

Teaching Law in Recordkeeping Courses: the Monash Experience

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Livia Iacovino is a lecturer in the Department of Librarianship, Archives and Records at Monash University. She completed her MA (Archives and Records) at Monash University in 1996 and her principal research interest is the socio-legal context of recordkeeping.

This article explores the integration of legal studies within a records continuum-based educational model, using the recordkeeping courses at Monash University as a case study. The teaching of law in recordkeeping programs at Monash was developed with reference to the records continuum which provides the conceptual framework for these courses. It has been further enhanced by research and curriculum development over the last two years. This article reports on the research undertaken by the author and details recent legal studies curriculum developments at undergraduate and postgraduate levels, with particular emphasis on professional postgraduate education.

This is a refereed article.

Introduction

In exploring the relationship between the law and recordkeeping as part of my research on the teaching of law in recordkeeping courses, it became

clear that all aspects of recordkeeping have a legal ramification, from the legal context in which records are created and the evidentiary characteristics of records, to the specific legal requirements which may be satisfied by recordkeeping system functionality. It is therefore essential for recordkeeping courses to be underpinned by a conceptual framework which enables the study of law and recordkeeping to be developed interdependently, and from which the application of law to recordkeeping can flow logically. This framework should be the point of reference for the development of the legal content in recordkeeping courses.¹

Research issues and processes

A review of the literature on archival and records management education revealed that an integrated view of law and recordkeeping is generally lacking. Legal topics in the literature tend to confine the study of law to a narrow range of specialised record-related tasks which no longer reflect the full role of the new recordkeeping professional. And although the professional literature generally indicates that recordkeeping professionals need a range of multidisciplinary knowledge and skills, there have been few in-depth studies of how knowledge and skills from other disciplines might form part of the education of the recordkeeping professional.²

Moreover there has previously been no comprehensive research about which aspects of law and legal process are relevant to the education of the recordkeeping profession. One of the hypotheses of my research was that, in devising a legal curriculum which is suited to the specific needs of the recordkeeping profession, it is not sufficient to extract pieces from law courses. It is necessary to investigate relevant aspects of legal courses and materials and adapt them to the requirements of the recordkeeping profession, with reference to broad understandings of the relationship between law and recordkeeping. In order to explore this proposition, my research focused on the following issues:

- How is law to be defined in a way that is relevant to recordkeeping education?
- Is the study of law fundamental to recordkeeping?

- Which legal theories and principles are linked closely to records and recordkeeping? How do these theories apply in the Australian context? Are they universal to all contexts?
- What is the role of regulatory codes and standards within the legal framework and their relationship to recordkeeping?
- How have records as legal evidence evolved within the Australian judicial system?
- Where does the study of law fit and how important is it in relation to the overall knowledge and skills base of the profession? Is it part of the core knowledge of the recordkeeping profession or is it auxiliary knowledge?
- How are students in the Monash recordkeeping courses currently taught about law and to develop skills in relation to finding and interpreting the law and legislation? Is the legal content of the current curriculum adequate?
- Is it possible to translate an understanding of law into curriculum design and course content that is appropriate to the recordkeeping profession within a records continuum model?
- What can recordkeeping education draw from legal studies as taught in pure law courses?

Other issues considered related to the design or structuring of legal course curricula. These were:

- Should legal knowledge and skills be integrated into all subjects in the curricula?
- Should there be a separate in-depth subject which is part of the core curricula?
- Should law be taught as an auxiliary subject in common with other general information management subjects?
- Should law for recordkeeping be taught by external legal experts?

These research issues were addressed by undertaking a range of research processes as described on the following page.

RESEARCH PROCESSES

Archival and legal literature review

The review evaluated the literature relating to the records continuum, the antecedents of the recordkeeping profession, and the place of legal knowledge within archival and records management education. It identified key articles that link the relevance of law to the recordkeeping profession; researched definitions of the law, legal systems and legal concepts from the legal and archival literature; and provided the basis for analysing the relationship of law and recordkeeping from both a recordkeeping and a legal perspective.³

Case study of Monash recordkeeping courses

The case study examined the legal aspects taught in the Monash archives and records courses in terms of both their structure and content, using course curriculum materials. The criteria used to assess the Monash approach was derived from critically assessing existing literature dealing with the place of legal education in the recordkeeping educational curricula, literature defining the relevance of law to recordkeeping and an analysis of legal concepts and methodology.

