Editorial

Why do we do clinic and how on earth do we manage it?

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In this edition we continue the conversation linking values, intent, pedagogy and context to understand the complexity of clinic in the 21st Century.

We begin with a paper from Martha Simmons and Marian Mac Gregor that challenges us to consider who can contribute to clinical work. Their focus on students with disabilities and the challenges and opportunities of providing access to clinic is timely and compelling. We are witnessing an expansion of clinical programmes which can be an opportunity to ask ourselves where the evidence lies that some students are better suited to clinic than others, whether there are pre-existing attributes that fit students to serve our communities or whether social justice ideals demand that more diverse students get to benefit form a clinical experience.

Following on from their paper on emotional competency in interviewing[1] we have a new paper from Colin James and Felicity Wardhaugh exploring the emotional impact of clinical work and the pedagogies and experiences that can support students in providing both client-centred practice and the kind of self-care that enables long term professional resilience.

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[1] IJCLE 20, 2, 2014

Ann Thanaraj's paper elaborates the theme of student development and identity, using a methodological framework unusual in legal studies. This phenomenographic approach offers the potential to capture data that has proved elusive in the past and others may find it helpful as a way of making more concrete their felt sense of what students gain from the clinic.

We are grounded in the realities of sustaining clinic by our Practice Report from Barbara Preložnjak and Juraj Brozović, who describe the Croatian context with great detail and energy. Readers will immediately make the link to the key themes for sustainability identified by Tribe Mkwebu[2] and we welcome this paper and any others that colleagues might wish to share from their own countries.

We end this edition (as T.S. Eliot predicted) at the beginning, with the voices of law students, by showcasing the winners of the 2016 Pro Bono Essay competition at Northumbria University. They sum up the various approaches to understanding clinical work: academic, idealistic, pragmatic and above all highly personal. We all have our motivations and our rewards, one model does not have to 'win' in order for clinic to flourish.

As you will hopefully have heard through your networks, three organisations are coming together for the 2017 conference. We look forward to welcoming you to Newcastle!

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[2] Mkwebu, T. (2015) A Systematic Review of Literature on Clinical Legal Education: A Tool for Researchers in Responding to an Explosion of Clinical Scholarship *IJCLE, 22, 3*
 Mkwebu, T. (2016) Unpacking Clinical Scholarship: Why Clinics Start and How They Last, *AJLE (3, 3) forthcoming, available online*

IJCLE – ENCLE - CLEO

The *International Journal of Clinical Legal Education*

in association with the

European Network for Clinical Legal Education

and the

United Kingdom *Clinical Legal Education Organisation*

CONFERENCE 3-5 JULY 2017

at the University of Northumbria, Newcastle upon Tyne, UK

"Bringing It All Together: Clinical Legal Educators in the 21st Century University"

Clinicians wear many hats: teacher, group facilitator, project manager, lawyer, researcher, mentor, activist, administrator, supervisor, academic, fund raiser, practice manager, collaborator, role model, counsellor…

This year's conference continues our exploration of the key, often overlapping, issues arising for clinical legal education in the 21st century from the clinician's perspective; juggling sometimes competing priorities and often making difficult choices. Papers are invited which consider one or more of these themes below while still encouraging participants to locate their papers either mainly in one of those areas or by exploring the overlaps.

Themes:

- The clinician and community needs

- The clinician and research into the impact of clinic

- The clinician and academic identity

- The clinician and curriculum and student learning

In particular, we would like to encourage participants to include student and other partners' voices in their presentations, ideally through collaborative writing and presentation in person or through video calling or recordings.

Taking part

Presentations at IJCLE/ENCLE/CLEO can take one of three formats, each with its own structured proposal application form:

- Paper presentation

- These will be in traditional conference paper format, with a twenty minute presentation followed by questions. Participants will be invited to indicate if their paper falls into one or more of the four areas: Community Need; Curriculum and Students; Academic Identity; Research and Impact.

- Interactive seminar

  - These sessions will be 90 minutes long, will involve active participation from the audience as well as input from the presenters and will be designed to generate discussion and new learning for the participants *and* the convenors. Participants will be invited to indicate if their seminar falls into one or more of the four areas: Community Need; Curriculum and Students; Academic Identity; Research and Impact.

- PechaKucha

  - A PechaKucha consists of 20 slides timed to change every 20 seconds, so each presentation lasts 6 minutes and 40 seconds. Each presenter in PechaKucha session will be assigned a 10 minute slot to allow for a question to be posed. We anticipate that PechaKuchas will consist of short introductions to new work, methodological innovations or insights from the field. Please follow this link to learn more. Participants are encouraged to offer PechaKuchas in addition to traditional papers.

Key Dates

- Call for papers, seminars and PechaKucha opens – November 21, 2016. Please follow this link to submit and learn more.

- Call for papers, seminars and PechaKucha **closes** – January 31, 2017

- Confirmation of papers, seminars and PechaKucha accepted for the conference – rolling through December and no later than February 10, 2017

- Registration opens – January 16 2017

- Early-bird registration closes – March 3, 2017

- Registration closes – June 2, 2017

- Deadline for submission of papers and outlines to website. – June 9, 2017

CLINICAL LEGAL EDUCATION AND DISABILITY: ACCOMMODATION, IMPLEMENTATION AND ASSESSMENT IN SERVICE-LEARNING PROGRAMS

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INTRODUCTION

Experiential education is becoming an increasingly relevant pedagogy in post-secondary and professional education. A recent survey of 22 Universities in Ontario, Canada, revealed that each highlights experiential education as an asset to the school's curricular offerings and heralds it as a beneficial learning practice.[1] Most of the universities surveyed connect the benefits of experiential education to the students' post university opportunities. Ontario is certainly not alone in this focus.

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[1] This informal survey began by using the list of universities provided on the Government of Ontario Ministry of Training, Colleges and Universities website (http://www.ontario.ca/education-and-training/ontario-universities). This website provides a list of 22 accredited universities in Ontario. This list of universities also included a link to the specific university official website. From the university's official site I typed the term "experiential education" to search the internal site. Of the 22 universities searched 20 had a positive result for this search term with most having a separate webpage dedicated to experiential education or experiential learning. Only two universities, Royal Military College and Dominican College, had no results with those search terms. This is most likely attributed to the specialized nature of those universities (military and philosophy/theology respectively).

The Canadian Council on Learning (CCL), in its 2008 report, "Lessons in Learning: The benefits of experiential learning", connected the shift to a more knowledge-based economy to the growing demand by employers for employees with occupational skills rather than solely academic knowledge.[2] The CCL suggests that mandating experiential learning as a condition for graduation from a post-secondary institution offers an opportunity to gain "the job-specific technical skills and the so-called soft skills" required by employers.[3] In the law school environment, experiential programs provide a bridge between the academic and practice worlds.

Different models of experiential education are utilized in law school curricula. For this paper, the authors will focus on the clinical setting of service-learning programs, where community service – the practice is interwoven with theory and reflection. The particular focus of this paper will be on the impact of such programs on students with disabilities and the way in which service-learning programs can create universally accessible learning environments. Service-learning programs are particularly useful for law students as they enable students to identify the type of law the wish to practice, to develop practice skills, to make sense of the theoretical classroom teaching, to learn professional

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[2] Canadian Counsel on Learning, *Lessons in Learning: The Benefits of Experiential Learning* (2008), *available at* http://www.ccl-cca.ca/pdfs/lessonsinlearning/feb-21-08-benefit-of-exper.pdf.
[3] *Id.* at para 2.

responsibility as part of an overall reflective practice and to make important networking and mentoring connections.[4] These skills, along with the opportunity to identify and experiment with accommodations that they may need to utilize in practice is of particular benefit for students with disabilities who have greater difficulty finding employment in the legal field after graduation.[5] Pervasive and substantial barriers still exist for students with disabilities. Clinical programs at law school are a good place to start breaking down these barriers.

This discussion is timely, as there is an increasing number of students in law schools with both physical and "non-visible" disabilities requiring accommodation.[6] Certain accommodations have traditionally been provided in the academic classroom, accommodations that may not be relevant in the experiential classroom and clinical setting. This paper will consider the challenges faced by students with disabilities within the service-learning model and will offer some prescriptions for program selection, implementation and assessment. Using a critical disability lens, as this paper does, offers a deeper analysis of this subject and reveals that, for people with disabilities, the service-

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[4] Sande L. Buhai, *Practice Makes Perfect: Reasonable Accommodation of Law Students with Disabilities in Clinical Placements*, 36 *San Diego Law Review* 137 (1999).

[5] *Id.*; Law Society of Upper Canada, Report of the Disability Working Group, *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession* (2005), *available at* http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487144.

[6] The nature and severity of disability among law students varies and is not well-documented. Some examples of such disabilities include: mental health disabilities, learning disabilities, medical disabilities, mobility disabilities, physical disabilities, sensory disabilities, among others.

learning model has the potential to reinforce barriers to participation. These barriers are maintained through an ongoing failure to identify and challenge the ubiquitous ableism that is present within the social framework. These problems can indeed be addressed, but a shift must take place in the field of clinical education in order for meaningful change to be made.

This paper will begin by situating service-learning within the larger context of experiential education. It will then turn to an examination of the social model of disability and its relevance for service-learning programs. The final section will narrow in on implications of the aforementioned on program selection, implementation and assessment. Our hope is to offer practical suggestions to create and maintain universally accessible programs as well as a theoretical framework from which to view these challenges and opportunities.

SITUATING SERVICE-LEARNING WITHIN THE LARGER CONTEXT OF EXPERIENTIAL EDUCATION

Before a detailed examination of service-learning and its impact on students with disabilities can be considered, the nature of experiential education must be outlined. The field of experiential education suffers from a conflation of terms and meanings that warrants clarification. The philosophy of experiential education is often confused with the learning process of experiential learning. In

turn, each of these terms is further entangled with the execution of their goals in programs such as externships, service-learning programs, internships, work placements or co-ops, among others. To ensure clarity throughout this paper, we will spend some time in this section, explaining and contextualizing experiential education.

It is important and necessary to distinguish experiential education from the process of experiential learning. These are terms that are often used interchangeably in error. Kolb describes experiential learning as "a process whereby concepts are derived from and continually modified by experience".[7] The modification of learning through experience is indeed an essential component of experiential education, but it is not sufficient to amount to experiential education in and of itself. Experiential education offers a far more enriched educational experience that serves a purpose; it does not simply entail learning a skill. Experiential education engages the learner through reflection in an educational triad: theory, practice, and reflection.

The Association for Experiential Educators uses a base definition that provides some further guidance and refinement:

> Experiential education is a philosophy that informs many
> methodologies in which educators purposefully engage with

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[7]David A. Kolb, EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT 26 (1984).

> learners in direct experience and focused reflection in order to increase knowledge, develop skills, clarify values, and develop people's capacity to contribute to their communities.[8]

As an educational philosophy, experiential education has its roots with John Dewey who first began writing and connecting "learning through doing" in his works *Democracy of Education*[9] and *Experience and Education*[10]. For Dewey, it was the process of learning rather than the actual content learned, which was paramount. In explaining Dewey's concepts, Itin comments that, "It was insufficient to simply know without doing and impossible to fully understand without doing".[11]

Reflection is an essential component of experiential education philosophy. Reflection is critical to ensure that experience along, Dewey argues, has the potential to mis-educate the learner in a way that reinforces barriers rather than eliminates them.[12] Dewey writes, "The belief that all genuine education comes about through experience does not mean that all experiences are genuinely or equally educative".[13] Thorough and appropriate reflection is required to ensure genuine education takes place. Students become exposed, in experiential

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[8] Association for Experiential Education, *Definition of Experiential Education*, *available at* http://www.aee.org.

[9] John Dewey, DEMOCRACY AND EDUCATION (1916).

[10] John Dewey, EXPERIENCE AND EDUCATION (1938) [hereinafter Dewey (1938)].

[11] C.M. Itin, *Reasserting the Philosophy of Experiential Education as a Vehicle for Change in the 21st Century*, 22(2) Journal of Experiential Education 91 at 92 (1999).

[12] Dewey (1938), *supra* note 10.

[13] *Id.* at 28.

education, to new challenges that may conflict with or reinforce their preconceived notions. Critical reflection helps reconcile misconceptions they have to align with new realities.[14] If a learning experience is not sufficiently orchestrated and reflected upon, it may reinforce stereotypes, beliefs and lead to misinformation. The potential for mis-education of this fashion is of particular note in the context of disability. A more in-depth discussion of the concept of mis-education and its impact follows further in the paper.

Various forms of experiential education exist, including externships, service-learning programs, internships, work placements and co-ops. This paper considers service-learning as a specific method in order to create clarity around the environment being examined. The unique nature and expansive application of the label "service-learning" to a wide range of activities makes it difficult to articulate a sustainable definition. Instead, there is a spectrum of programs that fit within a service-learning continuum, each with different emphases.[15] The following useful definition of service-learning is provided by the National Service-Learning Clearinghouse: "a teaching and learning strategy that integrates meaningful community service with instruction and reflection to enrich the

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[14] Tania D. Mitchell et al., *Reflective Practice that Persists: Connections Between Reflections in Service-Learning Programs and in Current Life*, 21 Michigan Journal of Community Service Learning 4 (2015).

[15] D.W. Butin, SERVICE-LEARNING IN THEORY AND PRACTICE: THE FUTURE OF COMMUNITY ENGAGEMENT IN HIGHER EDUCATION (2010).

learning experience, teach civic responsibility, and strengthen communities".[16] It is the combination of out-of-classroom community service activities and academic study that characterizes service-learning models. The great preponderance of clinical legal education programs, including those directed by the authors, indeed combine education, reflection, and community service.

While integral to service-learning programs, the twin dimensions of academic study and community service can be problematic. In a service-learning environment, the connection and balance between learning and service is essential but difficult to master.[17] If the emphasis shifts towards prioritizing community needs, the resulting program looks closer to volunteerism. If the program moves closer to prioritizing the learner, the resulting program is better described as field education or internship.[18] A balance must be struck which is increasingly difficult if the clinical programs are externally funded[19]. The trick is to create a general equilibrium, although at different stages one may take precedence over the other. The focus of this research is on the students and the focus that must remain on the learning that takes place through service to the community. Students must come first.

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[16] National Service-Learning Clearinghouse, *Definition of Service-Learning* (n.d.), (June 2, 2013), http://www.servicelearning.org.

[17] A. Furco, *Service-Learning: A Balanced Approach to Experiential Education*, *in* EXPANDING BOUNDARIES: SERVING & LEARNING 2 (1996).

[18] *Id.*

[19] It is not uncommon for Legal Aid Ontario to provide funding to some clinical programs in order that they provide legal services to low income families and individuals.

Despite some critique, carefully crafted and executed service-learning programs provide invaluable education to students. Service-learning is beneficial to students as it provides enhanced learning opportunities as well as personal and social skill development. A study of about 1500 students found that service-learning had a positive impact on such outcomes as personal development, social responsibility, interpersonal skills, tolerance and stereotyping, learning, and application of learning.[20] Indeed, the literature pays special attention to the ways in which student cognitive learning has been shaped and enhanced through the participation in service-learning. These studies have focused on challenging and measuring diversity outcomes (age, race, gender, socio-economical positions and culture) through the use of reflection.[21] They have not yet considered disability as an outcome.

DISABILITY: PREVALENCE IN POST-SECONDARY EDUCATION AND THE DUTY TO ACCOMMODATE

We turn now to the topic of disability in order to explain the duty for service-learning providers to accommodate students with disabilities. Canadians with

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[20] J.S. Egler & D.E. Giles Jr, WHERE'S THE LEARNING IN SERVICE-LEARNING? (1999).

[21] T. Mitchell, *Traditional vs. Critical Service-Learning: Engaging the Literature to Differentiate Two Models*, Michigan Journal of Community Service Learning 1 (2008). See also A. Green, *Difficult stories: Service-learning, Race, Class, and Whiteness*, 55(2) College Composition and Communication 276 (2003); A.R. Roschelle et al., *Who Learns from Service-Learning?*, 43(5) *American Behavioral Scientist* 839 (2000).

disabilities are protected from discrimination under the 1982 *Canadian Charter of Rights and Freedoms*.[22] The operation of s.15(1) of the *Charter*, along with various provincial legislation oblige post-secondary universities and law schools to provide appropriate accommodation for students with disabilities.[23] Ontario's *Human Rights Code* defines "disability" as,

> (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,

> (b) a condition of mental impairment or a developmental disability,

> (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

> (d) a mental disorder, or

> (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; ("handicap").[24]

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[22] *Constitution Act 1982* c.11, *Canadian Charter of Rights and Freedoms* at s.15(1).
[23] *Id.*
[24] *Human Rights Code*, R.S.O 1990 Chapter H.19. Although this paper focuses on Canadian legislation and jurisprudence, similar provisions and case law exist in other jurisdictions.

Educational institutions, including law schools and the universities in which they are situated, have a legal obligation to provide "reasonable accommodation" which promotes equity for students with disabilities.[25] The exception to the duty to accommodate is generally only operable where there is "undue hardship" on the person responsible for accommodating those needs.[26]

The Courts have interpreted the definitional requirement for accommodation existent in the federal and provincial legislation. As defined by McChesney,

> Accommodation is the adjustment of a rule, practice, condition, or requirement to take into account the specific needs of an individual or group. To some degree it involves treating individuals differently. Different treatment to adjust for a disability is legally required if the accommodation is needed to ensure that the individual has the opportunity to participate fully and equally.[27]

There has been a rise in the number of students requiring accommodation in post secondary institutions over the last decade.[28] The prevalence of various disabilities in a survey of post-secondary students was documented in the

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[25] Allan McChesney, NAVIGATING LAW SCHOOL AND BEYOND: A PRACTICAL GUIDE FOR STUDENTS WHO HAVE DISABILITIES (2000).

[26] See for example, *Human Rights Code, supra* note 24 at s.17(2).

[27] McChesney, *supra* note 25 at viii.

[28] L. Clapham et al., NAVIGATING STUDENT MENTAL HEALTH AND WELLNESS: FRAMEWORK AND RECOMMENDATIONS FOR A COMPREHENSIVE STRATEGY (2012).

National College Health Assessment, the results of which are depicted in the chart below.[29]

Attention Deficit Hyperactivity Disorder (ADHD)	4.6%
Chronic Illness	5.0%
Deafness/hearing loss	2.0%
Learning disabilities	3.9%
Mobility/dexterity disabilities	1.1%
Partial sightedness/blindness	2.4%
Psychiatric condition	5.4%
Speech/language disorder	1.0%
Other disability	2.1%

Universities are attempting to provide accommodations to students in the ways they, as institutions, are obliged to do so. However, traditional accommodations, offered by secondary and post-secondary academic institutions, are often of limited applicability and utility in service learning programs. Students must have the opportunity to request accommodation and service-learning programs must be equipped to provide required accommodation, which may or may not mirror accommodations utilized in traditional academic settings.

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[29] American College Health Association, *National College Health Assessment: Canadian Reference Group Data Report* (2013), *available at* http://www.cacuss.ca/_Library/documents/NCHA-II_WEB_SPRING_2013_CANADIAN_REFERENCE_GROUP_DATA_REPORT.pdf.

DISABILITY AND SERVICE-LEARNING: THE PROBLEMS WITH ABLEISM AND THE CHARITY MODEL

The definition of disability, as utilized in legislation, is outlined above. At the forefront of the theory on which this paper is based, however, is how disability is conceptualized within the classroom or in the learning environment rather than purely by its definitional elements. We ground our work in the social model of disability, which focuses on socio-environmental aspects of disability rather than simply a bio-medical definition.[30] The focus on a medical model of disability perpetuates the marginalization of people with disabilities whereas the social model recognizes disability as a social construct. Although, it should be noted, students ability to receive accommodations within the university setting will require medical documentation to at the very least articulate the functional limitations.

As explained by the Supreme Court of Canada in *Granovsky v. Canada*, "Exclusion and marginalization are generally not created by the individual with disabilities but are created by the economic and social environment and, unfortunately, by the state itself".[31] The legal profession and law schools are not immune to the barriers that create disablement. Efforts must be made to make these accessible.

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[30] Ravi A. Malhorta, *The Duty to Accommodate Unionized Workers with Disabilities in Canada and the United States: A Counter-Hegemonic Approach,* 2 Journal of Law and Equality 92 (2003).
[31] *Granovsky v. Canada (Minister of Employment and Immigration)*, [2000] S.C.R. 703, 186 D.L.R. (4th) 1 at 30.

This paper is intended to provide practical strategies to create universally accessible service-learning programs. It is first essential, however, to outline the problematic theoretical framework within which these programs often operate. Pamela Gent is one of the few academics to start applying a critical disability lens to service-learning. Gent identifies significant ways in which students with disabilities are excluded from service-learning even when they participate as learners.[32] The exclusion is based on the pervasiveness of ableism within society that fails to comprehend the impact of language, attitudes, program design and roles of people with disability that create barriers to universal participation. Ableism refers to "… a network of beliefs, processes and practices that produces a particular kind of self and body (the corporeal standard) that is projected as the perfect, species-typical and therefore essential and fully human. Disability then, is cast as a diminished state of being human".[33] As Campbell explains, ableism is based on the belief that the disabled body is "inherently negative and should the opportunity present itself be ameliorated, cured or indeed eliminated".[34]

Ableism views disability as a negative, problematic and difficult way of being. Moreover, such starting points operate on the assumption that the disabled body

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[32] P. Gent, *Service-Learning and the Culture of Ableism*, *in* PROBLEMATIZING SERVICE-LEARNING: CRITICAL REFLECTIONS FOR DEVELOPMENT AND ACTION 223–243, (T. Stewart & N. Webster eds., 2011).

[33] F. K. Campbell, *Inciting Legal Fictions: Disability's Date with Ontology and the Ableist Body of the Law*, 10 Griffith Law Review 42 at 44 (2001).

[34] F.K. Campbell, *Refusing Able(ness): A Preliminary Conversation about Ableism*, 11(3) M/C Journal 154 (2008).

will be either cured or reformed to fit within the undefined, yet pervasive, normalized body.[35] In other words, people assume that there are few or no students with disabilities (perhaps because they were cured or reformed) and those that remain follow the script of the disability trope and require little or no attention. The disability trope dictates that the person with a disability is either the incapable childlike recipient of services or the supercrip who subscribes to the overcoming narrative and requires little accommodation or assistance.[36] In this way the learner with a disability is ignored, silenced or hidden and as a result has received little attention or examination. Students with disabilities are underrepresented in the service-learning setting, largely because of these problematic views.

Even where students with disabilities enter service-learning programs, they rarely disclose their disabilities for fear of discrimination because of the pervasiveness of the ableist narrative. As explained by Anderson & Wylie,

> Given the lore and legend of the competitive nature of law school, these students may fear that their classmates may perceive unfairness if one individual is given extra time to complete a writing assignment or the time pressured high stakes tests. Students may also choose to 'tough it out' because they realize they are entering a profession with frequent deadlines and high performance

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[35] *Id*.

[36] Brenda Jo Brueggemann & Rosemarie Garland-Thomson, *The Politics of Staring: Visual Rhetorics of Disability*, *in* DISABILITY STUDIES: ENABLING THE HUMANITIES 56–75, (Sharon L. Snyder ed., 2002).

standards, and they reason that they should use law school to prepare themselves for practice.[37]

Moreover, faculty members often lack the training to assist students, even if disability is disclosed. Owing to this lack of training, students may fear that faculty members may be aware of their need for accommodation and may feel that the student is not capable of practicing in a certain area. There is a concern that if students cannot meet the clinical program requirements without accommodation then they cannot meet the practical elements of the program. Since faculty are often integral in providing reference letters, students may fear ramifications resulting from disclosure. Despite the onus on students to disclose their disability in order to receive accommodation, these fears sometimes impede disclosure. Thus, the authors urge service-learning program faculty to make efforts to create a universally accessible program in order to accommodate all students irrespective of disclosure.

Aiming to create universally accessible spaces is important because the system of oppression and exclusion for people with disabilities occurs on many levels: individual, cultural and institutional. The ongoing oppression is unrecognized because so many fail to identify the problematic attitudes towards people with

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[37] Alexis Anderson & Norah Wylie, *Beyond the ADA: How Clinics Can Assist Law Students with 'Non-Visible' Disabilities to Bridge the Accommodations Gap between Classroom and Practice*, 15 Clinical Law Review 1 at 20 (2008) [hereinafter Anderson].

disabilities[38] and the ways in which we are socialized to accept ableism.[39] Gent identifies five ways in which ableism underrides attitudes towards people with disability, ultimately leading to oppression: that people with disabilities have a poor quality of life because of their disability such that it would be better if they did not live; that people with disabilities need to be cured or at the very least repaired; that disability equates to a continued state of child-like innocence and/or that the inspirational nature in the way that people with disabilities overcome makes them worthy to participate in society.[40] Each of these beliefs perpetuates an ongoing understanding that disability is not within us but exists as something outside ourselves. We fail to recognize our own limitations and spectrum of abilities and fail to appreciate that ability is a temporary state. Ableism is problematic and damaging to everyone regardless of ability/disability.

Gent argues that the privileging of the normative body is so pervasive that it is not even recognized.[41] Evidence of this ignorance is found in the literature that identifies disability as a framework for discussion but does so in a troublesome way. In "Service-Learning is for Everybody", for example, author Robert Shumer notes that the participation of students with disabilities as learners in programs is

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[38] Gent, *supra* note 32.
[39] Campbell, *supra* note 33.
[40] Gent, *supra* note 32.
[41] *Id.*

significantly less than the participation of people with disabilities as recipients.[42]

He provides no real analysis as to why an imbalance exists, other than to suggest

that some programs found it difficult to adapt the placement to meet the needs of

the disabled student. Neglecting to unpack the lack of participation of students

with disabilities risks validating Dewey's "mis-education" concerns explained

above. Students and faculty must be aware of the self-selection that takes place

even before the formal application process for service-learning programs begins.

Only once an appreciation of these issues is had, can the conversation of

participation be useful. Later in this paper, consideration will be given to the self-

selection that students engage in when deciding to participate or not to

participate in a service-learning program. In addition to this issue, the imbalance

in the number of recipients with disabilities vis-a-vis the dearth of students with

disabilities reinforces ableist thought in design and implementation of service-

learning programs.

We are not suggesting that faculty or institutions intentionally prevent

participation. It is not obvious to those who participate in or design service-

learning programs that ableism exists. Such naïveté is possible in part because it

happens as an unplanned consequence of so many other things – how disability

is displayed, defined, described and ultimately how it is a problem to be fixed

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[42] Robert Shumer, *Service-Learning is for Everyone*, 114 New Directions for Higher Education 27 (2011).

rather than another reality or to be celebrated. Thus, disability is rarely considered when crafting or executing service-learning programs. The pervasive ableism leads to programs that are inaccessible to students with disabilities, sometimes despite the simplest of amendments that would render the program accessible.

