

Introduction

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Introduction

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THIS SPECIAL ISSUE OF THE JOURNAL OF LAW AND SOCIAL POLICY brings together articles, conversations, and reflections in celebration of the tenth anniversary of the Association for Canadian Clinical Legal Education (ACCLE). Although clinical legal education has existed in Canada for many decades, it was not until the formation of ACCLE in 2010 that Canadian clinical legal educators really began to build a national community and engage in a sustained, nation-wide conversation about clinical pedagogy, clinical law practice, and the challenges and joys of this work. ACCLE's mandate is:

- to provide a forum for legal educators across Canada to share best practices, pedagogies and other information related to clinical legal education;
- to encourage the promotion and improvement of clinical legal education in Canadian law schools;
- to promote clinical pedagogy and research;
- to facilitate the dissemination of information pertaining to clinical legal education to clinicians in Canada, and;
- to promote or organize conferences or other activities to facilitate the purposes of the association.¹

The importance of national clinical organizations was discussed by Margaret Martin Barry and her co-authors in an article entitled “The Role of National and Regional Clinical Organizations in the Global Clinical Movement.”² The authors note that clinical law organizations provide clinicians with the “resources needed to develop clinic programs on the national, regional, and international level.”³ The authors note the key importance of conferences that provide a forum for clinical legal educators to come together.⁴ Certainly, this rings true for ACCLE's annual conferences, which have created an infrastructure for personal and professional relationship-building, and the sharing of ideas, practices, and pedagogies. Factors including geographic distance between clinics, perpetual precariousness of clinic funding, and variable support and recognition from law schools means that Canadian clinicians may find themselves feeling isolated in their work. Therefore, ACCLE's commitment to community-building and advocacy is particularly significant. It has permitted, as one clinic director stated, an “affirmation of our reality.”⁵

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¹ Association for Canadian Clinical Legal Education, “About ACCLE,” online: <<http://accle.ca/>> [perma.cc/YBK6-9VWN].

² Margaret Martin Barry et al, “The Role of National and Regional Clinical Organizations in the Global Clinical Movement,” in Frank S Bloch, ed, *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford: Oxford University Press, 2011) at 279.

³ *Ibid* at 279.

⁴ *Ibid* at 283.

⁵ See Buhler et al, “Clinical Legal Education on the Ground: A Conversation” in this volume.

From the outset, ACCLE has been dedicated to knowledge exchange and the promotion of clinical law research and scholarship. Several ACCLE conferences have featured research and writing workshops for clinicians. ACCLE conferences have also led to the publication of special issues featuring scholarship by clinicians and academics invested in clinical legal education.⁶ This interest in promoting and celebrating clinical legal scholarship motivated the ACCLE board to partner with the Journal of Law and Social Policy to compile this collection. We called for contributions that would “describe, assess, interrogate, and reflect on clinical legal education in Canada and to contextualize clinical legal education within ongoing and critical debates about legal education and access to justice in this country.”⁷ We sought academic submissions that would be subject to peer review, but also reflections, conversations, and creative submissions. We were delighted with the response to the call for papers and are pleased to share this issue with readers. We believe that the pieces in this collection reflect important themes in clinical legal education in Canada in 2020, including the centrality of social justice, accountability to clients and communities, deep commitment to students, and critical pedagogies.

Although the submissions in this special issue address diverse aspects of clinical legal education and the work of legal clinics, they all reflect what Wendy Bach and Sameer Ashar call an “embedded clinical stance.”⁸ Bach and Ashar point out that clinicians, unlike doctrinal scholars, “are embedded in their clients’ experiences of the legal system.”⁹ Clinicians advocate from this position, and their scholarship is also rooted in this proximity and sense of accountability to clients, communities, and students.¹⁰ This means that clinical scholarship is generated not from an abstracted “ivory-tower” vantage point but rather through proximity, accountability, and relationship. This “clinical stance” means that clinical scholarship is interested in theories and practices that might improve our own advocacy and pedagogies, and most importantly, that will promote substantive justice for our clients.¹¹ Bach and Ashar explain:

Clinicians engaging in the representation of the most marginalized do not have the luxury of simply standing and observing, nor do we have the luxury of (or interest in) refining theoretical insight simply for its own sake. It’s not generally in our wheelhouse to simply describe, demonstrate interest, or, as an end goal, improve description. Our job, most days, is to act and to react. So we wield theory when it is accurate and we revise it when it is not, but in either case we wield it for our clients and for ourselves.¹²

⁶ Papers arising from ACCLE’s 2012 conference in Winnipeg were published in volume 37:1 of the Manitoba Law Journal. In addition, papers that were presented at ACCLE’s 2011 conference (which was held in conjunction with a 2011 Symposium celebrating the 40th anniversary of Osgoode Hall Law School’s clinical programs) were published in a special issue of the Journal of Law and Social Policy in 2014 (Volume 23).

⁷ ACCLE, “Call for Contributions for a Special Issue of the Journal of Law and Social Policy” (on file with author).

⁸ Wendy A Bach & Sameer Ashar, “Critical Theory and Clinical Stance” (2019) 26 Clinical L Rev 81 at 83 [Bach & Ashar].

⁹ *Ibid* at 97.

¹⁰ *Ibid* at 91.

¹¹ See also Michele Gilman, “The Future of Clinical Legal Scholarship” (2019) 26 Clinical L Review 189 (“Clinical scholarship is a powerful rejoinder to the recurring critiques of legal scholarship—it is deeply engaged with real-world problems, and it has demonstrable impacts” at 202).

¹² Bach & Ashar, *supra* note 8 at 92.

Bach and Ashar confront critics who might protest that clinicians who embrace the clinical stance “cannot write credibly and critically ... [that we] are not detached enough to produce *scholarship*.”¹³ Their rejoinder is that “in our embrace of the embedded nature of clinical stance, we are claiming and celebrating our proximity to clients and communities as a standpoint from which to observe and describe. We are, arguably, better positioned to generate critical theories and structural critique than our non-clinical colleagues, given equal time and resources.”¹⁴

This special issue features a diverse selection of articles and reflections that arise from this clinical stance. Many of the contributions engage with the injustices that clinics and our clients encounter day-to-day in law and in the Canadian justice system. Many pieces speak to the power of relationship, reflection, and accountability (to students, clients, and communities). Others delve into issues relating to the impacts and transformative potential of clinical pedagogies. In varied ways, many of the pieces critically engage with larger trends in legal education, legal practice, and the justice system. They also attend critically to day-to-day, on-the-ground clinical practices and pedagogies. Contributors include clinic students, administrative staff, supervising lawyers, directors, and academics engaged with clinical legal education. While the voice of clients and other community members are not featured directly in the collection, the centrality of clients and the justice claims of clients in clinical law is a theme that runs through this issue.

CONTRIBUTIONS TO THE SPECIAL ISSUE

The issue opens with Sarah Marsden’s article “Just Clinics: A Humble Manifesto.” Marsden engages directly with current discourses about access to justice and lawyer competencies. She urges clinics to position themselves as “sites of justice” and to resist instrumentalist metrics that focus on “neoliberal rubrics of numbers served and the checking off of standard skills for law students entering the job market.”¹⁵ Marsden argues that measuring success based on numbers of clients served, or on the “practice-readiness” of law students erodes the transformative potential of clinical legal education. Instead, Marsden proposes critical new ways of measuring the work of clinics that are centred on what she terms “actual access to justice.”¹⁶ This, for Marsden, means clinics must be focussed on justice as defined by marginalized communities. This is inherently relational work and requires explicit confrontation of “social and economic inequality and the structures that perpetuate it.”¹⁷

Sean Rehaag’s piece, “A Snapshot of the Law in the Streets: Reflections of a Former Parkdale Academic Director,” is an example of critical clinical reflection. In his unpacking of a split-second event that occurred on the street near Parkdale Community Legal Services in Toronto, Rehaag interrogates his own reaction and positionality in a piece that delves into identity, power relations, the political function of emotions, and the legibility of justice and injustice to “outsiders” of a social context. His piece is also a meditation on the importance of critical and transformative reflection in clinical legal education programs. Although competing demands in clinics mean that time for reflection is often limited, it is through the work of

¹³ *Ibid* at 94.

