

SUPERVISION IN THE CLINIC SETTING: WHAT WE REALLY WANT STUDENTS TO LEARN

Douglas D. Ferguson, Western University, Canada

1. INTRODUCTION

Student supervision by clinicians is a constant for lawyers and staff in every aspect of clinic life. We want to ensure that students are effective in their work and learn best practices for their future careers. We also want to ensure that clients are well served by our students. My fellow Canadian colleague Neil Gold has written about the role of a clinic supervisor in this way:

The supervisor, as guide and role model, should seek to be: thoughtful; insightful; measured-to-person, need and context; learned; holistic; and above all, constructively helpful. The importance of the role of the clinic supervisor in explicating and supporting student learning cannot be understated. This interpretive and reflective modeling and methodology can contribute to students' lifelong habits of learning and problem solving. In engaging the whole student, her thoughts, feelings, hopes and fears, the supervisor simultaneously engages the already stimulated affect and intellect of the student in her quest to deliver signal service. In this model, the student's experiences as primary actor and her thinking and feeling about them before action, in action and upon reflection are the focal point for guided debriefings and interpretations by the supervisor and often by the student herself once she has been trained to reflect in and on action.¹

Douglas Ferguson is Director, Community Legal Services in the Faculty of Law, Western University London, Ontario, Canada. The author wishes to thank Brienna French for her assistance with research for this paper.

This paper focuses on certain key elements of student supervision in Community Legal Services at Western University in London, Canada. Our clinic offers a very broad range of legal services, ranging from criminal law to wills, and consumer law to housing, with 125-150 students taking part in 800-1,000 files per year.

Community Legal Services has a very broad range of practice:

- Criminal law
- Small Claims Court
- Landlord and tenant law
- Wills and powers of attorney
- Family law
- Mediation
- Immigration
- Employment and human rights
- Criminal injuries compensation
- University appeals
- Intellectual property

Western Law has three clinical courses: Litigation Practice, Criminal Law Advocacy, and CLS Internship. This paper will be referring to the materials for Litigation Practice, which is based on civil matters. In this course, students are expected to carry 3-5 active civil files, comprising 60% of their grade. They must also take part in a number of simulations worth 40% of their grade.

Our students handle all aspects of their files, including trials and hearings, even going so far as to draft challenges to criminal charges under the Canadian Charter of Rights and

¹ Neil Gold, "Clinic Is the Basis for a Complete Legal Education: Quality Assurance, Learning Outcomes and the Clinical Method" (2015) 22:1 Int'l J. Clinical Legal Educ. at 20-21.

Freedoms. They draft all pleadings and other documents, handle all meetings with the clients, and docketing their time. They handle duties that are often done by articling students or even junior lawyers.

As contemplated by Evans et al. in *Australian Clinical Legal Education: Designing and operating a best practice clinical program in an Australian law school*, our clinic gives students significant autonomy:

Clinical models involving provision of advice to clients require students to assume responsibility for their actions in a much more direct way than in other forms of legal education. In such programs, students are compelled to recognise that their actions will influence the wellbeing of others, namely their clients... This type of student development relies very heavily on supervision designed to support student autonomy.²

The first part of this paper will examine compliance with the supervision requirements of the profession's governing body. Clinic supervision in a clinic must start with compliance with the regulator. The supervision requirements of the Law Society of Ontario are set out to demonstrate the standards Community Legal Services must meet.

I will discuss our clinic's supervision strategies for:

- ensuring students are aware of their responsibilities and are focused on their file work.
- legal research and case theory;
- effective communication with clients and drafting pleadings;

² Evans et al., *Australian Clinical Legal Education: Designing and operating a best practice clinical program in an Australian law school* (Australia: ANU Press, 2017) at 141.

- trial and hearing processes and strategy;
- ethics and professional responsibility.

This paper will then discuss the classroom component consisting of lectures and simulation exercises where we deal with professional identity, ethical issues, sensitization to the lives of our clients, awareness of the importance of access to justice, and the capacity of legal processes.

I will discuss our online materials for the classroom, including our Caseworker Manual which provides guidance in substantive law, court/tribunal rules, and clinic policies and procedures.

2. COMPLIANCE

Supervision must at the outset be viewed through the lens of your jurisdiction's governing body. What the rules of your governing body or jurisdiction's statutes require for:

- The ability of law students to appear in the courts and handle legal work for clients; and
- The duties of lawyers to supervise students and/or non-lawyers in a law office or clinic setting.

In Ontario, the governing body is the Law Society of Ontario. Its *Rules of Professional Conduct*³ deal with supervision in R. 6.1:

³ Law Society of Ontario, Rules of Professional Conduct at <https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct>.

- 6.1-1 A lawyer shall in accordance with the by-laws
- (a) assume complete professional responsibility for their practice of law,
- and
- (b) shall directly supervise non-lawyers to whom particular tasks and functions are assigned.

