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## The E-Team Project: A Teamwork Approach to Clinical Legal Education

HILARY EVANS CAMERON\*

Dans cet article, l'auteur avance que l'« Emergency Team » (« E-Team ») offrait un service crucial à ses clients et procurait aux étudiants membres une occasion unique d'acquérir des compétences juridiques pratiques. Le projet pilote étudiant a été créé pour assister les personnes qui font face à une décision de déportation à court terme. La première partie de cet article résume les objectifs initiaux du projet et conclut que ceux-ci sont atteints : la « E-Team » a gagné neuf de ses dix cas. De plus, ses membres ont reconnu l'efficacité du projet, notamment quant à l'enseignement de compétences légales décisives à leur carrière qu'ils n'auraient pas acquis autrement. Le projet a suscité et développé leur intérêt pour le droit social et l'accès à la justice. Les deuxième et troisième parties analysent la structure de la « E-Team » en identifiant les principes organisationnels qui permettaient aux étudiants de travailler ensemble. Dans ces parties, l'auteur avance aussi que le travail en équipe dans un contexte d'urgence offre des opportunités pédagogiques extraordinaires. Dans la dernière section, l'auteur suggère que, bien que le contexte du droit des réfugiés soit unique, le modèle de la « E-Team » pourrait néanmoins être utilisé par d'autres cliniques étudiantes ontariennes dans d'autres domaines du droit. Plus particulièrement, il pourrait être adapté et utilisé dans des contextes différents où les enjeux sont moins urgents.

In this article the author argues that the University of Toronto's Emergency Team (E-Team)—a student pilot project created to assist people facing deportation on short notice—provided a critical service to its clients and gave its student members a unique opportunity to learn real-world legal skills. The first part of this article reviews the project's outcomes and concludes that it was a success: the E-Team won nine of its ten cases, and its members credit the project both with teaching them crucial legal competencies that they did not encounter elsewhere and with fostering their passion for social justice law. The second and third parts analyze the E-Team's structure, identifying the organizational principles that allowed the students to work well together and arguing that teamwork, in a context marked by urgency and high stakes, offers exceptional pedagogical opportunities. In the final section, the author suggests that while the refugee law context is unusual in many respects, the E-Team model could nonetheless be applied in other areas of law practiced in Ontario's student legal clinics, and in particular, could be adapted to be useful in less urgent situations where the stakes are lower.

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FOR A YEAR AND A HALF, a team of students at the University of Toronto's student legal clinic worked at stopping deportations, often at the last minute and always when all else had failed. The Emergency Team (E-Team) pilot project aimed to provide a badly needed service to our clients. People facing deportation are usually given about two to three weeks' notice before they are put on the plane. While they may have legal options, they typically have a hard time finding counsel, for such cases involve frantic work with no guarantee of Legal Aid funding. Students, however, do not fear the all-nighter and want to make a difference, especially when they can work alongside their friends. As a model of clinical legal education, it seemed like a perfect match.

This first part of this four-part paper will review the project's outcomes. By every measure, it was a success. The E-Team won nine of its 10 cases. The students are unanimously enthusiastic about their experience: it was "extremely rewarding," "an amazing thing for students to be involved in," "one of the best things I did in law school." They credit the E-Team with teaching them crucial legal skills that they did not learn elsewhere, including in the regular clinical program. Many also credit their experience with fostering their passion for social justice law in general and refugee/immigration law in particular.<sup>1</sup>

The second and third parts of this paper will describe and analyze the E-Team's structure. The second will provide a detailed breakdown of the project's mechanics, explaining how the students were recruited and trained, how the Team was organized and how it functioned. The third will set out the structural principles that allowed it to achieve good results from a client service perspective, as well as the unique pedagogical benefits of a model that combines teamwork, urgency and high stakes litigation.

While the project's scope was modest, and its legal context in many ways unique, we learned much from the experience that may be relevant to other areas of law practiced in other Ontario student legal clinics. The final part of this paper will therefore look at how this model could be applied more broadly, and in particular how it could be adapted to be useful in less urgent situations where the stakes are lower.

## **I. REVIEW OF THE PROJECT'S OUTCOMES**

### **A. CLIENT SERVICE**

The E-Team turned away many deserving cases. Our resources were too limited to begin to meet our community's need. But within our means we took on as many cases as we could and we accepted any case where we could potentially make a difference.

Some of our cases were long shots—as one student put it, cases with "a wildcard chance." Others were extremely strong. But in this area of law, even the most compelling cases have plenty of opportunities to fail. To postpone a deportation, the Team would have to convince the immigration authority itself to defer its statutory obligation to remove their client. Otherwise, by filing a stay motion in Federal Court, they would have to convince a judge to grant an injunction ordering a halt to the removal (or, along the way, persuade counsel for the Department

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<sup>1</sup> "Refugee/immigration law" refers to the area of practice that tries to obtain legal status for people fleeing danger, or looking to stay in Canada for humanitarian reasons, as distinct from other forms of immigration.

of Justice to settle the matter).<sup>2</sup> Throughout, the landscape would be rocky—the legal tests onerous, the jurisprudence harsh—and the outcome would depend to a frustrating extent on luck.<sup>3</sup> I told the students at the outset to be prepared: we would lose more of these cases than we would win.

The E-Team ran for three school terms and two summer terms and took on a total of 10 cases: two or three in each of the school terms, and one each summer.<sup>4</sup> In its standard form, as described further below, the E-Team operated in units of four students, each of whom had a prescribed role. The Team used this model in seven of its cases. In three others—in one that came up shortly before exam period and in two where I was already involved with the client’s case—I took the lead role, working closely with several E-Team students. Including the latter, the Team won nine of its 10 cases (excluding them, it won seven of seven).<sup>5</sup>

Obtaining a deferral of removal or winning a stay motion is only a temporary reprieve, but it can buy a client enough time to obtain legal status through other channels. One of the E-Team’s successful clients was eventually deported, one remains in legal limbo, and we have lost touch with one other. The remainder—including a father of two young Canadian boys, a teenager overcoming a lifetime of abuse, a woman recovering from open-heart surgery, a torture survivor, and a young gay man from a country where homophobic persecution is rampant—have all either become permanent residents or have now been given permission to stay in Canada legally until their remaining paperwork is processed.

## B. THE STUDENT EXPERIENCE

In writing this paper, I interviewed at length every student involved in the E-Team project.<sup>6</sup> They were unanimously positive about their experience. The words they used most often were “rewarding” and “valuable,” and a repeated refrain gives one reason why: the E-Team was the law school experience “that most resembled the work I do now as an actual lawyer”: it “echoed

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<sup>2</sup> Since a stay motion is an interlocutory order, this requires first filing a Notice of Application to seek judicial review of the decision giving rise to the deportation.

<sup>3</sup> The outcome of a refugee/immigration case before the Federal Court can far too often be predicted by the judge. See *e.g.* Sean Rehaag, “Judicial Review of Refugee Determinations: The Luck of the Draw?” (2012) 38:1 *Queen’s LJ* 1 (in reviews of refugee decisions, outcomes “frequently came down to the luck of the draw, with, for example, one judge more than 50 times as likely to grant applications than another judge” at 2).

<sup>4</sup> Half of the E-Team’s clients were current or former clients of the clinic, including two for whom the E-Team had previously won stays and who came back months later with a new deportation order and a new set of legal issues. We gave these cases priority. The other half were new to the clinic, referred to us by a previous lawyer, by a friend, or by a community agency.

<sup>5</sup> In one case, we were able to convince the immigration authority to defer our client’s removal. In the remaining nine, either because the immigration authority refused, or because it did not answer our request, we prepared Federal Court stay motions. In seven of these cases, counsel for the Department of Justice agreed to settle the matter, effectively granting us the deferral that we had sought. In the remaining two, I argued the matter before Federal Court, winning one and losing the other.

<sup>6</sup> I conducted individual interviews with the 19 former members of the E-Team for 20-30 minutes each and asked them questions such as: “What drew you initially to the E-Team?” “What were your biggest fears?” “What are your impressions of the Team’s strengths and weaknesses?” and “Do you have any suggestions for improving the model?” I gave them the chance to provide additional feedback anonymously, as well as to provide anonymous feedback on a draft of the final paper. The E-Team project ran from January 2008 through August 2009, and with the exception of one student who is now completing her final year of law school following a leave of absence, all of these former students are now employed in law: the most senior have been in practice for three years, and the most junior are in their articling year.

the workplace,” “mirrored real practice” and gave “a better sense of what it’s like being a lawyer than just the clinic work.” By combining teamwork, urgency and high stakes litigation, the E-Team fostered a set of legal skills that feature prominently in the real world. The pedagogical benefits of this approach are discussed further in the third section of this paper.

Many of the students also credit their experience on the E-Team with helping to commit them to social justice law in general and refugee/immigration law in particular. One student who “didn’t come to law school for immigration” and who “wasn’t interested in it in a passionate way” when he joined the E-Team started up his own refugee/immigration law practice after articling. Another who also “wasn’t on the path when I went to law school” found that she felt “lonely and disconnected” on Bay Street. Before her time at the clinic, and in particular her work on the E-Team, she had not realized how much it meant to her to do work that “feels social justice-y, where I can see the end result, meet the people I’m helping...I didn’t know that it was important to me.” She left her corporate firm to become a refugee/immigration lawyer. Another was unemployed for six months after articling while she held out for, and eventually landed, one of the rare positions in a refugee/immigration law firm. As she explains, “before [the clinic] and the E-Team, I hadn’t thought about immigration at all. Afterwards, it was pretty much the only thing that I thought about.”

Other students had come to the clinic, and some in fact had come to law school, because they were interested in refugee/immigration law. They explained that the E-Team confirmed their commitment to entering this field of practice. A number also stressed that their work on the E-Team facilitated this choice, because word of mouth in the Toronto refugee/immigration law community meant that E-Teamers had a foot in the door. Indeed, I have received several emails from colleagues looking to hire an articling student: “Could you recommend me a student from your E-Team?” One student, who now practices refugee/immigration law with a prominent Toronto firm, noted that “I would not be where I am if I had not done that...I was going to go this direction, but if I had gone in that direction without this?” She feels that the E-Team “certainly set my career.”

The students credit their E-Team experience with opening doors across many areas of law, here and abroad. One explained that “the E-Team got me a gig” working at a legal clinic in South Africa. Several noted that the E-Team was “the top thing” they were asked about in job interviews. One student viewed this interest with suspicion; he explained that he spent “a good third” of every interview trying to convince the big firms that, despite his work on the E-Team, he was genuinely interested in corporate law! But another had a different explanation: his corporate interviewers, all of whom offered him a position, “always said that there was no shortage of smart kids, but that there was a real shortage of people who have worked on litigation files on a tight timeline.”

While their E-Team work may have opened Bay Street doors, a number of students explained that it also helped them to resist their pull. One said that his experiences on the Team “led me to decline articling positions at large downtown firms” and to opt instead for public interest work. Another commented that, even though she “wanted the social justice path” from the outset, the E-Team helped to keep her on it by “keeping me passionate” about working with vulnerable clients: “It was fantastic for really instilling in me the sense of responsibility for ensuring access to justice...They keep harping on that in law school, but once you get out of law school it’s very easy to forget.” The role the E-Team played in strengthening her dedication to her own “norms and values...was the most valuable, even beyond the hard skills that I learned.”

For students with a social justice bent, a common refrain was that the E-Team reinforced the idea that when you see an injustice, “Yes, there are things that you can do about it.” As one explained, “We want Canada to be a certain kind of place, and there are things that you can do to make that happen...Law school took you further and further away from this. The E-Team made it front and centre.” The idea that the law can be a practical tool for addressing injustice helped to convince one student, for example, who at the start of law school was committed to social justice activism but not enthusiastic about being a lawyer. He now practices public interest law and credits the E-Team in particular, and clinic work in general, with selling him on the practice of law.

