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CLE Aims vs LAC Client Interests

The aims of a clinical legal education (“CLE”) are to teach practical legal skills and to provide relevant services in the public interest.¹ Practical legal skills are learned through experience: students interact with clients, consider legal problems, conduct applicable research, and provide guidance to clients under the close supervision of a practicing professional. These tasks expose students to the skills required for applying knowledge gained in the classroom to actual needs of ‘real’ clients, and inculcate professional and ethical standards through reflection and analysis of issues borne out of direct client-contact.²

Services in the public interest are those which attempt to meet the high demand for access to the legal system, which are typically out-of-reach for lower-income segments of society.³ In this regard, it can be said that clinical legal training *is* public-interest work, as it contributes to raising the standards of legal practice in general while focusing that activity onto serving a particular community in need.⁴ This aim has arisen in part due to a growing deficiency in the quality of legal services available, and the perception that law schools are to blame for not addressing the issue, particularly since law schools control aspiring lawyers’ access to the profession.⁵ Thus it can be said that the aims of CLE are merged, or are ‘multi-dimensioned’ as it trains students on ‘lawyering’ in the public-interest by allowing them to actually work in the public-interest and to learn from the process.

Clients require competent work,⁶ performed without delay,⁷ in a continuous and uninterrupted manner,⁸ undertaken with the utmost in confidence and in active protection of privacy;⁹ and, an appreciation for their own life-circumstances,¹⁰ along with some acknowledgement for having contributed to the training-process of the legal profession.¹¹ Clients are unable to meet this requirement due to the high costs associated with *all* legal services.¹² Invariably, indigent communities face many challenges in gaining access to information on how the law specifically applies to them or assistance in undertaking commonplace legal processes that may even bear some direct effect on such indigency.¹³ Inevitably, meeting the demand for solving complex legal problems is not appropriate to the law student setting.

The high standard of care required in serving client’s complex legal needs will necessarily require mature, experienced professionals, who can be trusted to undertake their clients’

¹ Frank S. Bloch, 'The case for clinical scholarship' [2004] *Journal of Clinical Legal Education* 7-21, 8

² James E. Moliterno, 'In-House Live-Client Clinical Programs: Some Ethical Issues [1999] 67 *Fordham L. Rev.*, 2378

³ Du Plessis 'Clinical legal education: determining the mission and focus of a university law clinic and required outcomes, skills & values' [2015] *De Jure* 312-327, 313

⁴ Bloch (n 1) 8

⁵ Ralph S. Tyler and Robert S. Catz, 'The Contradictions of Clinical Legal Education', 29 *Clev. St. L. Rev.* 693

⁶ Ann Juergens, 'Teach Your Students Well: Valuing Clients in the Law School Clinic', [1993] *Cornell Journal of Law and Public Policy*: Vol. 2: Iss. 2, Article 3., 993

⁷ Juergens (n 6) 358

⁸ *ibid* 359.

⁹ *ibid* 360.

¹⁰ *ibid* 362.

¹¹ *ibid* 364.

¹² Drew, Margaret B. and Morriss, Andrew P., 'Clinical Legal Education & Access to Justice: Conflicts, Interests, & Evolution' [2013] *Faculty Publications*. Paper 96, 1

¹³ Juergens (n 6) 363

interests.¹⁴ Sadly, this is perhaps the greatest need of indigent communities: access to solutions to complex legal problems; however, CLE cannot be the cause for such needs going unmet. Further, indigent communities may be more exposed to incompetent lawyering in the open market for legal services than in any CLE setting.¹⁵ Complex legal problems also require greater costs which the clinical legal environment within the University are unable to absorb.¹⁶

CLE aims and clients' needs conflict where students' interests are put *beyond* clients' needs.¹⁷ Students have interests in gaining employment, impressing instructors and supervisors, and experiencing the active application of law. Where the clients' service-needs are subordinated to students' interests, the relationship between the two—the 'tension'—is tilted in a manner in which the clients are disserved through the fulfilment of students' interests.¹⁸ This may be exacerbated by faulty institutional cultures where clinical faculty are treated differently, or as less accomplished or 'worthwhile' than their 'traditional' counterparts.¹⁹ This also emphasizes that it is the clinical law faculty who may exacerbate or assuage the tension, as it is for clinical faculty to assure that clients' needs are met on ethical grounds,²⁰ and to equate the practice of law with excellence before students.²¹

Clinical faculty must therefore correct all instances where clients' needs appear to be 'slipping' below the interests of the students through the thoughtful application of a client-centred-structure to the overall clinical program.²² Through the 'quality assurance' provided by clinical faculty, the students ultimately advocate for clients at a high standard. In this regard, a clinical legal educator actively advocates, and therefore, is actively serving the public interest.²³ Thus, it may become morally incumbent upon clinical law faculty to assuage any apparent tension between clients' needs and students' interests. It may also become morally incumbent upon Universities to expand clinical programs and to provide *more* services in the public interest.

