

INTERNATIONAL
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Clinical Legal Education



Articles

An Examination of the Challenges, Successes and Setbacks for
Clinical Legal Education in Eastern Europe
Dubravka Aksamovic and Philip Genty

The Value of Incidental Learning in a Multidisciplinary Setting
Ross Hyams and Denise Sadique

Promoting Law Student Mental Health Literacy and Wellbeing:
A Case Study from The College of Law, Australia
Michael Appleby and Judy Bourke

Clinical Collaborations: Going Global to Advance Social
Entrepreneurship
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Plerhoples*

Regulating Clinic: Do UK Clinics Need to Become Alternative
Business Structures Under the Legal Services Act 2007?
Elaine Campbell

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This is a criterion that cuts both ways – very UK-orientated (or US-orientated) pieces might have merit but may be so introverted as to lack the international element – other papers might cover something which is of such interest to an international audience as to be worthy of publication. The best papers will often be rooted in a specific local experience – but will be able to draw that into a larger theoretical context that has wide relevance across jurisdictions.

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The Clinical Practice section is intended for more descriptive pieces. It is not peer-refereed. These will generally be shorter articles. They may focus on the general clinical context in a particular country – or describe a particular clinical programme, or a new type of clinical practice or clinical assessment. This section is intended to be less formal than the refereed part of the Journal, enabling clinicians to share experiences. The main criterion for acceptance is that the piece is likely to be of interest to the Journal's readership.

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Foreword

Welcome to Issue 20 of the journal – such a large issue that it is in two volumes. In Volume I are the refereed articles and in Volume II can be found the Clinical Practice papers. This is the final paper edition of the journal and my final edition as editor. After this edition, we are taking the journal online, freely accessible to all. I conclude this foreword with further information about the new online journal.

Eleventh International Journal of Clinical Legal Education Conference and Twelfth Australian Clinical Legal Education Conference: Common Ground sharing across models of experiential legal education Brisbane, Australia Tuesday 16 to Thursday 18 July 2013

Our eleventh conference was very kindly hosted by Griffith University. My particular thanks to Professor Jeff Giddings and his colleague Zoe Rathus for organising such a vibrant, well organised and fun conference.

A significant number of papers focused on pedagogy but there were also many papers presented on themes of social justice and streetlaw. Further details of the proceedings can be found at <http://commongroundconference.info/>

Twelfth International Journal of Clinical Legal Education Conference, in association with the European Network for Clinical Legal Education (ENCLE), Palacky University, Olomouc, 15-17th July 2014

We are hosting this conference jointly with ENCLE for their second conference. The theme of the conference is Clinic Without Borders. As the clinical legal education movement continues to push pedagogical, geographical, jurisdictional and discipline boundaries this conference will provide an opportunity for us to explore these new frontiers. For those interested in attending the conference, details can be found here: www.ijcle.com

In This Issue

One of the factors leading me to this year's conference theme was the thread running through the vast majority of papers in this edition as clinical legal education continues to push boundaries in many and diverse ways.

This edition contains several interesting papers on the birth and growth of clinic in new jurisdictions. In "An Examination of the Challenges, Successes and Setbacks for Clinical Legal Education in Eastern Europe," Professors Askamovic and Genty consider the history of Clinical Legal Education in Eastern Europe and ask searching questions about why it has flourished in some countries and not others. In Volume II, a series of articles by Nigerian academics consider the achievements, challenges and growth of clinic in that country. Two articles ("The Relationship Between Social Justice and Clinical Legal Education: A Case Study of the Women's Law Clinic, Faculty of Law, Univeresity of Ibadan, Nigeria" and "Clinical Legal Education and Cultural Relativism – The Realities in the 21st Century") consider the work of the Women's Law Clinic at the University of Ibadan. Both contain interesting insights into the work of the clinic and the

culture of the local community when undertaking outreach work. Further articles from Nigeria consider the prison system there: “Decongesting Prisons in Nigeria: the EBSU Law Clinic model,” and an overview of developments in Nigeria more generally: “Meeting the Required Reforms in Legal Education in Nigeria: Clinical Legal Education – Ten Years After.”

Volume I of this edition also sees expansion of clinics in another direction: multidisciplinary clinics. In “The Value of Incidental Learning in a Multidisciplinary Setting,” Ross Hyams and Denise Sadique investigate multidisciplinary work between social work, law and business students and the informal learning opportunities arising in that environment. There are clearly wonderful opportunities for both students and their supervisors to learn from other disciplines and approaches. One of the key insights is the influence that this exposure can have on law students’ developing sense of professional identity as lawyers. It seems to me that multidisciplinary clinics represent a further maturing of clinical legal education as we explore the opportunities that this offers to truly understand for ourselves and our students the role of the lawyer in society.

Also in Volume I, “Clinical Collaborations: Going Global to Advance Social Entrepreneurship,” Deborah Burand et al discuss a partnership which pushes yet more boundaries. The paper explores their cross-university collaboration with Ashoka (a global non profit organisation) to deliver transactional clinical legal services globally to advance social entrepreneurship. Again it is clear that this is a further sophistication of clinical work; building on existing international transactional work to partner with other universities and a global non profit partner to better serve client needs, learn from each other and inspire students and academics to study and contribute to social entrepreneurship.

I hope I have convinced the reader that many of the papers in this edition are a part of this broader theme of crossing borders. I will not attempt to stretch this for the remaining papers in this edition, which provide different insights. In Volume II, “Assessing Law clinic – the use of digital patch text assessment as an alternative to traditional portfolios,” evaluates the use of digital media in the use of Patch Text Assessment and its application within a law clinic module. Patch Text Assessment appears to offer several key advantages over traditional portfolio assessment.

Michael Appleby and Judy Bourke present important work regarding the well being of future lawyers. In Volume I of this edition they look at: “Promoting Law Student Mental Health Literacy and Wellbeing: A Case Study from The College of Law, Australia.” This study gives a valuable insight into work at the College to address important concerns about the mental wellbeing and mental health literacy of law students and, therefore also subsequently, lawyers. Of all their recommendations, it seems to me that as legal educators we should take most seriously the call to consider making mental health literacy training and wellbeing training part of the core curriculum.

In a not wholly unrelated article, in Volume II, the authors consider: “A Client-Focused Practice: Developing and Testing Emotional Competency in Clinical Legal Interviews.” The authors describe initial research into training in emotional competencies for client interviews and whether or not students who have undertaken that training perform better in the initial legal interviewing process. This paper provides an interesting prelude to the publication of fuller results from the research.

Finally, in Volume I, my colleague here at Northumbria, Elaine Campbell, considers: “Regulating clinic: Do UK Clinics Need to Become Alternative Business Structures Under the Legal Services

Act 2007?” This provides an important commentary for UK (particularly in England and Wales) clinicians, and policy makers, on the potential unintended consequences of the significant changes to the structure of law businesses. Elaine considers developments towards Alternative Business Structures in Australia and the new legislation in England and Wales. The potential outcome of the new regulatory regime could be that the ability of law clinics to offer a full legal service to clients could be severely curtailed. Clearly this is of importance to those of us in this country. I think the article is important for our international colleagues because it is an indication of possible future direction in other jurisdictions as the boundaries between law firms and other businesses continue to blur in an increasingly competitive, global and multidisciplinary environment.

The future of this journal

As indicated in the opening paragraphs, we are taking the journal online and Dr Elaine Hall becomes the managing editor.

Moving the journal online will lead to an increased profile and readership for the journal, lending more impact both for individual papers and for the CLE work more broadly. It will also allow us to have a more streamlined and transparent review process and easy access to our archive. Finally the move online gives us the opportunity to change the format of the journal, certainly by using multi-media content and to move to publishing more frequently with themed issues.

In the new format, each volume will consist of three issues, delineated by strand.

- ***Clinic, the University and Society***: this strand addresses the role of clinic as an instrument for civic engagement, access to justice and societal change.

Reviewed Articles in this strand will engage with the theory of clinic, relating to purpose, ideals and conceptualising the value that clinic offers to students, staff, the institution and wider society. These papers will explore the complex relationships between clinical education and social justice agendas, between university vision statements, student expectations and the demands of the legal profession.

Practice reports in this strand will deal with procedures and governance for clinic development, partnership working within universities and beyond, including statutory and voluntary sectors and practical aspects of managing clinical work including attendant issues such as data management. Papers co-authored with partners and stakeholders are particularly welcomed.

- ***Teaching and Learning in Clinic***: this strand investigates the curriculum, pedagogy and assessment used to prepare students for and support students during their clinical experience.

Reviewed Articles in this strand will contribute to the wider pedagogic literature, contextualising on-going debates in education within the particular disciplinary and local contexts. They may contain detailed empirical explorations of the impact of particular learning environments, opportunities or processes. From a policy perspective, some papers may explore the tensions between legal education and preparation for practice as a lawyer.

Practice reports in this strand will report innovative work, giving clear guidance for other practitioners who may wish to replicate their approach. Reports in this strand will typically include learner perspectives and we encourage co-authored papers with students.

- **Research and Impact:** this strand will focus on the evidence base for clinical education and will explore the weight of evidence and the knowledge claims. The issues will develop our sense of how secure our conception of the impact of clinic is by giving the rigorous presentation of a range of empirical data a strong critical and epistemological frame. Papers in this strand may therefore have a topic focus from another strand but the balance of the paper will be weighted towards an exploration of the research methods used (in a report of a particular empirical study) or of the balance of approaches to research in CLE (in a review of existing studies).

Reviewed Articles in this strand will engage critically with the tools and methodologies used to investigate clinic and provide evidence about the unique opportunities and limitations afforded by these choices of research design.

Practice reports in this strand will focus on single methods within on-going investigations of CLE, for example a review of the validity of a questionnaire used to tap into student experiences

Each issue of the journal will contain

- An editorial by the Strand or Managing Editor
- Three or four Reviewed Articles of up to 8,000 words each. These articles will be blind peer-reviewed by an Editorial Board Member and an external reviewer. Feedback from these reviews will be given to the author by the strand editor. Authors wishing to submit papers as Reviewed Articles will need to remove all identifying details from the paper before submission.
- Two or three Practice Reports of up to 6,000 words each. These reports will be internally reviewed by the Editorial Board. Authors submitting papers as Practice Reports do not have to anonymise their work, though they can do so.
- A 'From the Field' report of 2,000 words giving news of practice and innovation from a particular geographical or jurisdictional context.
- Reviews of book, articles, events and multimedia resources of between 200-800 words.

Authors preparing papers for the journal during the transition period are invited to contact Elaine Hall (elaine.hall@northumbria.ac.uk) if they would like to discuss where to place their contribution.

Although I am no longer editor of the journal I will continue to contribute to it and to the organisation of our annual conference, as well as continuing to work in Northumbria's Student Law Office. I look forward to continuing to meet with all of our colleagues and share experience and best practice as clinical legal education continues to grow across the globe.

Jonny Hall

Editor

An Examination of the Challenges, Successes and Setbacks for Clinical Legal Education in Eastern Europe

Dubravka Aksamovic¹ and Philip Genty²

I. Introduction

The authors first met in 2000, and have collaborated in conferences, workshops, and other projects since then. We also represent two sides of an international exchange that has frequently occurred in the past 15 years: a European law teacher who attends training sessions, networks with colleagues from other European universities, learns about American models of clinical education, and possibly receives some outside funding; and an American law teacher who is graciously hosted by Europeans, promotes American models of clinical education, and, one hopes, observes, listens and learns about the European system. We are also experienced teachers within our own universities and teach both clinics and more doctrinal courses. Finally we are friends and can be honest with each other.

After more than 10 years of working together, we wanted to take stock of the collaboration between American and European academics on issues of clinical education. We wanted to take a close look at what has happened in Central and Eastern Europe since the first “American invasion” of U.S. consultants and funding: what clinical programs were developed? Which ones survived after the consultants and funding left? Why did some programs survive and prosper, while others disappeared? What do the surviving models look like?

We also wanted to ask a series of more subjective and potentially sensitive questions: was the American influence ultimately helpful and productive? To the extent that it was *not* helpful, what have we learned about improving such cross-cultural international collaborations in the future? Have European law schools copied US models of clinical legal education, or have they developed

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their own models?

In the following sections we first discuss the history of clinical legal education in Central and Eastern Europe. We then focus on Croatia and Olomouc, Czech Republic, two examples of the ambitious but uneven development of clinical programs in Central and Eastern Europe. We next examine the experiences of clinical programs in countries of CEE and some of the challenges these programs have faced in achieving sustainability. We then use a comparison between the European and U.S. clinical program models as a lens for analyzing the experiences of the European programs and assessing the value of collaboration between European and U.S. clinical teachers. Finally, we offer some thoughts about the future of clinical legal education in Central and Eastern Europe.

II. History and Overview of Clinical Legal Education (CLE) in Central and Eastern European (CEE) Countries

Clinical legal education in Central and Eastern European countries emerged in the second half of 1990's. It first started on an experimental basis but in time it became an integral part of higher education programs in a number of these countries.³

According to different sources, in only a few years, from 1990 until 1995, more than 100 clinical programs were established in the countries of CEE, including many in Russia⁴. Clinical legal education was recognized by law schools in the region as a teaching and learning method that actually prepared students to practice law. Further, the clinical method of learning – learning by doing – was a “breath of fresh air” in the otherwise typical atmosphere of the “classical” classroom lecture methods applied in most law schools in Eastern and Western Europe⁵.

As discussed below, however, the development of CLE in Europe has been far from uniform. There are significant differences between CEE and Western Europe, as well as among the countries of CEE.

A. East v. West: CLE's Growth in CEE Countries and Its Failure to Take Hold in Western Europe

While Central and Eastern European countries accepted CLE with lots of enthusiasm, Western European countries were resistant to innovations involving the implementation of CLE⁶. Only a few clinical law programs have been established so far in Western European countries, notably in

3 For a comprehensive discussion of the history of CLE in Europe, see Edwin Rekosh, *Constructing Public Interest Law: Transnational Collaboration and Exchange in Central and Eastern Europe*, 13 *UCLA J. Int'l L. & For. Aff.* 55, 83-92 (2008).

4 Lusine Hovhannisian, *Clinical Legal Education and the Bologna Process*, PILI Papers, No. 2, December 2006., pp.14; Richard Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 *German Law Journal* 825 (2009).

5 Wilson, *supra* note 2, at 825-28.

6 *Id.* at 828.

the UK⁷. (This is quite understandable due to the fact that it is a common law country.) Besides the UK, successful clinical programs have been established in Spain, the Netherlands⁸ and one of the most developed is in Norway⁹. In France¹⁰, Germany¹¹ and Italy¹² CLE programs exist in only a few law schools.

This situation provokes the question: why has CLE been so well accepted in the European East and not so well in the European West? We want to suggest a few reasons.

First, all Central and Eastern European countries faced the fall of communism, which resulted in a high level of incentives to change things. In this context, and as said before, CLE was a “breath of fresh air” in the otherwise typical atmosphere of the “classical” classroom lecture methods applied in most law schools in Central and Eastern Europe.

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- 7 See James Marson, Adam Wilson, & Mark Van Hoorebeek *The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective*, 7 *International Journal of Clinical Legal Education*, 29-43 (2005); Richard Grimes, *Legal Literacy, Community Empowerment and Law Schools – Some Lessons from a Working Model in the UK*, 37 *The Law Teacher* 273 (2003); Julian Webb, *Inventing the Good: A Prospectus for Clinical Education and the Teaching of Legal Ethics in England*, 30 *The Law Teacher* 270 (1996); Nigel Duncan, *Why Legal Skills – Whither Legal Education?*, 25 *The Law Teacher* 142 (1991); see also Model Standards for Live-Client Clinics A Clinical Legal Education Organisation (CLEO)* Document (updated 2007) (available at: <http://78.158.56.101/archive/law/files/downloads/38/713.83471086.standards.rtf>); *Moving On: New Initiatives, New Resources: Report on the 2002 CLEO Conference* (available at: <http://www.ukcle.ac.uk/resources/teaching-and-learning-practices/2002conf/>)
- 8 See <http://www.uu.nl/faculty/leg/en/organisation/schools/schooloflaw/organisation/departments/studieeninformatiecentrummenserechten/cp/Pages/default.aspx?refer=/legalclinic>
- 9 See Jon T. Johnsen, *Nordic Legal Aid*, 5 *Md. J. Contemp. Legal Issues* 301, 328 (1994); see also Jon T. Johnsen, *Juss-Buss and Clinical Legal Education* (University of Oslo, 1991).
- 10 See, e.g., <http://master.sciences-po.fr/droit/en/content/access-justice> (Law Clinic of the Sciences Po Paris Law School); <http://www.unicaen.fr/recherche/mrsh/crdfed> (Fundamental Rights Law Clinic of the University of Caen); and <http://ufr-dsp.u-paris10.fr/ufr-de-droit-et-science-politique-dsp-/etudiants/euclid-386003.kjsp?STNAV=&RUBNAV=&RH=1314308994710> (Euclid Law Clinic of the University Paris Ouest Nanterre).
- 11 Few legal clinics exist in Germany, at least in part due to the rigidity of Germany’s higher education laws. See Andreas Bucker & William A. Woodruff, *The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences*, 9 *German Law Journal* 575, 611-13 (2008) (discussing rigidity of German law of higher education as an impediment to establishing clinics in German law faculties). Among those universities that do have clinics are the Hochschule Wismar, which has established a live client clinic for Master degree students, see *id.*; the [Heinrich-Heine-University Düsseldorf](http://www.jura.hhu.de/en/hilfe.html) Faculty of Law, which offers a legal advice clinic, see <http://www.jura.hhu.de/en/hilfe.html>; and Humboldt University, which has a human rights clinic. See <http://baer.rewi.hu-berlin.de/eng/humboldt-law-clinic>.
- 12 In February 2012, the University of Brescia organized an international conference on clinical legal education in Europe. See <http://www.lider-lab.sssup.it/lider/attachments/article/25/LocandinaClinicsDEF.pdf>. Four Italian legal clinics presented their work and discussed their models of clinical legal education. Those are the legal clinics from Turin, Rome, Florence, and Brescia (the host of the conference).

Second, all Central and Eastern European markets went through transition. So there was a strong demand from market forces for reforms and legal reforms in particular.

Third, the transformation, from a non-market to a market economy model, led to an increased need for free legal aid. A number of Central and Eastern European countries faced massive bankruptcies, lots of people were jobless, and some countries, like Croatia, were struck by war. Due to all of these factors, there was an increased demand to help the people in need, but the inherited model of free legal aid could not satisfy all of these needs. Civil societies institutions, who are currently also important free legal aid providers in CEE countries only started to develop at the time.

And finally, there was a whole new generation of law students who wanted change. They demanded more from legal education than faculties had previously provided for them.

B. Different Models of CLE in CEE countries

In addition to the different developments of CLE in CEE and Western Europe, there have been significant variations among the countries of CEE. Despite the fact that CLE appeared at the about same time throughout CEE, it did not follow the same pattern. What we notice, while exploring developments in CLE in different Central and Eastern European countries are peculiarities of CLE. Each country, and even the law schools within one country, have developed different models of CLE. While some countries and law schools unanimously chose the model of live client clinics, others accepted simulation clinics or the placement model (“externships”). This was surprising if we have in mind the fact that CLE in CEE was shaped and modeled with the help or assistance of no more than three U.S. partners, PILnet (formerly PILI), the Soros Foundation, and ABA CEELI¹³, and all of these funders specifically promoted the live client model.

The same phenomenon occurred in the context of clinical subject matter. Different types of clinics were established: constitutional law clinics, criminal law clinics, environmental clinics, business law etc. However, this is perhaps less surprising because the U.S. funders did not focus on any particular subject matter in the models they introduced.

This leads to several questions: given that these clinical programs were all based on similar U.S. models and benefitted from the same training and capacity-building efforts, why was a uniform model of CLE not accepted or developed in CEE? Is this diversity of models good or bad for CLE in CEE countries? What are the reasons for this diversity of CLE models?

There are several possible answers:

- a) The design of clinical programs often reflected the particular persons who conceived and developed a particular program. It was usually a particular person within the law school, not the law school as an institution, who created the clinical program.
- b) Clinical design was often regionally or geographically related. Different Central and Eastern European countries were burdened with different problems, and these were reflected in clinical activities. For example, while some countries had an increased need for labor law clinics, others had a need for refugee clinics.

13 See Leah Wortham, *Aiding Clinical Legal Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively*, 12 *Clinical L.Rev.* 601 (2006).

c) There was also a lack of systematic approaches and strategies towards a more uniform concept of CLE in CEE. Even clinics within a single country did not cooperate on curricular development or clinical pedagogy or other aspects of clinic design. So the clinical movement in CEE in the 1990's can be, to some extent, characterized as an *ad hoc* approach. As discussed below, this might be the reason why a number of clinical programs failed within a short time.

III. Specific Examples: Croatia and Olomouc, Czech Republic

To provide illustrations of some of the general descriptions and conclusions presented above, we offer examples from Croatia and the Czech Republic. These are two countries with which we have experience, the European as a direct faculty participant and the American as an visitor and observer.

A. The Croatian Example: Four Schools, Four Different Experiences

CLE in Croatia has a short tradition. It started later than in other parts of CEE due to the fact that the country was at war. Therefore transition came somewhat later.

The first Croatian clinical program started at the Faculty of Law in Rijeka in 2002, following by the legal clinic established at the Faculties of Law in Osijek in 2003 and in Split in 2008. In 2010, a live client clinic was established at the Faculty of Law in Zagreb. The establishment of a legal clinic at the country's oldest university was actually a major breakthrough for the future of CLE in Croatia¹⁴.

Clinical programs in Croatia were, from the very beginning, recognized and well accepted by legal academics as a new teaching methodology which can enhance legal education. In a short time clinical programs became a part of the mandatory curricula at all four law schools, although clinical programs are carried out in each of the law schools in different ways.

The legal clinic established at the Faculty of Law in Zagreb is the country's only live client clinic. Other law schools apply the models of either simulation or placements.

Despite intensive clinical activity and affirmation of clinical programs as an accepted teaching methodology, clinical development in Croatia has not been without problems, some examples of which are particularly visible in the smaller law schools which are not located in the capital city. These problems are similar to those mentioned above.

They can be summarized as follows:

a) Staffing problems

Smaller law schools have a small staffing capacity. The situation is much better in the capital city.

b) Problems with practicing lawyers in smaller cities

14 See Barbara Preložnjak, *Clinical Legal Education in Croatia – From Providing Legal Assistance to the Poor to the Practical Education of Students*, 10th International Journal of Clinical Legal Education Conference, Durham, UK, July 2012. (unpublished paper; English-language abstract available at http://www.numyspace.co.uk/~unnmlif1/school_of_law/IJCLE/abstracts.html); See also: <http://klinika.pravo.unizg.hr/> (in Croatian).

In many CEE countries, including Croatia, clinics must hire private lawyers to supervise law students in the legal work they perform, because law professors are often not permitted to be practicing lawyers. Finding and keeping involved a practicing lawyer on a stable basis is quite hard in smaller and poorer environments. Besides that, lawyers have poor or no knowledge of clinical pedagogy and methodology, which creates additional problems.

c) Ad hoc approach to organizing CLE

Clinical activity in Croatian law faculties depends too much on one person. Faculties are not involved enough to take over the responsibility and incentive for clinical development.

d) Lack of teaching credit for clinical faculty

Since clinical programs are new, clinical teachers often get no credit for performing CLE. It is purely voluntarily engagement, which must be performed in addition to all of the other demands (heavy teaching responsibilities, Ph.D. studies, administrative duties) placed upon the faculty members who teach clinics.

e) Legislative restrictions

Until 2008, Croatia had an additional problem. It was not clear what kind of legal aid clinics could perform. This issue was clarified to some extent in 2008, when the Code on free legal aid¹⁵ was enacted.

B. Olomouc, Czech Republic – the Flight of the Phoenix

The first live client legal clinic in Central Europe was at Palacký University, Olomouc, Czech Republic. It was funded by the Ford Foundation in 1995-1997¹⁶. However, this clinic was also one of the early failures, ending as soon as the outside funding stopped. Edwin Rekosh explains some of the reasons for this: “Arguably, those instances of failure were caused by some of the phenomena implicit in the pure export model; they were not sufficiently adapted to local conditions by locally-based champions working (when helpful) in long-term collaborative relationships with foreign partners.”¹⁷ Rekosh goes on to discuss the demise of the Olomouc clinic:

Certainly, this was the case with the initial experiment at Palacký University in the Czech Republic supported by the Ford Foundation. The initial local champion of the project, who had been dean of the law school at the time, passed away. The clinic director that his successor had appointed to run the project, a local bar advocate, treated her position supervising the students in the “live-client” clinic as an ordinary job and had no vision for or interest in what the clinic might become The foreign partner in the project interpreted the deficiencies of the start-up initiative as stemming from a lack of commitment by the local partner to core public interest values.¹⁸ Rekosh concludes that these problems were not limited to Olomouc: “No doubt many of

15 Official Journal No. 62/08 and 81/11

16 See Rekosh, *supra* note 3, at 87 n. 98.

17 *Id.* at 88-89.

18 *Id.* at 89, n.102.

the initial clinical projects supported by foreign donors were seen even more cynically by local actors as vehicles for bringing in much needed financing to resource-strapped state universities.”¹⁹

And yet, after this initial failure, the Olomouc clinic has since come back to life stronger than ever, with several different clinics, many of which are live client models, as well as an introductory lawyering skills simulation course, classes on legal ethics, and an energetic and innovative teaching staff who participate actively in international conferences.²⁰

IV. Evaluating the Experiences of Clinical Programs in CEE: Common Problems Which Different Clinical Programs in CEE Countries Have Faced

The experiences in Croatia and the Czech Republic provide examples of some of the challenges facing CLE in CEE, as well as the possibilities for overcoming these to develop strong and sustainable programs. Evaluated in general, and from a distance in time of some 15 years, the CLE programs that started in CEE in the 1990’s were a great success. This is especially true in Poland, which is the “gold standard” for European clinical education programs. Law clinics exist in law faculties throughout Poland, and clinical faculty meet in national and regional conferences. In addition, clinical educators in Poland have developed an extensive set of materials to support CLE.²¹

But the success has been uneven. The authors have attended many clinical teaching conferences in CEE and have observed that after a successful beginning, a number of clinics faced failure within a short period of time. On the other hand, a number of other clinics, established at the same time and in similar circumstances, experienced great success. This situation again raised the question: why do some clinics tend to be very successful and other clinics fail?

The exact reasons are unknown because there is no study which tracks the various clinics that were started in the 1990’s and shows how many of these clinics have been closed. But most of the available information suggests the following problems which are common to many clinics which faced failure:

19 *Id.*

20 To take one example – in 2011, law teachers from six continents gathered in Valencia, Spain, for the Global Alliance for Justice Education Worldwide Conference. At that conference, four of the sessions were conducted by members of the faculty at Palacký University. This only underscores the leadership position of this institution and faculty in international legal education reform.

21 For a description of law clinics in Poland, see Joanna Sliwa, *Report on the Legal Education in Poland* (Pilnet 2010), 23-25, available at: http://www.pilnet.org/component/docman/doc_download/45-legal-education-in-poland-building-institutional-will-for.html. See also, Rekosh, *supra* note 3, at 90-92.

a) *Funding*

Loss of outside funding frequently resulted in decreased clinical activities. Many law faculties were not prepared to take over funding responsibilities once foreign funders withdrew.

b) *Staffing problems*

It is very typical for CEE law schools to have too many students compared to the number of teaching staff. This also caused problems in the context of clinical education. There were often too few university teachers who could participate in student supervision and assessment.

c) *Legislative barriers*

Within the universities of CEE there is a wide lack of support and incentives to make the necessary legislative changes to the educational process that would create a system in which CLE is a presumed component of the law curriculum.

V. Comparisons Between the European and U.S. Experiences

In examining this uneven history of CLE in Europe, it is useful to compare the European programs with those in the U.S.²² As noted above, start-up funding for the European programs was provided by U.S. donor organizations, and much of the technical support and training was provided by U.S. educators. The U.S. has a 40 year history of CLE, and many of the European programs were based on successful U.S. models. Why, then, have the results been so mixed?

This question prompted an engaging and enlightening dialogue between the authors. We have observed that although the Bologna Process is moving the European system of law and legal education closer to that in the U.S.²³, the fundamental historical and cultural differences between the civil and common law systems continue to have an effect.²⁴ In Europe, CLE – and interactive education more generally – has to be incorporated into the prevailing, traditional, lecture-based doctrinal model of education.

The challenge is not in adding clinics formally to this traditional curriculum. In most CEE countries, clinics *are*, in fact, part of the curriculum, because the relevant governing educational body would not otherwise allow them to be taught. In Croatia, for example, if a faculty wants to teach a legal clinic, the faculty must write a detailed proposal for the clinical course and seek formal approval from the governing body. This is true of other CEE countries as well, because public universities are the prevailing model.

22 For general comparative discussions, see Leah Wortham, *Aiding Clinical Legal Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively*, *supra* note 13; Lee Dexter Schnasi, *Globalizing: Clinical Legal Education: Successful Under-Developed Country Experiences*, 6 T.M. Cooley J.Prac. & Clinical L. 129 (2003); Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 J.L.& Pol'y 111 (2008).

23 See Laurel S. Terry, *The Bologna Process and Its implications for U.S. Legal Education*, 57 Journal of Legal Education 237 (2007).

24 For a discussion of the differences between the civil and common law systems and the effects of these differences on CLE, see Philip M. Genty, *Overcoming Cultural Blindness in International Clinical Collaboration: The Divide Between Civil and Common Law Cultures and Its Implications for Clinical Education*, 15 Clinical L. Rev. 131 (Fall 2008).

Therefore incorporating clinics within the CEE curriculum is not the primary obstacle to be overcome; rather the challenge to successful implementation of CLE in the region is that clinics lack respect from the majority of law professors, who are traditional in their views and resistant to change. They generally oppose curricular reform, particularly with respect to educational content and teaching styles.

A related challenge in Europe is an underdeveloped clinical pedagogy and the lack of a clear curricular design. Students often do not receive academic credit for their work, and clinical seminars frequently operate without a set curriculum, syllabus, or teaching materials specifically designed for clinical courses. It will take time to develop clinical pedagogy in Europe. It appears that only Poland has managed to do that to some extent.

One area in which the U.S. has a clear advantage over most European countries is that the U.S. curriculum is more flexible. Because the courses in the U.S. common law system are not typically compulsory after the first year, course offerings and teaching methods tend to be fluid and varied. Thus, there is room in the curriculum for clinical courses, offered for many credits ($\frac{1}{2}$ of a student's total semester credits is common), with an extensive syllabus, ambitious curriculum, and well-developed materials, sometimes including textbooks specifically designed for these programs. The American clinical course is therefore a complete "package" of substance, skills, values, and experiences. This is not generally true of European clinics, because the time and space for clinics needs to be "borrowed" from other parts of a set, formal curriculum. European students therefore get only part of this educational "package" in the clinics they are able to take.

There are at least six, less fundamental, differences between the European and U.S. experiences with CLE. First, there are still relatively few live client clinics in European universities²⁵. Is it important that clinics have live clients, or are interactive simulations and project-based clinics equally valuable in the European educational context? Much of this is a function of sheer numbers of students. Even in universities with live client clinics, demand tends to exceed available opportunities even more than in the U.S. because of larger class sizes. For example, in Osijek, Croatia, a small school, three instructors in one academic department are responsible for giving lectures, examinations, etc. to 1,200 4th year students.