Not all of the former E-Teamers have followed the refugee/immigration law or public interest path, however. Some have gone on to other areas, willingly or otherwise: as one explained, “You need a job to make an income so choices are very restricted...Five years from now I would definitely like to do something more related to what we did, but right now I don’t have that option.” Several students who have gone to work for Bay Street firms noted that their time on the E-Team has nonetheless influenced their practice. One has been able to continue stopping deportations as part of her firm’s pro-bono work: “my E-Team experience...gave me that little ‘in,’ I had established a niche...I could say that I had worked on stays before.” Another explained that the E-Team “didn’t necessarily influence what type of law I want to do because I am interested in tax and corporate. But it gives you a different perspective within corporate, because I see my clients and the power imbalance differently. It changed my perspective.”

In short, even leaving aside the learning benefits discussed in the third section below, the E-Team was a valuable experience for the students, helped to promote social justice lawyering and greatly benefited its clients.

## II. HOW THE E-TEAM OPERATED

At the beginning of the first school term of the pilot project, I sent an email to every student involved in our clinic’s refugee/immigration division.<sup>7</sup> The email introduced the E-Team and answered some questions upfront:

### How does it work?

The deportation process moves very quickly, so there will be intensive—and often last-minute—work involved. Not all of it is sexy; there is photocopying and binding and running around town serving documents. But there is also working with the client, preparing her affidavits and supporting documents, doing country-conditions and legal

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<sup>7</sup> Downtown Legal Services is the student Legal Aid clinic of the Faculty of Law at the University of Toronto. The clinic’s clients are assisted by law students working under the supervision of review counsel, and during the period when the E-Team was operating, each student caseworker specialized in one area of law (refugee/immigration, tenant housing, criminal, family or academic appeals and offenses). During the school year, three types of students were involved in the clinic: credit students, upper-year volunteers and first-year volunteers. Credit students in the refugee/immigration division had carriage of approximately 12 to 15 files, for which they received six academic credits, equivalent to two to three courses. Upper-year volunteers usually took on one or two files on top of their full course load. First-year volunteers learned the ropes at the clinic and staffed the telephone intake line during their first term, and in their second term were allowed to assist the upper-year volunteers with their casework. Over the summer term, the clinic employed a complement of full-time students; the four students staffing the refugee/immigration division carried approximately 20 to 25 files each.

research, drafting a request to defer her removal and, assuming this request is denied, preparing the stay motion and materials. I will argue the motions in Court, but the Team will do a large part of the work behind the scenes, and the celebrating/drowning of sorrows at the pub afterwards [as the email explained elsewhere, “non-alcoholic drinks permitted”].

#### How much of a time commitment is involved?

The Team will have several units, each of which will take turns responding as emergencies come up. When a case comes up, I'll contact the unit on call. The stay process can take anywhere from a few days to a couple of weeks, start to finish...and during that time, the unit responsible may need to put in some late hours or come in over a weekend. But since the units will rotate, the heavy work should be spread out.

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#### What if I have an exam/paper due/personal emergency when my unit is on call?

The Team will not be expected to take cases during exams. If you have a paper/personal emergency, it will be your responsibility to arrange for someone from one of the other units to take your place.

This introductory email further explained that members would be expected to commit to the E-Team for one school term and that several spots would be reserved for first-year students. It concluded by asking anyone interested to submit an application.

I selected eight students to participate in the project's first term. I asked them to pick up a copy of the E-Team Manual, to read it, and to come prepared to the Team's first training session. The Manual gave a very brief (320 word) overview of the relevant law, explaining in broad strokes the legal mechanisms that the Team would be using, and introduced and explained the Team's structure: the E-Team would be divided into two units of four students each, each of whom would have a specialized portfolio:

#### Lead

Lead is responsible for legal research and drafting, and is ultimately in charge of running the code. He/she is an upper-year student with immigration and administrative law experience and is the main resource for the rest of the unit. At times during the code, he/she will be responsible for delegating tasks and, in an emergency where I cannot be reached, will make any final decisions. Lead should be a strong leader with a solid knowledge of *IRPA*<sup>8</sup> and a good grasp of the legal issues at play on judicial review.

#### Story

Story is the client contact. He/she will interview the client as often and as long as necessary to learn her story inside out, and will then present it compellingly in an affidavit and a draft statement of facts. Story should be a natural storyteller with excellent

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<sup>8</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27.

people skills—in particular, the ability to balance patience and sensitivity, and the need to gather as much relevant evidence as possible, with the need to keep the client focused under short time constraints.

### Recon

Recon is in charge of REsearching the CONditions in the client’s home country (or the country to which she will be deported). This requires conducting thorough and extensive internet research, and where the evidence is patchy, contacting other lawyers and/or tracking down experts willing to provide affidavits—and not taking ‘no’ for an answer. Should have strong research skills and the dogged determination of the investigative journalist.

### Logistics

Log is responsible for gathering, coordinating and organizing the materials, working closely with Story and Recon, and for taking care of the administrative requirements for filing in Court. While the rest of the unit is focused on their particular tasks, Log needs to be thinking one step ahead and anticipating problems before they arise. Should be an efficient multitasker with excellent time-management and problem-solving skills, as well as a particular attention to detail.

There is also a fifth “position”:

### Float

The requirements of the code can vary widely depending on the facts of the case. On some codes, Recon will be bored, and Story will be swamped, or vice versa. Anyone who finishes their task early, therefore, rather than heading to the bar, will check in with Lead. They will let Lead know that they are now on Float, meaning available on standby, and will stay within easy reach (and sober). Then if I, or any other unit member, need help, we will contact Lead, who will let us know who is on Float.

Each of the four portfolios had a dedicated section of the Manual that described in greater detail the kinds of work that the student would be required to do in different types of cases. Armed with this information, the students met for the E-Team’s first and only training session. For several hours, we ran drills: the students were divided into their four-person units and worked through problem sets together. At the end of this session, the first unit on call got a surprise: one of these “hypotheticals” was in fact their first case. The E-Team was up and running.

Each new E-Team case began when I was contacted by a refugee service agency or a colleague in the refugee Bar about a person facing removal, or when one of our own clients was called in to the immigration authority. I would send an email to the unit on duty and we would meet to distribute the upper-year portfolios (the first-year student on each unit was always assigned to Logistics) and to brainstorm: What kinds of arguments are we going to make? What

kinds of evidence will we need to support them? What are our external deadlines? What will our internal deadlines be? Then the members would head off to work.

Although their work was largely individual, the members needed to be in constant contact. At first we experimented with ways to facilitate this with the students working remotely: we tried holding regular mini-meetings, sending status update emails, keeping relevant information on a central white board; if we had been more technologically savvy, we might have tried some species of wiki. We eventually figured out that it was easiest, at least toward the end of the file, if everyone simply moved in to the clinic. So for the bulk of the life of the file, the upper-year portfolios worked side by side at their computers in the student office, or in an intake room with the client, occasionally sticking their heads in to my office to ask, “Is this source reliable enough?” or “Should he mention that in his affidavit?” or “Is this point worth raising as an alternative argument?” while Log moved back and forth among her teammates, the fax machine and the photocopier.

An example of one of our more straightforward files was the case of 16-year-old Sarah.<sup>9</sup> I was contacted about Sarah by her worker at a home for teenaged mothers. Sarah and her grandmother had come to Canada from New Orleans a few years earlier in the wake of Hurricane Katrina. She was taken into the custody of the Children’s Aid Society (CAS) when her grandmother was arrested for assaulting her (and was subsequently deported). Sarah now had an infant son with whom the CAS was also involved, and by all accounts she and her son were doing very well in the group home—despite Sarah’s mental health complications, which were just coming to light, including a significant developmental delay and possible post-partum psychosis. The immigration authority had informed Sarah that it would be putting her on a bus to Buffalo, leaving her baby in the custody of the CAS.

When this call came through, I notified the E-Team unit on duty and we had a team meeting and brainstormed our game plan. Then the students started in. Lead began researching how the child protection and immigration systems intersect: do the immigration authorities even have the jurisdiction to deport a non-status minor who is a CAS ward? Story, meanwhile, was meeting with Sarah, helping her to tell her story in her own words in an affidavit, and helping to gather medical evidence and letters of support from her caregivers at the group home and her workers at the CAS. Recon was researching the barriers to accessing support in New York State for homeless mentally ill teenagers, as well as what Sarah’s post-partum psychosis might look like if it developed. And Log was making sure that everything was running smoothly, that everyone knew what everyone else was doing and that the Team was on track to meet its deadlines. In this case, because drafting the affidavit was particularly labour-intensive, Log was also helping Story, returning phone calls and sending faxes to try to track down Sarah’s letters of support and medical evidence.

When all of the materials and research had come together, Lead drafted a letter asking the immigration authority to defer Sarah’s removal. Log photocopied and bound the supporting evidence and arranged for the package to be sent off by courier. When the removals officer handling Sarah’s file refused this request, we repackaged these materials as a stay motion to file in Federal Court: Lead prepared the bulk of the legal argument, Story the Court affidavit and the bulk of the “facts” section, while Recon and Log readied the rest of the legal paperwork (including the underlying Notice of Application for Leave and for Judicial Review, the Notice of Motion, the indexes and cover pages, etc.). Everyone came together to photocopy and bind the Record. Since the facts in this case were so compelling, however, and since we had the luxury of

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<sup>9</sup> Clients’ names and some identifying details have been changed.

a few days before our Court filing deadline, we first couriered a copy to the Department of Justice. When counsel for the Department of Justice called to tell me that her client would be granting the deferral after all, we came together again, this time to celebrate.

A more complicated case was Ahmed's. Ahmed had fled Turkey as a teenager a few years earlier and had made an unsuccessful refugee claim based on his refusal to perform his mandatory military service. After his case was refused, he filed a Pre-Removal Risk Assessment (PRRA) application in which he explained the real basis for his fear: as a gay man, he would be targeted in Turkey, especially in the army.<sup>10</sup> In denying his claim, the PRRA officer agreed that sexual minorities in Turkey "face discrimination and harassment in public life, were beaten and jailed and were frequently harassed by the police" and, in particular, are "severely discriminated against and persecuted in the military service." But he did not believe that Ahmed was gay. Ahmed walked into the clinic one afternoon, his deportation order in hand.

We needed to fight Ahmed's case on several fronts. Since the decision denying his PRRA application was weak on its face, his unit prepared and filed a Notice of Application to seek judicial review of this decision. At the same time, since his PRRA application was admittedly very thin—he had prepared it himself, without counsel—we also needed to file a second PRRA application supported by fuller evidence. Story and Log worked closely with Ahmed to draft a lengthy and thorough affidavit, explaining in his own words why he had not disclosed his identity earlier; drafted a detailed affidavit from his partner and helped them to gather documentary proof of their relationship; and drafted supporting affidavits from a number of their friends and co-workers. They also arranged for him to meet with a psychologist for a report that addressed the psychological factors that had prevented him from disclosing his identity earlier, and helped him to obtain an interview with and a letter of support from Amnesty International. Recon, meanwhile, was digging up as much evidence as possible on the mistreatment of sexual minorities in Turkey (since the second PRRA officer would arguably not be bound by the decision of the first), and was also investigating the situation of Ahmed's minority ethnic group, a potential compounding factor. After preparing the submissions on this second PRRA application, Lead wrote a letter to the immigration authority explaining Ahmed's situation, attaching a copy of his second PRRA application and asking the removals officer to defer his deportation until a decision on this application had been made.

