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Poverty Law, Access to Justice, and Ethical Lawyering: Celebrating 40 Years of Clinical Education at Osgoode Hall Law School

SHELLEY GAVIGAN & SEAN REHAAG*

THIS SPECIAL ISSUE of the Journal of Law and Social Policy collects papers presented at the Symposium in 2011 celebrating forty years of clinical legal education at Osgoode Hall Law School. Milestones of this kind lead us to reflect upon clinical education—the paths taken, how far it has come, and where it may be heading

I. CLINICAL LEGAL EDUCATION AND THE RELEVANCE OF ROOTS

In the Fall of 1971, legal education at Osgoode changed as dramatically as the heady social context in which it was situated. In 1971, Pierre Trudeau was Prime Minister of Canada, his civil rights persona having been smudged by his invocation of the War Measures Act in response to the FLQ crisis the previous October. The US war in Vietnam was ongoing. China was admitted that year to the United Nations. Canadian authors Alice Munroe and Mordechai Richler published, respectively, *Lives of Girls and Women* and *St Urbain's Horseman*. Ian Adams and his colleagues had just published *The Poverty Wall*, an indictment of poverty in Canada. In 1964, Bob Dylan had penned, “The Times They are a Changin,” and by 1971, some Canadian legal educators were ready to agree. They were encountering a new breed of law students.

Some law students were still coming to law school for the same reasons that most students had been coming to law for generations; but increasing numbers, touched by the rebellious optimistic spirit of the 1960s, came to law to become different kinds of lawyers, to make social change.¹ In response, Osgoode Hall Law School was not the only Canadian law school to make space for a community-based access to justice program in their curriculum,² but

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¹ See e.g. Paul Copeland, “Speaking Notes for the Law Society Medal Awards” (29 May 2013): <http://lawsocietygazette.ca/wp-content/uploads/2013/05/Speaking-Notes-Paul-Copeland-for-Law-Society-Medal-Awards.pdf>.

² Parkdale Community Legal Services and the Community and Legal Aid Services Programme were established in 1971. Storefront legal clinics affiliated with other law schools, including Dalhousie Law School and the College of Law at the University of Saskatchewan, opened at the same time. See Frederick H. Zemans, “The Dream is Still Alive” (1997) 35:3&4 Osgoode Hall LJ 499. The many 40th anniversaries in recent years regarding clinical legal education programs in Canada (Downtown Legal Services (University of Toronto) 40; Law Students Legal Advice

its leadership and innovation in legal education made an enormous contribution, one said to have “radically changed the face of legal education in Ontario, in Canada, and outside Canada.”³

II. CLINICAL LEGAL EDUCATION THE RELEVANCE OF HISTORY

As is well known, clinical legal education, and its early affiliation with “storefront” or neighbourhood legal services clinics, was initially controversial, both within the legal academy and within the legal profession. For instance, Osgoode’s plan to create a “neighbourhood or community law office” that would provide legal assistance was a matter of concern to the Legal Aid Committee the Law Society of Upper Canada in the early fall of 1971. Osgoode’s Dean LeDain, Associate Dean Harry Arthurs, and newly appointed Parkdale Community Legal Services (PCLS) Director, Fred Zemans had to develop a strategy that would allow the Clinic to keep its doors open and its students there.⁴ Dean LeDain is said to have “put his words into practice when he took a personal stand to support Parkdale when the Law Society of the day was expressing strong opposition.”⁵ Despite initial resistance, by 1978, community legal clinics in Ontario, inspired by the PCLS model, would be formally embraced by the legal aid plan administered by the Law Society, on the recommendation of Mr. Justice Samuel Grange.⁶

In the academy many had expressed concerns about clinical programs detracting from academic and intellectual components of law school in favour of providing technical skills training.⁷ This view has, of course, long been contested. For instance, in 1987, Professor James Hathaway, then Osgoode’s Director of Clinical Education, argued forcefully against the idea that clinical programs were “training” and that “clinical education in law schools can and should be a means of providing students with an enhanced understanding of mainstream conceptual learning goals.”⁸

More recently, however, the professional training versus academic study dichotomy has largely been broken down, replaced by a broad consensus that academically robust learning about law in context occurs in well-designed clinical programs.⁹ Both the legal academy and the legal profession have, with increasing vigour, embraced experiential learning, often citing clinics

Program (University of British Columbia) 40; University of Manitoba Law Centre 40; Legal Information Clinic at McGill) and elsewhere (Georgetown 40) attest to this.