Development of model legal curriculum framework

Having identified gaps, weaknesses and strengths in the Monash courses, a legal curriculum framework for integrated archives and records courses at all levels was proposed. This involved structuring the curriculum by looking at legal methods and subject outlines taught in the Monash law courses and extrapolating what could be adapted to archives and records courses within a recordkeeping approach.⁴ Finally areas of law and recordkeeping were merged into topics, including application tools and methods.

Development of case study relating to interpreting the recordkeeping aspects of Australian Corporations law

A case study on interpreting recordkeeping aspects of the Australian Corporations Law was developed to enable the examination of legal reference and library reference tools within the proposed legal curriculum framework. The study also highlighted the need to interpret legislation for recordkeeping in the context of the overall legal responsibilities of organisations or individuals.

A major research outcome centred on proposing enhancements to the Monash recordkeeping courses. As indicated above, the Monash courses had provided a case study of integrated legal education within a records continuum-based educational model, a model that posits that recordkeeping theory is common to both archivists and records managers. It is a model that focuses on the nature of the particular type of recorded information that is the domain of these professions, that is records of social and organisational activity, which provide evidence of that activity.⁵ It therefore provided a suitable framework for developing a legal curriculum for the recordkeeping professional.⁶ The recordkeeping profession as defined in the Monash framework and used in this article encompasses both the archivist and the records manager.

The research also referenced a number of other important reasons for developing appropriate legal education for recordkeeping professionals in the current environment. The issues surrounding the management of electronic recordkeeping have brought about a fundamental re-assessment of the role and mission of archivists and records managers and of their understanding of recordkeeping. In assessing the current teaching of law in recordkeeping courses one cannot ignore the effects of communication and technological changes on the traditional model of archival and records management work and the questioning of that model by the profession itself. The impact of change on both archivists and records managers has led them to conclude that recordkeeping requirements need to be established at the front end of recordkeeping systems. This has focussed attention on the need to establish the jurisdiction in which a recordkeeping system will operate, and its regulatory environment in order to help assure such things as its evidential reliability and the appropriate retention periods for the records the system captures. Educating the recordkeeping professional within this dynamic environment includes teaching as an integral part of the recordkeeping programs:

- a knowledge of legal systems
- basic legal research skills
- an awareness of current record-related legal issues.

In re-defining the recordkeeping profession, legal knowledge can also help

to identify partnerships and important strategic alliances with other professions who have a vested interest in recordkeeping as a means of providing evidence of business activities, in particular with those who require reliable and authentic records for judicial purposes.

The relationship of law to recordkeeping knowledge

Within European archival knowledge, law has been a long established associated discipline of archival science. In Australia, both within the university scene and externally, it is seen as a new alliance. Moreover the two disciplines of archival science and law have developed their own theories and methodologies since their separation in Europe in the late nineteenth century. In my research project, I took the view that the law needs to be assessed as it exists in its present form, and in terms of how its own theories and practices have evolved, as well as with reference to variations that exist within different legal systems, particularly the differences between the common law and civil law legal systems.

The historical links of law with recordkeeping were found to be many and to include:

- the contribution of law to the theories of archival science, in particular the relationship of jurisprudential and archival concepts in nineteenth century Europe
- the provision of a home in law schools for the teaching of archival science in its formative years in Europe
- the study of law as a prerequisite for the study of archival science in Europe
- the close alliance between the recordkeeping practices of many continental European countries and the legal procedures and concepts embedded in Roman law
- the development in Europe in the seventeenth century of the techniques of diplomatics which contributed to the legal system's acceptance of records as evidence.⁷

The research considered how records play a large part in the governance of relationships, whether they be personal relationships arising out of birth, marital status or family, eg the parent/child relationship; public relationships in which a citizen interacts with the government, such as the taxpayer/taxation officer (representing the crown) relationship; commercial relationships involving organisations providing a service to a customer, for example the buyer/seller relationship; or professional relationships which provide a professional service, the oldest and legally best recognised professional relationship being that of the doctor/patient type. The law recognises a range of legal relationships and gives a legal personality to individuals and to organisations (as natural or legal persons) in order to recognise them as holders of rights and obligations and to regulate them. Records and recordkeeping regulate social relationships within the operation of any legal system.