The Team received no response and so, with the Court's filing deadline looming, we deemed our request to have been denied and filed another Notice of Application to seek judicial review of this deemed denial. Then we concurrently filed two stay motions: one based on each of the pending judicial review applications (of the first PRRA decision and of the deemed decision not to defer Ahmed's removal). We prepared each set of Court materials as we had in Sarah's case, and served and filed them. The Department of Justice settled Ahmed's case at the eleventh hour, and we all went out to celebrate.

The Team's successes in these cases and others suggest that it was an effective model. The following section suggests why.

### **III. THE E-TEAM'S STRUCTURAL PRINCIPLES**

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<sup>10</sup> Before deportation, failed refugee claimants are given the opportunity to submit a Pre-Removal Risk Assessment application, attaching any new evidence that was not reasonably available at the time of their refugee hearing.

The structural principles discussed in the first section below helped the E-Team to provide an effective service to its clients. Some were by design. Many were not; we lucked into them and their helpfulness has only become clear in hindsight.

In planning the E-Team, I gave very little thought to how the students would benefit. I hoped that they would have a good experience and figured that they would learn a lot, but my intention was to stop deportations and I was mostly interested in exploiting them for their ability to work around the clock. The students themselves identified the three aspects discussed in the second section below and explained why they found them to be so valuable.

## **A. FROM A CLIENT SERVICE PERSPECTIVE**

The portion of the E-Team's success that was not due to luck was attributable, quite simply, to the power of teamwork. Teams are energizing. Brainstorming as a group is much more powerful than doing it alone. Four pairs of eyes can catch more mistakes. And four pairs of hands, if coordinated, can get a lot more done. Bay Street has long used teamwork to good effect and, as discussed further below, the E-Team's teamwork structure essentially replicated the model of a corporate litigation firm.

The refugee/immigration Bar, in contrast, is made up overwhelmingly of sole practitioners. Whether working in clinics, in partnerships or affiliations, or in the relatively few firms that practice refugee/immigration law, refugee/immigration lawyers typically carry their own individual file loads. Some have paralegals or students to assist them. Many do not. Federal Court justices often bemoan the insufficiency of the evidence on stay motions, and indeed these Motion Records are often skimpy because they contain whatever one lawyer can gather on short notice, while at the same time preparing the legal arguments, the Federal Court paperwork, and a client affidavit—and managing the rest of his or her file load. In such circumstances, there is rarely time to track down expert reports about the conditions in a client's home country, for example, even for the rare client who could afford them. Most country conditions documents are drawn from a lawyer's own stash of NGO reports and are supplemented by hasty internet searches. It is not only the judges who find this frustrating. Lawyers in Court are typically arguing from a Record that they know would have been much stronger if they had had more time and better resources.

One of most biting and enduring criticisms of student legal clinics is that law students experiment on living people; at least the medical students have the grace to use cadavers.<sup>11</sup> Some have suggested that this tension between the student experience and client service is fundamental, for legal work “can almost always be done more quickly and effectively by an experienced lawyer than by a student.”<sup>12</sup> This overlooks the tremendous amount of attention and energy that students are able to give to a file, however, and in deportation cases in particular it could not be further from the truth. The E-Team not only benefitted from having four people who were dedicated to putting in whatever time was required to make the best possible product, it also specifically benefitted from the fact that these four people were university students: the Team had inside access to professors, who were generous in providing expert evidence, as well as to scholarly journal articles, which carried much more weight with the Court than popular

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<sup>11</sup> See *e.g.* the criticisms cited in Shelley AM Gavigan, “Twenty-Five Years of Dynamic Tension: The Parkdale Community Legal Services Experience” (1997) 35:3&4 *Osgoode Hall LJ* 443; Jeff Giddings, “Contemplating the Future of Clinical Legal Education” (2008) 17:1 *Griffith L Rev* 1.

<sup>12</sup> *Ibid*, Giddings at 7.

internet sources. As a result, the E-Team was sending to Court the most complete Records that I have encountered, better than anything that I ever produced in private practice. In the cases that proceeded to a hearing, it was an almost disorienting feeling to be arguing from a Record that contained everything that I needed, in some cases everything that I could possibly have wished for.

One of our students recently brought the E-Team model with her when she went to work at a specialty refugee law clinic. The director of her clinic explained that at this student's insistence, her clinic has tried having lawyers prepare stay motions in pairs, using "basically the E-Team model" adapted to teams of two, and has found that "it makes sense, it works well." To date they have done five or six stays in this way, and as a result "we get a better product for the Court, for the client."

Yet for this model to function, its members must be committed to the project and they must work well together. Term after term, the E-Team students were relentlessly enthusiastic from the beginning of a case through to the end, and through even the hardest of the hard times they got along like a house on fire. These students were extraordinary people. In addition, a number of structural elements helped to promote and maintain their enthusiasm and harmony, and also, on a mechanical level, helped them to work together effectively.

## 1. ENTHUSIASM

The students were initially enthusiastic about the E-Team for all of the reasons one might expect. Some were passionate about social justice. Many saw "a real gap in legal services" and a way to "make an impact." Some saw a "great litigation opportunity." One said that as an immigrant himself, and having known someone who was deported, he wanted to "give back to a cause I believe in." Many were drawn by the chance to see a matter through from beginning to end. This is otherwise rare in refugee and immigration clinic work, where cases may last for many terms, leaving students frustrated that "I never get to find out what happened to my clients."

The urgency of the cases and "the high stakes nature of it" also played a large role in drawing many students to the Team. The outcomes were "so tangible, so immediate." "To be honest," said one student, "it was the urgency...It made it seem more important than something that's not urgent." One first-year student also figured, correctly, that "when there's a hard deadline then junior people get more responsibility." Several noted that the Team in general—and the possibility of all-nighters in particular— "sounded exciting." It promised "lots of suspense and drama."

The appeal of working on a team was one of the most common reasons that the students gave for wanting to participate in the project. Some noted the standard benefits of teamwork: "I find it's more fun to work with others, I find it motivating and more exciting and interesting...also for social reasons, it's a good way to meet people." In addition, many echoed the observation that in this particular legal context, a team approach was "a very non-scary way to do very important work." As one explained, doing this work in a team was "a really good way of doing it without feeling overwhelmed," and it would take away the fear of being "the only one asking questions." Phrases that came up repeatedly were "all in the same boat" and "not all on my shoulders."

In addition, three less obvious aspects of the E-Team's structure played an important role in drawing the students in and in keeping them engaged: the application process was selective; the Team included members from each of the three years of law school; and all were volunteers

(in the dual sense that they were not receiving academic credit for their work on the E-Team and that they were not concurrently enrolled in the clinic credit program). As discussed further in the final section of this paper, each of these elements would be even more important if this model were adapted to function in non-urgent settings with lower stakes.

i. The members were specially selected

Several students were quite candid about the appeal of belonging to an elite group. As one noted, “I liked the fact that it was an exclusive application process...it’s the competitive nature of a law student.” Said another, “It seemed very prestigious. Whenever you have something that’s selective and competitive, people like me just want to apply.” I suspect that some of the others who did not mention this aspect might nonetheless have found it similarly motivating.

ii. The Team included members from all years of law school

All of the E-Team members were enthusiastic, but none more so than the first-year students. As discussed further below, first-years are “really anxious and eager to do something legal,” but there are few opportunities for engaging with the practice of law in the first year of law school, where “all you get is theoretical classes.” A repeated refrain among the first-years was that a huge draw of the E-Team was the “the chance to get into something real” so early on. “The thought that as a first-year law student I could be working on actual cases that go to court...was totally thrilling. I mean, who gets to do that that early?” For the first-year students, the E-Team was “an oasis in a desert of theory.”

Several also highlighted the draw of getting to play with the big kids, some of whom they already knew and admired. As one explained, “I went to a lot of the first-year sessions [to promote on-campus activities] and [T.] was speaking at every activity that I was interested in and he was a very charismatic speaker.” She thought, “I wish I could be like [T.] when I graduate.” She was excited to get to work closely with him on the E-Team.

Many students echoed the idea that “having people with different levels of experience within each unit was essential” to the work that the E-Team did. The senior students appreciated that the junior students took charge of the administrative tasks. The junior students appreciated what one referred to as the Team’s “3-step” model, where the senior students acted as an intermediate level of review between them and the supervising lawyer: “Even before we brought things to you we could consult with each other.” Their supervising lawyer appreciated this as well!

iii. The members were volunteers

In researching this paper, I interviewed 14 review counsel and directors of student legal clinics across the province. I presented an overview of the E-Team project and asked them, among other things, to identify any weaknesses that they saw in the model. For several, the “biggest issue” was a concern about “the quality of work of non-credit students.” Could volunteers “be reliable when they have other courses?” Would they really give it their all “if they’re not being graded”?

Many students admitted to having been apprehensive about the E-Team workload and “how that would fit in with the law school schedule.” Indeed, as one noted, “it was kind of stressful having this looming over your head, any day you could need to volunteer an entire week

of your time.” This type of commitment not only has an impact on academic work. It limits other extra-curricular activities and also makes demands on relationships. Putting in several nights in a row on the Team was complicated for one student, for example, because “I had convinced my girlfriend to move out to Toronto, and she didn’t have anyone there.”

Yet every term, the students made the E-Team their top priority. The nature of the work was the most obvious reason. They had no trouble appreciating that they were working on something more important than “classes, readings, etc.” As one student remarked, E-Team work “puts everything in perspective: someone is getting deported, so getting a week behind in your course readings” seems less disastrous. Grades, as another stressed quite firmly, were “beside the point. The point was to actually be able to do work that meant something.”

But since the E-Team would have been less sustainable over the long run if its members had flunked out of law school, we did not take cases during final exams, and before accepting any case I would canvass the Team for conflicts. I do not recall any ever arising, however, because as the students repeatedly emphasized, in “the law school calendar, there’s nothing really urgent.” Other than readings, as a rule, “we didn’t have much to do throughout the term” until “the end-of-term crunch times when everything is due.” As a result, “you can put off things. You can be completely dedicated to one thing for 72 hours and can catch up on your studies on the weekend.”

In addition, the E-Team “wasn’t a constantly heavy workload.” The work “would come in spurts” and the students were only on deck for relatively brief periods: as a rule no more than a week or two of moderately intense work, with a day or two at most of round-the-clock scrambling at the end. If any genuine emergency came up during the life of a case, the students could call on their teammates to cover for them: I had suggested at the outset that since the units usually took cases in rotation, in a real pinch they might call in a friend from the other E-Team unit (although I do not remember this ever happening). And crucially, the Team members “knew what to expect” when they signed on. The level of commitment “was clear from the outset” and this “sufficiently managed our expectations.” Beyond that, as one explained, “You just take it as it comes.”

The E-Team experience answers the question of whether student volunteers could be counted on to make the E-Team their top priority with an emphatic and unqualified “yes.” The more difficult question concerns credit students, who in addition to their coursework are responsible for a full complement of other clinic files. If credit students make the E-Team their top priority, will these other cases suffer?

A colleague of mine who teaches refugee and immigration law at another student legal clinic recently ran a version of the E-Team with her students. Her division is staffed each term by full-time credit students, each of whom is responsible for a full complement of twenty or so other files. Her principle concern with this model in her clinic context was that while her students were working on their E-Team case, their other cases “went by the board.”

Our clinic has a similar staffing model during the summer terms, and the E-Team did take on one case under these conditions. Although we did not encounter this problem, our experience was likely atypical: two of our four students had been on the E-Team the previous term, and to the students’ recollections, during their busiest E-Team moments their other files were relatively stable. As a result, juggling their caseload “wasn’t particularly difficult”; “it was a very busy time but not unmanageable”; “I don’t remember it being that brutal.” One of these summer students explained that when a pressing matter came up in another of his files it was actually easier to balance the E-Team work than it was to balance the rest of his individual caseload.

