Learning, Teaching & Practising Systemic Advocacy in Legal Clinics: A Conversation

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Clinical programs have incorporated systemic advocacy in various ways for decades; indeed, for many clinics systemic advocacy is a philosophical and practical imperative. For those legal clinics with students working, taking credit, or volunteering, incorporating meaningful systemic advocacy programming brings with it a host of challenges. This article, framed as a conversation between two women involved with clinical legal education in Windsor, Ontario and Saskatoon, Saskatchewan, was born out of the practical frustrations and joys of this work. The article illuminates the theoretical, pedagogical, and administrative challenges of meaningfully incorporating students into the day-to-day realities of systemic advocacy. Although the authors are careful not to make prescriptions or speak for other clinics, the article proposes potential models to incorporate community-based systemic advocacy in student clinical legal education programs.

THIS ARTICLE WAS BORN OUT OF THE AUTHORS’ MUTUAL INTEREST in teaching and practising systemic advocacy in a legal clinic context. During the Association for Canadian Clinical Legal Education conference in 2015, the authors played out these challenges in the form of a debate, which was a useful way to clarify the arguments on both sides of this complex issue.  

* At the time of writing, both authors were involved in legal clinics. Since this article was conceived, Amanda has moved to the Mennonite Central Committee to engage in and support work in reconciliation, restorative justice and community development. Gemma has been involved with clinical legal education in various ways since 2003, including as director of a community-based mediation clinic and academic clinic director of two community legal clinics. She is active in a range of community advocacy groups and campaigns and is President of the Association for Canadian Clinical Legal Education.
In Canada, there is relatively little writing discussing the possibilities and challenges of various models of clinical legal education.\(^1\) While more has been written in an American context, we hope these ideas would be most relevant to a Canadian clinical audience. To this end, we reframed our 2015 debate as a conversation. In this conversation, we consider the benefits and challenges for students, role of community, and practical challenges in incorporating systemic advocacy within student legal clinics. In doing so, we draw on our experience and research-as-experienced.\(^2\) In this way, the methodology and approach might be best characterized as “experimental representation.” We hope to engage our experiences as windows into this complex work rather than as a definitive representation of truth. In this work, as Laurel Richardson writes, “[t]here is no such thing as ‘getting it right,’ only ‘getting it’ differently contoured and nuanced.”\(^3\) We hope this piece will support the student, clinician, and/or academic in making choices about how—and whether—to incorporate explicit systemic advocacy elements in their student work. We use a clear and informal writing voice throughout this article to make it as useful and digestible as possible, and to echo the nature of the discussions we have engaged with over the years. We are indebted to other scholars who have forged a path in this style of writing.\(^4\)

We also wish to be clear: we agree with Rebecca Sharpless (drawing on the work of Martin Luther King) that there is no one “right way” to do this work.\(^5\) We hope the conversational framework and the frank depiction of struggles avoids this trap.\(^6\) This article is not as a prescription for an illness but an ingredient in a recipe.

In part one of this article, we—Amanda and Gemma—situate ourselves for the reader. This is not an ethnography or autoethnography, and hence this section is limited to brief introductions of ourselves and the topic. In part two, we introduce both the idea of systemic advocacy in a clinical context as well as some of the challenges and successes we have encountered, including the meaning and role of community. In part three, we discuss some of the thinkers and practitioners who have influenced our approaches to systemic advocacy and pedagogy. We have tried to limit lengthy footnotes here and throughout the article, but we do include references to authors whose ideas have influenced us or pieces that are useful for further reading. In part four, we choose four significant challenges in teaching and practising systemic advocacy in a student clinic context. Ultimately, in part five we conclude that, like many clinicians before us, no meaningful clinical experience or, indeed, practice, exists absent systemic and contextual analysis. If we are not practising systemic advocacy in a clinical context, then where? The authors also suggest pedagogical models that might support students in better


\(^2\) For the purposes of this article, we focus on the benefits and challenges of working specifically with law students. Some arguments are relevant for interdisciplinary clinics, as well, but that topic specifically requires a separate piece of work.


\(^6\) Richardson, supra note 3 at 480.
understanding and setting aside space to consider and practise systemic advocacy in a clinical context.

I. SITUATING OURSELVES & DEFINING OUR TERMS

Amanda: Before we start this debate, we should situate ourselves for the reader. In doing so, we should make clear we are focusing primarily on our work experiences which are most immediately relevant for the reader. I am a settler of British ancestry who was raised in Regina, Saskatchewan, on Treaty 4 territory, currently living and working in Saskatoon, Saskatchewan, on Treaty 6 territory, both the traditional land of the Métis. In situating ourselves in relation to territory, we also acknowledge the limits and dangers of simple acknowledgement without deeper engagement and active critique of colonialism. I have worked as a legal aid lawyer, systemic justice advocate, and educator. I have been with the Community Legal Assistance Services for Saskatoon Inner City (CLASSIC) since 2008. I teach the Systemic Justice seminar at the College of Law, University of Saskatchewan.

Gemma: I am a settler of Irish and German ancestry currently living and working on unceded Anishinaabe territory, the territory of the Three Fires Confederacy (the Odawa, the Ojibwa, and the Potawatomi peoples), now known as Windsor, Ontario. I am the mother of two daughters and have worked as a mediator, educator, and community activist. I work at the Faculty of Law at the University of Windsor as a professor focusing on clinical and experiential learning. I have worked with both Community Legal Aid and Legal Assistance of Windsor, two poverty law clinics in Windsor, Ontario. I was also the director of a community mediation clinic between 2003 and 2009.

Amanda: It’s also safe to say that we both identify as politically progressive feminists with a particular focus on inequality in various forms.

