate the decision-making process," is concerning because it devalues the role of the university lawyer as a facilitator of sound decision-making by university management.¹² Nevertheless Thomas acknowledged that these negative perceptions may be justified if the university lawyer is "unnecessarily cautious, confrontational, or domineering, or who is a mismatch with the institution's culture and needs."¹³ As a consequence, clients may not access legal services in the future if they encounter university lawyers who do not collaborate with clients, or fail to appreciate the importance of facilitating activities which achieve institutional goals. Clients who do not access legal services may expose the institution to legal risks which could have been managed in collaboration with university lawyers.

A case study of Australian university lawyers reported in this article supports a redefinition of role to incorporate not only *what* university lawyers do (practices), but *how* they do it (methods) and *why* they do what they do (strategies). Collaboration is

Richard J. Sensenbrenner, *University Counselor: Lore, Logic and Logistics*, 2 J.C. & U.L. 13 (1974).

4 Roderick K. Daane, *The Role of University Counsel*, 12 J.C. & U.L. 399, 400 (1985).

5 *Id.* at 409.

6 Robert D. Bickel, *A Revisitation of the Role of College and University Legal Counsel*, 85 ED. LAW REP. 989, 989 (1993).

7 *Id.* at 998.

8 Nancy L. Thomas, *The Attorney's Role on Campus: Options for Colleges and Universities*, 30 CHANGE 34, 35 (1998).

9 Corbally, *supra* note 3, at 4.

10 *Id.*

11 *Id.*

12 Bickel, *supra* note 6, at 997.

13 Thomas, *supra* note 8, at 35.

conceptualized as a risk management method of university lawyers, and facilitation as a risk management strategy. Collectively, the risk management practices, methods and strategies of university lawyers represent their risk management framework. In particular, the case study findings suggest that articulating the roles of collaborator and facilitator may quash misconceptions of university lawyers, and thereby have the potential to improve stakeholder relationships and legal service delivery on the college¹⁴ or university campus.

The remainder of this article is structured as follows. Part II defines risk management and work-integrated learning, providing context to the case study and the roles of the university lawyer as collaborator and facilitator. Part III reviews the literature that describes and analyses the role of university lawyers in higher education. Two roles which emerge from the literature – the university lawyer as collaborator and facilitator – suggest that role is not confined to the practices of university lawyers, but may involve a broader framework of practices, methods and strategies. Part IV provides a brief description of the case study design employed, including scope, interview design, case selection, data collection and data analysis. Part V describes and analyses the experiences of university lawyers as collaborators with various university stakeholders, as well as facilitators in relation to WIL programs. Facilitation operates on two levels. University lawyers facilitate the delivery of WIL placements¹⁵ for students and facilitate risk management by WIL disciplines.¹⁶ Part VI is a discussion which situates the university lawyer as facilitator and collaborator in the literature, before concluding (Part VII). In particular, the author argues that the recognition and promotion of these roles as part of the university lawyers' risk management framework may improve client relationships and the delivery of legal services.

II. Risk Management by University Lawyers in WIL

This article examines the roles of the university as collaborator and facilitator through a lens of risk management, as it applies to one higher education activity: work-integrated learning (WIL). The meaning of the term WIL can be a source of semantic confusion. It is a term used by different disciplines, and in different countries, to describe similar processes of combining practical work and learning within a curriculum.¹⁷ Other terms used to describe WIL include internship, cadetships, cooperative education, placement, practicum, clinical rotations / program / internship / clerkship, sandwich course / year, professional practice, service learning and experiential

14 The author refers to university, and not college, throughout this article because the lawyers studied were selected from Australian universities. Notwithstanding this, it is important to acknowledge that the case study findings apply equally to colleges, college stakeholders and lawyers involved with colleges.

15 WIL placement is the time when students are in the workplace as part of a WIL program.

16 The WIL discipline is the academic discipline responsible for delivering the WIL program.

17 See, e.g., Phil Gardner & Kenneth R. Bartkus, *What's in a Name? A Reference Guide to Work-Education Experiences*, 15 ASIA-PAC. J. COOP. EDUC. 37 (2014); Janice Orrell, *Work-integrated Learning Programmes: Management and Educational Quality*, in QUALITY IN A TIME OF CHANGE: PROCEEDINGS OF THE AUSTRALIAN UNIVERSITIES QUALITY FORUM 2004; CAROL-JOY PATRICK ET AL., THE WIL [WORK INTEGRATED LEARNING] REPORT: A NATIONAL SCOPING STUDY., www.altc.edu.au.

learning and fieldwork.¹⁸ WIL, unlike the other terms, makes explicit the purpose of the curriculum, distinguishing WIL from other forms of work-based learning that do not entail the integration of university study and practice.¹⁹ For the purpose of this article, WIL is a curriculum design which combines formal learning with student exposure to real professional, work or other practice settings.²⁰ Although the role of university lawyers is studied in the specific context of WIL, it is argued that the research findings can apply to any higher education activity which involves university lawyers.

WIL is of strategic value to the university. Employers and students demand WIL because it offers an authentic learning environment which can improve students' professional awareness and generic skills (or 'work-readiness').²¹ In fact, many Australian universities have formally recognized the strategic value of WIL by incorporating the expansion of WIL opportunities to students in their strategic plans.²² Despite its strategic value, WIL poses a variety of legal risks to the university before, during and after the student's time in the workplace.²³ For the purpose of this article, a legal risk is defined as an event or circumstance that exposes the university to the possibility of liability or non-compliance with external or internal rules and regulations. The manifestation of these risks can have significant legal, financial and reputation consequences for the university.²⁴ University lawyers are engaged by the university to manage legal risks as part of their delivery of legal services. Risk management by university lawyers supports university goals associated with higher education activities, which in the context of WIL is to maximize the strategic value of WIL but minimize the legal risks that WIL entails.²⁵

18 See AUSTRALIAN WORKFORCE AND PRODUCTIVITY AGENCY, *WORK INTEGRATED LEARNING: AWP SCOPING PAPER* (2014); LESLEY COOPER ET AL., *WORK INTEGRATED LEARNING: A GUIDE TO EFFECTIVE PRACTICE* (2010).

19 Calvin Smith, *Evaluating the Quality of Work-Integrated Learning Curricula: A Comprehensive Framework*, 31 *HERD*. 247, 247.

20 The definition is adapted from *Id.* at 247 and Denise Jackson, *Employability Skill Development in Work-Integrated Learning: Barriers and Best Practice*, 40 *STUD. HIGH. EDUC.* 350 (2015).

21 Craig Cameron, *The Strategic and Legal Risks in Work-Integrated Learning: An Enterprise Risk Management Perspective*, 18 *ASIA-PAC. J. COOP. EDUC.* 243 (2017), 245, 246

22 *Id.* at 245.

23 For a table of legal risks in WIL programs derived from the literature, see *Id.* at 254-255. University lawyers have identified legal risks, also described as contract risks and program risks, in relation to WIL programs: Craig Cameron, *The Contract Risks to Universities of Work-Integrated Learning Programs*, 45 *A. BUS. L. REV.* 405 (2017); Craig Cameron et al., *The Program Risks of Work-Integrated Learning: A Study of Australian University Lawyers*, 40 *J. HIGH. EDUC. POL. MANAG.* 67 (2018); Craig Cameron and Christopher Klopper, *University Lawyers: A Study of Legal Risk, Risk Management and Role in Work Integrated Learning Programmes*, 37 *J. HIGH. EDUC. POL. MANAG.* 344 (2015).

24 For example, Cameron identified 12 reported Australian cases between 1998 and 2016 involving student action against the university in relation to WIL programs. The reported decisions would only be a fraction of the complaints that are received by the university: See *Id.* at 246-247, 256; There are also reported cases in the USA with respect to WIL. This includes the widely reported Florida Supreme Court decision of *Nova Southeastern University v Gross* 758 So.2d 86 (Fla. 2000) which examined the university's duty of care to a student who suffered harm during a postgraduate psychology internship, as well as cases involving academic dismissals and disciplinary dismissals from WIL programs: see Pamela Bernard, *Academic dismissals of students involved in clinical, internship or externship Activities*. Paper presented at the 16th Annual Law & Higher Education Conference (1995).

25 See Part V Section B and Figure 1.

For the purpose of this article, risk management is the practices, methods and strategies used by university lawyers to address legal risk. The risk management practices of university lawyers are the services, delivered to representatives of the university, which are designed to manage legal risk, whereas risk management methods are how university lawyers approach their risk management practices. For instance, how do university lawyers go about advising and educating campus staff and drafting and reviewing instruments such as agreements, policies and other resources? The risk management strategies of university lawyers are the overall plans for risk management that are aligned to university goals, namely why university lawyers engage in risk management. It is argued that the role of the university lawyer as a collaborator is a risk management method and their role as a facilitator is a risk management strategy with respect to higher education activities.²⁶

III. Roles of the University Lawyer

University lawyers have described the various roles they play which support institutional goals related to teaching, research and service, as well as the type of legal service delivered to fulfil their roles. Daane originally identified the university lawyer as an advisor-counsellor, educator-mediator, manager-administrator, draftsman, litigator, and spokesperson.²⁷ Quantitative studies measuring the work of university lawyers support these traditional and visible roles of the university lawyer.²⁸ Bickel and Ruger then suggested the emergence of two additional roles in higher education: the university lawyer as an insulator and dispatcher.²⁹ The university lawyer serves as an insulator (or buffer) in legal matters between campus staff and third parties such as external counsel, government agencies and parents, so as to minimize disruption on campus, and dispatches (or handles) legal matters received from campus staff, who may not know how to respond, in a timely manner.³⁰ More recently, Dunham argued that university lawyers' work in drafting and reviewing programs to assure and enforce compliance with regulations has created a role which is distinct from counselling and advocacy: the university lawyer as a regulator.³¹

University lawyers fulfil their role by practicing 'treatment law' and 'preventive [or preventative] law'.³² A university lawyer practices treatment law when resolving

26 See Part III, Section C.

27 Daane, *supra* note 4.

28 Dennis E. Gregory, *The Role of College and University Legal Counsel as Defined by Operational and Policy Making Responsibilities* (Aug. 1987) (unpublished D Ed. dissertation, University of Virginia (on file at University of Virginia)); FRANK B MANLEY & CO, *PROVISION OF LEGAL SERVICES: A SURVEY OF NACUA PRIMARY REPRESENTATIVES* (1992).