¹⁴ *Ibid*.

¹⁵ See Sarah Marsden, “Just Clinics: A Humble Manifesto” in this volume [Marsden].

¹⁶ *Ibid*.

¹⁷ *Ibid*.

reflection that we “take seriously our impulses to confront injustices, while also recognizing that these impulses are not themselves somehow outside of structures of power, oppression and marginalization.”¹⁸

Rehaag’s contribution is followed by an article by Sarah Buhler and Catriona Kaiser-Derrick entitled “Home, Precarious Home: A Year of Housing Law Advocacy at a Saskatoon Legal Clinic.” This piece is an example of an empirical project borne out of the clinical stance.¹⁹ The article discusses the results of a research project involving an analysis of CLASSIC’s (Community Legal Assistance Services for Saskatoon Inner City) housing law files. The goal of the project was to “identif[y] the types of housing law problems faced by clients and consider (...) the impacts of CLASSIC’s advocacy in addressing these issues.”²⁰ The research provided “empirical insights into housing law processes and the housing law problems faced by low-income tenants” and also brought “nuanced and ground-level insights into the advocacy and work of clinical law students.”²¹ The project revealed that CLASSIC tended to advocate for tenants who had already lost their tenancies for various reasons, meaning that its advocacy “focused on mitigation of, or compensation for, harm relating to lost tenancy, rather than maintaining or improving current housing conditions for tenants.”²² This reflects structural power imbalances that are built into the governing legislation. Buhler and Kaiser-Derrick conclude that while individual housing law advocacy is important, insights from the project illuminate the clear need for law and policy reform, and community organizing.

The final piece in the first section turns the focus from justice for clients to the question of justice for law students with disabilities. This article, “Confronting Accessibility in Clinical Legal Education: Human Rights Law and the Accommodation of Law Students with Disabilities in External Placements,” examines the issue of accessibility and inclusion for students with disabilities in clinical legal education. The authors, Roxanne Mykitiuk and C Tess Sheldon, employ a critical disability lens to examine inclusion in clinical legal education programs. They confront ableism and microaggressions that students with disabilities experience in clinics and beyond. Like other pieces in this collection, this article was, “motivated by practical considerations about the scope of the duty to accommodate law students with disabilities in clinical education placements.”²³ However, as the authors point out, an examination of these questions leads to deeper questions about inclusion in legal education more broadly.²⁴ This article reminds us that clinics’ work for justice also means creating inclusive and just environments for students.

The Voices and Perspectives section includes four pieces: two transcribed conversations; a collaborative clinical instructor and student reflection; and an advocacy brief with accompanying reflection.

First is “ACCLE and Bill C-75: Implications for Student Legal Clinics & Communities in Canada” by Jillian Rogin, Gemma Smyth and Johanna Dennie. In 2018, the federal government

¹⁸ See Sean Rehaag, “A Snapshot of the Law in the Streets: Reflections of a Former Parkdale Academic Director” in this volume [Rehaag].

¹⁹ See Bach & Ashar’s discussion of empirical research, *supra* note 8 at 95.

²⁰ See Sarah Buhler & Catriona Kaiser-Derrick, “Home Precarious Home: A Year of Housing Law Advocacy at a Saskatoon Legal Clinic” in this volume.

²¹ *Ibid.*

²² *Ibid.*

²³ See Roxanne Mykitiuk & C. Tess Sheldon, “Confronting Accessibility in Clinical Legal Education: Human Rights Law and the Accommodation of Law Students with Disabilities in External Placements” in this volume.

²⁴ *Ibid.*

introduced Bill C-75, a bill that made significant changes to the *Criminal Code*. The impact of one of these changes (a change to the maximum penalty for summary convictions) effectively meant that law students would no longer be permitted to represent people accused of summary offences in provincial courts. ACCLE consulted its members and responded to this change through an advocacy campaign, including the submission to the Standing Committee on Justice and Human Rights, which is reproduced in this piece. Although ultimately unsuccessful, ACCLE members were galvanized through this campaign, and the experience was a significant step for ACCLE in the development of its sense of identity as an organization and its sense of being a national voice for clinicians.²⁵ Going forward, ACCLE remains an association that can organize and respond to emerging issues that impact clinics and clinical legal education.