³ Larry Taman, “Response to the Chief Justice” (1997) 35 Osgoode Hall LJ 436 at 437.

⁴ See Fred Zemans’ account of this early drama: *supra* note 2 at 505-515. See also, The Honourable Gerald Le Dain, “Remarks Delivered Following the Chief Justice” (1997) 35:3&4 Osgoode Hall LJ 431 at 439.

⁵ The Honourable R. Roy McMurtry, “Celebrating a Quarter Century of Community Legal Clinics in Ontario” (1997) 35:3&4 Osgoode Hall LJ 425 at 425.

⁶ Ontario Commission on Clinical Funding, *Report of the Commission on Clinical Funding* (Toronto: The Commission, 1978) (Commissioner: Hon SGM Grange). See also, S.R. Ellis, “The Ellis Archives, 1972-1981: An Early View From the Parkdale Trenches” (1997) 35:3&4 Osgoode Hall LJ 535 at 544-552.

⁷ See *e.g.* Shelley Gavigan, “Twenty-five Years of Dynamic Tension: The Parkdale Community Legal Services Experience” (1997) 35:3&4 Osgoode Hall LJ 443 at 446-457. See also Zemans, *supra* note 2.

⁸ James C. Hathaway, “Clinical Legal Education” (1987) 25:2 Osgoode Hall LJ 239. Hathaway railed against the suggestion that “skills training” had any place in clinical education. His vision has long informed the approach to “skills training” at Parkdale Community Legal Services, which is a one week pre-term program. See Gavigan, *supra* note 7 at 466-67.

⁹ See *e.g.* W.M. Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Carnegie Foundation for the Advancement of Teaching, 2007).

as flagship experiential learning programs. Nonetheless, today, if the early concerns now seem quite dated, they are also being replaced with new ones.

III. JUST ANOTHER FORM OF PEDAGOGICAL METHODOLOGY? WHITHER THE CLINICAL EDUCATION MOVEMENT?

We have come a long way in forty years. However, our progress is not without its risks, contradictions, and possible pitfalls. Might our success and achievements contribute to our undoing? Legal education, the legal profession, and the relationship between the two, appear to be on the cusp of another difficult engagement. For instance, there is a risk that the professional training versus academic study dichotomy will re-emerge if the legal academy feels that experiential learning is being foisted upon them by the legal profession in the name of increasing the ability of newly called lawyers to hit the ground running, or indeed to be “practice ready” upon graduation from law school.¹⁰ In either case, the increased emphasis on skills training—rather than experiential education—will pose a challenge to the theory and practice of clinical programs. The recent imposition of arbitrary and pedagogically unsophisticated competency requirements and curriculum reform on law schools by the law societies does not bode well in this regard.¹¹

There is also a risk that the mainstreaming of experiential learning will lead the legal academy to forget that, for most of its history, experiential learning in law schools was deeply connected to transformative social justice projects. Indeed, for some clinical scholars and teachers, this historic connection to access to justice and social justice is the source of consternation and lament about marginalization by the institutional tyrannies of now dominant social justice clinical programs.¹²

¹⁰ The Law Society of Upper Canada (LSUC) recently approved Lakehead University’s Integrated Practice Curriculum, in which students will graduate from a three year law program—including a 4 month experiential learning placement term—having completed all the requirements for admission to the legal profession without needing to undertake articling or a Law Practice Program. Law Society of Upper Canada, “Law Society announces new, innovative paths to lawyer licensing” (21 November 2013), online: <http://www.lsuc.on.ca/Pathways>. After approving this program, the LSUC indicated that they are also prepared to consider proposals from other universities. This places enormous pressure on faculties of law across Canada to offer similar programs, at the expense of competing curricular aspirations in these faculties. For an interesting discussion of the various forces at work in these developments, see Roderick A. Macdonald & Thomas B. McMorrow, “Decolonizing Law School” (forthcoming).