29 Robert D. Bickel & Peter H. Ruger, *The Ubiquitous College Lawyer*, 50 *CHRONICLE OF HIGHER EDUCATION* B1 (2004).

30 *Id.*

31 Stephen S. Dunham, *Government Regulation of Higher Education: The Elephant in the Middle of the Room*, 36 *J.C. & U.L.* 749, 788-789 (2010).

32 See Bickel, *supra* note 3; Corbally, *supra* note 3; Daane, *supra* note 4; Sensenbrenner, *supra* note 3; WILLIAM A. KAPLIN & BARBARA A. LEE, *THE LAW OF HIGHER EDUCATION* (5th ed. 2013).

an actual legal process such as litigation by or against the university, or non-compliance with internal regulations, whereas a university lawyer practicing preventive law takes action before legal problems arise.³³ Risk management, an evident component of preventive law, is made explicit in the various roles of the university lawyer. Two additional roles of the university lawyer, that appear to support risk management, also emerge from the literature – the university lawyer as collaborator and the university lawyer as facilitator.

A. Collaborator

The university lawyer may perform the role of collaborator when providing advice, educating university management, and drafting and reviewing documents. The literature emphasizes the importance of collaboration in three relationships: university lawyers and academic administrators; university lawyers and the operational division responsible for insurance and risk related matters at the university (insurance-risk); and among university lawyers. University lawyers collaborate with their colleagues from other universities. Fleming acknowledges that, in the Australian context, networks with lawyers at other universities are a valuable resource in a legal office with limited resources, and describes the nature of the collaboration:

Apart from meeting on a quarterly basis, we often e-mail each other to “bounce” ideas, or alert each other to problems. For example, university lawyers across Australia recently co-operated to insist (successfully) on changes to some rather unacceptable terms of a contract to which all Australian universities were a party.³⁴

Ruger argues that legal practice in higher education is collaborative, that the National Association of College and University Attorneys (NACUA) has contributed to fostering a sense of community among university lawyers, and that this spirit is evident in most university legal offices.³⁵ Glick provides some empirical evidence of collaboration between university lawyers, having interviewed 20 university lawyers about how institutions learn from each other when responding to the law, as part of a broader research project. Findings included that universities collaborated to solve legal problems, with one university lawyer acknowledging that “there is a lot of sharing and we probably end up with a lot of policies that look very similar.”³⁶

University lawyers also collaborate with insurance-risk about insurance coverage to alleviate university staff concerns about personal liability,³⁷ and to ensure that the

33 KAPLIN & LEE, *supra* note 32, at 163.

34 Helen Fleming, *A most peculiar practice? The role of the university in-house lawyer: Challenges for the new millennium. Paper presented at the Association for Tertiary Education Management Conference* (1999).

35 Peter H. Ruger, *The Practice and Profession of Higher Education Law*, 27 STRETSON L. REV. 175, 192-193 (2007).

36 David M. Glick, *Learning by Mimicking and Modifying: A Model of Policy Knowledge Diffusion with Evidence from Legal Implementation*, 30 J.L. ECON. & ORG 339, 362 (2014).

37 KAPLIN & LEE, *supra* note 32, at 165.

university receives the maximum benefit from its insurance policies.³⁸ Insurance personnel deal with insurance-related matters, including the adoption and variation of policies and the handling of claims made by or against the university, whereas university lawyers educate, advise and prepare and review documents designed to prevent the manifestation of legal risk. Nevertheless, university lawyers and insurance personnel have been described as “natural allies”: they are both in the business of risk management and both wanting to protect the university from a litigious environment.³⁹ University lawyers collaborate with insurance-risk when reviewing and finalizing insurance policies, particularly coverage of risks, by combining their expertise in insurance, risks to the university, legal interpretation, and knowledge of settlements and judgements concerning the manifestation of legal risks.⁴⁰ The legal knowledge of university lawyers and knowledge of the insurance market and customs retained by insurance-risk can be complementary. A university lawyer working closely with insurance-risk can understand the fundamentals of insurance coverage and can apply their legal and insurance knowledge to improve university insurance programs.⁴¹

University lawyers collaborate with academic administrators to achieve university goals. Collaboration entails the merging of legal and academic expertise as part of a maturing relationship.⁴² In particular, collaboration requires the university lawyer to understand the administrator’s purpose of the activity within the broader context of achieving institutional objectives, to apply their legal knowledge and to work with the administrator to manage the legal risks.⁴³ Collaboration equips university lawyers with an intimate understanding of university operations, thereby assisting them in anticipating legal risks and identifying university areas which require greater allocation of legal resources because of their higher risk.⁴⁴ The importance of collaboration is supported by recent empirical research. A study by Hustoles included open ended questions which invited university lawyers to recommend ways in which department chairs could deal more effectively with legal risk and risk management. The prominent themes in the responses of university lawyers included the recognition by department chairs of the university lawyer as a resource, as well as greater university lawyer involvement with department chairs in terms of legal advice, education, and other relationship building activities.⁴⁵

38 Howard Ende, Eugene R. Anderson & Susannah Crego, *Liability Insurance: A Primer for College and University Counsel*, 23 J.C. & U.L. 609, 716-717 (1997).

39 Id. at 716.

40 See Ende, Anderson & Crego, supra note 38; John F. Adams & John W. Wall, *Legal Liabilities in Higher Education: Their Scope and Management*, 3 J.C. & U.L. 215 (1976).

41 Ende, Anderson & Crego, supra note 38, at 717.

42 See Bickel & Ruger, supra note 29.

43 Id.

44 See Bickel, supra note 3, at 76.

45 Carol L J Hustoles, *Through the Eyes of Higher Education Attorneys: How Department Chairs are Navigating the Waters of Legal Issues and Risk Management* (Jun. 2012) (unpublished Ph.D. dissertation, Western Michigan University (on file with ProQuest Dissertations & Theses Global)).

B. Facilitator

The university lawyer may also execute the role of facilitator when providing advice. The primary objective of providing advice is to facilitate activities which achieve institutional objectives. Scaduto succinctly describes the facilitative approach in this way: “A counsel’s role is not to tell people what they cannot do, but to help them accomplish what they want to do.”⁴⁶ Corbally, drawing on his experiences with university lawyers as an academic administrator, initially alluded to the facilitative approach of university lawyers. The university lawyer tends to be a “conservative voice in the management team,” raising questions of university management about processes and procedures.⁴⁷ Whilst others perceive the university lawyer to be obstructive, Corbally’s experience was that university lawyers worked with management to achieve a common objective.⁴⁸ Daane refers to Corbally and expands this initial conception by analogizing the university lawyer as a facilitator:

There will be times, for example, when the lawyer’s advisory role will be to flash a red stop signal and thus to prevent a statutory violation or some other problem. Much more often, however, the lawyer’s role is to facilitate the accomplishment of an institutional objective in a way consistent with the law. The red light function is important, but the green light should shine more often.⁴⁹

More recently Ward and Tribbensee relied on the ‘facilitator university’ model originally devised by Bickel and Lake⁵⁰ and further developed by Lake⁵¹ to argue that the goals and mission of the university, as well as legal issues should be considered by university lawyers when advising the client.⁵² They argue that “the facilitator model is one in which the university and members of the campus community share responsibility for managing risks.”⁵³ According to Lake, the facilitator university is a social and legal model which can strike an appropriate balance between university control and student freedom to provide a fair allocation of legal rights and responsibilities between university and student that maximizes student safety and promotes the mission of the university. Students and the university share the responsibility for student safety. The facilitator university accepts reasonable risk as part of its mission because students can learn from risky activities. Students have the freedom to participate in the activity which creates risk, but the university is responsible for ensuring the risk is reasonable through appropriate planning as well as providing guidance, warning and instruction to

46 Sara Lipka, *The Lawyer Is In*, 51 CHRONICLE OF HIGHER EDUCATION A19 (2005).

47 Corbally, *supra* note 3, at 4.

48 *Id.*

49 Daane, *supra* note 4, at 409.

50 ROBERT D. BICKEL & PETER F. LAKE, *THE RIGHTS AND RESPONSIBILITIES OF THE MODERN UNIVERSITY: WHO ASSUMES THE RISKS OF COLLEGE LIFE?* (1st ed. 1999).

51 PETER F. LAKE, *THE RIGHTS AND RESPONSIBILITIES OF THE MODERN UNIVERSITY* (2nd ed. 2013).

52 Paul Ward & Nancy Tribbensee, *Preventive Law on Campus*, 35 CHANGE 16 (2003).

53 *Id.* at 19.

the student so that they can make an informed decision about the activity and its attendant risks. Legal rules can formalize this shared responsibility by requiring universities to take reasonable care to prevent foreseeable risks and for students to accept the responsibility of obvious risks.⁵⁴

Ward and Tribbensee appear to focus solely on the university mission component of the facilitator university model to make the same point as Corbally and Daane – the significance of institutional objectives when university lawyers work with university management. For instance a university lawyer taking a facilitative approach does not simply advise an academic administrator that a proposed activity is illegal or possesses obvious risk, but asks questions to understand the goal of the activity or its relationship to the mission of the university.⁵⁵ The lawyer may suggest alternatives that minimize risk or that achieve the goal, thereby giving an activity the ‘green light’. A recent dissertation study of three university lawyers by Block suggests that some university lawyers perceive their role as someone who facilitates, but does not make a decision, on a course of action. As one university lawyer put it: “‘you just realize that this deal’s not going to get done unless ... you, as the attorney, put together the building blocks to make a deal happen.’”⁵⁶

C. Conceptualizing the Roles within a Risk Management Framework

The literature intimates that risk management by university lawyers is not confined to their practices but may involve a broader framework of practices, methods and strategies. The roles of the university lawyer as advisor, educator, drafter and reviewer of documents are examples of risk management practices: the services that are designed to manage legal risk, delivered by university lawyers to representatives of the university. However, collaboration with outside university lawyers, university management and insurance-risk, as well as the facilitation of activities that achieve university objectives, are not risk management practices of university lawyers. Collaboration may be a risk management method, that is, how university lawyers approach their risk management practices; facilitation may be characterized as a strategy, employed by university lawyers, which is aligned with the university goals associated with the higher education activity (in this case, WIL). University lawyers may not only facilitate the delivery of activities that can meet institution objectives; they may also facilitate risk management by other members of the university community who share responsibility for risk management. Collectively, the various roles of the university lawyer can be described as the risk management framework of university lawyers.

