Fall 2018

Clinical and Experiential Learning in Canadian Law Schools: Current Perspectives

Gemma Smyth
Faculty of Law, University of Windsor

Samantha Hale
Faculty of Law, University of Windsor

Neil Gold
Faculty of Law, University of Windsor

CLINICAL AND EXPERIENTIAL LEARNING IN CANADIAN LAW SCHOOLS: CURRENT PERSPECTIVES

Gemma Smyth, Samantha Hale, Neil Gold

What are some of the challenges and possibilities animating modern Canadian clinical and experiential learning in law? This question was the starting point for our research, which examined two sets of data. In the first part of this project, we analyzed available information on existing clinical and experiential learning programs in Canadian law schools. This data revealed a growing quantity and variety of programs across the country. We then held qualitative interviews with deans, professors, and clinicians across Canada regarding their views of clinical and experiential learning. While the interviews suggested that many of the same financial and curricular challenges that dominated early debates remain stubbornly entrenched, there are also significant promising views and practices. No longer regarded by most as a legal education outlier, clinical and experiential learning has come out of the curricular shadows and taken a prominent place in most law schools in Canada. Nuanced questions now dominate thinking around this generation of clinical and experiential learning. What is the role of community in the creation, decision making, and continuity of clinical programs? How can students balance an increasingly intensive set of learning, professional, and financial challenges? How can clinical and experiential learning be better aligned with the rest of the curriculum, and as accessible as possible? As all respondent law schools but one are expanding their clinical and experiential learning options, these and other questions will continue to animate programs in the foreseeable future.

Quels sont certains des défis et des possibilités découlant de l'approche moderne de l'apprentissage clinique et expérientiel du droit au Canada? C'est à partir de cette question que les auteurs ont effectué leur recherche qui examine deux ensembles de données. Pour débuter , ils ont analysé les renseignements disponibles sur ce type de programme dans les facultés de droit canadiennes. Les données indiquent que l'on retrouve de plus en plus de tels programmes, sous différentes formes, à la grandeur du pays. Les auteurs se sont ensuite entretenus avec des doyens, professeurs et cliniciens venant d'un peu partout au Canada pour recueillir des données qualitatives sur leur avis relativement à l'apprentissage clinique et expérientiel. Alors qu'un grand nombre des difficultés liées aux finances et au curriculum qui dominaient les débats antérieurs persistent toujours, plusieurs points de vue intéressantset pratiques prometteuses se sont dégagés de ces entrevues. N'étant, en général, plus perçus comme de second plan par rapport à la formation en droit, ces programmes d'apprentissage par la pratique sont ressortis de l'ombre pour prendre une place

importante dans le curriculum de la plupart des facultés de droit canadiennes. De nos jours, la réflexion sur l'apprentissage clinique et expérientiel porte désormais sur des questions plus nuancées. Quel est le rôle de la communauté dans le cadre du développement, du processus décisionnel et de la pérennité de ce type de programmes? Comment les étudiants pourront-ils surmonter les défis toujours plus grands , aussi bien en matière d'apprentissage que sur le plan professionnel et financier? Comment mieux aligner les programmes d'apprentissage clinique et expérientiel sur le reste du curriculum, et les rendre les plus accessibles possible? Étant donné que toutes les facultés de droit avec lesquelles les auteurs se sont entretenus, à l'exception d'une seule, proposeront plus de choix quant aux programmes d'apprentissage clinique et expérientiel qu'elles offrent, ces questions et d'autres encore continueront d'animer le débat entourant ces programmes à l'avenir.

Contents

Introduction[1]

In this article, the researchers seek to understand the challenges in strengthening Canadian clinical and experiential legal education. The researchers—one a former clinic lawyer and director, professor and dean in Canada's earliest forays into clinical legal education,[2] one a current academic clinic director and professor[3] and one a current law and social work student[4]—conducted interviews with deans, clinicians and professors across Canada to investigate this phenomenon.[5] In face of the decades that have passed since the first wave of clinics in the 1970s, early results of these interviews suggest limited progress and relative stagnation in clinical and experiential education in Canada. More specifically, the interviews reveal significant variation in approaches, funding availability, community and student interest, and professional pedagogical readiness. Nonetheless, although our research points to wide variances in shared understanding and organized thinking around clinical and experiential legal education, research and practice, it has also highlighted some significant promising practices.

The first part of this article sets out a political and social context for our research. The second sets out our project goals and methodology. Part three summarizes findings from our cross-Canada survey of clinical and

1 Expert research assistance for this project was provided by one of the co-authors, Samantha Hale, as well as University of Windsor MSW/JD students Amanda Webb and Mattie Marie Eansor-Bornais. The authors benefitted from helpful participant comments at the 2016 International Journal of Clinical Legal Education/Association for Canadian Clinical Legal Education Conference. Thank you, as well, to the anonymous peer reviewers for careful reading and insightful comments. The authors wish to thank the Law Foundation of Ontario and the University of Windsor for research funding.

2 Neil Gold is an Emeritus Professor of Law at the University of Windsor, Founder and former Director of Legal Assistance of Windsor and Founder and former Director of the Law Centre and the former Director of the Clinical Law Program at both the University of Windsor and the University of Victoria.

3 Gemma Smyth is an Associate Professor and current Academic Clinic Director at the University of Windsor Faculty of Law.

4 Samantha Hale is in her third year of the JD/MSW program at the University of Windsor.

5 The researchers have conducted interviews with both common and civil law programs, but as the interviewing work for law programs in Quebec is not fully complete, this paper's focus is on common law legal education.

experiential learning opportunities and analyzes interviews with deans, clinicians and academics. The last part of this article highlights promising practices based on our interviews and sets out possible directions for future research.

Part 1.0

1.1 Context

In its *Futures* Report, the Canadian Bar Association ("CBA") recommends "new models for legal education" including restructured and "innovative" programs focusing on skills integration.[6] The authors note that, throughout their consultations, "lawyers of all generations expressed a desire for more practical opportunities for learning through clinical and work placements" and therefore calls for regulators to ease restrictions on students' participation in legal clinics.[7] In these recommendations, the CBA joins a decades-old chorus of Canadian (and other)[8] clinicians who have argued for greater attention to this form of teaching and learning.[9] More recently, the provinces,[10] educational regulators[11] and others[12] have called for greater depth and volume of experiential learning opportunities for students. For advocates of clinical and experiential learning, this is a long way from early

---

6 The Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada* (Ottawa: Canadian Bar Association, 2014) at 58, online: <www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf> [*Futures*].

7 *Ibid* at 59, 60.

8 See Jerome Frank, "Why Not a Clinical Lawyer-School?" (1933) 81:8 U Pa L Rev 907.

9 See e.g. Frederick H Zemans, "The Dream Is Still Alive: Twenty-Five Years of Parkdale Community Legal Services and the Osgoode Hall Law School Intensive Program in Poverty Law" (1997) 35:3 Osgoode Hall LJ 499 [Zemans]; Lorne Sossin, "Experience the Future of Legal Education" (2014) 51:4 Alta L Rev 849; Neil Gold, "Legal Education, Law and Justice: The Clinical Experience" (1979–1980) 44 Sask L Rev 97. Note that the CBA previously released its "Reaching Equal Justice Report: An Invitation to Envision and Act" in 2013, online: <www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf>.

10 See e.g. The Premier's Highly Skilled Workforce Expert Panel, *Building the Workforce of Tomorrow: A Shared Responsibility* (Toronto: Queen's Printer for Ontario, 2016).