When his own files heated up there was “no release valve,” whereas “when you’re working on the Team, everyone’s cooperative” and if one person needs to attend to something else, the rest of the Team will “pick up the slack.” Even so, as another student remarked, “I did notice that when I had an E-Team case that exploded, the other clinic work seemed much less interesting.”

My colleague’s experience raises an important caution. The E-Team model will work best with volunteers—volunteers who know what they are signing up for, are excited to be taking part, and can give the work their undivided attention.

## 2. HARMONY

As set out above, effective teamwork has significant benefits from a client service perspective. On the other hand, “Hell is other people.”<sup>13</sup> Many books have been written, many courses taught, on how to work well with others. Brainstorming is easy. The trouble comes afterwards: jointly evaluating the options; collectively setting priorities and arriving at a consensus about which steps to take; and figuring out how to distribute assignments evenly, fairly and in a way that makes the best use of each member’s skills, one that avoids duplication and does not leave gaps. Teamwork often generates “process conflict,” which typically makes a team less productive.<sup>14</sup>

The E-Team felt like a team. It was energizing like a team. Its members brainstormed together and caught each other’s mistakes like a team. Yet it demanded as little actual teamwork as possible. For most of the life of an E-Team case, its members worked individually. Although “there were other people to talk to and consult” and “you never had to make a difficult call on your own”—and although review counsel was ultimately responsible for all of the bigger decisions in each file—each student made all of the smaller decisions affecting his or her own work. A portfolio was never shared, even when more than one student was working on it. This was reinforced by giving the fifth position, Float, its own name: if Float is helping Story, although they may be working side-by-side, this portfolio has not become a two-person team. Story is Story, and Float is her assistant.

Having the students work separately on preset portfolios resolved the principle sources of stress associated with the division of labour, and minimized collective decision-making. This not only made the bulk of the work more comfortable for a student population largely accustomed to working independently, it also made the remaining—critical and unavoidable—teamwork much easier. Since they were largely spared the major causes of group work conflict, the students were able to gel as a team, term after term. This, in turn, helped them to communicate, coordinate and cooperate effectively as they worked to put all of their individual pieces together.

The students were unanimous: for all that it involved a serious amount of work the E-Team was “a really good time.” “Being there late at night, joking around” was “fun and exciting” and several students made lifelong friends. “Everyone was always willing to put in whatever work was necessary, there was no shirking of any kind,” and team members would help each other out as needed. From one student’s perspective, the E-Team’s cohesiveness was “magical.” From the perspective of the final product, it was a terrific advantage.

## 3. MECHANICS

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<sup>13</sup> Jean-Paul Sartre, *No Exit and The Flies* (New York: A Knopf, 1947).

<sup>14</sup> See e.g. Kristin J Behfar et al, “Conflict in Small Groups: The Meaning and Consequences of Process Conflict” (2011) 42:2 *Small Group Research* 127; Sonia M Goltz et al, “Teaching Teamwork and Problem Solving Concurrently” (2008) 32:5 *Journal of Management Education* 541.

The portfolio model also had a number of benefits at the level of E-Team's mechanics.

"Individual autonomy," giving individual teammates "freedom, independence and discretion" in carrying out their tasks, has been "long recognized as a means to improve functioning of individuals and teams,"<sup>15</sup> and "strong individual roles" are very helpful, in particular, for teams that navigate complex systems, especially in emergency situations.<sup>16</sup> A number of the students commented that having a single focus and being responsible for one "discrete task" was less daunting and allowed them to build their confidence more quickly. One also explained that having a single person associated with each aspect of the case helped him to conceptualize the different interworking parts of the legal machine. In fact, now that he is practicing law, now that "all of the roles are being performed by me," he still finds it useful to "visualize" himself in each of the different roles as he is preparing a case.

Another advantage of this model was its potential to reduce file transfer errors, illustrated by what the students came to know as the Doctor Principle. Hospital doctors and nurses often work long shifts, toward the end of which their error rate rises.<sup>17</sup> Why not, then, have them work shorter shifts? One reason is that a larger spike in error rates occurs whenever files change hands.<sup>18</sup> The E-Team could have been structured, for example, to have the students rotate in shifts. But it was far preferable that the portfolios not be passed around.

In addition, this model allowed the law school's steep social hierarchy to work in our favor. Senior students, and third-years in particular, often loom large on the law school social scene. This had its advantages: as Leads, they were easily able to inspire confidence in anxious juniors. One student explained that her fears upon joining the Team at the beginning of her first year were "alleviated by the fact that we had strong team leaders. My team leaders seemed very capable and they had confidence in themselves and they knew what they were doing." (Her team leaders, in contrast, confess: "I was really nervous...it was the first time I'd ever been pushed that far into the lawyer role," and "There we were, not really knowing what we were doing so much..."). But the potential downside of this reverence was that in the eyes of their teammates these very impressive senior students were simply beyond reproach. If a third-year student were really running the show, this would be a problem because of the Pilot Principle. Over the course of a commercial airline flight, the pilot and the less experienced co-pilot will take turns at the controls. Most crashes happen when the pilot is flying the plane, and the black box recordings

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<sup>15</sup> H van Mierlo et al, "Individual Autonomy in Work Teams: The Role of Team Autonomy, Self-Efficacy, and Social Support" (2006) 15:3 *European Journal of Work and Organizational Psychology* 281 at 283.

<sup>16</sup> Ellen Goldman et al, "Learning in a Chaotic Environment" (2009) 21:7 *Journal of Workplace Learning* 555 at 559.

<sup>17</sup> See generally Ann Page, ed, *Keeping Patients Safe: Transforming the work environment for nurses*, (Washington, DC: The National Academies Press, 2004) (there is "very strong" evidence that error rates increase at the end of long shifts (see 229-236); some researchers have found that nurses' error rates in fact triple after more than 12.5 hours on the job); Ann E Rogers et al, "The Working Hours of Hospital Staff Nurses and Patient Safety" (2004) 23:4 *Health Affairs* 202; CA Estabrooks et al, "Effects of Shift Length on Quality of Patient Care and Health Provider Outcomes: Systematic Review" (2009) 18:3 *Quality and Safety in Health Care* 181 (a recent study raising methodological cautions and concluding that further research is needed).

<sup>18</sup> See e.g. Joint Commission Centre for Transforming Healthcare, News Release, "Joint Commission Centre for Transforming Healthcare Tackles Miscommunication Among Caregivers" (21 October 2010) online: Joint Commission Centre for Transforming Healthcare <[http://www.centerfortransforminghealthcare.org/center\\_transforming\\_healthcare\\_tst\\_hoc/](http://www.centerfortransforminghealthcare.org/center_transforming_healthcare_tst_hoc/)> ("[a]n estimated 80 percent of serious medical errors involve miscommunications between caregivers when responsibility for patients is transferred or handed off").

suggest why. When the co-pilot is flying, the pilot will jump in to correct a mistake. When the pilot is flying, the co-pilot is often too intimidated to speak up.<sup>19</sup>

The E-Team benefited greatly from having a first-year student in the driver's seat. Titles aside, Log was the one principally responsible for manoeuvring each Team unit through the legal process. In her gathering and organizing, Log was the go-between who kept everyone on the same page, who knew which parts of the file were where, which stacks of photocopies contained the stamped originals, whether the latest version of the amendments had been approved, whether the filing cheques had been requisitioned, when the courier would be coming to pick up the materials. One student remarked perceptively on "a weird thing" that she had noticed on the Team: Log was in effect "a quasi-Lead – she was the one who was putting it all together."

From the perspective of review counsel this was unsettling, because Log's work was the hardest for me to supervise directly. I would be in my office with my nose in the arguments and the evidence, while Log would be downstairs at the photocopier, or dashing back and forth among her teammates, often not engaging with me much until the file's final stages. If any of the other portfolios had ever gone seriously awry, I could have stepped in and taken over. It would have been more difficult to take over Log's job in mid-stream; easier to overlook her errors (one exhibit among 25 is not stamped; a document has the wrong Court File Number; we have only four copies of the Notice instead of five); and potentially harder to fix them (the wrong document in the Record means unbinding, renumbering and rebinding many sets of materials; a serious technical error could lead the Court to refuse service and cause us to miss our filing deadline). As a result, it was a great advantage that Log was a first-year student: someone whom the others trusted themselves to question if they saw, or even suspected, that she might be making a mistake.

At the recent 10<sup>th</sup> annual conference of the International Journal of Clinical Legal Education, the topic came up again and again: how can we find ways to engage first-year students in clinic work? On the one hand, they are so eager. On the other, they often know next to nothing yet about the law. The first-year students brought their enthusiasm and their non-legal skills to the E-Team and were critical in making it function. Involving them was a good way of building institutional memory, since many stayed on into their second year and brought their knowledge with them. In return, their confidence got a big boost – they were highly appreciated by their senior teammates and they were able to feel "a degree of individual responsibility and, as a result, personal ownership" over the final product – and they were able to begin learning clinical legal skills "right off the bat." Like their upper-year peers in the regular clinic program, they got to experience the law in action: they learned the basics of how to draft a memorandum, how to prepare an affidavit, and also how to think about legal problems practically and strategically. One student stressed what an advantage it was to have had this exposure so soon: "being able to pick up on some of that really early was huge."

In addition, for first-years and upper-years alike, the E-Team offered the chance to develop a different set of skills than those acquired in the regular clinic model.

## **B. FROM A PEDAGOGICAL PERSPECTIVE**

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<sup>19</sup> Malcolm Gladwell, *Outliers: The Story of Success* (New York: Little, Brown and Company, 2008) ch 7.

The E-Team exposed its members to three aspects of legal practice that law students rarely encounter singly and nowhere else in combination: teamwork, last-minute urgency, and cases with potentially life and death consequences. As a result, a common refrain was that the E-Team was “my first real window into what it was like to be a practicing lawyer.” The first part of this section discusses the competencies that the Team members developed as a result. The second part challenges the common notion that these competencies are better learned in the workplace than at law school.

## 1. THE E-TEAM COMPETENCIES

### i. Teamwork

Business schools teach teamwork. One E-Team student who earned a joint degree remarked that learning how to work well in a team was “one of the biggest things I got out of the MBA program.” In law school, however, teamwork is relatively rare. At the University of Toronto, as the students explained, “we’re writing our own exams, we’re writing our own papers,” and the closest they typically come to working together is in their compulsory moot, where a pair of students present two halves of an argument (but receive an individual evaluation). Many students noted that the E-Team was the only time in their program that they had been expected to work together. Asked about their extra-curricular activities, the students identified journal editing and participating in competitive moots as opportunities for group work, but they noted that these experiences lacked the same sense that each member was ultimately accountable for the end result. “The E-team was the only time we were working on a joint project,” said one competitive mooter, “the only experience where it was true teamwork, where everyone is responsible for the final product.”

Teamwork is similarly rare in the casework aspect of the Ontario student legal clinics. While many clinics also have a strong community legal work component, where students often work collaboratively on public legal education and law reform projects, working together on client files presents distinct challenges, as discussed below. In every student clinic, students are primarily responsible for their own individual complement of casework files, and in some clinics, in some areas of law, group work is non-existent. In others, junior students will sometimes pair up with senior students to assist them as needed, especially on more complex or labour-intensive files. These types of arrangements tend to be “ad hoc,” reactive and not always voluntary: as one lawyer explained, “I can develop an E-Team at any time” because when emergencies arise “I second people. I take them off of whatever they’re doing. [I ask,] ‘Any volunteers?’ If not, it’s you, you and you.”

