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Reflecting on Clinical Legal Education at the Indigenous Community Legal Clinic

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Reflecting on Clinical Legal Education at the Indigenous Community Legal Clinic

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Reflecting on Clinical Legal Education at the Indigenous Community Legal Clinic

PATRICIA BARKASKAS with MELANIE ALCORN, RYAN ADAIR, KATE GOTZIAMAN, JENNIFER MACKIE, MADELEINE NORTHCOTE & VICTORIA WICKS

INTRODUCTION

The Indigenous Community Legal Clinic (ICLC) is located on the traditional, ancestral, and unceded territories of the x^wməθk^wəy^{əm} (Musqueam), Sk^wx^wú7mesh (Squamish), and sə́lilwətaʔl (Tsleil-Waututh) in Vancouver's Downtown Eastside, which is also home to a vibrant mixed urban Indigenous community. Up to ten law students each semester, three semesters each year, enrol in the ICLC program and assist with providing pro bono legal services to self-identifying Indigenous people. The pedagogical approach of the program is grounded in questioning Canadian colonial framings of law. A foundational aspect of this work explores what is a fundamental notion to the concept of law and of teaching and learning about law, especially when working with and for Indigenous peoples—that is *justice*.

Throughout their time in the ICLC program, I hope to help students question their understandings of justice. Because Indigenous peoples continue to deal with justice as defined by the Canadian state, which still does not acknowledge or recognize Indigenous laws and sovereignty, I ask students to consider if there is truly meaningful justice in the Canadian legal system for Indigenous peoples. This work intervenes in the normative violence of legal education primarily premised on a colonial notion of justice. In this way, legal education functions as a form of what Marie Battiste has called “cognitive imperialism.” According to Battiste, “[c]ognitive imperialism relies on colonial dominance as a foundation of thought, language, values, and frames of reference as reflected in the language of instruction, curricula, discourses, texts, and methods.”¹ Rather than accept colonial understandings of justice, I challenge 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 peoples in the Canadian legal system.

Grounding the pedagogical approach of the ICLC program in Indigenous methodologies is key to assisting students in their work attempting to find some path to justice for Indigenous clients. Utilizing Indigenous methodologies is foundational to the ICLC's Indigenous pedagogy. Christine Zuni Cruz's pedagogy and ethics for law/lawyering for Indigenous peoples is central to this work.² I also engage Darlene Johnston's teachings about “situated relatedness,” which reminds us to always return to and examine our own biases.³ This concept of relational situatedness requires us to situate ourselves. For example, I am required to situate myself as an Indigenous person within the context of my community and relations because the approach to the work I do as a lawyer and

¹ Marie Battiste, *Decolonizing Education: Nourishing the Learning Spirit* (Saskatoon: Purich Publishing, 2013) at 161.

² Christine Zuni Cruz, “Toward a Pedagogy and Ethic for Law/Lawyering for Indigenous Peoples” (2006) 82 North Dakota L Rev 863.

³ Darlene Johnston, “Disrupting Normative Legal Education Through Decolonial Resistance Pedagogy” Workshop Panel on Legal Pedagogy, 3 May 2018, Peter A Allard School of Law, Vancouver, BC.

an educator is informed by my experiences as a Métis woman. I challenge students to consider how the way we talk about and educate about justice either perpetuates the acceptance of settler colonial violence as normal, or allows us entry points into disrupting these, as, for example, through deliberate interventions such as situated relationality. Or, as Kwagiulth scholar Dr. Sarah Hunt speaks to, the power of the methodology of witnessing, which creates relational encounters to ensure frameworks of responsibility that hold up the experiences of others' lives we have witnessed them on their own terms.⁴ Respectful listening is another aspect of Indigenous methodology utilized in aspects of the program like our educational talking circles, which are a regular practice in the classroom. This practice then informs how students engage with clients and one another in their clinical work.

It is important to ground discussions about injustice and its intimate connection to the violence of legal education through an intersectional lens grounded in Indigenous knowledge. As Natalie Clark states, Indigenous trauma-informed approaches call for the development of “models for addressing violence that are aligned with Indigenous values, Indigenous paradigms and epistemologies and that are based in strengths, resistance and survivance.”⁵ She suggests “that we should move beyond decolonizing Western models of trauma, and instead attend to the centering of ‘wise practices’ and specific Indigenous Nations approaches ... within a network of relational accountability.”⁶

Clark’s “Red intersectionality,” or what can be called an Indigenous intersectional approach, includes five principles: “respecting sovereignty and self-determination, local and global land-based knowledge, holistic health within a framework that recognizes the diversity of Indigenous health, agency and resistance, and approaches that are rooted within specific Indigenous nations relationships, language, land, and ceremony.”⁷

These Indigenous approaches also provide a framework for asking students to examine themselves through their self-reflective process—what are they learning from their interactions with clients that is counter to their assumptions? Can they acknowledge that they may in fact be the person experiencing challenge and that the client is meeting them where they are at? These examples of Indigenous pedagogical approaches, grounded in Indigenous ontology and epistemology, resist dominant discourses about the power and purpose of law.

Normative legal education in Canada perpetuates settler colonial perspectives as part of the ongoing violence of colonization where the law is used as a tool of dispossession and oppression. Educating law students following the Truth and Reconciliation Commission’s Calls to Action requires interrupting hegemonic legal education by engaging with pedagogical approaches that resist dominant discourses about the power and purpose of law.⁸ Integrating Indigenous methodology and pedagogy in both the academic and practical aspects of clinical legal education intervenes in the normative violence of legal education and challenges the colonial hegemony underpinning the Canadian legal system.

⁴ Sarah Hunt, “Researching within Relations of Violence: Witnessing as Methodology” in Deborah McGregor, Jean-Paul Restoule & Rochelle Johnston (eds) *Indigenous Research: Theories, Practices, and Relationships* (Toronto: Canadian Scholars, 2018); and Sarah Hunt, “Disrupting Normative Legal Education Through Decolonial Resistance Pedagogy” Workshop Panel on Legal Pedagogy, 3 May 2018, Peter A Allard School of Law, Vancouver, BC.

⁵ Natalie Clark, “Shock and Awe: Trauma as the New Colonial Frontier” (2016) 5:1 *Article 14 Humanities* at 11.