Gemma: Absolutely! I should also acknowledge that I have tenure. Tenured clinical positions in Canada are still rare. This status allows me room to take greater risks and to write about this work in a way that is inconceivable for most full-time clinicians, especially those without stable funding. I work in a faculty that is for the most part supportive of clinics, in the province with the greatest funding for clinics of any in Canada. One of our long-term clinics was interdisciplinary from the beginning and I have learned lots from social workers. So, while I raise critical issues in this discussion, I must also acknowledge the incredible economic, social, and political privilege that comes with my particular position. There are real class and power implications in being able to write this conversation down at all.

Amanda: Indeed, and important to note! I am not an academic but a staff lawyer at a non-profit and a sessional lecturer at the University. CLASSIC receives considerable support from the University, including funding. However, CLASSIC is dependent on a wide range of other funders to keep its programs running. Insecure funding creates a sense of tenuous viability, laying a pall over our work. CLASSIC must be strategic to keep funding coming in, and that limits what systemic advocacy we can do, particularly its boldness.
Gemma: It might also be useful to contextualize the clinics we have worked with. Most recently, I have worked with clinics funded by Legal Aid Ontario and the university with both social workers and lawyers. One of the clinics, Legal Assistance of Windsor (LAW), has been written about by one of my mentors, the late Professor Rose Voyvodic. She sets out some of the foundational thinking around the clinic program she directed at Windsor. LAW was founded as an interdisciplinary and community-based clinic. Because the clinic began with both social workers and lawyers, systemic advocacy (or, for social workers, community development) was embedded in the work from the beginning. Of course, there are a wide variety of approaches to systemic advocacy in clinics across Canada, from more traditional community legal education work, to government advocacy, to quite creative and community-engaged work. Students work, volunteer, or take credits during their time at the clinic. Some students take a seminar course during their time in the clinic, although not all. Previously, I worked at a mediation clinic that was primarily grant-funded and engaged in a wide range of facilitation, mediation, and education work related to dispute resolution. A lot of that work was systemic in nature, although deconstructing what “systemic” means in a dispute resolution context is different, I think. Clinic context matters a lot in this work, so I’ll refer mostly to the legal aid clinical context. The people and communities we work with share the experience of having low income. Of course, because of the nature of economic inequality clients are more likely to be racialized, Indigenous, sole support mothers, and/or people with disabilities.

Amanda: I have worked primarily at CLASSIC, the only community legal clinic in Saskatchewan. CLASSIC is relatively young, having been founded in 2007. Similar to your clinic, law students are placed with us through academic courses and as volunteers. For most of its existence, CLASSIC was focused on legal representation and summary legal advice for low-income clients. Our litigation practice has always had a systemic element to it, for example, by seeking improved procedural fairness or policy changes for our marginalized clients. In 2014, CLASSIC decided to take an intentional approach to pursuing systemic change in ways its existing programs could not by initiating the Systemic Initiatives Program, with a specific objective of seeking policy and legal change for recipients of social assistance, inmates, and people with disabilities. In 2015, I began teaching the Systemic Justice seminar, supported generously by Professor Jon Hanson who initiated the first class in Systemic Justice at Harvard Law School. So, it is fair to say we are still in the early stages of doing and teaching about systemic advocacy.

Gemma: So from a curriculum and practice design perspective, a major difference between these approaches is having a single streamed course and clinic practice experience versus a separate systemic program and course. We’ll examine the benefits and drawbacks of these two approaches throughout this piece.

Amanda: Gemma, we’re going to have a conversation about whether systemic advocacy is appropriately within the work of clinics, and we’ll also discuss the challenges and benefits of this work in a student legal clinic context.

Gemma: Exactly. Although we have structured this as a conversation, I’ll take on the primary role in raising critical questions. I think we can safely assume most readers already know this, but we should probably start with defining what we consider a student legal clinic for those who might be unfamiliar. We know many legal clinics function without students, so the “student” part is very important for our purposes.

Amanda: I think everyone would agree that a student legal clinic has a few constituent elements. Law students (and sometimes students in other disciplines) work under the supervision of lawyers and sometimes others to provide a service related to law in a community. How this is done varies widely. Most student legal clinics provide legal advice to individual clients, or perhaps groups of clients. They also work primarily with clients who otherwise couldn’t afford a lawyer. Focus in student legal clinics is both on working with clients and communities but also learning in a coordinated and reflective way with and from supervisors, clients, other students, judges, community organizations, and others.

Gemma: And we also know that early leaders in clinical law figured out pretty quickly that practising individual advocacy with clients experiencing low income could only get you so far. Legal clinics which identify as “community” legal clinics understood that pro bono and judicare models often result in legal service that doesn’t acknowledge the overlapping and oppressive ways law operates in the lives of people with low income. So, systemic advocacy has long been identified as a core constituent element of any clinic working in the area of “poverty law” (areas such as income supports, immigration and refugee, criminal, and so on). The term “upstream” advocacy seems to be pretty popular these days, referring to the need to address problems that will ultimately affect communities “downstream.”

Amanda: Exactly. So, it is pretty clear based on this description that systemic advocacy must be a part of a fulsome approach to clinic law work!

Gemma: That’s true, but it doesn’t mean there aren’t difficult issues surrounding how we move forward from this. Let’s turn to defining systemic advocacy. How do you define systemic advocacy? What are its essential elements? Have you had challenges in reaching a shared understanding of what systemic advocacy means in a legal context?

Amanda: I think there are loosely shared ideas regarding the nature and forms of systemic advocacy practised in legal clinics. I think about systemic advocacy as including community development as well as law and policy reform. Systemic advocacy seeks social change to improve conditions for individuals and communities at a systems level. There is generally a consensus that systemic advocates work collaboratively with marginalized communities, in a non-hierarchical fashion, and are responsive to community-identified issues and strategies.

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Gemma: It sounds like systemic advocacy includes analysis and change in both formal and informal law, and also social, political, and economic systems.

Amanda: Yes. And sometimes these systems are easy to identify and can be clearly located in written policy or law. Sometimes it’s difficult even to locate where a policy or practice originates, or whether it’s a matter of changing attitudes. Oftentimes it’s not the law or policy that needs changing, but the way it’s implemented in the system, to improve realities for marginalized people.