Collaboration and facilitation appear in the literature as roles which support the advice, education, drafting and review of documents by university lawyers as part of their risk management framework. However, there are no empirical studies that describe and analyze the roles of collaborator and facilitator in a systematic

54 LAKE, *supra* note 51.

55 Ward & Tribbensee, *supra* note 52, at 19.

56 Jason A. Block, *The Law Comes to Campus: The Evolution and Current Role of the Office of the General Counsel on College and University Campuses* (Oct. 2014) (unpublished Ph.D. dissertation, University of Kentucky (on file with University of Kentucky)).

way. The study reported in this article addresses this empirical gap, examining the roles of the university lawyer as collaborator and facilitator through a lens of risk management, as it applies to WIL. A qualitative research design was selected because of its compatibility with the research purpose. The case study provides a rich description of university lawyers' experiences as facilitators and collaborators, which can deepen understanding about the phenomenon being studied, being the role of university lawyers, and enable readers to assess the transferability of the research findings to their circumstances, and to higher education activities other than WIL.

IV. Research Design

This research is part of a multiple instrumental case study⁵⁷ of 13 Australian university lawyers. The author has previously reported on the legal risks that university lawyers manage with respect to WIL programs,⁵⁸ as well as their risk management practices.⁵⁹ The research question relevant to this study is: *how do university lawyers manage legal risk with respect to WIL programs?* Collaboration and facilitation emerged as the dominant roles of university lawyers which underpinned their risk management methods and strategies respectively. A summary description of the study scope, interview design, case selection, data collection and data analysis are provided in the sections which follow.

A. Scope

The university lawyers selected for the case study were in-house counsel only, namely a qualified lawyer, employed by the university, who delivers legal services to the university. Conversely, external counsel represents a law firm engaged by the university to deliver legal services. Compared to their external counterparts, the literature suggests that in-house counsel is more accessible to university staff;⁶⁰ specializes in higher education law; is immersed in and familiar with the cultural and strategic nuances of the institution; is focused on the one client (the university) and develops experience in addressing recurring legal problems.⁶¹ Familiarity, accessibility, focus and expertise have the potential to promote preventive lawyering.⁶² For these reasons, it was thought that in-house counsel was likely to be more involved with overall risk management in relation to WIL programs and thus could provide a richer understanding of their experiences.

Although the study was specific to university in-house counsel, it is argued that the findings can apply to external counsel practicing higher education law,

57 ROBERT E. STAKE, *THE ART OF CASE STUDY RESEARCH* (1995).

58 Cameron *supra* note 23; Cameron et al., *supra* note 23.

59 Craig Cameron, *Risk Management by University Lawyers in Work Integrated Learning Programs*, 45(1) *MON. ULR.* (forthcoming).

60 See Jonathan Peri, *The Wisdom of Employed General Counsel in Higher Education*, 18 *WIDENER. LJ.* 191 (2008).

61 See Bealle, *supra* note 3; McCarty & Thompson, *supra* note 3; Sensenbrenner, *supra* note 3.

62 See Bealle, *supra* note 3.

and lawyers representing other tertiary institutions such as colleges. All lawyers involved with higher education can apply the roles of collaborator and facilitator as a means of promoting access to and improving the delivery of legal services.

B. Interview Design

The interview design, which received university ethics approval,⁶³ began with structured interview questions to gather demographic information about the university lawyer and their legal office. This was followed by more open-ended questions about legal risk and risk management by university lawyers. A list of template questions for each interview is outlined at Table 1. The interview also incorporated follow up questions not included in the list, as well as prompts and probes derived during the interview.

Table 1: Interview questions

Q	Interview Question
1	What is your position at the university?
2	How many university lawyers (total / full time equivalent) are employed at the university?
3	How many years have you been employed as a university lawyer (total / current university)?
4	Can you describe the organizational structure in which legal services are delivered?
5	Do you have a dedicated person in your office for handling legal work concerning WIL programs? (if yes) Is that person you?
6	Do you have a person recognized in your office who handles most of the legal work concerning WIL programs? (if yes) Is that person you?
7	How would you describe your current role in relation to WIL programs?
8	What are the legal risks that you manage in WIL programs?
9	What do you do to manage the legal risks in WIL programs?
10	Does risk management with WIL programs differ from risk management with traditional study programs? If so, how?
11	What are the challenges with managing legal risks in WIL programs?
12	What assists you to effectively manage legal risks in WIL programs?
13	What recommendations would you make to the university to improve risk management in the context of WIL programs? What would be the impact (if any) of each recommendation on your role?
14	Do you have any comments not covered by the interview questions that you feel would contribute to an understanding of your role, legal risk or risk management in the context of WIL programs?

A separate interview guide was kept for each university lawyer to ensure consistency and rigor in the interview process. The guide includes space for inserting the interview details as well as the university lawyer’s unique ID for the case study, a script to introduce each interview, interview questions and a pre- and post-interview checklist. Each participant was assigned an ID number to promote anonymity and confidentiality, which has been converted to pseudonyms in this article for readability.

63 Griffith University Ethics Approval AFE/19/13/HREC.

C. Case selection

A limitation of this study is the sample size. Unlike quantitative research, the case study findings from a sample cannot be generalized to a population of university lawyers. Despite this limitation, several strategies were employed to promote the validity or ‘accuracy’ of the research, including rich description of university lawyers’ experiences in the case study write up, and maximum variation sampling⁶⁴ to select university lawyers for the case study. These strategies were designed to garner and present multiple perspectives on risk management, so that a greater range of readers may identify with the university lawyers’ experiences and apply the findings described in the research.

Maximal variation sampling was employed to gain diversity of universities, legal offices and university lawyers. 13 university lawyers were selected from 12 university sites and stratified according to the following demographic characteristics: university lawyer length of experience and position; State and Territory of primary university site in Australia; university type; and size of legal office (total number). A case typology was maintained during case selection, with other demographic information collected during the interviews (university lawyer background, recognized WIL lawyer, and office structure) added to the case typology. A finalized case typology is at Table 2.

Table 2: Case typology of university lawyers

State or Territory of main campus	N	University type	N	Legal office size (Number)	N	University lawyer experience	N
New South Wales	3	GO8	5	2 to 5	6	2 to 4 years	4
Victoria	3	Technical	2	6 to 9	6	5 to 9 years	5
Australian Capital Territory or South Australia	3	New Generation	2	Greater than 9	1	Greater than 9 years	4
Western Australia	2	Regional	2				
Queensland	2	Gumtree	2				
Position	N	Recognized WIL lawyer	N	Office structure	N	University lawyer background	N
University lawyer	9	No	10	Flat	8	Mix	8
Manager	4	Yes	3	Hierarchical	5	Private sector	3
						Public sector	2

The two general categories of demographic information (as represented in the case typology) are university sites and university lawyers. There are 41 Australian universities, which are generally classified into five types based on age, origin and/

64 Maximal variation sampling is a qualitative sampling technique in which the researcher selects cases that have different demographic characteristics: JOHN CRESWELL, *EDUCATIONAL RESEARCH: PLANNING, CONDUCTING, AND EVALUATING QUANTITATIVE AND QUALITATIVE RESEARCH* (3RD ED) (2008), 214.

or location: Technical;⁶⁵ Group of Eight (G08);⁶⁶ Gumtree;⁶⁷ New Generation;⁶⁸ and Regional.⁶⁹ The five types, including the relevant universities that apply to each type, are adapted from a classification conducted by Moodie.⁷⁰ A recognized WIL lawyer is a dedicated person in the legal office for handling legal work concerning WIL programs or recognized in the legal office as handling most of the legal work concerning WIL programs. The legal office for each case was categorized as flat or hierarchical. A flat structure involves a maximum two lines of authority—university lawyers are supervised by and report to a General Counsel or Director. A hierarchical structure involves a General Counsel or Director of the legal office or multiple operating divisions (which includes the legal office), and a second-in-command (2IC) such as a deputy counsel, associate director or senior lawyer who has the formal responsibility for supervising university lawyers and reporting to the manager.

University lawyers had to possess experience in delivering legal services to WIL programs; and a minimum two years' experience as a university lawyer. It was assumed that university lawyers with lengthier periods of service would have more experience with WIL programs and hence provide richer descriptions of their experiences.⁷¹ A mix of university lawyers who were General Counsel or Directors of the legal office was also sought. General Counsel and Directors have substantial experience with WIL as a university lawyer, but also may bring a different perspective on risk management, given that they have supervisory and reporting responsibilities. General Counsel and Directors are labelled 'Manager' in the case typology.

65 Technical universities: Australian universities established as technical institutes in a capital city and formally designated a university after 1987: Curtin University, Queensland University of Technology, RMIT University, Swinburne University of Technology, University of South Australia, and University of Technology Sydney.

66 Group of Eight universities: The oldest Australian universities in their mainland capital cities: Australian National University, Monash University, University of Adelaide, University of Melbourne, University of New South Wales, University of Queensland, University of Sydney and University of Western Australia.

67 Gumtree universities: Australian universities, established from the mid-1960s to the mid-1970s, that were distinctively different from the older capital city universities: Deakin University, Flinders University, Griffith University, La Trobe University, Macquarie University, Murdoch University, University of Newcastle and University of Wollongong.

68 New generation universities: Australian universities based on former colleges of advanced education, designated as universities around 1987 or as private universities, with most of their student load in cities of more than 250,000 people: Australian Catholic University, Bond University, Edith Cowan University, Torrens University, University of Canberra, University of Notre Dame, Victoria University and Western Sydney University.

69 Regional universities: Australian universities with most of their student load in centers with a population of fewer than 250,000 people: Central Queensland University, Charles Darwin University, Charles Sturt University, Federation University Australia, James Cook University, Southern Cross University, University of New England, University of Southern Queensland, University of the Sunshine Coast and University of Tasmania.