11 See e.g. Rhonda Lenton et al, *Community Service Learning and Community Based Learning as Approaches to Enhancing University Service Learning* (Toronto: The Higher Education Quality Council of Ontario, 2014) online: <www.heqco.ca/en-ca/Research/ResPub/Pages/Community-Service-Learning-and-Community-Based-Learning-as-Approaches-to-Enhancing-University-Service-Learning.aspx>.

12 See e.g. Higher Education Quality Council of Ontario, *A Practical Guide for Work-integrated Learning: Effective Practices to Enhance the Educational Quality of Structured Work Experiences Offered through Colleges and Universities* (Toronto: Queen's Printer for Ontario, 2016).

struggles to simply recognize clinical and experiential learning as valid methods of teaching and learning.[13] While it appears that experiential legal education is now *en vogue*, lawyers, social workers, community legal workers, academics and others working in clinical programs are experiencing many of the same challenges expressed over the past 50 years of Canadian clinical legal education. Funding, lack of pedagogical coherence and marginalized status when compared with other more highly regarded models—all cited in the Canadian clinical legal education and legal education literature more generally—remain prevalent in the literature and also in the pedagogic practices of Canadian law schools.[14] However, more recently, specific critiques have emerged about the rise of neoliberalism in legal education, including clinical and experiential legal education,[15] as well as practical concerns about the role, availability and quality of articling placements, especially for marginalized and oppressed groups in Canada.[16] Unsurprisingly, concerns regarding the ever-increasing cost of legal education, especially clinical and experiential education, the corollary of the unavailability of funding, and more nuanced pedagogical issues are also reflected in the current discourse.[17]

---

[13] In 1983, the Arthurs Report noted that "clinical legal education has not yet become a significant element in Canadian law schools." See Social Sciences and Humanities Research Council of Canada, *Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada by the Consultative Group on Research and Education in Law* (Ottawa: Information Division of the Social Sciences and Humanities Research Council of Canada) at 51 [*Arthurs Report*].

[14] See e.g. *Arthurs Report*, *ibid*; John McLaren, "The History of Legal Education in Common Law Canada" in Roy J Matas & Deborah J McCawley, eds, *Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23-26, 1985* (Montreal: Federation of Law Societies of Canada, 1987) 111; M Kathryn Munn, "Clinical Legal Education Through the Looking-Glass" (1989-1990) 12 Dal LJ 505; W Wesley Pue, "Legal Education's Mission" (2010) 42:3 L Teacher 270; Zemans, *supra* note 9; HJ Glasbeek & RA Hasson, "Some Reflections on Canadian Legal Education" (1987) 50:6 Mod L Rev 777. For a comprehensive list of writing on Canadian clinical legal education see Sarah Buhler, "Clinical Legal Education in Canada: A Survey of the Scholarship" (2015) Can Leg Education Annual Rev 1.

[15] See e.g. Sarah Buhler, "Skills Training in Clinical Legal Education: A Critical Approach" (2011) Can Leg Education Annual Rev 1.

[16] See Equity Initiatives Department—Josée Bouchard & Ekua Quansah, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees: Consultation Paper* (Toronto: Law Society of Upper Canada, 2015). For a critique of the Consultation Paper, see Letter from Sujith Xavier & Gemma Smyth to Josée Bouchard (15 March 2015), online: <www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Windsor_Law_Equity_Diversity_Committee(1).pdf>.

[17] See e.g. Sarah Buhler, Priscilla Settee & Nancy Van Styvendale, "'We Went in as Strangers, and Left as Friends': Building Community in the Wahkohtowin Classroom" (2015) 1:2 Engaged Scholar J: Community-Engaged Research, Teaching & Learning 96 [Buhler, "Wahkohtowin"]; Gemma Smyth & Marion Overholt, "Framing Supervisory Relationships in Clinical Law: The Role of Critical Pedagogy" (2014) 23 JL & Soc Pol'y 62.

Part 2.0

2.1 Project Goals and Methodology

In undertaking this project, we first sought to understand the current state of clinical and experiential learning programs in Canadian law schools by establishing a current list of programs.[18] For the purposes of this study, we understood "clinical" to be any program that had undertaken some form of direct service or representation that had a potential or real impact on clients, communities and/or groups, including direct representation (such as advocacy, mediation, negotiation, etc.), policy advice, dispute resolution work, and community organizing or solidarity work. Student work had to be integrated in the teaching and learning methodologies of the law school (through courses, supervised placements (externships), implementation of an academic director to oversee clinical programs, or other mechanisms). *Pro Bono* placements were not considered, as they are generally not incorporated into the curriculum. We also did not include moots, which vary widely and are relatively unpredictable vis-à-vis the law school curriculum. Under the rubric of "experiential", we included any course that had a significant experience using an active learning and reflective approach simulating an experience associated with the practice of law, widely defined. We defined significant as more than 50% of the time, content, and/or grading methodology of any course. As this information was gathered from online sources, it was often difficult to determine a specific percentage of time or grade allocated to an experiential education activity, as well as the degree of reflection that was incorporated. We simply used our best judgement in interpreting the academic calendars and outlines available. We also benefitted from sending the list of clinical and experiential education opportunities to each corresponding law dean or dean's designate. We were successful in confirming relevant placements with most law schools. It is also noteworthy that the vast majority of law schools indicated they were in the process of expanding their programming. Based on our interviews, passing months will only increase the number of available learning opportunities.

---

[18] The researchers chose to include both experiential and clinical legal education as part of this study, both because they share pedagogical similarities, but also because the clinical literature is often marginalized as too resource intensive or implausible for wide or universal adoption in Canadian law schools. For example, comments from most respondents regarding the cost of clinical programming in Canada reflects this concern. Experiential learning, however, is a broader term that allows more room for inclusion and is, perhaps, more resilient to marginalization. Although experiential learning programs can certainly be resource intensive, it is also possible to create lower-cost, high-impact programs. The issue of cost is explored later in this article. Although clinical legal education has been more widely accepted in some jurisdictions, it is by no means the dominant legal pedagogy in any country. A list of both clinical and experiential learning programs in Canada is on file with the authors.

We subsequently sought to understand clinical and experiential education in greater depth through online and in-person interviews. We received Research Ethics Board clearance from every Canadian law school's university ethics board.[19] We chose three groups to interview: deans or deans' designates, professors or instructors engaged in some form of experiential work, and clinicians.[20] Because of their broad view of legal education across their institutions, we held 30 to 60-minute telephone or Skype interviews with deans or deans' designates. The additional two groups were sent online surveys using FluidSurveys. We chose online survey data due to the high number of clinicians and professors engaged with clinical and experiential legal education. Research subjects were located through public, online databases. Participation was voluntary and there was no incentive attached to participation.[21]

Because the researchers aimed to understand the participants' views in an undirected manner, all questions were open-ended and qualitative in nature. Deans were not guaranteed complete anonymity, as many of the programs that were discussed in the interviews can be easily attached to a specific school's clinical and experiential programming. However, all responses were coded. For the most part, the information presented in this paper will not be associated with a particular school, although where the information is otherwise public or deans agreed to waive anonymity, we reference specific schools. Online participants were guaranteed anonymity and confidentiality. While some participants chose to self-identify, data was coded to remove association with their institution. All interview data was transcribed, anonymized as necessary by the primary research assistant, and coded.