Second, the legal assistance provided to clients in European clinics tends to be shorter term than in the U.S., with a focus on the one-time giving of advice or drafting of legal pleadings or other documents. In this way European clinics resemble some limited scope "unbundled" *pro bono* programs in the U.S. One practical reason for this is the length of court proceedings. Even the simplest cases usually last longer than an academic year, and students do not want to continue their involvement beyond the academic year.

Third, among the most interesting differences we examined is the focus of the clinics in the two systems. European clinics tend to focus less than U.S. clinics on the dynamics of the attorney-client relationship, including interviewing and counseling skills and developing a relationship of empathy with the client. The focus in European clinics might be described as being more on "solving the case" than "understanding the client."

²⁵ There are no reliable data about the number of legal clinics in Europe in general, and in particular about the breakdown among types of clinics, e.g. the number of live client clinics. Perhaps this situation will improve with the establishment of ENCLE (European Network for Clinical Legal Education). See: http://www.uc3m.es/portal/page/portal/instituto_derechos_humanos/sala_prensa/comunicados_de_prensa/encl.pdf.

Solving cases rather than getting to know the client is not specific to the clinics, however – it is the typical approach of practicing European lawyers. In other words the clinics are reflecting actual practice, which is arguably what they should be doing.

This observation has significant implications for cross-cultural work. Many of the clinical training sessions provided by PILnet, ABA-CEELI, and other U.S. organizations for European law teachers have focused extensively on teaching interviewing and counseling skills on the theory that these skills are essential to effective lawyering. However, it may be that these skills are relatively unimportant in European law practice and that a focus on these skills in clinical development work is therefore misplaced. The European author's own experiences appear to support this conclusion; she noted that she had found this aspect of the training sessions she had attended relatively unhelpful.

Fourth, related to this lack of focus on the attorney-client relationship, education in ethical issues is not typically part of the European clinical curriculum (but it is not part of the non-clinical curriculum either). Where ethics courses exist, they tend to be taught in a code-centered lecture format, rather than the interactive problem-based model that is more common in the U.S. Palacký University in Olomouc, Czech Republic is an exception, because it offers an elective, interactive ethics course, which is taught by one of the clinical faculty members. This course is beginning to be replicated in other Czech universities.

Fifth, in some European countries, especially those in which professors are not allowed to practice law, clinics must contract with practitioners for court representation of clients. There may be an educational gap for the students if the practitioners are not trained in clinical pedagogy and included in faculty discussions of such pedagogy.

Sixth, European countries do not generally allow for student practice in courts and administrative proceedings. (The Republic of Georgia is one exception to this.) Related to this, it is not clear to what extent attorney-client confidentiality applies to law students who meet with clients in law school clinical programs.

All of these differences need to be taken into account in structuring effective collaboration between European and U.S. colleagues. As discussed below, future collaborations should focus more on supporting the new European models of clinical education rather than replicating U.S. models.

VI. Reflections About the Future of Clinical Legal Education in Central and Eastern Europe

After the first wave of funding and consultants ended, many European clinical programs did not survive, suggesting that clinical education might not be sustainable in the long-run without outside funding. However, the good news is that the support provided in the 1990's and 2000's by outside organizations (Ford Foundation, ABA, OSI, PILnet, etc.) planted seeds of "human capital" – the law teachers and students who attended the conferences and workshops have become an energetic new generation of clinical educators. In addition, Bologna and other European educational reforms have stimulated the introduction of graduate law programs. These graduate students – especially Ph.D. students – are often themselves products of the new clinical education programs, and they have taken on important teaching roles within the clinical programs. This "human capital" may ultimately be a more important factor than outside funding in achieving sustainability for clinical

education in Europe.

However, in thinking about the future it is important to distinguish among three main goals of CLE and tensions among them. Clinical scholars typically identify the following goals: creating social change by giving disadvantaged groups access to legal services; making experiential courses mandatory so that all students are better prepared for the profession they will be entering; and providing students with a “live client” experience.

It is hard, if not impossible, to do all three of these things in existing European systems, and it may not be realistic to think that all three goals can be achieved. Live client clinics require a lot of resources, so they will have to be limited to a small number of students. It is probably more realistic to offer simulation clinics, which can be provided to larger number of students. To the extent that live client opportunities are offered, the best way to give the largest number of students this opportunity is to give them short-term cases involving limited scope representation, e.g. advice-only or drafting of pleadings. But these cases will probably not do much to create social change, because social change cases require full representation over an extended period of time. So it is important for law faculties to be realistic and honest about their goals. This may require them to choose among possible objectives.

Contrary to conventional wisdom, the major obstacles to sustainability of clinical programs may not be a lack of funding. It is, of course, easier when one has funding, and many schools failed to pick up responsibility for funding clinics when outside funding dried up. But since clinics must, for the reasons discussed above, be formally approved and integrated into the law school curriculum, they have space and equipment.

The bigger challenge is maintaining the necessary “human capital.” In the European system of legal education, contrary to the U.S., clinical faculty are burdened by the pressure to achieve academic advancement in a short period of time – LL.M, Ph.D, all within 6 years. In addition, early in their careers, European law teachers have substantial departmental responsibilities. They carry significant substantive course teaching loads, administrative duties, and responsibilities for assisting and supporting senior colleagues. (In addition, these senior professors will influence the promotion prospects of their junior colleagues.) Finally, they usually do not receive any credit for teaching clinics. So, European law teachers who would otherwise like to teach clinics are often faced with the need to give up activities – such as clinical teaching – which are not important for academic advancement. That is probably one of the reasons why a number of clinics failed in Central and Eastern Europe.

VII. Conclusion

What does the future hold? What are the prospects for clinical legal education in Central and Eastern Europe? These are the questions to which, it seems, there are no exact answers. CLE, in the last 15 or 20 years spread across Central and Eastern Europe. It “flourishes” in some countries, less in some other. But the fact is that the concept of CLE is not unknown any more to European legal educators.

There are four possible scenarios for the future of CLE in Europe:

1. Clinics will continue to spread and will be fully accepted and accredited law school programs in all of Europe not just in CEE.
2. Most of the clinics will fail in time because it is not a traditional or typical teaching methodology in Europe.
3. Most clinics will fail because clinical education is not accepted as a teaching methodology on the EU level.
4. It is not predictable how clinical programs will continue in the future.

Which one of these scenarios we will witness in the future, in our opinion, depends a great deal on Western Europe, which to some extent has always influenced legislative and educational processes in CEE. This influence is even stronger now, when most of CEE countries are becoming part of the EU. What we can see at the moment is that CLE is being more accepted in Western Europe too. Proof for that is the recent initiative coming from Italy to establish the European Network for Clinical Legal Education (ENCLE)²⁶ which will serve as an umbrella organization and as a support to CLE throughout Europe. This might be the key that will widely open the door to European clinical education.

U.S. educators can also continue to contribute to these efforts, but in doing so they must recognize that Europe will develop its own CLE models, probably to some extent distinct from those in the U.S., and presumably more appropriate to the needs of European law faculties and civil societies. The best use of U.S. expertise may therefore be to facilitate the creation of opportunities – through conferences and websites – for European clinical teachers to exchange experiences, information, and ideas, and to engage in ongoing conversations with one another.

26 About ENCLE see http://www.uc3m.es/portal/page/portal/instituto_derechos_humanos/sala_prensa/comunicados_de_prensa/encl.pdf; <http://www.iuctorino.it/content/european-network-clinical-legal-education>

The Value of Incidental Learning in a Multidisciplinary Setting

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Introduction

There is much to be gained by students learning together in a multidisciplinary environment. Enabling students to interact in a multidisciplinary clinical setting enhances their opportunity to learn from each other, their supervisors from different disciplines and from their experiences with clients. As well as “formal” learning opportunities which take place in the classroom, seminar environment, or in one-to-one instruction with a clinical supervisor, students working in a clinical setting have a range of opportunities to be exposed to informal, or incidental learning. This is learning that occurs in an opportunistic, unplanned and often, serendipitous fashion. This paper reflects on incidental learning opportunities that have been observed to take place in a multidisciplinary clinical setting, specifically between law, social work and business students. These reflections come directly from practice experience at the Monash-Oakleigh Legal Service, operated by the Faculty of Law at Monash University in Melbourne, Australia.

Originally established as a pilot project in 2010, the multidisciplinary clinic runs two client intake sessions per week throughout the year, involving approximately 65 students from three disciplines on a yearly basis. The students interview clients in a team (law, social work and finance) and the supervisors also sit together as a team to advise the students. The Legal Service has a generalist practice, dealing with a diverse range of matters such as car accidents, crime, family law, debt, neighbour dispute and traffic infringements. Since its inception, students graduating from the clinic, and their supervisors, have been surveyed about their views regarding their participation in multidisciplinary clinical education. Accordingly, one of the main themes that has emerged from these surveys is that students are learning a great deal that supervisors are not necessarily directly teaching them— that is, much “incidental” learning is taking place from the cross-fertilisation between students and supervisors of different disciplines, during the clinical experience at the Legal Service. There was also incidental learning that took place among the supervisors of the different disciplines, with supervisors stating that they gained knowledge and insights into each other’s disciplines. These were both unexpected outcome of the multidisciplinary clinical methodology, but outcomes which are much welcomed by clinical educators.

This paper will first attempt to define and describe incidental learning. It will then focus on the opportunities for incidental learning which can arise in a multidisciplinary clinical setting, concentrating on both formal and informal learning outcomes and will ask whether such outcomes can be measured and if so, how. Ultimately, it will be concluded that much insight and wisdom takes place by incidental learning in a multidisciplinary clinical environment and that we should seek to create and maintain a work environment that nurtures this type of learning. Accordingly, recommendations will be made for future clinical education which may be able to capitalise on and nurture collaboration, transfer of learning and informal learning opportunities to provide participating students from diverse disciplines with skills and knowledge that better prepare them for the reality of the workforce.

What is incidental learning?

Garrick³ provides a literature review that offers various definitions of incidental learning. A starting point in defining the concept may be to investigate what formal learning consists of by way of comparison. Tusting⁴ states that formal learning comprises the following characteristics:

- It takes place in an educational institution.
- It follows a planned curriculum which has been set in advance.
- It is accredited using formal means of assessment.
- Teaching is delivered by way of a hierarchical relationship between teacher and student.⁵

By comparison, incidental learning is described by Garrick as, amongst other descriptors, non-intentional, self-directed, experiential, contextual and reflective.⁶ In a clinical environment, some experiential, contextual and reflective learning outcomes are intentional on the part of the educator. Part of the objective of clinical legal education is to intentionally attempt to enable the student to learn from experience and discover, for example, the appropriate role of a professional. In addition to intentional learning experiences, clinic creates an environment which also offers serendipity – learning can take place in a spontaneous fashion when you least expect it, often in situations that a teacher would find very difficult to simulate in most classroom situations. However, the opportunities for incidental learning will often depend on the learning environment that has been created. A formal classroom or lecture theatre environment may not be fertile ground for spontaneous and reflective learning amongst students. An appropriate “climate” must occur in which the need, motivation and opportunity for learning exist.⁷ Marsick and Watkins describe this climate as simply one of context – that is, incidental learning can come as a result of everyday encounters where a challenge arises or a problem must be resolved.⁸ Further, in their study of managerial proficiency reported in 2003,⁹ Enos, Kehrhahn and Bell discovered that managers consistently reported that their learning of core managerial skills arose mostly from informal, or incidental, learning opportunities.¹⁰ This indicates that incidental learning has a key role to play in transfer of learning – that is, how a trainee applies skills learned in their training to a variety of situations required in the work environment.¹¹

Arguably, the context requirement described by Marsick and Watkins is unlikely to arise in formal learning environments and most likely to take place in the context of a clinic – where clients’ problems must be resolved and their needs addressed on an everyday basis. This is why

3 J Garrick (1998) *Informal Learning in the Workplace: Unmasking Human Resource Development*. London: Routledge

4 K Tusting (2003) “Working Paper No 2: A Review of Theories of Informal Learning” Literacy Research Centre, Lancaster University, UK

5 Ibid 6.

6 Ibid 5.

7 V Marsick & K Watkins (2001) ‘Informal and Incidental Learning’ 89 *New Directions for Adult and Continuing Education* 25 at 28.

8 Ibid 29.

9 M Enos, M Kehrhahn & A Bell (2003) ‘Informal Learning And The Transfer Of Learning: How Managers Develop Proficiency’ 14 (4) *Human Resource Development Quarterly* 369

10 Ibid 377.

11 Ibid 371.

clinical education is such a fertile ground for incidental learning – it provides the context which forms the central hub of Marsick and Watkins informal and incidental learning model.

Students consistently complain that classroom learning of doctrine has little to do with, or is difficult to apply to, real life client situations (this is especially true of law students where the majority of their legal education has been traditional lecture style). If we apply Enos, Kehrhahn and Bell's findings about managerial proficiency to university students, it is apparent that much of the skills and knowledge that students acquire from incidental learning can assist them in the transfer of this learning to various client situations both within the clinic and in their future professional lives.

Lave and Wenger¹² point out that informal learning is a social process. It requires people to participate in interactions with others in the workplace that arise out of an integrated set of work relations.¹³ It cannot take place in isolation. Again, this is where clinical education really comes to the fore – by their very nature, clinics are social environments requiring students to interact with a variety of people – clients, administrative staff, supervisors and each other. This is a rich and diverse environment which cannot be replicated in a classroom setting where opportunities for informal learning are very difficult to create. Enos, Kehrhahn and Bell found that “interactions with others” was the most prevalent learning activity for new managers in the workplace, and provide a wealth of learning.¹⁴ These are important findings which underscore the value of incidental learning for university students in becoming work-ready graduates.

Important incidental learning in practice is also noted by Le Clus as learning that occurs within everyday work activities. Learning as part of experience and participation indicates that learning occurs using a variety of strategies. Making sense of daily occurrences in a workplace involves reflecting on what is known and then experienced in a self-directed way. Le Clus also suggests that incidental learning is a social process that can occur from observation, repetition, social interaction and problem solving.¹⁵ Indeed Le Clus highlights Lave and Wenger's more detailed “community of practice” idea, where activities and understandings do not exist in isolation but have meaning as part of a system of relations among persons. Learning thus involves transformation as stated by Lave and Wenger “becoming a different person” and “the construction of identities”.¹⁶

Incidental learning is also described by Le Clus as most often occurring in the moment, tacit and situated within social situations and interactions with co-workers. Such an environment is available and supported in the clinical setting where the focus is service delivery and the development of students' skills and knowledge for practice. An explicit purpose of social work field placement is to allow experience to influence the developing professional self.¹⁷ Le Clus characterises tacit knowledge as “the subjective and personal knowledge acquired by individuals.”

12 J Lave & E Wenger (1991) *Situated Learning: Legitimate Peripheral Learning*. In R Pea & JS Brown (Eds) *Learning in Doing: Social, Cognitive and Computational Perspectives* Cambridge University Press.

13 *Id.*

14 M Enos, M Kehrhahn & A Bell above n 10 at 379.

15 M Le Clus (2011) ‘Informal Learning in the Workplace: A Review of the Literature’ (51)(2) *Australian Journal of Adult Learning* 355.

16 J Lave & E Wenger (1991) *Situated Learning: Legitimate Peripheral Learning*. In R Pea & JS Brown (Eds) *Learning in Doing: Social, Cognitive and Computational Perspectives* Cambridge University Press

17 Ching Man Lam, Hung Wong and Terry Tse Fong Leung (2007) ‘An Unfinished Reflexive Journey: Social Work Students' Reflection on their Placement Experiences’ (37) *British Journal of Social Work*, 91.

She refers to Gourlay's¹⁸ review of research studies from different disciplines that suggest tacit knowledge is personal, experiential, job specific, transferred during conversation, known or unknown to the learner and as such, is knowledge that can be learnt incidentally or informally.¹⁹ Much of this learning may be incidental to the tasks at hand, unintentional and only noticed in journal reflections or conversations with peers or supervisors. However, it may also be critical to the development of skills in learning from and through experience.²⁰ This reflective practice can be improved by making such incidental "implicit knowledge explicit and exposed to scrutiny," according to Fook.²¹ It is hoped such incidental learning assists growing practitioners to be better at learning to respond and manage change, perform as required and feel satisfied with their efforts as they progress to the workplace.²²

In Marsick's examination of incidental learning, it is further suggested that learning is not only implicit or incidental but more easily understood through the broader socio cultural dimension of workplace learning. The interaction of people in their "social, historical and cultural context"²³ is identified as affecting learning practices and choices, shaping and being shaped by people, not always consciously. Marsick highlights the influence "nurturing socio-cultural and organisational environments"²⁴ such as the context created for students in the multidisciplinary setting, has on formal and informal individual learning. Activities such as experimenting, reflection, examining practice, sharing ideas, learning by doing and making mistakes, mentoring and coaching, giving and receiving feedback as well as every day conversations with peers and supervisors are all offered as opportunities to stimulate the development of skills relevant to individual professional practice, no matter what the discipline.

Supportiveness of an environment for learning in an accidental and incidental way was highlighted during Gola's narrative research.²⁵ Gola studied social workers in Italy, to better understand informal learning. Marsick noted that Gola identified that social workers' learning could be categorised as "deliberative learning, reactive learning and implicit learning."²⁶ The difficulty Gola found studying implicit learning was that even though this type of learning may be driven by values and goals that could be espoused, the learning itself may not be conscious and therefore difficult to identify. An important role of professional supervision is to assist students to identify this implicit incidental learning, as it is experienced. In the multidisciplinary learning setting, supervisors aim to

18 Gourlay,S.N (2002) 'Tacit knowledge, tacit knowing or behaving?', paper presented at the 3rd European Organisational Knowledge, Learning and Capabilities Conference, Athens, 5-6 April and Gourlay,S.N (2004) 'Knowing as semiosis: Steps towards a reconceptualisation of "tacit knowledge", in H.Tsoukas & N. Mylonopoulos(eds.), Organisational knowledge systems, London: Palgrave MacMillan: 86-105 in MLe Clus (2011) 'Informal Learning in the Workplace: A Review of the Literature' (51)(2) Australian Journal of Adult Learning 355.

19 M Le Clus above n 16 at 365.

20 Ibid 365.

21 Jan Fook and Fiona Gardner (2001) *Critical Reflection in Context: Applications in Health and Social Care* (Routledge,Hoboken) 3.

22 M Le Clus above n 16 at 358.

23 Victoria J. Marsick (2009) 'Toward a unifying framework to support informal learning theory, research and practice' (21) (4) *Journal of Workplace Learning*, 265.

24 Ibid 274 - 275.

25 Ibid 271.

26 bid 281.

encourage the development of a climate where this knowledge can be discovered.²⁷

Relevance of a multidisciplinary learning environment

For law students, new paradigms of collaborative practice and non-adversarial methodologies in the legal system require law graduates to have a wider understanding of the lawyering roles than was previously expected. As Bratt points out, the conventional study of appellate cases, often being large scale commercial law disputes, provides an inaccurate picture of what graduates will encounter in their daily practice.²⁸ This method of studying law also does not provide the background, the narrative or the context of law in its social milieu, which forms a large element of the setting of legal disputes in practice.

Further, as Daly notes, the increasingly complex demands of clients' legal issues demand integrated advice²⁹ – that is, advice from a lawyer which takes into account a variety of non-legal factors. There are also changes taking place in clients' expectations of lawyers. There is a growing belief amongst clients that lawyers must be creative and knowledgeable beyond the strict confines of the law and the legal system and that they will provide a common sense³⁰ approach to problem solving from a multi-faceted perspective. This expectation can also be seen in the justice system itself as more courts and judicial officers adopt collaborative practices. For example, Drug Courts adopt a therapeutic approach that attempts to resolve offenders' addiction to drugs, rather than just meting out punishments. Participation in this, and other 'problem-solving' courts, requires lawyers to collaborate with prosecutors, psychologists, therapists, support workers and other court officials.³¹ These types of courts require a multidisciplinary teamwork approach and a willingness to understand, and work with, professionals in other disciplines. As Freiberg points out, in a Drug Court environment such a team may be a group of legal, health, law enforcement and correctional professionals.³²

*It requires a range of disparate groups, with often conflicting interests, to work together. The team usually meets prior to each sitting of the drug court to review the cases and remains in court during proceedings.*³³

Working in a new court environment such as this means that law graduates have to take a much less adversarial view of their role in the justice system – in a criminal law context, being a zealous advocate and focusing all energies on simply aiming to acquit one's client may no longer be

27 Id.

28 Carolyn S Bratt (1977-78) 'Beyond the Law School Classroom and Clinic – A Multidisciplinary Approach to Legal Education' 13 *New England Law Review* 199 at 202.

29 Mary C Daly (2000) 'What the MDP Debate Can Teach Us About Law Practice in the New Millennium and the Need for Curricular Reform' 50 *Journal of Legal Studies* 521 at 533.

30 Ibid 543.

31 Moore D (2007) 'Translating Justice and Therapy: The Drug Treatment Court Networks' (47) *British Journal of Criminology* 42 at 48.

32 Arie Freiberg (2002) "Drug Courts: Sentencing Responses to Drug Use and Drug-Related Crime" 27 *Alternative Law Journal* 282 at 284-285

33 Id.

an appropriate course, especially in a situation where a client is a repeat offender.³⁴ Taking a multidisciplinary approach to such a client will affect how an initial interview is conducted and the resources that are brought to bear from various other professionals in order to deal with the client's wider life issues. This is a much broader investigative and counseling role than lawyers have previously undertaken. If law students don't glean an understanding of, and some familiarity with, this enhanced lawyering role from the outset of their legal education, they will find themselves ill-equipped to provide an appropriate level of service delivery when they graduate. This new understanding can be seen in one of the early comments made in the reflective journal of a law student in the multidisciplinary clinic:

One of the most interesting events has been meeting the police prosecutor handling the criminal matter of one of my clients to negotiate a potential plea. It was surprising to find that the meeting was not adversarial. Rather, there seemed to be a common understanding of what was fair and reasonable and a real interest in working together to resolve the case in a timely manner that also considered the interests of the client.

A multidisciplinary learning environment, where students can learn from those in other disciplines in an informal setting, also assists law students to develop self-identity and autonomy as a professional. There are various choices about one's self-identity as a lawyer that can be made by law graduates. O'Grady suggests that lawyering styles can run the entire spectrum from "empathetic connection" to "detached neutrality".³⁵ Parker and Evans propose a paradigm of four different lawyering approaches commencing with the traditional "adversarial advocate",³⁶ in which the lawyer sees themselves as simply having a duty to pursue the client's interests within the boundaries of legality. At the other end of the spectrum, they posit a self-identity of the lawyer as moral activist.³⁷

Rather than simply just absorbing their new employer's paradigm of lawyering, law students can develop their own self-identity as professionals by exposure to a multidisciplinary learning environment during their undergraduate legal education. A strong self-identity will benefit the new graduate in their complicated, and often challenging, dealings with the reality of practice. Lesnick posits that law students must be confronted with "questions of identity"³⁸ in order to promote their professional growth and that a failure to do so sends an unspoken message that legal education is simply a tool to obtaining a well-paid job. In a multidisciplinary clinic, law students have the opportunity to test their understandings of their professional role against those of students in other disciplines, by comparing, for example, their understanding of their professional responsibilities and approach to ethical issues. Such an opportunity assists them to create and refine their understanding of the lawyer's role in assisting with dispute resolution, and more specifically, how they personally define themselves as professionals within that role. When asked

34 Michael King, Arie Freiberg, Becky Batagol & Ross Hyams, *Non-Adversarial Justice* (The Federation Press 2009) at 231.

35 Catherine Gage O'Grady (1997-1998) 'Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New lawyer' 4 *Clinical Law Review* 485 at 491.

36 Christine Parker & Adrian Evans, *Inside Lawyers' Ethics*, (Cambridge University Press 2007) at 21-37.

37 *Ibid* 28.

38 Howard Lesnick (1992) 'Being a teacher of Lawyers: Discerning the Theory of My Practice' 43 *Hastings Law Journal* 1095 at 1099.

about the law students' role identity, one of the supervisors of the pilot project of the Monash Oakleigh Legal Service commented as follows:

By virtue of having three students from three different disciplines interview the client, I find that each student notices a different emphasis. They've all heard the same material, but sometimes they write down different and conflicting information and they have to rationalise it between each other - it's almost like a check and balance which can be a good thing or sometimes is confusing and requires further clarification. I think the students received a greater awareness of the bigger picture of each of their clients.

By having to rationalize their perceptions of the client's problem to students of other disciplines, the law student is confronted with the need to understand why they are focusing on particular aspects of the client's presentation (and not others). This requires students to develop self-insight and assists them to form an understanding of their own identity as legal professionals.³⁹

Autonomy is an essential aspect of lawyering as the practice of law requires the making of judgments on an everyday basis. Ryan and Deci define autonomy as "action that is chosen; action for which one is responsible."⁴⁰ In a clinical environment, professional autonomy translates to student independence and self-direction.⁴¹ In a multidisciplinary setting, law students are forced to rationalise choices to their non-law peers and to take control of the legal aspects of the clients' problems. Working in a team requires a sense of responsibility to other members of that team and this responsibility enhances the notion that they must develop independence. As their team members are looking to them to take responsibility for certain important aspects of the client's matter, law students develop a sharp sense of self-direction and a feeling of responsibility for the choices they make, thus satisfying Ryan and Deci's definition. This awareness of the necessity to act autonomously can also be engendered in a conventional clinical legal education environment, but such students do not feel it as keenly as they are not required to justify their decisions or actions to other members of a peer team:

I learnt so much from my finance student, because we were together for three months. If I'd been with my social work student for that period of time, I think I would have learnt the same amount from her.

The practical knowledge that I've learnt is so valuable, not only legal, but finance and social work knowledge.

There is definitely 'bleeding' between the disciplines. The good law students, those who are more empathetic and more attuned to treating a client, not a problem, pick up tips from the social work students and raise finances issues. – Comment of clinical supervisor.

However, it is worth the effort, as one student notes:

I can now issue spot areas really easily in which I think a client could benefit from a

39 Catherine Gage O'Grady (1997-1998) 'Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New lawyer' 4 *Clinical Law Review* 485 at 499.

40 Edward Deci & Richard Ryan (1987) 'The Support of Autonomy and Control of Behavior' 53 *Journal Of Personality and Social Psychology* 1024

41 Ross Hyams (2008) 'On Teaching Students to 'Act Like a Lawyer': What Sort of Lawyer?' 13 *International Journal of Clinical Legal Education* 21 at 25.

multidisciplinary approach just by flicking through a file or hearing a student discussing their clients with other students.

For this student, this skill obtained through working in the clinic supports Enos and Kanter's findings that students working in a multidisciplinary environment "see legal solutions as only one option among a multidisciplinary array of interventions."⁴²

Whilst in the workplace effective team work is viewed as an essential requirement of professional practice for social work students, according to Pockett⁴³ limited attention is given to this aspect of practice in professional social work education. She challenges educators to give this element of best practice prominence in the social work curriculum.⁴⁴ The incoming President of the Victorian Branch of the Australian Association of Social Workers – David Maxwell – recently affirmed his commitment to strengthening the professional position of social work in the contemporary scene by focusing his attention on an "increasingly challenging multidisciplinary environment."⁴⁵

The multidisciplinary clinic offers students from the social work discipline along with their law and finance counterparts this learning experience. Despite differences in discipline approaches to their work with clients, students are unified by a context that is based on social justice principles of providing service to those most in need. The legal circumstances in which clients present are "explored holistically taking into account the complexity of the social and financial concerns of each client".⁴⁶ This opportunity enables students to learn much about the complexity of people's lives and the collaborative effort required to achieve change – but equally important and perhaps incidental to the main task "students learn to appreciate the unique skills and knowledge associated with each discipline, from both their peers and their supervisors."⁴⁷ As one social work student highlighted very powerfully:

I learnt that legal practitioners and social work practitioners can have overlapping objectives in regards to working for the maximum benefit of clients. Although each profession is based on differing philosophical foundations, both can have the similar goal of working for the empowerment of the disadvantaged and vulnerable people of society.

Furthermore, there are many legal issues that evolve either directly or indirectly from entrenched social economic disadvantage, mental illness or some other form of oppression. I have learnt that the combined efforts of law and social work practitioners will multiply the capabilities of either profession working in isolation. A whole of person approach to client's problems involves the collaboration of professionals of various backgrounds and expertise.

42 V. Pualani Enos & Lois H Kanter (2002-2003) 'Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting' 9 *Clinical Law Review* 83 at 134.

43 Rosalie Pockett (June 2010) 'Interprofessional Education for Practice: Some Implications for Australian Social Work' *Australian Social Work* (63)(2) ,207

44 Ibid 208.

45 David Maxwell (2012) 'Incoming President's Report',1) (3) *Social Work Connect* 3.

46 'Hyams R, Brown G and Foster R (2013) "The Benefits of Multidisciplinary Learning in Clinical Practice for Law, Finance, and Social Work Students: An Australian Experience" 33 (2) *Journal of Teaching in Social Work* 159

47 Ibid 22

Another student observed that:

Whilst together we had the ultimate goal of gaining the best outcome, how each discipline seeks to address the client's issues and how they perceive the issues was an eye opening aspect of working in the Multidisciplinary Clinic.

The value of this experiential learning for future practice was described by a social work student and supported by comments that follow from a finance student:

Working in the Multidisciplinary Clinic teams has given me a supported experience for future workplaces where I know I will come across multidisciplinary teams again.

To have a sense of workplace culture, to gain knowledge of effective team work and develop skills of investigating underlying issues.

The research findings of Eraut⁴⁸ confirm that the two forms of informal learning reported by professional workers as most significant were the challenge of work itself and learning from other people. He concluded that the learning from such activities is largely implicit and difficult to explain. This research reinforced that working in groups with individuals who bring different expertise assists practitioners to both understand and utilise this expertise.⁴⁹

Group learning strategies are an important tool in social work education. The team based learning available in a multidisciplinary setting facilitates co-operative learning amongst students. Research has shown the benefits of co-operative learning for students across a wide range of disciplines⁵⁰ and social work educators agree. They suggest it fosters more effective critical thinking, improves student cohesion and respect for diversity amongst social work students.⁵¹ This research is supported by the comments of the social work students in the authors' clinic who commented about their learning:

'Every student approaches it in a different way and more heads are better than one! The more we include each other and contribute, the more the client benefits.

Other students identified the benefits as follows:

A positive would be working in a team and being able to discuss client's needs and issues between a group of you. If you have a long or tough interview with a client, it can be good to debrief with each other afterwards and especially with people who were in on the situation with you. It is also good to see that everyone can have different opinions about the same issue and to hear what other people thought and if you thought the same thing.

Whilst I have worked in team based workplaces before, the Multidisciplinary Clinic experience demonstrated to me how successful partnerships should work.

48 Michael Eraut(2011) 'Informal learning in the workplace : evidence on the real value of work-based learning (WBL),'*Development and Learning in Organizations*, (25)(5) 8-12.

49 Michael Eraut (2011) 'Informal learning in the workplace : evidence on the real value of work-based learning (WBL),'*Development and Learning in Organizations*, (25)(5) 9.

50 D.W Johnson.,&Johnson,R.T. (1992) *Creative controversy: Intellectual challenge in the classroom*. Edina, MN:Interaction Book Co and R.E Slavin. (1995) *Cooperative learning* (2nded.). Boston, MA: Allyn & Bacon in Judy Gillespie (Spring-Summer2012'Enhancing social work education through team based learning', (48) (2) *Journal of Social Work Education* 377.