70 Gavin Moodie, *Types of Australian Universities*, ACADEMIA (Aug. 10, 2018), https://www.academia.edu/310547/Types_of_Australian_universities.

71 See Table 2. G08 universities are over-represented in the case study due to the experience of university lawyers. G08 university lawyers tended to have more experience than their colleagues at other universities, providing a better opportunity to learn about risk management.

D. Data collection and Analysis

The data collected for the case study is based on 13 face-to-face interviews with university lawyers, e-mail communications with university lawyers, and documents referred to by participants during the interview. The data were analyzed in four stages: initial reflexivity; eclectic coding;⁷² pattern coding;⁷³ and data representation. *Initial reflexivity* involved the author reflecting on each case and maintaining analytic memos about: the interview itself; potential codes, categories and themes; and the coding process adopted by the author, including decisions made about modifying codes. *Eclectic coding* techniques were then employed to create an initial code map for risk management by university lawyers. The initial codes relevant to the present study included: 'asking staff questions'; 'formal collaboration with WIL staff'; 'external validation of risk'; 'collaboration with insurance-risk'; 'outside university lawyers'; and 'facilitation'.

Pattern coding was then used to develop sub-categories and categories from the codes. The data from each university lawyer (or case) was categorized into 'risk management practices', 'risk management methods' and 'risk management strategies'. The risk management practices of university lawyers are discussed in a separate article,⁷⁴ and include advice, communicating directly with representatives of the host organization,⁷⁵ referring legal matters to a higher level of university management, drafting and reviewing WIL agreements,⁷⁶ educating WIL staff,⁷⁷ consulting during the development of WIL policies, reviewing WIL program documents⁷⁸ and preparing WIL resources.⁷⁹ The sub-categories attached to risk management methods were: 'asking staff questions', 'participation in formal WIL groups', 'external support for risk management practices', 'collaboration with insurance and risk personnel', 'communication with lawyers at other universities', 'accessibility in legal service delivery', and 'pragmatism in legal service delivery'.

72 Eclectic coding is a mix of various coding strategies. The coding strategies applied in the case study included: structural, descriptive, attribute, in vivo, simultaneous, versus and sub-coding. See JOHNNY SALDANA, *THE CODING MANUAL FOR QUALITATIVE RESEARCHERS* (2ND ED) (2013).

73 See MATTHEW MILES AND MICHAEL HUBERMAN, *QUALITATIVE DATA ANALYSIS: AN EXPANDED SOURCEBOOK* (1994).

74 See Cameron, *supra* note 59.

75 Host organization: A legal entity that accepts the student into the workplace as part of a WIL placement.

76 WIL agreement: A written agreement involving the university, host organization and/or student with respect to the WIL placement.

77 WIL staff: University employees involved with the management and/or delivery of WIL programs. They include WIL conveners, university supervisors (who may also be the WIL convener), WIL support staff (administrative, liaison or placement officers) and the management attached to a discipline delivering the WIL program. Collectively these persons are referred to as WIL staff and are members of a WIL discipline.

78 WIL program documents: documentation about the WIL program distributed to host organizations and students; these are commonly described as handbooks or guides.

79 WIL resources: resources for WIL staff about WIL agreements and risk management.

The two sub-categories of risk management strategies were ‘facilitate risk management by WIL disciplines’ and ‘facilitate the delivery of WIL placements for students.’ ‘Collaboration’ was the theme underpinning the risk management methods of university lawyers, and ‘facilitation’ was the theme that emerged from the risk management strategies of university lawyers. Both themes are reported in rich description and conceptualized as roles of the university lawyer in the case study findings and discussion which follows (*data representation*).

V. Results

A. *The University Lawyer as Collaborator*

University lawyers collaborate with WIL staff, insurance and risk personnel, and formal WIL groups to manage legal risk in WIL programs. University lawyers collaborate with WIL staff by asking questions about work-based activities for the purpose of eliciting the information necessary to manage various legal risks associated with WIL programs. Pragmatism and accessibility are two professional characteristics of university lawyers which underpin their collaboration with WIL staff. External parties including government authorities, private firms and lawyers at other universities also provide support for the risk management practices of university lawyers by advising, educating and validating university lawyers on WIL-related matters. Each relationship is discussed under the headings below.

Collaboration with WIL staff

University lawyers collaborate with WIL staff by adopting formal and informal methods of asking questions about the WIL program. A formal method of asking staff questions is a request for legal services form which staff complete and forward to the legal office. The form asks simple questions about the matter, what the staff member wants the university lawyer to do, and requests documentation (if applicable). The responses provide context about the activity so that the university lawyer can ask more targeted questions during the first conversation with staff. As Sue explained, the form:

helps us get a couple of steps forward before we have that first conversation. We’ve already got at least some information about it which we can read, and then ask questions if there’s anything that is unclear, as opposed to starting right at square one.

During the first conversation, an aspect often explored is whether student activities constitute work experience, a scholarship (with a work component), employment or a WIL placement. The first question that Emma and Jane ask is whether the work experience is a required part of the degree or part of a particular course that the student is enrolled in. Other questions include “what work are they actually doing, how long are they spending?” (Emma), “is it paid or unpaid?” (Jane), as well as a request for documentation already used by the academic discipline to gain a better understanding of the activity. The university lawyer can

then provide advice to structure the activity so that it meets the legal requirements which exempt students from being deemed employees under Australian labor law.⁸⁰ Asking targeted questions about student activities also enables the university lawyer to determine the appropriate agreement for managing risk, whether that is a scholarship, employment or WIL agreement.

University lawyers ask WIL staff questions about WIL programs for the purpose of assessing legal risk, solely or in collaboration with insurance-risk. Questions include the location of the WIL placement, any accreditation requirements attached to the WIL program, the responsibility for supervision, intellectual property (IP) created by students, the activities of the host organization and the proposed student activities during the WIL placement, the year level of the students, which is related to their level of knowledge and maturity, as well as the orientation/induction processes conducted by the university and the host organization. Sue will also ask WIL staff questions about the value or benefit of the activity to the university when a legal risk is identified. In this example, Sue recommended that a legal risk concerning insurance coverage of the host organization be transferred to the university's insurer because the value of the WIL experience outweighed the legal risk:

... And you have to weigh up... we don't do this alone, we do it obviously with our academic or WIL staff colleagues... what is the benefit of this experience to the student? Does it really outweigh any risks? Is there anything we can advise the student to do to sort of mitigate what we might see as potential risk by agreeing to take a particular clause out? You know, an easy example is if the company says, 'we just don't have insurance for visitors...' (it would be very unlikely). We can then say 'well, we've weighed it up... this experience is so valuable, we'll actually buy an extra piece of insurance to cover this cohort of students, or this student', but it's about sort of making that assessment about the value, about the risk, and about the benefits ...

Sue's line of questioning reflects the university lawyer's complementary roles as a facilitator and collaborator. Following collaboration with WIL staff, the strategic value of the WIL activity was such that Sue recommended additional insurance coverage to control and transfer the legal risk, which would thereby facilitate the WIL placement.

The purpose of the questioning at times is for WIL staff to think about the legal risks associated with the WIL program. For instance, Jess was approached about a nursing student with a latex glove allergy and a nursing student with dwarfism. This stimulated a number of questions in which Jess placed the onus on WIL staff to identify the risks and to provide solutions to address the risk: "I tried to get them to think through where the risks are, and what we can actually do. Is there a solution to it?" Jess not only advised WIL staff about anti-discrimination law, but also brainstormed with WIL staff to come up with practical ideas for making

80 See Fair Work Act (Act No. 28/2009) (Aus.). For a summary of Australian labor laws in relation to WIL, see Craig Cameron, *The Vulnerable Worker? A Labor Law Challenge for WIL and Work Experience*, 14 ASIA-PAC. J. COOP. EDUC. 135 (2013).

reasonable adjustments in the workplace. Jess suggested this solution-oriented approach is a skill possessed by lawyers:

I find people who are trained lawyers, they're clear thinkers, and can think outside the square a bit, whereas I find that academics know their stuff, but you might suggest something that's quite common sense (to us), but they haven't thought about it...

Steve will ask WIL staff, “what’s the worst-case scenario?” and “what could go wrong in this placement in your view?” In an IP context, Peter and Jane ask questions intended to promote WIL staff awareness about the legal consequences of students assigning their IP rights to the host organization. In this way, an informed decision can be made by the WIL discipline about the legal risk. For instance, Peter asked WIL staff, “do you realize what this means?” with respect to the proposed assignment of IP created by a postgraduate student before the WIL placement (known as background IP). Jane asks WIL staff whether they are aware of the general rule under university IP policy that the student owns the IP they create in the course of their studies, and asks whether WIL staff will need examples of the work for assessment purposes. Jane also has WIL staff think about whether assignment of IP to the host organization is essential, because the student may not appreciate the legal consequences of relinquishing their IP rights.

Accessibility in legal service delivery

Accessibility is a critical enabler of collaboration. The legal office can be unaware of WIL programs and the legal risks they may entail, unless WIL staff request legal services. For Sue, being accessible means that WIL staff can receive the right advice, which at times may be a simple reassurance that “yes what you’re doing is fine.” Jess explained the concept of accessibility and its importance in these terms:

... I come from the school of thought that it is incumbent on me to make people feel comfortable enough with me to come and tell me scenarios so that I can protect the University if there is an issue. So I’m not a believer in the ‘ivory tower’. I believe in being approachable, and actually building up really solid relationships, so someone can pick up the phone... so we’ve got an instruction mechanism where people will send an email and fill out forms ... some people find that just a pain in the backside if you want something really quick, now. My view is ‘just pick up the phone and ask’ ... I’d rather be asked than not asked. So I’m trying to be inclusive, and trying to be included in things rather than not.

An interesting side issue here is the suggestion by Jess that for some WIL staff the request for legal services form, a formal method of asking WIL staff questions designed to improve service delivery, may deter WIL staff from accessing legal services. In the interests of accessibility, WIL staff have the option of contacting Jess direct.