My interviews with supervising lawyers and clinic directors helped to clarify why a team approach to casework, standard across so much of private practice, is not more popular in the student clinic setting. One lawyer wondered whether teamwork might hinder the students’ development: “whether they get too used to having too many people covering them.” In addition, when a single student has carriage of a case, she benefits from getting “to fully prepare for the whole process,” and since she will “know all the details,” she is less likely to overlook something important. Others noted that group work makes individual evaluation harder and potentially less fair, and also highlighted the hassle of trying to arrange meetings around many students’ schedules. Several explained that their students already enjoy the benefits of teamwork, especially the full-time credit students who share office space: they “share all day long, get each

other's input," and "do a really good team thing anyway." In short, while they recognized its advantages for urgent situations, a number of my interviewees felt that as a model of regular clinic work, having a group of students work together on a case is an unnecessary "team-building practice rather than being useful for the file."

The former E-Team students, in contrast, stressed again and again that this experience was their only chance to learn a valuable legal skill set, one that gave them many advantages in the workplace. The E-Team, as one student noted, was "the first time that I interacted with fellow law students in a quasi-professional capacity, getting introduced to the way that teamwork works in law." As many others observed, the E-Team's design "mirrors the structure of a law firm," and not just one on Bay Street. While refugee/immigration law, ironically, is one of the areas where teamwork is currently used the least (although as discussed further below, E-Team graduates are doing their part to change that), "working as a team is such a big part of practicing law" even in smaller public interest law firms. In a law firm, junior lawyers are not typically consulted on the division of labour or on the big decisions about the direction of a case. Instead, "everyone is expected to be responsible for a specific area of the work." Like the E-Team, a law firm is a system with "a lot of moving parts" and the E-Team students entered the workforce with an understanding of "how the pieces fit together." Junior lawyers are expected to work independently and without much "direct instruction," and the E-Team students had also already started to get a feel for "when to ask for help, and when to get further input, and when you just need to get your bit done."

In addition, even junior lawyers are responsible for what one of the clinic lawyers that I interviewed identified as one of teamwork's biggest dangers: making sure that everyone knows what they need to know. The potential for one person to miss a relevant piece of information is one of the reasons why this lawyer felt that "teaching one person to do it sequentially" is not only "easier" but also better for the file. Indeed, the students explain that learning how to focus on one piece of the work while simultaneously keeping an eye on the other portfolios to make sure that nothing is falling through the cracks was one of the greatest challenges that they faced, one exacerbated by the fact that their teammates had different levels of legal knowledge. It was also one of the most valuable competencies that they acquired. As one student explained, "the way these cases end up getting put together, it's not just a totally linear progression, where you get the story and put together the argument." The person responsible for getting the information from the client, for example, might "miss something" or might "not ask all of the detailed questions" that she should have on the first pass, or else "something comes up later that needs to be followed up on." The students on the E-Team learned to have their antennae out for these kinds of situations and learned that the key to "making sure you're on the same page" is "feeding back on each other as you progress"; the key is "a lot of back and forth and sharing of information."

The students who have been in practice the longest see additional advantages to the teamwork that they did on the E-Team. One, who is now a mid-level member of his firm, finds the model a useful precedent now that he is taking more responsibility for the direction of cases: it gave him "that ability to look at an issue, a problem, a process and say here are the four things that need to get done, here's the order we need them done in, here are the roles different people will play." In addition, as one of the first graduates from E-Team notes, "even earlier than I expected, I was put in the position of supervising students, and now supervising and delegating to junior associates," and in so doing she was grateful for her experiences on the E-Team. As another points out, even as a sole practitioner, the "same skill set" that she developed in

interacting with her junior E-Team teammates has helped her to delegate work to her paralegals and support staff. “If it was up to me, even now, I prefer to do everything”; but on the E-Team she learned “to trust this little first-year law student that he’s going to be able to do it correctly. There was a lot of letting go.”

Teamwork has many potential learning benefits beyond its practical ability to arm students for the workplace,<sup>20</sup> yet many students do not appreciate it as a classroom model. Researchers note that law students, in particular, are steeped in the notion that “learning is and should be individual and competitive” and are “frequently openly hostile to working in groups.”<sup>21</sup> An E-Team model harnesses teamwork’s pedagogical power in a context where students value the experience.

## ii. Urgency

One lawyer questioned whether taking on cases with tight timelines was a sound teaching strategy: “whether it’s a good model to do everything at the last minute.”

Many of the students observed that “working the tight deadline” is a skill that they were not taught in law school. They noted that even in clinic work, very quick turn-around times are rare, and even more rarely do they come “out of the blue.” One student explained that “clinic work gives you the impression that everything moves very slowly and that everything is very clean,” at least compared to the frantic and chaotic scramble that she regularly encounters now in her refugee/immigration law practice. Being exposed to what this student referred to as “messy situations” in a safe learning environment had a number of benefits for the students on the E-Team.

The students learned quickly to ask themselves “what’s the fastest way...the shortest, most competent way to do something?” Several who worked with the clients commented that they learned much better than in their regular clinic work “how to really focus the questions”; unlike in many of their other cases, “we didn’t have three months to keep going back for more of the story.” One identified as a particularly helpful competency the ability to think strategically “about what needs to go into the Record.” As she explained, when the students had plenty of time to prepare them, the division’s other applications were often “really bloated.” Doing the deportation cases forced the Team “to strip down to what’s important and what’s practical...rather than just throwing stuff at the wall and see what sticks.” She noted that she has found this training very helpful in her own practice, and also that this ability is often lacking in the students and junior lawyers that she supervises.

Another student reflected on how “managing the time crunch” on the E-Team meant calculating at the outset “what the timelines are going to be over the next seven days”. At the beginning of each case, the Team would work backwards from the hard deadlines to set soft

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<sup>20</sup> Mary Keyes & Kylie Burns, “Group Learning in Law” (2008) 17:1 Griffith L Rev 357 (“There is a substantial body of data which shows that cooperative learning leads to higher achievement; the development and more application of higher level reasoning strategies, such as evaluation and analysis, critical thinking; greater productivity; higher creativity; transfer of learning; better retention; higher involvement, engagement and motivation; more positive attitudes towards learning; and better abilities in peer- and self-reflection than individual and competitive learning”) at 361. Teamwork also has the potential to be “more responsive to the learning needs of students who are marginalised in intensely individualistic and competitive learning environments, including women and students from backgrounds and cultures which emphasise collective and cooperative activity”; *Ibid* at 360. See also Goltz, *supra* note 14.

<sup>21</sup> *Ibid*, Keyes at 357, 364.

internal deadlines for each step of the process. This student observed that learning this procedure has been crucial in his practice. Others stressed simply how helpful it was to have to train themselves to focus under pressure: to maintain “attention to detail on a tight timeline.” Several also noted that the “really fast, really resourceful evidence gathering” that they learned on the E-Team continues to be an asset to their clients: the skills that allowed the students to make the most of their time now enable their clients “to make the most of their resources.” Not only are the students able to work more efficiently, but they have learned helpful strategies such as seeking out “social science studies for evidence for clients who can’t afford expert reports.”

One of the most striking learning developments that I observed over the course of every E-Team term was the students’ shift toward “worst case scenario” planning. From my work with students over the years, I believe that this mindset is what most distinguishes the E-Team graduates from those who have not had this kind of experience. At the beginning of their time on the Team, the students would typically state confidently: “The client will be bringing us his documents tomorrow morning,” or “The courier will be here at noon.” They soon learned to add, “But what if he can’t find them? What will that do to our argument?” or “What if the courier doesn’t show up? What is our backup plan?” The Federal Court accepts service until 4:30 p.m. We would file our documents by noon, even if that meant working through the night—so that should the Court refuse to accept them, we would have time to rush them back to the clinic, fix the problem, and bring them back again. The E-Team was about building in redundancies, and more redundancies in case those redundancies failed. I am still struck every term by how often students do not have a fallback plan. In their regular clinical work, they often have the wiggle room to fix problems that they failed to foresee, but not under tight timelines.

Doing this kind of work gave the students a well-earned confidence in their ability to perform under these kinds of time pressures, which in turn helped them to weather the legendarily stressful articling year. Many noted that the E-Team was “a great experience to have before articling”: it meant that working to a tight deadline “wasn’t that intimidating,” and “I didn’t really get shaken in the way that I would have if I hadn’t done the E-Team work.” In short, working on urgent cases was “really really good practice” for the world of law.

In addition, it gave its members a rare chance to reap the benefits of problem-based learning. Education theorists, principally in schools of management, have long been concerned that their students are learning too narrowly and mechanically, as evident by the fact that they so often cope badly with “unstructured” or “poorly structured” problems:<sup>22</sup> problems characterized by “ambiguity and uncertainty”<sup>23</sup> where the students are not told where to look, what they are looking for, or what approach to take when they find it, where many issues are raised at the same time, where finding solutions many require using different skill sets from different areas.

To encourage a deeper understanding of the content, as well as to promote creativity and flexibility, many educators have set out to bring these kinds of “messy, confusing problems” into the classroom.<sup>24</sup> Eschewing the traditional approach—teach a unit, then test on it—they have worked hard to create artificial learning environments that will present students with “disruption,

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<sup>22</sup> See generally John D Bigelow, “Using Problem-Based Learning to Develop Skills in Solving Unstructured Problems” (2004) 28:5 *Journal of Management Education* 591; Goltz, *supra* note 14.

<sup>23</sup> Eliat Aram & Dorothea Noble, “Educating Prospective Managers in the Complexity of Organizational Life” (1999) 30:3 *Management Learning* 321 at 321; See also Susanne Bunniss & Diane R Kelly, “‘The Unknown Becomes the Known’: Collective learning and change in primary care teams” (2008) 42:12 *Medical Education* 1185.

<sup>24</sup> DA Schon, *Educating the Reflective Practitioner* (San Francisco: Jossey-Bass, 1987) at 3, quoted in Aram, *supra* note 23 at 324.

confusion and chaos”<sup>25</sup> and teach them how to develop a “metastructure” that they can use to find their way through it.<sup>26</sup> The results have been impressive: there is strong evidence that this model increases “comprehension, critical thinking, and retention of learning.”<sup>27</sup> Not surprisingly, however, given that this method specifically aims to be destabilizing and anxiety producing,<sup>28</sup> students very often do not appreciate having it imposed on them, especially when their work is being graded.<sup>29</sup>

The student who referred to the “messiness” of the E-Team work hit the nail on the head: “disruption, confusion and chaos” came standard. And at first I found this very unsettling. The first version of the Manual reflected my attempt to impose order: for each type of case that the Team might encounter I had drafted a set of byzantine “codes” that laid out for each step of the process what each portfolio would be doing and in what order. We scrapped these codes midway through our first case. Instead, we developed a “metastructure”: looking at the big picture, where are we trying to go and what is the best way to get there? For all of us, the E-Team was a technicolour crash course in problem-based learning.

While working on urgent cases had many potential pedagogical benefits, it also carried risks, and more attention to these could have made the E-Team an even more valuable learning experience. The tight timelines meant that my guidance was often directive. Sometimes this was necessary; sometimes we simply did not have time for a genuinely “constructivist” approach, one where students problem-solve for themselves and instructors hang back and provide guidance only as needed.<sup>30</sup> On the other hand, there is a noted danger that clinical instructors, especially those coming from private practice, may treat students like inexperienced junior associates<sup>31</sup> – and this danger is only heightened in a model that functions like a law firm. The students would certainly have benefited if I had taken more of the available opportunities to ask, “Well, what do you think?” before saying “Here’s what you’ll need to do.”