¹¹Federations of Law Societies of Canada, “National Requirement”, online:

http://www.flsc.ca/_documents/National-Requirement-ENG.pdf. For a critique, see H.W. Arthurs, “‘Valour Rather Than Prudence’: Hard Times and Hard Choices for Canada’s Legal 18 Academy” (2013) 76:1 Sask Law Rev 73.

¹² See e.g. Praveen Kosuri, “Losing My Religion: The Place of Social Justice in Clinical Legal Education” (2012) 32:2 Boston College J Law & Soc 331. Kosuri, an Associate Professor and Director of the Entrepreneurial Legal Clinic at the University of Pennsylvania Law School, draws on Stephen R. Reed, “Clinical Legal Education at a Generational Crossroads: A Self-Focused Self-Study of Self” (2010) 17:1 Clin L Rev 243. A certain cynicism informs Reed’s critique. His title understates his focus and critique of “Great Clinicians”, elder statespersons of clinical education, “who are unshakeably committed to public service from the moment of their birth” (at 243). Reed describes his early rejection as a law student of the “Birkenstock bleeding heart” (at 244) and his later transformation as a clinical educator from seeing law students rather than poverty stricken clients as those most in need:

Osgoode's approach to clinical education has been one of incremental pluralism. For instance, the first two Clinical Programs that formed part of the curriculum,¹³ the Intensive Program in Criminal Law and the Parkdale Program, represented two different approaches: the Parkdale Program placed students for an entire semester in a downtown, storefront legal clinic delivering legal services and engaging in community work under the supervision of clinic staff, whereas the Criminal Law Intensive immersed the students in criminal law practices, but normally did not involve the students representing clients. Despite the diversity of approaches, however, a commitment to learning about law in context combined with a commitment to forwarding social justice, have long been hallmarks of Osgoode's clinical programs. With the recent explosion of experiential learning programs in more lucrative areas of practice—at Osgoode and elsewhere—there is a concern that this connection is being strained.¹⁴

And then there are resources. Well-designed experiential learning is resource intensive—it requires more resources to deliver than large enrolment lecture based courses evaluated through a final examination.¹⁵ As the legal academy faces increased financial pressures—and as students reach a breaking point in terms of increased tuition—there are questions about whether these programs are sustainable. One worry here is that, confronted with these resource challenges, expensive clinical learning programs will be under pressure to devolve into models that are not robust or reflective. This may reinvigorate old expressions of concerns about

Once I actually found myself practicing in the clinical environment, however, my priorities changed. In a relatively short period of time, I began to see the law students enrolled in the clinical course as the “people in need” I should be helping (at 249).