51 Ibid at 377.

Work based learning enables social work students to show evidence of their capacity to apply their academic knowledge to practice, as a precursor to learning directly from practice by critically reflecting on everyday tasks once they commence work.⁵² Mirabito suggests that field education in partnership with academics has traditionally served as a central strategy in the education of social workers. She acknowledges that, “Schools of Social Work are continually challenged to provide professional training which effectively prepares students” for the constantly changing and increasingly complex, practice context. New practitioners require a set of integrated social work skills that not only include the ability to provide direct clinical services to a diverse and disempowered client group but the skills to also negotiate demands within an agency, organisation or community; to communicate professionally both verbally and in writing, as well as conduct relevant research and program evaluation as required.⁵³ Political skills in managing in difficult environments, inter or multidisciplinary teams, working collaboratively and taking up leadership roles to develop services and programs are also recognised as necessary skills.

The ability to maintain a strong social work identity in the face of encroachment from other professions is also a current requirement for the new practitioner. Much of this learning is often developed during field education experiences in incidental and spontaneous ways that are context dependent and not always predictable.⁵⁴ Developing a sense of professional social work identity can be particularly difficult for new social work graduates who work in a multidisciplinary environment, according to Seden and McCormick.⁵⁵ Social workers that place clients at the centre of their practice and who can identify the influence of social context and use a holistic approach based on a trusting relationship, are encouraged to bring these skills to influence multidisciplinary settings.⁵⁶

Such workplace contexts are where not only professional practice but professional identities are developed.⁵⁷ Davis, Gordon and Walker noted that professional identity development relies on the building of confidence from reflecting on knowledge and learning through practice – a confidence to challenge, negotiate and provide professional assessments of value.⁵⁸ Agllias reported in her findings that new social work graduates often struggled with role conflict, clarity and value conflicts.⁵⁹ She highlights the increasingly complex contemporary work environment where the role of the social worker may be overlooked or misunderstood. Social work may be

52 Roger Davis, Jean Gordon and Gill Walker Chapter 20 ‘Learning in practice: Some reflections on the student’s journey’, in Janet Seden, Sarah Matthews, Mick McCormick, Alun Morgan *Professional Development in Social Work* (Routledge, Hoboken, 2010).

53 Diane M. Mirabito (2011) ‘Educating a New Generation of Social Workers: Challenges and Skills Needed for Contemporary Agency-Based Practice’ *Clinical Social Work Journal* 1-11 Springer link 10.1007/s10615-011-0378.

54 Ibid 1, 5

55 Janet Seden and Mick McCormick, Chapter 24 ‘Caring for yourself, being managed and professional development’ in, Janet Seden, Sarah Matthews, Mick McCormick, Alun Morgan *Professional Development in Social Work* (Routledge, Hoboken, 2010) 171-177.

56 Ibid 175-176.

57 Jan Fook Chapter 3 ‘Beyond reflective practice Reworking the ‘critical’ in critical reflection’ in *Beyond Reflective Practice New approaches to professional lifelong learning* Eds. Helen Bradbury, Nick Frost, Sue Kilminster and Miriam Zukas (Routledge, Oxon,2010) 49.

58 Davis,Gordon and Walker above n 53.

59 Kylie Agllias(2010) ‘Student to Practitioner : A Study of Preparedness for Social Work Practice’ *Australian Social Work* (63)(3) 345-360.

rendered powerless as tasks perceived as social work are performed by other professionals.⁶⁰

Interestingly, the social work students in the multidisciplinary clinic found holding onto their identity a challenging task. Some social work students may have been intimidated by being in the law students' "realm." Professional status and power differences were observed. However, the consequent learning opportunity is also highlighted by the comments of students.

"Law students in a legal service may dominate the way in which interactions between the client and students take place"

"At times it could feel as though the social work component of the Multidisciplinary Clinic was peripheral to that of the law work"

"It can be hard to voice your perspective, but that is something that can be worked around with time."

"There is a bit of a hierarchy"

"In terms of viewing myself as a social work practitioner, one thing all of us achieved is our own sense of resilience."

Developing the skills and confidence to influence workplace culture in order to advocate for and provide responsive and effective social work service is an excellent learning opportunity offered to social work students in the multidisciplinary setting of a legal service, where the core business is legal and where higher status professions like law lead. There is great value in a pedagogical focus on organisational skills and strategies for social work practice in inter and multidisciplinary settings that include legal or health care services.⁶¹ In these workplaces in particular, social work students are required to develop skills in negotiation, collaboration, leadership and interpersonal communication to ensure psycho social issues are voiced and political climates are understood and influenced for the benefit of the client. Skills in effective communication with professional disciplines who command more power and influence is a necessity for contemporary social work practice.⁶²

What learning outcomes should we expect from an MDC?

In addition to practical skills such as interviewing, negotiation, letter writing, advising and document drafting which are expected outcomes of clinical education, there are a number of other learning outcomes which can be perceived, measured and assessed from multidisciplinary clinical experience. Apart from the acquisition of a number of practical professional skills, there are some less tangible learning outcomes which can be derived from a multidisciplinary environment which are a direct result of this unique form of learning. This is not to say that such skills cannot be obtained elsewhere in a vocational university curriculum – however, a multidisciplinary clinic is an excellent environment to nurture a particular set of skills that are necessary for graduates to operate effectively in today's practice setting. The first of these skills is that of self-reflection. It has been stated before that the clinical environment is the perfect laboratory for action and

60 Ibid 354.

61 Diane M. Mirabito above n 54.

62 Ibid 6.

reflection.⁶³ One of the prerequisites for an effective pedagogy of reflection is that students must be placed in situations which are outside of their normal range of experiences.⁶⁴ It is fair to say that a multidisciplinary clinical environment will certainly present challenges to most students which are far outside of their previous educational experiences. Students can be encouraged to develop and refine their reflections of their multidisciplinary clinical education by way of reflective journals or learning diaries⁶⁵ which can be submitted to their clinical supervisor, discussed and (if desired) assessed.⁶⁶ The skill of self-reflection is essential to becoming a well-rounded professional and in striving to become what Schön describes as the “reflective practitioner”⁶⁷ – adult learners who reflect on their experiences for the purposes of self-evaluation and improvement. As one student commented:

“The process of introspection has helped me to reconceptualise the role of a lawyer as more than just a legal advisor. I now understand that a good lawyer needs to play the role of educator, planner and counselor.”

Critical reflection learning processes that start with individual experience and include social contexts of professional practice such as workplaces, ‘professional cultures, social, political and cultural contexts’⁶⁸ are encouraged in social work education – especially clinical practice. This involves examining assumptions that may be implicit or incidental to a task, but significant for practice learning. This reflection is considered critical if it enables ‘an understanding of the way socially dominant assumptions’⁶⁹ restrict so that more empowering practices may be chosen. Fook encourages professional lifelong learning and the role of critical reflection processes.⁷⁰ She also sees the importance of people developing “a sense of their own professionalism and professional practice”⁷¹ separate from workplaces. Developing an understanding of how one’s fundamental values impact on the construction of professional identity, which is then translated into professional practices, may occur intentionally or incidentally through critical reflection. Workplace cultures can be very powerful and the importance of educating students to be alert to organisational values is not to be underestimated, according to Fook.⁷² In the authors’ opinion, there is no better “laboratory” for this to be nurtured than in the multidisciplinary service delivery environment. The students who were surveyed for this paper were very aware of these issues:

“I have learnt to analyse and be critical of client stories as they do not always tell the truth or act in their best interest. Think a bit like a lawyer.”

63 Jacqueline St. Joan, (2001) ‘The Clinic as Laboratory: Lessons from the First Year of Conducting Social Research in an Interdisciplinary Domestic Violence Clinic’ 47 *Loy. L Rev* 317.

64 Richard Rogers, (2001) ‘Reflection in Higher Education: A Concept Analysis’ 26(1) *Innovative Higher Education* 37,

65 Ross Hyams, (2010) “Assessing Insight: Grading Reflective Journals in Clinical Legal Education” 17 *James Cook University Law Review* 25.

66 *Id.*

67 D Schön, *The Reflective Practitioner: How Professionals Think in Action* (New York, 1983).

68 Jan Fook above n 58 at 49

69 *Ibid* 40.

70 *Ibid* 38.

71 *Ibid* at 39.

72 *Id.*

“Lawyers aren’t all bad, which I believe is a big misconception.”

“I have learnt about the assumptions people make about social work.”

“Taught me how to engage in a working environment where everyone may not agree on the best course of action regarding a client and how that has to be negotiated.”

“I have learnt more about people in general (clients, co-workers and friends) and about human interaction and development than in my life and degree thus far.”

This purposeful and structured way of achieving insight links in with the concept of autonomy previously discussed in this paper. As law students develop insight into their clinical experiences, they form a self-view of their lawyering style which will be shaped by their interactions with their non-law peer team members. This helps to reinforce their budding notions of autonomy and independence, as noted by this student’s learning:

“Law is not for the faint hearted and I need to be mindful of my clients and their needs, as ultimately these will make me happier in my chosen profession.”

The pedagogy of a multidisciplinary clinic also leads to law students forming an understanding (perhaps for the first time) of social justice issues. This exposure to a social justice agenda is enriched by interactions with peers from other disciplines (such as social work students) who, because of the very nature of the discipline from which they derive, often have a more sophisticated understanding of social justice at the outset of their clinical experience. Rand points out that social work students operate from the perspective of an “empowerment model” basing their interventions in their clients’ lives on whether it will improve social justice for the client and the community.⁷³ By contrast, law students often perceive the legal system from a positivist construct and concentrate on understanding and applying existing law, rules and processes. As a result of their legal education, they often have a form of legal myopia – focusing on the law “as is”, rather than the possibilities for reform and change. Rand further suggests that during their legal education, law students may be exposed to some awareness of social justice issues, but that pedagogy in legal education generally does not approach the social justice agenda in a creative or structured fashion.⁷⁴ He contends that law students must form a perception of social justice “that is both strongly held and operational”.⁷⁵ Certainly, being challenged by peers in a multidisciplinary team from disciplines such as social work with a strong social justice agenda will assist in this process. These law students highlight their operational learning:

“Often, there are underlying financial and mental health problems. This meant helping clients meaningfully needed to involve more than just focusing upon the legal issue they had presented with.”

“Every time I went to meet a client with a finance or social work student, I felt better equipped to resolve any problems that could potentially arise.”

73 Rand, S.(2006) ‘Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help through Social Work’s Empowerment Approach’ 13 *Clinical Law Review* 459 at 484.

74 Ibid 463.

75 Id.

“Law is more than just statutes and High Court Judgments but it also deals with people who have issues beyond the black and white legal problem.”

“It was refreshing to see how uncompetitive, caring and approachable the social work students were.”

In tandem with an increased perception of social justice issues, the pedagogy of multidisciplinary clinic sharpens law students’ ethical awareness of the lawyering role and their understandings of professional responsibility. Evans and Hyams note that clinics have not only the opportunity, but the responsibility to provide training in these areas,⁷⁶ as there are minimal opportunities in the traditional legal education curriculum to successfully instill a sense of ethical consciousness in law students⁷⁷ in an engaging and participatory fashion. Clinical legal education, especially a multidisciplinary environment, constantly challenges students in this area as they are forced to deal with ethical issues on an almost daily basis in the context of attempting to obtain the best possible outcomes for their clients. Indeed, it is the very random nature of clinic which provides the various opportunities to deal with the spontaneous challenges of ethical issues in an immediate practice setting.⁷⁸ When an ethical issue is raised in the context of casework, law students must not only consider the published professional rules of conduct, but their own ethical framework, social justice issues and the impact of their conduct on the community.⁷⁹ Working in a multidisciplinary team, law students’ awareness of their personal and professional ethics are sharpened and placed under the spotlight of scrutiny from their supervisors and peers alike. They are challenged by the twists and turns of the legal system in its operation in the social milieu and they must justify their decisions and motivations to their non-law peers. Parker and Evans refer to this process as ‘values awareness’⁸⁰ and suggest that legal education can challenge, change and form an early understanding of ethical values in law students which may ultimately lead to better career choices and more satisfactory working lives.⁸¹

Our research indicated that social work students, like the law students, experienced and learnt from ethical dilemmas in their multidisciplinary practice. Ethical principles and values such as confidentiality and taking a client centred approach appeared to be similar for both the law and social work students but were not mentioned by the business economic students. Whilst law places a priority on the client’s instructions, the social worker students realised that the best interests of the client and community were most highly valued in their interventions. Similarly, the primary focus of law may often appear to be an overriding duty to the court, or the law itself, whilst for social workers, it is more obvious that clients are of greatest significance. This did result in some value differences and the social work students had to reflect critically on their interventions on a number of occasions, where, for example, there was the threat of further domestic violence, child

76 Adrian Evans & Ross Hyams (2008) “Independent Evaluations of Clinical Legal Education Programs: Appropriate Objectives and Processes in an Australian Setting” 17 *Griffith Law Review* 52 at 69

77 Adrian Evans and Josephine Polermo (2006) ‘Preparing Future Australian Lawyers: An Exposition of Changing Values Over Time in the Context of Teaching About Ethical Dilemmas’ 11 (1) *Deakin Law Review* 103.

78 Mary Anne Noone & Judith Dixon (2001) ‘Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers’ 4(2) *Legal Ethics* 127 at 135.

79 *Ibid* 143.

80 Christine Parker & Adrian Evans (2007) *Inside Lawyers Ethics*, Cambridge University Press at 254.

81 *Id.*

abuse or criminal behaviour. As clients attend the service for legal reasons, the social work students were cautious about the extent to which they might challenge a law student on an issue of concern. They were aware of the importance of balancing their concerns about a client with the aim of team harmony and acceptance by peers.⁸² Cooper notes that social work is about “the judicious and ethical use of power and authority and the accompanying responsibilities.”⁸³ Learning to assess a personally challenging situation of a client, whilst maintaining a constructive working relationship, increased and tested the ethical awareness for all students at the legal service.⁸⁴

Agllias concludes from her research that social work graduates need the support of social workers with experience to reflect and challenge boundary conflicts and unethical practices in the workplace.⁸⁵ Eraut’s findings confirm that support and feedback are critical factors for “confidence, learning, retention and commitment.”⁸⁶ It was found that the quality of this support and feedback as well as appreciation for work completed, impacted on commitment to work.⁸⁷ At the multidisciplinary clinic where students are expected to perform and achieve outcomes for clients, students quickly learn about the importance of quality supervision. Supervision is available to not only social work students but all the students and it was acknowledged by most students as supportive, collaborative and valuable. The other opportunity available to students and supervisors is to engage in research to explore the impact of this model of practice on students, supervisors and clients.

Undertaking empirical research on the pedagogy of multidisciplinary student learning environments⁸⁸ is a goal of the program but not easily achieved given the business of students and supervisors attending to the complex needs of the clients that present. A first attempt at a qualitative study to develop a better understanding of students’ perspectives on the influence of the multidisciplinary clinic on their learning and future practice has just commenced. During the last semester of 2012, as students from business economic, law and social work who participated in the multidisciplinary clinic were close to departing; they were emailed a questionnaire by the social work supervisor. A pre and post questionnaire could be introduced in the future to more accurately measure the impact of the clinical experience. Structured and semi structured interviews would explore more deeply the views of students. However, limited time and resource constraints have meant that, thus far, only a questionnaire could be undertaken. The questionnaire provided students with the opportunity to voice their opinions about the program. The forty six students invited to participate were completing their placements and reflecting on their experiences was encouraged using a brief questionnaire. Sixteen were from the law faculty, sixteen were business economic students and fourteen were social work students. An explanatory statement was forwarded as well as a consent form detailing the research title, voluntary nature of participation and confidentiality provisions, for participants to sign if they chose to participate.

82 Kylie Agllias above n 60.

83 Barry Cooper Chapter 3 ‘Criticality and reflexivity Best practice in uncertain environments’ in Janet Seden, Sarah Matthews, Mick McCormick, Alun Morgan, *Professional Development in Social Work* (Routledge, Hoboken, 2010).

84 Ibid 20.

85 Kylie Agllias above n 60 at 358.

86 Michael Eraut (2011) above n 49.

87 Ibid 11

88 Kylie Agllias above n 60 at 357.

The questions asked were open ended, designed by the social work supervisor to enable students to reflect on the following: what they had hoped to learn and what they actually learnt; both the positive and negative aspects of their experience; how the multidisciplinary approach had helped (or not helped) to meet the needs of clients; the impact of their learning experience on their future practice; and an opportunity to contribute any other comments which most students completed. Fifteen out of 16 social work students completed the questionnaire; three out of sixteen law students and three students from the Faculty of Business and Economics participated in the research. The high social work student participation may have been a result of their supervisor requesting participation. The other students may have felt less compelled to participate given it was not part of their assessment requirements and assessment was a high priority towards the end of their placement at the multidisciplinary clinic. An interview approach may also have resulted in an increased participation rate.

Themes were identified and summarised to contribute to further understanding and development of the learning opportunities facilitated by a multidisciplinary setting. A more refined set of research questions that explores the influence of social justice values and principles as well as models of supervision in the multidisciplinary context is also possible in the future.

Themes arising from the surveys received to date from the law, social work and finance students include the value of learning to transfer academic knowledge into practice. Students noted their improved investigative and organisational skills as well as the importance of being thorough and detail oriented. They identified writing skills; insight into the contributions of different disciplines; team work and collaboration as relevant learning. Communication skills such as negotiation, leadership and assertiveness were also skills acquired. Observing social justice in practice was noted, as was the confidence to holistically meet the needs of complex clients. Some students highlighted an increased self-awareness and insight into the value of supervision and supportive peers. Learning about workplace culture, policies and legislation; developing practice autonomy; and professional identity development were among the outcomes acknowledged by all the students from the multidisciplinary experience.

All the students from the three disciplines highlighted the value of effective teamwork in multidisciplinary practice. The finance students valued the opportunity to be exposed to 'real life situations'. Law students acknowledged a preference for working with "those who really need my help rather than dealing with company mergers and never meeting a client" and the importance of a 'holistic' approach to be effective. The unique supportive learning environment was noted by both law and social work students. The importance of supervision for support and guidance was noted by social work students who also highlighted the value of input from other discipline supervisors to their learning. More than half of the social work students highlighted the value of the legal knowledge learnt for their future work with clients. Two students expressed their intention to undertake law degrees and two identified working in the legal context as a future goal.

Some of this learning occurred incidentally to providing services to clients in need. However, it is still early days in the life of the multidisciplinary clinic and the qualitative methodology and small sample size limit the ability to generalise from these findings. However, it can be noted that students identified their own professional practice learning as well as generic skill development necessary for all practitioners in the workplace. Social work literature reinforces the need for graduates to bring a broad repertoire of integrated skills beyond the clinical to meet current

practice demands.⁸⁹ In a competitive employment market, it is expected that all professional workplaces would demand similar employability skills, which is an important outcome of this experience based pedagogy.

Can we measure these outcomes?

There has been, and will continue to be, much debate regarding assessment in clinical programs.⁹⁰ Much of this debate surrounds the dispute as to whether a pass/fail or graded regime is appropriate for the assessment of clinical work.⁹¹ There has also been debate as to whether it is appropriate (or even possible) to assess the acquisition of ‘professional responsibility’⁹² and how feasible it is to assess insights demonstrated by student in reflective journaling tasks.⁹³ It is not necessary to repeat these arguments here – however, the authors believe that it is both possible and valuable to measure the learning outcomes of a multidisciplinary clinic, with the aim of providing students with useful formative and summative feedback.

Formative feedback comes in many modes and can be informal (such as brief casual discussions with students as to their responses to clients or the way they drafted a document) and formal (for example, scheduled file review meetings or mid semester appraisals) or a mixture of both. Summative assessment can be by way of a written case study or reflective essay. However, Stefani notes that assessment is not just about measuring whether students can deliver a ‘product’ at the conclusion of the learning period,⁹⁴ but should also be about assessing the learning process itself. This supports the notion that the ongoing assessment of the acquisition, development and refinement of emotional and narrative intelligences (often demonstrated via the reflective journaling process) can be a useful vehicle of student learning.

Irrespective of the tools that are used for assessment, it is imperative that the multidisciplinary clinic actually assesses the learning outcomes promulgated by the clinic. This was pointed out by Stuckey in the incredibly helpful CLEA Best Practice Report:

“Outcomes should be measurable. It is self-defeating to state an outcome which cannot be assessed. At the same time, it is important not to be bound by the expectations of objective decimal place accuracy. In this context “measurable” means a general judgment of whether students know, think, and can do most of what we intend for them”.⁹⁵

If the expectations on students and the learning outcomes of the clinic are made explicit, students can be assessed on practical skills such as interviewing, advising, file management and letter writing

89 See, for example, Diane M. Mirabito (2011) above n 54.

90 See, for example, Simon Rice, ‘Assessing – but not Grading – Clinical Legal Education’ (2007) *Macquarie Law WP* 16; Ross Hyams, (2006) ‘Student Assessment in the Clinical Environment – what can we learn from the U.S. experience?’ 10 *International Journal of Clinical Legal Education* 77; Stacy Brustin & David Chavkin, (1997) ‘Testing the grades: Evaluating Grading Models in Clinical Legal Education’ 3 *Clinical Law Review* 299; Evans & Hyams, above n 77.

91 *Id.*

92 Evans & Hyams, above n 77 at 71.

93 Hyams, above n 42.

94 Lorraine Stefani “Assessment in Partnership with Learners” (1998) 23(4) *Assessment & Evaluation in Higher Education* 339 at 344.

95 Roy Stuckey et al. CLEA Best Practice Report (2007) *Clinical Legal Education Association U.S.A* at 49.

as well as the less tangible skills such as reflection, professionalism, creativity, collaboration and teamwork. Many of these less tangible skills are also learnt via the vehicle of incidental learning and can be also be reliably assessed. Assessment rubrics which identify both practical and less tangible skills can be created which are provided to the students at the outset of their placement in the clinic, and formative feedback provided to students as to whether they are being successful in attaining the skills and qualities expected of them. An assessment rubric of this sort needs to be comprehensive and versatile, enabling students to obtain marks in various areas of both the practical and less abstract skills being taught intentionally and acquired by students in their participation in the clinic.⁹⁶ This is quite a burdensome task for clinical educators, as it requires much commitment to the assessment regime in terms of observation of the students, appropriate scrutiny and analysis of their performance⁹⁷ but the outcomes for the students of detailed, timely and continuous feedback which is linked to the learning outcomes of the clinic greatly enhances their learning experience.

Social work educators are interested in promoting good learning outcomes driven, according to McDonald,⁹⁸ by a responsibility for the “well-being of a student’s future clients.”⁹⁹ Social work literature, she suggests, describes student self-efficacy in terms of client outcomes and students’ readiness for practice. Continuous improvement in skills education to increase student self-efficacy is recommended. Promoting skills in “critical analysis and problem solving within a framework of ethicality”¹⁰⁰ is also supported. Pocket emphasises the need to prepare social work students with the skill, insight and critical ability to deal effectively with the uncertainties of practice in the postmodern world.¹⁰¹ These skills are assessed during field placement by clinical educators against relevant learning areas. All learning – observed, documented, reported and practiced, structured or incidental - is constructively reviewed for discussion during supervision and placement reports provided to the individual student as feedback and evidence of their experiential learning for practice.

Team based learning evident in multidisciplinary settings assists students to investigate, discuss and explain the best approach to addressing the complex world of professional practice.¹⁰² Learning about the dynamics of working with others to achieve shared goals involves each student taking some responsibility for outcomes. This learning may develop at different stages for each student.¹⁰³ Ensuring students are assessed fairly and are held accountable for their contribution requires feedback to both individuals and teams about their performance that is frequent and timely. Assessment of outcomes can include evaluations of student engagement, supervisor satisfaction as well as student attainment of the specific knowledge and skills necessary for practice. Research to date demonstrates that the learning outcomes for students in the team based

96 Ross Hyams (2006) “Student Assessment in the Clinical Environment – what can we learn from the U.S. experience?” 10 *International Journal of Clinical Legal Education* 77 at 87.

97 Id

98 Catherine McDonald (2007)“This is Who We are and This What We Do: Social Work Education and Self Efficacy” (60) (1) *Australian Social Work*, 83 .

99 Ibid 85.

100 Catherine McDonald above n 106 at 85.

101 Rosalie Pockett above n 44.

102 Judy Gillespie above n 48

103 Rosalie Pockett above at n 44 at214-215.

multidisciplinary clinic are significant.¹⁰⁴

Conclusion – implications for the future

To a large extent, our multidisciplinary clinic is still in its pilot phase. The supervisors are constantly learning along with the students. However we have identified, through this research, that incidental learning that has been taking place and the value derived by the students therefrom include the micro skills needed for practice; learning about student preferences for contexts of practice; working with other professionals from their own and different disciplines as well as what approach is most effective with their clients. We believe that we now have some opportunities to capitalize on these benefits. We need to find ways to maintain and nurture an incidental learning environment in order to improve proficiency and transfer of learning in the clinical setting. Part of doing this is simply awareness of the value of incidental learning. It also includes the provision of opportunities for students to indulge in what Harrison Owen refers to as “spontaneous corridor conversations”¹⁰⁵ – this requires “open space technology”¹⁰⁶, that is, not only informal areas for students to work and socialize, but informal time for them to do so. Inevitably, providing both this space and time may require changes in workroom geography and in timetabling client interviews, seminars and other formal learning times. It may mean a reduction in formal teaching time or in the way this is delivered, in order to maximize informal learning opportunities.

Clinical educators can assist students to link their theoretical learning to workplace practice. This significant learning may be informal or incidental and developed in collaboration with teams of professionals from different disciplines. Learning to work with other disciplines in a team context is a particularly relevant skill for social work students, who may find their social work role in the workplace not always clearly defined.¹⁰⁷ Shared learning experiences (as noted by a number of students in this research) have many benefits that often occur incidentally. Most importantly, this includes an increased understanding of the motives and intentions of other professionals, as well as the cultures that influence their practice.

The “growth and transformation” of students into professionals occurs from learning from experiences that may be made transparent or more evident to students during the practice of their micro skills in a real life context. Some of this learning is incidental and uniquely dependent on the individual student and their experience of the practice context. Such educational contexts are found in inter and multidisciplinary practice settings.¹⁰⁸ According to research conducted by Enos, Kehrhahn and Bell, “Proficiency is the result of informal learning.”¹⁰⁹ Finding opportunities for learning naturally where support and feedback are available was a critical finding by Eraut.¹¹⁰

104 Judy Gillespie above at n 52 at 378, 382.

105 Owen H (1997) *Open Space Technology: A users guide*. San Francisco: Berrett-Koehler Publishers

106 Id.

107 Rosalie Pockett above n 44.

108 J Lave & E Wenger (1991) *Situated Learning: Legitimate Peripheral Learning*. In R Pea & JS Brown (Eds) *Learning in Doing: Social, Cognitive and Computational Perspectives* Cambridge University Press pp 121 -122.

109 M Enos, M Kehrhahn & A Bell (2003) ‘Informal Learning And The Transfer Of Learning: How Managers Develop Proficiency’ 14 (4) *Human Resource Development Quarterly* 369

110 Michael Eraut ‘Informal learning in the workplace: evidence on the real value of work-based learning (WBL),’ *Development and Learning in Organizations*, (2011) Vol 25 Iss:5, pp.8-12.

Our early research from the multidisciplinary setting previously discussed also supports these findings and provides student perspectives on the value of their experiential learning. As such, the results of this research and our new understandings of informal learning provide clinical educators with challenges in order to maximize the incidental learning benefits students receive from a multidisciplinary clinical environment. Clinical educators have a responsibility to actively engage students in interactive and innovative initiatives. Acknowledging the value of incidental learning for all students, no matter what the discipline, is an important factor in ensuring education prepares graduates well for the increasingly complex workplaces of today.

Promoting Law Student Mental Health Literacy and Wellbeing: A Case Study from The College of Law, Australia¹

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1. INTRODUCTION

A number of studies have been undertaken about the mental health of law students and the reports as to the findings of those studies have all expressed concern about the high levels of psychological distress⁴ suffered by them.⁵ Australian studies indicate that while university students suffer from emotional distress at a rate greater than that of the general population and at a higher rate than their non-student (age group) peers,⁶ law students are more distressed than their university peers.⁷ This has led to many calls for action.⁸

Most law students undertake their degree with a view to practising law. It is now also accepted that legal practitioners suffer depression or emotional distress at higher rates than other professionals, other workers more generally and the general population.⁹

Research shows that there is a strong correlation between high levels of emotional distress and the incidence of mental illness.¹⁰ Law students suffering high or very high distress levels are therefore at an increased risk of suffering a mental illness, most commonly anxiety and/or depression.

4 The most common mental health surveys used by researchers in this area do not enable them to determine whether or not a participant has a diagnosable mental illness. However measuring emotional distress allows them to estimate 'the risk that a person with a particular score is suffering from a mental illness'. *Courting the blues: Attitudes towards depression in Australian law students and legal practitioners*, at 6 (2009) [Hereinafter BMRI Report].

5 See for example, Id., WENDY LARCOMBE, IAN MALKIN AND PIP NICHOLSON, *Law Student's Motivations, Expectations and Levels of Psychological Distress: Evidence of Connections*, 21 LEGAL EDUCATION REVIEW 1-34(2011). C. M. LEAHY, et al., *Distress levels and self-reported treatment rates for medicine, law, psychology and mechanical engineering tertiary students: cross-sectional study*, 44 AUST N Z J PSYCHIATRY (2010). TODD DAVID PETERSON AND ELIZABETH WATERS PETERSON, *Stemming the Tide of Law School Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE JOURNAL OF HEALTH POLICY, LAW, AND ETHICS 357(2009). K. M. SHELDON & L. S. KRIEGER, *Does legal education have undermining effects on law students? Evaluating changes in motivation, values, and well-being*, 22 BEHAV SCI LAW (2004) [hereinafter Education]; K. M. SHELDON & L. S. KRIEGER, *Understanding the negative effects of legal education on law students: a longitudinal test of self-determination theory*, 33 PERS SOC PSYCHOL BULL (2007) [hereinafter Understanding]; TANI, M. AND VINES, P., *Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?*, 19 LEGAL EDUCATION REVIEW 3(2009). Note that Peterson follows the studies of law student emotional distress in the USA back to 1957.

6 See for example, *Courting the blues*, *supra* note 1, at 12; MOLLY TOWNES O'BRIEN, STEPHEN TANG AND KATH HALL, *Changing Our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and Law Curriculum*, 149, 161 (2011); LEAHY, et al., AUST N Z J PSYCHIATRY, 608, 159-161 (2010).

7 See for example, *Courting the blues*, *supra* note 1, at 12; Leahy, et al., *supra* note 3, at, 611.

8 See for example, WATSON P. & FIELD R, *Promoting Student Wellbeing and Resilience at Law School*, in EXCELLENCE AND INNOVATION IN LEGAL EDUCATION (Sally Kift ed. 2011), at 395; DR COLIN JAMES, *Law Student Wellbeing: Benefits of Promoting Psychological Literacy and Self-Awareness Using Mindfulness, Strengths Theory and Emotional Intelligence* 21 LEGAL EDUCATION REVIEW 217, 232 (2011); DR WENDY LARCOMBE AND PROFESSOR IAN MALKIN, *The JD First Year Experience: Design Issues and Strategies*, 21 LEGAL EDUCATION REVIEW 1, 15 (2011); PETERSON and PETERSON *supra* note 2, at 413;

9 See for example, W.W. EATON, J.C. ANTHONY, W. MANDEL, R. GARRISON, *Occupations and the prevalence of major depressive disorder.*, 32 JOURNAL OF OCCUPATIONAL MEDICINE 1097(1990); BMRI Report *supra* note 1; and the summaries of previous research set out in; Sheldon and Kreiger, Education, *supra* note 2 and Tani and Vines, *supra* note 2.