University lawyers advocate and demonstrate their accessibility to WIL staff when educating WIL staff about risk management in WIL programs (a risk management practice) and collaborating within WIL groups. The legal office of

Peter is proactive in educating WIL staff, approaching an academic discipline to offer training on an issue that the legal office may be dealing with on a regular basis. Peter's experience is that conducting the training on the academic discipline's "home turf" encourages more WIL staff to participate in training, thereby appreciating that university lawyers are accessible. The notion of accessibility is clearly an important attribute of risk management for university lawyers. Further, training relieves the fear factor of university lawyers, particularly for lower level staff as demonstrated by this exchange with Peter:

Peter: If we seem to be getting a flood of a particular thing... one of us, [name deleted] or I, will approach that area, and say, 'do you want us to come in to your next morning tea, and have it face to face so we're approachable?', because the lawyers are often seen as scary... and we're not very scary, but you know what I mean. Sometimes it's people that are lower level that don't feel they've got the right to come and ask us those things, so it would benefit a lot from us being out there as well.

Interviewer: So availability is important, being seen to help...

Peter: and going there on their turf. We used to do them here (downstairs), and I think the whole concept of even coming to [building name] puts people off. We go out to the areas, and we find it much more receptive.

A similar message of accessibility is promulgated by John when collaborating in a formal WIL group: "I'm your lawyer, I'm friendly... if you've got an issue, knock on the door." Accessibility appears to be a condition for achieving shared responsibility for risk management in WIL programs. University lawyers are responsible for delivering services that support risk management by WIL disciplines, but this support is contingent upon the WIL discipline approaching the legal office. University lawyers encourage collaboration in risk management by being accessible, as well as by being pragmatic.

Pragmatism in legal service delivery

University lawyers are pragmatic in their method when addressing legal risks. They appreciate the unavoidable legal risks associated with WIL, but also the strategic value of WIL to the institution, which may necessitate the acceptance of risk in order for the WIL placement to proceed. Tom explained the pragmatic approach taken by the legal office when advising WIL staff on risk:

We're a fairly pragmatic team, so when we're explaining legal risk, we've always approached it on the basis that anything the University does carries a risk ... sometimes that can be legal. If we wanted no risk, we would do nothing. So we can't have a no-risk situation. What we have to do is understand the risk that we're going into, and if we accept it we accept it.

For the student with dwarfism and the student with the latex allergy, Jess collaborated with WIL staff to devise practical solutions which ensured that reasonable adjustments were made in the workplace. Jess also adopted a pragmatic approach when advising WIL staff about the appropriate disciplinary action to take against a nursing student who took selfies of a patient and posted them on Face Book, in potential breach of Australian privacy laws with respect to health

information.⁸¹ Jess had WIL staff, who were “quite emotive,” to think about the gravity of the student misconduct, and about the potential psychological and financial consequences for the student of being withdrawn from the program.

Pragmatism was particularly evident when university lawyers managed legal risks within the WIL agreement. In the process of drafting WIL agreements, Kate and Tom were concerned that a WIL placement may not proceed if the host organization was presented with a legally complex and lengthy WIL agreement. As Kate explained:

If we couldn't be a bit practical in our approach, then organizations wouldn't want to take our students for placements, for example if we had a 30 page legal agreement for them to sign for every student they took, they would run a mile – hence we have tried to in our legal agreement (well not do the bare minimum) but do enough so that both [university name] and the student are protected.

Tom explained that there were two “flavors” of WIL agreement prepared by the legal office – “soft” and “legalistic.” The university lawyer tailors the WIL agreement according to the flavor selected by the WIL discipline. A food metaphor also appears in Tom's explanation of the pragmatic approach to preparing a soft WIL agreement:

Interviewer: You actually obtain instructions from your client about the “flavor” of the document that they want?

Tom: Yes, because... again, it's that digestibility by the sector. If we create a document that scares the bejesus out of everybody... look, it's legally lovely, but it scares the bejesus out of every host, and no one will sign it, then it's not a useful document. So if the document can sound nicer, but still have all of those legal bells and whistles in there (but just in different language), that protects the University, they set the expectations, they protect the student, they do everything they're supposed to do, but they don't seem legalistic... that may be the preferred model.

The comments of Kate and Tom also reveal the balance between risk management and pragmatism. It is all very well to have a short agreement devoid of technical legal language so as not to deter host organizations, but both university lawyers are conscious that the agreement must ensure student and university interests are protected. University lawyers are mindful of both the strategic opportunity of securing the WIL placement and the legal hazards that the WIL placement may entail for the student and the university.

When reviewing WIL agreements, university lawyers are mindful of the practical consequences of rejecting provisions of a host WIL agreement,⁸² or of not accepting amendments proposed by the host organization to a university WIL agreement,⁸³

81 See Cameron et al., *supra* note 23 at 75-76.

82 Host WIL agreement: A WIL agreement prepared by the host organization.

83 University WIL agreement: A WIL agreement prepared by the university, which is often a template for use by one or more academic disciplines.

that may pose a legal risk. A pragmatic approach is required by university lawyers; otherwise the WIL placement may not proceed. University lawyers acknowledged three practical truths with respect to WIL programs:

1. The university needs the WIL placements – “the business wants this to happen from the Vice Chancellor down” (Steve);
2. Risk is unavoidable – “if we wanted no risk, we would do nothing. So we can’t have a no-risk situation” (Tom); and
3. The university may have to accept legal risks associated with the terms proposed by the host organization by virtue of truths 1 and 2 above.

Jess described the approach to reviewing WIL agreements as “exception-based.” Unless the legal risk is a “deal breaker,” Jess will advise WIL staff that the WIL agreement be accepted. Risk avoidance is the exception rather than the rule in approaching legal risk with respect to WIL programs. This pragmatic approach is reflected in the practices of Kate, Jane and Sue. Kate asks the question “‘look, can we live with that?’ As long as the roles and responsibilities and what they’re asking of our students (and of [university name]) are not totally outrageous, then generally speaking we agree.” Events or circumstances the university has no control over, such as agreement provisions that will cause the university to break the law or put the student at risk in some way, represent the legal risks that Sue will say to WIL staff, “can’t live with this... you need to try and negotiate this.” Jane described legal risks which should be avoided and cannot be changed through negotiation with the host organization as “deal-breakers,” meaning that the student should not be placed with the host organization.

Jess used an excellent analogy of a Commonwealth Bank of Australia loan document to explain pragmatism when reviewing host WIL agreements. The reference to the Commonwealth Bank of Australia is poignant as the case study revealed it tended to be larger organizations retaining multiple students on WIL placements that prepare their own WIL agreements. The analogy also covers the three truths understood by university lawyers about the demand for WIL placements, the unavoidability of risk and risk acceptance:

... The way I explain it to people is it’s like a mortgage document. If I put a Commonwealth Bank mortgage document in front of you, you either take it or you don’t take it, and you look like an idiot if you go back with a marked-up version of it. So you either sign it knowing the risks, or you don’t ... And so with the Commonwealth Bank scenario, you can either sit there and go, ‘I never want to sign a mortgage in my life’, but you’ll never own a property. So everything has its risk.

Simply put, the university either accepts risk in the WIL agreement (mortgage document) or avoids risk and misses out on the WIL placement (property). The role of the pragmatic university lawyer is to ensure WIL staff understand the legal risks before a decision is made to accept the risks and proceed with the WIL placement.

A pragmatic approach also relieves a potential fear by WIL staff that university lawyers will complicate their work. Fear was evident in the initial reaction by WIL staff to the introduction of WIL agreements at the university associated with Sue:

Initially because it was a big change, people thought, 'it's going to be so much more work, it's going to make our jobs harder, hosts won't want to take our students, they'll take them from other Universities where they don't have an agreement'.

Sue was responsible for drafting the agreement templates, in collaboration with a formal WIL group. Sue's approach to agreement-making was to make the WIL agreement templates as short and simple as possible. The fear of WIL staff has been replaced with "a realization that it is a good way of protecting the students."

Collaboration in WIL groups

Formal collaboration with university management and WIL staff arises from the university lawyer's participation on a project, working party or committee related to WIL programs (WIL group). University lawyers and WIL staff primarily collaborate during the review of existing university WIL agreements and the drafting of new WIL agreement templates. For instance Kate drafted a simple WIL agreement template that could be used across disciplines:

So my role in the working party was to help establish a simplistic (when I say 'simplistic', it's not to take away from the importance of it) placement agreement, a template which [university name] could use without having to reinvent the wheel every single time a student went on placement.

The WIL group of Sue first conducted an audit of WIL programs across the university to identify their types, size and scope and then developed appropriate systems and structures required to support the programs. A catalyst for the group review of WIL programs was the attention paid by the Australian media and the Fair Work Ombudsman (FWO), a Federal government department which enforces Australian labor law, to work experience and WIL programs.⁸⁴ Sue drafted multiple WIL agreement templates tailored to the specific concerns of host organizations from the engineering and science disciplines, such as the ownership of IP and the protection of trade secrets and confidentiality. Like Sue, Chris drafted a series of WIL agreement templates as part of a new streamlined process for making and recording WIL agreements. Chris also advised the WIL group about the agreement templates, as it was each group member's responsibility to then present the agreements to the academic disciplines.

John is a current member of a WIL group. For John, the WIL group is valuable as a central point for communication of all WIL-related matters. This has enabled John to gather university WIL agreements from group members across disciplines, in order to understand the types of agreements WIL disciplines enter into, and to identify any legal risks. The ultimate aim is to standardize the WIL agreements and thereby minimize the legal risks. The WIL group is also a forum for John to advise WIL disciplines about various contractual issues and to promote the role and accessibility of the university lawyer to WIL staff.

84 See Cameron, *supra* note 80.

Collaboration with lawyers at other universities

University lawyers are a collegial group, a fact at odds with the popular notion of lawyers as combatants in an adversarial environment. University lawyers communicate with their colleagues at other universities individually and as a group, through the Society of University Lawyers (SOUL). SOUL is the national association of university lawyers in Australia. SOUL administers an electronic list for discussion on topics of interest (SOUL discussion list). E-mails sent to the SOUL discussion list are forwarded to all SOUL members and saved in an archive for member-only access. As the SOUL discussion list is a 'closed shop', the electronic archive could not be accessed. Nevertheless, Peter did search the archive following the interview and noted that most of the topics relevant to WIL involved compliance and war stories on specific host WIL agreements. SOUL also holds regular regional meetings of university lawyers from Eastern, Southern and Central/Western Australia, and convenes an annual conference attended by university lawyers and external counsel. A previous SOUL conference in the Australian State of Tasmania (2010) included a presentation and subsequent discussion concerning the impact of Australian labor law on work-based activities, including WIL programs. However it appears that the more productive outlets for university lawyer collaboration on WIL-related issues are regional meetings and the SOUL discussion list.