Along the same lines, in the middle of a case there often was not enough time for constructive feedback. Students would give me a draft and often I would return it to them with changes and comments. Sometimes I would edit it myself and send it out the door. Ideally, I would meet with the student after the dust had settled to review the changes – but too often this fell by the wayside. Asked about this, the students were very gracious. As one remarked, “That’s what happens when you’re a junior lawyer. I give the partners work and it comes back, sometimes the same, sometimes very different. I don’t expect or get an explanation.” Students, however, are not yet junior lawyers and they both need and deserve prompt feedback.

Lastly, as mentioned at the outset, the E-Team was up and running after one single training session. By far the most common constructive criticism from the students was that they would have appreciated “more of a theoretical grounding,” “more of the legal basis,” more about “the actual nuts and bolts” of the legal mechanisms that they were using. I had assumed that with

<sup>25</sup> Goldman, *supra* note 16 at 556. See also Stephen R Axley & Timothy R McMahon, “Complexity: A Frontier for Management Education” (2006) 30:2 Journal of Management Education 295; Bigelow, *supra* note 22; Aram, *supra* note 23; Goltz, *supra* note 14.

<sup>26</sup> Bigelow, *supra* note 22 at 597.

<sup>27</sup> See generally Goltz, *supra* note 14 at 545-546; Bigelow, *supra* note 22.

<sup>28</sup> See e.g. Ron Iannone, “Chaos Theory and Its Implications for Curriculum and Teaching” (1995) 115:4 Education 541.

<sup>29</sup> See generally Bigelow, *supra* note 22 at 603.

<sup>30</sup> See e.g. Giddings, *supra* note 11 at 8-9; Goltz, *supra* note 14 at 543; Keyes, *supra* note 20.

<sup>31</sup> Deborah Burand, “Building Houses While Building Lawyers: Case Study of MicroBuild” (Paper delivered at the International Journal of Clinical Legal Education Conference, Durham, UK, 11-13 July 2012).

the amount that they had to keep in their heads, and with the all-consuming urgency of these cases, they would prefer to work on a “need to know” basis and to be free to leave it all behind them on their days off. In fact, many mentioned that they would happily have attended further seminars to fill in around the edges and to give them a broader perspective on this area of law (one had the excellent suggestion of periodic “lunch and learn” sessions).

### iii. High stakes

Student clinics deal every day with cases that have life-altering outcomes. Our clients win or lose custody of their children, stave off eviction or lose their homes, avoid or acquire a criminal record. We hope that our students learn early that every case is important, even the smaller ones: getting a landlord to fix a window, winning back a few days of owed wages, or having a bad grade removed from a transcript can mean the world to their clients. In some cases, however, the stakes are not merely high for the clients. In this section of this paper, “high stakes” cases refers to those cases where losing seems catastrophic *to the student*, either because of the gravity of the outcome, or because of the bond that they have forged with the client, or both. These are the cases where the students say “I don’t know how *I’ll* cope if we lose.”

Such cases come up occasionally in all areas of clinic law. But they were standard fare on the E-Team. The students were keenly aware that they were all that was standing between their clients and disaster. They were often convinced that their clients’ lives were at risk. In one case, the high stakes were even more immediate. One student reported that her biggest fear working on the Team was that “my clients might kill themselves,” and with good reason: her clients had disclosed a suicide pact and a reviewing psychiatrist reported “with clinical certainty” that one of them, at least, would attempt to carry it through if the Team lost her case.<sup>32</sup> The students report that they felt secure doing this work because “we had a lot of support,” and “we were all doing it together,” “it wasn’t all on my shoulders.” But losing is still losing, and what if losing is simply unbearable?

As the students themselves noted, confronting high stakes failure is a hard-won legal competency, especially for those pursuing a career in social justice law. Without a plan in place for how you will cope if you fail, it is hard to have the courage to “take a wildcard chance” on a case that matters. One of the strengths of the E-Team was that it planted the seeds of a philosophy of ‘hard case’ practice that helps to make this kind of work sustainable. One student identified “dealing with defeat” as one of the most important things that he learned on the E-Team—even though, at the time he graduated, the E-Team had not yet lost a case.

Because the possibility of catastrophic failure loomed large over every E-Team case, it was made explicit from the beginning how we would deal with it when, and not if, it came: in a word, together. The initial recruiting email stressed that every case would conclude with a “celebrating/drowning of sorrows pub session (non-alcoholic drinks permitted).” Like at a wake, like at a shiva, we would grieve together. The E-Team made clear that as a model of legal practice, taking the time to absorb the shock of a shattering loss is as important as drafting the closing memo. You do not try to swallow it and move on; you make the time to process it, and you do not do it alone.

Working with people whom others have intentionally hurt puts caregivers at risk of losing the ability to trust, to care, to feel connected; they risk withdrawing from a world that

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<sup>32</sup> Following this incident, the E-Team students received professional training to help them to identify when a client might be considering suicide and to seek assistance.

starts to seem like a cruel and dangerous place.<sup>33</sup> Those who work with refugee claimants run this risk in spades: one recent study on the “psychological effects of working with refugees and asylum seekers” found that all of its subjects reported that this work was “considerably more stressful” than their work with other clients, and that it often left them feeling “overwhelmed, helpless, powerless, frustrated and exhausted.”<sup>34</sup> But while “all trauma workers experience some degree of difficulty with the nature of the work, not all develop vicarious trauma.”<sup>35</sup> One “vital” mediating factor in a clinical setting is an open relationship with a supportive supervisor.<sup>36</sup> Another is peer support, especially from colleagues ‘on the inside’: on the outside, as one subject in a trauma study explained, “no one wants to hear the gory details and often those are the ones you need to express.”<sup>37</sup> For many trauma workers, unloading casually with colleagues is “the most helpful” coping method.<sup>38</sup>

Paying attention to their mental health is a particularly important skill to teach law students, because they very likely will not learn it on the job. Our profession is notoriously bad at self-care.<sup>39</sup> Those who learn good practices in law school, however, may start to take the profession in a new direction. As mentioned at the outset, refugee/immigration lawyers typically work in isolation. This is not only bad for clients, it is bad for refugee/immigration lawyers. One former E-Team student—the one whose clients disclosed their suicide pact—now practices refugee/immigration law in a clinic that specializes in filing stay motions. She was one of the instigators of a recent shift in her clinic’s approach to these kinds of files: “we’ve started doing them in pairs; that’s our new office policy.” The impetus for this change was not merely to improve the product. This student realized that on the E-Team “bringing a motion and potentially losing it...wasn’t horrifying because we were all doing it together.” Now, in her office, “nobody goes through it alone.” This is nothing short of a revolution in the refugee/immigration Bar’s approach to this kind of work, and it is very gratifying that a former E-Teamer is in the vanguard.

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<sup>33</sup> These are symptoms of a phenomenon referred to interchangeably in mental health literature as “vicarious traumatization, secondary traumatic stress, compassion fatigue, burnout and traumatic counter transference”; Rebecca Guhan & Helen Liebling-Kalifani, “The Experiences of Staff Working With Refugees and Asylum Seekers in the United Kingdom: A Grounded Theory Exploration” (2011) 9:3 *Journal of Immigrant & Refugee Studies* 205 at 207. For a further review, see Lila Petar Vrklevski & John Franklin, “Vicarious Trauma: The Impact on Solicitors of Exposure to Traumatic Material” (2008) 14:1 *Traumatology* 106; Marjorie A Silver, Sanford Portnoy & Jean Koh Peters, “Stress, Burnout, Vicarious Trauma, and Other Emotional Realities in the Lawyer/Client Relationship: A Panel Discussion” (2002-2004) 19:4 *Touro L Rev* 847; MaryDale Salston & Charles R Figley, “Secondary Traumatic Stress Effects of Working With Survivors of Criminal Victimization” (2003) 16:2 *Journal of Traumatic Stress* 167; Andrew P Levin & Scott Greisberg, “Vicarious Trauma in Attorneys” (2003) 24:1 *Pace L Rev* 245.

<sup>34</sup> Guhan, *supra* note 33 at 207.

<sup>35</sup> Vrklevski, *supra* note 33 at 108.

<sup>36</sup> Salston, *supra* note 33 at 171. See also Guhan, *supra* note 33; Betsy B Cook, Steve R Banks & Ralph J Turner, “The Effects of Work Environment on Burnout in the Newsroom” (1993) 14:3-4 *Newspaper Research Journal* 123.

<sup>37</sup> Roger A Simpson & James G Boggs, “An Exploratory Study of Traumatic Stress Among Newspaper Journalists” (1999) 1:1 *Journalism and Communication Monographs* 1 at 17. See also Salston, *supra* note 33; Silver, *supra* note 33; Guhan, *supra* note 33.

<sup>38</sup> Guhan, *supra* note 33 at 220. This type of informal debriefing should be distinguished from a professionally structured group debriefing, a counselling method whose efficacy in reducing incidences of secondary trauma has for years been the subject “an extended and heated debate,” one that remains unresolved. For a review, see Michelle R Tuckey, “Issues in the Debriefing Debate for the Emergency Services: Moving Research Outcomes Forward” (2007) 14:2 *Clinical Psychology: Science and Practice* 106.

<sup>39</sup> See *e.g.* Patrick J Schlitz, “On Being a Happy, Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession” (1999) 52:4 *Vanderbilt L Rev* 871.

The students also learned something about losing even from the cases that they won. Several students commented at pub celebrations that winning did not feel the way that they had thought it would. They had expected euphoria. Instead, while they were profoundly relieved, they felt shaken. We won; why do I feel like I just missed getting hit by a bus? The students discovered that stopping a deportation often feels less like winning and more like narrowly avoiding losing. This helped to underscore one of the E-Team's mantras: that every positive outcome is the result of hard work and good luck. Recognizing how much luck goes into every victory can make a win feel very fragile in hindsight. But it is important, as much for mental health as for modesty: it helps to moderate the temptation to assume full responsibility for a loss.

And from losses, of course, there is still more to learn. My colleague who recently ran an E-Team at her clinic lost two heartbreaking long-shot cases. Her students, champion "group huggers," found these experiences very difficult but also very valuable: they reported that they "learned more than they ever could have" otherwise. And as my colleague pointed out, one important aspect that they learned is the role of palliative care. Having lost the stay motions, the students were still able to make deportation a less traumatic and a more dignified experience for their clients.

One director commented that the E-Team was "a lot to ask from the students" and it was. But medical and nursing students, who are at the same stage of life, regularly face high stakes situations. Their patients die. Exposing medical and nursing students to these situations is the cost of saving lives. The members of the E-Team were emphatic that their time on the Team was a very positive experience. It was a lot to ask from them, and they got a lot in return. So did their clients.

## 2. WHY STUDENT LEGAL CLINICS NEED TO TEACH THESE COMPETENCIES

Learning how teamwork works in law, learning how to prioritize under tight timelines – these may well be important skills for lawyers, but why is it important that they be taught in law school? After all, law schools do not aspire to graduate full-fledged lawyers. They rather expect that their graduates will learn the nuts and bolts of legal practice from their employers when they join the workforce.