10 RONALD C. KESSLER, PHD; PEGGY R. BARKER, MPH; LISA J. COLPE, PHD, MPH; JOAN F. EPSTEIN, MS; et al., *Screening for Serious Mental Illness in the General Population*, 60 ARCH GEN PSYCHIATRY 184-189, 188-189, (2003).

Faced with this problem, the question arises: how should legal education institutions¹¹ respond? This article describes the approach taken by one legal education institution, The College of Law, Australia (the College), in answering this question. The College identified the value in improving students' mental health literacy and stress management and now trains its lecturers to deliver an educational workshop (the workshop) in these areas. The workshop forms part of the core curriculum for the College's practical legal training program (PLT).

Part 2 of the article reviews some of the literature about health promotion, health literacy, mental health literacy and promoting student wellbeing, providing the underpinnings for the intervention. Part 3 describes the development of the workshop for pre-admission graduate law students. Part 4 outlines the content of the workshop and delivery methods. Part 5 considers evaluations of the workshop, from both the student and teacher perspective and student learning outcomes, and Part 6 contains recommendations based on our experience in designing and delivering the workshop.

2. RESEARCH BASIS FOR THE INTERVENTION

2.1 The state of law student mental health and their knowledge of and attitudes towards mental health issues

Mental illness is a serious problem in the general population of countries such as Australia. For example, in 2007, the Australian Bureau of Statistics (ABS) conducted a National Survey of Mental Health and Wellbeing. Its report drew on surveys completed by 8,841 randomly selected Australian households.¹² Participants were surveyed in relation to mental illness at any point in their lives, and in the 12 months before completing the survey (a 12-month mental disorder). The results showed that in the year prior to the survey, 20% of Australians aged between 16 and 85 years had had a mental disorder (a diagnosable mental illness). More specifically, the report noted that 26% of people aged 16-24 had had a 12-month mental disorder. That level was almost matched by the next age group 25-34 years. Anxiety, depressive and substance use disorders were the most common disorders revealed by the survey.¹³

Young people make up the vast majority of university students.¹⁴ As disclosed above, about one in four young people will have had a mental disorder in any one year and this includes university students (and amongst those law students). Statistically, mental illness and psychological distress are the greatest burden of disease in young people.¹⁵ These facts should strongly inform universities and other tertiary education institutions, including law schools, in developing and implementing

11 We have used this term to apply to all organisations offering academic training to law students including university law schools and those offering, for example, practical legal training in countries such as Australia (Graduate Diploma of Legal Practice), the UK (Graduate Diploma in Law) and Canada, for example in British Columbia (Professional Legal Training Course).

12 See, 4326.0 National Survey of Mental health and Wellbeing: Summary of Results, 2007 at, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4326.0> accessed 20 September 2012.

13 *Id.*, at 4

14 In 2012 the Australian Bureau of Statistics reported that in 2010 that there were about 523,000 young people aged between 15 and 24 enrolled in higher education. See, Australian Bureau of Statistics 1301.0 Year Book of Australia, 2012 at <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1301.0~2012~Main%20Features~Higher%20education~107> accessed 3 July 2013.

15 BMRI Report *supra* note 1, at 37 and 42.

policies regarding the health and wellbeing of their students.

Some research has been carried out to look at the mental health of university students. Two recent studies in Australia¹⁶ have respectively shown levels of emotional distress amongst university students to be higher than that of age matched population counterparts, and the general population. In only one of these studies did the researchers record and report data by reference to the degree course enrolled in. In that study, law students and mechanical engineering students distress ranked highest amongst those university students surveyed.¹⁷

This recent data concerning law students is broadly consistent with the other major Australian studies which have looked at the mental health of law students. This includes the report of the Brain and Mind Research Institute of the University of Sydney (BMRI) entitled 'Courting the Blues'¹⁸ and studies conducted at the Australian National University¹⁹ and the University of Melbourne²⁰. It is also consistent with comparable studies conducted in the United States of America (U.S.).²¹

The Australian research, in addition to confirming the levels of emotional distress suffered by law students, also discloses (consistent with U.S. research) that there is a decline in their mental health within their first year of study.²² This is the case regardless of whether the students are graduates or undergraduates²³ (including in the case of undergraduates for whom law subjects form less than half of the subjects studied in the first year of a combined degree).²⁴ The same outcome is apparent when curriculum designers take particular care to intentionally design a first year program for graduate students delivering a very good first year experience of law school.²⁵

Many studies of emotional distress in the literature (including that of the BMRI) use the Kessler K10/K6 non-specific distress scales to measure emotional distress. These were found in a study reported in 2003 to be statistically significant predictors of serious mental illnesses.²⁶

The study conducted by the BMRI disclosed that 35.4% of law students surveyed were found to

16 Leahy et al. *supra* note 2, at 611; HELEN M. STALLMAN, *Psychological distress in university students: A comparison with general population data*, 45 AUSTRALIAN PSYCHOLOGIST 249, 253(2010). Cf. N. J. REAVLEY, et al., *Actions taken to deal with mental health problems in Australian higher education students*, 6 EARLY INTERV PSYCHIATRY 159(2012). Reavely found a rate of emotional distress in students less than in the general population and suggests that the levels in students needs further investigation, at 164.

17 Leahy et al. *supra* note 2, at 611.

18 See BMRI Report, *supra* note 1.

19 See O'Brien et al., *supra* note 3.

20 See Larcombe et al., *supra* note 2.

21 See for example, Peterson and Peterson *supra* note 2; Sheldon and Kreiger, *Education*, *supra* note 2.

22 O'Brien et al. *supra* note 3, at 159-160; Sheldon and Kreiger, *Education*, *supra* note 2 at 272.

23 O'Brien et al. *supra* note 3; Sheldon and Kreiger, *Education*, *supra* note 2. Note that in the U.S. Law is only offered as a graduate degree.

24 O'Brien et al. *supra* note 3. In Australia most universities offer Law as an undergraduate degree. It is also most commonly offered as a combined degree with another discipline. By contrast in the U.S. law is undertaken as a graduate degree.

25 WENDY LARCOMBE, LETTY TUMBAGA, IAN MALKIN, PIP NICHOLSON AND ORANIA TOKATLIDIS, *Does an Improved Experience of Law School Protect Students against Depression, Anxiety and Stress? An Empirical Study of Wellbeing and the Law school Experience of LLB and JD Students*, 35 SYDNEY LAW REVIEW 407, 432 (2013).

26 Kessler, *supra* note 7, at 188-189.

have high or very high distress levels and almost 70% had moderate to very high distress levels (68.5%). It also reported that law student distress was higher than that of other university students and higher than a sample of the general population.

While some studies have pointed the way to possible causes of this phenomenon, no study has been able to conclusively identify them. They include some key Australian studies.

The first is a study by Tani and Vines. It showed that law students were more competitive, less interested in their studies, more focused on grades and more likely than their peers in other disciplines to have been influenced by others in the choice of their field of study. From this it was inferred that law students may have certain personal characteristics including lack of autonomy and lack of social connectedness²⁷ which might be indicators of depression or depressed thinking.²⁸

It is often asserted that in addition to these characteristics, lawyers and law students are perfectionists or tend towards perfectionism and this is referred to in the Tani and Vines study. They define this characteristic as one in which people have 'high and unrealistic standards combined with relentless self-criticism'.²⁹ This characteristic has been said to contribute to the emotional distress of both law students and legal practitioners.³⁰

In a later study, researchers from the University of Melbourne considered both intrinsic reasons for studying law (such as personal interest) and non-intrinsic reasons for studying law (such as parental pressure or perceptions of the status of being a lawyer). Their results supported the view that increased psychological distress in law students is 'associated with increases in non-intrinsic reasons for studying law'³¹ and that the law school experience might re-orient students away from

27 Tani and Vines, *supra* note 2, at 25.

28 Tani and Vines, *supra* note 2, at 30.

29 Tani and Vines, *supra* note 2, at 28.

30 PAUL R VERKUIL & TERRY H KANG MARTIN E P SELIGMAN, *Why Lawyers are Unhappy*, 10 DEAKIN LAW REVIEW 49(2005) at 54.

31 Larcombe et al. *supra* note 2, at 16.

intrinsic to non-intrinsic reasons.³²

Those researchers have undertaken a further study which has just been published.³³ The research looked at the factors (both personal and course-related) that might be contributing to law students' emotional distress. Those factors were studied both in relation to the level of distress (moderate and severe) and also in relation to the different forms of distress (depression, anxiety and stress).

One of their major findings was that different factors were associated with the different levels of distress and for each form of distress.

This research supports the notion that many different initiatives will be required to respond to law student psychological distress. It also provides (for the first time) very valuable data to support law education institutions in developing targeted initiatives with respect to the various forms of law student distress and associated factors (many examples of which are provided in the paper).

At the Australian National University researchers found a significant shift in students' thinking styles in their first year at law school. Specifically, there was a decrease in their experiential (intuitive) thinking and a corresponding increase in their rational (analytical) thinking. The authors looked at the relationship between this shift in thinking styles and depressive symptoms and concluded that for the survey group:

32 Larcombe et al. *supra* note 2, at 20. The University of Melbourne research and that of Tani and Vines draw significantly upon the work of Sheldon and Kreiger: see Sheldon and Kreiger, *Education*, *supra*, note 2 and Sheldon and Kreiger, *Understanding*, *supra*, note 2 and Self-Determination Theory. That theory and its application in the work of Sheldon and Kreiger has been neatly summarised as follows:

'Why do motivations and values as— people's reasons for engaging in activities — affect wellbeing? According to Self-Determination Theory ('SDT'), external motivations and values tend to reduce or impair people's experiences of autonomy, competence and relatedness to others. Experiences of autonomy, competence and relatedness are known to be basic psychological needs, essential for positive wellbeing. Sheldon and Kreiger's.....research was designed to test SDT's capacity to explain high levels of psychological distress among law students and their findings confirm the soundness of the underlying theory: that 'psychological-need deprivation appears to be a principal source of human distress', see Larcombe, *supra* note 2, at 4.

A later University of Melbourne study concludes that its results provided strong support for the work of Sheldon and Kreiger in explaining law student distress. WENDY LARCOMBE AND KATHERINE FETHERS, *Schooling the Blues? An Investigation of Factors Associated with Psychological Distress Amongst Law Students*, 36 UNSW LAW JOURNAL 390(2013).

Self-Determination Theory posits that if individuals are provided with what is called 'autonomy support' (which in turn supports their psychological needs) that one of the outcomes of providing that support is psychological health and wellbeing. An integrated model of thriving based on Self-Determination Theory was tested in the law school context by Sheldon and Kreiger: see, Sheldon and Kreiger, *Understanding*, *supra*, note 2 (surveying students at two law schools). The study found that the provision (at one of the law schools) of greater perceived autonomy support predicted greater needs satisfaction (autonomy, competence and relatedness) in its students. That greater needs satisfaction led to 'higher subjective well-being relative to baseline' (although it should be noted that the subjective wellbeing of students from both law schools declined during law school attendance), *Id.* at 593. The application of Self-Determination Theory to clinical legal education and, in particular, meeting the needs of students for autonomy, competence and relatedness through clinical legal education has been considered. Wortham et al argue that clinical legal practice might provide students with improved autonomy support and discusses ways in which this might be achieved. LEAH WORTHAM, KATHERINE F. KLEIN, BERYL BLAUSTONE, *Autonomy-Mastery-Purpose: Structuring Clinical Courses to Enhance These Critical Educational Goals*, 18 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION 105.

33 Larcombe and Fethers, *supra* note 29.

*a propensity towards experiential thinking is a stronger overall predictor of lower levels of depressive symptoms. Less experiential-thinking students showed a statistically significant heightened level of depressive symptoms in the end-of-year group*³⁴

All of these studies demonstrate the effort being made to understand the characteristics of law students and their mental health. Further research continues to be undertaken to identify the causes of law student emotional distress and the contribution to that which is made by the law school experience.

As noted earlier, the BMRI report found that 35.4% of law student respondents were suffering high or very high levels of emotional distress. It was also reported that almost half of the law students surveyed reported that they had suffered depression (46%) and that of those (23%) had been treated for it.³⁵

The BMRI study also asked questions aimed at finding out about participants' understanding, and self-awareness, of depression. The study surveyed both legal practitioners and law students. Some of its key findings were that:

- Both law students and legal practitioners surveyed tended not to be able to recognise the most commonly identified symptoms of depression³⁶
- Law students appeared to have less understanding of the symptoms of depression than medical students and that consequently that they might not be as able to readily identify depression when it occurred in themselves or their peers³⁷
- More than one in five law students thought that depressed people were dangerous to others³⁸
- About 20% of participants (both legal practitioners and law students) thought that their friends or family might discriminate against them if they experienced depression – this rose to over 50% in relation to the attitudes of employers³⁹
- Over 30% of the participants said that they would not seek help from any professional if depressed and for students that figure rose to 39.4%⁴⁰
- Over one third of participants who reported having experienced depression also reported never having sought information about it⁴¹
- A majority of participants expressed mixed views about depressed people.⁴²

There are three clear conclusions that might be drawn from this BMRI material in relation to law student literacy about depression. The first is that some law students have difficulty in identifying

34 O'Brien, *supra* note 3, at 165.,

35 See also Leahy, et al., *supra*, note 3 at 612; Leahy reported that 12% of law students had been treated for mental illness.

36 BMRI Report *supra* note 1, at 39.

37 BMRI Report *supra* note 1, at 39.

38 BMRI Report *supra* note 1, at 31.

39 BMRI Report *supra* note 1, at 30.

40 BMRI Report *supra* note 1, at 20.

41 BMRI Report *supra* note 1, at 26.

42 BMRI Report *supra* note 1, at 40.

the symptoms of depression. Secondly, a significant proportion of law students would not seek professional help if depressed (39.4% in this study). Thirdly, many of them held negative, stigmatising views about those with depression.

The authors went on to argue:

*These views might well have a strong detrimental effect on their attitudes towards their own depression and help-seeking behaviour, and towards any peers or employees who approach them for support regarding psychological distress*⁴³

It was findings such as these which formed the basis of our conclusion that mental health education would be of real benefit to law students and informed the development of an intervention as part of the College's PLT program.

There is arguably a clear role, or at least opportunity, for legal education institutions to develop educational responses aimed at addressing the stigma attaching to mental illness, providing information about common mental illnesses and influencing the help seeking behaviours of law students.⁴⁴ The BMRI report itself indicated that '[p]rimary strategies for intervening to improve mental health outcomes of legal educational institutions include: increasing legal educators' and students' awareness of mental health issues'.⁴⁵

Before proceeding further, it should be made clear that the College is not a university law school, although it is a provider of post graduate education (other than a Juris Doctor degree) to the legal profession. Part of its core business is to provide practical legal training to law graduates prior to their admission to legal practice. The College educates about 2,400 students a year in this program.

The College's PLT program includes coursework of 15 weeks duration for fulltime students and 30 weeks for part time students. The coursework component of the training is delivered by way of blended learning, being a combination of online and small group tuition. Students attend the College for three separate weeks of classes (onsites) aimed primarily at skills acquisition (and also assessment).

There is also a work experience component which requires students to complete 15 weeks work in a legal workplace (broadly defined) supervised by a practicing lawyer.

The work experience component is somewhat similar to university clinical legal education programs offering law students experiential learning opportunities.

As foreshadowed in the introduction, we will go on to write in detail about a mental health initiative developed by the College for its students. As College PLT courses are of short duration it has only been possible for us to design and deliver an educational intervention of three hours

43 BMRI Report *supra* note 1, at 40.

44 As we write this paper (13 August 2013) a student rang one of us to 'apologise' for having to talk about a recently developed anxiety condition with accompanying panic attacks, about which the student was 'embarrassed'. Incidents like this, involving students suffering internalised stigma and shame, continue to underline the need for mental health education of law students.

45 BMRI Report, *supra* note 1 at viii. The Concil of Australian Law Deans has recently adopted as best practice that law schools 'to actively educate and disseminate information around the issues of mental illness and student distress with staff and students'. See *Promoting Law Student Well-Being Good Practice Guidelines for Law Schools* at <http://www.cald.asn.au/assets/lists/Resources/Promoting%20Law%20Student%20Well-Being%20Good%20Practice%20Guidelines%20for%20Law%20Schools.pdf> accessed 11 December 2013.

(initially two and a half hours).

Many of the interventions we review in this article are of longer duration than that of the College. The appropriate length of any intervention will continue to be the subject of research and discussion. University law schools, which would normally have their students enrolled for at least three years have the opportunity to design and implement more substantial interventions.

Nevertheless, we argue that useful lessons for legal education institutions generally arise from the design and implementation of the College's intervention.

2.2 The value of mental health literacy

Whilst much work is being done to review and renew the law school experience and curricula, in light of the literature referred to in the earlier part of this paper, the issue of the mental health of law students might also be considered from a health perspective. In that regard, it is useful to consider the literature on health education.

Health education is now generally seen as an element of what is defined as health promotion, together with the elements of prevention of disease and health protection.⁴⁶

One of the aims of many health interventions, including health education, is to develop health literacy in the target population. A definition of health literacy is now included in the WHO health promotion glossary and is as follows:

*Health literacy represents the cognitive and social skills which determine the motivation and ability of individuals to gain access to, understand and use information in ways which promote and maintain good health*⁴⁷

Good health includes good mental health. Or, as is articulated by the World Health Organisation; 'Mental health is an integral part of health; indeed, there is no health without mental health'.⁴⁸

In relation to the development of health literacy more generally, Nutbeam suggests that there are three levels at which it works.⁴⁹ The first he calls 'functional health literacy' which is promoted by traditional education and the communication of 'factual information on health risks, and on how to use the health system'. The second is 'interactive health literacy' focused on 'the development of personal skills in a supportive environment'. The third is 'critical health literacy' which supports cognition and skills in and around identifying the social determinants of health and looking at effective social and political action. Nutbeam also argues that increasing health literacy in a greater proportion of the population also brings social benefits.⁵⁰

Later in the paper we argue that this analysis might assist legal education institutions by providing a framework to inform the design of mental health education programs for law students.

In the specialised field of mental health, the more specific term of 'mental health literacy' is used.

46 See WHO Health Promotion Glossary at, <http://www.who.int/healthpromotion/about/HPR%20Glossary%201998.pdf> accessed 26 September 2013.

47 *Id.*

48 See WHO Factsheet at, <http://www.who.int/mediacentre/factsheets/fs220/en/> accessed 6 September 2013.

49 DON NUTBEAM, *Health literacy as a public health goal: A challenge for contemporary health education and communication strategies into the 21st century*, 15 HEALTH PROMOTION INTERNATIONAL 259, 265 (2000).

50 *Id.* at 264,

This term was coined in 1997 by Jorm and others and is defined as ‘knowledge and beliefs about mental disorders which aid their recognition, management or prevention’.⁵¹ The terms ‘health literacy’ and ‘mental health literacy’ are not well known in legal education institutions and the legal profession.

Jorm argues that if a person has a mental health problem and they are able to recognise it as a mental disorder then they are more likely to seek help. He refers to a study by Wright et al from which the following conclusion is drawn: ‘Young people who recognise a disorder in a scenario tend to have better help seeking and treatment preferences’.⁵² He goes on to say that in order for people, who are able to identify a disorder in themselves or others, to get effective help (or refer others to effective help) they also need to know where professional help might be obtained. These are key insights which might inform initiatives seeking to develop the mental health help-seeking behaviours of law students.

These ideas have received further support in a recent Australian study of university students and university staff. In that study, the participants were given a vignette containing a description of a person suffering a common mental illness. The results showed that a capacity by participants to identify the common mental disorder was ‘associated with greater likelihood of seeking professional help’.⁵³

The concept of mental health literacy extends further to encompass first aid behaviours. Based on these principles, Mental Health First Aid (MHFA) was developed by Kitchener and Jorm in 2001 and was aimed at teaching mental health literacy including first aid behaviours to non-health professionals in 12 to 14 hours of face to face tuition.⁵⁴ The MHFA program has now been evaluated a number of times using both controlled and uncontrolled trials.⁵⁵ The authors concluded from two controlled trials that there were consistent positive benefits from the program.

One of the findings of the studies was that the course led to a decrease, in participants, in stigmatising attitudes.⁵⁶ Given the findings of the BMRI study, decreasing stigmatising attitudes should be an important aim in developing any mental health initiative for law students and this study demonstrates that the teaching of mental health literacy has the capacity to do this.

The argument has been made in Australia that tertiary students should be encouraged to undertake MHFA training, particularly its first aid component, as it has been shown that for university students with mental health concerns the most popular self-help strategy is to talk to a friend.⁵⁷ It stands to reason that the more mental-health literate that friend is, the more scope there is for appropriate assistance to be given. Conversely, the less mental-health literate the friend, the higher

51 A. F. JORM, *Mental health literacy: empowering the community to take action for better mental health*, 67 AM PSYCHOL 49 (2012).

52 *Id.* at 3.

53 Reavley et al., *supra* note 13, at 159.

54 We are aware that a new mode of delivery is being developed for MHFA in order that it might be undertaken predominantly online.

55 BETTY A. KITCHENER and ANTHONY F. JORM, *Mental health first aid training: review of evaluation studies*, 40 AUSTRALIAN AND NEW ZEALAND JOURNAL OF PSYCHIATRY, 6, 7 (2006).

56 In the U.S. providing MHFA to teachers and others who interact with young people is part of President Barack Obama’s plan to reduce gun violence, see plan at 14, http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf accessed 9 August 2013.

57 Reavley et al., *supra* note 13, at 163-164.

the risk that the friend will either fail to recognise the signs of mental illness or emotional distress or suggest appropriate help.

In summary, scientifically based health promotion is globally acknowledged as an appropriate response to health issues. In the area of mental health, health promotion has many potential positive benefits. Providing students with good information about mental illnesses and their symptoms may give rise to a greater capacity to recognise those symptoms in themselves.⁵⁸ This then may lead them to have better help seeking and, if good information is provided about where to seek help, to better use of the health system.⁵⁹ It also has the capacity to lessen stigmatising attitudes.⁶⁰ With appropriate training it can support people to assist others in the midst of a mental health crisis.⁶¹

2.3 The contribution of positive psychology

Later in the paper, we report our conclusions from having conducted focus groups with law students. In those groups, students were clear that they were interested in approaching mental health issues through concepts such as resilience, wellbeing and the maintenance of good mental health. This raised questions regarding health prevention and positive psychology.

The following material looks at some of the growing body of research in these areas, which we found to be relevant to the development of mental health programs for law students, and from which we continue to draw ideas.

One of the aspects of health promotion, referred to above, is health prevention. Health prevention is said usually to have three different levels – primary, secondary and tertiary. Ratzan, in relation to health literacy generally, suggests that the three levels might be described as follows:

Primary – ‘How do I stay well?’

Secondary – ‘How can I detect disease/illness early and treat it appropriately?’

Tertiary – ‘How can I live best with illness?’⁶²

In the mental health field the question, ‘How do I stay well?’ has two parts. The first is about avoiding or preventing mental health disorders. The second is about enhancing wellbeing and supporting flourishing.

Ideas such as these have formed the foundation of the new and emerging field of ‘positive psychology’. Seligman, a key figure in the field, says that positive psychology focuses on learning about, and teaching the elements of, positive emotion, engagement, meaning and positive relationships.⁶³

In a review of the growing body of research evidence regarding psychological wellbeing, Huppert concludes that ‘[i]nterventions which encourage positive actions and attitudes have an important

58 Jorm, *supra* note, 48.

59 Jorm *supra* note 48, at 3; Reavley et al., *supra* note 13, at 164.

60 Kitchener and Jorm, *supra* note 52, at 7.

61 Kitchener and Jorm, *supra* note 52, at 7.

62 SCOTT C. RATZAN, *Health literacy: communication for the public good*, 16 HEALTH PROMOTION INTERNATIONAL 207, 212 (2001).

63 MARTIN E.P. SELIGMAN, *FLOURISH* 12 (William Heinemann (Australian Edition).2011).

role to play in enhancing well-being'.⁶⁴ In a very general sense this is what positive psychology is all about – shifting the focus of attention from illness (including preventing illness) to the enhancement of wellbeing.

One of the continuing questions for us is: can you teach wellbeing or the enhancement of wellbeing? And can you teach it in a law school?

Teaching wellbeing (in the contemporary sense), in an educational setting, was pioneered by Seligman. The programs that he and his team developed have now been operating for more than 20 years. One of these programs, the Penn Resiliency Program (PRP), has been positively evaluated against control groups more than 17 times.⁶⁵

The PRP is aimed at developing in adolescents, the ability to handle day to day stressors and the stressors particular to their time of life. It is delivered over a number of classes (12 of 90 minutes or 18 of 60 minutes)⁶⁶ and covers resilience concepts and skills, including coping and problem solving skills.⁶⁷ The evaluations have shown that the program prevents clinical levels of depression and anxiety, reduces the symptoms of those conditions, prevents anxiety and reduces hopelessness.⁶⁸

We note here that one of the recommendations of the BMRI Report was that 'law students and legal professionals need to be made aware of, and prepared for, normal forms of stress in the normal workplace'.⁶⁹

We would add to that; *and to the stresses involved in law school education.*

The PRP may provide good support to legal education institutions seeking to implement mental health and wellbeing programs as it provides an example of a program which is preventative with respect to some forms of mental illness in an educational setting and because it is also particularly aimed at teaching young people to handle stressors.

It has already been proposed that positive psychology in support of student wellbeing in various

64 FELICIA A HUPPERT, *Psychological Well-being: Evidence Regarding its Causes and Consequences*, 1 APPLIED PSYCHOLOGY: HEALTH AND WELL-BEING 137, 154 (2009). Also of interest from an educational perspective is Huppert's additional conclusion that the science now shows that people with positive emotions tend to function better in life. This extends to (most forms of) cognition including having more flexible and creative thinking. This alone would seem to be a good reason for teaching some forms of positive psychology in Universities.

65 MARTIN E. P. SELIGMAN, RANDAL M. ERNST, JANE GILLHAM, KAREN REIVICH AND MARK LINKINS, *Positive education: positive psychology and classroom interventions*, 35 OXFORD REVIEW OF EDUCATION 293 (2009). Seligman has also developed a program of more general positive psychology for adolescents called the Positive Psychology Program. This program is based on signature strengths training together with interventions to promote 'resilience, positive emotion and students' sense of meaning or purpose'. The program was taught to Year 9 high school students in America. The students attended about 25 classes each of 80 minute during a school year. On evaluation it was found that the program had been shown to increase students' reports of their own engagement in school and their social skills. However, it appeared to have no effect on students' reports of their experience of depression and anxiety. In an even more ambitious program Seligman and his collaborators are working with Geelong Grammar in Australia to not only teach Positive Psychology to students but to embed it throughout the school curriculum. The elements of the Positive Psychology skills which are taught to students are 'resilience, character strengths, gratitude, positive communication, optimism'. At the time of his writing no evaluations of this initiative were available, *id* at 302.

66 See, Penn Positive Psychology Center at, <http://www.ppc.sas.upenn.edu/prpsum.htm> accessed 7 February 2013.

67 Seligman et al., *supra* note 60, at 297.

68 Seligman et al., *supra* note 60, at 298.

69 BMRI Report *supra* note 1, at 49 .

forms be taught as part of the law school curriculum.⁷⁰ For example, Peterson and Peterson propose the teaching of learned optimism, the building of positive emotion and the use of strengths theory to law students.⁷¹ As part of their research they ran a trial of the use of strengths theory at the George Washington University Law school.

Strengths theory is based on the notion that each person has personal strengths and qualities and that by identifying those strengths and using them in a conscious way, a person will thereby promote their wellbeing. This empirical study found a correlation between how often students used their top strengths in their daily lives and the three measures of wellbeing tested (satisfaction with life, stress measures and depression measures).⁷²

Peterson concluded that, theoretically, a university law school program including formal curriculum, which incorporated and focused on strengths theory might be able to provide a 'buffer against psychological distress'.⁷³

The use of strengths theory has been empirically shown more generally, in other studies, to lead to increases in wellbeing.⁷⁴

In Australia, it has been argued that law school curricula should include programs to increase students' levels of psychological literacy particularly through the use of strengths theory. James also proposes that instruction should include emotional intelligence training and mindfulness.⁷⁵

Mindfulness is an intervention particularly mentioned by Huppert as supporting wellbeing. It is defined as including 'bringing one's complete attention to the experiences occurring in the present moment, in a non-judgemental or accepting way'.⁷⁶ Mindfulness has its origin in the spiritual practices of Buddhist meditation, and in recent times these have been adapted for secular use.

Hassed et al. explain mindfulness in the following way;

*Mindfulness involves attention regulation and being in the present moment. It is based on the premise that while both pleasant and unpleasant experiences arise in daily life, the habit of judging or resisting those experiences heightens their impact. Thus acceptance is also a core element of mindfulness practice. Mindfulness meditation is the cornerstone of fostering mindfulness in day-to-day life.*⁷⁷

Mindfulness practices have been specifically adapted for stress management in a program known

70 See for example, Peterson and Peterson, *supra* note 2; James, *supra* note 5.

71 Peterson and Peterson, *supra* note 2, at 395-408.

72 Peterson and Peterson, *supra* note 2, at 411.

73 Peterson and Peterson, *supra* note 2, at 414.

74 See ALEX M. WOOD, et al., *Using personal and psychological strengths leads to increases in well-being over time: A longitudinal study and the development of the strengths use questionnaire*, 50 PERSONALITY AND INDIVIDUAL DIFFERENCES (2011).

75 Subsequently James and others tested the relationship between emotional intelligence and psychological wellbeing. They found that 'personality subsumes any effect of EI on our wellbeing'. COLIN JAMES, MILES BORE and SUSANNA ZITO, *Emotional Intelligence and Personality as Predictors of Psychological Well-Being*, 30 JOURNAL OF PSYCHOEDUCATIONAL ASSESSMENT 425, 435(2012).

76 R. A. BAER, et al., *Using self-report assessment methods to explore facets of mindfulness*, 13 ASSESSMENT 27, 27(2006).

77 C. HASSED, et al., *Enhancing the health of medical students: outcomes of an integrated mindfulness and lifestyle program*, 14 ADV HEALTH SCI EDUC THEORY PRACT 1, 3 (2009).

as Mindfulness-Based Stress Reduction (MBSR). We have noted that stress management has been identified as an important skill for law students.

In 2011, Keng examined 17 randomised controlled trials of MBSR (a number of which were studies involving American college undergraduates) and found that, overall, benefits included reductions in self-reported levels of anxiety, depression, anger, general psychological distress (including perceived stress), improvement in positive affect, empathy, satisfaction with life and quality of life.⁷⁸ In other words, its effects are both potentially preventative or ameliorative with respect to emotional distress and supportive of enhanced wellbeing.