Gemma: And this is often linked to one’s ideas about social change and law. Systemic approaches force us to question where law is meaningfully located for communities, and how it is practised. We have to engage with big questions about “what is law?”, “how is it generated?”, “how is it understood and practised in communities?”, and “how is it experienced by communities often left out of policy consultation and decision making?” I think most students learn pretty quickly that how formal law is written is very different from how it is actually practised and experienced. It doesn’t mean that the “law on the books” is not acting on communities all the time, but it is certainly more complicated and varies between areas of law.

Amanda: Yes. Our theory of law and social change is central to discussions when planning systemic action. I think systemic advocacy forces students to look very closely at law and legal institutions, and how they operate in people’s lives. Law students quickly observe the oppressive nature—whether intentional or not—of purportedly neutral laws and impartial systems.

Gemma: We’ll get to a few issues around this learning process a bit later. Let’s turn now to more specifics around the type of work that we might define as systemic and how it plays out in a student clinic context.

II. SUCCESSFUL (AND LESS-T HAN-SUCCESSFUL) SYSTEMIC WORK – SITUATING THE PROBLEM

Gemma: Both of us have engaged students in various systemic advocacy activities as part of our clinic work and in our personal capacities. Some typical examples of clinic systemic work include letter writing campaigns, formal political engagement with elected decision makers, public protests, and community planning meetings—to name a few. Some clinics do creative work with plays and films as well. What are some examples of work in your world?

Amanda: At CLASSIC, we’ve developed coalitions of, and partnerships with, community groups and worked collaboratively with them around shared concerns. We’ve prepared submissions to government on law and policy change, and provided tangible supports (legal and otherwise) to community agencies and grassroots groups.

Gemma: In the student clinical world, the goal is of course to get students involved with this work. In your clinic, what type of work do students get involved with, and what is their role?

Amanda: The Systemic Initiatives Program (SIP) is informed by patterns observed in the individual client work CLASSIC does, by consulting with staff and students. I coordinate the SIP
and I continue to oversee a portion of individual client work as well. The students involved in the SIP do not create or lead campaigns but provide essential support for them. Students have been invaluable in providing legal, sociological, and economic research support for our systemic initiatives; they are honing these skills and immersed in the learning material at school. They have joined our conversations with community agencies and leaders; their presence tends to ameliorate the power imbalance that can regrettably exist between lawyer and community.10 Students also assist with important administrative work that we as a non-profit have limited resources for, such as note-taking, photocopying, and writing grant applications. The Systemic Justice seminar has students engage in academic exploration and reflection about systemic origins of legal problems and the role of law in advancing systemic changes. The seminar creates a space that informs the systemic work, and the systemic work enhances the analysis in the class. And what about your students?

Gemma: Well, I always hope it happens in an organized fashion but that is often not the nature of the work. I don’t work at the clinic as a lawyer like you do, which can be a limiting factor but also provides some analytical distance. We have tried to have students sign up for specific campaigns and commit to them throughout the year, but realistically it is very much based in the student’s interest and energy. We do not have a separate systemic advocacy course, so the work sometimes gets lost with the other “individual” client work. Of course, one of the real benefits of student experience in a clinic is figuring out how to manage a caseload and structure short, medium, and long-term advocacy goals. While this has potential for deep learning, it can be (and likely should be) unpredictable. Some students are very engaged with the clinic’s systemic work. This is often because they have a background in this area, but not always. Other times, students work with a client whose experience with the formal legal system lights (or reignites) a fire of injustice and indignation—and the systemic advocacy light turns on. Having the experience of balancing individual work with systemic work could be a benefit of having a comprehensive clinic experience, rather than a separate systemic program. I’ve tried to incorporate the systemic work as part of the more general clinic course with mixed success. Some of what I would consider “successful” work from an outcomes (not process) perspective often occurs when students are focused on a relatively small type of reform, especially policy reform that matches up with the current government’s policy priorities. We talk quite a lot about what a “win” might look like as a lawyer. Sometimes, the big courtroom victories shown on TV or in movies give an impression that large-scale, dramatic successes are the gold standard for lawyers. This is obviously false, as change often comes through incremental, long-term, complex strategic work. I hope at least that piece becomes understandable for students throughout their clinic work. Speaking frankly, my most intense frustrations occur when students view systemic advocacy as presenting a PowerPoint to a group of folks in a way that is not meaningful or usable.11 I want to

10 Lawyers have frequently been criticized for taking control over community-based justice strategizing; see e.g. William P Quigley, “Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations” (1994-1995) 21:2 Ohio Nu L Rev 455.

be clear that I don’t want to blame students for these problems, but I do want to put them out there as something I have experienced. What about your students’ less-than-successful campaigns? What characteristics did they share? What went wrong?

**Amanda:** I can relate to your frustrations as we have had less-than-successful efforts also! For example, we spent considerable resources supporting a grassroots tenants’ rights group; while some of the community legal education we did was ostensibly empowering, in the end, the group did not want to pursue systemic change goals but instead wished to focus on supporting individual tenants. I can also relate to your experience of students unwittingly replicating oppressive patterns with marginalized community members, especially through their use of language. For most students, it is their first time working with people who experience poverty and marginalization, and despite our training efforts, they do not always approach the work in anti-oppressive, culturally appropriate ways.

**Gemma:** Exactly, and we can bring middle-class values around “appropriateness” to a table with people who have been silenced and marginalized, without even realizing it’s happening. We can and do replicate hierarchies in this work. Some of my failures are also due to not structuring appropriate preparation in advance of students’ systemic work. As I noted earlier, there is no separate course on systemic advocacy and not enough explicit work around anti-oppressive practices. It’s hard when clinicians feel they are starting with students who have little relevant practical skills every term. Whether this is true or not, there are certainly challenges in knowledge transfer—turning classroom knowledge into practice. I also occasionally feel there is an “add and stir” element to my systemic advocacy work. I struggle with the hyper-skills focus and a radical systems analysis when teaching and working with students. I haven’t figured out the right mix (or order) of the introductory skills – which students need to feel a certain level of comfort with individual client work – and the systemic skills and analysis that I aspire to. This problem was echoed in some interviews I did with clinicians in legal clinics across Ontario. For example, what can clinicians rely on and expect students to know and apply, and what analytical and strategic frameworks do students use when faced with a legal problem?