The questionnaire was designed using primarily open questions in which participants were encouraged to express their opinions on clinical and experiential legal education. Like most qualitative researchers, we

---

19 University of Windsor Research Ethics Board #16-042.

20 Interviews with deans in Quebec are ongoing and will be the subject of a further article utilizing a comparative international perspective. We chose not to use the term "common law", as many of the Quebec schools offer common law degrees, often in addition to the first civil law degree.

21 The researchers chose not to interview students for this project, despite the fact that their input is valuable in understanding the role of clinical and experiential legal education. At this point, it was simply not feasible given resource constraints to include this data. For Canadian articles with recent student interview data on clinical legal education, see Janelle Anderson, "Clinical Legal Education: Perspectives From Former Clinical Law Students" (2013) 37:1 Man LJ 427; Gemma Smyth, "Bridging the Clinical-Doctrinal Divide: Clinician and Student Views of Teaching and Learning in Clinical Legal Programs" in Laura A Wankel & Charles Wankel, eds, *Integrating Curricular and Co-Curricular Endeavors to Enhance Student Outcomes* (Bingley, UK: Emerald Group Publishing, 2016) 119.

used an inductive method of analysis.[22] We utilized the grounded theory approach in which we sought to understand "an area, by developing and refining a theory as more is learned," aiming to be both "pragmatic and yet theoretical."[23] In reading and interpreting the data, we wished to both acknowledge each participant as making meaning out of her own experience while also providing for the broader contexts (law school, legal education, government, regulators) that affect reality.[24] Because the researchers are current or former employees at the University of Windsor as well as former clinicians, we are systems insiders. In interpreting the data, we attempted to critically reflect on our own biases and our ability to be reflective and fair in our interpretation of the data. As we unpacked our own assumptions, we also aimed to unpack possible assumptions and background that affected the participants' statements. Each of us reviewed the data for common themes (prevalence) as well as for outliers or surprising themes. We did not aim for statistical validity in this research, but rather depth of understanding of the phenomenon.[25]

2.2 Limitations

There are several limitations to this study. First, the response rate for clinicians and professors/instructors was not as high as we had hoped. In contrast, the response rate for deans/deans' designates was high (81%).[26] However, we were unable to secure interviews with several Canadian law school deans, largely due to administrative turnover. We also experienced difficulty finding contact information for all potential respondents, especially for clinicians and instructors not primarily affiliated with a university. As we noted, the sample size for both professors and clinicians is low.[27] However, since we were not seeking statistically significant data, we were satisfied that the responses received are indicative of many (although certainly not all) themes relevant to Canadian clinical legal education. The researchers found significant valuable information and insights in all the data sets.

---

22 See Lisa Webley, "Qualitative Approaches to Empirical Legal Research", in Peter Cane & Herbert M Kritzer, eds, *The Oxford Handbook of Empirical Legal Research* (New York: Oxford University Press, 2010) 926 [Webley].

23 *Ibid* at 944.

24 Virginia Braun & Victoria Clarke, "Using Thematic Analysis in Psychology" (2006) 3:2 Qualitative Research in Psychology 77 at 81.

25 Webley, *supra* note 22 at 935.

26 Again, note that this does not include Deans from Quebec law schools. These interviews are ongoing.

27 Unfortunately, due to the way we received online responses, we were not able to know each respondent's position within a clinic and/or law school. It is therefore difficult to assess whether, for example, clinic directors had different perspectives from lawyers working in legal clinics.

Another unexpected challenge in data collection arose from lack of shared terminology, which occasionally caused confusion. It was often difficult to understand if respondents were referencing clinical programming or experiential courses, or whether these terms were synonymous for respondents. The researchers mistakenly assumed greater working understanding of these terms, which caused some difficulty in data analysis. In reviewing the data, the researchers attempted to parse which sections specifically spoke to clinical legal education and which spoke to experiential education more broadly.

This article also does not seek to fully explore the history of legal education in Canada, nor to deeply engage with the history of each law school. However, it was clear through our interviews that the history of each law school was influenced by a wide variety of factors including community makeup, history and location. We did not fully explore how history connects with current approaches to clinical and experiential learning; in hindsight, we would have done so. It is clear to us that history continues to influence the paths of law schools old and new.[28]

Part 3.0

3.1 Findings

We have organized our findings into several broad categories. First, we analyze findings from our review of experiential and clinical programming, with brief examples of noteworthy models and approaches, as well as clinical and experiential education staffing decisions. Subsequently, several broad themes are delineated. The first, as mentioned earlier, is that definitional challenges remain. A shared understanding of the nature and roles of experiential pedagogies in supporting student learning remains elusive at most schools. Second, barriers to clinical and experiential education were significant including funding, staffing, governance, scope of service, and many others. Deans, professors and clinicians had some overlapping, but also some divergent, concerns in these areas. Finally, respondents also expressed diverse views about the role of clinical and experiential education in meeting the legal needs of the public.

---

[28] See *Arthurs Report*, *supra* note 13 (describes the development of law schools in Canadian common law schools). See also Annie Rochette, *Teaching and Learning in Canadian Legal Education: An Empirical Exploration* (DCL Thesis, McGill University Faculty of Law, 2011) [unpublished] (provides greater depth on the history of legal education in both Quebec and the rest of Canada, as well as pedagogy in Canadian law schools).

3.1.1 Types of Clinical and Experiential Learning Programs in Canada

Our search uncovered a diverse array of clinical and experiential learning programs in Canadian law schools, from the long-standing legal aid clinical model,[29] to business law,[30] environmental,[31] etc. Many law schools have further established innovative clinical offerings that are unique to their schools, from the long-standing Prison Law Clinic at Queen's University,[32] to the Global Health Law Clinic at the University of Ottawa[33] and the newest Rise Women's Legal Centre in collaboration with LEAF and the University of British Columbia.[34] Publicly funded entities and law foundations remain a significant source of external funding for clinics, particularly in Ontario. Legal Aid Ontario remains the single largest funder of clinical programs in Canada. In fact, a province's decision to withdraw funding from clinical programming has had significant impacts on law schools in Manitoba, Saskatchewan and British Columbia.[35] Hence, Legal Aid Ontario's funding decisions have a major impact on clinical program delivery in Ontario. However, law schools are diversifying their funding sources and professors

---

29 For example: Legal Information Services (Thompson Rivers University), Law Centre Clinic (University of Victoria), Lakehead Legal Services (Lakehead University), Community Legal Services (Western University), Downtown Legal Services (University of Toronto), and Dalhousie Legal Aid Services (Dalhousie University). A current list of all programs is on file with authors.

30 There are business law clinics at the University of Victoria, University of British Columbia, University of Calgary, University of Manitoba, University of Windsor, Western University, Osgoode Hall Law School, University of Toronto, Queen's University and University of Ottawa.

31 There are environmental law clinics at the University of Victoria, University of Calgary, University of Windsor, Osgoode Hall Law School, University of Ottawa and Dalhousie University.

32 See "Queen's Prison Law Clinic", *Queen's Law Clinics*, online: <queenslawclinics.ca/prison/>.

33 See Faculty of Law—Common Law Section, "Global Health Law Clinic" (23 June 2015), *uOttawa*, online: <commonlaw.uottawa.ca/en/news/global-health-law-clinic>.

34 See "Rise Women's Legal Centre is Open Today!" (24 May 2016), *West Coast LEAF*, online: <www.westcoastleaf.org/2016/05/24/rise-womens-legal-centre-open-today/> [LEAF].