While this expectation has long been stressful for students and frustrating for employers, with the economic downturn it has become increasingly untenable for clients. For decades, clients "have essentially underwritten the training of new lawyers, paying as much as \$300 an hour for the time of associates learning on the job."<sup>40</sup> Recently, they have begun to protest, telling the firms to "teach new hires on your own dime."<sup>41</sup> A recent survey of major American law firms found that in almost half of these firms, a client had refused to be billed for the work of first- or second-year associates.<sup>42</sup>

In the United States, this pushback has "helped to hasten a historic decline in hiring."<sup>43</sup> As a consequence, having spent a fortune on a degree, American law school graduates are finding that jobs are scarce: *The Wall Street Journal* recently reported that the class of 2011 had

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<sup>40</sup> David Segal, "What They Don't Teach Law Students: Lawyering" *The New York Times* (19 November 2011) online: <[www.nytimes.com](http://www.nytimes.com)>.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

just over a 50% chance of finding work as a lawyer within nine months of graduation.<sup>44</sup> While the situation is less dire in Canada, “young lawyers are having a harder time than ever finding work” in the cities;<sup>45</sup> the number of students being hired back by the big firms has gone down;<sup>46</sup> and in Ontario last year, one in seven students could not find an articling position, a situation “so bad it’s been called a crisis,” one that has prompted a recent overhaul of the articling system.<sup>47</sup> Without practical legal skills, students who do find work in smaller firms place heavy mentorship demands on their employers. And as for the rest, “Where do these students go?...They can’t hang a shingle and start on their own. Many of them are now asking their schools, ‘Why didn’t you teach me how to practice law?’”<sup>48</sup>

This call is being echoed not only by employers and clients but also by many legal academics. As one concludes, “it is no secret that law schools must do more to prepare students for the actual practice of the law”; in fact, this is “perhaps the biggest challenge currently facing law schools.”<sup>49</sup> The Dean of the University of Calgary’s Faculty of Law recently commented that law schools must do more to teach practical legal skills, and “we’re not just talking about skills of immediate value—preparing court papers or incorporating a company—but rather skills of enduring value that carry across domains, like teamwork, project management, and leadership.”<sup>50</sup>

The solution most commonly proclaimed is for law schools to ramp up their clinical programs.<sup>51</sup> As welcome as this development surely is, the casework aspect of the student clinic experience is not teaching “teamwork, project management and leadership.” A repeated refrain, even among veterans of the regular clinic program, was that the E-Team’s practical skills were “not something I got anywhere else.” As one student who has now been in practice for several years commented: “I’ve worked with so many articling students, nobody has had the experiences that I did on the E-Team...no one has had anywhere near the clinical experiences.”

As noted at the outset, these experiences gave the students competitive advantages. By incorporating an E-Team model, clinics would be bestowing these advantages on the students most committed to furthering social justice in whatever area of law they end up practicing. They would not only be stocking the profession with more competent lawyers, but with the right kind of lawyers.

<sup>44</sup> Joe Palazzolo, “Law Grads Face Brutal Job Market,” *The Wall Street Journal* (25 June 2012) online: <<http://online.wsj.com>>.

<sup>45</sup> Kate Lunau, “Bye-bye Bay Street,” *Maclean’s* (15 September 2011) online: <<http://www2.macleans.ca>>. The article notes, however, that opportunities in smaller firms in rural areas abound for new grads willing and able to “put up a shingle.”

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.* See also: “Law School Grads Can’t Find Mandatory Work,” CBC.ca (10 May 2012); Law Society of Upper Canada, “Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario,” Articling Task Force Final Report (25 October 2012) online:

< <http://www.lsuc.com/WorkArea/DownloadAsset.aspx?id=2147489848> > ; Kirk Makin, “Critics Fear Ontario’s Articling Plan Will Create Two-Tier System for Law Students,” *The Globe and Mail* (23 November 2012) online : <http://www.theglobeandmail.com>.

<sup>48</sup> Segal, *supra* note 40.

<sup>49</sup> Deannell Reece Tacha, “Training the Whole Lawyer” (2011) 96:5 Iowa L Rev 1699 at 1701. See also Katherine Mangan, “A Plea for Real-World Training in Law Schools: Carnegie Foundation report suggests more focus on clients, less on Socratic dialogues,” (2007) 53:20 The Chronicle of Higher Education A6.

<sup>50</sup> Barbara Balfour, “Canadian Law Schools Embrace Challenges of 21<sup>st</sup> Century,” *Calgary Herald* (4 July 4 2012) online: <[www.calgaryherald.com](http://www.calgaryherald.com)>.

<sup>51</sup> See e.g. Segal, *supra* note 40; Mangan, *supra* note 49. Osgoode Hall Law School has recently committed itself to making “hands-on learning” a key component of its students’ legal education, becoming the first law school in Canada to make clinical experience mandatory: <<http://www.osgoode.yorku.ca/experience>>; Balfour, *supra* note 50.

## IV. HOW THE E-TEAM MODEL COULD BE USEFUL IN OTHER CLINICS

The E-Team project involved a relatively small group of students over a relatively short period of time, and as discussed further below, it operated in an unusual legal context. Nonetheless, its pedagogical and structural principles may be more broadly relevant to the work of Ontario student legal clinics.

When they learned that this paper was setting out to explore ways that the E-Team model could be applied in different clinic contexts, many of the students volunteered that they hoped that other clinics would start up their own E-Teams. When I interviewed lawyers and directors at other clinics, some were also quite enthusiastic: “It’s a fascinating model...I’m really, really interested in it”; “I can see it working on a lot of different levels”; and “If Legal Aid is looking for better ways to provide services, this could be a way.” But only one of my interviewees had no concerns at all about the model, some had serious reservations, and one concluded that it would not be “an effective use of our resources.”

The first part of this section will address the general concerns that my colleagues raised from the perspective of clinic administration. The remaining concerns, other than those already canvassed above, relate to how well this model would transfer to other areas of law. This will be the focus of the second part of this section, with particular attention to how it could be adapted to non-urgent settings with lower stakes.

### A. GENERAL CONCERNS

As one director explained, managing a student legal clinic is a perpetual “balancing act”: “We’re very aware here that we’re constantly being pulled in different directions and you have to choose and prioritize.” For this director, the “issue is the use of resources. If we have a student on this, are we losing the ability to deal with something else?” This same director explained that since his clinic is “already extremely busy...I don’t see our students as having a lot of extra time to devote to this.” And it is not only the students’ capacity that is an issue, of course: of particular concern to a number of my colleagues was the potential for review counsel burnout. Any clinic considering starting an E-Team will certainly need to bear each of these points in mind. What follows are a couple of thoughts to weigh in the balance.

Student clinics, it has been suggested, have “three competing policy priorities” – casework, community action and legal education.<sup>52</sup> They have been strongly criticized for neglecting community action in favour of the other two: by focusing heavily on individual clients and putting too little effort into dismantling oppressive systems, clinics become just “another first aid centre on the edge of the battlefield.”<sup>53</sup> The E-Team was unapologetically a first aid model, or more precisely a harm reduction model: we never set out to stop all of the unjust deportations within our catchment area, let alone to reform the immigration system. On the other

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<sup>52</sup> Australian clinic director (and now Victorian Supreme Court Justice) Kevin Bell, quoted in Giddings, *supra* note 11 at 8; see also Gavigan, *supra* note 11.

<sup>53</sup> Doug Ewart, “Parkdale Community Legal Services: A Dream that Died” *Obiter Dicta* (12 June 1972) 4-5, reprinted in (1997) 35:3&4 *Osgoode Hall L J* 485; Doug Ewart, “Catch Your Dreams Before They Slip Away: The Parkdale Dream Revisited” (1997) 35:3&4 *Osgoode Hall L J* 493. See also discussion in Gavigan, *supra* note 11; Giddings, *supra* note 11; Jeff Giddings, “Casework, Bloody Casework” (1992) 17:6 *Alternative L Journal* 261.

hand, since its goals were modest, the substantial benefits that the E-Team provided its clients, its students and the social justice legal community came at a relatively low cost. At two or three cases per term on top of the clinic's regular caseload, the work was sustainable. For review counsel, as for the students, the "on deck" time was intense but fairly brief.

And the cost could be even lower. Provided that counsel is confidently up to date on the law, there is no reason why a single-unit E-Team could not take on a single case per term. At one case per term, several students would learn skills that they would not learn elsewhere, and one client, at least, would be better off. If review counsel's regular caseload does not allow for one E-Team case, lowering it slightly to accommodate one would factor in the model's many benefits. Otherwise, a number of my colleagues also raised the possibility of establishing a partnership with a lawyer from the private Bar, such as could be arranged, for example, through Pro Bono Students Canada. This kind of partnership model, where students are initially trained in a legal clinic and are then supervised by external counsel, has been very successful in running student teams in other contexts.<sup>54</sup>

Since this model works best with volunteers, student capacity is much less of an issue. At the many clinics whose caseworkers are predominantly volunteers, the supply of eager recruits nonetheless outstrips the demand. One lawyer at such a clinic, noting the "potential in the volunteers," explained that while her credit students might feel "maxed out," many of her upper-year volunteers "would be looking for extra experience"—to say nothing of the first-year students (of whose applications her clinic accepts only a quarter). At the clinics whose caseworkers are all or almost all credit students, the demand is even greater. These clinical programs have many upsides and one considerable downside: many fewer students are able to participate.<sup>55</sup> As one lawyer at an all-credit-student clinic pointed out, however, such clinics still have "the capacity to access volunteers" from the law school. He explained that his clinic, in fact, has recently had success bringing in volunteers to work on special clinic projects. This not only gives more students a clinical experience, it also gives former credit students a way to stay actively involved in the clinic and to pass on their knowledge to new volunteers.

## **B. HOW THE MODEL COULD APPLY IN OTHER AREAS OF LAW**

For student clinics that practice refugee/immigration law, the time has never been better for an E-Team. New legislation coming into effect shortly has one clear and overriding purpose: to make the system move quickly at any cost.<sup>56</sup> With as few as 30 days from the date of a client's arrival in Canada in which to prepare for a refugee hearing—and with requests to adjourn refugee hearings granted exceedingly rarely—these hearings themselves will become emergencies. Appeals to the new Refugee Appeal Division of the Immigration and Refugee Board must be prepared within 15 days of a negative decision. These appeals, which will be a law- and evidence-heavy paper process, would be ideally suited to a team of students. Many failed refugee claimants will not have access to this process, however, and will instead face deportation even while they seek judicial review of their refusal. As one former E-Team student noted, this will mean "all stays, all the time" for refugee/immigration lawyers. Yet Legal Aid Ontario's recent announcement of drastic cuts to refugee case funding means that fewer and fewer counsel will be

<sup>54</sup> See e.g. Burand, *supra* note 31.

<sup>55</sup> Giddings, *supra* note 11 at 5.

<sup>56</sup> Canada, Bill C-31, *Protecting Canada's Immigration System Act*, 1st Sess, 41st<sup>t</sup> Parl, 2012.

taking on even the most deserving of these cases.<sup>57</sup> In short, the federal and provincial governments have given student clinics with a refugee/immigration division a wealth of E-Team opportunities.

Since many of the Ontario student clinics do not practice refugee/immigration law, however, or else practice it in a very limited capacity, this paper also set out to explore how this model might apply in other areas. Interviews with my colleagues soon made clear that the E-Team's cases were anomalous in several respects: deportations are scheduled on very short notice; their dates are rigidly fixed; and some of the people facing removal were the clinic's own long-standing clients. Very often when an urgent matter arises in one of the other divisions—typically a looming hearing—the timelines are short because the client has come to the clinic at the last minute. Even so, as discussed further below, the court or tribunal will usually adjourn the matter at the clinic's request in order to give the students enough time to prepare. Across the clinics, the standard practice in such cases is therefore to ask for an adjournment on a limited retainer, and if this request is denied, to refuse the case—which is made easier not only by the fact that the client often bears some responsibility for having delayed in seeking counsel, but also because the students and review counsel are not yet heavily invested in it.

Of the rare areas where tight deadlines are truly non-negotiable, one was identified by several of my colleagues as a potential candidate for an E-Team: students in the criminal law division could assist with bail hearings when clients are re-arrested, which one colleague noted occurs in her clinic around two to four times a term. The students could help their client to find, interview and prepare potential sureties. Since the students would not have standing to argue these cases themselves, they would present their work to Duty Counsel, who “would be thrilled,” and they would then have the added bonus of getting to watch the oral arguments. This would likely involve a pair of students rather than a team, and would expose them to a relatively narrow range of legal work; but it would potentially be a very rewarding experience and one of great benefit to clients.