**Amanda:** I get this problem. My own theory is that these are not mutually exclusive. We can start macro and move to micro. When students start with an understanding of socioeconomic inequities and how they create and perpetuate legal problems and injustices, it can be central to becoming better advocates for individuals. I think it creates a deeper understanding of the context around the individual to better understand the systemic causes of what is happening. This leads to reduced likelihood that students “blame” clients for their circumstances: they can identify the interplay of structural forces and individual agency. I believe it also creates greater empathy for clients and the impossible structures they are faced with. Students can create arguments in their individual cases that speak to systemic causes and can consider remedies that have systemic impact. The adjudicator can be invited into this conversation with arguments in hand, and feel more equipped to issue a creative decision with, ideally, a systemic impact.


Gemma: That’s an important point about advocacy within formal spaces. How do you manage what I assume is a shift in how your students have to think in this work compared to their earlier law school work? I’m not sure law schools are preparing students for thinking about—never mind practising—how law operates in people’s lives, although I also don’t want to dismiss significant, recent changes. For example, Professor Janet Mosher wonders whether law schools “produce lawyers with the skill, knowledge, and ability to work with members of subordinated communities, and with the movements of which they are a part, in ways that facilitate social transformation.” ¹³ And I think what we are talking about in systemic work is social transformation. In fact, as Professor Mosher argues, law schools have historically tended to rely on existing state systems as the venues in which to argue for client entitlements, thereby undermining meaningful structural change.¹⁴ She also argues that the lawyer-as-representative/advocate model has traditionally “actively suppress[ed] the voice and agency of the person they purport to ‘represent.’”¹⁵ And, as Professor Mosher notes, even if one is to take an alternative vision, “the challenges of doing so are enormous.”¹⁶ Margaret Thorton also argues persuasively that privatization and domination of corporatism has remained remarkably resilient and slippery, despite the rise of critical scholarship and practice.¹⁷

Amanda: There’s no question that law school has historically ignored systemic approaches other than, perhaps, law reform. But we have also seen significant shifts over the last decade or more. Feminist, Indigenous, and critical legal scholars have shifted our understanding about the nature and role of law. I am confident that, with some effort, legal education can prepare students for this role. The Systemic Justice course I mentioned earlier tries to deepen students’ understanding of hegemonic sociopolitical structures and their causal connection to legal problems and instances of injustice. They develop a “systemic lens” by which to view legal problems, and thereby consider broader and more multi-faceted strategies by which they can be addressed. They actively critique traditional legal avenues and remedies, acknowledging not only their limitations in effecting systemic change but also, as Professor Mosher suggests, their propensity to undermine systemic change and maintain the structural status quo.

Gemma: Do you also spend time on individual and institutional critical reflection in a way that supports the kind of constant re-evaluation that (I think) is required in meaningful systemic, community-based work? What other topics do you discuss in the course and how does that prepare students for systemic advocacy work? Is there a portion of the course dedicated to planning and executing systemic justice work with the community?

Amanda: The course grounds students in how social and economic power are aligned, how social stratification is developed and maintained, how ideology maintains power relations, and how hegemonic structures can be destabilized. I think the lack of attention to law-as-power in mainstream legal education can also be an opportunity to voice students’ discomfort within this

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¹⁴ Ibid at 626.
¹⁵ Ibid at 616.
¹⁶ Ibid.
class. It’s an opportunity to infuse a discussion of law with sociopolitical dynamics. We are overt about the interrelationship between the two, and law’s complicit role in subordination but also subversion within justice systems. In the experiential component of the course, students work hands-on on the systemic initiatives. Risks of lawyer dominance are minimized with an ideological commitment to understanding the community’s expertise and the importance that they design and lead the work. The students also start with where the community is at. They identify barriers and community dynamics. Students must work collaboratively with community rather than deciding what’s best for them.

Gemma: What are some of the most meaningful learning experiences your students have had?

Amanda: If I had to name one it has to be the profound difference between law and justice. The students observe that justice can be pursued in a myriad of ways and by advocates of all stripes; the law is seen as just one tool and lawyers just one kind of advocate. They also hear community dialogue about law and justice. When marginalized community members talk about justice, they talk about what is happening outside of courthouses and legal clinics: poverty, racism, government agencies, home environments, and more. Community members are not relying on legal institutions or professionals to help them find more just results. If we really listen, community members will redirect our focus to the root causes of legal problems. As one Indigenous woman from Saskatoon stated, “What is happening at home is definitely a justice issue.”

Gemma: I would really echo these experiences during my time with Mediation Services. So many conflicts were defined by the state as one thing, but defined by the participants as something entirely different. So, it sounds like you have found a real balance and a positive educational process for students.

A. ROLE OF COMMUNITY

Gemma: You mentioned earlier that the community acts as the leader in your work and that students can balance the power yielded by lawyers. I’m interested in knowing more about your communities’ experiences with students. Of course, there are limits to our abilities to understand how community members experience law, lawyers, and law students, and the clinic specifically. How do you understand community members’ experiences with the clinic and clinic students? In your experience, how do you ensure that communities lead this work? What strategies do you use to ensure community members impacted by law and practice remain central to the work?

Amanda: Students have been particularly successful—more so than staff at times!—in the grassroots community development work we have been a part of. Community members seem to have “taken a shine” to these young, eager students, appreciated their deferential approach, and been open to their contributions. I think they are perceived as less threatening and less likely to “take over” than legal staff.