Several definitions of law and legal systems were considered carefully in terms of selecting a concept that would reflect the unique role that records play in regulating legal relationships. A number of Australian legal texts were consulted, but the understanding of law and of legal systems propounded in these texts dealt almost exclusively with codified laws, and thereby excluded other codes of behaviour which regulate a society or a defined group. By adopting the European concept of a juridical system, which encompasses, but is not confined to, a formalised legal system of rules, it was possible to include within this concept more than the constitutionally-based institutions and their rules which are necessary to regulate relations between the government and its citizens.⁸ The juridical approach is a universally applicable viewpoint and served as a useful construct for understanding that regulations imposed on organisations are governed by all forms of law: natural, customary, moral, statutory, and judge-made. The concept has modern applications in that it allows for codes of ethics and industry practices to be part of the regulatory environment. It provides a useful framework for understanding the socio-legal context of recordkeeping. Therefore the adoption in my research of the term juridical and its differentiation from the term legal was purposeful.⁹

Having defined a juridical and legal system, I then proceeded to establish a range of areas within recordkeeping that require knowledge of the law for uses that are different from, but also complementary to, education for

legal professionals. In this research process the notion of a juridical and legal system was also adapted to the Australian legal system. Relevant aspects of legal studies were placed within this construct.

My research found that the law as it has evolved has been tied to developments in recordkeeping in two ways. Firstly the law depends on documents to enforce the rights and obligations of organisations and individuals in society. Secondly the law has developed elaborate rules for the acceptance of records as evidence, particularly records that are not issued by public authorities. Records by their very nature provide evidence of the activities of organisations or persons within a given juridical system. We need to understand the underlying concepts of the juridical system in which records enforce and support both the system's positive laws as well as its binding rules. Within this approach law is part of the context of recordkeeping. We also need to understand the law in relation to the evolution of a society's specific legal system (in Australia the common law system) and its acceptance of records as legal evidence by the judicial system. The understanding of records as evidence of social and business activity which has meaning in a specific juridical system and their admissibility as evidence within a given judicial system, can be applied to any legal system.

A number of conclusions were drawn in my research from exploring the relationship of law and recordkeeping, namely:

- Records establish personal and corporate rights and obligations in society through the legal system which includes codes of personal and corporate behaviour.
- They establish an individual's legal existence and his/her conduct within the law in its broadest sense (duty of care).
- They may also contribute to proving the facts in a court case to which they are relevant.¹⁰

Thus I concluded that a legal curriculum for recordkeeping should include the recurring elements of rights and duties/liabilities which underlie all legal systems, as well as the specific instruments of law operating in that system, in addition to other forms of behaviour that a juridical system sanctions as appropriate.

The examination of the definitions of law and legal systems found in the legal literature, and their relevance to recordkeeping knowledge in terms of the juridical nature of recordkeeping, provided a foundation for understanding why law is fundamental to recordkeeping knowledge.¹¹ The analysis also provided the basis for establishing a framework in which law can be integrated into recordkeeping knowledge for educational purposes.

In countries which have developed separate recordkeeping professions, differentiated on the basis of managing current and non-current records, life-cycle mindsets as opposed to continuum-based approaches are clearly evident in the educational curricula. The study of law is considered auxiliary or, at best, only as part of the knowledge required to manage archival institutions through the examination of archival legislation, or legislation affecting access to or copying of archival holdings. On the other hand records management courses have tended to focus narrowly on legal requirements for records creation and retention. A study of the juridical context of recordkeeping as an integral part of recordkeeping knowledge is evident in the educational curricula of institutions which have maintained a unifying view of archives and records, and in which archival science is treated as a distinctive discipline.