While ubiquitous ableism is problematic, the ways in which service-learning replicates the charity model of disability is even more concerning. As a way of conceptualizing disability, the charity model defines disability as a deficit in need of the generosity of the community to either cure or transform the disabled body through the use of technology or assistive devices or other forms of "aid". It fails to recognize the complex, enriching and valuable lives of people with disabilities regardless of cures. A more thorough examination of the charity model, its impact and how it is replicated in service-learning adds another layer to Gent's theory of ableism. As long as service-learning replicates the charity model, people with disabilities should be cautious in participating in such programs. That caution should apply to people who do not identify as disabled for different and overlapping reasons.

Disability has, until quite recently through the emergence of the social model of disability, been framed by those without a disability in a manner that focused solely on the individual as problematic. The impaired body is a flawed body and

one that is in search of a cure.[43] There is no distinction between impairment and disability. The charity model of disability continues to locate the impairment within the individual where,

> (t)he ideology of cure and the mandate for normalcy intertwine, crowding out any possible narrative of accommodating rather than eliminating disability.[44]

The charity model insists on a particular narrative of exclusion as the impaired body fails to conform to a society that values the commodity of labour.[45] The charity model allows society to find a place for the disabled, but not as full participants in society. Instead, the disabled by virtue of a tragedy, whether by birth or accident, are otherwise excluded in the normal world order.

The charity model of disability has its roots within the medical model of disability. The prevailing characteristic of both is that the impaired body is a flawed body in search of a cure. The lack of participation in society is a fault of the disabled person whose body is a sight of the failed normal. A mythology is created of the suffering and tragic "half person"[46] who has no life (or not a life worth living) and who cannot easily participate in society. The lack of participation rests solely on the disabled individual whose body does not

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[43] D. Hevey, THE CREATURES TIME FORGOT: PHOTOGRAPHY AND DISABILITY IMAGERY (1992).

[44] R. Garland-Thomson, *Feminist Disability Studies: A Review Essay*, 30(2) Signs 1557 (2005).

[45] Hevey, *supra* note 43.

[46] M. Russell, BEYOND RAMPS: DISABILITY AT THE END OF THE SOCIAL CONTRACT 85 (1998).

comply. These "occasions of ideology"[47] homogenize the disabled body as one, regardless of the scope, nature or impact of the disability.

The issue of identity under the charity model of disability is one of perception. The disabled person is perceived as inactive and passive, the recipient of whatever benevolent services are bestowed upon them. Disability is continually imaged, both verbally and visually, as pathetic and in need of being cured or at least transformed. Within that attitude is a view that there is nothing of value within the disabled body, that the experience of the disabled body is inherently negative rather than different, and that frustration ensues because the disabled body will simply not cooperate and be normal. Within that inactive and passive body also lies a helpless one, which is another trope, embedded within the charity model – the innocent child. There is an incorrect assumption made that assumes a connection between requiring assistance (especially with the most intimate tasks) and a person's maturity or adult status.[48] To be clear, we are not suggesting that services or technological/assistive devices are not useful for people with certain disabilities. These, however, should not be viewed as the solution or cure of disability or that the need and use of assistance renders the person less capable.

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[47] B.A. Haller, REPRESENTING DISABILITY IN AN ABLEIST WORLD: ESSAYS ON MASS MEDIA 137 (2010).
[48] For a historical analysis of the charity model and its origins see H. Stiker, *A History of Disability* (1999).

Inherent in the charity model is the existence of distinct roles for those who are determined disabled and those who are not. This is problematic because the distinction between these two conceptions is not easy to delineate; the determination of who is, or is not, disabled is a false dichotomy that fails to identify the spectrum of the body and the transitory nature of some disabilities. The social model of disability, while not without its own flaws, distinguishes between what is socially created or constructed (disability) and impairment which "is simply a bodily state, characterized by the absence or altered physiology, which defines the physicality of certain people".[49] The distinction between abled and disabled does not acknowledge that all bodies are abled as, even individuals with a disability, are living and breathing beings. The distinction is really about capacity – something to which everyone can relate.[50] The focus on a cure or transformative technology "reduces the tolerance for variable bodies".[51]

The charity model and the medical model upon which it is predicated, set up an ongoing struggle for people with disabilities to fight against the reality of their

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[49] Brendan Gleeson, GEOGRAPHIES OF DISABILITY 52 (1999).

[50] C. Champman, *Disablism or Ableism* (2011), *available at* http://comradshaw.wordpress.com/2011/09/12/disablism-or-ableism-a-piece-by-chris-champman/.

[51] R. Garland-Thomson, *Integrating Disability; Transforming Feminist Theory*, *in* FEMINIST DISABILITY STUDIES 18 (Kim Q. Hall ed., 2011).

own bodies.[52] In addition, the charity model creates a relationship of dependency that is one-sided and unrealistic. To assume that, with or without disability, there are no reciprocal independent/dependent relationships is misleading and untrue. It fails to recognize and even devalues the assistance we provide each other on an ongoing basis in order to meet the demands of living irrespective of disability.[53]

Service-learning often perpetuates what is problematic with the charity model.[54] At the first level, service-learning has individuals with high cultural capital volunteer for the benefit of people with low cultural capital. The concept of cultural capital, first introduced by Pierre Bourdieu, is a useful framework to discuss the inequality within the service-learning setting.[55] Butin offers an important critique of service-learning in which he questions the relationship between the individual students with "high cultural capital" who in the context of an academic setting undertake activities "for the sake of individuals with low social capital".[56] In service-learning, individuals with high cultural capital volunteer for the sake and benefit of people with disabilities, who are deemed to

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[52] R. Drake, Charities, *Authority and Disabled People: A Qualitative Study*, 11(1) Disability and Society 5 (1996).

[53] M. MacGregor, *Citizenship in Name Only: Constructing Meaningful Citizenship Through a Recalibration of the Values Attached to Waged Labour*, 32(3) Disabilities Studies Quarterly (2012).

[54] Butin, *supra* note 15.

[55] Pierre Bourdieu, *The Forms of Capital*, *in* HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION 241 (J. Richardson ed., 1986).

[56] Butin, *supra* note 15 at 6.

be of low social capital. Both are about doing good *for* others, rather than *with* others, and the goal is not social change but rather such individual acts of kindness are aimed to bring about individual satisfaction for both the learner and the recipient.[57] Framing service-learning in this way is problematic as it marginalizes students and recipients with disabilities in a way that perpetuates ableism. How do students with disabilities fit into a model that is predicated on the notion of the abled helping the disabled? This narrative must shift if universal accessibility is sought.

CLINICAL PROGRAMS AND DISABILITY: PROGRAM SELECTION, IMPLEMENTATION AND ASSESSMENT

The preceding sections have articulated the theory behind experiential education, narrowing in on service-learning, and have shed light on some significant barriers faced by students with disabilities. The pervasive ableism promulgated by the charity model of disability has been problematized. With all this in mind, we now begin the search for a solution. The remainder of the paper will turn to prescriptions about what can be done to ameliorate service-learning programs and create a more universally accessible learning environment for all students.

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[57] Drake, *supra* note 52.

There is no easy solution to the complex problems we have described. However, shifting the lens of service-learning programs to one of universal design begins this process. Universal design refers to a broad spectrum of ideas meant to create spaces and programs that are inherently accessible for individuals with and without disabilities. It recognizes both the ubiquity and range of disability in the population and respects the range of comfort with disclosure of disability existent in the community. Universal design must be applied to program selection, program implementation and program assessment. Each of these will now be discussed.

Program Selection

The theory of universal design requires that disability be considered, by both students and faculty, from the inception of a service-learning program. Even before students are admitted to programs, disability considerations are integral. Indeed, one must contemplate that some students are self-selecting out of service-learning programs because they have a perception, real or imagined, that their disability will not be accommodated. At the program selection stage, there are various issues. Is the selection process itself accessible? Are program directors clear on their expectations of students such that students can make an informed decision about what can work for them? Do particular programs have

requirements that bar certain students from participating? This section will consider these issues.

(a) Inform students about accessibility before the admission process begins

Anderson and Wylie suggest that clinical faculty should disseminate information about access to accommodation.[58] We agree with this suggestion and expand it to suggest that providing such information once students are accepted to a program is too late. Clinical faculty must find a venue for such information sharing before program selection takes place. As noted above, we are concerned about the number of students who erroneously self-select out of service-learning programs because of a dearth of information regarding potential accommodations. However, students should have a clear understanding of what programs entail so that they may be able to make the right choices for themselves. Students vary in their willingness to disclose the existence and extent of their disabilities, so a fulsome approach to information sharing about program expectations should be taken from the outset. It must be recognized that some students may also be unaware of a disability until well into a service-learning program or may develop a new disability that was not existent upon program selection.

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[58] Anderson, *supra* note 37 at 43.

We must be mindful that not all programs are able to provide settings that are accessible to all students. Funding and physical access limitations make it unrealistic to maintain such an expectation. As McChesney found in his study,

> One survey participant stated that he had wanted to obtain a position in his law school's community legal aid clinic. He was asked to withdraw his application, however, because of his visual disability. Most of the files and resources at the law clinic were not in a format accessible to him. A clinic participant at another law school, who has a learning disability, stated that he faced barriers in contributing to the school's law clinic, where accommodations or adjustments were not offered for his disability.[59]

If indeed effort is made to accommodate students with disabilities in service-learning programs, this information must be shared very early on, before students can discount themselves as not able to participate. Integral to this initial information is sharing with students the essential role of service-learning programs in assisting students to bridge the gap between academic and practice settings.

(b) Consider the varying levels of disclosure

A significant encumbrance on the ability for program faculty to accurately characterize the accessibility of their program for particular students is the fact that a number of students elect not to disclose the existence or nature of a

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[59] McChesney, *supra* note 25 at 51.

disability. Why do some students choose not to disclose a disability? This is a difficult question to answer, as the reasons are deep and diverse. A consequence of the charity model, and how it describes and defines disability, is the inevitable reluctance to be identified as disabled. The decision of whether to be identified in this way or not bears significantly on student selection in clinical programs and thus bears consideration here. Some students might choose not to be labeled disabled, if at all possible, to avoid the negative associations of either being a body in search of a cure, a helpless person or a "supercrip" who can overcome any obstacle. None of those descriptors sound appealing and cannot possibly apply in some kind of uniform fashion.

If a student chooses to "hide" or "pass" as not disabled, which is distinctively different from choosing not to disclose, it is more difficult to challenge the ableist narrative and assumptions that are guiding the learning within the classroom and the underlying reasons the student has chosen to hide. There is a troublesome dialogue around privacy and disclosure. We do not advocate for a process in which every student must disclose their disability, but we should start examining the role privacy plays in how and why students choose to disclose their disability or not. There is a lot of weight given to the student's right to privacy and we question whether there is an underlying agenda that is cloaked in the language of privacy.

The main reason to not disclose, presumably but not exclusively, is to avoid the stigmas and assumptions embedded and hidden within disability. Students may fear, for example, that disclosure of a disability will lead faculty members to question their ability to practice in a law firm setting, hence impacting much coveted reference letters and grades. What needs to be acknowledged and addressed is the underlying reasons *why* the student doesn't want to disclose a disability rather than exclusively the student's *right* not to disclose. When a significant reason to not disclose is to avoid stigma and negative assumptions then we do a disservice when we don't examine further how and why those assumptions exist. A subtle, but powerful, message is sent when students' fears about the ramifications of disclosure are met with promises of privacy and anonymity rather than fulsome and widespread effort to address the underlying fears.

The other side of non-disclosure is the right to choose from the number of personal identities that seem important to each individual. Identifying as a person with a disability may not seem important within the context. Multiple identifiers such as sister/mother/friend/ally/student exist within all of us and at different times we may want to choose which identifier is the most appropriate, rather than having it chosen for us.

Students with disabilities often ask how, when and if they should disclose their disability to potential employers. Worried about a narrow job market post graduation there is some evidence that students with disabilities (as well as mature and/or racialized students) are more likely to enter the third year of law school without a secured position[60], students with disabilities, who have a choice as to whether to disclose, are rightly concerned about disclosure.[61] These concerns translate into a student's concern about being admitted to a program within a clinical setting. Clinical programs have the potential to assist students in making the decision to disclose or not to disclose in an employment environment, by simulating these environments in a less pressured, more supportive, setting. The provision of a summary that describes the efforts made to provide an accessible program, along with the follow through by program faculty during the program selection process, help to make students comfortable with disclosure and/or with throwing their hat in the ring for a position in the program.

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[60] Law Society of Upper Canada, P*athways to the Profession: A Roadmap for the Reform of Lawyering Licensing in Ontario* (2012), *available at* http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147489848.

[61] The process of articling creates a mentor relationship between the graduated law student and a practicing member of the bar. The process of finding an articling position traditionally takes place during the summer between second and third year with at least some portion of students starting their third year with a secured position that will start shortly after graduation and last for approximately one year. Normally these positions are paid but, most importantly, being articled for a year is a requirement to being licensed to practice law.

While students cannot be forced to disclose, it is helpful for them to understand the beneficial impact of disclosure. A participant in Pardo and Tomlinson's study explained,

> Students must be encouraged to disclose at the earliest possible time in order to facilitate the restructuring of the clinical setting…Faculty and staff need to be better educated around the needs of students with disabilities and academic accommodations coupled with a clear understanding of the essential competencies and skills to be mastered.[62]

Without disclosure, it is difficult to ensure that students are receiving the optimal accommodations right from the start.

(c) Create an accessible admission process

Even after a general statement of accessibility is included in material describing the service-learning program, faculty must ensure that whatever selection process is utilized is accessible. The authors both utilize interviews as the main selection criterion.

Interviews allow faculty the opportunity to acquaint themselves with students in a way that written applications and transcripts cannot. They also allow for a more fulsome discussion around possible accommodations that may be required. At the same time, though, interviews may themselves be inaccessible to students with both visible and non-visible disabilities. Depending on the location and

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[62] Patricia Pardo & Debra Tomlinson, IMPLEMENTING ACADEMIC ACCOMMODATION IN FIELD/PRACTICUM SETTINGS 40 (2000) [hereinafter Pardo].

format of interviews, students with disabilities may be either invited or barred from participating. We suggest sending an invitation for students to participate in an interview, which includes a question about whether any accommodations are required. A sample of such an invitation can be found in Appendix A. The effect of such an inquiry is to both make students feel welcomed to disclose and to practically develop a strategy for the interview. Is a telephone interview more appropriate? Should the room be set up in a certain way to accommodate the student? An accessible interview is the first step to an accessible program. These issues, however, are often overlooked.

Program implementation

Once students have selected a clinical program and have been admitted, the work begins to follow through on the promises made to create and ensure an inclusive and accessible setting. Clinical programs have the potential to be of benefit to students with disabilities. The individualized attention given to clinical students and the smaller class sizes of clinical seminars help ensure that relationships are established with both faculty and peers and that accessibility can be assured.

The sad reality, however, as stated in the previous section, is that students sometimes do not reveal their disabilities. Even more unfortunate is the frequent

occurrence experienced by the authors, where students reveal their disabilities at the end of a program, once a high level of trust has been built with program faculty. Research has been conducted on the intimate relationship that students share with clinical faculty.[63] The intimacy between students and faculty in clinical programs is different from that of other law school classes. Students spend a considerable amount of time with faculty in service-learning programs and share personal and self-growth experiences with them. These relationships present ideal ground to assist all students in self-discovery and advocacy.

Because it takes time to build such relationships, program directors unfortunately often learn about a disability only when a crisis occurs or once it is too late to provide the appropriate accommodations. This section will discuss the implementation of service-learning clinical programs through universal design, along with the importance and risk of partnerships within such programs.

(a) Ensure accessibility in the daily operation of the service-learning program

It seems obvious that student clinical settings should be accessible to the students for whom the clinics were created to teach. Despite the blatancy of this statement, the goal of accessible workspaces is not often being maintained.

Even within environments in which the faculty members are especially sensitive to the importance of accommodating disability on a universal design basis,

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[63] Kathleen A. Sullivan, *Self-Disclosure, Separation, and Students: Intimacy in the Clinical Relationship*, 27 Indiana Law Review 115 (1993).

barriers remain. This section will outline one particular example of the ways in which clinical settings can impede the active participation of students with disabilities. It will also explain the principle of universal design to explain how one may approach the creation of an accessible program.

Recently the law school, in which the clinics the authors direct are situated, underwent a major renovation. The result was a brand new clinical space that has enough space for students to work, replete with interview rooms and group meeting spaces. A separate entrance was created to ensure clients were spared wandering through the law school in search of the free legal clinic that would both single out their poverty as well as which side of the law they found themselves on. For all its great design, the reception desk, which is where the volunteer students provide intake services, is completely inaccessible to any student with a mobility disability.

University settings are complex, and at times unwieldy, organizations that take a long time to respond – all too often, in a reactive rather than proactive manner. Over the next two years the reception desk became a source of discussion and frustration. The desk itself has a high counter that runs parallel to a set of windows with a seating area behind and in between the counter and the windows. A further building design created a foot high and foot wide ledge along the base of the window. Consequently the space between the seating area

and the window ledge is barely enough to fit a chair. At any given time there are four students that volunteer to answer the incoming calls, determine eligibility for those seeking services and provide comprehensive referrals for those the clinic cannot assist. Sitting in a long row made exiting the area difficult and required students to walk along the window ledge while the other students squeezed their chairs in as close as possible. In addition, the volunteer students are supervised by a senior credit student to ensure that they are providing the correct information. The reception desk area design made it impossible for the supervisor to work alongside the volunteers to ensure that they were completing the information in the database correctly and ultimately they ended up supervising from the seating area. The overall effect was poor supervision, a physical environment that is impossible to navigate for students with disabilities as well as inaccessible to both those students and potential clients with disabilities.

What are we teaching, and more importantly what is being absorbed, about accommodation of disability in such a setting? Ultimately these lessons are not the ideal ones to convey. Despite repeated complaints, the University remained unmoved, likely because this issue was deemed inconsequential – there were no students with disabilities volunteering or in the credit program. A hurried and less than satisfactory response was likely to come only when the student

(volunteer or otherwise) with a mobility disability could be presented – everyone likes a poster child! However, this approach negates the deterrence that the space may create for students who may have wanted to volunteer for the clinic or to accept a credit position. As was supposed in the previous section, they simply may not apply for the program because they see that it would not work for them.[64]

Recently the reception/volunteer space was reconfigured and the process for the provision of initial intake services was reviewed. The result is a volunteer space that is accessible, better maintains client confidentiality and projects a professional image of the clinic to those entering the clinic. The budgetary constraints remained the same, university permission to redesign the space has still not been granted but a solution was arrived at.

The point in detailing this situation is to highlight that the impact of ableism has prevented researchers from a close examination of the intersection of disability in service-learning programs. Flowing from that is the necessity for critical investigation in how the tensions found in waged labour environments for people with disabilities are recreated in what is intended to be educational

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[64] Unfortunately, the *Accessibility of Ontarians with Disabilities Act*, and more specifically the Design of Public Spaces Standard, only applies to newly constructed or renovated spaces begun after January 1, 2016 for institutions such as York University. (AODA Integrated Accessibility Standards, Ont. Regulations 191/11 and personal communication with Monica Ackermann, Accessibility Consultant on September 2, 2013).

programs. The situation described a physical barrier for students with mobility disabilities. Such barriers can be seen, even if only once it is too late to change readily. What about those barriers that cannot be seen? When and how do we address such impediments to education?

The answer lies in the theory of universal design. Creative teaching strategies must be used to ensure that each student in a service-learning environment receives an accessible education. Clinics should offer a variety of work spaces from which students can select. A combination of quiet and communal work spaces would allow students to experiment with what works best for them. This educative process will help both during and after the service-learning program.

Buhai suggests other accommodations that can be of assistance.[65] She suggests, for instance, the option of giving students extra time or smaller, less time-sensitive projects.[66] She also suggests client questionnaires in lieu of client interviews where such interviews do not meet the accommodation needs of students.[67] However, such accommodations do not always service the needs of clients, a limitation that Buhai acknowledges.[68] Client realities cannot be ignored. Deadlines are real and cannot be set aside in favour of a different pedagogical aim. Clinic faculty must consider the myriad of people affected both positively

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[65] Buhai, *supra* note 4.

[66] *Id.*

[67] *Id.*

[68] *Id.*

and negatively by any accommodation plan.

Using student teams can be an effective way of supporting students through universal design. The strengths of one student can often support the accommodation needs of another and vice versa. Supervision here is critical, however, to ensure that team dynamics are operating in an effective way. No student should have to shoulder burden because of another unless the reciprocal is true as well.

(b) Work with community partners to ensure accessibility

The examination of partnerships is important for the ongoing discussion of disability within service-learning programs. Many service-learning programs rely on partners outside of the law school to provide a rich learning experience for students. The addition of external agencies and individuals, while useful and enriching in many ways, imputes an added layer of complexity to the discussion of disability. As has been stated throughout the paper, ableism pervades the social and professional world in which these programs reside. There are essential questions to be asked as a way of observing and challenging how ableism is created and maintained. These questions are not separate nor can they be separated from the academic component of service-learning. Organizations that perpetuate abelism are fundamentally flawed, reinforce prevalent views on disability that neither challenge students nor improve civic responsibility and

thus go to the very core of "mis-education" against which Dewey warned. Partners must be carefully selected and monitored.

In examining service-learning partners, we should consider the role that people with disabilities play in the organization that is the recipient of service. This is especially important if the partner organization's goals are in any way disability related. Do people with disabilities work at the organization in paid positions, and at what level? If an organization that purports to assist people with disabilities does not have people with disabilities in decision-making and management positions this reinforces the hegemony of who is capable and who has knowledge and decision-making abilities. People with disabilities have been denied the ability to articulate needs related to service delivery on a mistaken belief that they are incapable of understanding and expressing their own or collective needs. If students are brought into these work environments, such flawed messages should not be conveyed.

However, a related concern arises when placements are chosen specifically to accommodate students with disabilities. Reeser notes that there are a limited number of architecturally accessible partner agencies and a shortage of disability-awareness training for agency staff, resulting in reduced placement

options for students with disabilities.[69] In order to meet accessibility needs, then, students are often placed with disability-serving agencies even when this is not the student's area of choice or interest.[70] Once again, the message is not one of inclusivity and accessibility.

Program Assessment

The third area that this paper will address concerns the assessment of service-learning experiential programs. Assessment is yet another area in which students with disabilities can stand at a disadvantage in clinical programs. This need not be the case. Indeed, for some students, clinical programs are ideally suited to assess their skills in ways that traditional law school classes cannot. For others, however, this is not the case. This section will consider the types of accommodations that may be useful in grading service learning programs and will outline the issue with typical accommodations allowable through typical academic channels.

As Buhai noted long ago, the skills required in a clinical setting are different from those required in a pure academic setting.[71] If indeed the skills required are different, the assessment mechanisms must be equally different. Often,

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[69] L.C. Reeser, *Students with Disabilities in Practicum: What is Reasonable Accommodation,* 28 Journal of Social Work Education 98 (1992).

[70] *Id.*

[71] Buhai, *supra* note 4.

suggestions for accommodation for evaluations that are available in the typical academic class are of little utility in a clinical setting (i.e. extra time for test taking, preferential seating, note-taking scribes, audio recordings of lectures). In Pardo and Tomlinson's study, 50% of respondents identified difficulties implementing academic accommodations in a field or practicum setting.[72]

Clinical faculty must recall their essential dual role: they must assess students fairly and they must assist students to prepare for a legal career that will impact on or be affected by their disabilities. Faculty should discuss strategies with each of their students, irrespective of disability. Particularly for students with disclosed disabilities, extra care should be taken in addressing particular challenges faced by the students and how these may be remedied in practice. The clinical placement is an opportunity for students to set their professional paths in motion. How is one to grade such development? What risks will students avoid if they know they are being graded? What opportunities for growth will be lost?

Anderson and Wylie, in their case study research of non-visible disabilities in legal clinics, suggest the importance of determining essential and non-essential components of a clinic.[73] They state, "If a clinic narrowly defines its essential functions and continually revises that list to reflect current experiences of all its

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[72] Pardo, *supra* note 62 at 41.
[73] Anderson, *supra* note 37.

students, then students...may well be able to be accommodated".[74] Essential

functions should be assessed and insisted upon, while non-essential functions

may be better waived or altered in certain circumstances. As explained by Helms

and Helms, "Students with disabilities must be able to perform the essential

tasks of his/her profession in a competent manner with reasonable

accommodation in order to be eligible for a field placement".[75] The key is in

determining what the specific essential tasks are for the individual service-

learning programs.

Patricia Pardo and Debra Tomlinson also offer suggestions for applying

accommodation plans in clinical settings.[76] Specifically, the report suggests the

need for a realistic appraisal of students' learning needs before the

commencement of the practicum; the need to review evaluation procedures with

the student before the clinical placement; the need for discussion and review of

accommodation requests before the placement; the need for clarity regarding

disclosure of the student's disability amongst administration, clinical faculty, and

placement staff; the need for the development of institutional protocols to review

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[74] *Id.* at 40.

[75] L.B Helms & C. Helms, *Medical Education and Disability Discrimination: The Law and Future Implications*, 69 Academic Medicine 535 (1994).

[76] Pardo, *supra* note 62.

student requests for clinical accommodations.[77] These requirements are certainly

necessary in legal service-learning programs as well.

Detailed mid-term evaluations can be a vital source for students in helping them

develop as lawyers and as individuals. Such mid-term evaluations open the door

to initiate discussions of possible accommodations where a student may be

struggling to meet expectations.

CONCLUSION

This paper has begun to combine theoretical considerations of disability with

practical strategies for service-learning programs that take into account students

with disabilities. The suggestions offered herein do not negate and indeed

encourage the need for clinical faculty to attend training programs, which focus

on teaching students with disabilities. In addition, faculty should share their own

experiences with accommodations that proved successful or unsuccessful in an

attempt to increase the body of knowledge in the area. Our hope is that, by

increasing dialogue in this area, students with disabilities will feel more

comfortable embarking on service-learning programs that can help them set a

career path in motion.

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[77] *Id.* at 52-53.

APPENDIX A - Sample Interview Invitation

Hello,

Thank-you for applying to the CLASP Clinical Intensive program.

Below I have outlined the interview sign up process and what to expect at the interview. Interviews will take place on   at various times throughout the day.

Sign Up Process

When:

How: IN PERSON: (FROM 9AM TO 4PM)

Come to the CLASP offices (you can send someone on your behalf)

OR

BY PHONE:(FROM 9AM TO 4PM)

The Interview - What to Expect

Here at CLASP we endeavour to meet with every student who expresses interest in the program.

Each applicant will meet with the CLASP team (Clinic Director, Review Counsel, Community Outreach Counsellor and a Student Board Member. During the interview we will ask you a series of questions about your interest in the program and the work we do at CLASP. You will have an opportunity to ask questions about the program, the work and academic program. The interviews are approximately 15 minutes in length. We will have copies of your statement of interest and resume.