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18 Amanda Dodge, Access to Justice Metrics Informed by the Voices of Marginalized Community Members: Themes, Definitions, and Recommendations Arising from Community Consultations (Canadian Bar Association’s Access to Justice Committee, March 2013) at 22, online: Canadian Bar Association <cba.org/CBA/cle/PDF/JUST13_Paper_Dodge.pdf> at 22 [perma.cc/2JJT-3JDE].
Gemma: I am also aware that students have varying proficiencies in legal and interpersonal skill. In your case, it seems as if you have experienced significant success in preparing students for this work. Do you think this due to training you do with students before, the nature of the community groups you’re working with, or other reasons?

Amanda: We are explicit about our community-as-leader ideological commitment. There are a few strategies we employ to ensure the community leads our efforts. Before we do anything, we dialogue with affected community members, their leaders, and the agencies that support them to identify the systemic issues of concern. We then work with community agencies and leaders to develop the initiatives, and try wherever possible to involve a “first voice” or “essential voice”—the presence and voices of affected people. This sometimes involves having community members at the table, as well as community consultations—the point is that their voices are central to the strategy and the advocacy. We are not always successful in this, as we do find ourselves working with other privileged allies who also seek to support marginalized community groups.

Gemma: So, you have a defined process, and rely sometimes on “trusted intermediaries” who, I assume, have positive critical consciousness around the work.

Amanda: Exactly. The key for me is maintaining community voice and ensuring we are responding to community-identified issues. This is of course a fluid process so we work to maintain community relationships throughout the project.

III. LITERATURE/ IMPACTFUL READINGS AND IDEAS

Gemma: It sounds like we both draw on articles and other written materials or theoretical approaches to support the work. What do you find are your most impactful pieces and why?

Amanda: I really like the critical literature about the limits of the law as a tool to create socioeconomic change, and to increase the political power or socioeconomic position of low-income and otherwise marginalized people. I’m thinking of Stoddard’s thoughts on the law’s “culture-shifting” capacity—that advocacy for rule-change must also shift ideology and cultural norms to attain legitimacy and longevity.19 I’m also thinking of Michael Diamond and others who have virtually abandoned formal legal tools for sociopolitical alternatives, which may use legal discourse but does not rely on the law at all.20

Gemma: I also like the “law from below” writing about communities either totally ignoring law that doesn’t work for them, or crafting their own law and systems, sometimes in opposition to existing systems.21 I also deeply appreciate the critical lawyering literature. We’ve had the good

fortune to be able to learn from Canadian clinicians who have done a lot of groundwork, including Professors Janet Mosher, Shin Imai, Shelley Gavigan, Rose Voyvodic, and many others. We’re standing on shoulders.

Amanda: And we now have a critical mass of clinical and experiential learning scholar-practitioners that form a community.

Gemma: Exactly. I’ve learned a lot from reading, but I have to say I’ve probably learned just as much watching people and making my own mistakes. It really bothers me to watch lawyers take over community spaces, and I’ve made that mistake myself. I remember doing organizing with a group of tenants and I moved way too quickly into working on a constitution for a tenant’s association before really listening to their problems which, it turned out, had a lot to do with sexism and racism. A constitution wasn’t going to solve that problem. And they had (and have) a group of kick-ass women, many of them racialized and LGBTQ2S-identified who I could have done a better job of simply supporting in speaking their truth, rather than turning to legal process. I’ve also learned a lot from social workers who tend to operate in a quite different way from lawyers. They taught me about strengths-based approaches to working in community and anti-oppressive practices. And a lot of this was (and still is) written about in the community lawyering literature, including lots of interdisciplinary insights.26

Amanda: Similarly, I have learned a lot by watching others, and more often non-lawyer advocates! For example, the Saskatchewan Association for Community Living has made great strides in their systemic advocacy, accomplishing considerable policy and legal change, by collaborating with other community agencies, hearing and telling community members’ stories, and developing relationships with and educating government officials.

Gemma: There’s also a lot of great work online from grassroots groups that is often open source and so instructive in understanding various forms and approaches to advocacy.27


22 Mosher, supra note 13.
25 See e.g. Voyvodic & Medcalf, supra note 7.
27 See e.g. Tactical Technology Collective, “10 Tactics for Turning Information into Action” (5 September 2016), online: <https://archive.informationactivism.org/en/viewonlinex> [perma.cc/4GKW-6RX5]; Andrew Boyd et al, Beautiful Trouble: A Toolbox for Revolution, online: <http://beautifultrouble.org/> [perma.cc/BEST-RJRA]; University of Kansas Center for Community Health and Development, Community Tool Box, online:
IV. OUR CRITICAL CHALLENGES

A. THE STUDENT CLINIC MODEL

Gemma: In this part of our discussion, I’ll raise four key challenges that I believe are common to many clinic programs and have caused some difficulty in systemic work particularly. I am culling these challenges from hundreds of meetings, conversations, classes, and chance meetings with current and former students. Again, there are limits to my ability to know students’ realities entirely. Due to the significant power differential in law school, students often filter their comments. As well, I hear what they say through my own lenses, particularly my sensitivity and protectiveness about clinic work. So, the first challenge has to do with geography and timing inherent in the student clinic model. Due to our location and size, students at Windsor are usually not from the communities in which our clinics work. I think this raises significant possibility that law students are like tourists in these campaigns. I think there’s more risk in some types of advocacy than others of course, but there is a sense from the community sometimes that the students aren’t in it for the long haul, or that they won’t ever really understand the problem. Campaigns often outlast the students’ time at the clinic. Therefore, the social workers, lawyers, community legal workers and other staff end up taking the brunt of the slack. It’s difficult when the ebb and flow of students’ time at the clinic means we go from having a lot of hands on deck to very few. And sometimes what is of interest to one group of students isn’t to another—or the skill set of one group is different from the next. And sometimes students get excited about the work and are disappointed when their time at the clinic ends without reaching the goals they expected. I have also been part of the challenge by being focused on learning outcomes and what are “appropriate” student learning experiences. I’d appreciate your ideas here.