⁶ *Ibid.*

⁷ *Ibid.* at 7. See also Natalie Clark, “Red Intersectionality and the Violence-informed Witnessing Praxis with Indigenous Girls” (2016) 9:2 *Girlhood Studies* 46.

⁸ Truth and Reconciliation Commission of Canada, *Calls to Action* (Winnipeg: Truth and Reconciliation Commission of Canada, 2012) at 3 (Calls to Action #27 & 28).

For example, I turn the notion of relational situatedness back over to each student and invite them to consider who they are, not based on their education, or other achievements that may mark their identities, but by situating themselves relationally to their own and their families' histories of being "Canadian," or not, and what that relationship means to them. I ask them to think about who they are and where they come from—what is their family history? Where were their parents born? And, no matter the answers, I ask them to further contemplate what that means considering their relationship to the land they live on and the Indigenous peoples of these lands. These questions are just as relevant for Indigenous students as for non-Indigenous students. Thinking about relational situatedness—to the lands we occupy and spend our time upon, to the people with whom we have relations, and our personal history—requires an epistemological shift that inherently demands a reckoning with the question: how do I imagine justice?

This is a question I am challenged by daily in my work as Academic Director and a supervising lawyer at the ICLC. I focus on teaching law students how to listen to Indigenous clients and to practise understanding that they, the clients, are experts on their own lives—they may require assistance with a legal issue, but they are best placed to tell us what they need from us in order to assist them. I require students to engage in critical self-reflection about their ideas of justice, settler colonialism, the history of Indigenous/settler relations in Canada, the veracity of the Canadian legal system, and the current debates about reconciliation. I hope they leave the ICLC program thinking about what historical and present truths must be acknowledged and understood before a more meaningful conversation about justice for Indigenous peoples in Canada can even really begin.

SELF-REFLECTION IN PRACTICE

It is with all of the aforementioned in mind and in an attempt to intervene in the normative violence of legal education that I and six students enrolled in the ICLC program in the fall term in 2018 decided to engage in a collaborative writing project resulting in this article. I proposed to the six students enrolled in the ICLC program (listed here in alphabetical order), Melanie Alcorn, Ryan Adair, Kate Gotziaman, Jennifer Mackie, Madeleine Northcote, and Victoria Wicks, that we engage in a collaborative writing project to submit to this special edition of the *Journal of Law and Social Policy* on clinical legal education. They generously took me up on this proposal, which has resulted in this article.

This project, which we undertook through individual writing and group workshopping that included peer feedback, was focused on breaking down the competitive, individualized approach to law school assignments, and instead opening up a space for collective reflection about each student's critical, self-reflective analysis and experiential learning process. In short, I was trying to decolonize the final seminar assignment. The format of the project was reached through collective consultation and consensus.

Together, the students worked to hold space for one another's observations, to witness their various thoughts and feelings about their experiences through the term, and to meet each other where they were at in their separate learning journeys. This process was challenging, but the students all committed to sharing their experiences and reflections honestly and endeavoured not to judge one another, while also encouraging themselves and others to reach deeper into their critical, self-reflective analysis and think and feel through their time at the ICLC from their position in situated relatedness and through a decolonial lens.

I have attempted here to bring together excerpts from the students' individual final

reflections, created out of this collaborative process, as a collective piece. After workshopping collectively, each student finalized their reflection. The pieces speak to each other in conversation as emerged through the collaborative process and ongoing reflection formed out of peer feedback. I am honoured to have been able to facilitate this conversation among these students and to bring their voices together here to add to the larger dialogue on decolonizing and Indigenizing clinical legal education and resisting the normative violence of legal education more broadly. Below, the student's voices are captured in their reflections, framed by my thoughts on how the pedagogical approach of the ICLC program creates space for this learning.

INDIGENOUS PEDAGOGY AND EXPERIENTIAL LEARNING—A DIFFERENT WAY OF LEARNING

An important aspect of the ICLC's pedagogical framework is reciprocal learning. Students share reflections, as they choose, each week in the ICLC seminar's talking circle. As we work through the course texts, which include academic readings, poetry, prose, video, multimedia, art, and other sources, primarily created by Indigenous peoples, the students first reflect privately on and theorize their understandings of their experiences and learning through a weekly journal. Students are encouraged to engage in their self-reflective process using other approaches than just formal journal writing, if that better suits their reflection and theorizing process. Examples of journal submissions that fall outside of the usual written journal format I have received over the years include music, carvings, photo essays, art pieces, poetry, and creative non-fiction prose. This provides students an opportunity to work through their ideas and reflect on their feelings about the learning they are doing through their experiences.

The goal of self-reflective journals is to provide students an opportunity to reflect personally and privately on their reactions, thoughts, and feelings about what they have experienced. The journal provides a space to explore these responses critically and theorize about the meaning of specific aspects or broader meaning of their experiences in the clinic, as well as in the seminar and talking circle. When they come together in the seminar each week, they then discuss their perspectives on the week's assigned texts, having had a chance to critically analyze how these relate to their own experiences. In sharing their reflections with their peers, the students teach one another about different approaches, responses, and perspectives. In the talking circle, students develop trust with each other, so that over time differences of opinion or individual struggles with the work or the process are expressed with knowledge that honesty is encouraged within a supported environment.

Educational talking circles are particularly beneficial in providing supported space for students to engage in reciprocal learning. The talking circle format is distinct. I utilize a talking stick, usually a carved cedar hummingbird created for me by a local Indigenous artist, Alex Mountain, or another symbolic implement in the absence of a talking stick, such as a stone or cedar bough—anything that reminds us we are linked to the world outside of the intellectual space where the circle may be happening. As a supportive learning space, my pedagogical approach to talking circles utilizes three main principles: situated relatedness, respectful listening, and respectful witnessing.⁹

⁹ Although many Indigenous scholars write and speak about these epistemological and ontological concepts, I ground my work in these principles as specifically mentored and taught to me by Métis social work practitioner and scholar Dr. Natalie Clark, Kwagiulth scholar Dr. Sarah Hunt, and Anishinaabe legal scholar Darlene Johnston. Clark, Hunt, and Johnston's methodologies of listening, witnessing, and relatedness inform the basis of my pedagogical approach.