If you require any accommodations for the interviews please do not hesitate to contact me directly and together we will ensure an accessible interview process. I can best be reached by email at

Thank you very much for your interest in the program and I look forward to meeting with you next week.

ENHANCING EMOTIONAL COMPETENCIES WITH LAW STUDENTS

Colin James and Felicity Wardhaugh*

The University of Newcastle and the Australian National University, Australia

This paper follows a preliminary report titled 'A Client-Focused Practice: Developing and Testing Emotional Competency in Clinical Legal Interviews'. It provides the final results of research with students at the University of Newcastle Australia that was designed to test ways to enhance emotional competencies in clinical placements.

A   INTRODUCTION

In our earlier paper we discussed why it is becoming increasingly important for law students to be introduced to the concept of EI and provided with the opportunity to develop and enhance their EI abilities.[1] As stated there, the Teaching and Learning Outcomes (especially TLO 5) in legal education recognise that employers expect law graduates to have well-developed self-awareness and the kind of good communication skills that require emotional capacities.[2] While this study involves students on placement in a community legal centre practice, the need for law students to enhance their emotional capacities is just as significant for commercial legal practice. In fact,

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[1] Felicity Wardhaugh and Colin James, 'A Client-Focused Practice: Developing and Testing Emotional Competency in Clinical Legal Interviews' (2014) 20 Volume II *International Journal of Clinical Legal Education*, 633-645.

[2] Anna Huggins, Sally Klift and Rachael Field, 'Implementing the Self-Management Threshold Learning Outcome for Law: Some intentional design Strategies from the Current Curriculum Toolbox' (2011) 21(2) *Legal Education Review* 183.

commercial practice often involves billing clients based on time spent which potentially adds another level of stress for the lawyer requiring well-developed emotional competence.

The concept of emotional intelligence (EI) is relatively recent although the relevance of human emotion has been reflected upon for centuries.[3] In the early 20th century, psychologists developed 'IQ' tests to measure intelligence.[4] In the 1990s the possibility of a social intelligence or EI caught the imagination of the public.[5] Unsubstantiated claims about the benefits of EI and controversy over whether it should be considered an 'ability' or a 'trait' led to distrust about its validity or measurability, however some well- respected tests emerged.[6] 'Ability' EI is usually measured through problem-solving tests, which are similar to those used in intelligence tests.[7] 'Trait' EI is typically regarded as aspects of character, and includes motivation and social competency, and is generally measured using self-report tests.[8]

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[3] Aristotle discussed the role of emotions in his work on moral virtue in his lectures published as '*Nicomachean Ethics'*

[4] Possibly the first IQ test developed was by Binet-Simon to help assess which school children may need assistance. Alfred Binet and Theodore Simon, *The Development of Intelligence in Children* (Williams & Wilkins, 1916)

[5] Daniel Goleman, *Emotional Intelligence: Why it can matter more than IQ* (Bantam Books, 1995)

[6] For a discussion of this development see Elizabeth J Austin and Donald H. Saklofske, 'Introduction to the special issue on emotional intelligence' 65 (2014) *Journal of Personality and Individual Differences* 1.

[7] J.D. Mayer, D. Caruso and P. Salovey, 'Emotional Intelligence Meets Traditional Standards for an Intelligence' (1999) 27(4) *Intelligence* 267;M. Brackett and P. Salovey, 'Measuring emotional intelligence with the Mayer-Salovey-Caruso Emotional Intelligence Test (MSCEIT)' (2006) 18 (Suppl.) *Psichothema* 34.

[8] R. Bar-On, 'The Bar-On model of emotional-social intelligence (ESI)' (2006) 18 suplement *Psicothema* 13; R. Bar-On, 'The Emotional Quotient Inventory (EQ-i): A test of emotional intelligence' (1997) (Toronto,Multi-Health Systems, Inc.).

The ability model of EI postulates people have four broad 'domains', the ability to perceive emotions, to use emotion to facilitate thinking, to understand emotions and to manage emotions. These abilities are broadly conceived and interrelated so that our ability to perceive emotions includes our perception of other people's emotions as well as our own. Understanding emotions includes appreciating likely causes behind certain emotions. The fourth ability, the management of emotions, includes our ability to regulate our emotional state, as well as to interact effectively with other people's emotions and feelings.[9]

In seeking to improve students' EI, the authors favour the ability construct of EI over the trait model. A belief that students can improve their EI is consistent with findings on neuroplasticity and our capacity to learn from experience, as explained by the theory of 'growth mindset'.[10]

The research into EI challenges the historical cognitive dominance, whereby lawyers privilege "thinking" over "feeling" in legal education and practice. The conventional, dualistic view that thinking and feeling act as separate functions is now complicated by the probable inseparability of cognitive and affective interactions in how we process

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[9] Mayer J.D., Salovey, P and Caruso, D.R 'Emotional Intelligence: Theory, Findings and implications' (2004) 15 *Journal of Psychological Inquiry* 197 See also Davies, M., L. Stankov, and R.D. Roberts. (1998). 'Emotional Intelligence: In Search of an Elusive Construct.' 75(4) *Journal of Personality and Social Psychology*, 989

[10] Kathrin Koch et al, 'Extensive learning is associated with gray matter changes in the right hippocampus' (2016) 125 NeuroImage 627; Carol S. Dweck, *Mindset: The new psychology of success* (Ballantine, 2007).

information and make decisions.[11] Research into what makes an effective lawyer now supports EI as a necessary skill for lawyers,[12] and EI has become a professional characteristic that is leveraged in promises of a caring approach with clients:

> Each of our lawyers and conveyancers are as personable and approachable as we are knowledgeable and serviceable. We have the emotional intelligence to understand almost any legal situation and, just as importantly, you, our client.[13]

Despite the apparent openness to EI in the legal profession, legal education has been slower to respond. Changes have begun however, and initiatives are emerging in legal education to help law students improve their EI ability.[14] Some clinical law schools are incorporating aspects of EI into the curriculum, for example when students learn about 'active listening' in dispute resolution.[15] Similarly, students learning the practice of mediation are encouraged to use insight to understand the situation of the other side, and to consider if developing a more empathic approach might help resolve the

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[11] Antonio Damasio, *Descartes' Error: Emotion, Reason, and the Human Brain*, (Penguin, 2nd ed, 2005) and Immordino-Yang M, Damasio A. 'We feel, therefore we learn: the relevance of affective and social neuroscience to education' (2007) 1 *Mind Brain Education* 3.

[12] Marjorie M. Shultz & Sheldon Zedeck, 'Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions, (2011) 36 *Law & Society Inquiry* 620. Susan Daicoff, 'Expanding the Lawyers' toolkit of skills and competencies, synthesizing Emotional Intelligence, Conflict Resolution and Comprehensive Law" (2015*) Santa Clara Review*, 795.

[13] Di Rosa Lawyers < http://dirosalawyers.com.au/about/meet-the-team >21 November 2015

[14] Nathalie Martin, 'Think like a (Mindful) Lawyer: Incorporating Mindfulness, Professional Identity, and Emotional Intelligence into the First Year Law Curriculum' (2014) 36 (3) *University of Arkansas at Little Rock Law Review* 413. This follows earlier work such as Marjorie Silver, Emotional Intelligence and Law (1999) 5(4) *Journal of Psychology, Public Policy and Law* 1173, and John Montgomery (2008) 'Incorporating Emotional Intelligence into Legal Education, strengthening the professionalism of law students 39 *University of Toledo Law Review* 322.

[15] Nadja Alexander and Jill Howieson, *Negotiation Strategy Style Skills* (2nd Ed., 2010) LexisNexis Butterworths (Chapter 8). Roger Fisher and Daniel Shapiro, Beyond Reason, *Using Emotions as You Negotiate* (Penguin, 2006)

dispute.[16] . In addition, some law schools incorporate discussions of EI as an aspect of professional resilience training, in response to research showing law students typically experience a deterioration in their mental health as they progress through law school.[17] Consistently, other research shows the ability to express and interpret personal emotions often corresponds with improved wellbeing.[18]

Despite the significant increase in empirical and theoretical publications applying, advocating and critiquing the utility and validity of EI, including its relevance in legal practice, the authors could find no research testing whether training in emotional competency could improve the way a law student performed on placement in a legal clinic.

B THE RESEARCH HYPOTHESIS

The presumption for the hypothesis was that a practical training program enabling law students to develop their EI competencies, going further than merely helping them to understand theories of EI, would help them in their practice as lawyers.

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[16] Robert A Barusch Bush, 'Mediation Skills and Client-Centered Lawyering: A New View of the Partnership (2013) *Clinical Law Review* 19, 429. See also Susan L. Brooks, 'Using a Communication Perspective to Teach Relational Lawyering' (2015) 5 Nevada Law Journal 477, where Brook's approach to teaching communication skills to lawyers includes aspects of EI.

[17] Rachael M. Field and James Duffy, 'Law student psychological distress, ADR and sweet-minded, sweet-eyed hope' (2012) 23(3) *Australasian Dispute Resolution Journal* 195.

[18] Martins, A., Ramalho, N. and Morin, E. 'A comprehensive meta-analysis of the relationship between emotional intelligence and health' (2010) 49 *Personality and Individual Differences*, 49; Brian S. Clarke, 'Coming Out in the Classroom: Law Professors, Law Students and Depression' (2015) 64(3) *Journal of Legal Education* 403.

Consequently, the hypothesis was that students who participate in an EI training module will perform better, as measured by their respective clients, by their supervisors and by self-assessment, in a first legal interview, compared with a control group of students who do not participate in the training. More information about preparation for the project is detailed in the earlier paper.[19] Briefly, the authors devised a training program to improve students' emotional competency and attempted to test the effectiveness of the program using students' first interview of live clients attending a legal clinic, by analyzing responses and feedback from the clients.

The clinical setting

The research took place at a community legal centre (XXXXX), a general legal practice funded by the XXXXX, as part of the XXXXX Law School. The centre provides free legal assistance to members of the community in a 'drop in' legal advice clinic and is also a vehicle for teaching students legal practice skills such as client interviewing, in a clinical module. Students are enrolled in the University's Practical Legal Training (PLT) program, integrated with their last two years of academic legal study, and once completed they are eligible for admission to practice as a lawyer. The XXXX program requires students to work 360 hours over a 2-year period, of which the first 90 hours is at the centre and the balance can be at another legal practice or organisation in the community. The program includes class-room teaching, which complies with the

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[19] XXXXX

course content requirements of the Solicitors' Admission Board. The students who participated in this research were 4th year students in their first 90 hours of placement at the clinic. Participants included both graduate and undergraduate students predominantly aged in their twenties. Most had no prior experience of legal interviewing, because the research took place in their first semester of the PLT program. Based on the PLT program being an 'admission stream' and on the authors' experience over many years teaching in that stream it was assumed that most students in the program were seeking admission to practice.

During 2013 and 2014, the clinic operated on Wednesday mornings and clients attended seeking legal advice on issues typically encountered in a general practice community legal centre, such as family law, criminal law, employment law, tenancy disputes and deceased estates. Students met the clients and asked them to complete a form giving information about themselves and their legal problem. The students then escorted the client to an interview room. The student who conducted the interview enquired about the client's case (the first stage) but did not provide legal advice to the client. Once the student was satisfied that he or she understood the legal problem the student asked the client to wait, and left the interview room to find a supervising lawyer. The student then discussed the case with the supervisor (out of client earshot) and the student, together with the supervisor, decided on legal advice for the client. Both the supervisor and student returned to the client in the interview room where the supervisor provided

legal advice to the client (second stage) with the student observing and assisting. This research sought to make use of the time gap between the first and second stages, which provided an opportunity for questionnaires to be completed by all three participants in the process: the client, the student and the supervisor.

Ethics

The university's Human Research Ethics Committee granted approval for the research on 25 October 2012 (H-2012-0368). Subsequent procedural amendments were also approved as variations.

Method

A research assistant (RA) was employed to communicate with participating clients and students and to distribute research information sheets. If the client agreed to participate, the RA produced a questionnaire and asked the client to complete it during 'the gap' whilst waiting for the student to return with a supervisor. The number of clients who refused to participate in both 2013 and 2014 was insignificant.

The RA also explained the research to the students, provided them with an information sheet and invited them to consider participating. Similarly, supervising lawyers were informed of the project and invited to participate. In both years all students invited to participate agreed to do so. Four of the six supervising lawyers participated. [20]

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[20] The authors were not participants.

The research began with a pilot study in 2012, as discussed in our earlier paper.[21] The main research involved 2 cohorts of students. The first cohort in 2013 was the 'control' group, which consisted of 56 students who received no additional training, and conducted 118 client interviews. The second cohort in 2014 was the intervention or 'experimental' group of 64 students who conducted 122 interviews after receiving four weeks of additional 'intervention' training.

The research design involved a mixed method to test the hypothesis, using a questionnaire combining quantitative and qualitative questions. Both the client and student questionnaire involved eight quantitative questions using a Likert scale.[22]

The questionnaire for clients combined elements from earlier studies in legal and medical education.[23] The clients' questionnaire is shown at Figure 1. For each question clients were asked to respond: 'unsure/don't know – strongly disagree – disagree – agree – strongly agree'.

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[21] Wardhaugh and James, above n. p.638.

[22] A likert scale is a common form of scaling responses in survey research like this. Here, a similar questionnaire instrument was used for the supervisors but it was reduced to 5 questions. Supervisors in the pilot expressed concern that they were unable to answer some of the questions because they had not seen the student and the client interact in the first stage of the interview process.

[23] Barton, K., Cunningham, Jones, C.G., Maharg, P, 'Valuing what clients think: standardized clients and the assessment of communicative competence '(2006) 13(1) *Clinical Law Review* 65. Mercer SW et al, 'Relevance and practical use of the Consultation and Relational Empathy (CARE) Measure in general practice' (2005) 22 (3) *Family Practice* 328. Mercer SW et al (2004) 'The development and preliminary validation of the Consultation and Relational Empathy (CARE) Measure: an empathy-based consultation process measure' 21 *Family Practice* 6, 699-705.

> 1. The law student explained the process to me clearly
> *(fully answering your questions, explaining clearly, giving you adequate information; not being vague)*
>
> 2. The law student understood what was important to me
> *(communicating that he/she had accurately understood your concerns; not overlooking or dismissing anything)*
>
> 3. The law student did not accurately summarize what I told him/her
> *(the law student either did not feed back to me what I had said or did feed back to me but I had to correct a lot of the feedback)*
>
> 4. The law student was interested in me as a whole person
> *(asking/knowing relevant details about your life, your situation; not treating you as "just a number")*
>
> 5. The law student let me tell my story
> *(gave you time to fully describe your problem in your own words; not interrupting or diverting you)*
>
> 6. The law student helped me feel at ease during the interview
> *(being friendly and warm towards you, treating you with respect; not cold or abrupt)*
>
> 7. I felt the law student really listened to me
> *(paid close attention to what you were saying; not looking at the notes or computer   as you were talking)*
>
> 8. The law student showed care and compassion
> *(seeming genuinely concerned, connecting with you on a human level; not being indifferent or "detached")*

Figure 1.

There were also two qualitative open questions in the client questionnaire:

1. '*Please use the space below if you would like to explain how the student could improve upon their interviewing skills*' ('the improvement question'), and

2. '*Please use the space below if you would like to explain any of your answers to the questions on the survey*' ('the explanation question').

The pilot test in 2012 had indicated significant participant bias as most clients gave very positive answers to all questions. In response we varied the questionnaire and included "the improvement question" to encourage clients to be more candid about the interview process.

The research periods

The control group interviews took place between 10 April 2013 and 29 May 2013 and the intervention group interviews took place between 7 April 2014 and 11 June 2014. For each cohort the research commenced in the 5th week of the first semester so that the control group of students and the intervention group of students were at the same point in their studies both in the clinic and their other doctrinal subjects. The difference was that the intervention cohort received 4 weeks of EI training before the research commenced whilst the control group did not.

STEU testing

Students in the control group and the intervention group were each tested before and after the research period using the situational test of emotional understanding instrument.[24] The STEU questionnaire was developed by MacCann and Roberts for use in EI research and has been tested to show good validity.[25] Whilst the MSCEIT test is commonly used in EI studies the cost was prohibitive for this project.[26] The multiple choice format of STEU is designed to test understanding of 14 different emotional

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[24] MacCann, C., & Roberts, R. D. 'New paradigms for assessing emotional intelligence: Theory and data' (2008) 8 *Emotion* 540

[25] Nele Libbrecht & Filip Lievens, 'Validity evidence for the situational judgment test paradigm in emotional intelligence measurement' (2012) 47 (6) *International Journal of Psychology* 438. Veleka D. Allen et al, 'Development of the situational test of emotion understanding - brief (STEU-B) using item response theory' (2014) 65 *Personality and Individual Differences* 3.

[26] Mayer, J.D., Salovey, P. and Caruso, D., Mayer-Salovey-Caruso Emotional Intelligence Test (MSCEIT), (2002) Multi-Health Systems, Toronto.

states, which was suitable to capture before and after levels for the students in both control and intervention cohorts.

C. THE TRAINING MODULES FOR THE INTERVENTION GROUP

The intervention training aimed to assist students recognise the importance of emotions in legal practice and to facilitate development of their emotional competencies whilst developing their interviewing skills in a clinical setting. The structure of the intervention consisted of 8 hours of training over four weeks being 4 x two-hour, weekly seminars. The intervention included engaging the students using class discussion, video simulations, class exercises, as well as a guest speaker and visual presentations on specific topics associated with current knowledge on emotions and their relevance in legal practice.

Overall approach to the intervention training modules

The authors sought to make the intervention development seminars engaging, creating a relaxed, informal atmosphere in class to encourage the students to participate as fully as possible. One assumption was that students at different stages of emotional competency would learn best from active participation and by listening to different perspectives and reflections, and by engaging with each other.[27] We used a diverse

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[27] Research in the business field suggests EI competencies are best developed 'on the job' through group dynamics. N. Clarke 'Developing Emotional Intelligence through team-based learning' (2010) 21 *Human*

range of colour imagery and audio in our presentations as well as humour in entertaining video clips. We devised activities as learning tools so that students were not passively sitting in class, and we helped them focus by 'banning' the use of laptops, tablets and smart phones in class and persuading the students of the value of being present, and reflecting on the immediate content of discussions without taking notes, or checking their messages.

Overall, the training aimed to help students improve their abilities to identify, understand, use and manage their emotions, specifically in a client interview situation.

The ability to understand emotion

Due to the emphasis in law school on cognitive performance we expected the students to be consciously trying to 'think like lawyers'. The study and practice of law has been portrayed as a 'cognitive and rational' process, where emotions need to be eliminated for better decision-making.[28] One student explained this perspective well:

> *Based on my law studies in previous years, I was under the impression that a legal professional should be as neutral or emotionless as possible when engaging with their clients, so as to maintain a professional working relationship with the client, to approach their legal matters objectively, and so as to not become personally invested in their cases.*

Attempting to leverage any cognitive bias in the students' thinking we began by focusing on the cognitive dimension of the training.   We invited a clinical psychologist

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Resource Development Quarterly 119; P Moriarty and F Buckley 'Increasing team emotional intelligence through process' (2003) 27 *Journal of European Industrial Training* 98

[28] Gerald F. Hess, 'Heads and Hearts: The Teaching and Learning Environment in Law School' (2002) 52(1 & 2) *Journal of Legal Education* 75

to present to the students on the topic of 'Emotions and the Law' with a view to helping the students to start thinking about the role and importance of emotions, the science behind theories of emotion and to begin the process of understanding how emotions may inform our thinking, decisions and behaviour. The speaker was engaging, amusing and informative and appreciated by the students:

> *the things that Professor XXXX said were important because as someone who may potentially end up being a practising lawyer it's important to see potential clients as human beings with the same vulnerabilities as you*

The speaker demonstrated the potential presence of cognitive bias through a short interchange with a student. When a student was asked: *'how do you feel about your partner?'* she responded: *'I think he is awesome'* - providing a 'cognitive' response to a question about emotions.[29]

Other intervention activities involved strategies to help the students realise how their values can affect their emotional responses. One exercise used a provocative scenario by Jonathon Haidt.[30] The story involves a brother and sister who have sexual intercourse while on a holiday. They use a contraceptive and afterwards decide the experience was good but agree not to do it again. Students were asked to notice how they felt about the story:

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[29] As the psychology lecturer pointed out, people typically find it hard to openly express their emotions and tend to hide behind a 'safer' response. When he pressed the student she quietly said 'well, I love him' but it felt very awkward.

[30] J Haidt, 'The emotional dog and its rational tail: A social intuitionist approach to moral judgment' (2001) 108 *Psychological Review* 814

I really enjoyed the exercise where we were required to decide whether we thought that it was okay or not okay for a brother and sister to make love. I realised that the point of the exercise was to show how our 'emotional brains' can take over before our 'rational brains' are able to kick in.

I was sitting next to [X]and she immediately circled 'No' but I held back and considered if there were any rational reasons for circling 'No'. We had a heated discussion because [she] realised that she could not explain why she circled 'No', only that 'it was disgusting'. However, I do not have a brother and therefore was able to consider the matter more objectively …..

My immediate thought was 'eww'! However, when I tried to [write] down my reasons for this response. I could not think of any rational reasons. I had no personal reason to think that what they did was wrong besides a gut feeling that it wasn't right. I just believed it was wrong. So then, I considered writing that I thought it was okay.

Looking at it from a rational point of view I can see that the actions of the brother and sister do not affect me personally. They were both consenting adults and it was a one-time thing that did not have any future consequences. In the end, I could not bring myself to answer yes ….my emotional response won the debate.

The Reflection Process in understanding emotions

Students in the intervention group were asked to write a reflection paper each week for the first three weeks to explore how the issues examined in the seminars might help them understand the relevance of EI in their legal placement, and for them as a beginning legal professional. The researchers gave qualitative feedback to each student with a personalized and supportive response.

The reflection process required students to intentionally *pay attention* to feelings, and to the likely feelings of the client. Students were asked to notice their emotions in working with clients, to question their feelings and decide whether it was helpful or unhelpful in assisting their analysis of the case and giving the client the best possible legal assistance.

By responding to each student reflection, the authors were able to facilitate and in many cases improve the students' engagement with the reflection process. Typical responses to students were:

> *In your next reflection, I want you to go deeper and discuss the emotions you think a client might have had, and how they may have affected their communications and decisions. Also what were your emotions, and how did they affect your behaviour?*
>
> *…you describe a narrative of events rather than reflecting on your emotions or those of another in an interview situation….. try to recall the apparent emotions of …client you interviewed. There are many things you can reflect on, eg. what were your emotions at the same time? How do you think the client's emotions affected their thinking and communication, and how did your emotions affect yours?*

The following short extracts show how the reflective process apparently helped one student shift their perspective from 'descriptive' to 'reflective':

Student A - first reflection:

> *It is very important to be patient. As a lawyer, I would like to make my client feel comfortable and I would like to create a relationship of trust.*

Student A – final reflection:

> *I think that maybe he just wanted to be heard. From watching the video clip, the client really seemed to just want someone to try and understand him…..*

The reflections gave the subsequent classes more salience by enabling us to incorporate issues raised in class discussions. Further, some students developed enough trust to use their reflections to disclose difficulties they were experiencing when interacting with clients. Our responses to the students helped break down barriers, which in turn led to further improved trust and more open discussions in class.

Perceiving Emotions in oneself

In helping students improve their capacity to recognise their own emotions, we suggested they become 'a student of me' and learn their own emotional 'triggers'. We introduced 'emotion cards' to demonstrate the large number of emotions for various situations, to discuss how emotions can be fleeting, multiple or confusing, and to demonstrate the difficulties some have in identifying and recognising emotions.[31]

Perceiving emotions in others

To help students understand the challenge of recognising emotions in others we organized several group activities. One activity involved 'emotional charades'.[32] Students were placed into groups of five and one member was instructed to be an 'actor'. The actor was asked to 'replicate' the emotion, without speaking, of how they

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[31] We used the 'Emotions Cards', published by the Langley Group http://hub.langleygroup.com.au/shop/category/cat13629/Facilitation_and_Coaching_Tools.html. N Ashkanasy, Charmine E J Härtel and Catherine S Daus, 'Diversity and Emotion: The New Frontiers in Organizational Behavior Research' (2002) 28 *Journal of Management* 307.

[32] David R Caruso, Peter Salovey, '*The Emotionally Intelligent Manager'* (Jossey Bass, 2004), p.89

might feel on walking out of a performance review where they were told their work was poor.

There was lively discussion afterwards whilst the class worked through whether they had identified what the actor was feeling. Subsequent student reflections captured their thinking about others' comments:

> *When people started to describe the emotion that they picked up on, I initially thought that everyone must have had different scenarios. I was surprised when I realised that everyone had the same scenario, but had expressed it in different ways.*
>
> *It was surprising how people chose to express the emotion in many different ways, from energetic anger all the way down to quite introverted emotions like uncertainty. The other thing I found surprising, was how hard it was to describe the emotion I had witnessed. I thought it would be easy to describe disappointment, but when I started thinking about it, I found it really hard to put into words.*
>
> *I found it very interesting just how varied the individual responses were. Nearly everyone who 'acted' came up with a different emotion to the same situation, and for those who did act out the same emotion, each portrayal was unique.*
>
> *Some people had very loud, over the top reactions, whilst others simply slumped in their chairs. It seemed I had a very naive view of just how varied people's emotional reactions can be. I never knew there were so many ways to exhibit 'frustration' or 'anger.'*

Research suggests we have a natural tendency to perceive emotion from within our own cultural frame and to judge others only from what we can see, which in a legal interview may be a small part of a client's reaction.[33]   To make this a more realistic

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[33] Constantin Bratianu and Ivona Orzea, 'Emotional Knowledge: the Hidden Part of the Knowledge Iceberg', *Management Dynamics in the Knowledge Economy* (Tritonic Books, 2014), Volume 2 at 41.

experience for students we devised a practical exercise. Working in pairs, one student was given a pen and informed (separately) that the pen was very valuable for emotional reasons (it belonged to a deceased family member) and they were to resist any attempt by their partner to borrow it and, on no account, were they to give a reason for refusing to surrender the pen. The other student, uninformed of the instructions to the first student, was given one minute to persuade their partner to lend them the pen. We anticipated that this exercise would appeal to law students who see themselves as strong advocates. By the end of the activity only one student had successfully borrowed the pen, and then only for a 'few minutes'. This simple activity appeared to have a profound effect on some students:

> *I do …. find this class quite unsettling. …. For example, the pen exercise that we did this week; I think this was a really beneficial exercise to show that it is extremely difficult to communicate effectively with clients when there is so much built up inside them or 'under the surface of the iceberg' that we do not know about or understand.*
>
> *The exercise about the pen …….. (I) failed to understand that he may have been grieving the loss of his father and upset by the way in which the funeral home handled the funeral….*

At this stage, class discussion included the simple practices we can adopt as lawyers to help identify and acknowledge emotion in our clients. These include being mindfully 'present' with the client, looking at them as they speak, listening to them carefully and asking considerate questions. Research suggests that recognising emotional cues from

clients can be as simple as noticing how they are behaving.[34] For example, according to

Gay Gelhorn, noticing the first words uttered by the client can be very helpful:

> [C]lients demonstrated that they will reveal critical material as soon as they have
>
> an opportunity to speak . . . . These revelations some- times occurred in the phase
>
> of an interview generally regarded as solely serving the purpose of putting the
>
> client at ease …Often, interviewers are focused on themselves or make the
>
> assumption that nothing substantive is happening in this phase . . . . [T]he
>
> revelations most often were misheard (they often were sotto voce), or went un-
>
> heard and unacknowledged[35]

The intervention training included helping students consider using probing questions

which might uncover their client's emotional responses to their legal problem:

What are your greatest fears regarding the outcome in this matter?'