¹³ Osgoode's Community & Legal Aid Services Program (CLASP), which was established around the same time, began as a student-run organization, managed by a five person Board elected annually by students who had participated in CLASP, and initially was not formally part of the curriculum at Osgoode. Following *the Report of the Long Range Academic Policy Study Group* (PW Hogg, Chair) (Toronto: Osgoode Hall Law School, 1974), a “small number of students” who qualified as “senior supervisory personnel” (now called Division Leaders), on the recommendation of the CLASP Board, counsel, and the Clinical Training Committee, could receive 3 credits once during their academic careers at Osgoode: Clinical Training Committee (CTC) (SR Ellis, Chair), *Clinical Education Report* [submitted to Professor PW Hogg, Chair of Faculty Council] (Toronto: Osgoode Hall Law School, 1980) at 101. At the request of Dean Stanley Beck in 1978, the CTC had conducted “a review and analysis of the clinical educational experience” at Osgoode (CTC, 1980:1). The Committee noted that in 1979, following a joint decision of the Faculty and CLASP, a counsel for CLASP was appointed. According to the CTC, CLASP had “sought such an appointment because the students felt the need for a person who would be able and prepared to not merely supervise cases, but also develop the educational aspects of CLASP” (CTC, 1980: 100). A CLASP and Osgoode alumna, Paula Knopf, was appointed to the position. For the CTC, the fact that hundreds of students also volunteered at CLASP spoke to “intrinsic values to be found in this Program” (CTC, 1980: 104). The CTC concluded that “CLASP makes important, if informal, contributions to the [Law School's institutional goals] of leadership, legal education and research and public service] and should continue to be regarded as a valuable part of the school's activities (CTC, 1980: 111). By 1999, three full time lawyers and support staff were employed at CLASP. Over the next few years, following further reports into “best practices for legal services, educational and skills development, a series of further changes took place at CLASP,” including an expanded position of Clinic Director, and an incremental expansion of academic credits for CLASP's Division Leaders: See, CLASP, *Proposal for Expanded Clinical Program: Submission to Academic Policy Committee* (January 2003) (on file with the authors). Currently, CLASP's Division Leaders receive 15 credits for their clinical and academic work over the course of two academic terms.

¹⁴ In addition to the Intensive and Clinical Programs that are expressly committed to social justice (eg. aboriginal law, human rights, immigration and refugee law, disability rights, and poverty law at CLASP and PCLS), there are also programs in the areas of small business practice, business law, and intellectual property.

¹⁵ Notwithstanding the differences in resources needed to deliver large enrollment courses versus well-designed clinical education programs, there is some debate over the relation between clinical programs and the overall costs of legal education. For a recent discussion in the US context see, Robert Kuehn, “Pricing Clinical Legal Education” (29 January 2014), online: <http://ssrn.com/abstract=2318042>.

experiential learning being mere hands on legal work, devoid of theoretical or critical inquiry and deep reflection. From the perspective of clinics and community based organizations there is also the worry that, faced with resource challenges, law schools—who receive tuition and other funding and who are, relative to many of these organizations, well-resourced—are increasingly offloading responsibility for student education onto under-resourced organizations.

The resource question goes beyond the academy. Community legal clinics across Canada are also subject to enormous financial pressures—and many legal aid programs have been decidedly unsupportive of the clinics. Other legal aid administrators appear to regard law schools and our students as potential pools of cheap and cheerful labour. But, of course, properly supervising students—and offering them occasions not just to learn skills but also to reflect on their experience and to learn about law in context—is more resource intensive than clinics may think.

IV. LOOKING FORWARD

Still, despite the risks, thinking back to the past 40 years of clinical education, we are optimistic. The contributions to this special issue give us further cause for optimism.

The special issue includes pieces that point to exciting new interdisciplinary approaches in clinics, that examine what reflective pedagogies should look like, that ask us to think about the emotional and mental health experiences of students in clinics, and that consider how clinics might do more to adopt law reform strategies that place low income people at their centre. All demonstrate the academic richness of legal clinics as sites for learning but also as sites for research.

We are particularly excited that the special issue includes student publications. Here again we are reminded of the words of Gerald LeDain, Osgoode's Dean in 1971, and later justice of the Supreme Court of Canada: "You cannot appreciate the achievement of Osgoode with respect to the reform of legal education without being aware of the great contribution made by the student body."¹⁶ Indeed, working with engaged students who have clearly learned so much through their experiences with clinics has been one of the highlights for us of this project.

And, of course, we are thrilled that the articles in the Voices and Perspectives section of this Special Issue are drawn from clinic lawyers and social workers who are engaged in front line supervision of clinical law students.

We think that the Special Issue embodies some of what has made legal clinics associated with law schools such great places to teach, to learn, to study, and to work over the past 40 years—and we are excited to see, and participate in, what the future will bring.