35 See Deana Driver, "Manitoba Bar Angered at Cutbacks in Legal Aid Funding", *The Lawyers Weekly* (14 February 2003); Canadian Centre for Policy Alternatives, *Getting the Balance Right: Saskatchewan Alternative Budget, 2006-07* (Regina: Saskatchewan Office of the Canadian Centre for Policy Alternatives, 2006) at 48–49, online: <www.policyalternatives.ca/sites/default/files/uploads/publications/Saskatchewan_Pubs/2006/SK_Alternative_Budget_06_Getting_the_Balance_Right.pdf>; Sunny Dhillon, "B.C. Lawyers Protest Lack of Funding for Legal Aid", *The Globe and Mail* (7 July 2014), online: <http://www.theglobeandmail.com/news/british-columbia/bc-lawyers-protest-lack-of-funding-for-legal-aid/article19501751/>. See also perspectives from deans later in this article.

continue to work in clinical settings as part of their course load or service assignments, or *pro bono*. To some extent, committed faculty who do not get academic credit for their clinical work are also contributing their services in lieu of clinic financing. Funding is discussed further below.

Law schools are also launching experiential education courses and programs, including a greater number of externships (placements external to the law school with pedagogical and sometimes administrative support from the law school). Osgoode Hall is partnering with a variety of groups including the Human Rights Legal Support Centre, ARCH Disability Law Centre, and Defence for the Wrongly Convicted; the University of Toronto has long-standing placements with the Aboriginal Legal Services of Toronto, Advocates for Injured Workers, and the Barbra Schlifer Commemorative Clinic; and Dalhousie University has developed an extensive Health Law network of health authorities, health centres, and legislative branches of government that accept for-credit student placements.

Professors are also experimenting (with and without institutional support) with community-engaged models of community education. Professor Sarah Buhler of the University of Saskatchewan holds classes with members of local Indigenous communities, as well as law students in traditional classroom settings and in "non-traditional" environments such as prisons.[36] Professor Deborah Curran at the University of Victoria has developed a Field Course in Environmental Law and Sustainability where students are challenged to apply the laws of Aboriginal rights and title in the context of the land and communities of the British Columbian Central Coast—in particular, assessing the impact of provincial energy law and policy on remote communities and their environment.[37] In many law schools across Canada, professors are providing students with many opportunities to deeply engage with their broader communities, connecting them with local and international advocacy groups. Given the diversity of programming, it is clear that "innovation" is occurring in Canadian law schools.

A clinical placement is not mandatory at any common law school in Canada, although the University of Manitoba, the University of Calgary and Osgoode Hall have mandatory experiential programming. Osgoode Hall mandates that students complete a Public Interest placement and an experiential education component (a "praxicum") during the course of the law degree. The University of Calgary and the University of Manitoba

---

36 See Buhler, "Wahkohtowin", *supra* note 17.

37 See "Law 384 Field Course in Environmental Law and Sustainability", *University of Victoria Law*, online: <web.uvic.ca/calendar2014/CDs/LAW/384.html> (provides a detailed description of the field course).

require their students to complete experiential components in particular sequencing, for example, completing a mandatory Negotiations course in second year (Manitoba) or mandatory participation in a Negotiations (second year) and Trust Advocacy (third year) three-week intensive course (Calgary).

Staffing in clinical programs varies widely from full-time, tenured faculty to full-time, securely employed directors, lawyers, social workers and community legal workers to volunteer and precariously employed staff members. Staff lawyers are a mix of contract, permanent and *per diem*. A few clinical programs continue to operate using primarily student volunteers.

Experiential education programs are taught by a mix of faculty and sessionals. An initial calculation of the clinical and experiential learning programs in Canadian law schools shows that approximately 40% of the courses are taught by academics (defined as someone who is an assistant, associate, full or emerita professor) and 60% of the courses are taught by non-academics (defined as an adjunct professor, sessional lecturer, legal practitioner, or other legal or social work professional). However, there are large discrepancies between the law schools. Most have a fairly equal mix, but two law schools had a 1:10 ratio of faculty to sessionals and another had a 5:1 ratio of faculty to sessional instruction.

3.1.2 Getting on the Same Page: Definitional Challenges

In the online and in-person interview questionnaires, respondents were first asked to describe their understanding of clinical legal education, experiential learning and experiential education. Deans were also asked whether their faculty had a shared vision or definition of these terms. With one notable exception, most deans acknowledged the lack of shared definitions of these terms amongst faculty, and we further noted the diverse levels of familiarity in each faculty. However, many deans reported being in the midst of efforts to reform the curriculum, with one major focus being experiential and clinical learning. They expect that the outcome of these discussions will be clearer visions of the pedagogical and practical goals of experiential education in their faculties. All deans considered clinical legal education a subset of experiential learning, but few differentiated between experiential learning and the more pedagogically integrated term, "experiential education", which includes the cycle of learning, doing, reflecting, and adapting.

Most professors and instructors also understood clinical legal education to be a subset of experiential education. Most located the difference between clinical and experiential as working with "real" rather than "simulated" clients. A few professors/instructors engaged with the concept of clinical

and experiential education as opportunities to engage critically, reflect, and develop professional identity. There was limited discussion about social justice within clinical legal education, although for some respondents it was central. A very small number of professors were concerned that experiential approaches tended to be atheoretical and uncritical, and therefore not useful. Others were concerned that the discussion of "practice readiness … takes time away from doctrinal instruction and that can be a problem for student learning,"[38] implying that traditional methods of teaching must remain paramount in a JD program and that clinical and experiential approaches are, by their nature, at odds with doctrinal courses.

In contrast, clinicians tended to have quite sophisticated definitions of clinical legal education, experiential education and experiential learning. For example, a short excerpt from one clinician's definition was:

> … the differences between experiential legal education and clinical legal education may be subtle, but there are important distinctions. Experiential learning defines an overarching process by which learners engage in an experience and have an opportunity to reflect and think about that experience. It can happen in the classroom as well as in various 'real life' type of environments or settings. Experiential legal education is the ultimate example of 'showing not telling' students how the law or a concept within the law works 'on the ground'. And, while it does not necessarily involve leaving the law school or the classroom, it does involve learners engaging in the 4-step experiential learning process through self-directed and reciprocal learning.
>
> Clinical legal education, on the other hand, is a hands-on and much more self-directed learning process whereby students must not only engage in the experiential learning process, but must consider the actual consequences of their work (and their learning) within the broader reality of society. In clinics, and I would include some externships in this as well, students work for a client and have to negotiate what that means for themselves and for the clients they are assisting. In working for and with clients to accomplish specific results, students encounter myriad dilemmas and are challenged to consider all the potential outcomes for the client … Students also learn from their clients, thereby developing new perspectives on legal problems and life; they engage in value clarification as they clarify and assess their beliefs and values as they apply to legal practice and the role of law in its social context[.]

Again, all defined clinical as a subset of experiential. The majority of clinicians viewed theory and practice as integrated in the clinical environment. Interestingly, one noted that while clinics have social justice goals, experiential education does not.

---

38 Interview of Professor 1 (24 May 2016) in FluidSurvey Interview at question 7.

In short, many law schools continue to struggle with a pedagogical vision of clinical and experiential education. This series of questions demonstrates the diverse understanding of clinical and experiential education in Canadian law schools. However, the questions did not reveal the level of animosity toward clinical and experiential legal education reflected in the early legal education literature. This may be due to the group of respondents selected; however, even deans, who have an overall understanding of the faculty, did not report widespread negativity regarding clinical and experiential legal education.