The question of how to acquire legal knowledge and skills raises issues of interdisciplinarity; that is, can a recordkeeping professional benefit from studying legal reasoning and methodology within the study of law itself? Legal knowledge for recordkeeping education can be viewed from either a multidisciplinary or interdisciplinary perspective. A multidisciplinary approach allows for the integration of relevant parts of several disciplines into other disciplines, while interdisciplinary approaches focus on disciplines which are relevant or related to another discipline but separate from it. In the interdisciplinary context legal studies have tended to be seen in terms of something tacked on to archival and records management courses, usually as separate subjects or modules within subjects. Applying either of these two approaches to analysing an appropriate legal education for archivists and records managers means first defining their core knowledge. The results of the research undertaken demonstrated that law is part of the *core* knowledge of the recordkeeping professional.¹²

A legal curriculum for recordkeeping education

My examination of the relationship of Australian law and recordkeeping was based on linking recordkeeping perspectives with the legal concepts and methodology found within the traditional subject classification of the common law system used in Australian law courses, eg legal process, constitutional law, administrative law, torts, contracts, property, intellectual property, evidence, the divisions between substantive and procedural law.¹³

The re-developed Monash legal curriculum for recordkeeping education was devised by merging recordkeeping perspectives with relevant legal studies extracted from the law courses of Monash University's Faculty of Law. The selection of relevant material from a substantive law course provided a means of focusing on the unique relationship between law and recordkeeping. The resulting course proposal adopted the juridical notion of law as its framework. It also linked the legal studies content conceptually to features of the records continuum model as developed in the Monash teaching framework.

The main attributes of the Australian legal system that were found to affect organisational recordkeeping operations and were included in the education of the recordkeeping professional are listed in the following table.

Legal Attributes Relevant to Recordkeeping Operations

The major features of the Australian legal system:

- a common law system
- its constitutional framework
- the Commonwealth and State jurisdictional boundaries
- public accountability.

continued

Legal Attributes Relevant to Recordkeeping Operations (cont.)

The juridical competence of an organisation as conferred by legislation and other binding codes:

- statutory powers conferred on the Crown, Ministers, designated officials and on statutory bodies and offices
- the legal personalities the legal system recognises, eg whether an organisation exists as a corporate body that can sue and be sued.

Legislation and law based on the division of the public and corporate sector. (Note: As a result of corporatisation and privatisation the division is no longer as useful a tool as it has been for providing a demarcation in terms of relevant law, eg administrative law still applies to particular legal entities in the public sector.)

Legal concepts of reasonable care and fiduciary duty:

- recordkeeping professional liability, eg ensuring that records in the computer system cannot be tampered with, and protecting unauthorised access to the system as professional duties.

Concepts of proprietary ownership of records:

- what can or cannot be done with the records of an organisation.

Concepts of statutory and common law access rights and obligations to records:

- FOI, archival and privacy legislation
- common law duty of confidential relationships.

Legal relationships which involve the rights and duties of parties involved:

- commercial relationships, eg creditor/debtor
- professional relationships, eg doctor/patient.

continued

Legal Attributes Relevant to Recordkeeping Operations (cont.)

Contractual relationships:

- records to enforce a contract.

Legal concepts and procedures for legally admissible evidence:

- laws of evidence.

It is only once these over-arching legal concepts are understood that relevant legislation, case law and other regulatory controls imposed on particular types of organisations and their effects on recordkeeping are introduced in the Monash curriculum.

The model curriculum

On the basis of the research findings, a model curriculum for teaching the law in the Monash recordkeeping programs was developed. The revised legal curriculum uses a flexible modular structure. This allows individual modules to be implemented in three ways. Firstly they may be integrated into existing subjects in any archives and records course based on the records continuum model. Secondly they may run sequentially within a separate subject focussed on law and recordkeeping. Thirdly they can also be adapted to suit basic, advanced or specialised levels of teaching of law for recordkeeping.¹⁴

The structure selected for the modules allows for a logical progression. First they focus on developing an understanding of the relationship of law and recordkeeping, juridical and legal systems, and the sources of law and its interpretation, including other modes of regulating behaviour in society. Then the legal properties of a record are introduced, before moving into the application of law to specific recordkeeping issues. Knowledge of the types of legislation applicable to records in particular organisational contexts is taught as a final step.