V. CONTRIBUTIONS TO THE SPECIAL ISSUE

This Special Issue begins with "Not So Dangerous Liaisons: A Clinical Perspective on Interdisciplinarity," in which Judith McCormack uses the student-clinic encounter as a window into the significance of interdisciplinary studies from a clinical legal education perspective. McCormack argues that the momentum gained by interdisciplinary studies in legal education may be threatened by the perception that interdisciplinary studies are of marginal value to professional practice. McCormack uses the example of the disoriented clinical student to portray

¹⁶ LeDain, *supra* note 4 at 439.

the gulf between traditional doctrine-centred curricula and the social reality of law. Applying this clinic lens, she suggests that the absence of interdisciplinary knowledge can in fact be debilitating for both the profession and its practitioners.

Next, Hilary Evans Cameron's "The E-Team Project: A Teamwork Approach to Clinical Legal Education" discusses the Emergency Team (E-Team) pilot project at Downtown Legal Services. This project involved law students working as a team to prevent deportations at the last minute. The author reviews the outcomes of the project and demonstrates how both clients and students benefited from the experience. These positive outcomes are attributed to the team work and enthusiasm exhibited by the law students. Moreover, the pilot project offered a unique opportunity from a pedagogical perspective, exposing the team members to teamwork, last-minute urgency, and high-stakes litigation. Cameron argues that student legal clinics need to teach these competencies. She also addresses concerns about how the E-Team model would transfer to other clinical settings.

Then, in "Framing Supervisory Relationships in Clinical Law: The Role of Critical Pedagogy," Gemma Smyth and Marion Overholt examine the student-lawyer supervisory relationships as a central site for solidifying critical pedagogy in community legal clinics. They explore this subject using Legal Assistance of Windsor, a multi-disciplinary community legal clinic located in Windsor, as a case study. Smyth and Overholt argue that the student-lawyer supervisory relationship allows critical pedagogy to become real for students, as it leads them to confront the highly political nature of law, legal institutions, and practice. By exercising a critical pedagogical approach to questioning these institutions and practices, supervisors can play an important role in the formation of students' professional identity. The article concludes with recommendations on strengthening supervisory relationships in a pedagogically sound manner that maintains a commitment to critical and socially progressive advocacy in the clinical setting.

This is followed by "Conceptualizing Reflective Practice for Legal Professionals," in which Michele Leering articulates a working conceptualization of what might comprise a "reflective practitioner," a concept that is considered an essential core competency by most professional disciplines. Drawing on interviews with several law professors, the author presents an aspirational conceptualization that includes three types of reflection—reflection on practice or technique (skills), critical reflection (knowledge), and self-reflection (values). She emphasizes the need to integrate all three types of reflection and the need to ensure professional rigour. She also highlights the importance of taking action on the momentum created by that reflection. Leering argues that introducing the concept of reflective practice as a core competency for legal professionals has the potential to enhance legal education pedagogy and to build professional expertise.

The next article is "When Law Reform Is Not Enough: A Case Study on Social Change and the Role That Lawyers and Legal Clinics Ought to Play," in which Jeff Carolin shares his experiences as a student legal worker at Parkdale Community Legal Services (PCLS) to illustrate what he believes to be the central problem afflicting law reform campaigns—namely, the construction of the particular law itself as social injustice. While at PCLS, Carolin participated in an immigration law reform campaign, Reunite. Carolin reflects on his involvement with this campaign, explaining that he became critical of the narrowness of Reunite's scope and demands. Rather than building a law reform project around legal problems identified from individual case files, Carolin advocates responding to the expressed needs of those already engaged in social change projects and who want access to legal knowledge in order to further their campaigns.

Those who disseminate legal information should focus on creative methods of public legal education, such as workshops that draw on Augusto Boal's Theatre of the Oppressed.