An example of a program aimed at enhancing student wellbeing and teaching mindfulness based stress management in an Australian higher education setting is provided by the Faculty of Medicine, Nursing and Health Sciences at Monash University (Monash). First year students as part of their core curriculum undertake a program entitled the Health Enhancement Program (HEP) which includes mindfulness based stress management and lifestyle programs.⁷⁹ It is conducted by way of eight lectures and six two-hour small group tutorials.

In 2006, 148 students in this course were surveyed twice during their first year of study (at the beginning and the end of a six week period). The researchers concluded that the data suggested that 'self-care in the form of mindfulness-based stress management and lifestyle programs can improve student wellbeing'.⁸⁰ In particular, the study showed that the symptoms of depression and hostility in the students had decreased over the survey period.⁸¹

Not only does this program support the notion that wellbeing can be taught, it also provides an example of the provision, in a university setting, of mindfulness based stress reduction as part of the core curriculum.

Mindfulness programs are being run at a significant number of U.S. Universities.⁸² An example is provided by the extensive programs run at the University of Miami, School of Law (Miami). Mindfulness is taught at Miami in stand-alone subjects and also as part of more traditional subjects including professional responsibility and succession. Additionally, it forms the core of many extracurricular courses and activities. Looking at the range of offerings suggests that mindfulness has become a facet of the culture of the law school. As yet this approach has not been evaluated.

Education in positive psychology or wellbeing as part of health promotion is relatively new, as is the science of wellbeing. When designing mental health interventions for law schools, a range of established programs will be considered. Two being used in law schools are interventions based on strengths theory and mindfulness based programs. Both have been evaluated (although primarily with groups other than law students) and have been found to have ameliorative effects on emotional distress and to enhance wellbeing and thus should be considered by curriculum designers.

78 SHIAN-LING KENG, et al., *Effects of mindfulness on psychological health: A review of empirical studies*, 31 *CLINICAL PSYCHOLOGY REVIEW*, 1042, 1044-1045 (2011).

79 C. Hassed, et al., *supra* note 74, 4-6.

80 C. Hassed, et al., *supra* note 74, 9.

81 C. Hassed, et al., *supra* note 74, 8.

82 See for a list of many of them, SCOTT L. ROGERS, *The Mindful Law School: An Integrative Approach to Transforming Legal Education*, 28 *TOURO LAW REVIEW* 1189, 1190 at note 5 (2012).

If one accepts the BMRI report's recommendation in relation to preparing students for the stress of practice any such intervention should contain a significant element dealing with stress management.

3. INTERVENTION – DEVELOPMENT, DESIGN AND IMPLEMENTATION

3.1 Background and the need for change

The catalyst for change for the authors of this article was their attendance at the first of the annual public lectures in 2006 organised by The Tristan Jepson Memorial Foundation (TJMF).⁸³ The TJMF was established by the parents of Tristan Jepson, a former law student at the University of New South Wales (UNSW) who took his life at age 26 after a period of suffering from severe clinical depression. In discussions subsequent to his tragic death, Tristan's parents discovered a culture of secrecy among some of Tristan's friends who also suffered depression but had not sought help for it. The aims of TJMF include finding ways to address the causes of depression and anxiety in the legal profession. At the outset TJMF focused on two initiatives, one for law students and the second an annual public lecture targeting the legal profession. As with several of the participants, we were prompted to consider what the first annual public lecture meant for us. The College PLT program seeks to prepare law graduates for practice. Our initial question was; Is there an educational role in preparing law graduates for practice from a mental health point of view?

3.2 Consultation Phase

3.2.1 Consultation within the College and the profession

For three years we consulted informally and formally with the lecturers at the College. In November 2009 we invited a number of key external stakeholders to join lecturers at a meeting, to consider the educational needs of the College's PLT students in light of the developing concerns about the mental health of law students and lawyers. This group subsequently formalised into the Consultative Committee.⁸⁴ It comprised representatives from the College, New South Wales Law Society, New South Wales Bar Association, LawCare,⁸⁵ LawCover,⁸⁶ a leading university law school, the BMRI, two national law firms, beyondblue,⁸⁷ a psychiatrist, a social worker and the TJMF.

In essence, the committee took the view that there was a need to provide law students with mental health training.

83 See TJMF Webpage at, <http://www.tjmf.org.au/> accessed 11 september 2013.

84 This College meeting took place in Nov 2009

85 LawCare is a professional and confidential counselling service for solicitors and their immediate family members run by the Law Society of NSW. It is also available in other Australian States.

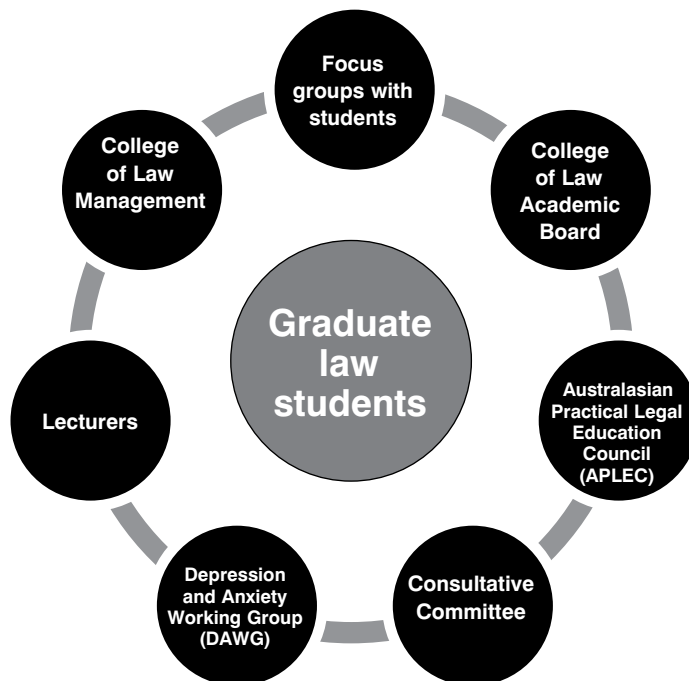
86 LawCover underwrites Compulsory Professional Indemnity Insurance (PII) for solicitors and provides other insurance services.

87 beyondblue is the national depression organisation

3.2.2 Depression and Anxiety Working Group

Arising out of the discussions with the Consultative Committee, the College was invited to join the Managing Partners' Depression and Anxiety Working Group (DAWG). This group was established by Managing Partners at five major law firms⁸⁸ to try and address the increasing incidence of depression and anxiety among lawyers in Australia. The group met regularly and worked collaboratively on, what was decided to be, an educational response. As a member of DAWG, the College became involved in the final design and production of a short film on mental health in the legal profession in Australia entitled *resilience@law* (the short film).⁸⁹ We were also given access to information from member firms of DAWG some of which had conducted focus groups of new lawyers within their respective firms.

Figure 1: Consultation Phase of Workshop Development



88 Allens, Blake Dawson now Ashurst, Clayton Utz, Freehills now Herbert Smith Freehills, Mallesons now King & Wood Mallesons

89 The College has subsequently taken responsibility for the ongoing distribution of the short film *resilience@law* to legal institutions and individuals working in law. It is made available free of charge subject to agreement as to use.

3.2.3 Australasian Professional Legal Education Council (APLEC)⁹⁰

An APLEC Conference is held annually and includes attendees mainly from Australia and New Zealand but also from South East Asia and the Pacific. During the consultation phase this provided us with a forum to present on aspects of our developing thinking and to generate discussion within the APLEC community. As awareness of the problem grew so did the interest of APLEC conference attendees.

3.2.4 Law Student Focus Groups

Law graduates enrolled in the College's PLT program are our key stakeholders and as such it was very important to obtain their input on any proposed component of the curriculum. We wanted to hear their observations of legal education and the legal workplace and explore with them their perceptions of what a workshop on mental health for law graduates should include and what would be of most interest and benefit to them. Three focus groups with students were held to obtain this information. The focus groups were facilitated by a College lecturer together with law firm representatives of DAWG (each of them being a human resource professional). The process involved generation of discussion by asking a series of trigger questions and then encouraging a free flow of discussion around the issues.

3.2.5 Outcomes of the Consultation Phase

A number of conclusions were drawn following this comprehensive and lengthy consultation phase, namely that:

- The need we perceived in 2006 for the education of law graduates about mental health issues was confirmed;
- It was appropriate for the College to include such education in its PLT program, placed as it is between law school and legal practice;
- Such education should be part of the core national curriculum to ensure a broad reach and impact,⁹¹ noting that the issues would in one way or another impact most if not all graduates at some stage in their careers (or in life);
- A key issue for the College was deciding who was to teach any such training; and
- Law graduates enrolled in the College's PLT program wanted any such education to approach mental health issues from a positive point of view, including information on how to remain well and build and maintain resilience.

3.3 Benchmarking

We also investigated what other legal educational institutions in New South Wales were providing by way of wellbeing and mental health training. There were a number of initiatives that we became

⁹⁰ APLEC represents all professional legal training courses in Australia, New Zealand and the Asia Pacific Region.

⁹¹ About 2400 students per year complete the College of Law PLT program.

aware of including, the University of Wollongong Law School's Vitality for Life program,⁹² the UNSW Law School LawPLUS program, the Macquarie University Law School's peer assisted learning program (PAL),⁹³ and the Faculty of Business and Law at the University of Newcastle's Peer Assisted Study Sessions (PASS).⁹⁴ All these programs are voluntary and, with the exception of Wollongong's Vitality for Life and Law program, all are peer assisted programs. However, although some address life and work or study skills, more often the focus is on course content and study skills rather than on developing psychological resilience and gaining awareness about mental health issues.

Our early thinking was to design and implement a program similar to the Vitality for Life and Law program but which would be compulsory for all students in the College's PLT program. That intervention, we planned, would focus on positive health and wellbeing and mental health literacy and be taught by appropriately trained facilitators.

3.4 Design phase

3.4.1 Mental health education as part of the core curriculum

The psychological distress of law students and lawyers is a matter of significant concern requiring a proportionate response. The College took the view that mental health education should be a part of the core curriculum so that it might have a broad impact and maximum effectiveness for all students. In early 2010, the College committed to developing a program of mental health education as a compulsory part of the curriculum for incoming PLT students.

3.4.2 Designing the intervention

The design phase led to the development of the Resilience and Wellbeing for Lawyers component of the College's PLT program. Our aims in designing the workshop were to support student wellbeing, particularly in providing stress management training, to provide mental health education including the provision of resources to support appropriate help seeking and to address the stigma attaching to those having a mental illness.

At the outset, it was important to identify that the new training would align with the PLT competency standards for entry level lawyers as prescribed by the rules of the Supreme Courts of

92 It aims to provide students with the opportunity to learn life and work skills which will enable them to thrive in their personal and academic life and to build a successful and sustainable career in the legal profession. The program involves a commitment to a series of evidence based interactive and experiential one hour weekly seminars which focus on strategies for minimising stress, maintaining a healthy lifestyle, enhancing physical health and wellbeing, building a supportive environment, developing psychological resilience, communication skills and reflective learning skills, strengthening emotional intelligence and self-awareness.

93 The learning sessions are run weekly for one hour and are peer facilitated, student supported and voluntary. The session reviews the weekly material, both lecture and tutorial, focusing on elements the PAL participants want to discuss and revisit and integrates course content with study skills and exam preparation. See PAL information at www.arts.mq.edu.au/current_students/undergraduate/peer_assisted_study_sessions accessed on 18 September 2012.

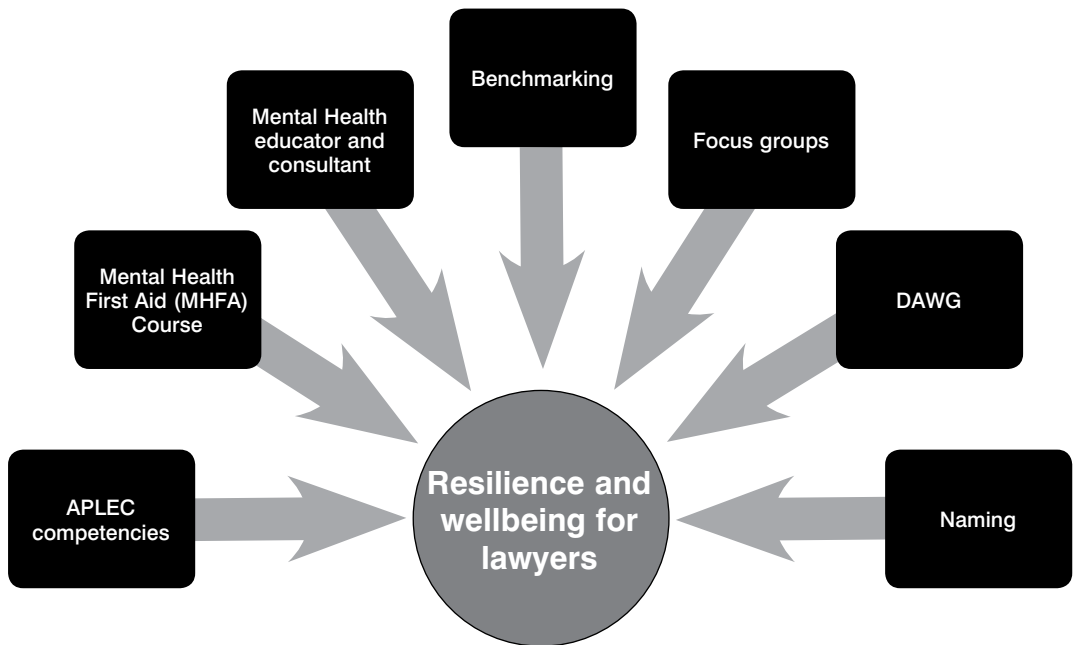
94 The PASS program consists of one hour weekly review sessions which provide students with an opportunity to compare notes discuss difficult concepts and review weekly materials in an informal setting. The sessions are conducted by PASS leaders who are students who have already completed the course and who have excelled in their results. See PASS information at www.newcastle.edu.au/faculty/business-law/for-students/current/pass/ accessed 18 September 2012.

the various States and Territories. The competencies included standards for Work Management and Business Skills and Ethics and Professional Responsibility⁹⁵ and we concluded that the new training would align with these.

As we did not have prior training in mental health or psychology and in order to educate ourselves prior to designing the new training, we completed a MHFA course. The training provided by that course is designed to enable delivery of mental health training by non-health professionals to non-health professionals. One of the key aims of the MHFA course is to make it broad-based so as to reach as many people as possible while still maintaining appropriate standards. This approach was an important discovery for us and was a turning point in our thinking. We realised that it was possible for law lecturers (as non-health professionals) to be trained to deliver mental health information to the College's non-health professional law graduates.

As the College did not have the resources to carry out the full design and preparation of materials for the new training, it was decided to consult and collaborate with a professional mental health educator. The person we approached was (at that time) a professional mental health educator and a former lawyer.⁹⁶

Figure 2: Inputs for and Influences on Workshop Design



⁹⁵ See APLEC Competency Standards at http://www.aplec.asn.au/Pdf/Competency_Standards_for_Entry_Level_Lawyers.pdf accessed 11 September 2013

⁹⁶ Susan Goldie – mental health educator and trainer of MHFA trainers.

A key issue for us was what mode of delivery should be used. We felt strongly that, as it was to involve mental health and self-care skills training, it should be taught face-to-face. However, the PLT onsite programs were already very full. Given the time constraints it was agreed, after much discussion, that the new training would take the form of a two and a half hour workshop⁹⁷ to be conducted during an onsite in small groups of up to 20 students.

Having decided on the workshop format, consideration was given to assessment. It was decided that the workshop would require attendance and adequate participation and that it would be graded as satisfactory/unsatisfactory. This was considered appropriate given that the aims of the workshop and the nature of the material covered lend themselves to a non-threatening and non-competitive environment. This approach was also consistent with the College's policies relating to other areas of skills training (for example advocacy and negotiation).

Given that law lecturers would facilitate the workshops, as a design principle, it was also important to acknowledge the limits of what could be taught by them as non-mental health professionals. A lecturer's role in the workshop was determined to be one of providing information and facilitating discussion and not one of counselling or advising. This was a strong focus of lecturer training.

We chose to call the workshop 'Resilience and Wellbeing for Lawyers' to reflect the student preference expressed in focus groups, for mental health material to be introduced by way of concepts such as resilience and wellbeing.

Throughout the design process we were supported by and drew from the many ideas that had been offered to us during the consultation phase including the DAWG and the materials they provided, the focus groups and the input of the Consultative Committee. By late 2010 we were ready to run the first pilot workshops.

4. THE WORKSHOP: RESILIENCE AND WELLBEING FOR LAWYERS

4.1 Elements

4.1.1 Teaching method

As the workshop is taught in small groups, the teaching spaces are set up so that students can work flexibly in groups of four-five and also as a whole group. In the workshop, the lecturer takes the role of facilitator, provides information and more importantly opportunities for discussion in both small groups and as part of the whole group. A key task for the lecturer is to develop a supportive environment in which to do this. Students are encouraged to raise any questions they have or concerns with the facilitator during or after the workshop.⁹⁸

97 The workshop is now 3 hours.

98 At the outset we were concerned about how to respond to a student becoming upset in class. In order to manage this we now have in place a backup system involving having a lecturer with MHFA training outside class designated as a 'go to' person should the need arise. The lecturer, if the need arises, can take the student to the 'go to' lecturer and return to class. Fortunately this backup has been needed in less than a handful of cases.

It was initially envisaged that a co-facilitation model be adopted for the workshop. This model is considered to have advantages for the facilitators who can complement and support each other and for the students who have the benefit of a diversity of perspectives and styles. Such an approach would also have the benefit of modelling of collaborative behaviours. However in light of the number of courses and students being taught this has not been possible to achieve.

4.1.2 Materials

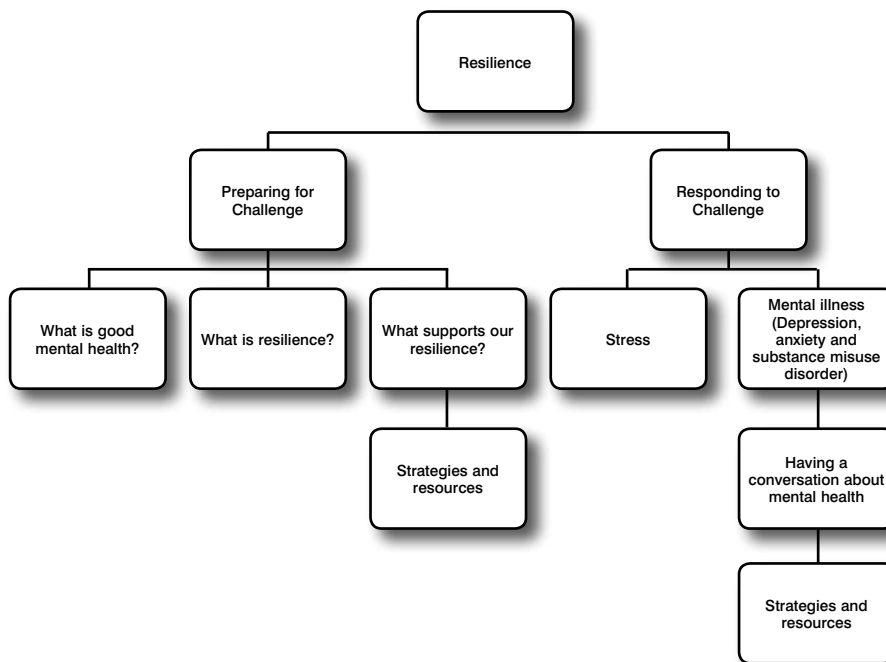
Working with our consultant, it was decided that the student materials would take the form of a workbook and that lecturers would be supported by print and online resources. The workbook⁹⁹ was designed to be used in the workshop and for students to take away and use in the future at work or at home. It includes a mix of information, discussion points, activities and other resources. Students are encouraged to reflect on the material covered in the workshop and what they might take away and adopt from it in their daily lives and also to complete the workbook activities not covered in class. They are also encouraged to retain the workbook as a useful resource.

4.1.3 Content

Part of the College's workshop seeks to educate students about common mental illnesses and their symptoms through discussion, supported by the workbook. Students' learning is further enhanced by viewing the short film in which lawyers graphically describe their lived experience of mental illness. The workshop then covers appropriate help seeking. Again this is undertaken through discussion supported by the workbook, which provides material about the sources of appropriate assistance and lists other resources (mainly online resources).

⁹⁹ A copy of the index to the workbook is Appendix 1

Figure 3: Workshop and workbook structure



Conceptually we use the term ‘resilience’ in two ways. The first is that of considering resilience as a *preparation* for challenge. Here students are asked to consider the important elements of good mental health which include a full range of emotional responses, important relationships and a range of personal resources to support their overall wellbeing. We also consider the nature of resilience and the resources we have or may develop to support resilience. Students complete activities in class (or at home) that support the development of proactive steps or strategies to build or maintain resilience.

Resilience is then considered in the context of that which we require when *responding* to challenge. This is considered in terms of our cognitive, emotional and behavioural responses to challenge, particularly stress. The concept of stress, both good and bad, is explored and warning signs of negative stress are considered. Students complete activities which look at what causes stress at work, realistic thinking, managing stress and time management. These all support the development of strategies to help students manage stress.

The workshop then moves to a discussion of what occurs when the individual’s resources and resilience are not enough. We commence to work with a definition of mental illness and provide information about the way that it impacts a person’s whole being; emotions, cognition, behaviour and physical wellbeing. Depression, anxiety and substance misuse are discussed as they are the most common mental illnesses suffered by Australians (and commonly coexist). Signs that a

person who has depression, anxiety or a substance use disorder (or a combination of these) might exhibit at work are discussed, together with statistics on common mental illnesses in the broader Australian community and the associated poor rates of help seeking.

The workshop is underpinned by the short film. Lecturers can use their discretion as to when this should be played, but our experience has shown that it is effective to play the short film prior to any discussion on mental illness. This is because it provides stories from real life describing what depression, anxiety and substance use disorder can look like more generally and in the workplace. The short film can be confronting but, in our experience, is ultimately uplifting. It sends a message of hope that collectively and individually we can reduce the impact of common mental illness at work and at home.¹⁰⁰

Components on how to talk about mental health concerns (our own or another's), being an effective listener and getting help for a mental health concern are also covered. Finally, reference is made to the part of the workbook which includes information on types of professional help available and other related resources.

4.2 Implementation

4.2.1 Pilot workshops

Prior to rolling out the workshop nationally we conducted two pilot workshops. On both occasions the workshop worked well. Informal discussions with the students prior to and during the workshops helped us to further develop our approach. For example, on the basis of feedback from the first pilot workshop, in the second pilot workshop we made it clear at the beginning of the workshop that there was neither a requirement nor expectation that students would make personal disclosures during the workshop. Following each of the pilots there was further fine tuning of the content and the ordering of activities. We also asked the students who participated in the pilots to complete an evaluation. The responses were overwhelmingly positive in relation to both the relevance of the material and presentation of the workshop.

4.2.2 Timing

The workshop was initially placed towards the end of an onsite week, prior to a number of assessments. However the challenge was that the attention of some students was significantly diverted towards their assessments, and after careful consideration the workshop was moved in the timetable to the first day of the second face-to-face intensive onsite week, where the focus was on teaching and learning rather than on assessments. The workshop is therefore now scheduled approximately two-thirds through the PLT program, and it has been observed that students are more able to focus on the workshop at this time.

4.3 Law Lecturers as Mental Health Educators

Formal expressions of interest were called from lecturers who would be interested in presenting the workshops. Consideration was given to these, as well as the level of interest and enthusiasm the lecturers had expressed more informally about the workshop during the consultation and design phases. For the first intake of lecturers to teach the workshop, consideration was also given to the

¹⁰⁰ In fact students in evaluations most often cite the short film as the aspect of the workshop that they most like.

attributes of lecturers most appropriate to teach it. As the workshop became more accepted as a normal part of the PLT program some lecturers who had been sceptical or non-committal about its inclusion have come forward actively seeking to train for and teach it.

Lecturers at the College are drawn from the practising legal profession and do not (with one or two exceptions) have any prior training in psychology or mental health. As stated above, it was important for all lecturers seeking to teach the new workshop to complete MHFA training. Completion of the MHFA course would enable lecturers to achieve a level of mental health literacy and assist them to acquire the knowledge and confidence to teach the new workshop effectively and improve their interactions with students generally. After completing the MHFA course lecturers received a further one day of in-house training.

This further training was designed to assist lecturers to become more familiar with and competent in using community mental health language, to practise the skills they acquired at the MHFA course and to familiarise themselves with the key concepts of resilience and stress which are pivotal to the teaching of the workshop. Lecturers are then guided through the students' workbook allowing opportunity to explore the student activities in small groups. The overall pace and timing of the workshop was considered.

Many lecturers expressed their concerns about teaching subject matter outside their 'comfort zone'. The train the trainer program provided an opportunity to address lecturers' fears and to manage their expectations about possible student reactions to and in the workshop. Examples of difficult questions or conversations that might arise in the workshop are addressed by working through a hypothetical student response scenario and general discussion.

More than half the lecturers in the College's PLT program, have now completed the training requirements to teach this workshop. As the majority of lecturers teach across most subjects in the program, the percentage of trained lecturers is expected to grow over time.¹⁰¹

The teaching by the lecturers is supported by lecturers' resources. These resources include definitions of key terms used in mental health, suggested approaches to setting the context of the workshop, discussion points and resources to support key activities, suggested timetable and copies of relevant articles.

Ongoing peer support is provided for lecturers in the form of debriefs both formal and informal. Periodically there are meetings to discuss content or process issues arising from the teaching of the workshop. This is a valuable opportunity for lecturers to share their experiences and gain insight into ways that particular student questions or concerns have been addressed. Following each offering of the workshop at a College there is often an informal debrief among lecturers on how the workshop went on that occasion, any difficulties that arose and how improvements could be implemented.

As the workshop is facilitated by a single lecturer there were concerns as to how best manage the workshop particularly if a student became distressed. The solution was to appoint a designated

¹⁰¹ The College operates in six locations and is staffed by lecturers from four campuses. The MHFA training and the Train the Trainer program were mainly undertaken by lecturers in their own city. With multiple full-time and part-time general courses offerings of practical legal training through each of the four Colleges and numerous other courses offered with large and medium size firms around the country there is a significant and ongoing demand for lecturers to teach this workshop. As mentioned earlier more than 2,400 students are now completing this workshop as part of their practical legal training each year.

'go to' person whenever the workshop was taught. That person would be an appropriately trained lecturer who would be available to provide support for a distressed student if the situation arose. This would allow the lecturer running a workshop to hand the distressed student to the 'go to' person and then continue with the workshop without undue delay. This solution has proved to be effective and there are only three cases, of which we are aware, where this has occurred in almost three years of running these workshops.

5. WORKSHOP EVALUATION AND OUTCOMES

Student evaluations

Student evaluations were sought across the first six months of workshop implementation and 1216 students from all College campuses completed evaluations.¹⁰² The response rate was 76.91%, which may be regarded as being relatively high. We think that this rate was achieved because the evaluations were completed and collected in class at the end of the workshop.

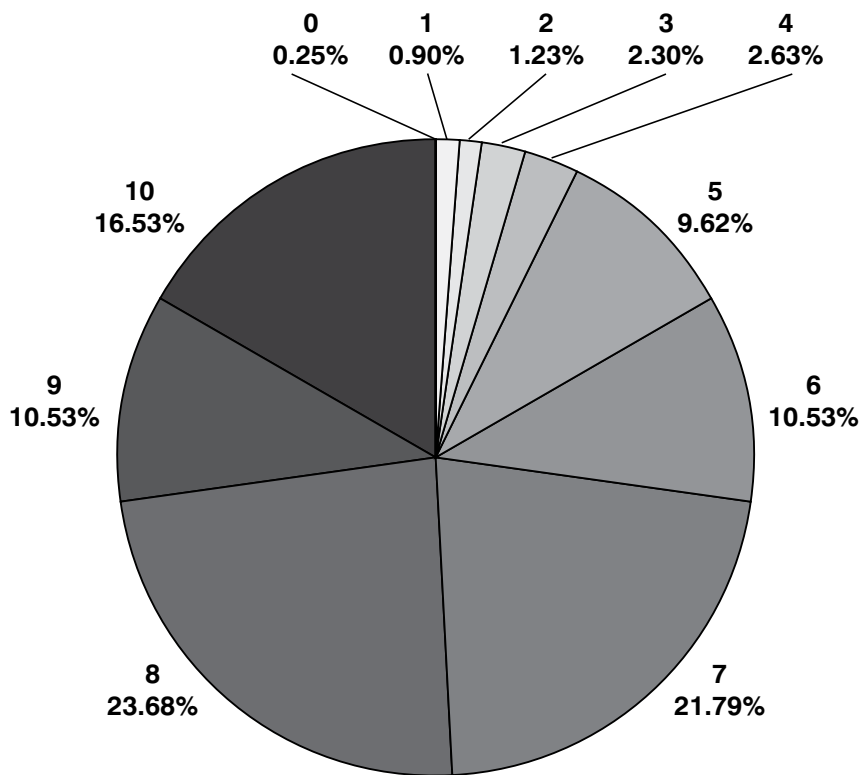
The evaluation questionnaire included six questions, seeking both quantitative and qualitative responses.

In 2011 women comprised 60% of and men 40% of College students. Although the survey did not record the gender of respondents we have no reason to believe that it did not accord with the gender balance in the student population for that year. In the same year 80% of our students were 30 years of age or under. In future surveys we intend to gather more specific data about gender and age. This will assist us in further research including differentiating responses by gender.

In the evaluation, students were first asked to score the relevance of materials presented in the workshop; 83.06% of students indicated a score of 6 or higher where 0 indicated 'Not at all relevant' and 10 indicated 'Very relevant'.

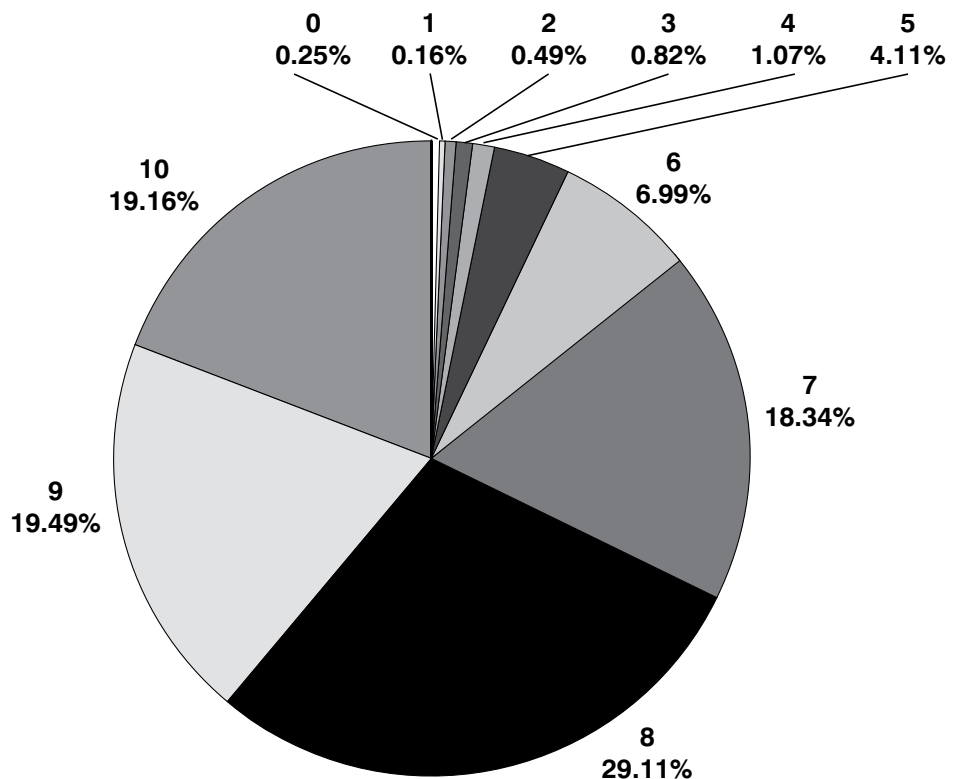
¹⁰² Participant evaluation forms for the workshop are at Appendix 2

Figure 4: Student perceptions of workshop relevance



Second, students were asked to score the presentation of the workshop; 93.09% of students indicated a score of 6 or higher where 0 indicated 'Not well presented' and 10 indicated 'Very well presented'.