Lawyers from other universities advise, validate and educate their colleagues, many of whom may work in small legal offices and have limited tertiary experience. The SOUL discussion list provides a forum for university lawyers to share an issue about a host organization or a WIL agreement, to check whether other university lawyers have had the same issue, and to seek responses about how the issue was dealt with. Whilst WIL may not be a frequently discussed topic, the feedback from other university lawyers in a WIL context assured Chris that "you're on the right page, and you're in the right space, and you're not barking up the wrong tree... and we're all pretty much doing the same thing." The e-mails sent and received on a topic are also an education resource for the time-poor university lawyer. In fact, Jack and Tom are in the habit of saving e-mail strings on a topic from the SOUL discussion list for possible future reference.

Lawyers from other universities also serve as a source of truth when negotiating with large host organizations that are involved in WIL placements with multiple universities across Australian States and Territories. For instance Jack was once concerned with insurance provisions in a WIL agreement. The relevant host organization insisted that the WIL agreement it proposed had been signed by other universities, thereby setting an apparent precedent for Jack to follow. Jack was able to e-mail colleagues on the SOUL discussion list to verify the truthfulness of this statement. Communication with other university lawyers "destroys the bluffing" by host organizations. Tom provided this example:

Like a [host organization name] saying, 'everyone else has signed it, don't know what your problem is', and you ring around and they go, 'oh no, we've got a problem with it, we heard you signed it... no we didn't'. So it's dispelling those sorts of myths where it's been really useful.

University lawyers not only engage in myth busting but also form a collective voice that may strengthen the bargaining power of universities in contract negotiations. Jack noted that, through the SOUL discussion list, “sometimes you’re able to hook up with some other unis, and then you can negotiate as a group of universities, and it’s much more effective.” Tom recalled a case involving a suite of host organization agreements. The suite included a WIL agreement which proposed the assignment of student IP rights to a host organization as part of a stipend/scholarship arrangement:

There have been five emails go around about that from different universities that when the lawyers get to them, they go ‘ooh jeez this is awful’, and they send around an email saying, ‘has anyone else had any... read this one... what were your thoughts... and did you get any concessions from [host organization name] on it?’, because we try and use that collective bargaining as well...”

In this way the university lawyer may increase the negotiating power of its client, the university, by obtaining information from other universities and, in particular circumstances, by joining other universities in collective action.

Regional meetings also represent an excellent opportunity for university lawyers to discuss issues and developments related to WIL. The regional meetings provide an open forum for university lawyers to communicate with one another on WIL issues. Tom compared the freedom of communication at regional meetings with the SOUL annual conference in these terms:

So when we have regional university lawyers meetings, for example, those are the meetings where we tend to talk freely about stuff that’s been going on... so the national conferences we don’t really get that chance to be in a room, and say, ‘hey, did you guys know blah de blah’, so when we’re at those meetings people talk about what’s being happening at the university...

Collaboration with insurance and risk personnel

University lawyers collaborate with insurance and risk personnel with respect to WIL programs, who themselves engage in risk management by conducting formal risk assessments⁸⁵ and dealing with insurance-related issues. Universities allied to the university lawyers studied generally delivered risk management and insurance services as part of a combined operating division (with other functions) or in separate divisions (collectively described as insurance-risk). A university employee may perform one or both functions. Two of the university sites employed an insurance officer but had no person with an explicit risk management function. Although they are fellow risk managers, the nature and extent of collaboration with insurance and risk personnel varied amongst university lawyers. All four managers indicated during interviews that they collaborate with insurance-risk, compared to six of the remaining nine university lawyers.⁸⁶

85 A risk assessment involves quantifying the probability and consequences of the legal risk and making a recommendation about its treatment.

86 See Table 2.

This may be explained by the delegation practices of three managers, in which matters assessed as high risk or complex requiring the input of insurance-risk are retained by the manager, or the manager has a longstanding relationship with insurance and risk personnel.

Most university lawyers will refer WIL staff to and communicate directly with insurance-risk on WIL matters. Referral, communication or a combination of the two on a WIL matter is generally dependent on the nature of the legal risk. Sue refers clients directly to insurance-risk when a legal risk materializes, such as bullying, assault or student injury, or the risk of an activity during the WIL placement is assessed as high, whereas an insurance clause requested by the host organization, a potential legal risk, will result in direct contact with insurance-risk. Tom often approaches insurance-risk following a referral, to provide advanced warning about the impending request for advice, and later seeks feedback from insurance-risk about the advice, to ascertain its impact (if any) on current legal work for the client. Whilst general questions on insurance coverage are referred to insurance-risk, Tom approaches insurance-risk directly if an insurance issue arises during contract negotiations. Insurance-risk may also notify the legal office about matters requiring legal services in WIL programs. For Emma, risk management by university lawyers is often sparked by an enquiry about insurance coverage made to insurance-risk when an academic discipline proposes a new WIL program. Insurance-risk then share this intelligence with Emma about the new WIL program. Equipped with this information, Emma can approach the relevant WIL discipline and complete a review of the WIL program to ensure legal compliance.

The three primary matters which university lawyers refer clients to, and/or collaborate with insurance and risk personnel on, are the capping of liability in WIL agreements, unusual clauses in WIL agreements requested by the host organization and insurance coverage for indemnities in WIL agreements that are in favor of the host organization. The common objective of the latter matter is to determine whether the legal risk can be transferred by the university through insurance. For Jane and Steve, the process of addressing legal risk associated with indemnities is an informed one. The risk is identified by the university lawyer, quantified by risk personnel and transferred or avoided by recommendation of insurance personnel. Steve will not only refer WIL staff to insurance-risk following identification of the risk, but will also participate in discussions with the insurance broker, as well as insurance and risk personnel, before a final recommendation is made. Risk may be transferred by extending existing insurance coverage to meet the indemnity, known as a “reinstatement of insurance” (Jane). Steve, who appeared to have the closest professional relationship with insurance and risk personnel from the university lawyers studied, described why a close relationship is invaluable in terms of risk management. First, the university lawyer gains a greater appreciation of legal risk associated with WIL programs, so that an informed decision can be made on addressing risk. Second, legal risk can be dealt with very quickly through collaboration.

Collaboration with external parties

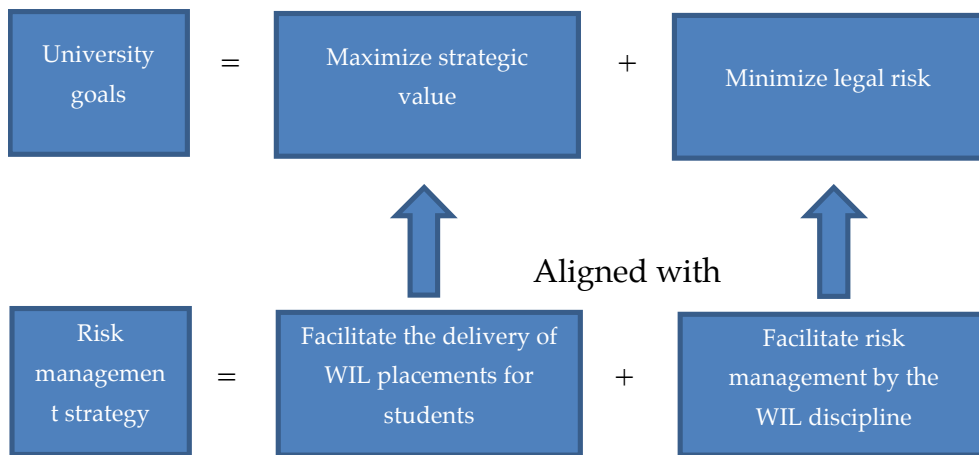
University lawyers also collaborate with external parties who provide support for their risk management practices. One particular legal risk in WIL programs is the

student being an unintended employee of the host organization.⁸⁷ Emma, Kate and Sue sought advice and clarification about this legal risk from the Fair Work Ombudsman (FWO), the Federal government agency responsible for enforcing Australian labor laws. University lawyers have also used information provided by FWO to draw the legal risk to the attention of academic administrators. FWO validated Emma’s concerns to university management that an unintended employment relationship in WIL programs was a legal and/or reputational risk for the institution that needed to be managed. The only two instances in which university lawyers sought external counsel on a WIL matter related to the same legal risk. Chris obtained tax advice about scholarship arrangements which incorporated a WIL placement, whereas Kate received legal advice that any activities forming part of an unpaid WIL placement would be exempt under existing labor laws.

B. The University Lawyer as Facilitator

Facilitation is the risk management strategy of university lawyers. Figure 1 illustrates how facilitation by university lawyers is aligned to the university goals attached to WIL. Broadly, there are two goals of WIL – to maximize the strategic value of WIL as a higher education activity (positive risk or opportunity) but minimize the legal risks of WIL (negative risk or hazard).⁸⁸ Facilitation as a risk management strategy has two aspects. Firstly, university lawyers facilitate the delivery of WIL placements for students, which supports the university goal of maximizing the returns from WIL as a strategic activity. University lawyers also facilitate risk management by the WIL discipline, which promotes the university goal of minimizing the legal risks of WIL. Both aspects are addressed separately in the sections which follow.

Figure 1: Facilitation as a risk management strategy in WIL programs



87 Cameron, supra note 23, at 411-412.

88 The two university goals are conceptualized by the author as strategic and legal risks in WIL programs. Risk management involves balancing strategic and legal risks: See Cameron, supra note 27.

Facilitate risk management by WIL disciplines

The WIL discipline is responsible for implementing risk management in its WIL programs. University lawyers facilitate risk management by the WIL discipline through collaborating with WIL staff and providing advice to WIL staff which identifies risk, assesses risk and suggests risk management methods. The activities of university lawyers which also support risk management by WIL staff involve WIL agreements, resources, program documents, policy and education.