- (i) Situated relatedness requires everyone in the circle to think about and be mindful of their specific history and how that informs their perspectives at all times, especially in relation to the other people in the circle, who may have different histories.
- (ii) Respectful listening encourages participants to listen deeply and without judgment. As the talking stick is passed around, only the person holding it speaks and everyone must listen without interrupting; people only speak in the talking circle when the talking stick reaches them. When responding, participants must follow a protocol of mutual consideration, which recognizes respectful boundaries when challenging others' ideas or introducing sensitive subject matter into the collective sharing space. Before opening the circle, I ask participants to agree that they will try not to respond directly to particular experiences or reflections other students may relate; rather, participants are asked to focus on their own experience and critically reflect on their perceptions and ideas.
- (iii) Reflective witnessing recognizes relational encounters to ensure frameworks of responsibility that hold up the experiences of others' lives as we have witnessed them on their own terms. This means holding space for individual's perspectives even though they may not be the same as our own and then reflecting on feelings and thoughts that may be generated based on the relational exchange of hearing someone speak from their lived experience. Ultimately, pedagogical talking circles allow space for an exchange of ideas and views, whether similar or dissimilar, with the intentional commitment to meeting each person where they are at in their learning journey.

It is in the spirit of feeling trusted and supported that students can share what they may be having difficulty grappling with based on their own experiences, reflections, theorizing, and practice while in the ICLC program. Madeleine Northcote described how engaging in this pedagogy was for her during her time at the ICLC and her thoughts about the value of this approach for disrupting the normative violence of legal education:

Our legal work and training at the clinic develop in tandem with the internal work we must each do, as individuals as well as law students, to make sense of our place and roles in such ongoing structural injustices. Over the course of the semester we are required to submit a weekly reflection addressing the week's events and readings, which creates space for deeper consideration of some of the wider concepts of settler colonialism, decolonization, and reconciliation. We also hold a weekly talking circle, where we share our reactions to the readings and the week's client work with our classmates. In this way, and unlike in classes at law school, the ICLC fosters dialogue and builds trust and layered relationships amongst students, as well as between students, instructors, and clients.

As students, each of us brings with us our different subjectivities and ways of living in the world. Through the weekly discussion, and the attendant built up trust, we are able to examine how we each negotiate our identities, and discuss not only the complexity

I thank them for their teachings and contributions to my understanding of these epistemological and ontological concepts in informing my work and grounding it in Indigenous methodologies.

of our files together, but also a plethora of related topics, including informal dialogues around how to talk and think about race, white guilt, and fragility. While not the same as discussing decolonization, discussing these surrounding topics establishes a community where we can talk and grow in a safe environment, and practise speaking about uncomfortable topics, so that we may be better advocates after our time at the clinic has come to an end.

Victoria Wicks reflected the following about the ICLC's pedagogical approach:

Many poverty law clinics may be able to provide such experiential learning outlined above. Having said that, the ICLC is exceptional in its focus on Indigenous clients and indigenizing the legal system. Specifically, the complementary academic seminar addresses Indigenous laws and exposes how colonialism has shaped our laws. The ICLC's pedagogy is also unique and draws from Indigenous traditions. Students facilitate each other's learning, challenging conventional hierarchies prevalent in academia. The talking circle method promotes equality and respectful listening amongst participants. Required weekly reflections—which could be anything from a written journal entry, to visual art, to a music composition—train us to consistently situate ourselves in the fight for justice.

SELF-REFLECTIVE PRACTICE IN ACTION—STUDENTS' UNDERSTANDINGS OF THEIR LEARNING

As they engage in self-reflective practice through their time in the ICLC program, students develop an awareness of their own learning. Inspired by the reflections of the group of students who co-wrote this article with me, the following themes emerged about their learning in the program: transformation, decolonizing and Indigenizing, and hummingbird teachings.

TRANSFORMATION

Students' reflections all touched on the powerful changes they experienced as a result of participating in the ICLC program. Transformation was a theme that emerged from their collective voices. Jennifer Mackie, who was the only Indigenous student in the group that term, captured the collective consensus on the transformative power of students' time in the program. She described her transformative journey through her learning at the ICLC as follows:

All that you touch
You Change.

All that you Change
Changes you...¹⁰

My path to law school was long and windy and overgrown with successional plants. I moved forward slowly making a wrong turn here all the time carving out a path and

¹⁰ Octavia E Butler, *Parable of the Sower* (New York: Four Walls Eight Windows, 1993) at 4.

thinning out the overgrowth which disrupted my vision. I encountered others who whispered directions to me which included the coordinates of landmarks to look out for all of which would assist me in figuring out the correct direction. I continued on. Eventually, I entered a PhD program and it was not until then I realized I was meant to be in law. Heeding the advice of an Indigenous law professor, whose class I had enrolled in as a graduate student, I sent in my application to law school and was subsequently accepted. A new, clearer path has emerged.

After first year, I felt conflicted and confused. I heard this happens. I entered law school with the intent to become an Indigenous health researcher. My interest lies at the intersections of Canadian law, Indigenous peoples and public health surveillance. At the end of 1L I no longer knew if research was what I wanted to do. A professor recommended articling after completing my degree because being called to the bar sooner is easier than trying to do this later, she explained. Having no idea what this would look like, I applied to one of the experiential learning opportunities offered by the school. I attended a presentation by the supervising lawyers of the ICLC, Professors Patricia Barkaskas and Mark Gervin, because it seemed to align with my interests. This past fall, I was one of six law students accepted to the program. One of the goals I set for myself was to gain a better understanding of the type of law I would like to practice. This, I thought, would inform how I would plan the remainder of my degree. I can now confirm that this experience helped me to plan my future in much greater detail. But, in actuality, the ICLC gave me so much more than just helping me to decide which courses I should take. It changed me.

I have been transformed.

Being an Indigenous student—white-coded, with privilege—living as an uninvited “guest” on the unceded territory of the Musqueam people, I am in a constant state of renegotiation of my place in these spaces. I am from the Carrier Nation on my mom’s side (Nak’azdli, Lasilyoo Clan), and Scot on my father’s side. Consideration of my privilege is ongoing as I walk on this land which reflects so much of the history that continues to be enacted in contemporary ways between Indigenous peoples and settler-Canadians. My own relationship with the law is further complicated by the fact that members of my family have a very different relationship with law than I do because of my white-coded skin privilege. Being aware of this reality means I am always questioning and shifting my place in these spaces in an attempt to step up to my responsibilities in this world to effect change for my family, my clan (Lasilyoo), my Nation, and for Indigenous peoples in general.