3.1.3 Clinical and Experiential Pedagogies: Practice Readiness, or Something More?

Respondents also had diverse views on the role of clinical legal education in supporting law students' learning. For the most part, deans focused on unique skills and attitudes imparted in experiential education. Many noted that students are able to understand the social context in which law operates and to be critical about the role of law in diverse contexts. Some deans described the role of clinical and legal education in "understanding legal needs in society," especially within marginalized populations, supporting students' understanding of how law is experienced, and increasing knowledge of policy advocacy. Some deans differentiated between the skills available in clinical rather than simulated contexts including: client management, interviewing, "professional skills", interpersonal skills, cultural competence and plain language communication. Some deans noted the "higher stakes" nature of clinical education contexts, which can lead to meaningful learning.

Both professors and clinicians were, overall, highly supportive of clinical and experiential legal education (perhaps unsurprising because of the respondent group selected). One respondent noted "it is critical in making what they learn in law school useful and relevant for their future work as legal professionals"[39] and another noted that "it should be mandatory in all years."[40] Both groups described experiential education as allowing students to "learn better". For the respondents, "learning better" meant that the quality of learning is superior to classes not taught experientially. Clinicians also noted the potential benefit of clinical legal education to support diverse student learning styles. Many respondents also noted that clinical and experiential education can encourage personal reflection, critical thinking, social awareness and professional identity development. One clinician also described the role of clinical legal education as "productive opportunities to advance social change."[41]

---

39 Interview of Professor 18 (24 May 2016) in FluidSurvey Interview at question 5.

40 Interview of Professor 4 (25 May 2016) in FluidSurvey Interview at question 5.

41 Interview of Clinician 5 (7 June 2016) in FluidSurvey Interview at question 2.

Although supportive, professors had several specific concerns with the role of clinical and experiential education in law. For example, respondents expressed some concern about the conflation of experiential legal education and "practice readiness". Another professor noted that lack of curricular integration can dilute the potential of experiential courses and clinical placements. As a clinician observed:

> There continues to be a tension, I believe, with respect to law as a strictly theoretical pursuit and the "skills building" or technical component that experiential learning brings to legal education. Most of our faculty seem open to experiential learning and see value in bringing theory to life. However, I sense that even supportive faculty would prefer experiential learning to remain secondary and even peripheral to more traditional academic inquiry …[42]

3.1.4 Current States of Clinical and Experiential Learning

Respondents were asked to express their views about the state of clinical and experiential learning at their law schools. Unsurprisingly, given their roles, many deans described their programs in positive terms ranging from "robust" to "full flowering". Some were generally positive but somewhat guarded in their descriptions: "overall good", "developing", and "works but could be better". However, none considered their programs perfect and all had goals to improve their programs. Most respondents described high student demand for increased experiential opportunities, although a few struggled with finding the right mix of credit allotment and student interest and capacity.

Some respondents from all three groups described the tendency for clinical and experiential education to arise with little coherence with the rest of the curriculum. Historically, clinical programs arose due to student demand, individual faculty initiative, and occasionally from community need. The vast majority of programs arose in relatively ad hoc style outside any particular curricular process, and this trend appears to be continuing at most schools. Several respondents were concerned that the "trending" nature of clinical learning tended to create programs that were not sustainable. Deans also described challenges with sustaining programs.[43] Many schools had one or few relatively long-standing clinical programs but had challenges creating and sustaining others. Few schools described having "common declaration(s) of goals" regarding experiential and clinical learning that served to focus the creation and maintenance of these programs.[44]

---

42 Interview of Clinician 2 (24 May 2016) in FluidSurvey Interview at question 4.

43 Resources were a significant concern, described more fully below.

44 Interview of Dean 1 (25 May 2016) in a personal interview at question 2. An exception to this is described below.

Clinicians raised several unique concerns. First, they were concerned that a rush to new programming would eclipse the growing needs of their own programs. They also described a lack of understanding among and between deans, associate deans, clinicians and professors, noting the lack of a shared vision regarding the role of clinical education in the overall mission of legal education. Some clinicians were clearly struggling with meeting the daily needs of their organization and maintaining capacity for the work. As one clinician wrote, "every day is a different uphill battle."[45]

3.1.5 Barriers

When asked about barriers to creating and maintaining clinical and experiential education, respondents echoed many of the same challenges described in early clinical legal education literature. All deans noted that financial resources were a great challenge in developing, but particularly in maintaining, clinical programs. This was particularly noteworthy because of the diversity of financial milieus occupied by law schools: some institutions had no direct government funding, and tuitions vary greatly among Canadian law schools because of provincial limitations on levels permitted and differing approaches to access. The issue of resources has been a dominant theme in both Canadian and American literature for decades, although the claim that clinics are automatically more expensive to maintain has been disputed.[46] For deans, however, clinics—and even simulations—are viewed as resource-intensive. One dean described experiences decades earlier: "There was a kind of fad for [clinical opportunities] in the 1970s when I was in law school. We had then a clinical course, which was attached to the [clinic] in fact. Eventually, the resource issues defeated us…"[47]

Deans noted specific challenges with securing endowed or multi-year funding for clinics. For deans, clinics create long-term costs—many of which are not included in universities' base budgets. Therefore, deans must seek clinical funding on an ongoing basis, often annually. Most clinic funds are not endowed, and donations often go to named student scholarship and bursary programs or other one-time costs more appealing to many donors. Even when clinics are funded through relatively solid government funding, there are ongoing concerns regarding the variances of government funding and its continuing sustainability.

---

45 Interview of Clinician 11 (11 May 2016) in FluidSurvey Interview at question 3.

46 Significant debate remains to be had about the actual costs of clinical and experiential legal education. Who funds the staff, how credit hours are allocated, the intensive nature of the experience, and so on, impact the actual costs of the program. See James C Hathaway, "Clinical Legal Education" (1987) 25:2 Osgoode Hall LJ 239 at 242 [Hathaway]. For an American example, see Robert R Kuehn, "Pricing Clinical Legal Education" (2014) 92 Denv UL Rev 1.

47 Interview of Dean 5 (25 May 2016) in a personal interview at question 8.

At the same time, every dean but one (who had recently completed a major expansion) wanted to expand their clinical and experiential offerings; however, most had mixed visions and some confusion about how to move forward. Many deans were concerned about pedagogical components of clinical and experiential education in the overall mission of legal education. While some of the questions (such as: what is the pedagogical role of simulation versus more high-stakes client work?; how can we consistently incorporate a rigorous, theoretically-informed, academic element in both clinics and experiential education?; and how can we hire in creative ways to incorporate theory and practice?) are echoed in the literature,[48] other questions raised by deans are quite detailed and reflect greater sophistication (such as: how can we honour the needs and perspectives of community?; and how can we better meet the needs of students with disabilities in our clinical placements?).

The sheer complexity of operating programs, particularly clinical programs with live clients, was also a challenge for deans. The many "moving parts" of clinics—governance, course approvals, faculty/clinician/staff relationships, division of responsibilities, meeting student expectations, understanding and meeting community needs, student practice requirements and ensuring both high quality learning and community service—were all mentioned as both important and challenging.

Uncertainty regarding regulation from law societies, governments and within universities were of significant concern to deans. At the time of these interviews, the Law Society of Upper Canada had recently proposed, and later withdrew, a proposal that would have significantly impacted clinical legal education in Ontario.[49] This proposal was raised by deans across the country as emblematic of challenges ahead. Along with concerns regarding law societies' impact on legal education were existing and potential restrictions on student practice, which varies across the country. For example, in British Columbia, "the largest number of temporarily articled students[50]

---

48 See Rose Voyvodic, "'Considerable Promise and Troublesome Aspects': Theory and Methodology of Clinical Legal Education" (2001) 20 Windsor YB Access Just 111 (reflects on the *Arthurs Report* 20 years after its publication; provides a thorough rationale of how and why "theory matters to clinical legal education" at 114–25; and notes "the prediction that clinical legal education would achieve 'mainstream' acceptance in legal education generally is largely inaccurate" at 115).