Amanda: Absolutely. We experience some of these same problems. I think some of them can be managed while others are more difficult. On the question of community role and turnover, I believe autonomy and ownership must be at the forefront. They must be ideological commitments. The problems students work on must be community identified and community led. This is not about being a “cause lawyer.”28 I know what you are thinking—and it’s a real problem. Community members are often living through one crisis to another, and they often don’t have the capacity for significant leadership and involvement with a campaign. I think we have both found ways around this. We can meet people where they are at (physically and psychologically). We can maintain individual client service and always be alert to identify patterns and barriers and engage community members.29 I think partnerships with Community Based Organizations are also really important. They are in the trenches with community members. They often have the expertise, community partnerships, coordination, and capacity to work with communities long-term. Regarding students’ transiency, I think this is a problem inherent in any student clinic or any student initiative. I think it can be mitigated by consistency


in the staff leaders. I also have learned from our Advising Elder Maria Campbell that trust is transferrable. If the staff leaders are trusted by community members and they “vouch” for a student, the community will be more inclined to trust the student. We can manage students’ expectations—the problems are old, complex, intractable; the work is therefore long-term—and help them see their contribution as an important stepping stone on the path to systemic change. We can also help students see systemic strains to their individual advocacy work—addressing them in individual advocacy will help them feel like they are doing something of value. I’d also like to push back on something you’ve noted a few times about students’ need for support. I’m not sure students need significant support. I think many students come to the table with a lot of thoughtfulness, study, and critique around systemic aspects of injustice. Again, this really depends on the student.

Gemma: Agreed. There are some really amazing students, and you’ve made me think more about how the system could be amended to support them better.

**B. PROFESSIONAL IDENTITY & ETHICS**

Gemma: We’ve already talked about the role of law and lawyers in systemic advocacy, but I have a couple of more specific questions that also touch on ethics and professional identities. Have you had challenges with the tendency for lawyers to professionalize community organizing and—consciously or unconsciously—stop including or perhaps hearing voices of community members or others directly impacted? Gerald López’s analysis of lawyers’ inability to scale the ethical, professional norms of law is important here.30

Amanda: My view is that we don’t have to throw the baby out with the bathwater. I still believe law has a role to play in social change, and so do many of our community members. As I mentioned before, we can consider law’s “culture-shifting capacity,”31 its ability to stimulate public discourse, and use the political process to promote rule-shifting with greater public legitimacy. The law has absolutely had harmful effects on community. There is also a history of equality perpetuated by and through law. But I don’t think it’s black-and-white. I also think we can learn from communities experiencing subordination who have taken up law as a tool for change. We can consider the usefulness of law and the lawyer in socioeconomic change while also critiquing it. One of my Indigenous students recently postulated that a system which has historically oppressed particular social groups has not only a moral obligation to alleviate suffering and reverse the oppression, but a redemptive opportunity to be embraced.32

Gemma: Let’s talk a bit about professional identity formation throughout the clinic experience. We’ve talked already about pieces that complicate the traditional solicitor/client, expert/subject, individualized notion of the role of the lawyer and client.33 We might add here Sameer Asher’s...

32 Lawren Trotchie, *(contribution during the Systemic Justice seminar discussion at the University of Saskatchewan, Saskatoon, November 2016)* [unpublished].
work—who reminds us that the traditionally-conceived individual client in fact comes to a lawyer with community, with allies, with power. And, in fact, isolating clients from their sources of power and solidarity is an act of violence. This is a countercultural idea. I sometimes feel the weight of community’s powerful culture that has no interest in presenting lawyers as humble learners!

Amanda: I agree completely! I think this points to why systemic advocacy is essential to a well-rounded legal education. It takes as a given that the individual is situated in her context. Students are necessarily focused on the socioeconomic, political, and historical forces that shape her world and the law’s effect on her life and her community. I see the effect of this in at least two ways. One, students have a new, kaleidoscopic lens through which to view the law and its application in formal systems and society more broadly. Two, they develop a perspective where lawyers have multi-dimensional roles: the lawyer can criticize law/legal systems and seek reform, help support and equip community in subversive advocacy, and work collaboratively with other disciplines towards effective change efforts.

Gemma: As you know, there are also complex ethical issues at play in understanding the lawyer’s role in systemic advocacy. What is the lawyer’s role in civil disobedience? How does this manifest for students who are taking greater risks? How does a lawyer represent a group of people who may or may not have similar interests, strategies, ability to take on risk, and so on? How do you engage with these and other ethical dilemmas?

Amanda: We often wrestle with these issues in our academic seminar and planning meetings. Students come to law school wanting to pursue justice. The clinical experience tends to shake their faith in law as a tool for justice and stokes their critique in the equity of law and so-called justice systems. It behooves us to equip them with what they can do, in- and outside of systems, to promote justice: how they can be “rebellious” to use López’s term. Looking at personal morality vis-à-vis legal ethics helps us teach students that they are not lawyer automatons, but they are developing personally as well as professionally. In doing systemic advocacy together, we are inviting them to work in solidarity with the community towards social justice, illustrated in teachings such as the quote often attributed to Lilla Watson, Indigenous activist and scholar, “If you have come here to help me, you are wasting your time. But if you have come because your liberation is bound up with mine, then let us work together,” as well as that which was said to me by a community member during a consultation:

My Elders have taught me that no one is better than anyone else. Just because you have a law degree doesn’t mean you’re any better. I have lived life too. I want to be

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heard. Some lawyers need to listen and learn. It’s about giving and taking it in. You need me as much as I need you. It’s not just you helping me, but also me helping you become a better person. You always have to take in and give out, help others learn.  

Gemma: Beautiful.

