INTRODUCTION: THE ASSOCIATION FOR CANADIAN CLINICAL LEGAL EDUCATION (ACCLE) CONFERENCE 2012

SARAH BUHLER

Clinical legal education has existed within Canadian legal education for over forty years. While the clinical law “movement” today in Canada is less prominent than it is in the United States, where according to Neil Gold and Philip Plowden the average law school hosts six clinics, clinical law programs exist in most Canadian law schools, and it appears that many law schools in this country are seeking to expand their clinical law offerings. Certainly, clinical legal education has been the subject of increased interest and attention within Canadian law schools in recent years. This interest has arguably been precipitated by external pressures on law faculties, such as the set of “competencies” now required by the Federation of Law Societies of Canada as part of its recognition of the “approved Canadian common law degree”, the changes to the structure of the articling process in Ontario, and the growing awareness of the access to justice crisis in Canada.

4 See Law Society of Upper Canada, Pathways Pilot Project, online: <http://www.lsoc.ca/Pilot-Projects/>.
5 University of Saskatchewan, College of Law.
Internal pressures, including interest by law students in experiential education opportunities and ongoing critiques of traditional pedagogies within legal education, have also sparked recent interest in clinical legal education.\(^6\) It should be noted that this growing interest is not an isolated phenomenon in Canada: as Frank Bloch notes, there is an expanding “global clinical law movement”.\(^7\)

There is no one single definition or model of clinical legal education, and there is much variance among clinical law programs. Canadian clinical law programs today range from specialty clinics (such as Innocence Projects, mediation clinics, or criminal, correctional or family law clinics) to broader externship-type experiential courses, to community-based poverty law clinical programs.\(^8\) Despite the wide variance in clinical legal education models, it is fair to say that most clinical law programs involve immersion in “real-life” legal practice contexts, and usually with an emphasis on access to justice and social justice for marginalized clients and communities. Furthermore, clinical legal education is grounded in theories of experiential education and clinical programs tend to incorporate some form of structured critical reflection component for students.\(^9\)

It is also important to note that the purpose of clinical legal education has also been subject to debate and contestation. Some clinical legal educators understand its purpose primarily in terms of its utility as a means of teaching students hands-on, practical lawyering skills that will be transferable to a variety of practice settings after law school.\(^10\) Some understand clinical legal education to be a rich environment for students to take on professional identities and grapple with substantive law and ethical issues through working

\(^5\) See the discussion at The Canadian Bar Association, Access to Justice, online: <http://www.cba.org/CBA/Access/main/>.

\(^6\) See generally Sossin, supra note 2.


\(^8\) See list of many Canadian clinical programs at Association for Canadian Clinical Legal Education, *Links*, online: <http://accle.ca/links/>.


\(^10\) Note that Sameer Ashar has observed that in the American context, the “skills transfer rationale” for clinical legal education has become dominant: Sameer M Ashar, “Law Clinics and Collective Mobilization” (2007-2008) 14 Clinical L Rev 355 at 371.
on real life cases.\textsuperscript{11} Others value it primarily as a means to politicize students and teach them about social justice.\textsuperscript{12}

Despite the fact that clinical law programs have long been a feature of many Canadian law schools, it was not until 2010 that a national association of clinical law educators and supporters was formed. Doug Ferguson, the Director of the Community Legal Services Clinic at Western Law, founded the Association for Canadian Clinical Legal Education (ACCLE) and hosted its first conference at Western Law in London, Ontario, in 2010. ACCLE’s mission is as follows:

(a) to provide a forum for legal educators across Canada to share best practices, pedagogies and other information related to clinical legal education;

(b) to encourage the promotion and improvement of clinical legal education in Canadian law schools;

(c) to promote clinical pedagogy and research.

(d) to facilitate the dissemination of information pertaining to clinical legal education to clinicians in Canada;

(e) to promote or organize conferences or other activities to facilitate the purposes of the association.\textsuperscript{13}

ACCLE’s annual conferences have been well attended and enthusiastically supported by members of the Canadian clinical legal education community. Clearly, there is an appetite among clinical legal educators and others for a forum to share information about clinical legal education models, pedagogies and theories, and to engage in critical discussions about the purpose and value of clinical legal education in the Canadian context. ACCLE held its second conference in Toronto at Osgoode Hall Law School in 2011, in conjunction with Osgoode Hall’s celebration of 40 years of clinical legal education.

ACCLE’s third annual conference was held at Robson Hall at the University of Manitoba Faculty of Law in October, 2012. The articles in this


\textsuperscript{12} See e.g. Shelley AM Gavigan, “Twenty-Five Years of Dynamic Tension: the Parkdale Community Legal Services Experience” (1997) 35 Osgoode Hall LJ 443.

\textsuperscript{13} See Association for Canadian Clinical Legal Education, online: <http://www.accle.ca>.
volume represent some of the content of that conference, which attracted clinicians, law faculty and students from across Canada as well as the United States, Poland and Scotland, to engage with the theme “Raising the Bar: Innovations and Best Practices in Clinical Legal Education”. The theme sought to reference and spark interest in the ongoing debates about clinical legal education: the notion of “raising the bar” speaks to both the goal of cultivating ethical, competent professionals as well as the goal of elevating and transforming legal education and legal practice itself in new and critical ways.