The ICLC is at the heart of this struggle located in the Downtown Eastside. It operates as a poverty law clinic offering legal services to many members of this community and beyond. Specifically, those Indigenous community members whose historical and contemporary relationship with law is fraught with negative experiences. This unease and distrust run deep for very valid reasons. The ICLC exists to disrupt these spaces on the unceded, ancestral, and traditional territories of the Musqueam, Tselil-Watuth, and Squamish peoples.

The ICLC became the space where I could connect what I had come to understand as my responsibilities, mentioned above, to lived realities. And I discovered just how deeply unprepared I was. At the ICLC, we are witness to what we have come to understand as the overrepresentation of Indigenous peoples in the criminal justice system. We are front-line workers, in a way, invited and entrusted with the stories of our clients' frustrated attempts to achieve justice in what are often complex and intersecting issues in criminal, civil, contractual, and family matters. We met with clients who were charged in criminal matters that made us question which public was being referred to in "the public interest." A common theme amongst all of this which is that of "relationality." Some wrong or harm has occurred between two people and Canadian law either responds, such as in criminal matters, or it does not. We, as students, are asked to use Canadian law to help our clients respond to a perceived wrong. Yet there are elements of the common law unavailable to our clients who reside on reserve. I am perplexed because the law is so available yet also unavailable to Indigenous peoples. What does justice look like, indeed?

As my time with the ICLC has come to an end and I return to the ivory tower, I am thoughtful of my role in the law and how to consider justice issues for the communities to which I belong. Although I am not a member of many other communities, including those of my clients, my life may intersect with my clients' lives as we are Indigenous peoples with shared experience and histories. As a law student, I am required to suspend my "insider" perspective and use it when I need to meet my clients where they are at. I will often imagine I am speaking to my ut'soo¹¹ who would let me know in her subtle-not-so-subtle ways when I was sounding too much like a city-girl ivory tower type person. When I could eventually catch her hint, I would renegotiate my words to the space. I recognize this now as part of my shape-shifting¹² ability navigating these myriad worlds. My family taught me humility and respect and they hold me accountable to these ways of being. I am a part of their network, the web of family. Now, I consider, what does justice look like? The answer is: I have to ask them.

These observations grounded in the lived reality of Jennifer's reflections as an Indigenous person also helped provide valuable learning for her fellow student clinicians.

DECOLONIZING AND INDIGENIZING?

While the clinical program is grounded in teaching and learning through the work of provision of pro bono legal services to Indigenous clients, the broader themes of the ICLC program are decolonizing and Indigenizing law. Students work through how they see, or even if they do see, these processes at work in their experiences at the ICLC.

Kate Gotziaman's reflection focused on grappling with these concepts:

¹¹ "Ut'soo" means "grandmother" in the Dakelh language.

¹² Sarah Hunt. "Ontologies of Indigeneity: The Politics of Embodying a Concept" (2014) 21:1 *Cultural Geographies* 27.

In “Beyond Reconciliation: Decolonizing Legal Education,” Patricia Barkaskas and Sarah Buhler ask: “Can clinical legal education be a site from which to engage in decolonization or decolonial practices and pedagogy?”¹³ At the end of my term at the ICLC, I do not have an answer to this question. I do not know whether clinical legal education can be a site of decolonization, or if it is only capable of reducing some of the harms that are caused by settler colonialism. However, I am convinced that there is value in asking this question even if one does not know the answer to it. While this may not be a satisfying or comfortable answer, it is the answer that seems to be the truest to me at this time.

I am not certain of this conclusion. It is possible that I may be approaching this question in an overly narrow way by focusing on the work that I did while learning at the clinic, rather than the work that the clinic did by educating me. It is very possible that I have an overly narrow definition of decolonization in mind or have misstepped in another way on the path to reaching this conclusion. What I would like to explore in the rest of this reflection, however, does not depend on this conclusion. Instead, I would like to share what I have learned from the clinic about how asking this question—is this a site from which to engage in decolonization?—can be valuable in ways that are independent of the answer.

As clinicians at the ICLC, this question was first posed to us before we began the clinic (through readings to be completed by the first day of the term), and it is a question that returned throughout the term. Sometimes we explicitly considered this question—most obviously in the academic classroom component of the program. Sometimes this question was submerged just below the surface, or implicit in other questions—for example, when one responds to what would generally be considered a positive outcome on a client’s file within the Canadian legal system by asking, “why does this still not feel just?” and “could I have done more?” These can be, to my mind, other ways of asking whether this could have been an opportunity to engage in decolonization. Sometimes I completely lost sight of this question or any critical perspective—for example, when learning the details of how to file an affidavit for the first time. So, it is not a question that was always on my mind or always informed my work, but it is a question that is woven through the clinical experience at the ICLC.

From being asked and asking this question during my time at the ICLC, I learned that the act of asking whether our clinical work could be a site to engage in decolonization is valuable in at least two ways that do not depend on how we answer this question. First, asking whether clinical work can be a site for decolonization helps reveal that the Canadian legal system is not the neutral backdrop that it can be tempting—at least for me, as someone who is not Indigenous—to think of it as. Second, and relatedly, I believe asking whether clinical work can be a site for decolonization helped me engage in settler harm reduction more effectively during my time at the clinic.

¹³ Patricia Barkaskas & Sarah Buhler, “Beyond Reconciliation: Decolonizing Legal Education” (2017) 26 J Law & Soc Pol’y 1 at 13.

Considering whether clinical work can be a site for decolonization was a helpful question for me during the clinic because it served as a reminder that the Canadian legal system is a particular legal system that arose from, and is sustained by, particular political circumstances. Because the Canadian legal system is the result of particular political circumstances, it is not apolitical or neutral. While this may seem obvious, I find it difficult to remember when it is the only legal system that I engage with on a consistent basis in law school. Being asked to consider whether our work at the clinic could contribute to decolonization helped remind me that even when our work contributes to positive outcomes for our clients within the Canadian legal system, it is still a success within a particular legal system that exercises control over our clients as a direct result of settler colonialism. Every time I considered whether my work was contributing to decolonization and determined it was not because I was only trying to understand and work within Canadian law, this served as a reminder that there are legal orders outside of Canadian law.