The final article is Christine Doucet's "Law Student, Heal Thyself: The Role and Responsibility of Clinical Education Programs in Promoting Self-Care," which attempts to address the well-known phenomenon whereby law students and lawyers experience high rates of emotional distress, addictions, and anxiety. Specifically, Doucet examines issues of stress, stress management, and self-care in the legal profession, particularly within the context of clinical legal education. She draws on the experiences of students at PCLS with stress—including her own experience—to offer recommendations about self-care and stress management training in the clinic system. She urges student legal clinics and clinical education programs to take a proactive approach to the self-care of students so as to adequately prepare students for the emotional side of lawyering.

Following the articles, there are a series of shorter Voices and Perspectives pieces. The first is "The Role of Technology in the Provision of Poverty Law Services," in which Lenny Abramowicz examines to what extent community legal clinics can harness technological developments to enhance the work they do. He begins by setting out the dual principles that community clinics were founded upon, namely, community-rooted legal services and systemic impact work. He then discusses the increasing resort to technology in providing legal aid services as a costs-savings trend established by businesses and governments worldwide. By considering the examples of 1-800 phone lines, kiosks, and interactive websites, he suggests that technology can easily clash with and undermine the purpose of community clinics. He concludes by providing alternative examples of how technology has positively impacted clinics in Ontario and the provision of their legal services. He argues that technology can in fact support the work of community clinics, but only when it is adopted in a manner consistent with the model and mandate of clinics.

This is followed by Geraldine Sadoway's "Pushing the Boundaries of Clinical Law: Exploring How Student and Community Legal Clinics Engage with International Human Rights Practice," which explores how community legal clinics could use international human rights law and international human rights monitoring bodies in the practice of poverty law. Sadoway argues that, in light of new punitive legislation in the area of Canadian immigration and refugee law, international venues for litigation will be key for supporting ongoing law reform efforts. Sadoway's research leads her to three student legal clinics in the United States where projects relating to immigration and refugee rights have been undertaken, making use of international human rights monitoring bodies. Sadoway argues that, like legal clinics in the United States, Canada must push the boundaries of clinical law and engage more actively in international human rights practice.

In "Multi-disciplinary Practice in a Community Law Environment: Clinical Legal Education Combined with Holistic Service Provision," Richard Foster explores the benefits of multi-disciplinary practice using the example of the Multi-Disciplinary Clinic (MDC) recently established at the Monash-Oakleigh Legal Service located in Melbourne, Australia. The MDC both requires and nurtures student collaboration involving three academic disciplines—law, finance, and social work—to deal with client issues. Through case studies, Foster demonstrates how challenges confronted by a single client may be best addressed through intersecting approaches drawn from the three disciplines, rather than from one discipline alone. The purpose of the article is not only to showcase the MDC, but also to illustrate how such a model offers exciting opportunities to meet interdisciplinary pedagogical objectives.

Then, in “Transformative Social Work in the Criminal Justice Field,” Susan Noakes combines her observations and experiences as a social worker with an independent evaluation report reviewing the Holistic Lawyering Project. This project—a clinical legal education program located in Victoria, British Columbia—becomes the backdrop against which Noakes examines the role of the social worker in the transformations of both the client and the law student. The author discusses specific case examples to demonstrate how two professionals (i.e. social workers and law students) can work together in a clinical legal education setting to address the problems presented by a client charged with a summary conviction offence under the Criminal Code of Canada. Noakes argues that while the law student represents the client in court, the social worker’s role is to work with the client and the law student to “re-present” the client to the court, thereby engaging in transformative social work.

Finally, the Special Issue ends with “Teaching Cultural Competency in Legal Clinics,” in which Cynthia Pay identifies various models of cultural competency training and reflects on ways to appropriately and effectively address this subject in a clinical legal education setting. She argues that there is a need for cultural competency training as a result of changing demographics—the “colour of poverty”—that result in immigrants experiencing disproportionately high levels of poverty, and the numerous gaps in legal services that otherwise result. Pay addresses barriers to cultural competency training and details three main models of training that can overcome these barriers: a) training on culture and demographics of specific ethno-cultural groups; b) introspection and self-awareness; and c) anti-racism/issue-based training. She then proposes her own model drawing on an equality-based cultural competency approach and outlines how a workshop based on this model might be structured.