Emma and Tom asserted that the university lawyer establishes a “framework” for WIL staff to manage legal risk. The framework to which they refer includes the WIL agreements, program documents and resources drafted and reviewed by the university lawyer. University lawyers establish a framework for managing legal risk, but it is the responsibility of WIL staff to employ the framework because university lawyers are not, nor do they have the time, resources or expertise to be managing the day-to-day operation of the WIL program. Tom described the challenge of designing a framework for WIL staff which has an appropriate balance between minimizing risk and facilitating the placement or “not spooking hosts”:

We can't predict every problem. So all we can do is set up a framework that we think has the right balance, and then give instructions on how to apply that framework and let people get on with it. We don't have the resources to look over people's shoulders all the time... we don't have the resources to manage those programs. So the risk... the issue... the challenge for us is getting the system right, that we think is balanced, so we're not spooking hosts, but you've got all the bells and whistles you need whether it's in fluffy language or not. Everyone knows the expectations of the program, so there is a process for the implementer of the program to manage the expectations of each level appropriately, and then there is the process for notifying us of any issues when they come up and need legal management. So as long as you've got that structure in place, that's really all the legal team can do to manage that risk. They try and put in place a structure that minimizes the risk as best it can without killing the program.

University lawyers produce a range of risk management tools for the WIL discipline, including their advice on legal risk and various WIL instruments, but the responsibility for whether and how the tools are then implemented rests with the WIL discipline.

University lawyers provide advice to support the decision-making of WIL staff pertaining to risk management. University lawyers stressed during interviews that they were advisors, not decision-makers, in WIL programs. In fact Jane makes sure that WIL staff understand that they are better placed to make decisions because of the relationship they have with the host organization and their superior knowledge of the WIL program. The advisor role of the university lawyer is to identify and assess risk and to suggest actions to manage risk, but the final decision remains with WIL staff on behalf of the university. Tom explained the distinction between advice and decision-making in the context of reviewing a host WIL agreement:

We provide a risk analysis to the University, and say, 'if we enter into this arrangement, this is the risk to the student, this is the risk to the University...

so our recommendation is that we don't actually sign this agreement... that we sign one of ours', but you know, it's for the person who's got the delegation to make that decision.

WIL staff (with the appropriate authority) can elect to reject the advice and accept legal risks that the university lawyer disagrees with. As John put it, "they don't have a problem with us providing fearless and independent advice... but they also don't have a problem with choosing not to necessarily go with our recommendations as well." This recognizes the reality that a university lawyer can develop frameworks and provide advice to manage legal risk, but the ultimate decision, as well as the ultimate responsibility, for implementing risk management is with the WIL discipline.

Facilitate the delivery of WIL placements for students

Another strategy of university lawyers is to facilitate the delivery of WIL placements for students when they provide advice, communicate directly with the host organization on WIL matters, and deal with WIL agreements. Facilitation is evident when Tom communicates directly with legal representatives from the host organization. Tom may accept changes to a WIL agreement that he does not agree with but that involves no shifting of risk to the university. This enables the WIL placement to proceed and gives the host organization representatives what Tom described as "a pyrrhic victory." For Jess, facilitating the WIL placement means adding value to the WIL agreement and not being unduly difficult, even in circumstances when the WIL discipline has negotiated and finalized a deal with the host organization before approaching the legal office for advice. Jess explained the thought process in risk management and distinguished lawyers who facilitate from lawyers who obstruct:

Generally I try to work through the parameters [of the situation] thinking about the relationship and what the real risk is. I mean, at one end of the spectrum you get some really anally retentive lawyers. I'm at the other end of the spectrum where we're here to not be an obstacle, we're here to keep a bit of an eye on things... and then jump in as necessary.

Emma operates on "a green light basis" with WIL placements if the risk associated with a WIL placement is low: "If risk is low, then I try to operate on a green light basis (for example, keep the contracts short and simple). No point trying to overcomplicate things or create roadblocks." Similarly, Chris facilitates the WIL placement by drafting short, plain English WIL agreement templates as revealed in this exchange:

Chris: ... there are a number of objectives [of the agreements]... one not to just have parties to the agreement, but two to make it user friendly for all parties (take out legal ease, make it as short as possible, but cover the essentials), and all the things that were not imposing obligations... weren't obligatory came out of the agreement.

Interviewer: Now why did you want to get rid of the legal ease and make the agreement shorter? Doesn't that put the host organization in a better bargaining position?

Chris: No, because it made it easier for the WIL practitioners that it was coming from them, just to... not hold up the process by them [host organization] having to send it off to their legal departments.

The simplified WIL agreement templates prepared by Chris and the green light operation of WIL placements by Emma demonstrate the strategic focus of risk management by university lawyers.

Sue specifically referred to “facilitation” when discussing the creation of WIL agreement templates for engineering placements. For WIL agreement templates that made provision for the assignment of student IP, Sue explained that facilitation was part of a balancing act involving risk management and student awareness of their IP rights:

We’re not trying to rip the students off. We’re trying to get a reasonable... middle ground that facilitates the placement, manages the risks (as the host perceives them and the University), but makes sure that they’re aware.

The same theme of balance was previously identified by Tom, when designing a risk management framework for WIL staff which minimizes legal risk but does not “spook hosts.” John expressed the balance as a challenge in terms of risk management. At the time of interview, John was in the process of gathering agreements from members of a formal WIL group for the purpose of standardizing the WIL agreements. University WIL agreements had already been developed with respect to the larger host organizations in the health discipline. John explained that small businesses “have no appetite to enter into a complex legal agreement.” The challenge for the legal office will be “trying to come up with an agreement that covers our risk to our satisfaction, whilst not scaring off the provider and having them walk away from being willing to provide a placement.”

Sue again referred to the balance when discussing the role of university lawyers. Sue acknowledged that risk management by university lawyers involves a balance between student learning outcomes (positive risk) and risk to the university (negative risk). Nevertheless, the legal office should not obstruct teaching and learning activities such as WIL programs: “It’s a balance between risk to the University and the student outcomes... and we’re here to do teaching and research, so... the legal office isn’t meant to be an impediment to that.” In both examples shared by Sue, the goal of the university lawyer when balancing the risk to the university and the promotion of student interests, whether that be awareness of their IP rights or achievement of student outcomes, is to facilitate the WIL placement. Emma also alluded to the balance between facilitation of WIL placements and management of legal risk. Emma was conscious of not putting in place roadblocks but also ensuring that the WIL program was compliant with the law:

It’s not something where we want to say ‘look, it’s a bad thing, it’s dangerous, don’t do it’, it’s something we want to encourage, so the less road blocks we put in place the better. We just have to make sure that we’re doing that in the proper manner.

Facilitation is reflected in the exception-based approach by university lawyers to risk management. The university lawyer will facilitate the WIL placement unless

the legal risk is a “deal breaker” (Jess and Jane). A deal breaker is a legal risk that should be avoided because it cannot be controlled or transferred by the university. Some examples of deal breakers discussed by university lawyers included bullying by host organization representatives and agreement provisions which may cause the university to breach internal or external regulations. If the deal breaker cannot be resolved, the student should not be placed with the host organization. The facilitation strategy underpinning the exception-based approach was also evident when Kate discussed her role with respect to WIL programs: “I want to be able to assist it... I don’t want to hinder... unless it’s outrageously unacceptable.”

Communicating the message of facilitation

University lawyers communicate a message of facilitation to address any negative perceptions which may otherwise discourage WIL staff from requesting legal services, and may expose the university to legal risk. University lawyers are not a “road block” (Emma and Jane) or an “obstacle” to WIL placements (Jess and Steve). Rather the risk management practices of university lawyers are designed to help WIL staff. Jane makes clear that the university lawyer is trying to help, enhance and build upon, rather than knock down and criticize, the work of WIL staff. For instance, Jane explained that WIL staff may be reluctant for university lawyers to intervene and make substantial changes to documents that they are familiar with and have been used for many years without incident. Jane placates the concerns of WIL staff around “throwing the baby out with the bathwater” by amending rather than replacing existing WIL agreements and program documents. According to both Kate and Jane, WIL staff are more open to approaching the university lawyer if they understand that the university lawyer is not a hindrance but can help them with delivering the WIL program. WIL staff can see that the university lawyer is aware of the strategic value of WIL to the institution. A shared vision attached to the risk management activity appears to facilitate a better relationship between WIL staff and university lawyers.

For Steve, there was a perception in the past that the legal office was “a stumbling block” to the pursuit of university activities. Steve has tried to change that perception over time by developing relationships with academic disciplines, built on trust, during which Steve has spread a message that the legal office is there to assist the discipline with university activities. As a result, Steve explained that “people don’t see us as an obstacle, they see us as helping them, and I think the message has got through to them.” Steve has built relationships by being proactive, visiting senior management within academic disciplines and university divisions, and being collaborative in the drafting of documents. Staff now trust the legal office to deliver legal services that facilitate, not obstruct, the pursuit of activities. Without a relationship built on trust, staff may not access legal services. Accordingly, a good relationship can promote access to university lawyers, as they become the ‘go-to’ person within the legal office for WIL staff and disciplines. Being the go-to person in an established relationship assists the university lawyer with managing legal risk, because WIL staff are more willing to pick up the phone or approach the university lawyer and ask questions. For instance, the relationship with the health discipline is such that David is used as a sounding board for addressing legal risks before they materialize during a WIL placement. Being able to address risks at an early stage can be effective preventive lawyering.

The language used by university lawyers is critical for ensuring WIL staff are aware that university lawyers are facilitators of WIL placements and not obstacles. The following passage in which Emma is advising WIL staff about the legal risks associated with Australian labor laws is instructive. Emma describes the difference between facilitative and obstructive language:

I mean no one has actually resisted our intervention, and in most of the cases we're not saying to them, 'you can't do it, we need to shut it down', we're basically just saying 'look, you can do it, but you just have to make sure that you're across these things, and that we are not exploiting the student', and so when you put it that way, then they're fine with it.

Tom is also conscious about the language of facilitation whilst working with WIL staff in managing risk:

It's not about 'we are legal, and we can tell you not to do something'. It is that 'we are here to help you get this off the ground. Let's just rethink this', rather than, 'that's really dumb because it breaches the law and you're going to put the university at risk, and I'm going to go dob you into the Vice-Chancellor you idiot!' We don't take that approach.