The ICLC creates space for students to grapple with challenging questions, and this is part of helping us learn to work with uncertainty instead of being frozen by it. Decolonization is largely unprecedented on this land and within the Canadian legal system. The path to anything unprecedented will necessarily require working with uncertainty because there is no established path to follow. By helping us learn how to work with uncertainty, in part through asking challenging questions about the potential limits of our work, the ICLC helps us learn one of the skills that will be necessary to create a more just and pluralistic legal system

Madeleine also discussed the challenge of thinking through the work of legal representation as decolonizing work, especially the struggle to unlearn some of what has been taught in law school classrooms and recognize how deeply internalized colonial perspectives are:

As students, we spent the semester as frontline witnesses to the ongoing, deeply problematic relationship between Indigenous peoples and the Canadian state. We have seen how the Canadian legal system still governs even the most intimate aspects of Indigenous people's lives.

This relationship has been conceptualized in different terms and different ways. In "Beyond Reconciliation," Barkaskas and Buhler refer to this dynamic between Indigenous peoples and the Canadian state as colonial dispossession and write of its power to fracture communities.¹⁴ This is not an overstatement. Every client I have met has been touched, to some degree, by this fracturing, be it dispossession, residential schools or even "just" the vast inequalities in health, education and housing. Indeed, in theorizing settler colonialism, Sylvia McAdam (Saysewahum), a founding member of Idle No More, reminds us that the process is a systematic series of "multiple disruptions, causing nations of Indigenous people to lose their connection to the laws that the Creator has given them to live by."¹⁵

¹⁴ *Ibid.*

¹⁵ Sylvia McAdam (Saysewahum), *Nationhood Interrupted: Revitalizing Nêhiyaw Legal Systems* (Saskatoon: Purich, 2015) at 27

Law school trains us to conceptually atomize these disruptions into discrete “legal matters.” This obscures the truth—that settler-colonialism is a still-ongoing process that seeks to disrupt and destroy Indigenous life. But our clients are not victims, and they will not be destroyed. They come into the clinic already fighting these disruptions, whether it be against land development of their ancestral lands, confronting their traumas and abusers from the Sixties Scoop, or raising their grandchildren in the face of intergenerational trauma. This resistance takes many forms. And alongside their legal issues, our clients share their own resurgent practice with us, in the form of a newly made cedar bark hat, language regeneration—a new word, and political resurgence—stories and memories of traditions of governance from their communities.¹⁶

This is all hard work. Settler colonialism and decolonization can feel like issues that are all-encompassing, and so the process of sifting through one’s own feelings and positionality can feel overwhelming and daunting. For this reason, the relationships developed through the clinic, both with fellow students as well as instructors, is crucial to create a safety framework through which these feelings can be interrogated in a generative way.

Ryan Adair picked up this thread in his reflection as well, discussing the difference between learning facts and receiving knowledge in the classroom in comparison to relational learning in the ICLC program through interactions with Indigenous clients:

In law school we learn the law. We read cases and extract a pithy rule to apply or distinguish on certain facts. We learn how to construe arcanelly worded legislation. This is an intellectually engaging and challenging endeavour, but these skills are few among many necessary in the legal profession. My experience at the ICLC has allowed me to develop skills which cannot be learned in the classroom, such as interviewing, managing client relationships, and managing time and files.

Most importantly, the ICLC has shaped how I view the legacy of colonialism in Canada. The Truth and Reconciliation Commission’s Calls to Action included two which explicitly addressed legal education,¹⁷ and efforts have since been made to implement them. For instance, UBC was one of the first schools to create a mandatory first year course in Aboriginal law. The first thing I experienced at law school was a welcome and acknowledgement that the building is located on the unceded territory of the Musqueam people. Individual professors have introduced portions of their courses dedicated to how their area of law has impacted Indigenous peoples.

This is all good work but it is not enough. When we are taught about the history of this country and its continued effects, it is at a high level. Residential schools were intended to destroy Indigenous culture and families and were largely successful. The history of

¹⁶ See Leanne Simpson, *Dancing on Our Turtle’s Back: Stories of Nishnaabeg Re-Creation, Resurgence, and a New Emergence* (Winnipeg: Arbeiter Ring Press, 2011) at 22.

¹⁷ Truth and Reconciliation Commission of Canada, *supra* note 8.

treaties has been unfair and full of broken promises. Terra nullius and the doctrine of discovery are lies born of prejudice on which the foundations of Canada were built. This is important knowledge and it provides students with a sense of history and a sense of responsibility to work towards solutions as people entering the legal profession.

It is also intangible. Much of the time, when we learn of history, we learn it as a story. As a result, it can be hard to find personal connection to historical events. It is hard to go from knowing that something happened to feeling it.

Being at a clinic which assists Indigenous clients has provided the unique opportunity to learn from people who can share their perspectives on the history of colonialism. For example, until relatively recently residential schools were not common knowledge. We are currently overcoming the hurdle of providing a foundational understanding of history, but what is still missing for people with no personal connection to these events is to move beyond the big picture and to understand the impacts on individuals.

At the ICLC I have been able to speak with people whose lives have been directly shaped by the history of residential schools and other colonial forces. Intergenerational effects of residential school are not the exception but the norm for our clients. When clients share their stories and family history, I glimpse the tangible effects of colonialism. I feel the micro and the personal. Some clients have expressed their experience of systemic and historical oppression in more impactful ways than I could have ever read. I believe it is easy for people without personal connection to view the impacts of colonialism as historical and abstracted, and intergenerational effects as amorphous and intangible. It is necessary to hear individual stories and the concrete ways that colonial history has shaped their lives to combat this skepticism.

My interactions with clients have also reshaped my thoughts about how the criminal justice system perpetuates the overcriminalization of Indigenous peoples. My criminal law professors were among those who dedicated portions of the class to focus on Indigenous issues. In the criminal context this discussion is centred around overrepresentation at all stages of the justice system and the particular overrepresentation of Indigenous women.