If this case turns out to your advantage, how will it affect your life?

If this case goes according to your worst case scenario, how will you be affected?

Managing emotion

Students watched videos of simulated legal interviews between clinical law students

and actors in the role of clients. The videos were designed to activate the emotions of

the students in a safe environment and to invite their thinking about how they might

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[34] Jennnifer K Robbenolt and Jean R Sternlight, *Psychology for Lawyers* (American Bar Association, 2012), 196

[35] Gay Gellhorn 'Law and Language: An empirically-based model for the opening moments of client interview' (1998) 4 *Clinical Law Review* 321.

have conducted the interview in a real situation.[36] One video involved a female student interviewing a male client who was angry about an offer of settlement from the opposing party. The video depicted the law student repeatedly advising the client that *'it's a good offer'* and apparently ignoring the client's rising anger and disappointment. The interview was designed to help the students explore ways the interviewer could have tried different strategies to connect with the client and to calm him sufficiently to hear and accept the advice.

Class discussion included the interviewer's response to the client's anger. Some students identified strongly with the student interviewer and some admired her tenacity:

> *There were many aspects of the interviewer's performance in the clip that I liked. She remained calm and focused on the advice that needed to be heard by the client.*

Asking students to consider whether the interviewer could have changed her approach produce a range of reflections:

> *I think she needs to actually acknowledge his concerns and then properly explain their position*
>
> *It was suggested in class that the interviewer could have made more acknowledgement of the client's emotions. I think this was a really good suggestion ….*

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[36] There were 4 videos which were developed specifically for the course. Each depicted a "typical client" scenario with a law student carrying out the interview. Actors were hired as clients and 5th year law students performed the role of interviewer. A range of interview scenarios were devised which included one scenario played out 3 times with different questioning techniques designed to explore which techniques were the most effective in putting the client at ease and eliciting the most relevant information from the client.

Students explored other techniques to reduce the impact of 'bad news' on the client or to deter or distract his rising anger in the first place, such as alternative ways of talking in order to prepare the client for disappointment. Overall the videos helped the students think about related content in the seminars and class discussions, which improved their awareness of their own emotional responses:

> *I noticed from the video the client repeatedly slammed his hands against the lawyer's desk … [he] repeatedly did this to express his emotions in the hopes of communicating his point clearly. As this occurred my emotions were outraged to a certain extent. I felt as though this client should be more grateful for the hard work being exercised by his legal representative free of charge. To this extent I had some initial feelings of anger…..*

The seminars introduced the students not only to the advantages of emotional awareness in legal practice but also the problems emotions can cause if they are not well understood. We discussed the theory of 'amygdala flooding' and how intense emotions can prevent a client from being able to think clearly.[37] Students were asked to imagine techniques they could use if the client was becoming too upset such as having a break to allow emotions to subside.

> *I think the message about 'pressing the pause button' would be extremely useful in diffusing the situation. Previously I would probably have been reluctant to do that as I would have worried that it would seem rude to the client. If done in a sympathetic manner, e.g. 'Would you like a glass of water' or .. 'let me get you a tissue', this could be really effective in calming down the situation.*

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[37] Alternatively 'amygdala hijacking' as used by Daniel Goleman in *Emotional Intelligence: Why it can matter more than IQ* (1996).

In one exercise,[38] we divided the class into two rooms, and showed each group the same projected visual image of an abstract painting while exposing them to different music, either dissonant and irregular sounds, or gentle and soothing music. Each group was then required to describe the picture. The group exposed to the soothing music used more positive and affirmative descriptions and generated more ideas about the painting than the other group. This led to discussion about how our workplace environment can impact clients' emotions including their ability to cope with 'bad news'.

We also discussed mindfulness as a strategy to help students manage their own emotions. Careful to distinguish it from any religious associations, mindfulness was presented as a practice to develop self-awareness, reduce anxiety and improve cognitive performance. Several students acknowledged improved self-awareness as an important skill for legal practice, even if it meant accepting they were at an early stage of professional development:

> (Before the intervention…) *the only way I could cope was to stop caring, emotionally I had to switch off. Even though I could recognise this, I was powerless to change it as I didn't know any other way to reconcile my emotions …*

Class discussion included the implications for the client of the interviewer 'switching off' when things got bad and what impact that could have on the professional

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[38] This exercise was adapted from one presented by the Langley Group: Diploma of Positive Psychology and Wellbeing

relationship.[39] Further discussion involved alternative strategies for managing stressful emotions during the interview, including acknowledging the feelings with the client, taking a break, getting support from a supervisor, and writing a reflection on the situation later. Some students were aware of the psychological value of written reflections through journal keeping:

> *To deal with the emotional stress of dealing with unhappy clients and their problems, writing about how I feel would definitely help, as I already keep a diary daily, and have since 2004…*

Near the end of the training, several students acknowledged how the discussions and reflections helped them understand they were not alone, and that as a lawyer it is acceptable to seek help if necessary to manage emotionally stressful situations:

> *If as a lawyer you were coming into contact with situations of high emotion on a regular basis, it may be necessary to reach out to friends or qualified support people….it may be necessary to talk about your feelings especially if you begin to find them exhausting or particularly draining.*

D THE RESEARCH RESULTS

Responses from clients

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[39] Rudolph J. Gerber, *Lawyers Courts and Professionalism* (Greenwood, 1989). Paula J. Manning, 'Understanding the Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes' (2013) 43(2) *Cumberland Law Review* 225

The control group in 2013 involved 116 returned client interview questionnaires, of which 15 were discounted[40], leaving 101 questionnaires for analysis. In the intervention group in 2014 there were 113 returned questionnaires of which 6 were discounted leaving 107 to be analysed.

Qualitative analysis

The qualitative analysis drew from the comments of the participating clients and students in order to identify themes, patterns and significant experiences and insights that might improve the clinical teaching, professional supervision and organisation of the clinical legal practice. Not every client took the opportunity to answer the qualitative responses in the questionnaire (the 'improvement question' and the 'explanation question'). Clients in both years referred to similar interviewing skills or qualities in their interviewing students, which they appreciated. They referred to the importance of the interviewer 'listening' to them (this was mentioned many times), showing 'empathy' towards them and demonstrating 'professionalism' (although this was not defined by the clients). Many also commented upon the 'appearance' of the interviewer.

Some clients particularly noticed whether or not the student smiled suggesting at least some clients appreciated a degree of friendliness or positive affect by the interviewer. For example:

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[40] Questionnaires were discounted where the respondent had circled all the same numbers (when question 3 was reverse orientated) or had failed to complete the questionnaire at all.

> *perhaps a bit of a smile and friendly engagement in between serious attentiveness and concentration – not a biggy*
>
> *Good eye contact, and listening skills but detached slightly not friendly but was unjudgmental may be smiling would help? Deadpan face*
>
> *More smiles! Very efficient*
>
> *They should practice more in getting the interview into an easier situation by a bit of a smile or show some enthusiasm on what the topic and problem is about…*

Several clients referred to the 'complexity' of their problem, suggesting their difficulty in explaining it to a student and their need to be seen as unique or special.

> *They were attentive and showed understanding and seemed to have a reasonable grasp of a complicated and uncommon situation*
>
> *…this is a very lengthy case and very very complicated situation that the students came into contact with*
>
> *Honestly my matter is quite complex. It need to be broken down and I don't know how to do it*
>
> *I had many issues, too big for one session*
>
> *….complicated matter and the student did a good job of giving understanding to solicitor, it was clear that meet with solicitor too complex*

Part of our analysis involved categorising clients' responses to each question as 'positive', 'negative' 'mixed' or 'neutral'. For example, a suggestion that the student could improve as an interviewer was coded as a negative response whilst a suggestion that the students had no need to improve was coded as positive. Examples of positive responses included:

> *I thought the student reasoned well and has a good manner. They were attentive and showed understanding and seemed to have a reasonable grasp of a complicated and uncommon situation;*
>
> *I thought the students interviewing strategies were well developed and no need for improving at this time*

Examples of 'negative' responses were:

> *Not sure of relevance with case but didn't ask too much about my life in general which may have some underlying influence/support to defend my case;*
>
> *When relaying summarising needs to ensure that it is correctly relayed or it can come across as being vague/disinterested*

Client responses suggesting students were good but improvement was still needed were assessed as mixed responses, such as:

> *(the student) showed a great listening skill and communication but probably forgot to summarise what we discussed other than that seemed genuine*

Some answers were categorised as "neutral" such as: *"satisfied in general but student did not have time to explain to solicitor as they just came in"*

The 'improvement question' (suggestions from the client on how the student could improve) is shown in Figure 2 with percentages for the five categories.
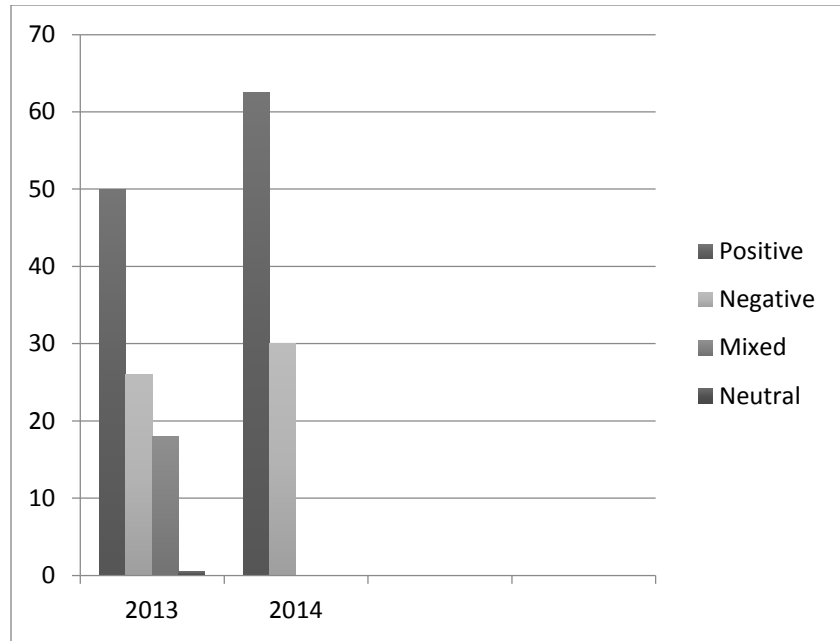
Figure 2. Numbers of clients who provided positive, negative, mixed or neutral responses to the 'improvement question'.

The 'explanation question' (where the clients gave an explanation for some of their answers in the questionnaire) were similarly coded and the percentage results are shown in Figure 3.
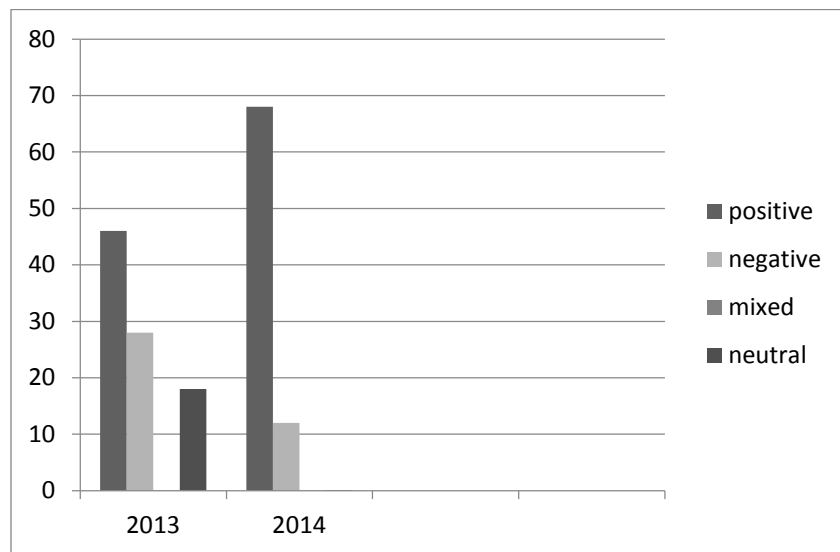
Figure 3. Numbers of clients who provided positive, negative, mixed or neutral responses to the 'explanation question'.

The participant numbers are not large enough for statistical significance however the indicating trends suggested the intervention group (2014) conducted interviews that produced more positive responses from clients than did the control group (2013).

Qualitative responses from supervisors and students

The questionnaires for students and for supervisors also invited qualitative responses. However only a few supervisors and students took the time to complete this section, and few answers adequately addressed the issues to assist the research aims. The central focus of the students and supervisors was understandably on assisting the clients with their real, and sometimes urgent, legal problems.

The quantitative Responses – results

The quantitative responses from the clients' questionnaires over both years were entered into an excel database and forwarded to a consultant who performed a statistical analysis looking for relationships between the control and intervention groups to evidence significant differences that could have resulted from the intervention . While there were some particular questions which trended towards significance, overall, despite using different tests, there was insufficient statistical evidence to support the hypothesis.[41]

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[41] The consultant's analysis is available for inspection on request.

Results of the STEU test

As mentioned above, the STEU test is designed to measure one aspect of EI, the ability to understand emotion. We asked every student in the control group and the intervention group to take the STEU test before the research began and after the research ended. There was no significant difference in the students before and after the research in either the control group or the intervention group. In addition, the difference between the control and intervention group at both times was not statistically significant.

There are several reasons for a null result in the STEU test. First, the STEU test is relatively simple compared with the MSCEIT which is more extensive and therefore likely to be more sensitive to changes in a cohort. Second, the intervention might have not elicited changes in emotional capacity of the students in the intervention group that could be detected by the STEU test, although there were significant beneficial changes in those students identified in the qualitative assessment described below. Thirdly, as discussed in the limitations, the numbers used in both groups were very small compared with numbers often used for quantitative research comparing before and after results.

Discussion: Student reflections on their learning

Despite the lack of statistical significance, the qualitative findings from the student reflections suggest the intervention group gained significant benefits in their training in

terms of increasing their EI awareness and abilities. For many students this involved a difficult transition where they were confronted with the need to reconsider their presumptions, for example that a client's narratives will always be consistent:

> *.. when, I found out that this other information that did not fit into her story, I actually felt a little betrayed. This weird sense of betrayal brought on a reluctance to work on her case*

This type of confrontation helped some students to grapple with their own self-concept, being able to adjust and be more flexible in how they presumed clients would see them:

> *This encounter also encouraged me to really 'get over myself' and realise that as an interviewing lawyer sometimes you are going to have to accept that clients may be unable to communicate completely respectfully. In such a circumstance, I now feel that it is more important to engage with the client and not expect endless amounts of respect.*

Several students were able to articulate their experience of change and development as a result of events during an interview.

> *At this point in the interview I noticed myself becoming acutely aware of my feelings and my body language. I extended my lean forward towards the client in an effort build rapport and provide some comfort. However, reflecting on the lecture ….it was an effort to conceal my own insecurity and estrangement from the situation. ….I felt helpless …*

Others reflected on their acquired belief in the importance of emotional regulation and how to appear when conducting a client interview:

> *I recognised that it was in the best interests of the [client] that I look engaged and that it was my duty to be composed. Along with the change in my physical body language I adopted a softer voice in my questioning and became increasingly conscious of the timing of any sensitive questions…*

Many students described how they were able to determine the emotional states of their clients at different stages of the interview, and reflect on what that might mean for their developing practice as a lawyer:

> *You could actually see the comprehension on the client's face, and though she was not overly happy with some of the things she was told, her relief was apparent…*
>
> *The client came in visibly anxious with an edge of anger or possibly frustration. … the client's speech .. was rushed and pointed… sat hunched with their arms crossed and spoke quickly in a loud and impatient manner, ending most sentences with a rhetorical question….*
>
> *This led to a change in the emotions of the client from anger to sadness and resignation as the speech slowed down and grew softer whilst the body language was more slouched and defeated.*

In terms of dealing with or responding to emotions, some students showed they had understood the theories of emotions we had discussed in the seminars and were motivated to practice strategies likely to develop their emotional competencies.

> *I was very conscious of my body language making sure I was leaning forward, giving eye contact and trying to be as sincere as I could at particular times (I found this difficult as my clients emotions spiked quite radically so I was never certain of exactly how to respond to things she said) portraying active listening at all times….*

Several students distinguished their genuine feelings from the feelings they wanted to project to the client, noticing the differences were not always significant or relevant and they could often be emotionally sincere and professionally responsible:

> *I wanted to make sure that I portrayed to her that I understood how tough it must have been. Although I did feel genuine empathy for her as her situation was really unfair. I*

> *wanted to make sure that she knew that I understood her. I thought back to some of the skills that we had been taught over the last two weeks.*

Some students focused on technique, and detailed how their interview methods seemed to affect the client and the communication flow:

> *I let her talk until it seemed like she had got everything out before I started asking questions.*
>
> *I kept eye contact and leant forward. …I found that in taking the time to show respect for the client's emotions helped us to communicate better ….*

Other students had more challenging interviews where the client was particularly emotional. Often in these cases, the student used the reflection process to augment their development with ideas on alternative strategies that might result in better interviews in similar cases in future:

> *Her tone was also dismissive, and every time I or someone else at the table tried to steer the conversation back towards the actual legal issue, (she) kept trying to cuss out and be negative about Y's conduct as if she was trying to get to us to agree that Y was a bad person. I feel that I probably could have used a different way of questioning or talking to her in a way that both allowed her to get it off her chest but also moved our time on productively.*

Overall, the opportunity for the students to develop through their reflections on their live-client interviews in the context of the incremental training on emotional competencies through the seminars was the most valuable part of the intervention. The supervisors responded personally to each reflection to help ensure students felt

encouraged, and more informed about the importance of emotions in legal practice broadly, not only in client interviews.

Conclusion

This project sought to develop and apply a method of enhancing students' emotional competency and to test whether teaching EI competencies to law students in a clinical legal setting would measurably enhance the clients' experiences of their first interview. Whilst our quantitative data was inconclusive, the qualitative findings were sound and provided insights into the value of EI competency training for law students. These results can be used to enhance professional development training in clinical programs and form a basis for future research.   The reflection journals evidenced that many students improved their understanding and developed abilities during the intervention training, including their abilities to notice and reflect on their clients' emotional responses as well as their own. The project supports the embedding of EI competency training into clinical legal education or professional legal training programs in a more sustained manner to improve students' professional development and abilities to work with clients effectively and empathetically.

E   LIMITATIONS

The research was conducted during a busy legal clinic, which was not suited for a research project. Of necessity, the research had to be conducted over two years using different cohorts of students and clients, the 2013 student cohort as the "control" group

and the 2014 student cohort as the intervention group. While both student groups had similar characteristics in terms of gender break-up, age and education level, we could not control for personality differences (likely to have significant effects in small cohorts) or law school programing and interview scheduling differences. Similarly, uncontrollable differences in personality of client and types of case in each year meant that small differences might have significant effects when using low numbers.

A significant structural limitation here was that in 2013 more than one student interviewed the client, in fact up to three students were in the interview room with the client, whilst in 2014 only one student interviewed the client in most cases. This was an unavoidable product of University scheduling. Any difference in the 2014 group as a result of the intervention training was, according to the statistical consultant, 'masked' by the effects of those students conducting interviews alone, compared with the team-based interviews in 2013.

Further, the overall sample sizes were small using data from just over 100 interviews in each year, which made it difficult to reach significant results. For statistical difference, future research needs to consider a design that collects from more interviews, with more students in a single clinical program, ideally over the same period. The control group could be offered the intervention training after the research period.

Finally, we could not control for the participant bias from the clients' apparent willingness to please, indicated by some giving positive answers to all questions. It is

possible that clients attending a free clinic with young nervous students were not inclined to criticise the students' performance, despite being informed of the confidentiality of their responses and the value of the research to the students' professional training. It is also possible some clients were getting legal advice for the first time in their life and could not compare the experience of the interview with anything in order to assess the student's performance. Some clients, for example, used the questionnaire to praise their student rather than provide useful information:

A wonderful service, I felt my situation was validated and handled in a professional matter. Thank you.

I feel that the whole experience was of a great assistance to me it helped me to feel more at tease with the situation many thanks to the students who participated in the interview.

just keep it up

Future Research

This project has several implications for future research that seeks to measure the effects of interventions designed to improve the emotional capacity of legal clinic students. If future research adopts a comparative analysis using a control groups as undertaken here, care should be taken to ensure the nature of the clinic situation under focus – here the client interviews – are comparable in structure. As stated above this problem was outside the control of the researchers in this study and produced a limitation to the results.

The researchers believe that clients' experiences are important and should be included in future studies, however researchers should identify methods that minimise the effects of participant bias. Specifically, we would urge caution about using surveys as part of the methodology. The conflicting factors of the clients' emotions, especially their anger, sadness, fear and confusion surrounding their legal case, and their gratitude and willingness to help the clinic students are likely to interfere with the accuracy of their surveys. A viable alternative might be inviting clients to be interviewed by researchers after being interviewed by the student, even though that would raise the problem of participant bias – upset or highly emotional clients would probably not agree to participate, and others might agree for fear of not seeming appreciative of the free legal help.

Capturing a richer, more nuanced and more accurate picture of the clients' experience of the student interview is a challenge particularly when the chief concern of a working clinic is to provide a legal service, modelling best practice including client care and confidentiality. The authors suggest that inviting clients to attend a focus group meeting in a relaxed setting, where the research questions could be explored more thoroughly, is worth considering if the participant bias can be adequately addressed.

UNDERSTANDING HOW A LAW CLINIC CAN CONTRIBUTE TOWARDS STUDENTS' DEVELOPMENT OF PROFESSIONAL RESPONSIBILITY

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Abstract

There is rich international literature spanning over decades giving valuable insights into the educational benefits of Clinical Legal Education (CLE), however there is little in the way of empirical data evaluating the link between utilizing CLE to develop specific skills. This paper aims to discover the link between CLE as a learning methodology and the extent to which students become more aware of professional responsibility skills after a clinical experience. The study employed a phenomenographic methodology to evaluate the variations in student learning. The findings suggest that students believe they have developed a greater sense of awareness and learning of a variety of lawyering skills and a greater awareness of values and characteristics of a competent lawyer through the clinical experience.

INTRODUCTION

Clinical Legal Education (CLE) is a popular teaching and learning methodology used by law schools across a number of jurisdictions.[1] There is rich international literature spanning over decades on the educational value of the use of CLE[2]

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[1] One of the leading advocates of CLE is Neil Gold in Gold, N. (2015) 'Clinic is the Basis for a Complete Legal Education: Quality Assurance, Learning Outcomes and the Clinical Method', International Journal of Clinical legal education, Vol. 22, No. 1, available at: http://www.northumbriajournals.co.uk/index.php/ijcle/issue/view/53 and Mary Ann Noone in Noone, M.A., (2013) 'Time to rework the brand 'Clinical Legal Education', International Journal of Clinical Legal Education, Vol. 19, No.1 available at: http://www.northumbriajournals.co.uk/index.php/ijcle/issue/view/13

[2] The literature on CLE and its educational benefits are in abundance. Examples of pioneering work are from Grimes, R. (1995) "Legal Skills and Clinical Legal Education" Web Journal of Current Legal

however, in the Best Practice report of 2007,[3] Professor Stuckey, a distinguished professor emeritus of CLE, recommended that the actual effectiveness of CLE needs to be assessed to help determine what students are learning.[4]

Existing literature suggests that the clinics can appropriately facilitate the learning of professional responsibility.[5] This paper aims to discover the link between CLE as a learning methodology and the extent to which students become more aware of the knowledge, skills and the values and behaviour of professional responsibility.[6]

A phenomenographic empirical study will be employed to determine:

1. How students recognise and understand their learning and acquisition of knowledge, skills and character building during clinical experience?

2. What are the challenges students face during a clinical experience?

3. Using the findings from the students' awareness and learning, to offer some reflections on how to use clinics constructively to capture the development of professional responsibility.

Issues Vol. 3; MacCrate, R. (2004) "Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development" Clinical Law Review, Vol. 10, Spring edition; Giddings, J. (2008) 'Contemplating the Future of Clinical Legal Education', Griffith Law Review Vol. 15, p.15, available at:
https://www.researchgate.net/publication/29469123_Contemplating_the_Future_of_Clinical_Legal_Education; Hall J., Kerrigan K., (2011) 'Clinic and the Wider Law Curriculum', International Journal of Clinical Legal Education, Vol. 15, available at:
http://www.northumbriajournals.co.uk/index.php/ijcle/issue/view/15;
[3] Stuckey et. al. (2007) 'Best Practices for Legal Education', Clinical Legal Education Association, available at: http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf
[4] Stuckey, R. (2006) 'Can We Assess What We Purport to Teach In Clinical Law Courses? International Journal of Clinical Legal Education, Vol 9, available at:
http://journals.northumbria.ac.uk/index.php/ijcle/article/view/85
[5] Foley et al. (2012) 'Teaching professionalism in legal clinic – what new practitioners say is important', International Journal of Clinical Legal Education, Vol 17, available at:
http://www.northumbriajournals.co.uk/index.php/ijcle/issue/view/8
[6] This study is not claiming to establish that professional skills are developed by Clinical Legal Education

A phenomenographic approach to an empirical study in CLE is a new method of identifying and analysing data from students who agreed to participate in this study. It is envisaged that employing this methodology in this subject discipline will help academics go further in considering the variations in student learning within a clinical curriculum. The methodology section will offer details of how the study was constructed and the methods employed to arrive at the findings of the study.

WHY TEACH USING CLINICS?

The underlying pedagogy used in designing a CLE curriculum maps into a constructivist experiential learning framework. The MacCrate report explains that the value of undertaking actual legal work exposes students to the "…*essential values of the legal profession: provision of competent representation; promotion of justice, fairness, and morality; continuing improvement of the profession; and professional self-development.*"[7] This means through participation in the clinical experience, students will have the opportunity to develop their existing knowledge and understanding of the substantive law by building on previous learning, application and understandings of the law to solve client problems.[8] Alongside this, it has been suggested that clinical

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[7] American Bar Association section of Legal Education and admissions to the bar – An educational continuum, report of the task force on law schools and the profession: Narrowing the Gap (1992), p.207, available at:
http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_educati on_and_professional_development_maccrate_report).authcheckdam.pdf Also known as the MacCrate report.