Figure 5: Student perceptions on how well the workshop was presented



From these responses, the comments made by students in answering qualitative questions in the evaluations and from the experience of those teaching the workshop, it would appear that the students perceived the workshop to be highly relevant to them and very well presented.

Third, students were asked what aspects of the program¹⁰³ they particularly liked. The responses most commonly referred to the short film (DVD) and the ‘openness’ of the program which suggests that students value the opportunity to discuss mental health issues openly and in a supported environment. Student comments included the following:

The DVD provided more of a personal approach to the topic. Inspiring and motivating to learn about other practitioners experience with depression and anxiety.

The DVD. It showed that many people go through it especially in law. Makes it feel like it is okay to have these feelings of stress and that you can get help and still continue your career. You don't need to hide from the world.

It was good to be able to talk about the issues of depression and anxiety.

Opportunities to discuss the issues with people with different experiences.

103 In the evaluations the workshop was referred to as the ‘program’.

Some comments supported the idea that psychological or mental health literacy should be taught at different points in a law student's life as part of a continuum.

All of it. This should be shown at the start of law school and again when people start as grads.

Fourth, students were asked whether there were aspects of the program they particularly disliked. Almost 70% of students did not respond to this question, from which we concluded that the majority of students did not dislike any particular aspects of the workshop. The 30% of students who responded to the question made comments related mainly to timing, structure and length of the workshop, rather than the content.

Fifth, students were asked whether there was anything else they would like to be included in the program. Again, almost 70% of students did not respond. Of the approximately 30% who responded a significant number wanted more! They wanted more personal stories (ideally) by guest speakers and they wanted more skills, information, discussion and activities. Given the frequency and multiple locations of our workshop offerings it is not possible for us to provide guest speakers at each workshop. These responses from students would support those in legal education institutions seeking to implement longer and more comprehensive interventions.

Sixth, students were asked about their overall response to the program. The responses were grouped into positive, neutral and negative: 82% of comments were positive, 15% were neutral and 3% were negative. Examples of student comments are shown below.

Discussing the problem of depression openly and with sympathy.

Gave practical advice on coping strategies and how to help others.

Delivered well. Good that it was delivered by a lawyer with experience.

The course is a must. Given the statistics and the prevalence of mental illness, this course provides a basis to work from and a help in recognising the signs in yourself before it advances to a level that requires extensive assistance.

I think it is fantastic that College of Law is running this program. It has heightened my awareness and no doubt others. It is the right time to discuss these issues when many are starting out.

I believe the program is extremely relevant and should form a permanent fixture of the College of Law

It was great it reinforced for me that stress and depression are real and treatable, and that I'm not alone in feeling overwhelmed at times.

Very useful and informative. Has made me aware of the issues, associated with work and personal circumstances and I felt better equipped to deal with a situation should it arise.

Very positive. I think it is an important subject to have in the overall course.

Good. Made me realise how prevalent mental illness is in the legal profession and helped us learn to deal with these issues rather than be embarrassed or ashamed

It is a great program for students to do. It helps them understand how to better cope with stress and anxiety – which I'm sure most students feel when they are fresh out of uni and about to start work in a law firm.

About time the legal profession are recognising that people do experience anxiety and depression – well done.

Very beneficial seminar. Hopefully other law firms will follow by example.

We plan to collect a further set of student evaluations shortly using the same questionnaire.

5.2 Lecturer experiences

While there has not been a formal evaluation of lecturers' experiences in delivering the workshop we have had formal and informal debriefs with lecturers (at each campus and nationally) in group settings and individually.

Lecturers have told us of their heightened awareness of mental health issues and the development of their skills through their training for and delivery of the workshop. They spoke of the challenge and stimulation arising out of varied experiences in the workshops and the sense of accomplishment they felt having successfully taught it.

They also reported a greater insight and understanding of their own students and a feeling of being better prepared to respond to their students' needs, particularly their mental health needs.¹⁰⁴

From our own observations, and also as reported to us by other lecturers, it would appear that there has been very little if any resistance or reluctance by students to attending and participating in the workshop.

5.3 Learning outcomes

5.3.1 Student mental health literacy

Although we have not yet formally assessed the learning outcomes, there are some indicia of success. First, the comments made in student evaluation forms referred to above suggest that some have been able to 'take on board' a measure of health literacy.¹⁰⁵ Second, we know of students who have realised, during the course of the workshop or following it, that they have a mental health problem or concern and that they have subsequently sought appropriate advice and treatment.

Earlier we referred to Nutbeam's analysis of the three levels at which health education might operate.¹⁰⁶ The College workshop promotes functional health literacy (the first level) as it provides students with mental health information including the sources of appropriate assistance in the health system.

At the second level is 'interactive health literacy' which is focused on 'the development of personal skills in a supportive environment'.¹⁰⁷ The workshop also works at this level. It is not simply an information session. It is interactive and undertaken in a supportive small group environment and is aimed at some skills development. Learning about the symptoms of common mental illnesses and where to seek help for a mental health concern are the subject of an activity and class discussion supported by the short film and its expression of the lived experience of common

104 Which extends only to general pastoral care and providing Mental Health First Aid (as first responder).

105 For example: 'a help in recognising the signs in yourself before it advances to a level that requires extensive assistance'; 'it reinforced for me that stress and depression are real and treatable'; 'Made me realise how prevalent mental illness is in the legal profession and helped us learn to deal with these issues'.

106 Nutbeam, *supra* note 46, at 265.

107 Nutbeam, *supra* note 46, at 265.

mental illnesses by members of the profession.

'Critical health literacy'¹⁰⁸ which is the third level, supports cognition and skills in and around identifying the social determinants of health and looking at effective social and political action. At this level, the workshop provides a forum in which new law graduates may further explore the culture of the legal profession and the culture of law firms. They then may go on to consider how those institutions might need to change to better support the health and wellbeing of those working in the profession.

The issues raised, and the manner in which they are raised, vary considerably from workshop to workshop (this is both a source of pleasure and challenge for our lecturers). Thus whether these broader issues are considered in a class is determined by the class itself. Some classes focus significantly on them and in doing so function at this third level.

To what extent does the workshop develop the social benefits referred to by Nutbeam? In the case of law students and in the context of the form of health literacy dealt with in this article, these might include an increased ability to respond to peers, family or friends experiencing the symptoms of mental illnesses. This is briefly covered in the workshop and the workbook also contains supporting material.

For some students it might also lead to an increased ability to engage in community action in and around Mental Health Law and Policy and the rights of those suffering mental illness.

Another aspect of critical health literacy supported by the workshop is the development of social capital. This might include greater knowledge and understanding of mental illness itself and of (future) clients who may be suffering a mental illness (or emotional distress). At the beginning of the paper reference was made to the study undertaken in 2007 by the ABS¹⁰⁹ of the mental health of the Australian adult population. As it concluded that a very significant proportion of the adult population suffered a mental illness in any one year it is likely that many students who go into legal practice will at some time act for a person (or persons) with a mental illness. It would almost seem reasonable to assert, that for this reason alone, that all law students, particularly those intending to practice, be trained in mental health literacy.

In the university context, where clinical legal education is taught, it would seem that mental health literacy might appropriately be taught as part of or associated with that subject. Self reflection is an important aspect of clinical legal education. As part of that process students are required or encouraged to reflect on their performance and as part of that, their capacity to assume the professional role. Students might be encouraged also to reflect on the personal resources they have and may need to develop to assume that role. Part of the context, for undertaking such a reflection, could include information about mental health issues in the profession and mental health literacy training. It might also include evidence based wellbeing and resilience training, particularly stress management training.

We argue above that mental health training may lead to the development of social capital. In a clinical legal education program this might also prove useful in the context of student reflection. Students might be encouraged to reflect on a client's responses in any interaction and the student's own assessment of the client. Both the reflection and the assessment might, in appropriate cases,

108 Nutbeam, *supra* note 46, at 265.

109 See National Survey, *supra* note 9.

be informed by such training.

It has been said that there is a strong correlation between malpractice and misconduct by legal practitioners and their having suffered a mental illness. It would be worthwhile considering and researching the ameliorative effect (if any) of mental health literacy on the rates of malpractice and misconduct in the profession. The relevant argument might be that receiving mental health literacy training will enable law students and lawyers to more readily identify the symptoms of mental illness in themselves, leading to earlier treatment and thereby reducing risks to clients (of a practitioner who may continue to practice with an untreated mental illness affecting their ability to function).

Finally, the workshop works at one other level. It demonstrates to students that as lawyers we can discuss mental health issues, resilience and stress management together in an open way. Our very clear perception is that law graduates are ready, willing and able to engage in this. The words of students in workshop evaluations best express this;

Discussing the problem of depression openly and with sympathy.

Opportunities to discuss the issues with people with different experiences.

It was good to be able to talk about the issues of depression and anxiety.

5.3.2 Supporting law student wellbeing and resilience

In designing the College program students told us that this was the way to engage them about mental health issues, that is, by focusing on resilience and maintaining wellbeing. The workshop commences with a focus on wellbeing and resilience – both prevention of illness and measures to enhance wellbeing.

In our experience law students are keen to participate in discussion about these topics, and although we have not measured whether their wellbeing and resilience has improved after the workshop, student evaluations provide support for the proposition that they have gained a greater understanding of what they need to do to stay well.

6. RECOMMENDATIONS

6.1 Law students should receive mental health literacy training

We suggest that all law students receive mental health literacy training on the basis of the material set out in sections 2.2 and 5.3.1 and primarily for the many potential benefits it might bring to both law students and their communities.

6.2 Mental health literacy can effectively be combined with wellbeing and resilience training

Although we are not entirely sure of the reasons, we know that there is a significant decline in the wellbeing of the student population as they attend law school. It is reasonable to assert that it is the responsibility legal education institutions to implement appropriate interventions which might both ameliorate students' increasing emotional distress and enhance their wellbeing.

In this paper we have reviewed three interventions which have been the subject of positive

evaluations. These and others might form the basis of interventions in our institutions and further research.

It would seem both appropriate and feasible to combine interventions aimed at enhancing the wellbeing of law students including stress management together with mental health literacy training, as they are so closely related. The College's workshop confirms that this can be accomplished.

One key reason for this is that as we have noted law students asked us to take a positive approach (an approach promoting student wellbeing), to mental health training. We can now say after three years that, that from our experience working with Australian students, that this is a way in which to engage law students in learning about mental health issues.

6.3 Legal education institutions should consider making mental health literacy training and wellbeing training part of the core curriculum

It is generally agreed that the emotional distress of law students and lawyers is an important issue.

Legal education institutions and the bodies regulating them are considering how appropriate responses might be reflected in relevant standards. For example the College, as a PLT provider, is governed by the APLEC Competency Standards for Entry-Level Lawyers (2002) (the Standards) which are currently under review. Some possible matters for review have been identified and a proposition for each matter has been formulated for the purpose of facilitating discussion.

Proposition 5 provides – That the Standards should require PLT providers to make students aware of resources available to them relating to cultivating wellness, developing resilience and dealing with depression.

This aligns our view that mental health literacy and wellbeing should be a compulsory part of the PLT curriculum (and we argue by extension the curriculum of all legal education institutions) so as to achieve broad and equitable impact.

6.4 Law lecturers can be mental health educators

Our experience has been that law lecturers suitably trained and with a genuine interest and ability to engage with mental health material and issues are adaptable to teaching courses related to law students' and lawyers' mental health.

MHFA training for lecturers has significantly supported the teaching of the workshop. In light of the proportion of young people suffering mental illnesses and the greater proportion of tertiary students, particularly law students, suffering emotional distress, it would be prudent for all lecturers and other student-interfacing roles in legal education institutions to be trained in MHFA.¹¹⁰ In our view this should be a priority.

¹¹⁰ We understand that as part of a range of mental health initiatives being undertaken by Victoria University, that all staff of the university (academic and non-academic) have been offered the opportunity to undertake MHFA training. As yet no evaluation of this program is available. This would seem to be a very appropriate initiative.

6.5 Mental health training should align with standards for law schools

In 3.4 above we noted our decision to align the Resilience and Wellbeing Workshop with the relevant Competency Standard. For Australian universities Threshold Learning Outcomes (TLOs) have been established for the Australian Bachelor of Laws degree, as part of the Learning and Teaching Academic Standards Project (LTAS).

If mental health and wellbeing training is to be provided to law students it will be important to align the programs with the appropriate standards.

In Australia that is TLO 6, 'Self Management', the text of which is as follows;

Graduates of the Bachelor of Laws will be able to:

- (a) learn and work independently, and
- (b) reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development¹¹¹

In consultations with the profession, TLO 6 was acknowledged as critical to professional practice because it incorporated a capacity for resilience through personal awareness and coping skills that might include openness to assistance in times of personal and professional need.¹¹²

Huggins and others have written a very detailed paper on the implementation TLO 6.¹¹³ In the paper they write that TLO 6(a) 'may address a broad range of skills including time management, stress management, resilience and emotional intelligence'.¹¹⁴ The paper goes on to offer advice and strategies for implementing TLO 6 in the design and delivery of law school curricula. In so doing the authors say that their work was informed by the 'aim of promoting students' wellbeing'.¹¹⁵

During the College workshop we have noted that students reflect on the nature of the meaning of good mental health and resilience, what supports resilience in themselves and others, the nature of stress and the way that they manage stress. This type of material falls directly within the scope of TLO 6. Although admittedly the workshop is only 3 hours long, the evaluations and our own experience suggest that students are strongly engaged by the workshop and describe a shift in their awareness and perceptions as a result. As such, this aligns with TLO 6.

111 AUSTRALIAN LEARNING AND TEACHING COUNCIL, *Learning and Teaching Academic Standards Project Bachelor of Laws Learning and Teaching Academic Standards Statement*, 50 (2010).

112 AUSTRALIAN LEARNING AND TEACHING COUNCIL, *Good Practice Guide, Threshold Learning Outcome 6 Self Management*, 23 (2011).

113 ANNA HUGGINS, SALLY KIFT AND RACHEL FIELD ANNA HUGGINS, *Implementing the Self-Management Threshold Learning Outcome for Law: Some Intentional Design Strategies from the Current Curriculum Toolbox*, 21 LEGAL EDUCATION REVIEW 183(2011) [hereinafter *Implementing*], see also A. HUGGINS, *Autonomy Supportive Curriculum Design: A Salient factor in Promoting Law Students' Wellbeing*, 35 UNSWLJ 683(2012).

114 Huggins *Implementing*, *supra* note 111, at 184.

115 Huggins *Implementing*, *supra* note 111, at 193.

7. CONCLUSION

Many law students experience elevated levels of emotional distress during their time at law school. Research shows that elevated levels of emotional distress are statistically significant predictors of serious mental illnesses. Thus it can be asserted that law students are an 'at risk' group. Lawyers are experienced at managing risk and it is likely that many different initiatives will be needed and will be designed and implemented by legal education institutions to respond to this risk.

Much work is being done to identify the factors associated with psychological distress in law students, particularly in the structure, pedagogy and curriculum of law school. Informed by this context much work is also being done to renew law school curricula and teaching.

Earlier in the paper we noted that many different interventions will need to be developed to meet the risks that have been identified. This argument has been significantly supported and developed by the University of Melbourne researchers.¹¹⁶

Mental health literacy and wellbeing training, we argue, should form part of the training of all law students. However, it is only one part of any comprehensive response to law student psychological distress.

The intervention we propose has two elements. The first is to provide all law students with mental health literacy training. Providing such training would appear to be a most appropriate response to risks that students face. It is likely that this form of training will also have indirect benefits including the building of social capital. Our experience at the College is that this form of training can be undertaken at little cost. Using the MHFA as a model program, mental health training can be appropriately provided by non-mental health professionals, in our case law lecturers. This approach has been successfully implemented at the College.

The second element is developing programs to support law student wellbeing. In light of research finding about the mental health of university and college students and an increased public discourse about mental health, it is increasingly common for policy making bodies and those setting the learning standards (or best practice guidelines) for students to include a requirement that institutions work to support the wellbeing of students. In our view interventions which might be developed to meet these aims might effectively be taught in association with training in relation to mental health literacy and should include stress management training.

In light of the mental health risks faced by law students it is both necessary and feasible to include such interventions as part of the core curriculum of legal education institutions.

There is now a healthy community of learning developing in this field and we and many others hope that the momentum which has now built for the development of new initiatives supporting the mental health and wellbeing of law students will continue. At the College we aim to move to a formal evaluation of the Workshop and also to review its current form particularly, the extent to which we teach first aid behaviours, improvements in our teaching of mindfulness and stress management and the addition of suicide prevention material.

The growing body of literature about the mental health of law students perhaps sheds new light on the words of John Dewey:

Education is a social processeducation is not a preparation for life; education is life itself.

116 Larcombe and Fethers, *supra* note 29.

Appendix 1 – Resilience materials index

Resilience@law: Mental Health and Wellbeing in the Legal Profession

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What might my workplace offer?

What does mental illness and recovery look like at work?

Getting further information

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6. What is your overall response to the Program?

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Clinical Collaborations: Going Global to Advance Social Entrepreneurship

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Jonathan Ng is the Global Legal Director and in-house counsel at Ashoka. Mr. Ng oversees Ashoka's in-house legal matters for its global headquarters. He manages Ashoka's relationships with its *pro bono* legal counsel, which includes some of the leading global law firms. He also coordinates with Ashoka's 33 country offices on matters related to corporate structuring, governance and compliance. Ashoka believes it is uniquely situated to be a leader in developing the emerging area of law and social entrepreneurship. Because social entrepreneurs do not fit neatly into the traditional nonprofit or for-profit categories, they are constantly pushing the boundaries of the laws that apply to them. As such, Mr. Ng is working with leading law schools and practitioners to help identify and respond to legal issues unique to social entrepreneurs. Prior to joining Ashoka, Mr. Ng practiced law at White & Case LLP in its New York office as a member of the energy, infrastructure, project and asset finance practice group.

Alicia E. Plerhopes is Associate Professor of Law and the Director of the Social Enterprise & Nonprofit Law Clinic at Georgetown University Law Center. She has been active in the local and national social enterprise movement, often speaking about laws that best facilitate the work of

social entrepreneurs. Professor Plerhoples' scholarship focuses on social enterprise and corporate governance. Her recent article *Can an Old Dog Learn New Tricks?*, 13 Transactions: Tenn. J. Bus. L. 221 (2012), examines traditional corporate law principles and how they might be adapted and applied to the flexible purpose corporation, a new corporate form that allows businesses to pursue social and environmental objectives along with profits. Her article *Representing Social Enterprise*, 20 Clinical L. Rev. 701 (2013), advocates a method of teaching law students about social enterprise, a subject area frequently taught in business schools but often overlooked by law schools. Her article *Delaware Public Benefit Corporations 90 Days Later: Who's Opting In?*, which is forthcoming in the Spring 2014 edition of the U.C. Davis Business Law Journal, presents original research on what entities are opting into the public benefit corporation—a new corporate form permitted in Delaware that requires the firm to produce a public benefit and operate in a responsible and sustainable manner.

Clinical Collaborations: Going Global to Advance Social Entrepreneurship

*Deborah Burand, Susan R. Jones, Jonathan Ng and
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ABSTRACT:

In the summer of 2012, transactional law clinics from three U.S. law schools: George Washington University; Georgetown University; and the University of Michigan launched a collaboration to serve a common client—Ashoka, a global nonprofit organization that supports close to 3,000 social entrepreneurs across 76 countries. While clinic collaborations *within* universities happen occasionally, clinic collaborations *across* universities are unusual. This essay focuses on the motivations, operations, lessons, and next steps of this cross-university, clinical collaboration aimed at advancing social entrepreneurship globally. Specifically, this essay examines why the collaboration was launched, how the collaboration is structured, what the collaboration offers clients and participating law students, how the collaboration has expanded the skills and knowledge of the three clinical directors who are participating in this collaboration, where this collaboration might go next, and finally, what others might learn from this experience when contemplating their own cross-university, clinical collaborations.

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Introduction

While clinic collaborations *within* universities happen occasionally, clinic collaborations *across* universities are unusual. In the summer of 2012, transactional law clinics from three U.S. law schools: George Washington University;² Georgetown University;³ and the University of Michigan⁴ launched a collaboration to serve a common client, Ashoka,⁵ a nonprofit organization based in the Washington, D.C. metropolitan area of the United States that is recognized as a global leader in the field of social entrepreneurship. Ashoka was founded in 1980 by Bill Drayton who popularized the term, “social entrepreneur.”⁶ According to Drayton,

[social entrepreneurs] have the same core temperament as their industry-creating, business entrepreneur peers. . . . Social entrepreneurs focus their entrepreneurial talent on solving social problems—why children are not learning, why technology is not accessed equally, why pollution is increasing, and so on. The essence, however, is the same. Both types of entrepreneur recognize when a part of society is stuck and provide new ways to get it unstuck. They envisage a systemic change, identifying the j[i]ujitsu points that will allow them to tip the whole society onto this new path, and then persist and persist until the job is done.⁷

Social entrepreneurship is now a widely used term, often conveying different meanings depending on the user.⁸ For the purposes of this essay and our collaboration, we broaden Drayton’s original definition of social entrepreneurs as those who possess a “powerful, new, system chang[ing] idea”⁹ to include social entrepreneurs who use business techniques or sustainable market mechanisms to “directly address[] an intractable social need and serve[] the common good.”¹⁰ Social justice is expanded through social entrepreneurship as social entrepreneurs work to instigate social,

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- 2 George Washington University Law School’s Small Business and Community Economic Development Clinic. More information about the clinic can be found at <http://www.law.gwu.edu/Academics/EL/clinics/SBCED/Pages/Overview.aspx>.
 - 3 Georgetown University Law Center’s Social Enterprise and Nonprofit Law Clinic. More information about the clinic can be found at www.socialenterprise-gulaw.org.
 - 4 University of Michigan Law School’s International Transactions Clinic. More information about the clinic can be found at www.law.umich.edu/itc.
 - 5 Ashoka: Innovators for the Public. More information about Ashoka can be found at www.ashoka.org.
 - 6 Caroline Hsu, Entrepreneur for Social Change, U.S. NEWS & WORLD REPORT ONLINE, Oct. 31, 2005, available at <http://www.usnews.com/usnews/news/articles/051031/31drayton.htm> (last visited Sept. 27, 2013).
 - 7 William Drayton, *The Citizen Sector: Becoming as Competitive and Entrepreneurial as Business* 44 CAL. MGMT. REV. 120, 123 (2002).
 - 8 See Robert A. Wexler, *Effective Social Enterprise – A Menu of Legal Structures*, 6 THE EXEMPT ORG. TAX REV. 565 (2009) (“Those of us who work with social enterprises recognize by now that there is no legal definition of social enterprise, and there is not even a uniformly recognized nonlegal definition, although there have been many valiant attempts.”) See also, Alicia E. Plerhoples, *Representing Social Enterprise*, 20 CLINICAL L. REV. 701, 709-718 (2013) (defining social enterprise through the various business models social entrepreneurs use).
 - 9 Drayton, *supra* note 7, at 123.
 - 10 *What is Social Enterprise?*, SOCIAL ENTER. ALLIANCE, <https://www.se-alliance.org/what-is-social-enterprise> (last visited Sept. 24, 2013).
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economic, and environmental change.¹¹

Our cross-university collaboration aims to provide law students with the forum to advance social entrepreneurship globally. This essay discusses the motivations, operations, lessons, and next steps of our cross-university clinical collaboration. Specifically, this essay examines why the collaboration was launched, how the collaboration is structured, what the collaboration offers clients and participating law students, how the collaboration has expanded the skills and knowledge of the three clinical directors who are participating in this collaboration, and where this collaboration intends to turn its attention to next. Finally, we also offer advice to other clinical law faculty for structuring their own cross-university collaborations.

1. Why collaborate?

From the outset, we shared several key reasons for participating in this collaboration. First, we believe that Ashoka is better served by our three clinics collectively than any of the clinics individually. Ashoka is a global network of social entrepreneurs with close to 3,000 Ashoka Fellows spanning 76 countries.¹² Ashoka provides “start-up financing, professional support services, and connections to a global network across the business and social sectors, and a platform for people dedicated to changing the world.”¹³ Multiple law firms partner with Ashoka to serve its legal needs and the legal needs of its Fellows. Similarly to Ashoka’s law firm partners, our three law clinics also support Ashoka and its Fellows. We also share the desire to learn from each other. Through our collaboration, we see how we each have structured the design and delivery of our legal services in a transactional clinical context and globally. We also wish to support each other in our legal work by sharing legal tools, practice methods, and other resources. Finally, and importantly, we are also motivated to work together for the purpose of facilitating and encouraging the legal academy and law students to study and contribute to the growing social entrepreneurship sector.

Our collaborative approach employs two methods: (1) students at the law schools collaborate to develop and share “best practices” for the sector through the production of legal toolkits and research that helps Ashoka further its charitable mission, and in turn, expand the field of social entrepreneurship; and (2) students, through the law clinics at each law school, also provide

11 Some social enterprises use not-for-profit models for their operations; other use for-profit models. Still others use hybrid models that pair not-for-profits with for-profits in ownership and governance structures, or through contractual relationships. The decision as to how best to structure a social enterprise often turns on a variety of issues that go far beyond just the simple question of whether the founders intend to make money. Some of the most common issues range from the mission or motivation of the enterprise’s founders, source of capital available to the enterprise (initially and over the longer term), size of the potential market (hence scalability of the enterprise), and founders’ desire for control. See Jim Fruchterman, *For Love or Lucre*, STANFORD SOC. INNOV. REV. 42-47 (2011) (describing key business issues that will likely shape a social enterprise’s choice of legal structure). *Contra* Albert Hyunbae Cho, *Politics, Values and Social Entrepreneurship: A Critical Appraisal*, in SOCIAL ENTREPRENEURSHIP 34, (Johanna Mair, et al. eds., 2006) (challenging social entrepreneurship approaches for their potential to create two problems: “they may coercively impose entrepreneurs’ visions of terminal objectives and the means appropriate to achieve them, and they may yield incomplete, even perverse solutions that ignore fundamental drivers of social problems.”); Fredrik O. Andersson, *Social Entrepreneurship as Fetish*, NONPROFIT QUARTERLY, Apr. 11, 2012 available at <http://www.nonprofitquarterly.org/management/20140-social-entrepreneurship-as-fetish.html> (last visited Dec. 12, 2013) (questioning the promise of social entrepreneurship and arguing that because of “the lack of rigorous research and evidence of what it is, what works, and what doesn’t, it appears premature to urge nonprofits to become more entrepreneurial.”)

12 Ashoka is registered as a 501(c)(3) tax-exempt organization in the United States.

13 ASHOKA: INNOVATORS FOR THE PUBLIC, <https://www.ashoka.org/about> (last visited Dec. 13, 2013).

business and transactional legal services to Ashoka and individual Ashoka Fellows who run social enterprises within Ashoka's network. The social enterprises that the clinics serve are intent on making positive economic, social, and/or environmental impacts on the communities in which they operate.¹⁴ Transactional lawyers have an important role to play in facilitating the social enterprise movement. The clinics at Michigan, George Washington, and Georgetown engage law students in this multi-layered endeavor as they undertake legal representation, strategic planning, and advocacy on behalf of Ashoka and Ashoka Fellows in the U.S. and abroad.

In addition to these shared objectives and methods, each clinic in this collaboration has its own unique reasons for participating in this tripartite clinic collaboration. The primary motivations of each of the clinics follow. First, however, this essay begins with an explanation of why our client Ashoka decided to work with all three clinics collectively, instead of engage each clinic separately.

a. Ashoka's Outreach to the Next Generation of Lawyers

Ashoka sits in a unique position to help advance the evolving area of law and social entrepreneurship. Ashoka has built the world's largest association of leading social entrepreneurs through an extensive network of Ashoka Fellows. Since 1980, Ashoka has elected close to 3,000 Ashoka Fellows spanning 76 countries. Ashoka has an extensive international network that supports the unique mission and objectives of its Fellows, in particular, and social entrepreneurs, in general. Given Ashoka's position and objectives, Jonathan Ng, Ashoka's Global Legal Director, recognizes social entrepreneurs' profound need for access to quality legal advice from lawyers who understand the concept of social entrepreneurship and who are particularly creative and entrepreneurial themselves. Furthermore, many social entrepreneurs start and grow new organizations, creating a particular need for transactional legal support.

Such transactional legal support may consist of advising on entity formation and other general corporate matters. The organizations that social entrepreneurs create sometimes do not fit neatly within the traditional legal confines of a nonprofit or for-profit entity. A social entrepreneur, for example, may seek to generate revenue through charitable grants and donations while also developing earned income revenue streams by providing services for fees or selling products. As such, an Ashoka Fellow's choice of legal entity may necessitate a hybrid model whereby an organization consists of both a nonprofit and for-profit entity, either working in parallel as affiliates or under a membership structure (i.e., this could take the form of a shared governance structure or possibly even a parent/subsidiary-like structure). Once an Ashoka Fellow's organization is established, he or she must also deal with other typical legal issues such as entering into contracts, applying for trademarks and protecting other intellectual property, hiring staff, and establishing good governance and internal policies.¹⁵ Although many of these legal issues may not differ from a typical nonprofit organization or other type of start-up entity, the approach to lawyering for

14 Ashoka selects Fellows through a rigorous screening process through which Ashoka evaluates the social entrepreneur's creativity, ethical fiber, entrepreneurial quality, and potential social impact of the idea or solution proposed. For a full list of Ashoka Fellows and more information about their work, see ASHOKA: INNOVATORS FOR THE PUBLIC, <https://www.ashoka.org/fellows> (last visited Dec. 13, 2013)

15 Many of these needs are within the areas of expertise of one or more of the collaborating clinics. For example, students in George Washington's SBCED Clinic may be certified to file trademark applications on behalf of clinic clients through the US Patent and Trademark Office Pilot Law School Certification Program.

social entrepreneurs may differ because of the double- or triple-bottom line objectives of the organization (i.e., a social and/or environmental mission in addition to a profit-driven mission).

Further, as the area of social entrepreneurship continues to evolve, so too have the laws affecting social entrepreneurship. Examples include the creation of new forms of legal entities to accommodate social enterprises.¹⁶ Open-source licensing also can facilitate innovation in social entrepreneurship. As the law begins to catch up with what social entrepreneurs are doing on the ground, lawyers will need to understand these laws and better understand the unique needs of social entrepreneurs to more effectively counsel them. As such, Ashoka believes in developing a community of lawyers knowledgeable about, and engaged in, the social entrepreneurship space. Ashoka has created an extensive network of *pro bono* legal partnerships with some of the leading global law firms such as Latham & Watkins, Hogan Lovells, and Linklaters, among others, that assist both Ashoka and Ashoka Fellows. To expand this community, Ashoka believes in investing in law students who will become the new generation of lawyers to work with an ever-emerging client base of social entrepreneurs. For this reason, Ashoka has piloted the collaboration with law school clinics that teach law students the transactional lawyering skills required to assist social entrepreneurs.

b. Why The University of Michigan's International Transactions Clinic?