Some of the modules draw from legal systems and legal process, while others merge specific areas of law with recordkeeping perspectives. The characteristics of records and recordkeeping systems are more fully explored only after a basic understanding of legal systems, legal research tools and the place of legislation and other codes of behaviour within a juridical system have been covered. Both knowledge and skills in understanding, finding and interpreting the law relevant to records are developed in a sequential mode. Underlying legal concepts of rights and obligations are included throughout the modules. Issues surrounding electronic records are integrated within all modules.¹⁵

Application of the model legal curriculum to Monash recordkeeping courses

The postgraduate program

In the postgraduate programs the teaching of legislative aspects has been integrated into subjects, not separated out into a specialised unit or subject. This was not intended to minimise the importance of law but to ensure that it was given equal weight in the curriculum with other knowledge and skills needed for the recordkeeping professional. An awareness of the impact of law and the evidentiary nature of records has been implicit throughout the courses.¹⁶

The Graduate Diploma

Applying the results of my research to the assessment of the course materials, the following areas were identified as requiring attention.

- There was a need for a clearer distinction in the course content between the juridical framework in which all organisations operate, their legal responsibilities, and the specific legal requirements of recordkeeping systems some of which arise out of the broad legal framework.

- The fundamental relationship between law and recordkeeping both historically and in current terms needed to be re-enforced.

The underlying concepts of the juridical and legal system, including the relevance of various codes, need to be introduced before the relevance of regulatory legal requirements are examined. These concepts are: positive law, legal relationships, rights and obligations, the newer rights of access and privacy, the nature of legal ownership, the changing form of the record and its impact on the law, and the laws of evidence which underpin the notions of the reliability and authenticity of good evidence. The regulatory aspects need to be examined with an awareness of essential legal concepts. By placing some of the legal concepts and tools into the context in which recordkeeping knowledge and skills are taught, the theoretical link between recordkeeping and the law is strengthened.

The further articulation of the records continuum teaching model has provided the basis on which the proposals to extend the teaching of law have been implemented in the archives and records graduate subjects. So, the core theory subject in the Graduate Diploma now includes the jurisprudential concepts, the legal underpinning of recordkeeping and the relevance of law in all areas of the records continuum. It also includes a general introduction to the Australian legal system.

The core practice subject teaches the relevance of law to recordkeeping in specific practical contexts using case studies.¹⁷ Students undertake research to locate and interpret relevant law including case law and ways of minimising the risks of litigation. It has been in this subject that the most practical exercises in finding legislation have been included in the past, with an emphasis on the tools required for locating Acts, delegated legislation, and changes to the legislation, and understanding the process by which a Bill becomes an Act, including proclamation. This approach is still taken, but in the juridical context of a particular industry.

The Masters program

The second year of the Masters program provides a framework for gaining specialised recordkeeping knowledge through a range of elective subjects

and/or research work. In an existing elective that focuses on community information, the juridical model is introduced and applied to community organisations in order to understand their legal structures, responsibilities and the rules which order them.

A proposed new Master's elective, *Recordkeeping and the Law*, based on the model curriculum, will be run from the second half of 1998. This subject has been designed to provide legal knowledge and skills relevant to recordkeeping professional work in Australia with some reference to the international context. Sources of law, including legislation, case law, and codes of ethics and practice, specifically applicable to the juridical and legal context of recordkeeping are covered. Using the juridical approach to recordkeeping, students are given a framework to develop the knowledge and skills which will allow them to apply appropriate legal strategies to recordkeeping issues in different social, organisational and technological contexts.

The undergraduate program

In applying the model legal curriculum to the undergraduate program it has been necessary to be cognisant of the fact that the Bachelor of Information Management is a generalist program. Although students may opt to specialise in recordkeeping or library studies in addition to their generic information management studies, the degree is not primarily designed to qualify students as recordkeeping or librarianship professionals. There are two subjects in the course that draw from the model legal curriculum, but have been adapted to the broader world of information management.