[8] Moliterno, J. (1996) 'Legal Education, Experiential Education, and Professional Responsibility', Vol. 38, William and Mary Law Review, p.78, available at:
http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1657&context=wmlr

education will enable students to gain experience in performing various lawyering activities[9] such as legal research, managing their case, interviewing clients, gathering facts and preparing advice and negotiating on behalf of a client, and perhaps even attending court with a client which are commonly present in many CLE experiences. Through this, students will learn to integrate knowledge of substantive law and its application in practice using the experience gained.[10]

The benefits and opportunities of learning within the constructive experiential framework can be utilized by encouraging students to reflect on the experience and opportunities. When reflection takes place, it facilitates awareness of learning, awareness of skills development, and an awareness of areas for improvement.[11] Learning through this process become more focused, personalised and at a deeper level, which helps to promote development of personal and professional values, attitudes, and beliefs,[12] with students taking a greater role and responsibility for their learning, preparing for continual lifelong learning and professional development.[13]

Cruess & Cruess (2012) 'Teaching Professionalism: General Principles' Medical Teacher, Vol.4(4), p.259 available at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3987476/

[9] As discussed on page 9 on identifying professional responsibility

[10] Much literature on CLE discusses the integration of substantive law with actual application of the law in practice as a key benefit of CLE. This is true. However, in order for students to gain a useful learning experience from CLE, they will need to be equipped with the theory of various lawyering skills and lawyer values and characteristics so that this knowledge can be utilized and built upon during the CLE experience.

[11] Leading literature on reflecting in professional practice is from Schon, D. The Reflective Practitioner: How Professionals Think In Action (1983) New York: Basic Books, p.7

[12] Clubb, K. (2014) 'Masters of our Destiny - The Integration of law clinic into post graduate Masters provision. International Journal of Clinical Legal Education, Vol. 20 (2), available at: http://www.northumbriajournals.co.uk/index.php/ijcle/issue/view/11

[13] When students undertake learning in the context of a lawyer's role with appropriate supervision and timely feedback this create a rich learning environment. For discussion on CPD in professional setting, the GMC's report on The Effectiveness of Continuing Professional Development - Final

Using the insight of students' learning obtained through the phenomenographic methodology, this study seeks to test if students believe they have developed the skills and values of professional responsibility. It must be clarified that this study was unable to test if the students have actually gained or improved these skills.

GAPS IN THE LITERATURE

CLE has been advocated as the gold standard for delivering a successful legal education curriculum.[14] The MacCrate report emphasized the benefits of CLE recommending law schools to *"determine how its school can best improve the process of helping students acquire the skills and values that are important in the practice of law, . . .* [15] The Carnegie report echoes this central role and value of clinics explaining that *'…clinics have made, and continue to make, an invaluable contribution to the entire legal enterprise. They are a key component in the development and advancement of skills and values throughout the legal profession"*.[16] Through successful advocating of its' effectiveness and educational value, CLE is a teaching and learning methodology

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Report, 2010 College of Emergency Medicine is available at: http://www.gmc-uk.org/Effectiveness_of_CPD_Final_Report.pdf_34306281.pdf

[14] Gold, N. (2015), supra 1

[15] The MacCrate report (2002) supra 7, Recommendation 8

[16] Sullivan et al. (2007) 'Educating lawyers: Preparation for the profession of law', The Carnegie Foundation for the Advancement of Teaching, p. 187–88, available at: http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf Also known as The Carnegie report

used widely across law schools across the globe. There are also conferences and forums for academics to share best practices in CLE.[17]

It has been argued that assumptions are made about the educational benefits of CLE to contribute towards a student's skills and professional development.[18] This is based on the lack of testing and evidence of data showing actual learning and development through CLE.[19] It must be noted that the literature on CLE is rich, encouraging and offers an extensive amount of support for new clinicians and law schools new to CLE,[20] describing how it works, different models of CLE and the skills gained through a CLE study. However, despite the support for CLE, there is little evidence in existing literature to help academics understand how, why and in what context clinics can deliver the educational benefits and to explain the relationship between CLE and the practical and professional development of law students.

It has been questioned whether it is the CLE itself or whether some other form of teaching methodology integrated into the CLE programme of study might help

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[17] Conferences such as the International Journal of Clinical Legal Education conference held annually across the globe, and forums such as the National Institute for Teaching Ethics and Professionalism set up by Georgetown University and in the UK by City Law School are leaders in the areas of CLE and professional responsibility..

[18] Bergman, P. (2003) 'Reflections on the US legal education', International Journal of Legal Professions, Vol 10, No. 1, p,112.

[19] Evans A. & Hyams R. (2008) 'Independent Evaluations of Clinical Legal Education Programs: Appropriate Objectives and Processes in an Australian Setting', Vol 17, No. 1, Griffith Law Review. p.14.

[20] There is a compilation of literature on various aspect of CLE, see Ogilvy & Czapanskiy, (2005) 'Clinical Legal Education: An Annotated Bibliography' Clinical Law Review, Special Issue No. 2, available at: http://faculty.cua.edu/ogilvy/Biblio05clr.htm. Note however that the compilation is approximately 11 years old, although this discussions are still relevant today.

contribute to professional responsibility.[21] Bergman's work on Clinical Legal Education is a useful starting point to this research paper.

Two major studies on CLE have taken place. First, in 2008, an insightful study by The Predictors of Successful Lawyering Project[22] surveyed members of the legal profession and judiciary, law academics, students and clients on lawyering skills and competencies. Although this study was most valuable in identifying the key components of effective lawyering, it did not address the mechanisms through which legal education can support the acquisition of these skills (thereby making a case for or against clinics).[23]

The year after, another study by an Australian law school[24] surveyed students in the third year of the law programme and followed their professional journey for two years after graduation and found that students who received clinical training were more often than not more willing to undertake pro bono work than those without clinical experience during law school.[25] Both these studies are really useful as they offer valuable insight into how clinical experience may have helped shape a future

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[21] Bergman, P. (2003), supra 19. Also see discussion in Evans A. & Hyams R. (2008) 'Independent Evaluations of Clinical Legal Education Programs: Appropriate Objectives and Processes in an Australian Setting', Vol 17, No. 1, Griffith Law Review, p.15

[22] Shultz, M. & Zedeck, S., (2009) 'Predicting Lawyer Effectiveness: A New Assessment for Use in Law School Admission Decisions', available at:
http://papers.ssrn.comlsol3/papers.cfm?abstractjid=1442118.

[23] Ibid., p.26-27. The studies show that there are 26 effectiveness factors in eight umbrella categories - intellectual and cognitive; research and information gathering; communication; planning and organizing; conflict resolution; client and business relations - entrepreneurship; working with others; and character.

[24] Evans, A. & Palermo, J., (2009) 'Lawyers and Ethics in Practice: The Impact of Clinical and Ethics Curricula on Lawyers' Ethical Decision-Making', Monash Univ. Faculty of Law, Legal Studies Research Paper No. 2007, available at http://ssrn.com/abstract=1349427

[25] Ibid.

lawyer but they have yet to investigate any data from which to establish a relationship between the clinical experiences and the acquisition of lawyering skills and development of professional responsibility.

Aaronson's[26] paper had set out to establish good lawyering skills and concluded that the facilitation of cognitive and emotional development in students will provide them with a solid foundation to become lawyers who are able to fulfil key responsibilities. Similarly, Breger's[27] paper featured a law school's effort to teach professionalism, using a variety of techniques and covered a variety of subject matter and O'Grady's[28] paper questions whether collaborative learning in a law school clinic adequately prepares students for practice. All this rich research is valuable in discussing the benefits of CLE, however the research does not provide insight into the validity of clinics through a methodological framework within the context of their research questions. Neither do the papers investigate and establish the extent clinical experience serves in the development of professionalism and lawyering skills.

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[26] Aaronson, M., (2002) 'Thinking Like a Fox: Four Overlapping Domains of Good Lawyering', Clinical Law Review, Vol.9, available at: http://repository.uchastings.edu/faculty_scholarship/7

[27] Breger, M., et al. (2004), 'Teaching Professionalism in Context: Insights from Students, Clients, Adversaries and Judges', South Carolina Law Review, Vol. 55, pp. 303-347, available at SSRN: http://ssrn.com/abstract=566061

[28] Gage, C, (1998) 'Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer' Clinical Law Review, Vol. 4, p.485, available at: https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=4+Clinical+L.+Rev.+485&srctype=smi&srcid=3B15&key=4c8ba8ea21344d37b5dcc1a2c2684354

Recent work from Engler[29] pays homage to the MacCrate Report and most helpfully provides us with a roadmap on how to use the report to develop competent and ethical lawyers. Hyams'[30] work on teaching students to act like a lawyer investigates the type of lawyer we want students to act like and leads the current literature on lawyering skills, values and characteristics of professional responsibility. However empirical research on the relationship between CLE and professional responsibility could have added some useful insights into why the characteristics identified were relevant for professional practice.

IDENTIFYING PROFESSIONAL RESPONSIBILITY

The formation of professional responsibility in law students has been of global interest amongst the legal professions.[31] Major work in this area include the MacCrate Report which sets out ten fundamental lawyering skills[32] and four

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[29] Engler, R., (2003) 'From 10 to 20: A Guide to Utilizing the MacCrate Report over the Next Decade', Vol. 23 Pace Law Review, p.519, available at: http://digitalcommons.pace.edu/plr/vol23/iss2/4

[30] Hyams, R. (2008) 'On teaching students to 'act like a lawyer': What sort of lawyer?', International Journal of Clinical Legal Education, Vol. 13, available at: http://journals.northumbria.ac.uk/index.php/ijcle/article/view/65

[31] The most insightful work on the knowledge, skills and characteristics of a professionally responsible lawyer is seen in the MacCrate report, the CLEA Best Practice report and the Carnegie report. Examples of professional responsibility discussions across the jurisdictions include:

- England and Wales - Solicitors Regulation Authority, Legal Practice Course: Outcomes 2011, Version 2, available at: www.sra.org.uk/documents/students/lpc/Outcomes-Sept2011.pdf Furthermore, the 2013 report on the Legal Education and Training Review can be found at: http://letr.org.uk/
- Canada - Federation of Law Societies of Canada, Task Force on the Canadian Common Law Degree, Final Report available at: http://www.flsc.ca/_documents/Common-Law-Degree-Report-C.pdf and http://www.flsc.ca/en/national-admission-standards/
- New Zealand - Institute of Professional Legal Studies, Graduate Competencies, available at: http://www.ipls.org.nz/for-employers

[32] As set out by the MacCrate report, the ten fundamental lawyering skills the report identified are: problem solving; legal analysis and reasoning; legal research; factual investigation; communication;

professional values[33] that "*every lawyer should acquire before assuming responsibility for handling a legal matter*"[34] as part of a standard legal education.[35] The report identified that providing competent representation to clients, promoting justice with fairness, and improving oneself[36] are essential professional traits of lawyers.[37] In addition, another major work in this area, the CLEA Best Practice report[38] also called for law graduates to demonstrate competency and professionalism in resolving legal problems.

In response to the discussions[39] surrounding lawyer proficiencies and professionalism within the law curriculum in England and Wales,[40] a range of 'Day

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counselling; negotiation; litigation and alternative dispute resolution; organization and management of legal work; and recognizing and resolving ethical dilemmas – The MacCrate report, supra 7, p.123

[33] The four fundamental values set out in the MacCrate report are: provision of competent representation; striving to promote justice, fairness and morality; striving to improve the profession; and professional self-development - The MacCrate report, supra 7, p.140

[34] The MacCrate report, supra 7, p.7

[35] See also Engler R, The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow, (2001) 8 Clinical Law Review. p.115

[36] MacCrate, R. (2000) 'Professional Values in the Practice of Law', William Mitchell Law Review Vol 27(2) available at: http://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1776&context=wmlr

[37] The 2007Carnegie report discussed the development of a professionalism as *'conceptual knowledge, skills and moral discernment and concludes that in legal education 'professionalism, social responsibility, or ethics draws to the foreground the purposes of the profession and the formation of the identity of lawyers guided by those purposes'* (The Carnegie report, supra, 16, p3)

[38] Stuckey, R. (2007) 'Best Practices for Legal Education' available at: http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf

[39] The Solicitors Regulation Authority has undertaken a number of reviews and consultations. See: Law Society Consultation: Training Framework Review (London, Law Society, 2001)

- The first consultation was on the inclusion of ethics into the curriculum (Consultation in 2001, paragraph 21-22)
- The second consultation was on understanding of professional responsibilities, ethics and values required of a solicitor (Consultation in 2003, paragraph 87)
- The third consultation was on a trainee solicitor's core values and skills (Consultation in 2005, paragraph 73)

[40] An independent review by the Law Society found that *"It is difficult to see how lawyers can be expected to be responsible/feel accountable when they are taught nothing of the history of their own profession, its challenges and aspirations…some deeper understanding of the professional project of lawyering … It might also more generally be argued that development of an understanding of the ethical basis of law (not just lawyering) is also a necessary prerequisite of vocational training in professional ethics and conduct…"* – See reference

one outcomes' were developed setting out the requirements of knowledge, attributes and ethics expected of a newly qualified solicitor,[41] including appropriate behaviours, integrity, sensitivity to clients and others,[42] and the ability to recognise and resolve ethical dilemmas.[43]

In addition, the Quality Assurance Agency (QAA) benchmark standards of 2015 for Law expects that *"…a law graduate is far more than a sum of their knowledge and understanding, and is a well skilled graduate with considerable transferable generic and subject-specific knowledge, skills and attributes."*[44]

There are a number of research papers from law academics on teaching professional responsibility. For example, Noone and Dickson[45] identify that a professionally responsible lawyer is someone who fulfils the duties attached to a fiduciary

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made by Boon, A., & Webb, J., (2008) 'Legal Education and Training in England and Wales: Back to the Future?', Journal of Legal Education, Volume 58, Number 1, available at: http://letr.org.uk/references/storage/U7RC3RR2/Boon%20%26%20Webb,%20back%20to%20the%20future.pdf

[41] A new framework for work based learning: Consultation - Annex 1 – Day one outcome - *"Knowledge of … the rules of professional conduct (including the accounts rules) …understanding of … the values and principles on which professional rules are constructed,* available at: http://www.sra.org.uk/solicitors/qlts/day-one-outcomes-table.page. For specific attributes see Outcome C and F

[42] Ibid. Outcome C

[43] Ibid. Outcome D

[44] These can be found at http://www.qaa.ac.uk/en/Publications/Documents/SBS-Law-15.pdf which sets out the key characteristics and skills a graduate of law should be capable of demonstrating. Some of these include intellectual independence, self-management, awareness of principles and values of law and justice, and of ethics, study in-depth and context of substantive areas of law, ability to conduct self-directed research, ability to interpret a range of data, ability to tolerate ambiguity and deal with uncertainty in law, ability to produce a synthesis of relevant literature, critical judgement of the merits of particular arguments, ability to apply knowledge and understanding to offer evidenced conclusions, ability to communicate and engagement with their own personal and professional development, and academic integrity" – Benchmark standards, section 2.4, p.7

[45] Dickson J & Noone M.A, Teaching Towards a new Professionalism: Challenging Law Students to Become Ethical Lawyers (2001) Vol.4(2) Legal Ethics p.127

relationship[46] through skills such as actively engaging in serving the community, effective communication; identifying ethical issues and using the law justly and fairly.[47]

Hyams[48] explains that autonomy demonstrated through an independent and self-directed manner is a necessary skill of professional responsibility. The ability to make sound judgements,[49] through *practical wisdom, a process of imagination, careful deliberation, and intuitive comprehension"*[50] is one that is not limited to legal matters alone.[51] Good lawyering and professionalism require an ongoing process of understanding personal limitations by reflecting on experience,[52] to continually improve through a lifelong learning and professional development.[53]

From reviewing the literature and through a degree of consensus from this and my own views, I have developed a range of learning outcomes in table 1 below which could be incorporated into clinical modules to help students learn and demonstrate professional responsibility. Within this study, these learning outcomes will assist in forming a basis for a definition of professional responsibility which will be used to test students' awareness of their development of professional responsibility through

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[46] Ibid.

[47] Ibid.

[48] Hyams, R. (2008), supra 30.

[49] Ibid.
Further, the CLEA Best Practice Report provides a comprehensive list of "good lawyer" traits which includes the ability to make competent judgements: integrity; honesty; diligence; fairness; courage; wisdom; compassion and balance – The Best Practice report, supra 50, p.51-53

[50] Eberle E. J. Three Foundations of Legal Ethics: Autonomy, Community, and Morality (1993) 7 Georgetown Journal of Legal Ethics, p.123.

[51] Sampford C. & Blencowe S. Educating Lawyers to be Ethical Advisers in Economides, Kim (ed), Ethical Challenges to Legal Education & Conduct, (Hart Publishing Oxford 1998) p.319.

[52] Hyams, R. (2008), supra 30

[53] Ibid.

a clinical experience and to determine the extent to which students feel they have become more aware of what these skills are and what level of proficiency is required.

Knowledge of professional responsibility through:
• Developing new knowledge and deeper understanding of law through solving problems [54]
• Conducting research and undertaking analysis in an independent and self-direct manner [55]
• Resolving client's problem through effective use of judgement and reasoning skills[56]
• Recognising and understanding ethical challenges [57]
• Understanding the values, behaviours, attitudes of a solicitor[58]
Lawyering skills of professional responsibility through
• Exercising appropriate levels of judgement in resolving problems for clients[59]
• Providing appropriate explanation and communication that is understandable[60] and tailored to client needs
• Working with autonomy and self-direction to produce work of high quality [61]
• Resolving ethical dilemmas[62]
• Being well prepared and organised and being able to think on your feet [63]
• Coping well with pressure [64]
• Demonstrating effective client rapport, interviewing skills, negotiation skills and analytical skills of the law and of facts[65]
Values and behaviours of professional responsibility through:
• Upholding the standard expected of the profession [66]
• Being reflective and responsible about own behaviours and actions to ensure continuous self-improvement [67]

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[54] The MacCrate report, supra 7; Noone, M. and Dickson, J, supra 45

[55] Hyams, R. (2008), supra 30

[56] Ibid.

[56] The MacCrate report, supra 7; Noone, M. and Dickson, J, supra 45

[57] The MacCrate report, supra 7; Hyams, R. (2008), supra 30

[57] The MacCrate report, supra 7 and the SRA Education and Training Committee Day one outcomes April 2007

[58] SRA Education and Training Committee Day one outcomes April 2007

[59] Hyams, R. (2008), supra 30

[60] The MacCrate report, supra 7; Noone, M. and Dickson, J, supra 45

[61] Hyams, R. (2008), supra 30

[62] The MacCrate report, supra 7; Noone, M. and Dickson, J, supra 45; SRA Education and Training Committee Day one outcomes April 2007

[63] Hyams, R. (2008), supra 30

[64] The MacCrate report, supra 7; Noone, M. and Dickson, J, supra 45

[65] SRA Education and Training Committee Day one outcomes April 2007

[66] The MacCrate report, supra 7 and the SRA Education and Training Committee Day one outcomes April 2007, and Noone, M. and Dickson, J, supra 45 - *Striving to promote justice, fairness and morality*

Showing integrity and sensitivity towards clients and others [68]
- Exerting judgement in a manner that uses the law justly and fairly [69]
- Raising ethical concerns where appropriate [70]
- Fulfilling the duties of the fiduciary relationship[71]

Table 1: Professional responsibility learning outcomes

This framework of learning outcomes will be utilized throughout the study to:

a) Assess whether students believe their experience of clinic contributed to their development of the knowledge and/or skills and/or character development of professional responsibility;

b) Determine the extent to which students believe they have become more aware of what professional responsibility is and whether the level of proficiency required;

c) Draw out and label the themes from the data to assist in determining students' awareness of professional responsibility;

d) Using the findings from the students' awareness and learning, to offer some reflections on how to use clinics constructively to capture the development of professional responsibility;

THE STUDY AND METHODOLOGY

This study features a module in which law students participate in the representation of actual clients under the supervision of a tutor/solicitor.

A phenomenographic methodology can be used systematically to explore the different participants' experiences and identify their understanding and meanings of

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[67] Hyams, R. (2008), supra 30
[68] SRA Education and Training Committee Day one outcomes April 2007 - Being honest and trustworthy
Showing respect for the client
[69] Hyams, R. (2008), supra 30 and Noone, M. and Dickson, J, supra 45
[70] The MacCrate report, supra 7; Noone, M. and Dickson, J, supra 45 and the SRA Education and Training Committee Day one outcomes April 2007
[71] Noone, M. and Dickson, J, supra 45

the phenomenon being studied.[72] A phenomenographic method is relevant for this study as the research aims to study students' lived experiences and conceptions of professional responsibility. The existence of variation in experiences is founded on the hypothesis that individuals experience the world in unique and different ways.[73] The data was collected from 36 self-selecting participants and the breadth of the representation of the participants across the second and third year programmes has provided 'useful insight' into the different ways in which CLE had facilitated awareness and development of professional responsibility in students.

The findings from this study will be analysed to find evidence of students' awareness of professional responsibility (as outlined in the learning outcomes in table 1) which students feel they may have developed after a clinical module. From these findings, it is hoped that we will be able to better understand and improve the use of clinics to draw out the desired learning outcomes of professional responsibility most effectively.

Sampling, interviewing and transcription

A pool of 36 participants was drawn from a second and third year class in the law programme through a self-selection process. The second year participants had undertaken nine months of a CLE curriculum and the third year participants have had a further three to six months of work experience with law firms during the

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[72] Marton, F. (1986). Phenomenography - A research approach investigating different understandings of reality. Journal of Thought, Vol. 21, p.28-49.

[73] Säljö, R. (1988). Learning in educational settings: Methods of inquiry. In P. Ramsden (eds.), improving learning: New perspectives. London: Kogan Page, pp.32-48;
Marton, F., Pong, W. Y. (2005) 'On the unit of description in phenomenography', Higher Education Research and Development Vol. 24, p.335

course of their study at the time of data collection. The study did not seek to explore whether the additional experience would have facilitated a more enhanced development of professional responsibility.

Each interview lasted around 30 minutes. The dialogue took place in a free-flowing joint discussion between the researcher and the participant. The dialogues were conducted by myself as the researcher and clinical tutor. Each interview began with a clear explanation of the purpose of the research and what I hope to learn from the discussion. Confidentiality and anonymity was assured. I adopted an informal intentional-expressive approach[74] to the dialogue, where participants were asked to discuss their experience on the clinical module, in particular, for me to draw out any awareness and development of professional responsibility skills.

Follow up questions are asked to encourage participants to reflect on and confirm the intended meanings in the expressions that they have used, thereby helping to establish objectivity to the interviewees' perspectives,[75] and minimizing any assumptions or influence of the interviewer. Further, there were five open-ended[76] questions which participants were asked towards the end of the conversation to encourage them to reflect and discuss aspects of developing professional

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[74] Anderberg, E. (2000) 'Word meaning and conceptions: An empirical study of relationships between students' thinking and use of language when reasoning about a problem Instructional Science', Vol.28, available at: http://www.springerlink.com/content/l82l42t6356h3m31/
[75] Svensson et al. (2006a)
[76] Anderberg, E. (2000) Supra 76

responsibility.[77] This also helped with providing some structure to the dialogue especially when students weren't too sure on what aspects to discuss.

The questions were:

a) *In your view, what are the learning benefits of CLE?*

b) *Having completed the CLE module with the reflective portfolio, what do you understand by the term 'professional responsibility'?*

c) *Can you give examples of ways in which your CLE experience has facilitated your knowledge of professional responsibility?*

d) *Can you give examples of ways in which your CLE experience has facilitated your professional responsibility skills?*

e) *Can you give examples of ways in which your CLE experience has given you the opportunity to gain and demonstrate the values and behaviours of someone who is professionally responsible*?

It is acknowledged that these questions make the assumption that there is a link between the CLE experience and professional responsibility, however questions (a) and (b) are addressed first to determine whether the participant is able to articulate an awareness of professional responsibility before the more direct questions to establish link is discussed in questions (c) to (e).

In a phenomenographic study, critics may question the credibility of the data gathered because of the conversation between the researcher themselves with the participant and the potential lack of independence from the study. I was also mindful of the potential differences in the use of language and meaning in interview data. As such, there was continual clarification of intended meanings through follow

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[77] Walsh, E. (2000) 'Phenomenographic analysis of interview transcripts'. In Bowden, J., Walsh, E. (eds) Phenomenography. Melbourne: RMIT University Press, 19–33.

up questions so that assumptions were minimised.[78] I avoided offering alternative

phrases or more accurate expressions; instead I listened attentively. Throughout the

interviews, I was thoughtfully analysing the data I was hearing, to confirm the

categories identified from previous dialogues, to discover emerging categories, and

sometimes to reject some categories which I had previously identified.[79]

Practitioners of this methodology have warned that the written notes could change

the intended meanings of participants[80] and could run the risk of misinterpretation

of the data.[81] In this study, the dialogues were recorded by way of written notes as

exact as possible, including expressions and clarified intended meanings,[82] which

was crucial, since the categories of description were to be constructed from the

participants' experiences gathered from this process. There may be criticism over the

possibility of bias and assumptions being made about the true intent of the notes

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[78] Hammersley (2003) recognized these issues but does not advocate abandoning all uses of interview data. He advised researchers to be aware of the dangers of using interview data and to exercise great caution in interpreting, using and drawing conclusions from them.

[79] According to Akerlind (2005), categories of description for the same phenomena can vary depending on the group of participants and different researchers' ability to develop different categories from the same data. See Akerlind, G.S. (2005b) Variation and commonality in phenomenographic research methods. Higher Education Research & Development 24(4): 321–334, available at: http://dx.doi.org/10.1080/07294360500284672

[80] Kvale, S. (1996) Interviews: An Introduction to Qualitative Research Interviewing. Thousand Oaks, California: Sage Publications.

[81] Barnacle, R. (2005). Interpreting interpretation: A phenomenological perspective on phenomenography. In J. A. Bowden & P. Green. (Eds.), Doing developmental phenomenograph, Melbourne: RMIT University Pressm p.47.

[82] Anderberg, E. (2000) 'Word meaning and conceptions: An empirical study of relationships between students' thinking and use of language when reasoning about a problem Instructional Science', Vol.28, available at: http://www.springerlink.com/content/l82l42t6356h3m31/
Svensson, L., Anderberg, E., Alvegard, C., Johansson, T. (2006a) The interplay between thought and language in understanding problems from a student perspective. In Svensson, L., Anderberg, E., Alvegard, C., Johansson, T. (eds): Pedagogical Reports: The interplay between language and thought in understanding problems from a student perspective. Lund, Sweden: Department of Education, Lund University, p.1–5

made, however I have tried to put my preconceptions of CLE and definition of professional responsibility aside and not to presuppose the view of the participants. My aim during the data gathering and data analysis process was to engage fully with participants' lived experiences to understand their conceptual meanings.