When the International Transactions Clinic (ITC) was launched at the University of Michigan Law School in the fall of 2008, it was the first of its kind in the world – a law clinic focused exclusively on providing legal services to support cross-border transactions conducted by organizations seeking to change the world for the better. When announcing the launch of the ITC, then Dean Caminker explained, “This is an exciting opportunity to involve a new generation of bright legal minds in cross-border transactions that will train our students for a lifetime of international business dealings, and that can also make an enormous difference in the lives of the people in the developing world.”¹⁷

The ITC is living up to its tag line: “doing good by doing deals – globally.” Since its launch in 2008, the ITC has enrolled nearly 80 students who, in turn, have advised clients in the conduct of over 100 transaction matters. Initially the ITC focused on serving clients that worked in the microfinance sector. Now, five years later, the ITC's clients range from for-profit to not-for-profit

16 Social enterprises have a growing number of legal structures available to them in England and Wales, and the United States, for example. In England and Wales, there are two legal forms that were created specifically for social enterprises – community interest companies (“CICs”) and charitable incorporated organizations (“CIOs”). See Morrison Foerster & TrustLaw Connect, “Which Legal Structure is Right for My Social Enterprise? A Guide to Establishing a Social Enterprise in England and Wales” (April 2012) (on file with authors). In the United States, a growing number of state legislatures have enacted legislation specifically designed for social enterprises, such as low-profit limited liability companies (L3Cs), flexible purpose corporations (in California), and benefit corporations (in 19 states and Washington, DC). See Carter G. Bishop, *Fifty State Series: L3C & B Corp Legislation Table*, Suffolk University Law School Legal Studies Research Paper Series, Research Paper 10-11 (July 10, 2012); *State by State Legislative Status*, BENEFITCORP.NET, <http://www.benefitcorp.net/state-by-state-legislative-status> (last visited Dec. 11, 2013); see also Morrison Foerster & TrustLaw Connect, “Which Legal Structure is Right for My Social Enterprise? A Guide to Establishing a Social Enterprise in the United States” (May 2013) (on file with authors).

17 Evan H. Caminker, Branch Rickey Collegiate Professor, Professor of Law, and former Dean of the University of Michigan Law School (announcing the launch of the International Transactions Clinic in 2008).

organizations, from start-up companies to well-established businesses, and from impact investors to social enterprises. Some ITC clients are based in Ann Arbor, Michigan; others are based in such places as Bangladesh, Kenya, and Tajikistan.¹⁸ However, what the ITC's clients all hold in common is an international focus and passion for improving the world with innovative business models, products, and services.

Jonathan Ng and his colleagues at Ashoka approached ITC Director Deborah Burand in the spring of 2012 after hearing her speak at a conference about the ITC's *pro bono* representation of social enterprises and impact investors engaged in cross-border transactions. They asked if the ITC could provide legal services to Ashoka and its Globalizing Fellows¹⁹; Burand quickly agreed. The clinic's physical distance from Ashoka (its headquarters are based in Northern Virginia) and Globalizing Fellows (who are located around the world) was not an impediment as the ITC was used to working with clients that were not based in Michigan (or in the United States, for that matter). The bigger issue facing the ITC was that of capacity. At the time of the ITC's initial discussions with Ashoka, Ashoka had more than 50 Globalizing Fellows. The ITC could not serve all of these new Ashoka-related clients at once while also providing legal services to its existing client population.

This capacity problem coincided with another issue facing ITC Director Burand: the ITC's exclusive focus on working internationally made it an outlier with respect to other transactional law clinics in the United States and elsewhere in the world. Burand felt professionally isolated as a result. A few weeks after the ITC and Ashoka began discussing a potential collaboration, Burand spoke at a transactional law clinic conference in the United States and inquired if any other U.S.-based transactional law clinics had considered pursuing international deal work. At this conference, Burand connected with the other professors that now participate in the tripartite clinical collaboration. Shortly upon returning to Michigan, Burand called Ashoka and asked Ng if he would be open to piloting a clinic collaboration with transactional law clinics based at Michigan, Georgetown, and George Washington Law Schools. Given Ashoka's emphasis on developing ecosystems that advance social entrepreneurship, Ng agreed.

During the first year of the collaboration, the ITC took on three transactional matters—one for Ashoka as the client and two for Ashoka Globalizing Fellows based in Kenya. The legal services the ITC provided to these clients varied greatly and included, among other things: (i) developing a compliance guide to raise awareness about and ensure compliance with U.S. laws and regulations in the areas of anti-money laundering, combatting the financing of terrorism, foreign corrupt practices, and economic sanctions; (ii) creating microfranchise agreements easily understood by small shopkeepers in rural Kenya; and (iii) analyzing entity formation choices and funding agreements necessary for expanding a social entrepreneur's business into South Sudan.

18 The ITC does not offer legal advice about the laws of countries outside the United States. Rather, much like global law firms, the ITC limits its role on cross-border transactions to that of acting as international counsel, and looks to local counsel to provide local law advice as appropriate.

19 Ashoka's Globalizing Fellows are a subset of Ashoka Fellows within Ashoka's networks whose "ideas have the greatest potential to catalyze global systems change." John Converse Townsend, *Going Global: Ashoka Globalizer Fellows are Off to Vienna from Nov. 5 to Nov. 7*, Ashoka Blog (Nov. 3, 2011), available at: <https://www.ashoka.org/story/going-global-ashoka-globalizer-fellows-are-vienna-nov-5-7> (last visited Sept. 25, 2013).

c. Why Georgetown's Social Enterprise and Nonprofit Law Clinic?

The Social Enterprise and Nonprofit Law Clinic (SENL Clinic) was not yet operational when its director, Alicia Plerhoples, began participating in the collaboration. In Spring 2013, Plerhoples taught an experiential seminar on social entrepreneurship at Georgetown in which law students worked with Ashoka to develop legal case studies of Globalizing Fellows and a social entrepreneur recommended to Ashoka by one of its law firm partners.²⁰ Ashoka tasked the law students with writing legal case studies that illuminate some of the legal issues that social enterprises face, and identifying how the lawyers of these social enterprises are molding current legal regimes for their clients' social purposes. Working in teams of two, Georgetown law students conducted due diligence to learn about the social entrepreneurs who agreed to take part in the case studies. The students conducted in-depth interviews of each participating social entrepreneur and also interviewed the lawyers who assisted the social entrepreneurs in their work. Through the class seminar, the law students learned about social entrepreneurship generally and also discussed the many legal issues that social entrepreneurs face as they attempt to launch, grow, and scale their organizations. With that background knowledge in hand, the law students analyzed their research and drafted the legal case studies.

The first legal case study explores the innovative capital raising models undertaken by a social enterprise that provides solar power to developing countries. The case study discusses the securities laws that the social enterprise navigated as it sought to crowdfund²¹ its operations, as well as the founding entrepreneurs' decision to join an accelerator whose management team understood the organization's social impact mission (as opposed to an accelerator that prioritizes fast-growth start-ups with a potential for high profit). The second legal case study details the organizational structure and governance methods used by a social enterprise that works with Mexican communities to develop wind farms on their most valuable community asset—land. The legal case study discusses how the social mission of the social enterprise was anchored through legal mechanisms (including corporate form) and communities were engaged and mobilized through direct participation in the social enterprise's decision-making process.

These legal case studies were undertaken under the auspices of the first objective of our collaboration: the production of legal tools and research that helps Ashoka further its charitable mission, and in turn, expand the field of social entrepreneurship. Georgetown law students presented the final case studies to participants within Ashoka's network in May 2013, and at the Annual Conference on Social Entrepreneurship at New York University's Stern School of Business in November 2013. Since then, the case studies have been shared through the Ashoka network and elsewhere as an educational tool for other organizations facing similar legal issues.

With this experiential seminar as its starting point, the SENL Clinic began its first semester of operation in August 2013. SENL Clinic's goals are to: (1) teach law students the materials, expectations, strategies, methods, and lexicon of transactional lawyering, as well as an appreciation

20 Two of the legal case studies are available for download at www.socialenterprise-gulaw.org.

21 "Crowdfunding is by definition, 'the practice of funding a project or venture by raising many small amounts of money from a large number of people, typically via the Internet.'" Tanya Prive, *What is Crowdfunding and How Does it Benefit the Economy?*, Forbes Blog, November 27, 2012, available at <http://www.forbes.com/sites/tanyaprive/2012/11/27/what-is-crowdfunding-and-how-does-it-benefit-the-economy> (last visited September 27, 2013).

for how transactional law can be used in the public interest; (2) represent social enterprises and nonprofit organizations in corporate and transactional legal matters; and (3) facilitate the growth of social enterprise in the Washington, D.C. area. As the collaboration between Ashoka and the law clinics has developed, SENL Clinic has undertaken direct legal representation of Ashoka Fellows on transactional and corporate legal issues. Ng also participates in SENL Clinic's seminar; he serves as a guest lecturer and teaches clinic students about the global social enterprise sector generally as well as discusses his role as an in-house social enterprise lawyer for Ashoka.

Participating in the collaboration provides the SENL Clinic with a source of established social enterprise clients with complex legal issues to challenge clinic students.²² It also introduces students to the social entrepreneurship sector and a means of using transactional lawyering in the public interest. Most business schools in the United States now have courses in social entrepreneurship; however, only a handful of law schools have corresponding classes.²³ Many transactional law clinics (such as George Washington's Small Business and Community Economic Development Clinic) have engaged social enterprises since such clinics began in the 1970s, although it has not always been labeled as such. Thus, for now, law students are most likely to encounter social enterprise in a clinical course representing a social enterprise, nonprofit, or small business. The SENL Clinic attempts to explicitly engage students in the study of social enterprise through the representation of such clients.

d. Why George Washington's Small Business and Community Economic Development Clinic?

When asked to participate in the collaboration, Small Business and Community Economic Development Clinic (SBCED Clinic) Director Susan Jones welcomed the opportunity to expand the reach of her well-established clinical program.²⁴ Since its inception in 1977 the SBCED Clinic has represented microbusinesses, nonprofit organizations, and artists. Although the SBCED Clinic has long identified and served several clients working in the social entrepreneurship sector, the clinical collaboration with Ashoka provided the chance to include social entrepreneurship into the clinical curriculum in a more robust manner. In addition, the collaboration allowed SBCED Clinic students to link local community economic development (CED) issues with international and domestic social enterprise concerns. In the U.S., CED emerged primarily during the Civil Rights era (1950s-1970s) in response to "tenacious poverty and the need for affordable housing, good

22 For a discussion of complex transactional legal work within a clinical setting and its pedagogical benefits to students, see Laurie Hauber, *Complex Projects in a Transactional Law Clinic*, 18 J. Affordable Housing & Community Dev. L. 247 (2009).

23 For example, Deborah Burand now teaches a seminar on impact investment lawyering at the University of Michigan Law School in addition to directing the ITC. This seminar examines legal issues that are likely to arise in the life cycle of investments into social enterprises from the perspective of counsel to the investor (the impact investor) and counsel to the investee (the social enterprise).

24 For a description of the SBCED clinic's operations and goals, see Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195 (1997). See also Susan R. Jones & Jacqueline Lainez *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in US Law Schools*, ___ WASH. U. J. L & SOC. POL'Y ___ (forthcoming 2013).

jobs and affordable health care, and other quality-of-life matters needed for human existence.”²⁵ Overall, CED encompasses “a wide range of economic activities ...[including] small business development and involves community building beyond that which is purely economic.”²⁶ Today, CED is structurally aligned with the social, economic, and environmental (i.e., triple-bottom line) of social enterprise and has the capacity to link local economy issues to global economic concerns.

During the initial phases of the collaboration, the SBCED Clinic represented Ashoka and created a Legal Audit Checklist for Social Entrepreneurs that is now widely available to Ashoka Fellows. The Legal Audit Checklist lists topics, identifies legal issues, and poses questions for social entrepreneurs to discuss with legal counsel. By providing social entrepreneurs with the right questions to ask their legal counsel and educating them on legal terminology, the Legal Audit Checklist helps social entrepreneurs establish a productive attorney-client relationship and saves the social entrepreneur time and money that might otherwise be spent on legal fees. Next, students in the SBCED Clinic represented a nonprofit organization founded by an Ashoka Fellow whose mission is teacher training and education reform. The SBCED Clinic also directly represents Ashoka on contractual matters. Going forward, students in the SBCED Clinic will also represent other social enterprises founded by Ashoka Fellows.

2. How is the clinic collaboration structured?

Our clinic collaboration has two tiers. First, each clinical program represents Ashoka as a client or community partner. The ITC and SBCED have established an attorney-client relationship with Ashoka and provided legal services to Ashoka directly. All three clinics also partner with Ashoka to produce research, legal toolkits, and other materials useful to the social entrepreneurs that Ashoka supports. Sometimes, Ng directs the clinics to produce these materials, but just as often, we pitch ideas to Ng regarding legal projects that Ashoka Fellows might find useful. Second, Ashoka refers its Fellows as needed to one of the clinics. The match is made based on the client's needs and the clinic's availability and specialty. In these cases, the clinic establishes an attorney-client relationship directly with the Ashoka Fellow, which includes entering into an engagement letter with the client. In each attorney-client relationship (i.e., between a clinic and Ashoka, or between a clinic and an Ashoka Fellow), client confidentiality is maintained. That is, once the match is made or the project is advanced, the clinic directors do not discuss client confidences amongst each other unless the client (either Ashoka or an Ashoka Fellow) has provided informed consent to waive confidentiality.²⁷ Moreover, matches are made based on a clinic's particular expertise and core competencies; at the outset of the collaboration each clinic director provided Ng with a description of her clinic's legal services.

An additional, intentional design of this collaboration is the clinic directors' coordination of efforts in order to ease any administrative burden that Ng might feel had he worked with each clinic separately. That is, Ng does not have to meet with each clinic director separately to pitch

25 ROGER A. CLAY JR. & SUSAN R. JONES, *BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY ECONOMIC DEVELOPMENT FOR ADVOCATES, LAWYER AND POLICYMAKERS*, American Bar Association, 2009.

26 *Id.*

27 Because separate attorney-client relationships are formed within the collaboration, each clinic operates according to its own governance principles and under its own malpractice or professional liability insurance. The clinics are not responsible for each other's legal work.

projects or clients. Every quarter, the clinic directors and Ng meet as a group to discuss the collaboration, new ideas, ongoing legal projects, and potential clients. These regular check-ins facilitate the collaboration by reducing administrative overlap and by maintaining transparency and accountability in our collective work, while also keeping us on task to achieve our collective mission.

3. What does the clinic collaboration offer students and Ashoka clients?

In addition to gaining competence in the many lawyering skills typically taught in transactional law clinics,²⁸ the collaboration provides students with the opportunity to contribute to the social enterprise sector and represent established social enterprises that have complex legal needs. The clients of the clinics gain lawyers who are attune to the particular legal needs of social enterprise clients.

Transactional lawyers have an important role to play in facilitating social enterprise, similar to their integral role in small business development, the nonprofit sector, and community economic development:

Business lawyers facilitate economic activity. They structure transactions and navigate laws and regulations for the benefit of their organizational clients. A sophisticated business lawyer must understand the client's business as well as the context and regulatory framework in which the client operates. The emerging sustainability field thus requires that business lawyers be able to articulate, advocate for, and take into account the client's sustainability goals when structuring a transaction or otherwise facilitating the client's business strategy or operations. Because sustainability goals are difficult to shape into a viable business model, business lawyers must help their social enterprise clients by spotting routine and novel legal issues, navigating legal gray areas, fitting sustainability initiatives into the existing legal and regulatory framework, and assisting in creating a new framework that can accommodate sustainability goals.²⁹

The clinic collaboration offers law students the opportunity to engage in this important work and contribute to the social enterprise field through direct representation of social enterprise clients as well as by acting as advocates for the sector. In some ways, transactional law clinics and their participating law students are ideally positioned to assist the growing social enterprise sector,

28 Lawyering skills learned in the typical transactional law clinic have been well documented and will not be repeated here. See, e.g., ALICIA ALVAREZ & PAUL TREMBLAY, INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE (2013) (discussing these transactional lawyering skills: interviewing, transaction planning, counseling organizational clients, negotiating transactions and contracts, drafting transactional documents, and navigating ethical issues in transactional practice); Susan D. Bennett, *Embracing the Ill-Structured Problem in a Community Economic Development Clinic*, 9 CLINICAL L. REV. 45 (2002) (discussing problem-solving in the transactional context); Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239 (1984); Karl S. Okamoto, *Teaching Transactional Lawyering*, 1 DREXEL L. REV. 69 (2009); Lisa Penland, *What a Transactional Lawyer Needs to Know: Identifying and Implementing Competencies for Transactional Lawyers*, 5 J. ASS'N LEGAL WRITING DIRS. 118 (2008).

29 Plerhoples, *supra* note 8, 739-740 (defining "sustainability" in the corporate sector as the strategic pursuit of social, environmental, and financial value creation to facilitate the needs of present and future generations; as opposed to the pursuit of financial value singularly to the detriment of present and future generations).

locally and globally. Law students who participate in such clinics have the interest, capability, and time to (i) reflect on the legal work they perform for individual social enterprise clients, (ii) aggregate information across social enterprise clients, (iii) identify patterns of legal needs and deficiencies in the social enterprise sector, and (iv) develop strategies and solutions to satisfy the collective interests of the social enterprise sector. One Ashoka Globalizing Fellow echoed this view after working with the ITC during the 2012-2013 academic year:

The structure of the [International Transactions] clinic is great for what we need as high-growth enterprises, because it allows for the time and dedication to get to know our businesses and culture and risks, rather than rushing to template solutions that really aren't a good fit.³⁰

“Client-centered lawyering,” a pedagogical method used by all three law clinics, also facilitates student learning and clients’ achievement of their individual goals. Client-centered lawyering is a lawyering method that emphasizes the client’s voice, decision-making abilities, values, and goals.³¹ The client-lawyer relationship is collaborative rather than hierarchical. Client-centered lawyering is a skill that social enterprises, in particular, require given their blending of profit-motives with philanthropic motives. It is also a skill that students can use to distinguish themselves as social enterprise lawyers.

At Ashoka’s Future Forum in May 2013, Plerhoples spoke with social entrepreneurs within Ashoka’s network about the role of a transactional lawyer in facilitating the social enterprise’s work. A key issue that was expressed by social entrepreneurs at this Future Forum panel is the need for lawyers who (i) understand the multiple bottom lines (financial, social and environmental returns) of the social enterprise, (ii) view the representation as an opportunity to shape law and regulation for the social enterprise’s benefit, and (iii) charge reasonable and affordable rates. Some audience members had encountered lawyers that they characterized as inflexible “naysayers” who were unable to “think outside the box” and failed to fully appreciate the missions of their social enterprise clients.

In stark contrast, the law clinics teach students to engage in client-centered lawyering. Law students are taught to (i) study an organizational client’s mission, operations, and goals, (ii) see problems from the client’s perspective, (iii) help the client identify and assess benefits and risks inherent in proposed actions, (iv) facilitate the client’s decision-making process, and (v) help the client achieve its goals. By adopting a client-centered approach, students must minimize their own assumptions and think creatively to achieve novel or unlikely solutions to a problem. Students also learn about social enterprise business and funding models as a means of understanding the industry they serve. By adopting a client-centered approach, our law clinics and students are better able to serve social enterprise clients that are often pushing the boundaries of the law to fit their multiple bottom line missions.

30 Madison Ayer, Director, Honey Care Africa

31 BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991) (describing client-centered lawyering and illustrating its application to the attorney-client relationship).

4. What does this clinic collaboration teach the three participating clinical directors?

At a most basic level, our collaboration teaches us to “walk our talk” and to reflect on what we ask our students to learn – that collaboration is “a process in which respectful interaction brings the talents of all parties to bear on a problem.”³² As Professor David Chavkin observes, our students collaborate with their peers and with their clinical supervisors in rounds and in supervision meetings.³³ They tend to use one of three collaborative models, “input collaboration” (one team member comments on another team member’s work); “parallel collaboration” (team members divide tasks); and “true collaboration” (all team members brainstorm at all phases of the collaboration—drafting, brainstorming, and final implementation). True collaborators discuss goals, strategies, and other significant issues so that the viewpoints and insights of all collaborators are acknowledged, choices are explicitly identified and strategies are developed based on the relevant choices. Indeed, true collaboration maximizes the benefits of each member’s experience and knowledge brought to the enterprise.³⁴

Research shows that there are myriad benefits of collaboration. Collaboration improves the outcome of work product, honors the life (and in this instance, the teaching experiences) of each team member, and highlights the fact that that a range of life experiences lead to more effective advocacy for clients. Collaboration also recognizes differences as strengths, increases motivation, and reduces anxiety.³⁵ In our collaboration, we are learning not only a great deal from our clients about the need for legal structures to support hybrid business entities, we also are learning from different transactional clinic design choices, different lawyering experiences, and clinical teaching methods.

Each of these three clinics is at a very different stage of development. George Washington has a mature clinic. The SENL Clinic at Georgetown is in its start-up phase. The ITC exists between the two clinics, having just celebrated its 5th year anniversary. As clinicians with varying levels of law teaching experience, we also are learning from each other. To illustrate, Jones, who leads the most mature clinical program of the three clinics, learned a great deal from Burand and Plerhoples as they grew and developed their programs. One specific example of a lesson learned is how to incorporate outside lawyers in a clinic, which ITC has successfully done.³⁶ Burand, in turn, has learned from her collaborators how transactional clinics are particularly well suited to providing

32 DAVID F. CHAVKIN, *CLINICAL LEGAL EDUCATION: A TEXT FOR LAW SCHOOL CLINICAL PROGRAMS*, at 88 (2002).

33 *Id.*

34 *Id.* at 88-89.

35 *Id.* at 86-87.

36 The ITC makes use of nearly a dozen practicing lawyers in its work. These practicing attorneys, together with fulltime law faculty of the ITC, supervise ITC law students. And, for more complex cross-border transactions, these practicing attorneys and their collaborating law firms offer legal advice on issues that are beyond the scope of the ITC – such as tax structuring advice for cross-border investment vehicles, for example. In these instances, the law firms often structure their collaborations with the ITC as a co-counseling arrangement, whereby the law firm enters into a separate engagement letter with the client.

action research and policy advice that advances broader sectorial interests.³⁷ As the newest clinician, Plerhopes has gained mentors in Jones and Burand, consulting them on both complex and mundane administrative and pedagogical issues. Because of our collaboration, we each have an additional colleague to call upon for professional advice.

5. What are the challenges of the collaboration?

Despite the early successes of our collaboration, we also recognize the challenges. First, despite our collaborative efforts, we do not have the collective capacity or competencies to assist Ashoka on *all* its legal matters, or to assist *all* Ashoka Fellows on their legal matters. The three clinics involved have a dual role—both teaching students and serving clients. Therefore, our clients' legal needs must be balanced against our students' educational needs. Students conduct the client work, and each clinic director builds in the necessary time for careful supervision of student work and reflection by students on their work and clinical experiences. This valuable, but time-consuming pedagogical method constrains the number of clients the clinics can represent. Moreover, each clinic has its own constraints related to its pedagogical and service-oriented objectives. While Ashoka Fellows most often operate globally, both SBCED and the SENL Clinic are also committed to serving nonprofit organizations and small businesses locally. For this reason, international organizations do not constitute these two clinics' entire client base. There are also some legal matters that fall outside the clinics' varying scopes of expertise, such as securities law.³⁸

Finally, a major challenge relates to the legal practice rules of different jurisdictions. Where the clinic directors (and other clinic faculty) are licensed or authorized to practice is taken into account when matching an Ashoka Fellow with a clinic. If a matter arises in a jurisdiction in which a clinic director or clinic faculty member is not authorized to practice, the clinics may still represent the client if they can limit the focus of the legal work to satisfy practice requirements, or they can work with local co-counsel. For example, the ITC collaborates with attorneys at law firms that can tap into their global network of attorneys. The ITC also has started to co-counsel with LLM graduates of the University of Michigan Law School that have returned to their home jurisdictions. Ashoka is also able to connect the clinics with its network of law firms. Importantly, we are each aware of and respect the limitations of our collaboration.

6. What's Next?

Social entrepreneurship is growing in the world. The number of those investing in such social enterprises (often called "impact investors") also is growing. Many of these transactions are

37 Prior to this clinic collaboration, Director Burand focused much of the ITC's work on specific client deal engagements. She then observed first-hand the "action research" that the other two clinics were conducting for Ashoka and its Fellows. Accordingly, before the end of the first year of the clinic collaboration, law students in the ITC were providing public comments on draft U.S. regulations regarding investments into Myanmar where the students identified possible confusion that could arise when applying these regulations to investments made into Myanmar by hybrid (for-profit and not-for-profit) organizations.

38 The clinic each work with outside attorneys, to varying degrees, to provide additional legal services where possible.

taking place across national borders.³⁹ Transactional law clinics can play an important role in developing lawyers who understand the unique risks and opportunities in this sector and can bring international transactional legal skills to bear on these new types of deals. Knowledge of the local laws relevant to these transactions also is important. Finding local counsel that understands the nuances of transactions that are intent on generating multiple types of returns can be challenging. Given that so many social enterprises are operating in emerging markets, there is an obvious need for law schools in such markets also to help grow the next generation of lawyers capable of advising social entrepreneurs and impact investors about the laws of their respective jurisdictions. This is a particularly significant role that law schools can play in countries where there is a more limited culture of *pro bono* representation by law firms. Accordingly, extending our clinical collaboration across borders to transactional law clinics in other countries seems a natural and important next step.

Thus far, we have each taken on legal projects and client representations and enlisted our clinic students to manage the legal projects and represent the Ashoka-referred clients, but our students in each clinic have not interacted with each other. That is, students from each of the legal clinics interact directly with Ng or the Ashoka Fellow, but they have not interacted with students from the other collaborating clinics. Our interaction has only occurred at the director-level. We hope to build cross-university collaboration among our students in the near future. From there, we hope to expand our clinical collaboration to create a network of law school clinics from around the world and adopt additional clients beyond Ashoka and Ashoka Fellows. We envision a network in which clinic directors and law students from multiple law schools co-counsel with each other – crossing borders to provide legal advice that supports international investments in social enterprises. For example, the SENL Clinic represents a U.S.-based nonprofit organization that supports Rwandan cooperatives. A network of law school clinics working collaboratively would allow U.S. clinic students to work with Rwandan-based law students to serve the legal needs of our cross-border social enterprise client.

7. Lessons Learned

Despite the early stage of our collaboration, we hope that our clinical collaboration provides useful lessons for other clinicians to work collaboratively and across universities. To launch this collaboration, we undertook the following initial steps, and offer them as advice to other clinical law faculty seeking to engage in clinical collaborations:

Identify a client whose legal needs are too numerous and/or are too varied to be served by a single transactional law clinic;

1. Obtain the client's agreement to be served by a consortium of clinics;
2. Identify each transactional law clinic's "sweet spot" of legal services to determine

³⁹ A 2011 survey of over 2,200 impact investments conducted by J.P. Morgan and the Global Impact Investment Network (GIIN) found that nearly two-thirds of the number of impact investments surveyed were made into emerging markets (67% were made into emerging markets, 31% were made into developed markets, and 2% were made globally). On the other hand, the notional values of these surveyed impact investments skewed toward developed markets (44% in emerging markets, 53% in developed markets, and 4% globally). See Yasmin Saltuk, Amit Bourri, Giselle Leung, "Insight into the Impact Investment Market: An in-depth analysis of investor perspectives and over 2,200 transactions," at 12 (J.P. Morgan's Social Research, December 14, 2011) available at: www.thegiin.org.

how and when to allocate work across the collaborating clinics. This necessarily involves a discussion of each clinic's structure, design, client selection process, timeline for accepting legal work, etc.;

3. Develop separate engagement letters with the client for each clinic;
4. Discuss confidentiality concerns and respect attorney-client boundaries (e.g. Ashoka might engage the ITC on a particular matter that the ITC then keeps confidential, even amongst the collaborating parties; we also never discuss Ashoka Fellow client matters with Ng or other Ashoka representatives unless expressly authorized); and
5. Establish regular check-in points so that the collaborating law clinics can discuss ongoing legal products, continue to look for new opportunities to collaborate, pitch project ideas to the client, and obtain feedback from the client as to the value of the collaboration.

Additionally, although not every clinical collaboration will follow a similar model, there are three lessons that likely are critical to success. These are: (1) pick your clinic collaborators carefully to ensure that the clinics have complementary skill sets and learning goals; (2) choose an appropriate client because not every client is well suited to a clinic collaboration; and (3) invest your time and build trust in the collaboration.

1. Pick your clinic collaborators carefully

Before starting this clinic collaboration, the three clinic directors spent time outlining for each other, and for the potential shared client, Ashoka, their respective practice areas and learning goals. They also described to each other and to Ashoka their clinic structures, including number of students, number and expertise of faculty, duration of student commitment (both in terms of semesters and credits), and academic calendars. Through this process, each clinic drafted a memo to Ashoka, identifying those areas where it had particular and unique legal competencies. We agreed in advance to try to match legal projects to a clinic's complementary areas of expertise and core competencies.

At least quarterly, the clinic directors and Ng meet (in person or by phone) as a group to discuss the matters that they are engaged in with Ashoka and Ashoka Fellows (within the boundary of preserving appropriate attorney-client confidentiality) as well as brainstorm new collaborative projects. This has allowed the clinic directors to avoid "reinventing" wheels in their representations of Ashoka and Ashoka Fellows. It also has allowed clinic directors to gain further understanding of and respect for the competency of its clinic collaborators.

As clinic collaborations expand, an important concern to be addressed is how best to ensure that all of the participating clinics are dedicated to and capable of delivering high quality legal advice and service to their shared clients. This becomes particularly important when and if clinics begin to collaborate as co-counsel with each other while serving a single client. One can imagine circumstances where uneven quality in the legal advice delivered by one clinic could adversely impact the reputation of all of its other collaborating clinics. One potential way to mitigate this issue is to develop clinic collaborations gradually. For example, a clinic collaboration could start

by first working on a simulated deal before graduating to a live client.⁴⁰ And even then, it may be a good idea to find “pilot” projects where the stakes are not particularly high and the deadlines for performance by the collaborating clinics are relatively relaxed.

2. Choose an appropriate client

Ashoka was particularly well suited for this clinic collaboration because its legal needs are significant. Moreover, as an organization that supports thousands of social entrepreneurs, Ashoka brings a network of many additional potential clients to the table. This has meant that the clinics do not need to compete for clients. Each clinic enters into a separate engagement relationship with the client it represents. Additionally, Ashoka’s interest in advancing the ecosystem for social entrepreneurship contributes significantly to the success of this collaboration. For example, Ng visits law students in each of the three participating clinics and guest lectures in our seminars. He has introduced us to other lawyers who work in the social enterprise sector. And he has invited law students from each clinic to participate in legal webinars hosted by Ashoka. In sum, Ng has made himself available to both the clinic directors and our law students in order to assist our understanding of the legal issues that social entrepreneurs face.