Again, the macro scale is important to learn as a baseline of understanding but my experiences with individual clients has been far more formative. I had the opportunity to assist and to get to know an Indigenous woman who was charged with a minor criminal offense. Although my criminal professor had discussed with us how Indigenous women are more likely to be viewed as aggressive or violent in domestic situations, it took seeing this happen directly to truly understand what that means. I can only imagine that if my client had not been impacted by intergenerational effects of residential schools, the issue at hand would not have been addressed through the criminal justice system. I saw direct lines leading from residential school to her family history, to her present situation, and to the future. She eloquently described how deeply

she felt the history of Indigenous child apprehension and of how that informed her thoughts and actions.

My experience with clinical legal education has been enormously positive. It provided the valuable opportunity to develop skills which cannot be taught in a classroom. As an Indigenous clinic, my knowledge of the colonial legacy in Canada has been supplemented and made tangible by personal stories. On reflection, I am reminded of a story Sarah Hunt tells in “Ontologies of Indigeneity: The Politics of Embodying a Concept.”¹⁸ It is a personal story of learning a dance at a potlatch. She describes a sort of trial by fire, where she is told to follow her aunties’ lead and sent out without instruction, then told what errors she made and sent back out again. She contrasts this learning with learning to dance by written instruction or tutorial video. She describes a “productive confusion” in this way of learning. In many ways I feel learning at the clinic with real clients and real stories was a trial by fire. But it was one with great support and mentorship.

Ryan’s reflection attests to the significance of direct personal experience and how meaningful this can be in coming to terms with the truths of colonialism’s impacts on Indigenous people. This certainly points to the profound impact of experiential learning in the clinical environment, although clearly other modalities of learning, such as through the work and words/creations of Indigenous academics, authors, and artists that we study in the seminar, also offer poignant insight, theoretical integration, and realization about the impacts of colonialism that can lead to other meaningful interventions in the colonial project.

Victoria Wicks’ reflection included her thoughts about learning to understand the barriers the Canadian legal system creates for Indigenous people and recognizing Indigenous clients’ empowerment and agency in the choices that they make about their legal issues and how and when they will decide to engage with the ICLC and student clinicians:

As Ryan noted in his reflection, most law classes have a very narrow focus to simply teach students the relevant law as found in cases or statutes. At best, these classes provide a forum to debate in what way and on what philosophical basis a legal doctrine should develop, and how that doctrine should be applied in certain scenarios. This mostly theoretical approach to appellate cases—though important and potentially intellectually fulfilling—does not address how legal services are actually delivered to clients who need them most.

Additionally, many of my law classes take for granted the Eurocentric worldview underlying our legal system. Certain values or ways of knowing were assumed to be objectively and universally “good,” rather than contestable, culturally specific, and directly responsible for inflicting immense harm against Indigenous people, both past and present. Consequently, there is little to no room for discussion about the legal profession’s responsibility to respect and uplift Indigenous laws.

Working at the ICLC responds directly to these significant gaps in conventional legal education. The ICLC offered me what a classroom cannot—that is, to be physically

¹⁸ Hunt, *supra* note 12.

situated in the Downtown Eastside, to bear witness to clients' struggles and build relationships with them, and to navigate our courts with particular and real facts. The accompanying seminar, grounded in Indigenous pedagogy, provided space to imagine what dispute resolution might look like according to Indigenous laws.

In particular, the ICLC forced me to confront that, paradoxically, those who have the most need for legal services are those who face the most difficulty accessing the legal system. Seemingly "small" things created substantial barriers to justice—for instance, the lack of identification or fixed means of contact, or the prohibitive costs of things like a process server or criminal record check. For many clients already facing discrimination, the legal system may unfortunately symbolize an oppressive tool of the state. This is especially true for many Indigenous clients, given the legal system's role in explicitly denying Indigenous people their rights and freedoms. On top of this, people may avoid accessing legal remedies altogether due to the formal and adversarial nature of legal processes. Examples include having a judge in foreign garb looking down at you; navigating legal jargon and bureaucracy; testifying about embarrassing, dark, or otherwise vulnerable parts of your life to a room of strangers; being asked intrusive questions by an antagonistic party; and enduring the uncertainty of a trial.

In the context of such numerous barriers to justice, it is easy to dismiss clients at the ICLC as powerless, while considering lawyers as a type of saviour. Thankfully, the ICLC's ethos teaches students to avoid such hubris that can arise when in a position of privilege and in a helping profession. It is true that many clients at the ICLC end up disclosing details of very tragic hardship related to abuse, mental health, discrimination, and/or addiction. Additionally, lawyers have a crucial role to play in defending such clients from further harm. Having said that, clients are not simply "marginalized." They are tenacious, knowledgeable, funny, resourceful, courageous, and deserving of the freedom to determine their own affairs for themselves.

When interacting with clients, then, student clinicians at the ICLC do not only listen for details relevant to a legal issue. We also "bear witness" as a way of affirming the client's existence as resistance against systems that have for so long tried to subjugate them. Bearing witness entails and signifies a respect for the client's autonomy in and expertise about their own lives. Bearing witness is also an exercise in empathy. It challenges the listener to see things from another person's perspective, without flattening the storyteller's experiences into their own.

In a similar vein, prior to coming to the clinic, I "knew" about things like colonialism's lasting impact through the child welfare system, and our legal system's access to justice problems. This knowledge, however, was largely a matter of fact rather than one of visceral experience. To learn through particular encounters, to unpack them through discussions with colleagues, and to apply these lessons in future interactions is an iterative, non-linear process distinct from that in a classroom. As Madeleine and Ryan have both mentioned, this is a "productive confusion." Experiential learning is personal and embodied—there are vivid images, sounds, tastes, smells, and most importantly, emotions attached to each lesson. Through working in the Downtown

Eastside, as well as building relationships with the ICLC's clients, I have developed a familiarity with certain issues, people, and a neighbourhood that is impossible to achieve via reading books or articles.