Other limitation include data collected at a certain point in time may not sufficiently represent the perspectives of the entire student population in the law department. Further, due to time constrains, no pilot interviews were used to ensure the questions were phrased clearly. However, it must be acknowledged that although the questions could have been refined, it sufficiently captured the essence of the research.

Data analysis process[83]

In this study, Sjöström and Dahlgren's (2002) data analysis steps were implemented. These are:

1. Familiarisation – To fully comprehend the conceptual meanings of the participants' experiences and to demonstrate reliability between the data obtained and the categories in describing the ways in which a phenomenon is experienced. The interview notes were read three times throughout the process to ensure that the data and categories were linked.[84] The aim was to look for qualitatively different conceptions of the phenomenon of interest

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[83] To fully comprehend the conceptual meanings of the participant's experiences, and to demonstrate reliability between the data obtained and the categories in describing the ways in which a phenomenon is experienced, Marton and Booth (1997) and Ashworth and Lucas (2000) advise researchers to deliberately set their opinions and preferences aside in the interpretation of data. Aspects of the validity issue in phenomenographic studies have been addressed comprehensively in Svensson, Anderberg, Alvegard, and Johansson (2006b) and T. Johansson, Svensson, Anderberg, and Alvegard (2006).

[84] Sjöström, B., Dahlgren, L. O. (2002) Applying phenomenography in nursing research. Journal of Advanced Nursing. 40: 339–345

collectively rather than the conceptions of individual participants.[85] As such, the interview notes were interpreted collectively rather than individually, with cautious awareness of language differences and choice of terminology used during the dialogues. Each participant's dialogue notes were analysed as a whole rather than by way of extracting individual answers from the notes, which helped maintain the intention, expressions and essence of the conversation.

2. Initial grouping – similar emerging themes from the dialogues were grouped together. The result was a number of different groups of data.

3. Comparison of groups/categories: re-reading and re-analysing the data to confirm the initial groupings and then comparing each of the groups to show the differences between them.

4. Labelling categories – Themes were drawn out from each participant's dialogue notes. Similar themes were grouped together to form categories. It must be noted that the epistemological stance taken in this study is that of social constructivism where variations in the way we view the world and what is around us are attributed to our own experiences and existing knowledge. As such, it is acknowledged that the categories for the same phenomena, in this case CLE and professional responsibility can vary depending on the group of participants and different researchers' ability to develop different categories from the same data.[86]

5. Outcome space – The results of the data analysis below has been presented in categories, sustained by quotations from the interviews. The outcome space (table 2) makes a graphical representation of the critically different

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[85] Marton, F. (1994) Phenomenography. in: Husén, T., Postlethwaite, T.N. (eds) The International Encyclopaedia of Education, 2nd edn. Oxford: Pergamon Press, 4424–4429.

[86] Åkerlind, G. (2005). Variation and commonality in phenomenographic research methods. Higher Education Research and Development, 24(4), 321–334.

conceptions, understandings and experiences of the participants[87] and how the categories described correlate together.

RESULTS OF THE STUDY EVALUATING THE EXTENT OF PROFESSIONAL RESPONSIBILITY GAINED

This paper aims to determine the extent to which students believe they become more aware of professional responsibility and the level of proficiency required for a clinical experience.

The discussion of results presented below is taken from the individual answers obtained from the interviews. The information from the interviews were summarised collectively to obtain the main themes in the dialogue before attempting to preliminary group similar answers, thereby drawing out the categories of description. Attention was given to language differences and choice of terminology used by the participants.

The results of the study demonstrate some useful insights into students awareness of how the CLE experience has helped with development of professional responsibility. The knowledge, skills and values will be discussed below. The challenges faced during the clinical module will be addressed in the reflection section with the aim of identifying enhancements to better utilize the module.

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[87] Bruce, C., Buckingham, L., Hynd, J., et al. (2004) Ways of experiencing the act of learning to program: a phenomenographic study of programming students at university Journal of Information Technology Education, Vol. 3, p.143–160, available at: http://jite.org/documents/Vol3/v3p143-160-121.pdf

<u>*Students' awareness of developing knowledge of professional responsibility through*</u>

<u>*application of the law to actual problems*</u>

The findings suggest that students believed they were capable of demonstrating knowledge of professional responsibility through the opportunity to develop a clear understanding of how the law applies in a practical context, being able to identity the key areas of legal issues within a case, an improvement in the ability to research the necessary areas of law.

> **Participant 5:** *I leant what the day to day life of a lawyer would be like through the integration of practical work in our studies…This experience has helped with improving my level of responsibility, and to think about the skills expected of a lawyer and to use my subject knowledge in practice. It was interesting to learn how the law applies in practice, and in my view it is a common sense approach rather than a straightforward application of legal principles.*

> **Participant 27:** *I am really proud of myself…I didn't think I had it in me to handle a real case…real client. I was able to resolve the problem for the client in a way that required me to think for myself, research all the necessary law, understand and apply these to the facts and make a decision using all the information I had on the best course of action for the client. I also made decisions on practical solutions based on my knowledge in the area …and the client seemed very pleased…*

> **Participant 30:** *When a client comes in with a problem, usually there are a number of issues which need to be addressed – some of which are straightforward, some are practical issues, some are more complex confidence related issues and others are evidential and legal issues. I have learnt to draw out the different types of issues after a preliminary client interview and tackle each one… This was a skill that wasn't easy to master however as I became more familiar with the subject knowledge and procedures, it became easier to draw out the issues …Detailed research also helped*

> *with this and a better understanding of the application of law was really helpful too…*
>
> *I feel that I have grown to develop these skills over the past year.*

Students felt that the clinical experience allowed them to take these skills further to demonstrate improvement in the analysis and application of research to the client's problems and the ability to offer suitable solutions through the process of reasoning and decision making.

> **Participant 4:** *…Being able to explain why one option is better for the client over another requires a fair amount of skills… empathy, research, understanding and reasoning skills. Analysing the documents from the opponents were time consuming and required meticulous fact-finding and strong analytical skills….especially when trying to strengthen our own case.*
>
> **Participant 7:** *…I feel as if I have understood what analytical now means. I used to receive feedback on my assignments saying my work required further analysis, but never really understood what it means, until I began working on this module…I have learnt to break an issue into manageable parts and look in-depth at each part using supporting cases or principles and relevant evidence for and against in order to find solutions for my client... Now I use that skill and process in my assignments too.*

Students' awareness of developing knowledge of professional responsibility through learning to solve a client's problem

Most students identified improvement in the process of problem solving as a key skill which improved through the clinical module. Some students explained that that they gained new insights into the application of the law but none were comfortable with trusting their own understanding from new knowledge which was being developed and constructed as a result of the experience.

Participant 1: *...I learnt how to problem solve properly when I began working in the clinical component of the course. I can confidently say I now know how to identify a client's problem, pick out the legal issues and offer solutions that are both law based and sensible for both sides...*

Participant 24: *I have understood how to investigate facts effectively, assess the credibility of evidence and present findings logically in a format understandable to the client.*

Participant 35: *During the negotiations I felt I coped well even when it was necessary to think on my feet and I was only able to do this because of the preparation I had done and having a clear understanding of the case.*

Work is also needed across the entire law programme to build in further opportunities for legal research. Being able to exercise appropriate judgement in resolving a client's dispute is an essential skill for a lawyer. Further work is needed in the clinical module and across the full suite of modules in the law programme to embed opportunities for students to undertake reasoning and judgement skills.

<u>*Students felt as if the horse was put before the cart in some instances of the CLE experience*</u>

Independent research was a key skill demonstrated by all students, although there were varying degrees of corrections and omissions in the work. Students commented that the responsibility of undertaking independent research, and making decisions on offering solutions to clients were the two main challenges they faced because of the lack of experience of exercising academic freedom in other modules. Further questioning is needed to gather specific details on why students were not confident in trusting their research and understanding skills.

Participant 22: *I took part in the clinical module in my second year and attended to a dispute surrounding a matter of asset division. Because I had not studied Family law and was just beginning to study Land law, I didn't understand the research I was gathering and felt as if I didn't quite learn about the subject area as well as I would have if I was in class. I also felt that because I didn't have any basic knowledge of the two areas of law, my advice to the client was sparse, lacking the credibility of a knowledgeable person….. I doubted myself and checking my notes constantly to make sure I understood what I was saying was correct…. I don't think I have learnt much about the areas of law presented by the client but I definitely am a little more confident in taking the initiative to learn something new on my own and to apply new knowledge using my problem solving skills. But I would still prefer a lecture first before attempting to apply my own research.*

Participant 25: *Learning a new area of law by being thrown into the deep end was challenging but interesting. It made me pay more attention to what I was researching and made me research more deeply into the area to ensure that my research was accurate…but I am not too sure if I actually learn enough of Employment law through this method – I definitely couldn't take an exam and pass it without the traditional teaching.*

Students' awareness of their development of some of the lawyering skills of professional responsibility

The findings suggest that students believe the clinical experience has been helpful in gaining insights into making the transition from law school into vocational studies and/or employment. Students also revealed that the clinical experience has been most effective in comparison to other modules. Students say that they feel better

prepared for work. Further in-depth research is needed to establish the exact reasons and factors which make students feel better prepared.

> **Participant 10:** *Most law firms are now looking beyond knowing the substantive law…The clinic has provided me with hands on experience and opportunities to attend court as a Mackenzie friend, represent a client, show evidence of preparation, legal analysis and offering practical solutions. I am confident in gaining employment after my degree.*

> **Participant 27:** *Feedback on performance or preparation…has really motivated me and encouraged me to pursue a career in law…I have understood the law in a much clearer and substantial manner…Research skills improved and I feel as if I now understand what analysis means – looking into cases and facts in a way that helps discern the key pieces of information. The case I worked on also showed that I have reasoning and decision making skills, which I hope to improve over time, with further legal case work.*

The evidence suggests that a number of the key lawyering skills of professional responsibility were developed in this module. These include team working, although there were some challenges in appropriate work between team members, problem solving, paying attention to details, reasoning and decision making skills and working responsibly and under pressure to tight deadlines. An assumption can be made based on the office and case management work that students have had to undertake independently, alongside the various skills and research that has been developed over the course of the module.

> **Participant 13:** *The clinical experience has given me an employment edge…actual evidence of team working, problem solving, communication with a variety of people,*

business awareness, flexibility and working under pressure; being attentive to detail; willingness to learn and good decision making skills.

Participant 21: *I have worked well to deadline and under pressure, and I utilized these strengths in the clinical module…I feel also that I have developed a better approach to problem solving by paying close attention to details in documents such as dates, names of individuals, consistency and discrepancies in multiple pieces of evidence…This has helped me develop a more confident approach to reasoning and explanation skills to clients, supervisors and team members…*

The interview however did not delve further into establishing whether there were any improvements to the existing professional skills which students mentioned they had developed.

Student's awareness of their development of lawyering skills through effective, accessible and clear communication

There was good evidence to claim that students understood the effective techniques to establish client rapport, understanding of good questioning and listening in client interviews with the aim of gaining as much details from the client, and knowledge of some effective strategies for use during negotiations. Using this existing knowledge, students felt they were able to plan and execute their own way of dealing with a client.

Participant 7: *I listened carefully to my client and understood exactly what he was hoping for. The client was happy with how I kept him updated on the progress I was making. The client preferred telephone calls, so I called him with updates and then followed it up by way of an email for my own records. I think this worked well for both of us.*

Participant 15: *The advice I provided my client helped them understand and decide what the right way was forward for them. I also encouraged my client to explore each of the options available to them in a way that benefitted them and helped achieve their goals. I found this challenging but learnt that this is one of the key lawyering skills of a successful lawyer.*

From this analysis, it is clear all students were working responsibly and were dedicated to find the best solutions for their clients, however there was insufficient evidence to suggest that students had thorough knowledge of the key values and characteristics of professional responsibility, as identified in table 1 of this paper. Students were capable of demonstrating practical skills alone through their commitment to do right by their clients such as through sound practical application of the law, good research, effective communication and employing good strategies for problem solving.

Students felt they lacked the understanding of what competency actually means

However, the findings confirm that not all students had this existing knowledge and many went into interviews without planning an agenda or setting out gaols of the task, let alone go in equipped with the knowledge of good practice. There needs to be introductory and refresher workshops highlighting good practice in key lawyering skills, for students to use this as a foundation.

Because of the lack of existing knowledge on good practice, there were many students who felt that they could have been more prepared, anticipating what to

expect and as such being able to build a better rapport with the client. Most felt they managed to cope well under pressure.

> **Participant 9:** *The learning outcomes in this module list number of skills such as competency in case management and competency in developing rapport with client. However, there is no explanation of what competency means and how we could achieve this competency. I would benefit from a set of criteria which explains the levels of competency and during feedback which level I am at to attaining competency of a particular skill. I found it hard to reflect on any improvements without a rubric of some sort.*

> **Participant 21:** *One of the skills we had to reflect on was our level of competency in understanding and working towards the standard expected of the profession….We have had a number of lessons and debrief sessions on profession, values, standards, behaviours. …Reflecting on where I am at on the competency ladder was a challenge as I didn't know what it is to be competent and not competent.*

Evidence suggests students were providing appropriate explanation and communication to clients that are meaningfully tailored to client needs, although as already mentioned, there is work to be done within the curriculum on reasoning and judgement skills. Students also commented that they are now more confident in communicating with members of the public and figures of authority for a variety of reasons. This finding does not tell us that clinic made students more competent or skilled after the experience, but it does suggest that clinic was beneficial in developing and improving a range of lawyering and transferable skills.

Students' awareness of their development of values and behaviours of professional responsibility through ethical awareness

The findings also indicate that there is awareness and demonstrable evidence of students showing sensitivity towards clients.

> **Participant 11:** *…I would never have learnt to apply the law to this extent if not for the clinical experience. I developed some good communication skills and had time to consider the conflict between the parties…I also had time to reflect on the extent I have developed my professional skills in particular through the weekly debriefing.*
>
> **Participant 22:** *It was really good to use my knowledge to help a client. I improved on my legal research, fact analysis and application skills…I improved in offering practical solutions which has now helped me obtain a training contract.*
>
> **Participant 31:** *I grew in confident and became more responsible as I had the welfare of someone else on my hands. There were many instances where I had to question my own belief – especially in the misconduct case – and where I found this to be challenging, I strived to do what is right by my client within the codes of conduct.*

Interestingly however, the findings show no link between the clinical experience and a strong desire to serve the community in the context of pro-bono work. This is intriguing because most students had mentioned during their admission to the law programme that they wished to fight for what is right and facilitate access to justice for all.[88] Possibly, more specific questioning is necessary to form a better opinion on the motivations to support the public through the CLE module.

However, whilst developing competent problems solving skills, there was insufficient evidence to suggest that more often than not students were able to recognise any ethical challenges that may be present in their cases, unless prompted

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[88] Recent work into insights of Pro Bono participation has been undertaken by McKeown, P., (2015) 'Law student attitudes towards pro bono and voluntary work: The experience at Northumbria University, International Journal of Clinical Legal Education, Vol 22 (1) available at: http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/407

to do so by a supervisor. Nevertheless, it was evident that students took a narrow view in understanding ethical behaviour and legal ethics to mean working in a way that does not contravene the codes of conduct.

> **Participant 1:** *…Applying client confidentiality in the day to day handling of a case really helped me learn how to deal with matters professionally. It gave a much deeper recognition and understanding to ethical practices.*
>
> **Participant 32:** *I understand the word ethical to mean doing what is right and moral within the codes of conduct and expectations of a lawyer. I am not sure whether I learnt how to become ethical, but through the debriefing sessions and reflective exercises I had some time to think about how I behaved, how I dealt with a case and I have set out some areas to work on. I do think though that being committed to the client, to the case and to the law is important and that is what being ethical is about perhaps?*

Questioning in this area suggested that students were unaware of some of the basic ethical and professional constrains. Initial teaching and refresher workshops in this area are necessary to give students the confidence to identify and address similar issues in the future.

Students felt that it was ok to make mistakes, but most importantly learn from them

It is evident from all students interviewed that being able to reflect critically had helped improve their performance in future lawyering tasks, and students began to identify areas for improvement and set out action plans to achieve their goals. More work is needed to support students through the reflective process to help draw out specific areas of professional responsibility development.

Participant 24: *It is ok to make a mistake, reflect upon it and improve the next time. The reflective questions…helped with establishing priorities and setting out goals for improvement…. Considering how you go about acquiring the skills of 'a good lawyer' and how will you know you have achieved your goals helped me focus, draw up a list of what I though   t a good lawyer should be, and with feedback…worked towards achieving these skills. The reflective opportunity weekly helped with improvement of how I deal with preparation and clients.*

Participant 33: *…Gave me time to reflect on the skills and experience…Opportunity within the module to think hard about my learning and my career goals, based on the experience and feedback on their strengths and how to overcome weaknesses.*

Participant 8: *The weekly debrief discussion on various skills and professional responsibility…helps us to draw out issues we may not have thought was important. I was able to consider carefully the role of an effective lawyer…. to really think about how I engage with clients, undertake research and do the best in each case.*

Students were capable of demonstrating the values and behaviours of a lawyer through evidence of their commitment and hard work to do the best for their client as fairly and justly as possible. However further exposure is needed for students to understand the depths of the standard expected of the profession.

Participant 7: *I would say being able to research, understand that research, analyse and find solutions for the client are the key skills of a lawyer. Being ethical is important too, but I am unsure what that actually means – probably I will follow the codes of conduct closely.*

Participant 12: *Communication, analytical and research skills are key components of being a lawyer*

Participant 29: *Academic intellect, research and finding the right solution are the main skills I would expect from a lawyer*

Most students stated that legal research, analysis and finding the right solution for the client are the top three skills expected of a lawyer. There is no doubt that these skills are vital, work is needed in the clinical module literature to help students understand the wide ranging necessary skillset and characteristics which should be embedded into the learning outcomes of the clinical module and explicitly assessed.

Illustration of variations

The table below has been created by mapping the findings from the study to the professional responsibility learning outcomes set out above. The table shows the percentage of participants who have gained a range of knowledge, skills and characteristics of professional responsibility. The information presented in the table derives from my interpretation of the themes and learning outcomes contained within the data gathered.

KNOWLEDGE	
Developing new knowledge and deeper understanding of law through solving problems	100
Conducting legal research and undertaking legal analysis in an independent and self-direct manner	78
Resolving client's problem through effective use of judgement and reasoning skills	83
Recognising and understanding ethical challenges	31
Understanding of the values, behaviours, attitudes of a solicitor	61
LAWYERING SKILLS	
Providing appropriate explanation and communication that is understandable and tailored to client needs	100
Working with autonomy and self-direction to produce work of high quality	78
Being well prepared and organised and being able to think on your feet	94
Demonstrating effective client rapport, interviewing skills, negotiation skills and analytical skills of the law and of facts	78
Exercising appropriate level of judgement in resolving problems for clients	72
CHARACTERISTICS AND BEHAVIOUR	
Coping well with pressure	72
Serving the community	11
Being reflective and responsible about own behaviours and actions to ensure continuous self-improvement	100
Showing integrity and sensitivity towards clients	83
Fulfilling the duties of the fiduciary relationship	81
Upholding the standard expected of the profession	58

Table 2: Illustration of the variation in students' learning of professional responsibility after a clinical module

REFLECTION ON USE OF CLINICS TO CAPTURE THE DEVELOPMENT OF PROFESSIONAL RESPONSIBILITY

1. <u>Guiding students' understanding of learning outcomes and assessment measures of a clinical module</u>

A broad brush approach to assessing how competent a student is doesn't capture the extent of their learning from a clinical module.[89] Instead, clear articulation of what each learning outcome means, how to effectively achieve each of the outcomes and clear assessment criteria to help students understand what is expected of them may encourage students to measure their improvements and become reflective and empowered autonomous learners.[90]

A feedback matrix that recognises the stages and characteristics of professional development such as beginner, competent, proficient and expert[91] will assist tutors and students to measure competency more effectively and rigorously.

2. <u>Understanding the value of putting the horse before the cart</u>

Clinics alone are insufficient to offer a full critical academic depth of a substantive area of law. However, it should be explained to students on clinical modules that one of the key characteristic of a successful graduate is to show that they are capable

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[89] Stuckey (2014), 'Can We Assess What We Purport to Teach In Clinical Law Courses?', Vol. 9 International Journal of Clinical Legal Education, available at: http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/85 Also see: Grimes & Gibbons (2016) 'Assessing experiential learning – us, them and the others', Special Issue Problematising Assessment in International Journal of Clinical Legal Education, Vol 23(1) available at: http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/492

[90] Stuckey (2014), supra 91.

[91] Daley, B. (1999) 'Novice to Expert: How Do Professionals Learn?', Adult Education Quarterly, vol.49, available at: http://newprairiepress.org/cgi/viewcontent.cgi?article=1998&context=aerc

of independently learning and applying new knowledge accurately. Within the context of professional responsibility, a future lawyer should be able to demonstrate and exercise a high level of autonomy in professional settings. To facilitate this, clinics are well-suited for giving students opportunities to demonstrate and develop the ability to work autonomously, by demonstrating a variety of lawyering skills, to complement the attainment of subject matter knowledge.

3. <u>Adopting a living education theory framework of learning and assessment in clinical modules</u>

The art of learning to become professional or responsible or ethical will only be possible if the learning is structured in a way that facilitates and draws out these specific intended learning outcomes within a module. In the context of a clinical setting, the most effective way to learn from experience is to use a process of *'….self-reflective inquiry… to improve the rationality of their own… practices, their understanding of these practices, (and) the situations in which the practices are carried out…The analysis which follows is focused upon the nature of the validity of an individual claim to know his or her own professional development'.*[92] This process is known as living theory which immerses the practitioner into the mind-set of 'How do I improve my practice?'.[93]

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[92] Whitehead, J. (1985) An analysis of an individual's educational development - the basis for personally orientated action research. Published in Shipman, M. (Ed.) Educational Research: Principles, Policies and Practice, p.97-108; Falmer; London, p.97. For more recent work see Whitehead, J. (2009) Self-study, Living Educational Theories, and the Generation of Educational Knowledge, Studying Teacher Education, 5(2); p.107-11.

[93] Whitehead, J. (1989). Creating a Living Educational Theory from questions of the kind, 'How do I improve my practice?', Cambridge Journal of Education, 19, 41-52, available at: http://actionresearch.net/writings/writing.shtml

This framework begins with what students know about how they come to acquire new knowledge from actively engaging in practical and professional work.[94] For example, the knowledge in this context may involve information about how lawyers should conduct themselves in a fact finding interview or in a negotiation, the rules governing civil or employment practice, key skills such as building a rapport of trust and confidence with clients, questioning techniques in interviews and strategies of achieving goals in negotiation.

The findings from this study indicate that further work is needed prior and during the clinical experience to give students adequate knowledge to understanding the depths of the standard expected of the profession, which should be embedded into the design of the clinical module with clear learning outcomes to be reflected upon and assessed. As such, there needs to be some introductory theoretical sessions on good practice of key lawyering skills, values and characteristics which will help students learn how to become competent in performing a task. Then, the student will be guided to articulate a plan for how they intend to perform a particular skill. This knowledge can be used to compare the performance actually exhibited.

After a clinical session, it would be useful to hold a peer debrief to share experience between students on how the actual performance related to the planned performance, discuss differences and what the student would try to do differently

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[94] Whitehead, J. & McNiff, J. (2004) Ontological, epistemological and methodological commitments in practitioner-research. Paper presented at the BERA Symposium 2004 in Manchester on: "Have We Created A New Epistemology For The New Scholarship Of Educational Enquiry Through Practitioner Research? Developing Sustainable Global Educational Networks Of Communication

the next time. A checklist to guide the discussion could include technical lawyering skills, ethical and emotive issues, and specific discussions on professional responsibility. If the performance demonstrated was incompetent, a feedback session with the tutor/supervisor can analyse what caused the ineffectiveness, the student's skills, values, or knowledge demonstrated.

This process of embedding continual planning, acting and reflecting within the clinical module provides a basis upon which students can evaluate their performances leading to practical change.[95] Furthermore, the ability to reflect critically on one's own knowledge and skills is vital[96] especially if we accept the pedagogic rationale of experiential learning where learning is seen as an active, self-constructed and intentional process.[97]

This also allows for new knowledge to be formed, opportunity to test and refine a theory and thereby continually improve one's performance. Hammersley (1993) encapsulates this type of learning process as *"sound practice cannot amount to the*

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[95] Quigley, A. & Kuhne, G (1997) 'Creating practical knowledge: Posing problems, solving problems and improving daily practice', New Directions for Adult and Continuing Education. No.73. San Francisco, CA : Jossey-Bass..

[96] England and Wales Solicitors Regulation Authority, outcomes statement of 2011: www.sra.org.uk/documents/students/lpc/Outcomes-Sept2011.pdf. The 2013 report on the Legal Education and Training Review can be found at: http://letr.org.uk/

[97] Leading work on experiential learning can be seen in Healey, M. & Jenkins, A. (2000) Kolb's Experiential Learning Theory and Its Application in Geography in Higher Education, Journal of Geography, 99, pp.185-195. Original advocate of experiential learning is Kolb, D.A. (1984) Experiential Learning: Experience as the Source of Learning and Development, Prentice-Hall, Inc. Englewood Cliffs, NJ.

straightforward application of theoretical knowledge, but is an activity that necessarily involves judgment and draws on experience".[98]

In many instances, the findings from this study indicate the effectiveness of the time, space and guidance provided to reflect. Reflective practice of involving 'How I can improve' is designed to entrench learning from experience by assisting students to think critically on the basis of experience and feedback, to improve the continuing work on behalf of the client and help students to understand the qualities of their work to date and what to do to improve those areas which are less developed.[99] Bergman suggests that reflections can expose students to new understanding in a constructive and explicit way, rather than just hoping that students will absorb the important lessons of how to behave in a professionally, ethically and responsibly simply through a clinical experience.[100] As such, it has been argued that the need to embedded reflective practice is a developmental path to a higher level of professionalism.[101]

The clinical module featured in this study requires students to write a detailed reflective[102] account about preparation for a task, how they performed and how they intend to improve taking into account the theory of practice. In this paper, the

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[98] Hammersley, M. (1993) 'On practitioner ethnography' in Hammersley, M. 'Controversies in Classroom Research. Buckingham: Open University Press, p. 430)

[99] The best known work on reflective learning in a professional context is by Schon who created the term 'reflective practitioner' – supra 11

[100] Bergman, P. (2003), supra 18, p.109

[101] Leering, M (2014) 'Conceptualizing Reflective Practice for Legal Professionals', Journal of Law and Social Policy, p.99-100, available at:
http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1191&context=jlsp

[102] Hyams, R., (2010), supra 30

findings have shown that students have begun to develop critical thinking about their performance and methods to continuously improve.