There are also more intangible but equally important aspects of taking responsibility for being a “good” clinical client, which Ashoka has embodied. Ng has this to say about how he views his responsibilities as a *pro bono* client of this clinical collaboration:

As with any *pro bono* client, this means partnering with someone who, while being offered free legal services, doesn’t take it for granted. This includes treating *pro bono* counsel (in this case, the law school clinicians) as if they were paying for legal services and recognizing *pro bono* legal support as a finite resource. This means being prepared, showing up on time, setting reasonable expectations, and responding to requests in a timely manner. Further, given the academic nature of a law school clinic, clients should embrace the learning component involved and do whatever he or she can to enrich the overall learning experience. This may sometimes require additional patience and providing more access to student clinicians so they can pause and reflect on why a certain decision was made or action was taken.

Ashoka is an extraordinary client, and particularly well suited—by structure and by mission—to participating in a global clinic collaboration. Finding other potential clients that are able and willing to make an investment of time and energy in a clinic collaboration may be a challenge. One potential starting point might be to look for other “network-like” organizations that, like Ashoka, can provide an introduction to multiple client engagements within their networks. Because of their membership structure, incubators and accelerators might be a good fit. Incubators and accelerators are programs that provide entrepreneurs with mentors and technical assistance, help refine business models and strategic plans, and offer start-up capital or opportunities to “pitch” to potential investors.

⁴⁰ Under the leadership of one of the ITC’s adjunct clinical assistant professors, Mary Rose Brusewitz, a partner with Strasburger & Price, LLP, the ITC collaborated with the transactional clinic of law school and business school students at the Fundação Getulio Vargas, located in São Paulo, Brazil, as part of a simulation exercise to provide guidance to participants in the microfinance industry. Students from the schools worked together to draft an array of legal documents, including engagement letters, a legal memorandum explaining how a microfinance participant might structure its entry into Brazil, and a due diligence checklist.

3. Invest time and trust into the collaboration

It did not take the three clinic directors long to realize that the potential benefits of this collaboration could (and should) go far beyond the scope of finding interesting clients to represent on a collaborative basis. Over the first year of this collaboration, we have learned from each other as well as from Ashoka. We often present at conferences together. We share issues and challenges that arise in our transactional clinic practices. We review each other's scholarly legal research and writing. This broader engagement came about only because each clinical director has made this collaboration a priority. When emails arrive, they are responded to promptly. When calls are placed, they are received immediately. And, the quarterly meetings we hold with Ashoka take place only on dates when all three directors are available and ready to participate.

This kind of engagement does entail a cost—a commitment of time and trust. The fruits of such a collaboration, however, far outweigh these expenditures. The intimacy forged by such a clinic collaboration has provided a safe place for the clinic directors to challenge each other and learn from each other, without lapsing into the “group think” that sometimes marks larger academic conferences and convenings. And, as this clinic collaboration matures and potentially expands to include other clinics, perhaps outside the United States, it is expected that still more benefits will accrue – to the clinics, the clients served, and the students participating in these clinics.

Regulating Clinic: Do UK Clinics Need to Become Alternative Business Structures Under the Legal Services Act 2007?

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In clinical legal education circles we tend to focus on the pedagogical aspects of our work. We enjoy lively debate on topics such as assessment, skills, ethics, student self-efficacy, the role of reflection and balancing the needs of the student with the needs of the client. Rarely do we speak or write about the legal framework regulating the work that occurs in clinics. However, the regulatory landscape is changing, and rapidly.

The Legal Services Act 2007 allows organisations that are owned or managed by non-lawyers to provide regulated legal services. It permits and encourages new entrants to the legal services market in England and Wales. It was heralded as ushering in important new opportunities for solicitors to team up with non-lawyers and to attract capital for their businesses in a carefully regulated environment². At first glance, there did not appear to be anything within the framework which affected law school clinics. On closer inspection, this is sadly not the case.

The aim of this paper is to increase the level of awareness within the clinical legal education community, in England and Wales in particular, of the effects of the Legal Services Act 2007 on clinical activity. It will explore the background to the introduction of alternative business structures and compare the approach which Australia has taken. It will also look to the future and discuss potential problems and solutions.

Background to the introduction of Alternative Business Structures

Australia (more specifically, New South Wales) was the first jurisdiction to look to an atypical law firm arrangement. In 1990 it allowed law firms to form multi-disciplinary practices (MDP) but with the proviso that lawyers retained at least 51 percent of the firm's net income and the majority voting rights³. It also permitted solicitor-corporations. However, as with MDPs, only an "approved solicitor" could hold voting shares in the corporation⁴. These strict caveats meant that whilst outsiders could be involved in the ownership of a law practice lawyers maintained ultimate control.

In 1998 *The Competition Policy Review of the Legal Profession Act* found that the existing rules were non-competitive. Following the report, the rules were changed. Non-lawyers could have majority voting rights in an MDP and were not prejudiced in terms of the share of net income of the MDP. However, even at this stage, lawyers were reluctant to move to a new form of legal firm structure.

It was not until the Legal Profession (Incorporated Legal Practices) Act 2001⁵ came into force in New South Wales that the idea that legal practices could and would be incorporated bodies was embraced by the profession⁶. The new legislation allowed legal service providers in New South

2 Solicitors Regulation Authority (2013) Legal Services Act. Available at: <https://sra.org.uk/lsa/> (Accessed 18 September 2013).

3 Section 48G Legal Profession Act 1987. The "51%" rule was introduced in legislative changes which looked to liberalise multi-disciplinary practices.

4 Legal Profession (Solicitor Corporations) Amendment Act 1990.

5 Accompanied by the Legal Profession (Incorporated Legal Practices) Regulation 2001.

6 Steve Mark, New South Wales Legal Services Commissioner (2007) *A short paper and notes on the listing of law firms in New South Wales to the Joint NOBC, APRL and ABA Centre for Professional Responsibility Panel* entitled "Brave New World: The Changing Face of Law Firms and the Practice of Law from a Professional Responsibility Perspective". [Online] Available at: http://www.olsc.nsw.gov.au/agdbasev7wr/olsc/documents/pdf/notes_for_joint_nobc_aprl_aba_panel (Accessed 14 July 2013).

Wales to register as a company with the Australian Securities and Investment Commission. As a company, the firm would be required to adhere to the requirements of the Corporations Act 2001 as well as the regulations governing the provision of legal advice.

The current statute which governs the legal profession in New South Wales is the Legal Profession Act 2004⁷. Under Part 2.6 of the Act a legal service provider can incorporate and provide services alone or together with other legal service providers who may or may not be legal practitioners.

By March 2008, there were 800 Incorporated Legal Practices (ILPs) in New South Wales. Gradually, other states in Australia followed suit and permitted incorporation⁸. The Legal Services Commissioner has estimated that ILPs comprise 20% of all firms in New South Wales⁹. MDPs have continued, but have been far less popular¹⁰.

Much like the Australian experience, the origins of Alternative Business Structures in England and Wales can also be found in a competition policy review. In March 2001 the Office of Fair Trading published a report entitled *Competition in the Professions*¹¹. The report focused on the anti-competitive nature of the prohibition on partnerships between barristers, barristers and solicitors, and lawyers with non-lawyers. It also found fault with rules preventing solicitors in the employment of non-solicitors from providing services to third parties¹². This led to a Consultation Paper *In the Public Interest* from the then Lord Chancellor's Department (now the Ministry of Justice) in 2002 and, the following year, the report *Competition and Regulation in the Legal Services Market*¹³. Both raised concerns about the legal services market, and both called for a full scale review.

On 24 July 2003 the UK government commissioned Sir David Clementi to undertake a complete review of the regulation of legal services. He was charged with recommending a framework which would "be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent, and no more restrictive or burdensome than is clearly justified"¹⁴. Clementi was given until 31 December 2004 to deliver his report. It was published on 15 December 2004.

7 Together with the Legal Profession Regulations 2005.

8 In Western Australia in 2004, Victoria in 2005, the Australian Capital Territory in 2006, the Northern Territory and Queensland in 2007.

9 See n5.

10 On 4 October 2011, the President of the Law Council of Australia gave an address to Council of the Law Society of England and Wales said that there had been a "strong preference" for incorporated legal practices. Full text available at: <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/speeches/20111004LawSocietyofEnglandandWalesSpeech.pdf> (Accessed 14 July 2013).

11 Great Britain. Office of Fair Trading (2001) *Competition in Professions – A report by the Director General of Fair Trading* [Online]. Available at: http://www.offt.gov.uk/shared_offt/reports/professional_bodies/oft328.pdf (Accessed 14 July 2013).

12 The Office of Fair Trading has advisory responsibilities relating to the competition implications of proposed rules and regulations under the Enterprise Act 2002. It also has advisory powers specific to the provision of legal services under the Courts and Legal Services Act 1990.

13 Great Britain. Department for Constitutional Affairs (2003) *Competition and Regulation in the Legal Services Market* (Online). Available at: <http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/consult/general/oftreptconc.htm> (Accessed 18 September 2013).

14 Great Britain. Department of Constitutional Affairs (2004) *Report of the Review of the Regulatory Framework for Legal Services in England and Wales* [Online] Available at: <http://webarchive.nationalarchives.gov.uk/+http://www.legal-services-review.org.uk/content/report/report-chap.pdf> (Accessed 14 July 2013).

The report strongly favoured greater competition between lawyers. It also sought to permit competition between different types of economic unit. In short, it set out that a new licensing regime should be available to entities which included non-lawyer owners or managers who wished to enter the legal service market. These were to be known as Alternative Business Structures. It proposed a Legal Services Board, with a non-lawyer chairman and chief executive, to oversee regulation by a list of approved bodies. At the time, the Office of Fair Trading stated that the Clementi report took forward a number of the important outstanding issues identified in its earlier work on competition in the legal professions. Clementi's recommendations, said John Vickers the then Chairman of the Office of Fair Trading, combined "deregulation – greater freedom for legal service providers to compete – with better regulation"¹⁵.

The government took Alternative Business Structures to its heart. In its subsequent White Paper *The Future of Legal Services: Putting Consumers First*¹⁶ it listed the numerous benefits for consumers and legal providers. For consumers, Alternative Business Structures meant more choice, reduced prices, better access to justice, improved service and convenience. The paper envisaged that Alternative Business Structures would realise savings through economies of scale, increase services in rural areas and be a "one stop shop" for consumers. For legal providers, the suggested benefits included increased access to finance, better spread of risk, increased flexibility and better retention of high quality non-law staff.

The Legal Services Bill was introduced 24 May 2006 and the Legal Services Act 2007 received royal assent on 30 October 2007. In section 1(1) the Act laid out 8 regulatory objectives:

1. Protecting and promoting the public interest;
2. Supporting the constitutional principle of the rule of law;
3. Improving access to justice;
4. Promoting and protecting interests of consumers;
5. Promoting competition in the provision of services;
6. Encouraging an independent, strong, diverse and effective legal profession;
7. Increasing public understanding of citizens' legal rights and duties; and
8. Promoting and maintaining adherence to professional principles.

The newly formed Legal Services Board was tasked with acting¹⁷ in a way which was compatible with the objectives and which it considered more appropriate for the purposes of meeting those objectives. It would oversee the regulators who would put in place and administer the licensing rules. This took much longer than anticipated. The new regulatory regime became active on 1 January 2010 – 3 years after the Act came into force.

15 Office of Fair Trading (2004) *OFT welcomes Clementi recommendations to reform the legal profession* [Press Release], 15 December Available at: <http://www.oft.gov.uk/news-and-updates/press/2004/clementi> (Accessed 14 July 2013).

16 Great Britain. Department of Constitutional Affairs (2005) *The Future of Legal Services: Putting Consumers First*. London: The Stationary Office. (Cm. 6679)

17 So far as was reasonably practicable.

Reserved legal activities and the licensing regime

Historically, certain aspects of the work of solicitors and barristers in England and Wales have been “reserved” to the legal professions. Clementi stated in his report that these areas could be termed “the inner circle of legal services”¹⁸.

Reserved legal activities have been described as the fundamental building blocks of the Legal Services Act 2007¹⁹. The activities currently reserved, and hence can only be carried out by authorised persons, are listed at section 12 of the Legal Services Act 2007 and defined in Schedule 2. They are:

- a. the exercise of a right of audience²⁰;
- b. the conduct of litigation²¹;
- c. reserved instrument activities²²;
- d. probate activities²³;
- e. notarial activities²⁴; and
- f. the administration of oaths.

An Alternative Business Structure is an organisation that is licensed to carry on one more of the legal activities regulated by the Legal Services Act 2007 and whose owners and/or managers include individual or entities who are not qualified lawyers.

An Alternative Business Structure which wishes to carry out any of the reserved legal activities will need to be licensed to do so by the relevant licensing body. For example, if the licensing body is the Solicitors Regulation Authority, solicitors and therefore the Alternative Business Structure can perform all reserved work bar some notarial activities²⁵. It is a criminal offence, under section 14 of the Legal Services Act 2007, to carry on reserved legal activities unless entitled to do so.

Under the Legal Services Act 2007 the licensing body must approve the holding of a “material interest” by a “non-lawyer” in the Alternative Business Structure. It must also authorise the firm as a whole as being appropriate to provide legal services. In order to assess whether a non-lawyer has a material interest the Act distinguishes between authorised and non-authorised persons.

18 See n.13.

19 Miller, I and Pardoe, M. (2012) *Alternative Business Structures*, The Law Society, p.3.

20 The right to appear before and address a court including the right to call and examine witnesses (Schedule 2, part 3).

21 Issuing proceedings before any court in England and Wales, the commencement, prosecution, defence of such proceedings and the performance of any ancillary functions in relation to those proceedings (schedule 2, part 4).

22 Preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2002, making an application or lodging a document for registration under that Act or preparing any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales (Schedule 2, part 5).

23 Preparing any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales (Schedule 2, part 6).

24 Activities carried on by virtue of enrolment as a notary in accordance with section 1 of the Public Notaries Act 1801.

25 See n.18, p.9.

Authorised persons include solicitors, registered European lawyers, regulated law firms, barristers, licensed conveyancers and legal executives. Non-authorised persons are any individual or entity who is not (a) an authorised person (b) a registered foreign lawyer (c) a member of an Establishment Directive profession entitled to pursue professional activities in an Establishment Directive state or (d) a firm providing legal services in which all of the managers and owners are individuals within (a)-(c) above or are bodies in which more than 90 per cent of the managers and owners are within (a)-(c) above. Paragraph 3 of Schedule 13 of the Legal Services Act 2007 sets out the tests for assessing at which point an ownership interest in an Alternative Business Structure is material²⁶ and therefore requires separate approval.

This is in stark contrast to the Australian system, which is far simpler and easier to navigate. Section 14 Legal Profession Act 2004 sets out that a person may not engage in legal practice unless the person is an Australian legal practitioner. It then goes on to state that this does not apply to a legal practice engaged in by an incorporated legal practice²⁷. An incorporated legal practice is defined²⁸ as a corporation that engages in legal practice, whether or not it also provides services that are not legal services. Legal services are defined, simply, as “work done, or business transacted, in the ordinary course of business”²⁹. A firm wishing to incorporate must simply liaise with the Australian Securities & Investment Commission and notify the Law Society of its intention to commence trading as an incorporated legal practice. In an address to Council of the Law Society of England and Wales, Alexander Ward, the President of the Law Council of Australia noted that Australia did not intend to move to a licensing regime for alternative business structures³⁰. Although much has been made of the positive experience of Australian law firms who chose to become ILPs, this “key point of difference”³¹ is not raised in any of the literature.

Section 106 Legal Services Act 2007: “special” bodies

When the Legal Services Act 2007 came into force, the focus was, and has remained, on the expansion of the legal marketplace and the benefits of innovative business models.³² Very little has been written about the parts of the Act which have a direct impact on non-commercial legal services providers. These provisions are spread throughout the Act and perhaps this has been why they have remained “hidden” from detailed scrutiny.

26 Usually, a material interest means ownership of at least 10 per cent of the shares in a licensed body or a body which controls a licensed body, although the Legal Services Act 2007 allows licensing bodies to reduce this figure should they wish.

27 Section 14(2)(b) Legal Profession Act 2004. There are other examples of exempted legal practice in section 14(2) Legal Profession Act, including the practice of foreign law by an Australian-registered foreign lawyer and legal practice engaged in by a complying community legal centre (which I have explored in more detail below).

28 Section 134 Legal Profession Act 2004.

29 Section 4(1) Legal Profession Act 2004.

30 *Address to Council of the Law Society of England and Wales by Alexander ward, President, Law Council of Australia* (2011) Available at: <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/speeches/20111004LawSocietyofEnglandandWalesSpeech.pdf> (Accessed: 14 July 2013).

31 Ibid.

32 As of 25 September 2013 there are 189 licensed bodies (ABS): <http://www.sra.org.uk/solicitors/firm-based-authorisation/abs/abs-search.page>. They include brands which traditionally have been associated with different sectors i.e. C-operative Legal Services Limited (supermarkets) and Admiral Law Limited (insurance).

Section 106 of the Act lists the entities which the Act calls “special bodies”³³. These are (a) an independent trade union (b) a not for profit body (c) a community interest company (d) a low risk body, and (e) a body of such other description that may be prescribed by order made by the Lord Chancellor on the recommendation of the Legal Services Board. Under the Act, special bodies with non-lawyer owners and/or managers that are providing reserved legal activities will need to be licensed by the Legal Services Board in the same way as any other Alternative Business Structure.

Section 23 of the Act states that not for profit bodies, community interest companies and independent trade unions have the benefit of a transitional grace period. During this period, they are not required to apply for authorisation as a licensed body. Until this transitional grace period ends, special bodies are free to provide reserved legal activities through individuals who are authorised to do so (for example, solicitors and barristers). Initially, the grace period was due to end in March 2013. The deadline was later extended to April 2014. On 5th December 2012, the Legal Services Board announced that the statutory grace period needed to remain in place for at least the next two years because “there was no regulator ready to provide an appropriate licensing framework”³⁴.

Do the provisions relating to special bodies in the Legal Services Act 2007 apply to law school pro bono clinics?

Most English universities and Higher Education Institutions (HEIs) are exempt charities under the Charities Act 1993. On 1 June 2010 the Higher Education Funding Council for England (HEFCE) became the principal regulator of those higher HEIs in England which it funds and which are exempt charities³⁵.

The definition of not for profit body under the Legal Services Act 2007 is a body which, by virtue of its constitution or any enactment (a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes, and (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes)³⁶. A charity (exempt or not) therefore falls within the definition. Accordingly, it follows that if the body is carrying out reserved legal work, then, once the grace period has ended, it is required to be licensed under the Legal Services Act 2007 i.e. it must become an Alternative Business Structure.

Engaging with the regulator

In April 2012, the Legal Services Board released a *Consultation Paper on the regulation of special*

33 There has been some criticism of the way in which the Act, and other literature on this subject, uses the terms “special bodies” and “non-commercial bodies” interchangeably. See the *Response from the Solicitors Regulation Authority to the Legal Service Board’s consultation* [Online] Available at: http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_received_to_the_consultation_on_the_regulation_of_special_bodies.htm

34 Legal Service Board (2012) *LSB responds to consultation by revising plans for regulation of special bodies* [Press Release]. 5 December. Available at: http://www.legalservicesboard.org.uk/news_publications/press_releases/pdf/20121205_special_bodies.pdf (Accessed 5 December 2012).

35 According to HEFCE, all but 18 HEIs fall into this category.

36 Section 207 Legal Services Act 2007.

bodies/non-commercial bodies³⁷. The consultation closed on 16 July 2012 and 24 organisations³⁸ in total responded. I prepared a response based on my concerns as to how the Act applied to law schools carrying out pro bono activities³⁹. I was subsequently invited to attend a stakeholder engagement meeting at the London office of the Solicitors Regulation Authority on 6th November 2012. 13 representatives from not-for-profit organisations attended. There were no other representatives from higher education institutions.

The key issue is that university clinics are rarely companies, entities, or any other type of “body”. They are activities - sometimes embedded into the curriculum, sometimes not. Some are voluntary, others compulsory. In my own institution, Northumbria University, our clinic (the Student Law Office) is a module. It is not a company, or some other form of separate legal entity or “body”. The question then becomes: what is the body to which the Legal Services Act 2007 refers? Is it the university within which the clinical activities take place? If this is the case then the Act requires universities where pro bono reserved work is being carried out to become Alternative Business Structures. I asked this question in the stakeholder engagement meeting and the answer was yes.

An alternate course of action would be for the clinic to become a separate legal entity, distinct from the university structure, so that it can be a licensed body itself. Yet, how many universities want to put this in place? And, is there any benefit to the clinic and the members of the public which that clinic serves, beyond complying with rules that do not seem to have been written with all non-commercial legal service providers in mind?

LawWorks, the national legal pro bono charity, raised similar concerns in its response to the consultation⁴⁰. The introduction of the licensing rules, it said, will have a significant impact on law school clinics, especially as the clinic is often only a small part of the law school and the university as a whole. The burdensome rules posed “a real threat” to their “very existence”⁴¹.

In addition, LawWorks looked at other models of clinical pro bono work and provided detailed information about legal advice clinics and the ways in which those clinics would be affected by the special bodies provisions in the Legal Services Act 2007. It used the example of a clinic based

37 Legal Services Board (2012) *Consultation Paper on the regulation of special bodies/non-commercial bodies that provide reserved legal activities* [Online] Available at: http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/3.pdf (Accessed 20 May 2012).

38 Advice UK, Advice Services Alliance, Action Against Medical Accidents, Child Poverty Action Group, Chartered Institute of Legal Executives and ILEX Professional Standards, Citizens Advice, The Council for Licensed Conveyancers, The Legal Services Consumer Panel, Disability Law Service, Friends of the Earth, The Institute for Chartered Accountants England and Wales, LawWorks, Law Centres Network, Liberty, Northumbria University School of Law, Prisoners Advice Service, Shelter, The Solicitors Regulation Authority, The Charity Commission, The Law Society, The Public Law Project, Trades Union Congress and UNISON. The full responses can be read at: http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_received_to_the_consultation_on_the_regulation_of_special_bodies.htm. There were also three confidential responses.

39 Campbell, E (2012) *Response to the Legal Service Board’s Consultation Paper on the regulation of special bodies/non-commercial bodies that provide reserved legal activities*. [Online]. Available at: http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_received_to_the_consultation_on_the_regulation_of_special_bodies.htm.

40 LawWorks (2012) *LSB Regulation of special bodies/non-commercial bodies - LawWorks response* [Online] Available at: http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_received_to_the_consultation_on_the_regulation_of_special_bodies.htm.

41 Ibid.

in the south of London where 20 – 30 volunteers attend a community centre one night a week and assisted over 60 individuals. It is entirely reliant on volunteers, with no permanent member of staff, and has a budget of less than £1500 per annum which is primarily spent on stationary, photocopying costs and legal resource. LawWorks stated that they were very concerned “that services such as these, providing access to justice for those most in need, will be unable to continue if burdensome, complex or expensive regulations governing special bodies are implemented”⁴².

The stakeholder engagement meeting demonstrated that there was no “one size fits all” model for the licensing of special or non-commercial bodies. There were significant differences in respect of how each body was organised and what their goals were for the future. For example, many of the organisations noted that they were going to use the new regulatory framework to allow them to have separate charging trading arms which would charge for advice.

Another issue is the provision of pro bono advice at a private university which would not fall within the definition of a special body. One would expect that they, if they are owned or managed by non-lawyers and are carrying out reserved legal activities, should be licensed now. However, there has been no confirmation that this is the case. Indeed there is no reference to section 23 or section 106 of the Legal Services Act 2007 in the legal handbook which was published by The Law Society last year⁴³ nor has there been any discussion of the effect of these sections of the Act on clinic in any capacity in any journal or press article⁴⁴.

Changing the definition of reserved legal activity

The stakeholder engagement meeting also highlighted that the Solicitors Regulation Authority was considering whether general legal advice should become a reserved legal activity⁴⁵. This would mean that special/non-commercial bodies providing any type of legal advice would need to be licensed as an Alternative Business Structure once the transitional grace period was at an end. Whether this will happen remains to be seen. In May 2013, the Lord Chancellor Chris Grayling rejected the Legal Service Board’s recommendation that will writing should become a reserved legal activity, despite the support which the recommendation had. Given this, it is hard to see how he would accept what would effectively mean abolishing the concept of reserved legal work altogether.

What will the licensing regime look like?

At present there is no information stating what the application requirements will be for non-commercial bodies following the expiration of the grace period. Many law school clinics will not have obvious “owners”, “managers” and “shareholders” as envisaged by the Act. For example, at Northumbria University the Student Law Office has a director (an academic post), and is also under the remit of an Associate Dean, the Executive Dean of the Faculty of Business and Law,

42 Ibid.

43 See n.18.

44 I wrote about the issue last year: Campbell, E (2012) ‘No one size fits all: not-for-profit legal services providers cannot be treated like law firms’, *Solicitors Journal*, 156 (34), p.10-11.

45 The idea was also mooted in the consultation paper. Respondents were asked: “What are your views on the proposed timetable for ending the transitional protection? Should we delay the decision of whether to end the transitional protection for special bodies/non-commercial bodies until we have reached a view on the regulation of general legal advice?”

the University Board of Governors and Vice Chancellor's Office. As LawWorks note in their response to the Legal Service Board's *Consultation Paper on the regulation of special/non-commercial bodies*⁴⁶, there is often a difference between the purpose of the clinic and the aims of the university as a whole.

The Student Law Office, like many pro bono service providers, does not handle any client money. It is a free legal advice clinic. The licensing authority currently uses turnover as a basis for the calculation of fees for commercial bodies who wish to become Alternative Business Structures. The Legal Service Board states that special bodies will need to pay a fee to be licensed. It has not announced how the fee will be calculated.

The Australian experience of alternative business structures and not-for-profit bodies

Section 134(2)(a) Legal Profession Act 2004 states that a corporation cannot be an incorporated legal practice if it does not receive any form of, or have any expectation or, a fee, gain or reward for the legal services it provides.

The difference between the provisions in the Legal Profession Act 2004 as compared to the Legal Services Act 2007 is striking. Rather than the Legal Profession Act 2004 trying to impose an "alternative" business structure on not for profit legal service providers, it firmly states that not for profit bodies are not permitted to become an incorporated legal practice. Solicitors and barristers supervising clinical work in Australia are regulated as individuals, as the position has been in England and Wales. A university or clinic does not require any licence in order to provide legal advice. "Pro bono clinic" is a term used to describe clinics that are staffed by private lawyers. In contrast, university clinics are referred to as that, or a Community Legal Centre clinic. Section 134(2)(d) of the Legal Profession Act 2004 states that a complying Community Legal Centre is not an incorporated legal practice.

In England and Wales, it is interesting to note that there is still confusion within the profession as to what special bodies are. The Law Society⁴⁷ states that:

"Special bodies are a type of ABS. It is currently unclear exactly which bodies will need to apply to become special bodies."

According to the Legal Services Act 2007 and the Legal Services Board's interpretation of it, special bodies are not a type of Alternative Business Structure – they are a type of entity which must, if carrying out reserved legal activities, become an Alternative Business Structure.

The drafting of the Legal Profession Act 2004 does not allow for this uncertainty. There are no "special" bodies. A firm decides for itself whether it wishes to incorporate and then notifies the relevant authorities. As Alexander Ward said to the Council of the Law Society of England and Wales⁴⁸, a licensing regime for alternative business structures was not an option for Australia.

46 See n.36.

47 The Law Society (2012) *Setting up an ABS* [Online] Available at: <http://www.lawsociety.org.uk/advice/articles/setting-up-an-abs> (Accessed 31 October 2012).

48 See n9.

The future for university law clinics in England and Wales

In December 2012, the Legal Services Board released a document summarising the responses to its consultation paper and the next steps⁴⁹. There was no reference to university-led legal clinics, nor to any of the issues which I raised in my response and at the stakeholder engagement meeting.

The current expectation is that the transitional grace period will end in 2015. By this date, the Solicitors Regulation Authority should have completed the licensing of all special bodies. The Solicitors Regulation Authority states that the licensing of special bodies will be preceded by a significant programme of work in 2013/14 to develop the framework within which they will be licensed⁵⁰.

If this goes ahead, one option available to university based clinics (and other pro bono legal advice providers) is to stop doing reserved work. Put simply, this would mean ceasing to offer full representation and moving to advice only. In the Student Law Office at Northumbria University this would mean that we would have to curtail the legal services provided to those requiring assistance with civil and consumer disputes. It is unclear whether this would also affect tribunal work such as employment, welfare benefits and criminal injuries compensation award appeals as no guidance on what constitutes “conduct of litigation” has been forthcoming. Naturally, this would have a significant impact on the vulnerable and disadvantaged who access the services offered by clinics. It is also likely to have a knock on effect with the courts – increased numbers of self-represented litigants without any legal assistance and legal knowledge will arguably lead to delays and added cost. Of course, if the change to the definition of reserved legal activities proposed by the Legal Services Board is accepted then this option will not be available.

The future in terms of the regulation of reserved work carried out by university based law clinics appears uncertain, as does the future of the regulatory framework in general. The Ministry of Justice has recently said that its aim is to reduce the burdens which hold back the legal industry. In June 2013, in a written statement to the House of Commons⁵¹, justice minister Helen Grant said that the Ministry of Justice would conduct a review which would encompass the ‘full breadth’ of the legislative framework, including 10 pieces of primary legislation and more than 30 statutory instruments. The Ministry of Justice issued a “call for evidence” from stakeholders⁵². The rejection of the regulation of will writing and the government’s focus on removing “red tape”⁵³ has led some to query whether there will be a Legal Services Act 2015⁵⁴.

For law school clinics which fall within the remit of the Legal Services Act 2007, there are two ways of dealing with this issue. The first is to broach it head on and engage with the regulators as much as possible – highlighting problems, misunderstandings and the reduction in pro bono

49 Legal Services Board (2012) Response to consultation and next steps [Online] Available at: http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20121130_lsb_response_to_special_bodies_consultation_and_next_steps.pdf (Accessed 5 December 2012).

50 <http://www.sra.org.uk/sra/strategy.page>

51 Ministry of Justice, *Legal Services Review Call for Evidence* [Online] Available at: http://www.parliament.uk/documents/commons-vote-office/June_2013/3rd_june/5.JUSTICE-Legal-Services.pdf (Accessed 5 June 2013).

52 I submitted a response on 2nd September 2014 detailing the concerns raised in this paper.

53 The Red Tape Challenge: <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

54 Rose, N (2013) *Are we headed for a Legal Services Act 2015?* Available at <http://www.legalfutures.co.uk/blog/the-legal-services-act-2015> (Accessed 15 May 2013)

service the licensing regime may cause. The second is to wait and see what will happen. Perhaps the transitional grace period will be extended indefinitely. Perhaps the regulator will carve out an exemption for law school clinics. Perhaps the Ministry of Justice will take heed of the calls for a complete overhaul of legal regulation⁵⁵. In this author's view, there needs to be a full and honest discussion between law schools, the Legal Services Board and the SRA so that the issue is not overlooked, or, worse, acknowledged but put to one side to deal with another day.

55 The Law Society, Solicitors Regulation Authority and the Bar Standards Board and Bar Council have all published their responses to the call for evidence. The Bar Standards Board recommends that the Legal Services Board should be removed and calls for a new Legal Services Act in 2018.