In the first year of the program the students are introduced to the various forms of recorded information. From these understandings it has been possible to develop a concept map as a model which would incorporate the different characteristics of recorded information, and its relationship with the juridical system (see *Figure 1* below). This has provided the conceptual framework for the specialised second or third year elective subject, *Legal Systems and Recorded Information*, introduced in 1996. It was the first subject in the Department solely directed to teaching legal issues and legal research

skills within the context of information management. In this subject the legal system is defined within an understanding of the juridical nature of society. Recorded information, which is created, captured, organised into systems and made accessible via social and legal mandates, is analysed in terms of a number of legal dimensions. The structure of the Australian legal system is introduced, including the socio-legal view that includes other notions of regulating the behaviour of legal and physical persons within a legal system, eg professional and organisational ethics, codes, industry standards and practices.

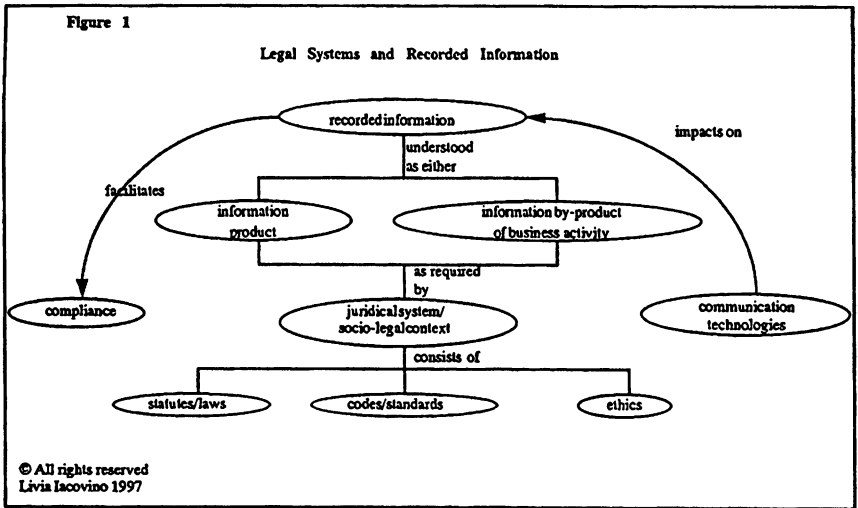


FIGURE 1

Legal concepts including the notion of legal rights and obligations; legislated and common law access rights and obligations; ownership and property principles; contract; duty of care; breach of confidence; and the law of equity are covered. These legal notions provide the framework for understanding legal requirements for recorded information in the Australian context. Legal research skills have always been taught to our graduate students by Monash Law Library staff. This cooperative relationship has been extended to our undergraduate teaching program.

The other related undergraduate subject is the third year elective, *Ethics and Risks in Information Management*, introduced this year. It provides an understanding of the ethical and risk management issues related to information management work generally and recordkeeping in particular, including those associated with technology. It aims to convey a general knowledge of the ethical principles and risks associated with the social and legal responsibilities and obligations of organisations in information management and recordkeeping. This subject also provides skills and techniques for assessing the information management-related risks associated with different business activities and the consequences of non-compliance. With its prerequisite subject, *Legal Systems and Recorded Information*, it provides the knowledge and skills to build ethical and risk management considerations into the development of socially and legally acceptable information and records management programs.

Conclusion

Outcomes of my research into the teaching of law in recordkeeping courses include:

- an increased understanding of the relevance of law for the recordkeeping professional through the exploration of the juridical nature of recordkeeping;
- the appropriate placement of legal education within overall recordkeeping education;
- a flexible model for the re-design or modification of the legal aspects of recordkeeping educational programs based on the records continuum; and
- definition of the areas that require legal expertise in relation to both basic legal process as well as specialised areas of the law.

The outcomes of the research and subsequent subject developments were principally intended to provide a legal curriculum framework for the recordkeeping professional. But the findings on the relevance of law to

recordkeeping, which provide the rationale for the new curriculum, also contribute to furthering our understanding of one of the distinctive knowledge areas of the recordkeeping discipline.

Recordkeeping professionals work in a range of organisational contexts. Rather than concentrating on industry-specific legislation in their education which would in any case be voluminous, general legal principles and basic legal research skills need to be integrated into recordkeeping courses within an understanding and knowledge of the juridical system. The juridical approach does not begin by looking at the effectiveness of a particular piece of legislation, but rather considers the whole juridical environment and thinking as conditioned by the legal system at a particular point in time. Only then does it consider the rules of that system.