This piece is followed by “ACCLE Past, Present, and Future: Reflections from ACCLE’s Board Presidents,” a transcribed conversation between the three individuals who have held the role of ACCLE president: Doug Ferguson, Lisa Cirillo, and Gemma Smyth. The conversation, compiled and edited by current ACCLE president Martha Simmons, provides an opportunity for the three past presidents to reflect on ACCLE’s growth, contributions, and challenges over its ten-year history. The discussion highlights the “sea change that has taken hold in clinical legal education in Canada” over the past decade and the potential for meaningful engagement with some of the key challenges during its development.²⁶ Themes that arise in the conversation include ACCLE’s role in creating a clinical law community in Canada, giving clinicians a national voice, and confronting the problem of isolation and siloing in Canadian clinical legal education. The discussion emphasizes the centrality of social justice in Canadian clinical legal education, and references ACCLE’s relationship with evolving discussions in the legal profession and in legal education over the last ten years.

This is followed by a very different conversation—one that turns the lens inwards in the context of one community legal clinic. Entitled “Clinical Legal Education on the Ground: A Conversation,” this piece provides a forum for clinic staff at CLASSIC in Saskatoon (the Executive Director, an administrative assistant, and two supervising lawyers) to discuss and reflect on their experiences “on the ground” in a busy community legal clinic. The conversation features reflections about the shared dedication to education of law students carried by CLASSIC staff, even in the face of a lack of recognition by the law school. The conversation reveals the weight of this educational role, as well as the emotional labour that is a theme of clinical legal education. The discussion also brings attention to the pressures of funding models that are premised in what Marsden called the “neoliberal rubrics of numbers served,”²⁷ meaning that just as at Parkdale,²⁸ CLASSIC staff have very little time for critical reflection. The interview also reflects staff members’ commitment to what Marsden would call “actual access to justice.”²⁹ The conversation is an example of a discussion arising from an “embedded clinical stance.”³⁰ It attends to particularities, relationships, and a commitment to social justice in the context of CLASSIC’s community.

The final piece in the collection is a collaboration between Patricia Barkaskas and her students Melanie Alcorn, Ryan Adair, Kate Gotziaman, Jennifer Mackie, Madeleine Northcote,

²⁵ See Martha Simmons et al, “ACCLE Past, Present, and Future: Reflections from ACCLE’s Board Presidents” in this volume.

²⁶ See Marsden, *supra* note 15.

²⁷ *Ibid.*

²⁸ See Rehaag, *supra* note 18.

²⁹ See Marsden, *supra* note 15.

³⁰ Bach & Ashar, *supra* note 8 at 83.

and Victoria Wicks, at the Indigenous Community Legal Clinic (ICLC) in Vancouver. Entitled “Reflecting on Clinical Legal Education at the Indigenous Community Legal Clinic,” this piece weaves together critical reflections about students’ experiences at the ICLC, framed by a critical and theoretical analysis by Barkaskas. The piece directly confronts and challenges the colonial Canadian justice system through the lens of the work of the ICLC. This clinical program “challenges students to begin with unlearning what they may believe justice is and questioning how justice might be found—or if this is possible—for Indigenous people in the Canadian justice system.”³¹ The piece engages with the work of critical Indigenous scholars and decolonial pedagogies and methodologies and shows how these approaches are integrated into a clinical legal education program dedicated to Indigenous communities and Indigenous understandings of justice. The piece is a weaving together of many voices that collectively “add to the larger dialogue on decolonizing and Indigenizing clinical legal education and resisting the normative violence of legal education more broadly.”³² The piece closes with the story of the hummingbird, recounting the tiny bird that refuses to give up its task of placing a drop of water at a time on a forest fire. Barkaskas explains that the parable of the hummingbird is a powerful symbol for the work of the ICLC’s “attempt to change the Canadian legal system through clinical legal education that specifically engages a decolonial and Indigenous pedagogical approach.”³³

³¹ See Patricia Barkaskas et al, “Reflecting on Clinical Legal Education at the Indigenous Community Legal Clinic” in this volume.

³² *Ibid.*

³³ *Ibid.*