This is made difficult where the present culture within an academic institution places higher value on epistemological endeavours in teaching law over the ontological aims of practicing law.²⁴ This suggests that there exist competing values between 'traditional' faculty and clinical faculty,²⁵ or that clinical faculty have become enticed by the apparent perks of teaching over lawyering and inevitably abandon values associated with the practice of law for those of teaching in a University:²⁶ serving clients' needs versus the students' interests in learning and researching law. Technically, clinical faculty must perform both: take measures giving paramount importance to client needs while simultaneously educating students on the craft of practicing law. If these conflict within faculty, or within the greater institution, a derogation inevitably transmits to both the clients' needs and the students' interests.

Given the implicit moral duty to competently serve clients' legal needs, any comparison between needs and interests necessitates placing clients' needs over students' interests. By this, the 'tension' emerges into existence or becomes exacerbated. This is made worse where the clinical setting

¹⁴ Tyler and Catz (n 5) 701

¹⁵ *ibid* 708.

¹⁶ *ibid* 704.

¹⁷ Juergens (n 6) 341

¹⁸ *ibid*

¹⁹ *ibid*

²⁰ Moliterno (n 2) 2386-87

²¹ Tyler and Catz (n 5) 697

²² Jeff Giddings, 'Contemplating the Future of Clinical, Legal Education, [2008] Griffith Law Review 7

²³ Bloch (n 1) 18

²⁴ Tyler and Catz (n 5) 698

²⁵ *Ibid* 697.

²⁶ *ibid*

is deprived of necessary funding or is devalued within its host institution. Given the duties that clients' needs give rise to, failing to support, encourage, and expand the clinical environment therefore runs the risk of actually diserving the public interest. However, this does not have to be so: it is not that the tension exists in nature, but emerges when the needs and interests are pitted against each other. This leaves the enormous task of advocating for the client within the classroom—an inappropriate forum for parsing the legal rights of an individual—to clinical faculty, who too as employees must meet University aims in serving students' interests. This also suggests that there is an easy fix: with greater institutional support, greater respect towards clinical faculty, greater procedural safeguards that protect clients' rights, and greater funding for clinical programs, any apparent tension between client-needs and student-interests evaporates.

With such an easy fix to an apparent tension, it is suggested that issues in client-services and legal education are correlative, and that there are greater causes at play. Lawyer incompetence within the field,²⁷ curriculum blindness to relevant cultural features within the community that receives legal services from University students,²⁸ and minimal availability of legal services to indigent communities²⁹ appear to be correlative to a failure to meet the legal needs of clients or the academic interests of students within the CLE environment.

All of these problems may be caused by a greater, systemic neglect of civic needs within society.³⁰ If this is the case, then the problem is one that is affecting all aspects of civic life, although apparent tensions may appear to emerge between correlated issues. Perhaps equally, there is no tension between epistemological and ontological aims associated with the law; rather, the failure to address an alarming unmet demand for competent legal services give rise to myriad correlative 'problems'. This suggests that there are apparent tensions, but they are illusory, or the wrong issues to focus upon. CLE seeks to address a problem that is far too big: the absence of affordable legal services to a society whose legal needs are ever-increasing.

Perhaps by addressing the lack of affordable legal services in general, the apparent tension between clients' needs and students' interests within the CLE environment will be non-existent. Of course, the problem then is that no University or CLE program could address this problem alone. This would be a massive undertaking that will require a cultural shift within the entire legal field. If the University wants to address the problem, then the focus should be taken out of the CLE classroom and put-upon admissions offices: if more lawyers qualify, then more enter the field, thereby increasing the supply of legal services and more closely meeting actual demand for legal services. By this, the costs associated with legal services are reduced, and in retrograde: law school costs will be reduced (by the same supply-demand logic). Therefore, there is no true tension between clients' needs and students' interests; rather, CLE should be supported and expanded so as to address the true tension between lawyers' interests in high costs and society's needs for affordable legal services.

²⁷ Bloch (n 1) 19

²⁸ Oluyemisi Bamgbose and Omolade Olomola, 'Clinical Legal Education and Cultural Relativism' [2014] 20 Int'l J. Clinical Legal Educ. 579, 582

²⁹ Jonathan H. Oberman and Ekow N. Yankah, 'The Trials of Clinical Education', [2014] 41 Litig. 47, 50

³⁰ *ibid*