The conference keynote speakers were Chief Justice Richard Scott of the Manitoba Court of Appeal, and Professor Shin Imai of Osgoode Hall Law School. Chief Justice Scott spoke about “a judicial perspective on legal education”. His remarks placed clinical legal education in the context of legal education as a whole, and emphasized the value of a hands-on apprenticeship in legal practice and professional identity formation. Professor Imai offered a vision of the value of clinical legal education as a way of teaching students critical, contextual perspectives on law and legal practice, emphasizing the social justice mission of clinical legal education. The conference sessions were lively and diverse in terms of content. Speakers discussed models of specialty clinical law programs, interdisciplinary practice in clinical legal education, community engagement, emotional aspects of clinical law practice, and critical and theoretical perspectives on clinical law pedagogies and practices. The issue of reform to legal education in Canada and the place of clinical legal education within this broader movement for reform was also addressed.

In her paper entitled “Innovative Thinking and Clinical Education: the Experience of the Osgoode Mediation Intensive Program”, Martha Simmons discusses how students at Osgoode’s Mediation clinical program are encouraged to use “innovative intelligence” and new approaches to legal practice in order to address the problems faced by clients and to become better prepared for the future roles of legal professionals. The clinical legal education model, she argues, is uniquely suited to teach students these approaches to thinking and approaching complex problems.

Lynne Jenkins, of the Barbara Schlifer Clinic in Toronto, turns the focus to a consideration of the affective dimensions of clinical legal education. Her paper, entitled “Teaching Law Students: Lessening the Effects of Vicarious Trauma”, focuses on the importance of attending to the potential effects of “vicarious trauma” in clinical legal education. As Jenkins notes, lawyers and law students may be susceptible to vicarious trauma (wherein they begin to reflect and display aspects or symptoms of trauma) through their day-to-day
and intensive work with traumatized clients. As Jenkins explains, lawyers have historically failed to adequately address the emotional dimensions of legal practice, and therefore to ignore the possibility of vicarious trauma within legal practice. Jenkins’ article is a critical and valuable resource for understanding and addressing this phenomenon within clinical legal education.

Also drawing on interdisciplinary knowledge, Eveline Milliken’s paper discusses the topic of “silence as a strategy of cultural safety” in clinical law interactions. Her paper is entitled “You Have the Right to Remain Silent...But I’m Your Lawyer! You are Supposed to Talk to Me! Working Towards Creating Culturally Safe Working Relationships”. Milliken reminds us of the crucial importance of recognizing the power dynamics within lawyer-client relationships, and in particular cross-cultural lawyer-client relationships. She goes on to offer a critical critique of dominant approaches to “cultural competence”, advocating that lawyers and other helping professionals must learn to adopt positions that support “cultural safety” for clients to tell their stories to their lawyers. This approach provides new insights into the complex lived realities of clients and into the lawyer-client relationship.

Dale McFadzean, from the University of the West of Scotland, describes the development of clinical legal education in Scotland in his paper, “The Law Wise Clinic: Perspectives on Clinical Legal Education in Scotland”. Clinical legal education is “in its infancy” in Scotland, but is gaining momentum, according to McFadzean, and he describes the various challenges and opportunities facing clinical legal education in Scotland through a discussion of the clinical law program at his law school.

Janelle Anderson, a student at the University of Saskatchewan College of Law, provides an overview and analysis of a study that she and I undertook in 2012 on the perspectives of former clinical law students of the University of Saskatchewan College of Law. In her article, entitled “Clinical Legal Education: Perspectives from Former Clinical Law Students”, Anderson’s analysis shows that these students experienced clinical legal education as a significant and valuable opportunity to learn skills, critical perspectives, and to learn about law in the complex contexts of clients’ lives. She concludes that clinical legal education is an important aspect of any law school that intends to train students as “legally competent, professionally responsible, civically oriented, and critically engaged legal professionals”.

In her article, “The Effective Role of a Social Worker in a Clinical Legal Education Practice”, Susan Noakes, a social worker at the Law Centre clinical
program at the University of Victoria Faculty of Law, argues that social workers have an important role within clinical legal education settings, and can provide assistance to clients and communities, as well as education to law students.

Douglas Ferguson’s article, entitled “The State of Experiential Education in Canadian Law Schools”, places clinical legal education within the larger context of experiential education in Canadian law schools. He discusses the challenges and changes that are currently impacting law schools, and argues that these challenges will be best addressed by transforming the traditional approach to legal education and embracing experiential education, including clinical legal education, within Canadian law schools.

Finally, Delloyd Guth of the University of Manitoba Faculty of Law’s paper describes “Manitoba’s Judge Shadowing Program.” This program differs from the focus of many clinical law programs in that it functions as an externship experience for law students, who spend time observing and learning from judges. Guth describes the benefits and opportunities of this approach.

Overall, the articles collected here present a variety of theoretical and disciplinary perspectives on clinical legal education, and focus on the various challenges and opportunities facing clinical legal education in Canada today. Given the relative dearth of scholarship about clinical legal education in Canada, this collection is timely and welcome, and will spark ongoing dialogue about “innovations and best practices” in Canadian clinical legal education.