Another possibility, one that would give the students a fuller litigation experience, would be for an E-Team to respond when landlords illegally lock tenants out of their homes. These tenants must request an emergency hearing at the Landlord and Tenant Board as quickly as possible if they hope to have access to their belongings or even, potentially, to be allowed to retake possession. This involves filing paperwork, which, as the Head of the Metro Toronto Tenants' Association explained, “doesn't have to be that difficult if you know what you're doing.” On the other hand, “if they're doing it by themselves it's going to be a disaster at least nine times out of 10.” With a good precedent on the computer, “a team of students would just hit ‘print’ and go to the Board.”

Once at the Board, the tenant has to demonstrate that she was the legal occupant of the unit and that her landlord has locked her out. Because tenants are so often unfamiliar with the system and so rarely have counsel, and because these evidentiary issues can be trickier than they seem, these hearings are “hit or miss.” Student representation would make a major difference in enabling tenants to make their case, and could also ensure that tenants in appropriate cases know to request that the Board levy a fine against their landlord. The students could also make a major difference in the cases that settle through mediation. In such cases, landlords rarely encounter

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<sup>57</sup> Legal Aid Ontario, “Changes to Refugee and Immigration Services” (2012), online: Legal Aid Ontario [http://www.legalaid.on.ca/en/info/refugee\\_immigration.asp](http://www.legalaid.on.ca/en/info/refugee_immigration.asp); See also Legal Aid Ontario, “Meeting the Challenges of Delivering Refugee Legal Aid Services,” (25 October 2012), online: Legal Aid Ontario <<http://www.legalaid.on.ca/en/publications/downloads/refugee2012/Refugee2012.pdf>>.

represented tenants; simply having counsel in the room would help to reduce the power imbalance. In addition, even when a tenant leaves the Board with an agreement allowing her back into their unit, if the landlord chooses to ignore it, the tenant can only enforce it if she can afford the Sheriff's fee, which many cannot. As the Head of the Metro Toronto Tenants' Association explained, students could help to draft agreements that are enforceable by way of a back-up clause: "let us in, or else pay us a big pile of money." That way, if the landlord refuses them entry, the tenants could at least garnish their wages.

This work would be fast-paced and would require coordination, collaboration and an efficient division of labour: one student could draft the paperwork; another could work with the tenant to gather her evidence and prepare her testimony; another, a senior student, could be the lead litigator; and a fourth, a first-year, could take care of all of the administrative matters, from drafting the retainer and opening the file to faxing and photocopying the materials. The students would be exposed to every step of the litigation, from the initial pleadings and strategic planning, through to mediation and potentially to advocacy in the hearing room—in a context where the stakes are high but the legal and factual issues are not overly complex, and where their presence alone could make a world of difference.

As set out above, outside of refugee/immigration law, cases with hard deadlines are exceptional. When a new client comes in with a looming hearing, as a rule the first step in every other area of student clinic law is to try to have the matter postponed, and very often this is successful. Some of my colleagues commented that they could "almost always get an adjournment" in such cases: "I haven't had a problem yet"; "I've never had one where I couldn't get an adjournment." Others, however, noted that while adjournments were the norm, having such a request refused was "definitely a risk." Regional differences among tribunals seemed to play a role, as did differences among members: some are more likely to conclude that "two to three weeks is enough time for you to prepare." As one colleague noted, while she could "usually count on getting at least one adjournment," the chances were much lower if the client had been granted one previously. And a number of other factors were relevant as well: at the Human Rights Tribunal, for example, adjournments are rare without the other party's consent, which is sometimes withheld, especially if the request is made at the last minute; the Landlord and Tenant Board is less likely to grant adjournments to tenants who are accused of more serious misconduct, such as committing an illegal act on the property, and in arrears cases the Board often makes adjournments contingent on the tenant paying the disputed money into the tribunal, which some cannot afford to do.

When an adjournment request is denied, the clinic typically refuses the case. Adding an E-Team into the mix, as the final resort, would give the students the benefit of the experience and would also give the clinic the capacity to respond in deserving cases—especially those where the client delayed in seeking counsel because of language or literacy issues, mental health complications, or other vulnerabilities.

This model could be used to stop evictions, for example, in the same way that it was used to stop deportations. In fact, one lawyer I interviewed had recently run a pilot project where a team of students was on stand-by to respond to evictions. Her team of third-year credit students participated as a mandatory component of their clinic course and worked individually, taking cases in turn. As she explained, "they were more than willing to do it...but they had other files, other courses, so they were finding the time constraint was really difficult to meet." In addition, with back-to-back cases, it was an exhausting "24/7" job for review counsel. The fact that the students nonetheless "did a good job" allays a concern raised by another colleague: that with so

many potential grounds of eviction, this area of law might be too complex for a rapid-response student team. As the colleague who led the eviction team explained “it was easy to train them, we just gave them a checklist.”

Another counsel who supervises a landlord and tenant division agreed that she could “totally” imagine an E-Team fighting eviction cases and suggested a three-student model: a senior student could prepare the questions for examination-in-chief and cross-examination and draft the closing submissions; a second could prepare the book of the client’s supporting documents (“pictures, emails, whatever we would use”); and a third, a first-year student, would be responsible for the remaining logistics, including putting together the book of authorities. Depending on the timelines and the complexity of the case, it might be useful to add a fourth portfolio, to lighten Lead’s load: a student who works closely with the client to prepare her testimony. As my colleague noted, many eviction applications involve fighting on two fronts, for tenants facing eviction have the opportunity to bring forward any counterclaims against their landlord (a tenant facing eviction for arrears of rent, for example, may be able to reduce the amount owing if she can prove that the landlord has failed to maintain the unit). In such cases, many hands would be especially helpful.

My colleagues also suggested that an E-Team model could be useful in preparing for hearings before, among others: the various university bodies that govern academic appeals and offenses; the Human Rights Tribunal; the Social Benefits Tribunal; the Workplace Safety and Insurance Board; and Small Claims Court (both for general matters and in particular for wrongful dismissal cases). With division-specific modification, a rapid-response team could work effectively in any of these contexts. One colleague noted that a three-person team might work better for Small Claims Court, for example, because “we always say that preparing for a Small Claims Court trial is a three-legged stool process”: one student could be responsible for the legal research and writing; one for marshalling the evidence; and one for “everything process related,” from preparing the forms to the service of documents. Another suggested that for workers’ rights cases involving financial calculations—of hours worked, wages and vacation pay owed, etc.—an “accountant” portfolio would be very helpful. One international colleague who worked with teams of students routinely assigned one student in each team to play the role of opposing counsel in order to expose weaknesses in the team’s arguments.

The E-Team students were suspiciously short on constructive criticism: “I have only good things to say”, “I have not a single negative thing to say, it was just the best.” We are all remembering the Team through rose-coloured glasses, and if other clinics feel that this model has potential, they will find many ways not only to adapt it but to improve it. A number of my colleagues were candid, however, about their reluctance to take on urgent work. They explained that they would be very interested in a model that played on the E-Team’s strengths, but without the pressures of the last minute scramble. Could we give the students some of the benefits of an Emergency Team, they asked, without the emergency?

## 1. NON-URGENT CASES

Adapting the E-Team model to non-urgent cases is challenging. Without the urgency, the students not only lose the opportunity to learn how to work efficiently and resourcefully under tight time constraints, but as they themselves noted repeatedly, the urgency of the E-Team work also helped them to focus; it helped to keep them energized and engaged; it made it easy for them to prioritize the Team; and it drew them to it in the first place. With high-stakes urgent

work, there was no need to encourage the students to become invested—rather the reverse: as one student noted thoughtfully, her work on the E-Team was “perhaps...the beginning of a tendency to become overinvested and overly emotionally attached” to her clients. In addition, researchers studying effective teamwork emphasize the effect of time constraints on group cohesion: urgent work creates a “pressing need for cooperation.”<sup>58</sup> Attracting students to lower-stakes non-urgent cases, therefore, means finding other ways to capture their imaginations, to create “drama and suspense,” to keep them energized, and to help them to bond.

One way to do this is by tapping more overtly into the role that clinic work can play in identity formation. Clinic work can help students to figure out what they want to do with their careers. It can also help them to figure out who they want to be. While the E-Team did not have to work very hard at branding itself as a team—in terms of group identity, the word “Emergency” stood in for “Who are we?” and “What are we all about?”—it reflected back to the students positive aspects of their own selves. The portfolio’s role descriptions spoke not merely of what each person would do, but of who they were: a “strong leader,” a “natural storyteller,” an “investigative journalist,” “an efficient multitasker.” And the E-Team’s overarching personal identity statement was unspoken: its members were the kind of people who would work until four in the morning to stop an injustice. They were heroes. I believe that when the students explain that their E-Team work was not only urgent and important, but also “meaningful” and “fulfilling,” this is, in part, because it helped them to become someone they wanted to be.

In lower-stakes less-urgent cases, this subtext would need to become text. If positive group and individual identities are emphasized more strongly, I believe that an E-Team-type model could work well even on ‘cold cases,’ those cases that are the polar opposite of emergencies.

One of the most interesting ideas for a non-urgent E-Team came from a colleague who heads a workers’ rights division. He explained that very often his students win awards against employers, only to find that “enforcement is a nightmare.” Employers close up shop and go underground, to pop up somewhere else under a new name. With new deadlines piling on, the clinic does not have the resources to dedicate more than a few internet searches to finding them. Far too often, the clients are unable to collect the money that they fought so hard to win. The clinic simply ends up closing these files. My colleague pointed out what a huge benefit it would be if a team of students were able to do the “detective work” required in such cases. Hunting down the employer often requires “field work: visiting the last place they lived, asking neighbours,” using the Ministry of Transportation’s database and doing “property and corporate searches,” and so on. If the students were able to locate the employer, there are varieties of “non-legal pressure” that they could apply, such as visiting the new workplace with media in tow: “it works really well once [the employers] realize they can’t get away.” Otherwise, if the students were able to effect service on the employer, they could go to court and set up debtor examination hearings. If not, they could hand over their information to the Ministry of Labour and lobby the Ministry to pursue collection and possibly prosecution.

If I were going to run such a team, I would not call it the Enforcement Team, despite the convenient “E”—I would call it the Hellhounds. The title of my recruitment email would be “Join the Pack!” This email would include a few words from one of the clinic’s own clients, along the lines of: “With your help, I won my case. But then my boss hid. Now he’s laughing somewhere, knowing he got away with it, and doing to other people what he did to me. It’s just

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<sup>58</sup> See generally Robert Drake, Geraldine Goldsmith & Rebecca Strachan, “A Novel Approach to Teaching Teamwork” (2006) 11:1 Teaching in Higher Education 33 at 34.

not right.” The email would briefly highlight the grittiness of the work involved and would conclude: “Want to track him down? Become a Hellhound. Join the Pack!” A flaming hellhound would glare down from above the door of the student office. The Handbook would have a hellhound logo on the cover, with the motto: “We’ve Caught Your Scent.” Each student would get a limited-edition Hellhounds pin. Vigorously branding this as a bonded pack, one whose members are fierce and tenacious, would not only help to draw in students who find these group and individual identities appealing. It would also help them to feel like a team and to stick with the work when it gets tedious, when competing priorities come up and “We can’t let him get away with it” starts to lose some of its power. They could look up above the door, at their handbook and pin, and help each other to remember: “We are Hellhounds. We don’t give up.”

## **V. CONCLUSION**

The E-Team got results. Along the way, it gave law students a unique learning experience and supported its clients when no one else could. Even if the Team had lost more of its cases, its members would still have acquired critical skills. And its clients would have boarded the plane knowing that someone had fought for them to the end.