49 Professional Development & Competence Committee, *Report to Convocation, April 28, 2016* (Toronto: Law Society of Upper Canada, 2016).

50 In British Columbia, clinic students are required to obtain temporary articles from the Law Society of British Columbia and are subject to its Code of Professional Conduct and well as the provincial Legal Profession Act. For more information, see "Information: Temporary Articles", *The Law Society of British Columbia*, online: <www.lawsociety.bc.ca/docs/forms/MS-admissions/art-temp-info.pdf>.

that [the Law Society of British Columbia] will allow a lawyer to supervise is five."[51] These regulatory concerns were often primary considerations in how clinics would be managed, or whether they could open at all. In the British Columbian example, the student supervision requirement made opening and maintaining a clinic financially challenging.

Universities can also be slow-moving, and the increasing regulation of universities requires additional steps to secure approval—particularly in comparison with the early days of clinical and experiential legal education. As one dean stated, "bureaucracy eats innovation for lunch."[52]

Notably, faculty resistance was not mentioned by deans as a significant factor in preventing change. Only one law school administrator continually emphasized that law school is "an academic institution, not a vocational training ground,"[53] seeming to imply that increasing clinical and experiential education opportunities could threaten the academic nature of law school. Indeed, all groups noted that there are a few professors who remain resistant to clinical and experiential learning, occasionally for pedagogical reasons, but more often because of historical inertia, or "this is how we have always done things". However, these professors were described as outliers. As one dean put it, most of the self-identified outliers arrived "at a different time and with a different set of expectations"[54] and thus do not feel engaged in the movement towards expanding and engaging in experiential learning. Again, resistance to clinical and experiential educational programing appears to have given way to practical concerns. The question is less *whether* law schools engage, but *how.*

Barriers mentioned by professors and instructors were quite different. This group was primarily concerned with the time and effort involved in creating and maintaining experiential programming. Many concerns were pedagogical in nature, including creating high-quality materials, giving good feedback, grading and evaluating meaningfully and thoroughly, and having appropriate physical space in which to teach experientially. One respondent noted that "there is always a tension between coverage of a topic and experiential experiences where the topic covered often arises randomly and with different coverage for each student. This kind of teaching tends to take more time and often more marking is involved than in traditional lecture style formats."[55] Another noted difficulty "reconciling theoretical pedagogical aspirations with pragmatic real world outcomes."[56]

---

51 Interview of Dean 8 (20 June 2016) in a personal interview at question 5.

52 Interview of Dean 11 (10 May 2016) in a personal interview at question 9.

53 Interview of Dean 6 (14 June 2016) in a personal interview at question 2.

54 Interview of Dean 3 (20 May 2016) in a personal interview at question 3.

55 Interview of Professor 28 (10 May 2016) in FluidSurvey Interview at question 6.

56 Interview of Professor 6 (6 June 2016) in FluidSurvey Interview at question 6.

Other instructors reflected on challenges in moving out of their comfort zone to teach experientially. They described clinical and experiential education as potentially risky, involving more student engagement and potentially pushback. One respondent described these methods of teaching as "emotionally draining."[57] Other respondents were concerned about the role of students in the community, in particular the difficulty of knowing whether students are actually giving value. Resources were also mentioned as a challenge by some respondents. As one noted, the faculty is "highly supportive in principle, fairly supportive in practice, but there is a substantive gap between committing to experiential education as a goal and backing it up with the material and ideational resources to make it a reality."[58] Another wrote that "while my institution is very supportive of experiential education in principle, however, I am not convinced that we provide adequate administrative and financial support."[59]

It is important to note that the vast majority of respondents *choose* to teach experientially or clinically. Most were not hired based on their expertise or desire to teach in this way. Those who teach experientially and clinically appear to do so despite the challenges.

Similar to deans, clinicians mentioned resources as their number one challenge. For clinicians, resources generally meant money, including staffing, and time. Clinicians noted difficulty recruiting and retaining staff and managing the high volume of clients. "Balancing the realities of the practice of law with the, at times, idealistic theory of law"[60] was also noted as a challenge, along with concerns about staff burnout.

As a whole, clinicians did not seem certain that their faculty was supportive of their work. Their views of faculty members and leadership were often negative, bordering at times on hostile. One wrote that:

> [t]he faculty is tolerant of clinical legal education, in theory, as long as they don't have to do it, and as long as the credit weight does not encroach on what they perceive as "important stuff". They always worry that it is not "rigorous" enough, and that it smells too much like "practice". As for experiential learning, they all feel that they incorporate it into every class they teach, no matter which it is. No one is too sure what experiential education is, so they all say they do it. [61]

---

57 Interview of Professor 27 (10 May 2016) in FluidSurvey Interview at question 6.
58 Interview of Professor 17 (24 May 2016) in FluidSurvey Interview at question 4.
59 Interview of Professor 15 (16 May 2016) in FluidSurvey Interview at question 4.
60 Interview of Clinician 8 (6 June 2016) in FluidSurvey Interview at question 6.
61 Interview of Clinician 9 (9 June 2016) in FluidSurvey Interview at question 4.

Another respondent described their faculty's approach to clinical and experiential education as "an add on, not a revolution,"[62] while another simply noted that their faculty is "not supportive of the pedagogical part. At all."[63] However, clinicians noted that newer faculty members tended to be more familiar with and supportive of clinical and experiential legal education, whether or not they were hired with doctoral degrees.

These comments are indicative of what is perhaps an inevitable result of the separation of clinics from the so-called "mainstream" curriculum. For example, in 1987, Professor James C. Hathaway wrote that "[c]linical education is largely viewed as a 'perk,' a somewhat exotic adjunct to the range of 'hard law' courses taught in accordance with more traditional methodologies."[64] Many clinicians are not voting members of their school's faculty or departmental councils. Pay and benefit disparities (sometimes significant) remain between professors, instructors and clinicians. From the interview data, it appears that clinicians' participation in the decision-making and discussion avenues of the law school is limited or non-existent. In such an environment, sentiments such as "practitioners 'don't know how to teach'"[65] and "professors have 'never held a real job'"[66] are explainable.

Lack of curricular integration between clinical and experiential programs and the rest of the curriculum, or even basic mutual understanding, seems elusive. All law schools but one reported challenges in integrating their programs in a comprehensive way.

Unique to clinicians were their concerns about the social, political and legal environments that affect their work. Clinicians were concerned about the viability of the clinics so as not to be "vulnerable to the shifts of political will and government funding."[67] This concern amplified the important role of clinics in connecting schools with communities, and also shed light onto the quite different focus of clinics (particularly externally funded clinics).