The preceding section revealed that facilitation of the WIL placement for students can be manifested in the words and actions of university lawyers. As a whole, facilitation represents the plan of university lawyers for risk management to achieve institution goals associated with WIL. The next part of this article is a discussion which situates the roles of the university lawyer as collaborator and facilitator in the literature.

V. Discussion

University lawyers provided new insight about their roles as collaborator and facilitator when managing legal risks in WIL programs. As such, the study provides a more complete picture of risk management by university lawyers. Collaboration and facilitation can be conceptualized as a risk management method and a risk management strategy of the university, and when combined with the traditional practices (or roles) of university lawyers, provides a coherent and comprehensive explanation of risk management by university lawyers in relation to WIL programs. The risk management strategy of university lawyers is to facilitate the delivery of WIL placements for students and risk management by WIL disciplines. To execute the strategy, university lawyers are pragmatic and accessible when collaborating with WIL staff, insurance-risk, lawyers from other universities and external parties. Whilst the study is specific to WIL programs, facilitation and collaboration are two roles of the university lawyer that can be applied to other higher education activities.

Table 3 categorizes the various roles, as identified in the literature, into risk management practices, methods and strategies. To define role as what university lawyers *do* to manage legal risk, that is, their risk management practices such as advice, drafting and education, would be simplistic. It is clear from the study that risk management is more than the 'end product' delivered by university lawyers and discernible to recipients of legal services. University lawyers also

have methods (*how* they manage legal risk) and strategies (*why* they manage legal risk) which underpin their risk management practices. The characterization of practices, methods and strategies as a framework recognizes the different elements that support risk management by university lawyers.

Table 3: A risk management framework of university lawyers

Practices	Methods	Strategies
Advising	Collaborating	Facilitating
Drafting	Insulating	Regulating
Mediating	Dispatching	
Educating		
Managing		
Litigating		
Speaking		

Some risk management strategies and methods have been identified when the role of university lawyers is discussed in the literature. For instance, collaboration with lawyers at other universities has been noted by Ruger⁸⁹ and Fleming⁹⁰, who suggests that university lawyer networks are a resource for sharing ideas, identifying problems and being a collective voice in contract negotiations. Collaboration amongst other university lawyers through groups such as SOUL (Australia) or NACUA (United States) may also redress the power imbalance between universities and host organizations, so that the collective has a greater say over acceptable and unacceptable agreement provisions, and may prevent the host organization from ‘bluffing’ in contract negotiations. It has also been recommended that university lawyers collaborate with insurance-risk⁹¹ and academic decision-makers.⁹² The case study extends the literature by describing the nature and extent of collaboration with insurance-risk, lawyers at other universities and staff. For instance, university lawyers collaborate with WIL staff by asking questions about the WIL program, and through their participation in formal WIL groups to create WIL agreements and resources. Evidence of pragmatism and accessibility support collaboration as a risk management method. University lawyers are pragmatic when addressing legal risk; they draft plain English WIL agreement templates that protect student and university interests and are conscious of not being an obstruction or a ‘road block’ to WIL placements. University lawyers also encourage collaboration by making explicit their risk management strategy of facilitating the delivery of WIL placements for students.

89 Supra note 35.

90 Supra note 34.

91 Ende, Anderson & Crego, supra note 38; KAPLIN & LEE, supra note 37.

92 Bickel & Ruger, supra note 42.

The cultivation of good relationships with WIL staff and disciplines is a theme which underpins collaboration by university lawyers. As WIL disciplines cultivate external relationships with host organizations, the university lawyer cultivates internal relationships which are designed to encourage WIL staff to access legal services. The importance of building relationships with WIL staff and WIL disciplines to minimize legal risk in WIL programs is reflected by the pragmatism and accessibility of university lawyers when delivering legal services. A pragmatic approach to risk management is required by university lawyers to facilitate the WIL placement and thereby support the university goal of maximizing the strategic value of WIL. Accessibility is demonstrated by WIL staff, a discipline or a faculty having a go-to lawyer that they can turn to in their time of legal need. Being accessible, being the go-to lawyer, and conveying a message of facilitation are relationship-building methods and strategies of university lawyers.

As a risk management strategy, facilitation of WIL placements is consistent with the primary role of the university lawyer – to support the institutional goals and objectives of the university related to teaching, research and service.⁹³ Facilitation has been used to describe the advisory role of the university lawyer. Corbally, Daane and Ward and Tribbensee argue that the role of the university lawyer, when providing advice, is to facilitate activities which achieve institutional objectives.⁹⁴ A related point is that the university lawyer’s role is to advise and not make decisions about an activity the subject of the advice.⁹⁵ The case study provides an empirical basis for both propositions.

University lawyers facilitate risk management by WIL disciplines and the WIL placement, both activities, to achieve institutional objectives associated with minimizing legal risk and delivering WIL placements for students respectively.⁹⁶ The university lawyers who stressed that they were advisors and not decision-makers provide empirical evidence to support the argument that university lawyers facilitate risk management by WIL disciplines. The analogy by Daane when describing the university lawyer as facilitator – “the red light function is important, but the green light should shine more often”⁹⁷ – is reflected in UL1’s ‘green light’ strategy for WIL placements and the exception-based approach by university lawyers to reviewing WIL agreements. University lawyers will facilitate the delivery of WIL placements for students unless there is a deal breaker, namely a risk that cannot be controlled or transferred by the university. The deal breaker is a risk that should be avoided and represents the ‘red light’. Consistent with a strategy of facilitation, the university lawyer’s advice is not simply to identify the legal risk and say “no” to the activity.⁹⁸ The university lawyer will advise WIL

93 See e.g. Daane, *supra* note 4; Orentlicher, *supra* note 3.

94 Corbally, *supra* note 47; Daane, *supra* note 49; Ward and Tribbensee, *supra* note 52.

95 See Bickel, *supra* note 6, at 995-996; See also William R. Kauffman et al., *The University Counsel: A Roundtable Discussion*, 87 *ACADEME* 26 (2001).

96 See Figure 1.

97 Daane, *supra* note 49.

98 Ward and Tribbensee, *supra* note 52, at 19.

staff to go back to the host organization and re-negotiate, often using strategies and amendments to contract terms, suggested by the university lawyer, that are designed to minimize the legal risk and give the WIL placement a green light.

In the specific context of WIL, the findings of this research can be applied by university lawyers, WIL disciplines and university management to evaluate and improve risk management at their own institutions and to educate themselves and their colleagues about risk management in WIL programs. More broadly, university stakeholders may better appreciate the work of university lawyers by understanding their roles as collaborator and facilitator in higher education, and risk management as a framework of practices, methods and strategies. Whilst the traditional risk management practices (or roles) of university lawyers are visible to university management and clients, the methods and strategy are two covert pillars of the risk management framework. This has the potential to create misconceptions about the university lawyer that may stop campus staff from accessing legal services. For instance, Corbally noted that some academic administrators perceive the university lawyer to be obstructive,⁹⁹ whereas authors in the WIL literature have been critical of university lawyers for their perceived lack of knowledge about WIL programs when: drafting agreements,¹⁰⁰ advising on student confidentiality issues¹⁰¹ and handling student dismissals from WIL programs.¹⁰² The risk management framework may dispel these preconceptions. Whilst other university lawyers may not be as informed or have the experience in the tertiary sector to appreciate the strategic value of WIL to the university, it is clear from the university lawyers interviewed that they do understand the purpose of WIL programs, and appreciate their importance to achieve institutional objectives. In fact, university lawyers communicate a message of facilitation to address any negative perceptions.

V. Conclusion

The study reported in this article is the first known systematic research exploring the roles of the university lawyer as collaborator and facilitator in higher education, and provides evidence-based support for formal recognition of these roles as part of the university lawyer's risk management framework. In particular, risk management by university lawyers is not confined to their practices but involves a broader framework of methods and strategies including collaboration with outside lawyers, university management, WIL staff and insurance and risk personnel, as well as facilitation of risk management by WIL staff and the delivery of WIL placements for students. University lawyers demonstrated that

99 Corbally, *supra* note 9.

100 Sheldon R. Gelman, *The Crafting of Fieldwork Training Agreements*, 26 J. SOC. WORK. EDU. 65, 69 (1990).

101 Linda Cherry Reeser & Robert A. Wertkin, *Sharing Sensitive Student Information with Field Instructors: Responses of Students, Liaisons, and Field Instructors*, 33 J. SOC. WORK. EDU. 347 (1997).

102 Norman H. Cobb, *Court-Recommended Guidelines for Managing Unethical Students and Working with University Lawyers*, 30 J. SOC. WORK. EDU. 18, 29 (1994); ROBERT G. MADDEN & NORMAN H. COBB, *Legal Issues Facing Social Work Academia*, in GATEKEEPING IN BSW PROGRAMS 171, 191 (2000).

collaboration and facilitation are the methods and strategy for not only managing legal risk in WIL programs, but connecting with WIL staff at a level deeper than their traditional roles (or risk management practices) of advice, education, drafting and review of documents. Relationship building through collaboration and facilitation may foster a deeper understanding, awareness and appreciation among stakeholders about the role of university lawyers, and thereby encourage access to legal services.

Negative perceptions of legal services will remain a challenge to the practice of higher education law. The author has spent the past 18 months advocating the role of university lawyers to audiences in Australia, Europe, Asia and North America, drawing on his PhD thesis exploring risk management in WIL programs¹⁰³. Audience reactions to university lawyers have ranged from 'lawyer bashing', to not knowing that they had a lawyer on campus, to positive stories about university lawyers helping them with advice, review and drafting of agreements. Given the author's experiences and those of university lawyers in this study, it is imperative for institutions to articulate a clear message that university lawyers and recipients of legal services (or clients) are allies who collaborate to facilitate activities that achieve university goals. University lawyers should not be seen as 'us' versus 'them' from the perspective of clients; instead the perception should be one of collaboration or 'we'. University lawyers also need to promote themselves as facilitators and collaborators in the delivery of legal services. The study demonstrates that articulating the *how* and *why* university lawyers deliver legal services can change the way the institution's stakeholders perceive university lawyers.

103 Cameron, *supra* note 1.