Specific legislation in particular contexts is best introduced through case studies within relevant modules and subjects, possibly by allowing students to research a specific area themselves. The legal corporate area and outside legal advice are both important sources of information on complex legislative changes. The recordkeeping professional needs to know the right questions to ask in relation to the legal implications of recordkeeping. In addition it is now recognised that legislation is not always the most effective means of enforcing rules in society. Thus we need to supplement the knowledge of the law with an awareness of codes and other methods that regulate and control the behaviour of groups and individuals in society. The legal curriculum that has been developed in the Monash recordkeeping courses provides the knowledge and skills to enable recordkeeping professionals to confidently establish recordkeeping programs that are fully cognisant of juridical and legal issues.

The proposition that legal studies be integrated into the records continuum-based educational model in terms of a particular theory of law is informed by a socio-legal view of how society is regulated. This approach rejects a narrow black letter approach to the law. The changing social, political, organisational and technological context of the legal system parallels, complements and supports the role of recordkeeping in our society. This viewpoint is brought to bear on determining the required legal knowledge and skills for recordkeeping in the legal curriculum. Such legal

knowledge is also critical to the regulatory and up front role envisaged for the modern recordkeeping professional.

Acknowledgments

In developing my conceptual model for teaching legal studies to recordkeeping professionals, I have been influenced by a number of leading educators and professionals in my field. In particular Professor Luciana Duranti's understanding of law informed by a theory of juridical systems provides a link with records, which is deeply embedded in European thought, but is universally applicable. I am indebted to my colleagues, Associate Professor Sue McKemmish and Barbara Reed, and in particular to Frank Upward for his records continuum model which has served so well as a means of viewing the legal dimensions of recordkeeping.

Endnotes

- ¹ Livia Iacovino, *Legal Education for the Recordkeeping Professional: A Proposed Curriculum Framework within a Records Continuum-based Educational Model*, MA thesis, DLAR, Monash University, 1996. Early in the research process the records continuum model was adopted as the framework in which to develop the legal curriculum for recordkeeping professionals. The analysis of the Monash recordkeeping courses further supported this approach.
- ² *Ibid*, Chapter 3, 'Review of the Literature as it Relates to Archival and Records Management Education and the Law'. See the work of Stefan Petrow, 'The Burden of Proof', in *Records - The Heart of Management, 10th National Convention, Records Management Association of*

Australia, Hobart, Tasmania, 5-8 September, 1993, RMAA, Hobart, 1993, pp. 21-36. His study on the teaching of law within the respective curricula of archives and records management courses in Australia indicated that Monash's course included a number of useful legal research skills in their existing courses.

In the professional literature much of the standpoint taken on legal education for archivists and records managers has depended on whether the course is based on a records continuum model or a life-cycle model. In the life-cycle approach there is a division of tasks in relation to the management of records based on the notion that records require different management at the different stages of their life and thus different knowledge and skills. The Australian records continuum model encapsulates the idea of records in continuous time and space. It is not based on pre-determined sequential processes, and provides an alternative model to the life-cycle approach to records management which defines recordkeeping activities as occurring in chronological stages. The records continuum model was the model adopted for developing the legal curricula.