3.1.6 Impact of Clinics on Access to Justice

Through their clinical programs, law schools have been noted as potential avenues to address various "access to justice gaps" in the Canadian legal system, including the use and promotion of a *pro bono* model of service

62 Interview of Clinician 2 (24 May 2016) in FluidSurvey Interview at question 4.
63 Interview of Clinician 4 (6 June 2016) in FluidSurvey Interview at question 4.
64 Hathaway, *supra* note 46 at 240.
65 Interview of Professor 13 (13 May 2016) in FluidSurvey Interview at question 6.
66 Interview of Professor 6 (6 June 2016) in FluidSurvey Interview at question 6.
67 Interview of Clinician 2 (24 May 2016) in FluidSurvey Interview at question 9.

delivery.[68] From the law school deans interviewed, this view was met with considerable skepticism. Deans were aware that their clinics provided some measure of support to community members, but they were also circumspect about law schools' ability to solve, or even make significant inroads, into access to justice-related problems. One dean stated, "it can make a contribution, but it is quite important that we not suggest that law students can solve this problem."[69] Another dean noted, "[o]ne of the errors that the Federation and LSUC seem to be making is to think that somehow you can shortcut the learning process, partly to divest the legal process from mentoring young lawyers. We have to regard it primarily as an educational process and not as a service."[70] A handful of deans were of the view that the role of clinical legal education programs was to improve access to justice, and that their clinical and experiential offerings were a substantial contribution to addressing access to justice.[71]

Clinicians, however, were more likely to report meeting significant access to justice needs in the community. One clinician wrote that "[access to justice] is the role. It is essential. The organizations depend on law students in order to operate."[72] Another nuanced response pointed to the role of clinical legal education in teaching about the operation of law and social change: "an essential element of clinical legal education is to teach students that the legal system provides productive opportunities to advance social change through considering how the law functions within society."[73]

Given this juxtaposition, it is clear that most deans view legal education as primarily about student learning, not community service. As one dean noted:

---

[68] Law Commission of Ontario, *Increasing Access to Family Justice Through Comprehensive Entry Points and Inclusivity* (Toronto: Law Commission of Ontario, 2013), online: <www.lco-cdo.org/wp-content/uploads/2013/06/family-law-reform-final-report.pdf>; Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil and Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, 2013); Nikki Gershbain, "Law Students Can Help Solve Canada's Access-To-Justice Crisis", *Toronto Star* (9 Dec 2013), online: <www.thestar.com>; CBA Access to Justice Committee, *Reaching Equal Justice Report: An Invitation to Envision and Act* (Ottawa: Canadian Bar Association, 2013), online: <http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf>.

[69] Interview of Dean 8 (20 June 2016) in a personal interview at question 4.

[70] Interview of Dean 5 (25 May 2016) in a personal interview at question 5.

[71] Interview of Dean 4 (18 May 2016) in a personal interview at question 4; Interview of Dean 2 (20 June 2016) in a personal interview at question 4; Interview of Dean 11 (10 May 2016) in a personal interview at question 5; Interview of Dean 12 (2 June 2016) in a personal interview at question 4.

[72] Interview of Clinician 9 (9 June 2016) in FluidSurvey Interview at question 9.

[73] Interview of Clinician 5 (7 June 2016) in FluidSurvey Interview at question 2.

> It's not why we do it. In other words, the law school has to be driven by a set of educational goals. It has to be the best way to learn. But in the context of being the best way to learn, which I certainly believe it is, it has all sorts of ancillary and important benefits as a reservoir of capacity for access to justice. So those are all sorts of benefits that flow from it, but they are not reasons to do it.[74]

The degree to which experiential education is "course focused", "community focused" or "work focused" is a useful way to consider the primary goals of a program, and perhaps a source of disagreement among law schools, regulators, and other groups.[75] The question of whether law schools are responsible for access to justice (and, if so, what methods are possible and appropriate) is an interesting and persistent one that will undoubtedly evolve over the next several years.[76]

Part 4.0

4.1 Promising Practices

Throughout our interviews, it was clear that many respondents were considering nuanced aspects of clinical and experiential education, and many had experimented with what could be called "innovative" practices. We are hesitant to offer definitive recommendations for all law schools, as we quickly realized that many of the considerations in designing and offering experiential programs are contingent on factors including: the communities in which law schools are located, government and law foundation funding (or lack of funding), size of the student body, proximity to the client communities, demographics, and history. Nonetheless, participants raised many ideas, such as integrating clinic with the curriculum, moving useful discussion forward, and encouraging high-quality programming, which are useful for consideration across the diverse Canadian legal education landscape. The authors hope to follow this article with more fulsome description and explanation of promising practices and recommendations, with further research on international perspectives.

4.1.1 Curriculum Reform: Interdisciplinary Perspectives

At the University of Calgary Faculty of Law, the curriculum committee invited thought leaders from education and medicine to give interdisciplinary

---

74 Interview of Dean 3 (20 May 2016) in a personal interview at question 5.

75 "Common Language for Experiential Learning" (29 August 2015), *York University*, online: <avptl.info.yorku.ca/files/2015/09/2015-08-28-Common-Language-for-EE-Final-Aug-2015.pdf>.

76 When they founded Antioch Law School in the 1970s, Edgar and Jean Camper Cahn noted in a personal conversation with one of the co-authors in Washington, DC, 1997, that their clinical law school was "unequivocally committed" to both legal education and access to justice.

perspectives on curriculum design and experiential approaches to learning. A University of Calgary expert in pedagogy functioned to dispel common myths around educational best practices and point to evidence and literature to inform curricular decision-making.[77] Input from medicine gave insight into how another professional field teaches experientially. Faculties can resist inward-looking and self-perpetuating tendencies by inviting outside perspectives. Additionally, more faculties seem to be taking up Hathaway's suggestion that evaluations of clinical learning "should be part of, rather than auxiliary to, a process of generalized curricular review designed to implement faculty-wide teaching methodologies that are truly responsive to educational goals."[78] Some reported inviting clinicians, adjuncts, sessionals and others not typically involved in curricular review to participate more fully in curriculum design and delivery. As noted earlier, most faculties reported curriculum-reform efforts are currently in progress.

4.1.2 Tied Funding/"A Carrot Not a Stick"

Our interviews revealed that many (and perhaps most) professors are engaging in experiential education because they want to and they believe in its value. While mandatory experiential education can indeed accelerate the creation of new opportunities, it appears that professors are seeking both curricular leadership and funding to create and maintain experiential programs. The increase in clinical and experiential learning at law schools in which funds were made available for this purpose has had an immediate effect on the number and variety of placements. If we can draw conclusions from these models, simply providing more funding will result in more clinical and experiential learning opportunities.

Short of moving funds to base budgets for this purpose, several schools mentioned useful approaches to supporting experiential education. At the Allard School of Law at the University of British Columbia, a major donation included funding tied to experiential learning. Thus, funding is available annually for experiential projects. Like many schools, the University of Windsor made "strategic priority funds" available by application—many of which went to clinical and experiential programming across the university. Other schools (and governments) have utilized grants allocated to experiential activities, and in Ontario, the Law Foundation of Ontario has moved toward funding projects that emphasize clinical, community-based and/or experiential focuses.[79]

---

77 Interview of Dean 11 (10 May 2016) in a personal interview at question 3.

78 Hathaway, *supra* note 46 at 245.

79 See "Open Calls For Funding", *The Law Foundation of Ontario*, online: <www.lawfoundation.on.ca/open-calls-for-funding/> (information on the Law Foundation of Ontario's granting programs).

4.1.3 Faculty and Staff Hiring

More law schools are hiring for experiential and clinical expertise, such as constructing positions specifically designated in these areas, or in "regular" positions where practice experience is preferred and seen as an important asset. Some schools are creatively tying tenure and/or permanence to a diverse set of criteria that emphasize experiential teaching and learning practices. The Allard School of Law, for example, recently posted for positions that included "teaching milestones" as a criterion to achieve tenure.[80] Other schools have begun including interview questions and/or criteria that speak to candidates' knowledge of and interest for experiential learning. Some schools (including Osgoode, Saskatchewan and Windsor) have hired positions specifically for clinical and experiential education. These position descriptions are diverse, but generally involve specific teaching, support and/or administrative duties with the law school's clinics or other experiential opportunities. Questions remain as to the best way to structure faculty positions focused on experiential and clinical learning. There is additional research to be done in this area.