Some of the generic questions students were asked to reflect on at the start of the module and then to evaluate this at the end of the module include questions such as:

- *What do you understand by the term 'a good lawyer'?*

- *What sorts of skills should a 'good lawyer' possess?*

- *How is 'a good lawyer' different from 'a lawyer'?*

- *Do you possess these skills?*

- *How will you go about acquiring the skills of 'a good lawyer'?*

- *How will you know you have achieved your goals?*

However, from reflecting on the findings, it is proposed that a more constructive approach to reflection would help to explicitly draw out the key learning outcomes of professional responsibility. Constructive reflection is built on the premise that learning is an active process, necessarily situated to construct knowledge[103] rather than acquiring it through a detailed and guided cycle designed to assist the students in deeper and more personalized engagement of learning. From reviewing the findings, a proposed constructive reflection cycle has been illustrated in table 3. Constructive reflection requires the active role of the tutor to help students construct knowledge.[104] Tutors are encouraged to provide clear questions or statements

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[103] Dewey, J. (1938) Experience & Education. New York, NY; Vygotsky, L. (1978), Mind in society: The development of higher psychological processes. Cambridge, MA: Harvard University Press.
[104] Vygotsky, L. S. (1978). Mind in society: The development of higher psychological processes. Cambridge, MA: Harvard University Press. p.58

aligned to learning outcomes which creates a robust framework for students to question themselves and their strategies, formulate ideas, action plans for improvement after the clinical process. Through the constructive guidance, students are able to construct their knowledge actively, aligned to the aims and outcomes of the module.

As such, it would be useful for students to use the professional development matrix designed in table 1 of this paper against which to evaluate themselves.[105]
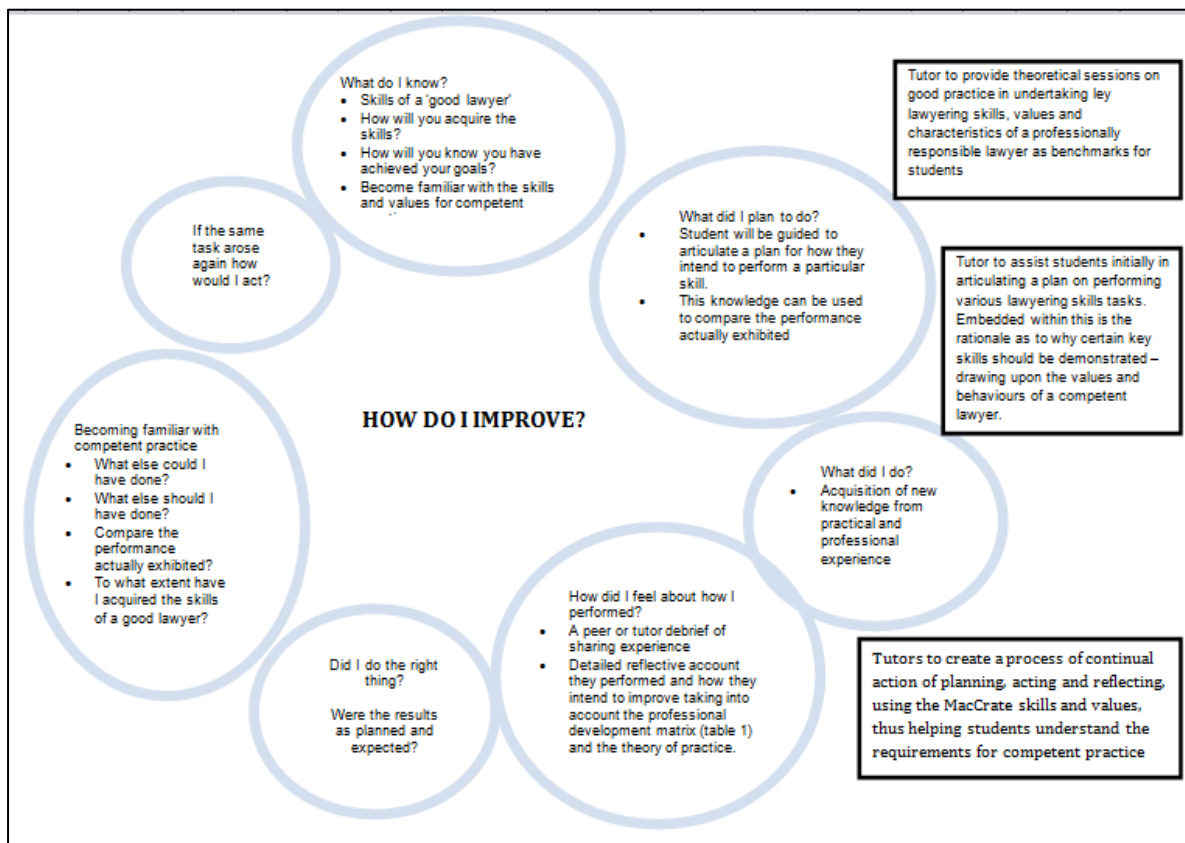

Figure 1: Framework of embedded reflection in a clinical module

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[105] See table 1 on pg.7 of this paper which comprises of the fundamental knowledge, skills and characteristics of professional responsibility.

Students will be directed to identify the skills and values of a good lawyer as currently being required, but more specifically using the skills and values now identified as key components of professional responsibility. This will help serve two purposes: It will enable students to develop the life-long skill of self-reflection and continual improvement and it will give students the opportunity to become familiar with the requirements for competent practice.[106]

4. <u>For academics integrating skills and values throughout the law curriculum</u>

Here are some thoughts which may help programme leaders to consider when thinking about how to integrate and embed relevant skills and values into the curriculum.

- Undertake a skills audit within the law programmes to determine gaps in the teaching of the components of professional responsibility[107]

- Identify three sets of top 5 skills and values to integrate into each year of the law programme. This study indicates that further work is needed in the clinical module and across the full suite of modules in the law programme to embed opportunities for students to undertake reasoning and judgement skills in particular.

- Consider the steps that will be put in place to bridge the gaps identified. This study indicates that initial teaching and refresher workshops on professional

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[106] The MacCrate report, supra 7, The Carnegie report, supra 16 and The Best Practice report, supra 38.
[107] In Section C of recommendation 8, the MacCarte report recommends law schools to undertake a skills audit to determine which of the skills and values described in its Statement of Skills and Values are presently being taught in its curriculum.

responsibility are necessary to give students the confidence to identify and address similar issues in the future. It is also necessary to highlight good practice in key lawyering skills.

- Reflect on whether the skills and values of professional responsibility are taught across the programme and how they are taught. Findings indicate that it is helpful for students to understand the learning outcomes and how they will be taught and assessed.

- Reflect on whether these skills and values can be gained through experiential learning

- Develop relevant support for students to draw out the learning gained from experiential learning, in particular the characteristics of professional responsibility.

- Consider how personal development activities enhance the overall skills and values training?

CONCLUSION

The aim of this study was to examine whether CLE as a learning methodology can successfully facilitate the development of students' awareness of professional responsibility in law students. Although there is a rich repository of literature in this field, there is little in the way of empirical data evaluating the link between utilizing CLE to develop specific skills. The study employed a phenomenographic methodology to evaluate the variations in student learning and presented findings

which suggest that clinics have the capability of developing and enhancing a variety of lawyering skills, awareness of values and characteristics of a competent lawyer and facilitate the development of new knowledge and deeper understanding of the application of law.

The findings from this study show that students believed they had acquired learning and acquisition of knowledge, skills and character building during the clinical experience and their comments demonstrate a greater awareness of this.[108] The findings suggest that students learned most effectively through:

- understanding and applying the law in actual problems;

- learning from mistake made;

- making mistakes and learning from it;

- developing confidence in some key lawyering skills such as learning to solve a client's problem;

- communicating clearly in an accessible manner with clients and stakeholders;

- and in a small number of situation identifying ethical considerations within a client's problem.

There is some indication from the study that students believe they have developed greater awareness of professional responsibility such as working autonomously, learning to deal with uncertainty and emotions, working with integrity and confidence. There is also some evidence of a sense of professional identity and some

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[108] However, this paper did not seek to make an assessment of whether students' learning of professional responsibility actually had developed.

sense of attitudes, moral and ethical practicalities in legal practice. Despite students' awareness of this high quality learning, they were unable to confirm whether they were approaching a competent professional standard, including not understanding what competency means within the context of various skills and values and undertaking practical work without adequate knowledge of the substantive law.

The study concluded by offering a reflection on how clinics could be better utilized to constructively capture all the opportunities to develop professional responsibility. These reflections include thoughts on guiding students to understand the learning outcomes and assessment measures of a clinical module, guiding students to understand the value of putting the horse before the cart, designing a clinical module around a living theory framework as identified in Table 3 of the paper on, whilst embedding reflections in a constructive and structured manner in the clinical module.

With the ongoing research in this field, some key areas are in need for future research:

- Whilst it is acknowledged that employing a suitable methodology could be challenging, it is proposed that clinicians and academics could describe and measure how effectively their clinics achieve the intended outcome and aims of a clinical module. This will offer valuable insight into the real educational value of CLE and establish its link between various skills development through this learning methodology;

- Develop a level of competency feedback matrix that is meaningful for students;[109]

- Develop effective methods of embedded reflection in clinical courses throughout a variety of stages of the clinical experience to actively draw out students' development of professional responsibility;

- Constructively aligning elements of professional responsibility to the learning, teaching and assessment in clinical modules using the living theory framework;

Finally, the paper concludes by offering some thoughts on what all of us could do to integrate skills and values throughout the law curriculum. Personally, these reflections will help me redesign and enhance the existing module and I hope that there is some value in this for other clinical modules.

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[109] There is already some work on this has been undertaken by Gold, N. (2015), supra 1; Stuckey (2014), supra 4 and Grimes & Gibbons (2016) supra 91

THE FINANCIAL CHALLENGES OF CLINICAL LEGAL EDUCATION: AN EXAMPLE FROM A ZAGREB LAW CLINIC

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Authors lay out the debate over the composition and direction of legal education in an era of law school's curriculum reform and limited financial resources. Croatian Legal Aid Act created an opportunity for law students to become more actively involved in delivering primarily legal aid to local community. If law schools are not sufficiently financially resourced, they can hardly equip students with the needed skills to practice law and provide legal aid. Finally, the authors argue who should play a guiding role in financing a clinical legal education in law schools that are focused on educating students as social justice lawyers.

Keywords: clinical legal education, legal aid, financial sustainability

1. INTRODUCTION

The concept of practical problem solving is an important means of developing skills which employers are expecting from young lawyers on the

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labour market.[1] Therefore, modern law school curriculums require that they increase the quantity and quality of experiential education provided to students. Clinical legal education is one form of experiential education which has grown in importance globally due to its potential to improve the quality of legal education.[2] Clinical legal education aims at developing the perception, attitudes, skills and sense of responsibilities which lawyers are expected to possess when they complete their professional education[3] Thus, clinical legal education provides students with opportunities for professional and intellectual development and prepares them for the practice of law.[4]

The article is divided in four parts. The first part examines the role of clinical legal education at law schools and their service to the local community. The second section briefly discusses the financial challenges that law schools face when they want to introduce and sustain a clinical curriculum. The third section presents an example of financial sustainability of clinical legal education at

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[1] Research has shown that the modern law firms share ideas of what they expect from law graduates. There are certain competencies which are most important in the hiring decision (Hamilton, N. W., Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism, University of St. Thomas Law Journal, Vol. 11, Issue 1, 2013, pp. 6-38).

[2] Bloch, F. S, Access to Justice and the Global Clinical Movement, Washington University Journal of Law & Policy, Vol. 28, 2008, p. 113. For a broader perspective and overview of different clinical models and experiences worldwide see Bloch, F. S. (ed.), The Global Clinical Movement: Educating Lawyers for Social Justice, Oxford University Press, New York, 2010.

[3] Vadapalli, R., The Perspective of Clinical Legal Education" Selected Works, 2010, p. 1. Available at: http://works.bepress.com/ranganath_vadapalli/9/ (24/10/2016).

[4] Ibid.

Zagreb Law School (the Law School).[5] Finally, the fourth section discusses the general financial implications for clinical legal education sustainability based on the Zagreb Law Clinic (the Law Clinic) experience and discusses whether clinical legal education should be as done so traditionally, financed by law school, or if the burden should be also divided among legal practitioners, local community and the state.

2.   THE ROLE OF CLINICAL LEGAL EDUCATION

The intellectual roots of clinical legal education date back in the 1930s when academics at the Yale Law School, together with colleagues at Columbia and one or two other law schools, developed a new approach to the study of law.[6] Their teaching was based on the idea that law should be used to help solve social and economic problems, so students needed to be encouraged to question existing legal rules and procedures with an aim to learn to think like a lawyer, rather than memorising rules and doctrine.[7] But it was not until the late 1960s that idea of clinical legal education received financial support and found effective advocates.[8] Starting with a small number of demonstration grants in the late '60s and early

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[5] See http://klinika.pravo.unizg.hr/law-clinic-zagreb (16/08/2016).

[6] Wizner, S., The Law School Clinic: Legal Education in the Interests of Justice, Fordham Law Review, 2002, Vol. 70(5), pp. 1931 -1933.

[7] Ibid., pp. 1931, 1932.

[8] Ibid., p. 1933.

'70s clinical legal education was introduced into the majority of American law schools.[9] Today, more than 100 law schools in the United States have clinical programs which are permanently included in law school budgets, as do some in Canada, the UK, Australia, Latin America, Europe, China, Israel, etc.[10]

Although legal education has undergone rapid change since late 1960s, law schools are still in the midst of adjusting clinical curriculum to meet the demands of employers who increasingly want to hire students who are ready to practice law.[11] Therefore, clinical legal education is becoming popular within law schools, as it establishes an opportunity for the students to gain important practical experience whilst providing a valuable legal aid service to the local community.[12] They have become the primary places where law students can learn to be competent, ethical and socially responsible lawyers.[13] Though in modern welfare state the primary obligation to provide legal aid services to the poor resides with the government and with the legal profession,[14] law schools can also contribute

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[9] Barry, M., et al., Clinical Education for this Millennium: The Third Wave, Clinical Law Review, 2000, Vol. 7(1), pp. 19-20.

[10] Ibid, p. 20-22.

[11] Radvany, P., Preparing Law Students to Become Litigators in the New Legal Landscape, Review of Litigation, 2014, Vol. 33(4), p. 881.

[12] Marson et. al. 2005, p. 29.; Quigley 1995, p. 471.

[13] Wizner 2002, p. 1929.

[14] Or at least that are the citizen's average expectations. See Social welfare law: what the public wants from civil legal aid. Findings from a nationwide opinion poll, LAG, The Baring Foundation, p. 7. Available at:

to the solution of the crisis in access to justice.[15] On the basic level, law clinics become like law firms, where students can engage in supervised law practice by providing legal services to clients in the legal aid system and at the same time develop a critical view of that system.[16] On the other hand, tasks that students perform in law clinics can be distinguished from the work they perform in law firms while attending law school.[17] Students in law clinics have an exceptional opportunity to learn that legal doctrine, rules and procedure, ethical considerations and the social, economic and political implications of legal aid services are interrelated [18] Thereby, law clinics can provide an instructional program that is intellectually situated within the law school curriculum as an integral part of legal education with particular valuable opportunities for

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www.lag.org.uk/media/47770/social_welfare_law_what_the_public_wants_from_civil_legal_aid. pdf (24/10/2016).

[15] Wizner et. al. 2004, p. 997.

[16] Wizner 2002, p. 1930.

[17] Ibid.

[18] Law schools have a unique opportunity and obligation to make access to justice a more central social priority. Rhode, D. L., Access to Justice, Oxford University Press, 2004., p. 193. cited in Wizner et. al. 2004, p. 997. Students are in contact with real life clients and they are engaged in activities which are usually done by graduate lawyers. Such experience gives them unique opportunity to develop needed skills for working in practice. They interview the clients, do their own research, give their own advice etc. In order to do that in a proper manner, they need to understand the system in which they are going to work. For a further overview of the benefits of law clinics, see Kerrigan, K., Murray, V., A Student Guide to Clinical Legal Education and Pro Bono, Palgrave Macmillan, London, 2011, pp. 13-17.

students to learn how the law functions, or fails to function, while serving low-income clients.[19]

3.   THE CHALLENGES OF CLINICAL LEGAL EDUCATION

Legal education curriculums that tend to satisfy labour market demands require   law schools to increase the quantity and quality of experiential education.[20] At the same time, law schools are under pressure to control costs.[21] It is the most pressing challenge many law schools face because they have a relatively fixed budget, which they can spend on matters that are most valued by the school.[22] Law schools must weigh the relative costs and merits of clinical experiential learning against those of other aspects of practical courses such as externships, which usually allow higher student-to-faculty ratios, and therefore, lower costs per student.[23] The cost per student for clinical education varies

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[19] Ibid, p. 998.; Rhode, D., L., In the Interests of Justice: Reforming the Legal Profession, Oxford University Press, 2000, p. 199.

[20] Katz, M., Understanding the Costs of Experiential Legal Education, Journal of Experiential Learning, 2015, Vol. 1(1), p. 28.

[21] Ibid.

[22] Ibid., p.36.

[23] Joy, P. A., The Cost of Clinical Legal Education, Boston College Journal of Law and Social Justice, 2012, Vol. 32(2), p. 327.

greatly depending on the type of clinical program and course.[24] The variations in costs may stem from different factors such as status of the faculty teaching the courses, student-to-faculty ratios, the number of credit hours awarded, law clinic facilities, including a research library, interview rooms, conference rooms and offices equipped with state-of-the-art technology.[25] In comparing the costs, it is often difficult to understand the true financial costs of clinical courses versus other practical law school courses.[26] Therefore, law schools must decide how much experiential education they want to offer and what they need to trade off to accomplish that goal.[27] Beside the educational goal, law clinics also have the task to meet the needs of low-income clients and their communities whom depend on legal aid services which students provide. This is to help ensure their access to crucial legal rights and procedures that protect the basic necessities of life, such as social assistance, housing, health, education and human rights. Therefore, sustainability of clinical legal education is not only crucial for the academic community but also for local communities. We should not forget its significance for local law firms that could benefit of this type of legal education

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[24] Ibid.

[25] Ibid., For detailed financial planning clinical legal education see more Katz 2015.

[26] Ibid, p.328.

[27] See Kuehen, R. R., Pricing Clinical Legal Education, Denver University Law Review, 2015, Vol. 92(1); Joy, P. A., The MacCrate Report: Moving Toward Integrated Learning Experiences, Clinical Law Review, 1994, Vol. 1(2), pp. 401, 404.

which makes students with this experience more employable and successful in law practice.[28] The broad scope of clinical legal education benefits are continually challenging law schools to find more cost-effective and innovative ways of gaining outside funding. This can be ensured from the state as funding for the representation of indigent clients and from law firms and attorneys as in-kind contributions. [29] Although clinical legal education programs can be more expensive than the Socratic or lecture and seminar classroom environment type of education, financial commitments from the whole community (academia, professional lawyers, local community and state) may be of great help to overstate that expostulations.[30]

4. ZAGREB LAW CLINIC PRACTICE FOR BETTER LEGAL EDUCATION

4.1. Clinical legal education and the preservation of access to justice

Zagreb Law Clinic was established in October 2010, with an aim to enable direct and active, practical education of students by their participation in live client

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[28] Marson, J., Wilson, A., Van Hoorebeek, M., The necessity of clinical legal education in university law schools: a UK Perspective, International Journal of Clinical Legal Education, 2005, Vol. 7, p. 29.

[29] Haydock, R. S., Clinical Legal Education: The History and Development of a Law, William Mitchell Law Review, 1983, Vol. 9(1), p. 142-144. In-kind contributions can be given basically in any goods, commodities or services, as long as they are not money-based.

[30] Kramer, J. R., Who Will Pay the Piper or Leave the Check on the Table for the Other Guy, Journal of Legal Education, 1989, Vol. 39(5), pp. 655, 661.; Kuehen 2015, pp. 21-22.

cases and delivering legal aid to socially vulnerable groups of citizens. In accordance with the Regulation on Study (the Regulation)[31] and Statute of Zagreb Law Clinic (the Statute),[32] the Law Clinic is defined as a form of teaching in which students provide free legal assistance in practical legal matters under the supervision of academics and legal practitioners.[33] The Law Clinic represents, along with simulated trials and internships in law firms and public notary offices, one of three forms of practical training in the ninth semester of the educational curriculum.[34] Student participation in the work of the Law Clinic is evaluated as equivalent to six hours of work per week during one semester, and equals 10 ECTS credits.[35] Students who enrol in the Law Clinic go through several stages and kinds of clinical education. At the start of their clinical practice students are obliged to attend introductory seminars, where they gain

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[31] Regulation on Study of 26 February 2014. For the whole text (Croatian only) see: www.pravo.unizg.hr/images/50000902/PRAVILNIK%20O%20STUDIJU%2014-04-11%20usvojen%20 tekst.pdf Last cited 12/08/2016

[32] Statute of Zagreb Law Clinic of 02 July 2014. For the whole text (Croatian only), see http://klinika.pravo.unizg.hr/sites/default/files/akt_o_pravnoj_klinici_-_statut_pk.pdf Last cited 12/08/2016

[33] Art. 16. of the Regulation 2014.; Art. 2., para. 1. of the Statute 2014.

[34] See Law study program, curriculum for IX semester available on website: www.pravo.unizg.hr/diplomski_studij/5.godina/nastavni_plan?_v1=ckIPgg_H0qGU0cWjvWoVg aWNrlbP2a_roLtuulzyi6gzZcZXQmLjvLhyZB9Q659usnn9jmmFg-Q0G7pMAI1_gA==&_lid=22629#news_22629.

[35] Ibid.

knowledge on the techniques of taking on and processing legal cases.[36] After finishing introductory seminars students take their daily duties in the central office where they work in groups in order to provide general legal information, legal advice and prepare written legal opinions (primary legal aid)[37] to citizens who have applied for clinical legal aid.[38] Students are not allowed to directly represent clients in the court, but they may attend the hearings and, within the work of law clinics, they may assist persons authorised to represent clients in the court.[39] Students provide primary legal aid to socially vulnerable citizens, but they are also authorised to provide legal aid in various kinds of legal cases,[40] which are of great importance for gaining practical knowledge.[41] Although students are obliged to work in the group, they also may undertake individual

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[36] Preložnjak, B., Clinical legal education in Croatia – from providing legal assistance to the poor to practical education of students, International Journal of Clinical Legal Education, 2013, Vol. 19(1), p. 375.

[37] According to Art. 9. Of Croatian Legal Aid Act (Off. Gaz. 143/13), primary legal aid comprises of general legal information, legal advice, help with the drafting of submissions in administrative procedures and procedures before international courts and organisations, representation before administrative bodies and legal help in alternative dispute resolution.

[38] Art. 13. of the Statute 2014; See Uzelac, A., Pravna klinika Pravnog fakulteta Sveučilišta u Zagrebu - Koncept programa ustrojstva i rada (Legal Clinic of the Faculty of Law, University of Zagreb - The concept of program of its organization and operation), Zagreb, 2010., p. 3.

[39] Ibid. Those would primarily be lawyers, but also other authorised representatives in accordance with law (e. g. Union representatives in labour disputes).

[40] According to Art. 10. Of Croatian Legal Aid Act, primary legal aid can be provided if the client applying for legal aid does not have sufficient knowledge to exercise his or her rights, if the client has not received free legal aid elsewhere, if the application is not manifestly unfounded and if the financial background of the client is such that paying for legal help could jeopardize his or her maintenance, as well as the maintenance of the members of his or her household. So any case can potentially be subject to primary legal aid.

[41] Art. 16. para. 3. of the regulation 2014; Art. 5. of the Statute 2014.

research regarding preliminary processing of cases. [42] In our central office, students have at least one meeting per week of working groups, where they discuss the results of their clinical work and any problems they are facing during their clinical practice. [43] At least twice in a semester students and clinical leadership hold plenary meetings with the aim of discussing organisational and strategic issues of clinical work, such as enrolment of new students, new projects of cooperation with NGOs and other regional law clinics and planning the schedule for providing legal aid in mobile clinics (outreach projects). [44] Beside the work in the central office, students are obliged to work in a mobile clinic, where they provide legal aid in areas of Croatia where legal aid is most needed. [45]

As the Law Clinic functions to provide assistance to members of especially vulnerable social groups and individuals who are not capable of exercising and protecting their legal rights, it aims to contribute to the overall system of legal aid. It is thus registered as one of the providers of legal advice and assistance at the Ministry of Justice. [46] This segment of the clinical education, which comprises

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[42] Ibid.

[43] Ibid.

[44] Ibid.

[45] Ibid.; Art. 4. para 3. of the Statute 2014. The idea behind outreach projects is to go outside the central office, located in Croatia's capital and visit other areas of Croatia. This decentralisation of legal aid was inspired by Norwegian model. See http://gratisrettshjelp.no/testside/jussbuss/ (16/08/2016).

[46] See .https://pravosudje.gov.hr (16/08/2016).

practical resolution of legal cases in the form of providing legal aid, represents a significant contribution not only to legal education, but also to the community. As a result, the Law Clinic became one of the major providers of legal aid in Croatia. During 2015 and in the first half of 2016 the Law Clinic has received more than 3,720 cases. The significance of this caseload can be judged on the background of the data supplied by the Ministry of Justice for the state sponsored legal aid and advice cases. In 2014 there were, altogether, approximately 2,758 legal aid and advice cases, and in the whole of Croatia the state gave support for only about 647 legal advice cases.[47]

4.2. Organisational structure

The Law Clinic is governed and its work coordinated by the Clinical Leader, who is a law professor and member of Zagreb Law School.[48] The administrative affairs of the Law Clinic are carried out by Assistant Leaders with the help of Student Administrators.[49] All the important decisions on the provision of legal assistance in specific cases are brought independently by students[50]. Strategic questions about the direction of clinical actions, organisation and other decisions

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[47] Report Ministry of Justice 2015.

[48] Art. 17. para. 1. of the Regulation 2014.; Art. 11. of the Statute 2014.

[49] Art. 11. para 2., Art. 16. of the Statute 2014.

[50] One of the students is a reporter in charge of the case and the Group is the one deciding on the final opinion. Of course, legal opinions are subject to supervision, but supervisor tend to reach a mutual decision instead of simply correcting and amending the students' opinions.

that require the engagement of additional resources or work, are decided at joint meetings by students, in agreement with the Clinical Leader, his Deputies and Assistants, Academic Mentors.[51]

The Law Clinic has clinical groups that serve as working groups.[52] They are independently formed in accordance with characteristics of specific cases and areas to which they pertain.[53] In the beginning the Law Clinic was operating through three working groups: civil and family law group - in which the cases concerning the property and status were handled; administrative and labour law group - in which the cases concerning labour and social issues were handled; and criminal law group - in which the cases concerning criminal implications in the broader sense (criminal, misdemeanour, disciplinary and similar cases) were handled.[54] However, since this classification of the working groups was too general and less client oriented,[55] at the end of academic year 2010/2011 a new

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[51] Meetings of clinicians are held monthly in the form of the Small Council. The Clinical Leader, his Deputies, Assistants, Academic Mentors, Administrators and students which represent clinical groups discuss important questions of clinical organisation, collaboration with civil society organisations, government agencies, legal practices, as well as presenting and analysing the performance achievements of students in providing of legal aid. Also at the meetings current difficulties in the work with which students and their mentors meet are discussed, with the aim of proposing concrete suggestions for their successful resolution. For more information, please see Art. 14. of the Statute 2014.