- ³ In addition to archival and records management professional literature on education, the key writings of prominent professionals were taken into consideration in developing suitable educational curricula. These included the writings of Sue McKemish, Frank Upward, Glenda Acland, Luciana Duranti, David Bearman, Terry Cook, and Hugh Taylor. Texts of key Australian legal writers included were Christopher Enright and P. L. Waller.
- ⁴ This was carried out by obtaining course materials in *Legal Process* from the Faculty of Law, Monash University, attending classes on statutory interpretation within *Legal Process* classes (courtesy of Professor Sue Campbell, from Monash University Faculty of Law), assessing the *Legal Process* course literature, and speaking briefly with some specialised law teaching staff and Law Library staff about legal methodology.
- ⁵ Sue McKemish, 'Educating Recordkeeping Professionals for the 21st Century: Issues and Challenges', in *Redefining Records Management, Conference Papers, 12 National Convention, Records Management Association of Australia*, RMAA, Melbourne, 1995, p. 88.
- ⁶ The Monash postgraduate recordkeeping courses integrate the teaching of law into the curriculum by teaching legal studies across a number of subjects. The legal content in these subjects needed to be enhanced in relation to the legal knowledge and skills essential for the recordkeeping professional in the current environment, in order to develop a suitable legal curriculum within a records continuum-based educational model. In formulating a specific legal curriculum for the recordkeeping professional it has also been possible to isolate those areas where specialised teaching from a Law Faculty member or outside legal expert is required. The approach taken has provided for a properly integrated legal curriculum suitable for all recordkeeping courses based on a records continuum-based educational model.

- ⁷ Iacovino, *op. cit.*, Chapter 2, 'The Recordkeeping Professional and the Records Continuum.'
- ⁸ The restrictive definition of law found in most Australian legal text books centres on 'black letter law', and excludes other codes of behaviour which regulate our society. However Helen Smith has successfully applied Duranti's juridical definition to the Australian legal system in her article 'Legal Responsibilities and Issues' in *Keeping Archives*, 2nd ed., edited by Judith Ellis, Thorpe, Melbourne, 1993, pp. 108-136.
- ⁹ 'Juridical thinking is not universal other than as philosophy of the law. Jurisprudence, being the study of a specific juridical thinking, is necessarily conditioned by time and space', in Luciana Duranti, 'Medieval Universities and Archives', *Archivaria*, Vol. 38, Fall 1994, p. 40. Juridical thinking developed as part of medieval thought in Europe when Roman law became the common law of Europe. Juridical is a term not commonly used in the English language. It is a term used in Europe and in countries that have civil law systems. See also Duranti in 'Diplomatics, New Uses for an Old Science (Part1)', *Archivaria*, Vol. 28, Summer 1989, footnote 22 in which she defines 'juridical' in terms of the nature of abstract legal concepts, that is as a part of legal theory.
- ¹⁰ Iacovino, *op. cit.*, Chapter 5, 'An Exploration of the Nature of Law and Recordkeeping'.
- ¹¹ *Ibid*, Chapter 4, 'Legal Knowledge for the Recordkeeping Profession'.
- ¹² *Ibid*, Chapter 3, 'Review of the Literature as it Relates to Archival and Records Management Education and the Law'.
- ¹³ *Ibid*, Chapter 7, 'A Proposed Legal Curriculum for Recordkeeping Education'.
- ¹⁴ A case study applying legal methodology to analyse a statute in terms of recordkeeping issues highlighted the limits of focusing on legislation out of context and the need to integrate legal process into recordkeeping education. See Iacovino, *op. cit.*, Appendix 2, 'Corporations Law: A Case Study of the Legal Requirements for Recordkeeping'.
- ¹⁵ The knowledge, skills, related legal field, relevant outside expertise, previous learning method if applicable, and reading material for each module is found in Appendix 1 of the thesis, see Iacovino, *op. cit.*
- ¹⁶ See Iacovino, *op. cit.*, Chapter 6, 'An Analysis of the Current Monash Archives and Records Courses and the Teaching of Law'. From the analysis of the curricula materials, it was evident that up until 1994 within the structure of the Graduate Diploma at Monash there had been a distinction made between the relevance of legal issues to recordkeeping and the teaching of skills in finding and interpreting specific statute and case law. An introductory subject which provides a contextual framework for other subjects in the Graduate Diploma course was the only subject which had a module devoted solely to the legislative context of recordkeeping. The core theory and practice subjects of the Graduate Diploma formerly included references to legal aspects or requirements only where necessary.

- ¹⁷ The legal module in the introductory subject provided a contextual base to introduce archivists and records managers to their legal responsibilities. A general introduction to the Australian legal system and its sources of law, the legal environment, some of the laws that impact on all recordkeeping programs, and an introduction to finding the law were initially added to the existing module on law. However the teaching of specific legal issues in relation to core knowledge and skills have remained in core knowledge and skills-based subjects.