4.1.4 Faculty and Staff Integration and Communication

Good will, but lack of mutual understanding between and among clinicians, professors and deans, was a clear theme in this research. One dean noted that "within the faculty, there will be widely varying degrees of knowledge about what the clinic actually does, but everyone takes a lot of pride in it."[81] It seems opportunities to engage with the activities, goals, methodologies, and priorities amongst a diverse teaching staff would be useful. Some respondents reported success by including professors on clinic boards of directors or other governance or advisory bodies, sometimes in *ex officio* roles. Another school reported success in employing a teaching model in which one professor and one practitioner co-teach with the hopes of better integrating theory and practice. The latter project is still in its initial stages with no publicly available evaluation. Nonetheless, good will is a significant improvement on the dismissal and hostility of earlier decades. Also of note is the work of the ACCLE (Association for Canadian Clinical Legal Education), which organizes an annual conference that serves to connect and educate professors and clinicians, and also provides a venue for country-wide organizing on issues of importance to this group. Organization on a national level appears to be strengthening knowledge and awareness of clinical and experiential learning.[82]

---

80 "Instructor I Appointments", *Peter A. Allard School of Law*, online: <www.allard.ubc.ca/sites/www.allard.ubc.ca/files/uploads/careers/2016_allard_instructor_postings_final.pdf>.

81 Interview of Dean 1 (25 May 2016) in a personal interview at question 3.

82 See *ACCLE*, online: <accle.ca>.

4.1.5 Curricular Coherence

One of the most significant struggles mentioned by all groups, and echoed in the Canadian literature, is the role of interfacing theory and practice, and the relationship between doctrinal and experiential criteria. Osgoode Hall has developed a three-pronged approach to its experiential "praxicum" requirements: exposure to relevant law and context, substantial experiential engagement, and reflective practice.[83] This approach draws on the literature on pedagogy including the work of John Dewey, David Kolb and Donald Shön. Given that this research is now decades old, it is curious that the problem of curricular integration has remained so stubborn at many schools. Again, this problem perhaps deserves its own independent investigation.

4.1.6 Community Context and Partnerships

Many schools have had success with unique and diverse community partnerships in traditionally legal and nontraditional environments. Schools are experimenting with a variety of placement models including externships, or, as Osgoode Hall terms, a "praxicum", which emphasizes the theory-practice integration. Schools are also working on projects responsive to their particular community environments. CLASSIC (Community Legal Assistance Services for Saskatoon Inner City Inc.) partners with the University of Saskatchewan in working with individuals and communities experiencing low income, with particular focus on Indigenous peoples.[84] LAW (Legal Assistance of Windsor, partnered with the University of Windsor Faculty of Law), located near the Canada-US border, works with victims of human trafficking who often cross the International Boundary, as well as migrant workers living in Windsor-Essex.[85] The Indigenous Legal Clinic at the Allard School of Law, University of British Columbia, provides free legal services to persons identifying as Indigenous in the Downtown Eastside of Vancouver.[86] The new Rise Women's Legal Centre, a partnership between the Allard School of Law and West Coast LEAF, focuses on providing women with legal advice in family law and other related areas—an area in which significant need has arisen with cutbacks in legal aid and increasing understanding of the impacts of the operation of law on women's lives.[87] Placements with external organizations, like those with international non-governmental organizations, are occurring at law schools across the country. These examples, and many other placement opportunities, arise in

---

83 Interview of Dean 3 (20 May 2016) in a personal interview at question 1.

84 See *CLASSIC*, online: <www.classiclaw.ca>.

85 See *Legal Assistance of Windsor*, online: <legalassistanceofwindsor.com>; "Legal Assistance of Windsor", *Windsor Law*, online: <www.uwindsor.ca/law/legalassistance>.

86 See "Indigenous Community Legal Clinic", *Peter A. Allard School of Law*, online: <www.allard.ubc.ca/iclc/indigenous-community-legal-clinic>.

87 *LEAF*, *supra* note 34.

response to a combination of expressed community need, faculty expertise, and student interest.

4.1.7 Research: Pedagogy and Best Practice

For those schools in earlier stages of clinical and experiential education development, there was great concern about "doing it right" and the mistakes of other new programs. Deans were particularly concerned about establishing sustainable programs, being responsive to and maintaining commitment to community, and properly integrating theory and practice. For these schools, we see great promise in their attempts to avoid past mistakes and develop new and meaningful clinical and experiential learning programs. Simply because a school has not developed a wide range of such programs does not preclude future excellence. However, finding a path toward meaningful decision-making in clinical and experiential program development appears to be an ongoing challenge for some schools.

4.1.8 Education on Pedagogy

Some schools offer programming for clinical, adjunct and/or full-time faculty on pedagogy. These educational initiatives support the understanding and integration of theory and practice, as well as high quality student learning methodologies. For example, the ACCLE provides an opportunity to engage in this way in its annual conferences, which are attended by clinicians, academics and students from across Canada. Additionally, some universities are also partnering with their respective Centre for Teaching and Learning to develop expertise in clinical and experiential education pedagogy. However, it was rare that clinicians reported opportunities to engage in this programming. The recommendation from Hathaway remains relevant: "There is therefore an urgent need for clinicians to be afforded the opportunity to pull away from operational concerns, to reflect on the congruence of goals and techniques, and to rationalize the experiential component to accord with educational imperatives."[88]

4.1.9 Leadership

Schools that have managed to successfully maintain and grow their experiential programs appear to have greatly benefitted from supportive leadership, especially from the deans' office. There were clear parallels between schools with growing clinical and experiential programs and the

[88] Hathaway, *supra* note 46 at 244. See "Community Leadership in Justice Fellowships", *The Law Foundation of Ontario*, online: <www.lawfoundation.on.ca/what-we-do/fellowships/cljf/> (Community Leadership in Justice Fellowships funded by the Law Foundation of Ontario, one of the aims of which was to "strengthen the bond between academia and public interest organizations").

dean's familiarity with and commitment to these forms of learning. There are also clear lines between schools that have hired specifically for experiential and clinical learning in the professoriate and meaningfully integrated, recognized programming.

Conclusion

In this article, our aim is to set out our initial understanding of the data we have collected, to put the data in comparative perspective, and to report on promising practices and observations. We continue to gather data on law schools in Quebec, which are raising unique questions about history, pedagogy, and relationships between law schools and the Barreau du Québec, as well as shared challenges concerning terminology and funding. This data has also raised additional questions for future research: What circumstances allow for clinical and experiential programs in Canada that are community integrated, pedagogically rigorous, and sustainable? What insight does literature from other jurisdictions tell us about developing clinical and experiential education? What insights do disciplines such as medicine, social work, or business have for experiential education growth and integration? How might mandatory education in pedagogy for faculty improve integrative programming?

The interview data gathered to date demonstrates the wide range of clinical and experiential education initiatives in law schools across Canada. Interviews also show significant progress on the legitimization of clinical legal education and experiential legal education; however, many of the same challenges facing law schools from the earliest days of clinical and experiential education remain. Experiential legal education has made greater inroads as part of the mainstream law curriculum and thus part of the work of adjuncts and professors. However, funding and curricular integration in particular remain problematic. There is much work yet to be done.