I am a first-generation immigrant, racial minority, and woman. This meant that my initial understanding of "justice" arose largely within the language of anti-racism and civil liberties activism. I now know that while this framework may be appropriate for particular groups, it cannot simply be grafted onto Indigenous peoples' fight for justice. Justice for Indigenous peoples is different than affirming liberal individual rights; it means recognizing Indigenous peoples' unique and separate status as self-determining nations. This requires not only a federal re-establishment of right relations between settlers and Indigenous peoples, but also between human and the non-human entities. The current legal system does not yet appear to have the words or concepts available to adequately address these issues.

At the ICLC, we are thus faced with the dilemma of working within a limited legal system. Kate introduced this problem as one between decolonization and settler harm reduction. The ICLC does not bring constitutional cases or lobby for a sweeping change in legal policy. Instead, we are usually trying to obtain a favourable outcome for the client. Sometimes we win, sometimes we lose. In either case, however, I believe our process is a form of justice. By bearing witness to and providing fierce representation for clients, we empower them in their own journeys to be self-determining and sovereign. We recognize their concerns are worth fighting for. This may not change the system overnight, but it can change one person's life. To me, that is an immense and humbling gift, and I will always be indebted to the ICLC for providing me the privilege to do this work.

Melanie Alcorn's reflection, moving towards concluding the conversation, braided together several threads others had raised in their reflections:

Working at the ICLC was the primary reason why I applied to the Allard School of Law. In part it was because of the way I encountered the conflict between Indigenous legal orders and the colonial state, during my academic and professional journey prior to law school, and the questions this raised. But I was also drawn by the broader opportunity for critical learning and inquiry, to reflect on the bigger legal picture, in a more hands-on environment.¹⁹

As my peers have reflected, the ICLC provided a space to craft our approach to client-care, to participate in the ceremonies of the court, and to witness the continuing impact of colonialism on Indigenous peoples in Canada. In addition to these experiences, the clinic also offered exposure to alternative approaches currently in place in the legal system. As Kate noted, much of this work still looks a great deal more like settler-harm reduction than decolonization. Nonetheless, they offer glimpses at approaches to legal problems that would not have been apparent through legal texts and in-class discussions.

¹⁹ Nikos Harris & Patricia Barkaskas, "Peter A Allard School of Law Faculty News" (2017) 75:1 Advocate 87 at 88.

Melanie and Jennifer had travelled together to Bella Bella and Klemtu as part of the ICLC's Travelling Clinic program during the term. Their reflections on that experience further assisted them and their peers in grappling with the notion of Canadian justice for Indigenous people. Melanie shared her reflections on the impact of that experience as follows:

Another student and I also had the opportunity to travel with the provincial circuit court to Bella Bella and Klemtu during our semester at the ICLC. Both communities are located on islands, approximately half-way between Vancouver and the most southerly tip of Alaska. The whole court—judge, clerk, sheriff, lawyers, etc.—fly in together a few times a year to these locations. Prior to this experience, admittedly, it might not have occurred to me that access to justice might not be a blanket term, but rather it may have very different meanings in different places.

This consideration was particularly salient in the community of Klemtu, at least from an outsider's perspective. By all accounts the community is fairly prosperous, in economic terms, with majority of residents employed at either the fish farm, fish packing plant, or eco-tourist hotel. Because of this, it meant that individuals seldom qualified for Legal Aid. This, coupled with the remoteness of the community, accessible by ferry once a week, or float plane, meant that there was often little to no access to legal counsel.

While interviewing a client, I was particularly struck by a comment they made. They mentioned that in the past they pled guilty because they were unrepresented, and they did not know what else to do. Until one is in that space, and can feel the tranquil, remoteness of the geography, it can be hard to fully feel the impact of that statement. I found it difficult to feel anything but disappointment regarding this reality. I was reminded of the words of former Chief Justice McLachlin that stand outside of Allard Hall: "The most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve."²⁰ By that measure, I think it is fair to say that we have failed. Where individuals are pleading guilty and going to prison because they do not know what else to do, there is a real and genuine problem with our system.

This experience accentuated the gap that exists between traditional legal education and the practice of law. In the classroom we learn the law and think about how justice is, or can be, carried out, but that cannot always capture the realities on the ground. But I am also not sure what the alternative is in a situation like this. Given the infrequency with which the court attends on the circuit, it was certainly apparent that the current system was not working. It may be that a community-oriented solution, akin to that of the Downtown Community Court and First Nations Courts (now renamed Indigenous Courts), might provide a greater benefit to the residents of Klemtu. But it is also very possible that the common law may simply not be the best system for meeting the community's needs.

²⁰ Right Honourable Beverly McLachlin, "The Challenges We Face," remarks delivered to the Empire Club of Canada, Toronto, Ontario, 8 March 2007, online <Supreme Court of Canada <https://www.scc-csc.ca/judges-juges/spe-dis/bm-2007-03-08-eng.aspx>>.

Jennifer, whose reflection was the first in the groups' collective dialogue, had also reflected on her time in Bella Bella and Klemtu as being part of a disruptive process:

For an Indigenous person living on reserve, access to justice is a challenge. Proximity is one reason. People may travel for hours in all kinds of weather conditions in this province in order to be in court when dealing with a legal matter. In an effort to accommodate this, there are Provincial Circuit Courts where a court (*i.e.* clerks, judge, sheriff, etc.) will travel to remote communities, including First Nation communities. Some communities see this Circuit Court for a few days every three months and others every six months, weather permitting. I was fortunate to have been granted an opportunity to travel with the Provincial Circuit Court to Bella Bella and Klemtu, two isolated First Nation communities situated mid-way up the west coast of British Columbia. I was witness to family matters and some criminal matters in this court. I felt confused at times. While I see this as an attempt to address systemic access to justice issues by having the court travel to community rather than community making the trip to larger more urban centres, there was also this very subtle, yet noticeable, disruption of peoples' lives.

I suppose this is normal since attending courts is technically a "disruption." But I witnessed a court in its various stages of set-up, take-down, and everything in between. When I, personally, find myself in the territory of another First Nation, I take a moment to consider who I am, where I am, and how I came to be there. Bella Bella is Heiltsuk territory. I was an uninvited guest in their unceded homelands. I was polite, I smiled, I spoke with people when they stopped to talk. I let people know who I was and why I was there, if they asked. I found myself trying to reconcile the protocols of being in Heiltsuk territory with what was actually going on in the court. Prior to being called into session, the Sheriff very kindly informed people seated in the courtroom of the procedure and protocol. When to rise, when to sit down, no hats or sunglasses or iPhones, etc. It was a ceremony. But it was not Heiltsuk ceremony. It was the Canadian state ceremoniously inserting itself into these lands, making its own space and creating its legitimacy and authority.