C. PEDAGOGICAL & OTHER CHALLENGES

Gemma: We’ve talked quite a lot about the idea of having a separate course on Systemic Advocacy which seems to be a promising practice for this work. As I mentioned earlier, I have attempted to add systemic advocacy as a portion of a more typical clinic seminar course, which has not been an unmitigated success. We’ve also talked about some of the problems transitioning into quite different ways of relating to law. We haven’t touched on some structural issues surrounding regulation of legal education. We know that students increasingly have to take a set of mandatory courses, which generally means less availability for multi-year, intensive clinical experiences. We touched on this “chicken or egg” problem earlier. Assuming a significant clinic experience is a one or maximum two-time experience for students, it’s a huge challenge for students to learn practice skills. We can’t predict whether there will be more pressure on law schools to adopt certain courses or competencies. I also wonder whether the “practice readiness” debate either does, or has the capacity, to infuse how law schools, firms, and others approach clinical learning. My view is that “practice readiness” as a goal in clinical legal education is an impossible if not unethical goal. Resting this duty on clinics is fraught with challenges for clinics generally, but for systemic advocacy efforts in particular.

Amanda: There is no question students are facing increased pressures to be “practice ready,” perhaps based on the attempts to download skills education onto law schools. However, I remain convinced that a fulsome practice of poverty law cannot exist without both individual and systemic approaches. I’m certainly not the first person to argue this; we can think of Stephen Wexler’s arguments decades ago. Students can’t work at a clinic without observing how law disproportionately affects the lives of low-income and otherwise marginalized people. It doesn’t take long to realize that their clients’ legal problems are generated by the inequitable socioeconomic structures around them. When our students expend considerable time and resources supporting a client through the resolution of a legal issue, and hopefully gain a benefit or defend against harm, it often is short-term crisis management. The client returns to her inequitable socioeconomic context, so inevitably, weeks or months later, the client returns to the clinic with a new (or perhaps the same) legal problem! Students quickly understand that the real enemy is not the opposing party—the Crown, the landlord, the employer—but the repeating patterns and barriers within socioeconomic dynamics and institutions that are bristling against their clients’ lives. Subordinated communities have understood this for centuries. They are

37 Anonymous Community Member, (community conversation held at the Regina Anti-Poverty Ministry, January 7, 2014) [unpublished].
experts in the systems and power dynamics whose “sharp legal things” scrape their lives on a daily basis. This has also long been recognized within poverty law service providers in general and university-affiliated legal clinics in particular. Excellent work has been and continues to be done within the public interest legal community to seek systemic change. In Canada, this has (arguably) mainly been in the form of strategic (test case) litigation and community legal education, and more so in the United States in the “law and organizing” movement. This creates a learning environment that is already infused with a systemic analysis and therefore very conducive to systemic advocacy. However, the main difficulty we’ve experienced has to do with the busyness of clinical work. In our first year of the Systemic Initiatives Program at CLASSIC, we required the clinical students with client caseloads to take on systemic projects. Unfortunately, they were very unproductive. Why? It was because their clients’ pressing needs inevitably took priority over long-term systemic advocacy initiatives. The following year, we introduced the Systemic Justice seminar and therefore developed two streams of students: clinical students working with clients and systemic justice students working on the systemic initiatives. Our challenge now is integrating the two streams and promoting cross dialogue to inform the others’ work. We are not doing great at it, but it’s a work in progress!

Gemma: So, despite my belief that law schools do not primarily exist as job preparation, I think we have to discuss a question that students and others occasionally raise. By focusing on social justice work in law school, especially on the perhaps less-recognized work of systemic advocacy, are we setting up students for disappointment? In a 2008 Report to the Law Society of Upper Canada on Career Choices for lawyers, the statistics were pretty disappointing.

Amanda: I am not sure we have great data on this. We do know a significant portion come to law school with a social justice bent. Admittedly, and perhaps anecdotally, there are few positions with systemic advocacy components, or perhaps those types of positions are more difficult to find outside the dominant recruitment process. However, I think a systemic approach to law and advocacy are important in every area of law. The practice of analyzing both the immediate and systems-level effects of problems is always useful. I would argue that adopting a systemic lens does not merely suit one to social justice lawyering, but enhances other forms of lawyering. Students coming out of the Systemic Justice seminar have adopted a systemic lens they can apply to whatever law and legal systems they encounter, whether they work for a non-profit, for the government, in private practice, etc.

D. FUNDING & EVALUATION CHALLENGES

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41 Ibid.
44 The Strategic Counsel, Report to the Law Society of Upper Canada: Career Choices Study (January 2008) online: online: <lsuc.on.ca/WorkArea/linkit.aspx?LinkIdentifier=id&ItemId=2147487123&libID=2147487373> at 70 [perma.cc/5HM3-UJZT]; (“Human rights/social justice law, which ties for third most preferred practice area at 23% combined, [actual practice measure] is sharply lower at 11%. Environmental, immigration, poverty, securities and tax law also show lower proportions of respondents actually practising in those areas than indicated a desire to practise in them, although the gaps are narrower than for human rights/social justice law.”).
Gemma: You’ve set out many compelling arguments about the utility of systemic advocacy. Now, let’s turn to a brief discussion about how this work gets done, including the thorny question of how it gets funded. We’re coming from quite different funding contexts with unique challenges. Ontario is significantly better funded than any other province or territory. This funding supports independent legal clinics as well as student legal clinics in every Ontario law school. Many, if not all, clinics engage in some form of systemic advocacy, and the Legal Aid Services Act envisages work outside individual client service. However, over the past several years, new performance measurement systems are threatening to use quantitative metrics that define performance by metrics such as “cost per case” which, as we know, means brief service, lower-needs, and less complicated cases are more attractive. Systemic work is not as easily captured—and this problem is not unique to law. Convincing funders to pay for systemic advocacy initiatives is difficult, especially when the outcome might be vague and the actual impact of one particular partner can be difficult to measure. Systemic advocacy can also be personnel intensive. When there are a lot of unmet legal needs, many of them immediate and generated by the state, it’s hard to convince funders that a long-term solution should be funded over a short-term, high-volume practice. And potentially even more troubling than the funding question is the issue of the chilling effect of legislatures on systemic advocacy (or advocacy of any kind). It was only very recently that the the Ontario courts overturned legislation restricting advocacy for groups with charitable status.45