[52] Art. 13. of the Statute 2014.

[53] Ibid.

[54] Uzelac 2010, p. 4.

[55] The clients started to address the Law Clinic with specific issues which needed inter-disciplinary approach. E.g. cases dealing with the issue of medical negligence needs to be

classification of working groups was made. Thus, the Law Clinic now operates in eight working groups: for asylum seekers and foreigners, anti-discrimination and rights of minorities; for the rights of children and family support; for protection and assistance of crime victims; for protection of workers' rights; for protection of patients' rights; for public relations and for special cases and projects.[56]

With the growth in its popularity and coupled with the knowledge of the public about its existence, the Law Clinic has grown considerably. In 2010/2011, initial generation of students who worked in the Clinic counted about 20 persons. During 2012-2014, and now in 2015, the number of clinical students rose to 112. This number needs intense engagement of the mentors and supervisors. Currently, the Law Clinic has about 20 academic mentors (selected among the teaching staff and attorneys who are assisting in training of the students), 10 student-mentors (selected among the best clinical students of the past generation).[57] With the exception of people who are exclusively engaged in administration and strategic planning (Clinic Leader, Assistant Leaders and student administrators), all other collaborators (students and their mentors) are

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assessed from a standpoint of criminal law (medical malpractice), civil law (negligence claim/insurance) and administrative law (special administrative procedures for patients). So the Law Clinic decided to focus on the client's case in whole and not just one aspect of their rights.

[56] See Art. 13. of the Statute 2014.

[57] The principle of autonomy is one of the cornerstones of the work in the Law Clinic, Not only are the students autonomous in regard to the solving of the cases (subject to supervision), but they also choose their own leaders (student-mentors). They are the ones we feel know their teams the best and who can truly evaluate their colleagues.

directly involved in provision of legal information and advice in concrete legal aid cases.

4.3. Mentoring

The Law Clinic has Academic Mentors, chosen among the professors and faculty associates, depending on their interest and knowledge in specific matters of significance for the Law Clinic.[58] Academic Mentors monitor the work of their clinical groups, they advise students regarding the direction of their research in solving the legal cases and discuss various legal issues that are needed for the successful providing of legal aid.[59] Although Mentors are involved in the student's work, they are not allowed to solve the cases instead of the students, nor are they allowed to impose on students their legal opinions.[60] In addition to Academic Mentors, the students are also mentored by 'senior' students who, after finishing one semester of active work in the Law Clinic, continue to volunteer within it.[61]

External mentors, selected on a voluntary basis among interested members of the legal profession (lawyers, lawyers in NGOs and other legal professionals),

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[58] Art. 12. para 1. of the Statute 2014.

[59] Ibid.

[60] Ibid.

[61] Ibid.

also participate in activities of the Law Clinic.[62] They help students with the practical training, mainly by participating in the reception and analysis of specific cases (receiving instructions from the client, identifying the main issues and advocacy strategies, etc.).[63] So far, the Law Clinic has successfully cooperated with several attorneys specialising in various aspects of the law, lawyers working in NGOs and bodies of state administration.

4.4. Funding

The standing financial source for the work of the Law Clinic is the Law School. It covers the basic costs of the Law Clinic (office space, postage, utilities and the costs of three student-administrators). Other costs (including the costs for equipment, promotional materials, field activities, external outreach programs, institutional visits, and occasional honoraria for the academic mentors and coordinators) are covered from the state budget (Ministry of Justice) and the local community budget (City of Zagreb Grant). The legal provision grants rights to the Law Clinic as a legal aid provider to request compensation from the state budget, but the annual value of budgetary funds allocated for the legal aid

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[62] Ibid., Art. 12. of the Statute 2014.
[63] Ibid.

providers are low and have been constantly decreasing.[64] Therefore, the Law

Clinic was in 2010-2011 fully financed from the Law School budget and was

supported by projects with international institutions, as well as foreign and

international organisations.[65] When the projects were initially proposed, the Law

Clinic was setting up its organisation, informing the public about its existence

and activities and discussing the format and targets of its activities. In the second

half of 2011, the Law Clinic started with its practical work but, until the end of

2011, it had altogether received approximately 300 cases.[66] The work of the Law

Clinic was difficult *inter alia* because of the lack of resources for regular work on

the cases. Although the Law School provided some office space to the Law

Clinics, this was a rather limited space shared by several other organisations,

with a low supply of computers, printers and other office equipment necessary

for office work. The Law Clinic acquired some of the needed equipment and

supplies with the financial support from the Law School and other donors

(UNHCR, World Bank). However, the logistics were still insufficient, specifically

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[64] Art 36. para 1. of Croatian Legal Aid Act (*Off. Gaz. 143/13;* CLAA); See European judicial systems Edition 2014 (data 2012): Efficiency and quality of justice European Commission for the Efficiency of Justice (CEPEJ), Council of Europe Publishing, Strasbourg, 2014, p. 77.

[65] In the period of 2011-2014 the Zagreb Law Clinic has succeeded in winning projects with the British Embassy, the Norwegian Embassy, and as well with the European Citizens Action Servis – ECAS. See http://klinika.pravo.unizg.hr/medunarodna-suradnja-i-pomoc.

[66] See http://klinika.pravo.unizg.hr/broj-i-vrsta-predmeta.

considering the dynamic growth of the number of cases and students working in the Law Clinic.

In the international project period (2011-2014), the Law Clinic was able to develop extensive activities in providing legal advice for marginalised groups and the less affluent parts of the Croatian population and to properly deliver practical experience to students.[67] Coupled with the growth in its popularity and the knowledge of the public about its existence, the Law Clinic has grown considerably. Initial generation counted approximately 20 students who worked in the Law Clinic. During 2012 and now in 2016, the number of student clinicians has increased over 100 students. The end result is that the Law Clinic became, in the period of international projects, one of the major clinical legal education programs and providers of legal aid in Croatia.[68]

5. SUSTAINABILITY OF CLINICAL LEGAL EDUCATION

5.1. Global challenges in funding of clinical legal education

Resources are "a critical issue of the establishment and sustainability of clinics" and, more importantly, they "affect the size of program that can be

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[67] Ibid.

[68] See ft. 47. This could not have been done without *pro bono* engagement of the Law School staff (young researchers, assistant professors and professors) and legal practitioners (mainly lawyers) who have supported the Law Clinic from the very beginning.

established".[69] It is of no surprise that the question of financing clinical legal education often arises in scholarly debates. However, one thing needs to be emphasized before discussing the different funding models. Financial challenges will differ depending on the source of faculty funds, so not all debates are applicable to every clinical model. For example, there is research analysing the influence of clinical legal education on the tuition of law schools.[70] This is certainly a very important question for privately funded law schools, however not of major importance for publicly funded law schools, such as the ones in Croatia.[71] This needs to be taken into account when reading the about different economic models of law clinics.

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[69] Giddins, J., Promoting Justice Through Clinical Legal Education, Melbourne, Justice Press, 2013, p. 145. Available at: www.justice-press.com/e-books/giddings/promoting-justice/projet/Promoting-Justice-Through-Clinical-Legal-Education---Jeff-Giddings.pdf (17/08/2016).

[70] The answer is negative. Research shows that 84% of law schools already have the capacity to provide the students with clinical legal training, so there is no need for them to increase the amount of tuition. Kuehn 2014, p. 39.

[71] The tuition students pay is dependent on the ECTS credits. Each university is autonomous in regard to the rates of each ECTS point, however rates are determined in accordance with the recommendations of the Ministry of Science, Education and Sport. This means that faculty's decision to include law clinic in the program could hardly influence the rates determined by University. See Rules on the tuition rates of University of Zagreb (Croatian only) of 13 March 2013, available at: www.unizg.hr/fileadmin/rektorat/O_Sveucilistu/Tijela_sluzbe/Senat/Sjednice/2012_2013/PRAVILA_PARTICIPACIJE_03.2013._Odluka_Senata-corr_scan.pdf (16/08/2016).

The costs of law clinics depends on the status of the faculty teaching the course, student-to-faculty ratio, the number of credit hours awarded, etc.[72] Katz adds faculty compensation costs and the complexity of the clinic to this list[73]. He explains that there are three important variable costs: professor labour costs, other labour costs (e.g. for hiring administrative stuff, outside attorneys etc.) and other expenses (e.g. travel, case management software etc.).[74] Of course, different types of experiential legal education models are faced with different costs.[75]

Recent increase in market orientation and liberalisation of traditionally public education systems[76] will influence the need of alternative funding opportunities for publicly funded law school clinics. The general lack of support on the university and government level can be generally solved by way of using trusts,

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[72] Swords, P. D. & Walwer, F. K., Cost Aspects of Clinical Education, in: Clinical Legal Education: Report Of The Association Of American Law Schools—American Bar Association Committee On Guidelines For Clinical Legal Education, 1980, pp. 139-143., cited in Joy 2012, p. 327. *Katz* argues that such data is out-of-date (Katz 2015, p. 34).

[73] Katz 2015, p. 45.

[74] Ibid., pp. 36-38.

[75] Ibid., p. 44.

[76] Which is certainly one of the trends characteristic for Europe (Jongbloed, B., Funding higher education: a view from Europe, Funding Higher Education: A Comparative Overview, organised by the National Trade Confederation of Goods, Services and Tourism (CNC) Brasilia, October 13, 2008, p. 6). Available at: https://www.utwente.nl/bms/cheps/summer_school/literature/brazil%20funding%20vs2.pdf (16/08/2016)

cooperative agreements, international resources, where available, as well as by using the private bar.[77]

An alternative solution for clinical sustainability is to adapt the clinical programme. For instance, a slightly cheaper alternative is to organise different types of externships.[78] However, if not planned carefully, they will not give the same effects as in-house clinical programs.[79] It is thus prudent to try to minimise the costs elsewhere, without risking the quality of law school education, e.g. by electrification of library collections or eliminating under-enrolled courses.[80]

5.2. Financial challenges of the Law Clinic

The Law Clinic is today extremely well received by students, who regularly apply for work in the Law Clinic in numbers bigger than that of available places. It also enjoys a high reputation among numerous legal aid clients in Zagreb and in other areas which have been reached by project activities so far. Unfortunately,

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[77] The need for finding the appropriate funding alternatives is the strongest in developing countries. Maisel, P., Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn From South Africa, Fordham International Law Journal, Vol. 30, Issue 2, pp. 388-398.

[78] Joy 2012, pp. 321.

[79]Although practitioners are well qualified to teach the students the necessary skills, academic mentoring and close supervision are required to achieve optimal education goals. Ibid., pp. 322-323.

[80] Ibid., pp. 329-330.

the Law Clinic faces several challenges to its future development as a legal aid provider.

	2010	2011	2012	2013	2014	2015	2016
Primary legal aid	46,000 €	20,150 €	26,700 €	21,350 €	193,150 €	193,150 €	93,250 €
Secondary legal aid	180,000 €	25,500 €	140,900 €	235,350 €	161,315 €	366,325 €	306,380 €
Total	226,000 €	45,650 €	167,600 €	256,700 €	354,465 €	559,473 €	399,630 €

Table 1: Legal aid funds in Croatia[81]

The most important challenge is the dysfunctional financing of the legal aid system, which essentially lacks relevant willingness to commit appropriate state funds for legal aid and advice. Table 1 clearly shows that legal advice and primary legal aid has mostly been underfunded over the years. As these funds, reserved for primary legal aid, are almost non-existent, the sustainability of some clinical activities, such as mobile clinics, depend on the ability to find another way of funding. In the light of the economic crisis, there is no real state

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[81] The presented data is approximation of the funds granted in Croatian Kuna (HRK) and does not represent a precise amount of funds granted. The data was presented on Eleventh Public and Private Justice Course in Dubrovnik during panel "Challenges in Clinical Legal Education - Sustainability of Clinical Programs" by Lidija Zajec, Advisor in the Minister's Cabinet in the Ministry of Justice. See the official web page of the course http://www.alanuzelac.from.hr/text/iuc-course.htm.

willingness to commit appropriate funds that would improve quality of access to justice and improve practical education for law students. The maximum budget that may be granted to the Law Clinic in 2016 according to the public tender (app. 10,000 €) will be sufficient to finance less than 30% of its real needs. The approximate costs of running the Law Clinic[82] are shown in *Table 2*:

	Expenses (per year)	**Approximate amount in EUR**
1.	Organisation of outreach projects - travel and sustenance costs for students - coordination	11,000
2.	Administration of the work of the Law Clinic	10,000
3.	Office costs - monthly rent - utilities costs - office supplies	10,000
4.	Publications - Pro bono – official newsletter - student manuals - advertisement	5,000
5.	Organisation of the annual round table regarding clinical legal education in Dubrovnik (within Public and Private Justice conference, held in May/June every year)	1,000
#	**TOTAL COSTS**	**37,000**

Table 2: The approximation of costs for running the Law Clinic

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[82] The Table 2 shows a rough estimate of the funds the Law Clinic needs at yearly basis. This approximation does not include in-kind contributions which some of the partners give. E.g. it is impossible to estimate the value of in-kind contribution of lawyers engaging in supervision of legal opinions.

If the Law Clinic wishes to maintain its goal, to enable as many citizens to access to justice as possible, then it cannot limit its work to the activities which can be funded by the government. Namely, when the Law Clinic started its work, it was located in a very modest office, with very limited space both for students and for clients. If one compares the years 2011 and 2015 of the Law Clinic, discussed under title 4.4. Funding, one can notice that the number of students and clients has increased more than five times.

It is only natural that the costs of the project rose along with the new responsibilities. It is thus of the utmost importance to locate the funds elsewhere, since the necessary public funds are not available.

At the beginning, the international grants were a chance to receive at least part of the very much needed funds that covered the activities that could not be sponsored by the framework organisation, the Law School. With the help of those grants, the Law Clinic provided practical legal education to students and advice and assistance to people outside of Zagreb, who are most socially vulnerable. It seems that the Law Clinic, with the support of the Law School and international grants, has reached the point where its prospects were good, but the continuation of work on financial sustainability is needed to secure clinical activities.

Therefore, projects with state and local community are important to secure some external funding for the essential legal aid activities of the Law Clinic. Without those funds, the Law Clinic will hardly be able to keep up with the expectations of the clients which also means that less students will be given the opportunity to engage in its work.

CONCLUSION

A central goal of clinical legal education is to provide professional education in the interests of justice and it poses new challenges regarding the improvement of student education. [83] Apart from its significant role in legal education, the existence of law clinics is also very important in terms of enhancing the legal aid system, by broadening the cycle of legal aid providers to which underprivileged citizens can turn when they are in need of legal aid. Moreover, clinical legal education has a positive impact on the strengthening of public policies, of exercising constitutional principles of equality before the law, the right of access to justice and a fair trial within a reasonable period.[84] These important goals, which clinical legal education aims to achieve, are closely linked and should be

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[83] Wizner 2002, p. 1935.

[84] Preložnjak 2013, p. 380. By informing the clients about their rights, law clinics can correct the imbalance between the parties of different socio-economic background. They can advise the clients when to initiate the court proceedings, as well as advise them on certain procedural issues within the proceedings, if they have already been initiated.

constantly improved by powering the law school's curriculum. Therefore, to maintain the positive development of clinical legal education, law schools have to retain strong financial resources for work of law clinics and to develop the cost model for Deans and curriculum committees as they think about how to manage and expand their schools' experiential offerings.[85] That is the only way to keep track with the development of modern clinical legal education, which aims to support students interested in gaining theoretical and practical experience through provision of legal aid, in the interest of the public benefit.[86]

As a final remark we have to stress that the combinations of financial investments of state, local community and law schools are crucial for financial sustainability of clinical programs. To achieve that goal the Law Clinic has to periodically raise awareness among the whole community, highlighting the importance of financial support of clinical legal education and its impact, not only on education of future lawyers but, also on legal aid system which is, and should be, the first line of defence in providing equal access to justice for all.[87]

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[85] Katz 2015, p. 29.

[86] Ibid.

[87] Now there is research showing the importance of law clinics in that regard. See Drummond, O. & McKeever, G., Access to Justice through University Law Clinics, Ulster University Law School, 2015, p. 32. Available at: www.ulster.ac.uk/lawclinic/files/2014/06/Access-to-Justice-through-Uni-Law-Clinics-November-2015.pdf (24/10/2016).

Pro Bono: What's in it for law students?

Rather like the sentiment that Atticus Finch imparts on his young daughter; "You never really know a man until you've walked in his shoes," a law student can never know what it is like to work for a client until they have done so. Before they have interviewed a client, taken legal jargon and created understandable prose from it and before they have appreciated that a client's expectations and the realistic remit of the law can often be polar opposites they cannot be fully prepared to enter the world of legal employment.

The benefits of Pro Bono work to law students go far beyond the metaphorical moral pat on the back that is received by helping a client who may not otherwise be able to afford legal representation or advice which due to cuts in legal aid has become more prevalent in certain facets of the law. Pro Bono for a law student gives them the opportunity to understand what motivates a client and to manage their expectations for the outcome of their case as well as the more obvious experience of case management and professional conduct.

Academics have long discussed the ramifications of graduates that are technically sound in knowledge of the law itself and the procedural steps that accompany statute, but could not begin to understand the effects on a client of the application of said statute. For example, you may understand that an application can be made

under Section 33 of the Family Law Act 1996 for an Occupation Order but until you have met the client who happens to be a victim of domestic violence, who fears for the safety of her children and understood how this application will affect this whole families life you cannot truly believe yourself to be educated in that area of law.

Speaking as a product of Northumbria University's Exempting Law Degree and having worked in their prestigious Student Law Office the benefits of Pro Bono are benefits that I have experienced personally. My resounding support for Pro Bono legal work therefore comes from experience. The prospect of meeting a live client for the first time does not fill me with dread as I postulate it may for some green-fingered trainees and I feel confident that I would be able to reassure a client who may be trusting me with what is ultimately a personal aspect of their life. For example, the creation of a will may be a frequent everyday task for a trainee, but for the client, that will is a document that will ultimately affect the lives of their most loved ones. The trainee will lose no sleep if 'Mrs Smith' decides to leave the sum of her assets to Battersea Dog's Home, but her spouse and five children will be vastly affected by this decision. The inclusion of Pro Bono client work in a degree ensures that legal graduates have some understanding of the personal effects of legal decisions.

Claire Eastwood

Pro Bono: What's in it for Law Students?

So what exactly does make the experience of Pro Bono so special? For me it offers two main benefits to students. Firstly it gives students the skills and confidence necessary to pursue a career in law, and secondly it instills student with a sense of social awareness, professionalism and empathy, which are all essential to becoming a good lawyer.

The skills developed in Pro Bono legal practice are invaluable to the pursuit of a career as a practicing lawyer. Almost every role within the front line services of the legal profession requires basic abilities in client and case management. The focus on techniques such as interviewing, legal writing, organisation, and management of the expectations of client qualify students perfectly to move forward in their legal career. Not only does the development of such skills help undoubtedly benefit students going into practice, but in my own experience provides the confidence to embark on that course. I for one can say that prior to my experience in Pro Bono legal work certainly wasn't confident in pursuing a career as a lawyer. However in developing these skills and confidence, and engaging in first hand experience working as a trainee solicitor, albeit in a Pro Bono setting, verified the enjoyable and exciting nature a career as a lawyer presents.

Not only does Pro Bono develop the basic skills necessary for a lawyer, it also helps to nurture lawyers who uphold the professional and respected image of

the legal profession. Lawyers not only need to be good at achieving results for their clients, but also at providing a professional and comforting service. Clients that students experience in Pro Bono work tend to come from a variety of social backgrounds This helps to break down any unconscious social bias they may have, to ensure that in practice they approach each case with an open mind and with the necessary social awareness and empathy required of a lawyer. Working in Pro Bono work prior to going in practice helps students to develop as lawyers whose primary concern is to help their clients rather than being purely motivated by money and career advancement. From my own experience work carried out in a Pro Bono setting was extremely rewarding, and confirmed to me why I chose to pursue a career in law.

Students are also given the opportunity to experience exactly what working as a lawyer entails, working within a firm of their own, being assigned other students to work with as partners, and a supervisor to report to. This is another invaluable part of the experience, as the ability to work within a team of lawyers is often what a career in the law involves. On the whole the experience of working in Pro Bono provides students with the necessary skills, and develops the character that is essential for work as a lawyer, while also allowing them to conclude on what form of legal career would suit them most.

Callum Bland

Pro bono – what's in it for students?

The ideals of a Student Law Office give students the fundamental opportunity to experience the expectations of a prospective lawyer, whilst concurrently providing legal advice *"for the public good."*[1] As with anything done on a voluntary basis, it can be somewhat uncertain as to what benefits accrue to the volunteer, but alternative opportunities (i.e. a paralegal role within a reputable firm) can be equally uncertain, the reason being that "unqualified advisors require supervision."[2] As such resources are scarce and the vast majority of aspiring lawyers are potentially left unaccounted for. According to *LawWorks*[3], 70% of law schools in the UK now run student law clinics, a practical concept that accommodates the *"vast quantity of forthcoming lawyers that are limited in access to hands-on experience within the field.*[4]*"*

The Advantageous nature of Pro bono to students is recognised internationally; In *Georgetown (U.S)*, Students of Law are expected to perform 50 hours of Pro Bono work on a compulsory basis[5]. Whilst the priority is to provide free legal service to those in poor socio-economic demographics, institutional academics stress that trainee lawyers cannot fully appreciate the prospects of a Lawyer in its absence.

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[1] John Cary, *The Power Of Pro Bono* (Metropolis Books 2010).

[2] 'Pro Bono And Law Students: What's In It For Me?' (*LawCareers.Net*, 2016) <http://www.lawcareers.net/Information/Features/02112015-Pro-bono-and-law-students-whats-in-it-for-me> accessed 8 June 2016.

[3] Rebecca Parker, 'The Lawworks Law School Pro Bono And Clinics Report 2014' (LexisNexis 2016).

[4] 'Legal Aid: The Consequences Of LASPO And The Implications Of The Latest Proposed Cuts' (*LawCareers.Net*, 2016) <http://www.lawcareers.net/Information/Features/09122014-Legal-aid-the-consequences-of-LASPO-and-the-implications-of-the-latest> accessed 8 June 2016.

[5] 'New York Bar Pro Bono Admission Requirement — Georgetown Law' (*Law.georgetown.edu*, 2016) <https://www.law.georgetown.edu/careers/opics/pro-bono/nybar-probono.cfm> accessed 8 June 2016.

Law students from the University of Manchester have emphasised that Pro Bono, *" offers students the opportunity to gain practical legal experience, foster links to legal professionals, firms and advice agencies, and develop legal skills that aren't taught in the classroom,"*[6] an attitude that incorporates the most pertinent benefits to the law student. By gaining invaluable experience of real client contact, taking a hands-on approach with legal skills (i.e. Drafting), and developing professional contacts, the student immediately makes themselves more attractive to the potential of a training contract or professional opportunity, thus increasing the likelihood of a successful career.

It is imperative to understand that the benefits of Pro Bono are not limited to professional applications; legal involvement within the community allows one to make meaningful contributions to those in need, and in doing so allows the student to appreciate the *"vital role the law plays."* [7] Legal Service has been denoted as being *"unaffordable and out of reach."* The common view held is that *"one of the most perplexing facts about our perplexing legal market is its failure to provide affordable services for just about anyone but the rich and corporations."* Thus, by providing legal aid to those who lack financial stability, the student is able to experience *"intrinsic morale"* and self-worth, something that all lawyers must be familiar with, and something that extends beyond the walls of the classroom.

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[6] Rachel Shepard, 'Pro Bono Work | Prospects.Ac.Uk' (*Prospects.ac.uk*, 2016) <https://www.prospects.ac.uk/postgraduate-study/law-qualifications/pro-bono-work> accessed 8 June 2016.
[7] Michael Zuckerman, 'Is There Such A Thing As An Affordable Lawyer?' (*The Atlantic*, 2014) <http://www.theatlantic.com/business/archive/2014/05/is-there-such-a-thing-as-an-affordable-lawyer/371746/> accessed 8 June 2016.

Whist it is apparent that Pro Bono could not exist without a public demand for legal services; it is perhaps as equally apparent that an adequate and sustainable legal service could not exist without the concept of Pro Bono. So when considering the benefits to a student, one can assume that the student is playing a fundamental role in accommodating the "perplexing legal market."

Ellis Taylor

Pro bono – what's in it for students?

With the introduction of tribunal fees, ever-increasing court costs, and dwindling public confidence in the legal system, pro bono work is more important than ever. Whilst the case for the utility of pro bono for the aggrieved has been made extensively, this essay considers how the volunteers may benefit themselves in the process.

To the careerist, it offers necessary work experience to compliment applications for training contracts and pupillages. With attrition rates for career progression being as grueling as ever (most notably in the case of the bar), pro bono work offers the aspiring lawyer a chance to apply their academics to real problems. In the current recruitment climate, work experience and a commitment to the legal profession has become a pre-requisite, not a bonus. Fortunately, pro bono work offers both, and is a valuable asset to any pragmatic law student.

Though it's easy to get lost in the intricacies of implied terms and the construction of contracts, practical law is often very different to academic law. Therefore, for the enthusiast, exposure to real cases and the ability to assist and advise both collaboratively and autonomously is an excellent learning tool and will invariably help cement essential legal principles in the context of tangible problems.

However, there is a strong enthusiasm for pro bono work amongst the qualified, and if the above were the predominant reasons for offering pro bono aid, there would be little appetite amongst today's professionals.

Pro bono work to the existentialist is the *raison d'être*, and transcends the divide between law students and professionals. For those that live and love the law, pro bono does not burden the volunteer with *having* to work; it gifts them with *getting* to work. It allows the long hours spent in the library, the years of debt following extortionate professional qualification fees, and the mountain of extra-curricular obligations required to succeed as a lawyer to be mere afterthoughts for the student. It puts billing targets, requisitions and awkward clients in perspective for professionals.

Most candid individuals would surely agree that the inner monologue of insecurity and neuroses experienced on a daily basis is enough to make any unlucky listener deeply uncomfortable – professional and personal problems occupy a greater amount of our thoughts than anyone would care to admit. The most valuable reward of all to the aspiring (or qualified) lawyer is the validation and assurance that one's skills can benefit society and improve the lives of those that have exhausted their own efforts. There is no better way to ensure your own peace of mind than to ensure another's. Therein is the affirmation that your endeavours are worthwhile, and your inner Sartre can be silenced for a time.

Pro bono work is what the volunteer makes of it: a tool for career development, a means of broadening their legal education, or the process by which one can begin to practice as they one day aspire to – prior to even completing legal education.

Joel Finnan