All rise. Order in the court. Please be seated.

Is this ... justice? I contemplated this during my trip. Not just the fact that this was not a "traditional" courtroom but what perplexed me was how the court remains standardized to a structure borne out of the common law which originated on another continent. Here it was being transported by plane and boat to far-away places so that Indigenous peoples could sit and have a non-Indigenous person, with credentials earned in a non-Indigenous education system, preside and decide over intimate and interconnected matters in a community to which nobody in charge belonged.

Professor Shin Imai wrote about a similar experience he had when working at a poverty law clinic in an Indigenous community in Ontario.²¹ He wrote of an incident which he saw to be an injustice experienced by community members and decided he would like to focus on finding a solution to this injustice. Yet, when he proposed his idea, he was turned down. The community members had other priorities. He realized he had made this assertion without even discussing it with the community members first. His realization was that as an outsider, he has no right to impose his own conceptions of justice on another community to which he does not belong.

Melanie returned to the notion of transformations and the impact of learning differently through the ICLC program in bringing the students' conversation to a close in her reflection:

As my peers have already expressed, our time at the ICLC was both challenging and transformative. While I received significant exposure to the many failings of the system, and the ways in which colonialism continues to be perpetuated within the Canadian legal system, I was also heartened to see work being done to find alternative solutions. And while we may still be a ways off in bringing the TRC Calls to Action to life, I believe my time with the ICLC has equipped me, my peers, and the clinicians who have come before us (and after us) to bring meaningful change to the practice of law and legal system.

DROPS OF WATER ON AN INFERNO

The ICLC's symbol is the hummingbird. I like to say that each student who comes through our program becomes a hummingbird, or at least learns and leaves with hummingbird teachings. The first Director of the ICLC,²² Reenee Taylor, who is Kwagiulth, gifted a teaching to students who work at the clinic about the power of their work and their responsibility to the people they represent:

Each people have a cosmology and belief system, an ethos that governs their relationship to all of creation. In Judeo-Christian mythology, there is a legend in the Old Testament about the Tower of Babel. The Kwakwaka'wakw legend described here is also about communication, and illustrates the importance of the hummingbird logo, which the UBC First Nations Legal Clinic and the Vancouver Aboriginal Law Centre share.

At the beginning of time, all creation spoke the same language: rocks, moss, mushrooms, trees, birds, spirits, clouds, rivers, mist, humans, and all the other mammals. All of creation was in balance and self-reliant. Over time, the bears began eating the abundant salmon at the spawning grounds. The deer began eating lichen, moss, and saplings. The orcas started hunting in pods, driving seals, walrus, and salmon towards high cliffs and eating them while as they fell back toward the ocean.

²¹ Shin Imai, "A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering" (2002) 9:2 *Clinical L Rev* 195.

²² The UBC First Nations Legal Clinic as it was called then.

And humans began hunting and gathering all edible foods and medicines, and building large shelters within which to live, weave, carve, feast, and potlatch. Each people developed a secret language to transmit knowledge to their young and to each other. And they protected themselves from predators by communicating in private. Only hummingbird could speak privately with each species and call a feast, inviting all of them to meet and restore order to creation.

Like the hummingbird, first and foremost, we must be communicators. As academics, chiefs, and leaders entrusted with our clients' legal matters, not only do we maintain their legitimate rights and remedies, but we communicate and advocate on their behalf before panels, courts, and tribunals, and with other counsel and colleagues.

Like the hummingbird, we try to restore and maintain order in all creation.

The gift of this teaching was something I took with me from my time as a student at the clinic and that stayed with me as I moved into practice. Perhaps that is why I am so drawn to another powerful hummingbird story that I now use in my teaching at the ICLC. This is the Hummingbird story of the Quechuan people of South America retold through Michael Nicoll Yahgulanaas's Haida Manga artwork in *Flight of the Hummingbird: A Parable for the Environment*.²³ In the story (summarized here by me) there is a large fire in the forest and all the animals have to flee to the edge of a body of water. All the animals are panicking, and no one knows what to do. However, at some point Bear notices that Hummingbird is flying around, zipping back and forth between the water and the inferno's flames. Bear starts to watch in disbelief as Hummingbird flies back and forth, and the other animals begin to notice too, until all those gathered are swiveling their heads—back and forth, back and forth—watching Hummingbird's flight. Finally, Bear cannot take it anymore and, in Bear's big voice, exclaims: "What are you doing?" Hummingbird, stopping in front of Bear mid-flight, as only a hummingbird can, declares: "I'm doing everything I can." Without further pause Hummingbird flies back to the water, takes up a single drop of water, because that is all that fits in Hummingbird's beak, and flies over the flames dropping the water on the inferno.

I imagine the Canadian legal system, colonialism, and its ongoing impacts as that inferno and each student who comes through the ICLC program and moves into the legal profession as a hummingbird. Cohorts of individual students have confirmed over the years that these hummingbird teachings become a part of them. They may not, however, quite imagine themselves this way, but I dream of them as a sky full of hummingbirds. This gives me hope; with enough hummingbirds dripping drops of water on that inferno, even single drops of water can become a deluge.

In conclusion, the hummingbird is powerful symbol of what we do at the ICLC in an attempt to change the Canadian legal system through clinical legal education that specifically engages a decolonial and Indigenous pedagogical approach. It is my hope that, as Ryan described below in his reflection, the hummingbird becomes more than a part of the learning students do at the ICLC; I hope the hummingbird's lessons become a part of them and that they can teach others as hummingbird has taught them:

²³ Michael Nicoll Yahgulanaas, *Flight of the Hummingbird: A Parable for the Environment* (Vancouver: Greystone, 2008).

I have taken to heart the story of Hummingbird, which is our logo at the ICLC. Professor Barkaskas vividly shared with us the tale of a lone Hummingbird taking drops of water from a river to put out a forest fire. I take comfort in this story when reckoning with the current state of the legacy of colonialism. I will be forever grateful for having had the opportunity to contribute a water drop or two.