Amanda: It’s hard when these areas of practice are pitted against one another. As we’ve discussed already, I firmly believe that in practice they are linked closely and can’t meaningfully be extricated. If we accept we’re working in a system that requires us to make choices, I wonder if it’s possible to identify the short- and mid-term goals of our initiatives that demonstrate progress and moderate successes. Can we take on systemic initiatives that have more immediate and tangible impact while still considered systemic in nature, such as Project ID? The community told us again and again that lack of identification was a considerable barrier to services, housing, employment, and voting, so we developed Project ID to help community members get identification. It attracted funding and balanced our longer-term projects with some tangible, immediate impact. And I think we can be practical about the risks and rewards of systemic work. In our systemic work, we have considered the risks of each initiative, considering both the small ‘p’ and Big ‘P’ (political) ramifications. There are several systemic advocacy opportunities that do not amount to Big ‘P’ work (like relationship building, “educating” not lobbying, and making direct submissions to government). This is also where the community-led values are key. An essential aspect of supporting communities is to equip them with knowledge and tools so that the community can engage in political activism. As systemic work grows, the clinic could also consider restructuring to develop a non-charitable arm, like Pivot and Aboriginal Legal Services have done.46 I do concede, quite heartily, that it is very difficult to fund this work. Funders like service-oriented programs that produce short-term, tangible outcomes. Systemic advocacy work is more diffuse than service delivery, longer-term in duration, and its outcomes are much less predictable. Also, systemic advocacy necessarily seeks to destabilize the powers-that-be, so it is no surprise that the powers-that-be aren’t keen to fund it! I argue that we can leverage other streams of funding to subsidize systemic advocacy. I can

give three examples that have worked for us: funding for tangible impact projects that have a systemic component, like Project ID; access to justice funding for community-empowering projects like community legal education; and academic funding for community based advocacy with a research component.

V. CONCLUDING THOUGHTS: A CLINIC WITHOUT SYSTEMIC ADVOCACY?

Amanda: We haven’t spent much time critiquing the possibility of clinics without a systemic advocacy component. I think traditional models of free legal service provision present a serious problem of engendering dependency. Providing legal services without other advocacy options means that there is little difference between a legal clinic and other social service agencies—including government—which offer a benefit or service to marginalized people but creates hierarchy in relationship.47 This does not mean partnership or solidarity, and does not ask for anything in return. Our Advising Elder Maria Campbell has taught us that it’s important to imbue the principle of reciprocity in all community work. I firmly believe that by inviting people to bring us their legal messes for us to solve for them, we are “creating clients” and not promoting engagement.48 We are not really developing our work so that community members are supported to seek lasting sociopolitical and economic changes for themselves and their communities. In fact, we reproduce dominant norms about our expertise and clients’ helplessness. I worry that we constantly articulate our narrative in our advocacy that presents the client as weak, as victims. We are not engaging in truly reciprocal work—even by trying to focus on client-directed outcomes and looking for “little ways” clients can help, e.g. filing documents—we are not equal partners, equally contributing.

Gemma: These are really important points. Breaking apart hierarchical norms around the role of the client, lawyer, and community and choosing to practise in anti-oppressive ways are practice themes that echo through our conversation. I cannot forget the instances when the system makes it very, very hard to do this.

Amanda: That’s very true, and perhaps that’s why the traditional legal avenues are limiting. In a courtroom, the lawyer is the protagonist; individuals and community members sit silently as the lawyer tells their story and advocates for them. However, there are some inspiring examples of subversive community lawyering that disrupt traditional legal spaces by ensuring that the clients/community members take centre stage.49

Gemma: This has been a really useful conversation that has really demonstrated the importance of an integrated and ideologically driven approach to systemic work in clinics. It seems

47 John McKnight, “Services are Bad for People: you are either a citizen or a client” (Spring/Summer 1991) 3:2 Organizing 41 [McKnight]; Austin Sarat, “... The Law is All Over: Power, Resistance and the Legal Consciousness of the Welfare Poor” (1990) 2 Yale J L & Hum 343.
48 McKnight, ibid at 41, 44.
49 One example of this is the Community Justice Project in Miami, Florida; see Charles Elsesser, “Community Lawyering – The Role of Lawyers in the Social Justice Movement” (2013) 14:2 Loy J Pub Intl L 375; Meena Jagannath et al, Community Justice Project, online: <http://communityjusticeproject.com> [perma.cc/WBG8-FWWS].
important to have foundational principles to guide the work, especially how community must be at the heart of all clinic work. When we began, I would have said that I obviously agree with this, but you’ve given me more ideas on how to really centralize this as part of the clinic mission. Another takeaway for me is, of course, rethinking the course model to more specifically set aside credits for systemic advocacy. I continue to think—like many others before us—that if we look to the revolving door of our clinics and listen to the voices of the community, we come to understand that only with an emphasis on systemic change can we be truly effective partners in our clients’ and communities’ search for a more just world.

**Amanda:** Agreed! I think we agree that doing this well involves a balance and consideration of the micro and macro, as well as the theoretical and the hands-on doing. It is a constant consideration of the role of law in social change. Most important, we seek invitation from the community to partner with them and learn from them the effective strategies for social change. You have raised very strong points about the challenges of this work, especially the inherent risks of replicating oppressive dynamics, the challenges and opportunities of working with students, and the difficulty of funding the work, all of which must be heeded and carefully navigated to do the work sustainably and responsibly. In the end, I think we both believe in the value of this work and working to overcome these challenges: we see transformation in our communities, our students, and ourselves.