Commentary

- [1] By-Law 7.1 governs the circumstances in which a lawyer may assign certain tasks and functions to a non-lawyer within a law practice. Where a non-lawyer is competent to do work under the supervision of a lawyer, a lawyer may assign work to the non-lawyer. The non-lawyer must be directly supervised by the lawyer. A lawyer is required to review the non-lawyer's work at frequent intervals to ensure its proper and timely completion.
- [1.1] A lawyer may permit a non-lawyer to perform tasks assigned and supervised by the lawyer as long as the lawyer maintains a direct relationship with the client or, if the lawyer is in a community legal clinic funded by Legal Aid Ontario, as long as the lawyer maintains a direct supervisory relationship with each client's case in accordance with the supervision requirements of Legal Aid Ontario and assumes full professional responsibility for the work.
- [2] A lawyer who practises alone or operates a branch or part-time office should ensure that all matters requiring a lawyer's professional skill and judgment are dealt with by a lawyer qualified to do the work and that legal advice is not given by unauthorized persons, whether in the lawyer's name or otherwise.

[5.1] A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, licensees, public officials, or with the public generally whether within or outside the offices of the law practice.

By-law 7.1⁴ of the Law Society of Ontario deals specifically with our responsibility for supervision of law students:

Assignment of tasks, functions: direct supervision required

- (3) A licensee shall assume complete professional responsibility for her or his practice of law or provision of legal services and shall directly supervise any Canadian law student, Ontario law student or Ontario paralegal student to whom the licensee assigns tasks and functions under this section.
- (4) Without limiting the generality of subsection (3),
- (a) the licensee shall assign only tasks and functions that the assignee is competent to perform;
 - (b) the licensee shall ensure that the assignee does not act without the licensee's instruction;
 - (c) the licensee shall give the assignee express authorization and instruction prior to permitting the assignee to act on behalf of a person in a proceeding before an adjudicative body;
 - (d) the licensee shall review the assignee's performance of the tasks and functions assigned to her or him at frequent intervals;
 - (e) the licensee shall ensure that the tasks and functions assigned to the assignee are performed properly and in a timely manner; and

⁴ Law Society of Ontario By-Laws, <https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/b/by-law-7.1-operational-obligations-01-25-18.pdf>.

(f) the licensee shall assume responsibility for all tasks and functions performed by the assignee, including all documents prepared by the assignee.

All of our supervisory practices are intended to comply with these Law Society rules.

Clinics should ensure that they comply with similar rules in their jurisdiction.

3. SUPERVISION STRATEGIES

(a) What We Want Students to Learn Through Supervision

Our clinic in effect operates as a law firm, with five “partners” and dozens of junior lawyers. Through their file assignments and interactions with the lawyers, students develop the practice skills they will need and will see the link between legal theory and practice. The clinic setting provides one of the three apprenticeships envisioned by the Carnegie Report:

Successful apprenticeship instills these habits of the practical mind as the learner sees expert judgment in action and is then coached through similar activities.⁵

(b) Training Sessions

Students taking a clinical course are provided with training in two settings. First, an in-class session where basic concepts are explained, and during duty hours in the first week or two of the course.

⁵ Sullivan, et al., *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass/Wiley, 2007) at 97.

The in-class session takes place during the first week of the course. It focuses on the following themes:

- The roles of lawyers, staff, and students
- The legal aid system in Ontario
- Legal research resources
- Our expectations of our student caseworkers
- Time management and balance
- Client relations, including reporting and returning messages
- Training for using Time Matters (by Lexis Nexis), our database and scheduling application
- Clinic policies and procedures
- Developing legal skills
- The nature of our client base
- Professionalism and confidentiality
- Client intakes
- File management
- Court appearances
- Caseworker manual

We recognize that this is a lot of information to digest in a short period of time. Each student is required to attend one duty hour per week (see below) in addition to file work and classroom time. During classes and duty hours more detail is provided and examples discussed with the students.

(c) Student Responsibilities

Our students are completely responsible for the conduct of a file, subject to the close supervision of a clinic lawyer. Their responsibilities include:

- Client meetings
- Correspondence
- Drafting pleadings
- Docketing and memos
- Legal research
- All court appearances including hearings and trials
- Keeping a file organized

(d) Legal Research and Theory of the Case

For all most files, students are expected to draft a research memo outlining the facts, the issues, and analysing the law as it applies to the facts. This research memo is crucial, as it provides the theory of the case: a roadmap that will guide the student and others working on a file.

We emphasize to students that the theory of the case will affect every aspect: pleadings, document disclosure, trial preparation, direct examination and cross-examination at trial, and closing arguments.

(e) Effective Communication and Writing

As our students are responsible for all correspondence, pleadings, and memos, we spend substantial time coaching them on their writing skills. One lecture during the course is devoted to writing.

For research memos and opinion letters, we provide templates with headings that students are expected to follow. This ensures students understand what is expected, and focuses them on the facts, issues, and legal analysis.

We place an emphasis on writing for your audience. When writing an opinion letter or other correspondence to a client, students are told to keep the “legalese” to a minimum, and write clearly and concisely so that clients will understand our advice.

When drafting a research memo, on the other hand, we tell students to assume they are drafting it for the eyes of a senior partner in a law firm. While this requires writing from more of a legal angle, we insist once again on conciseness and clarity. At times I find that students try to write in a complex or obscure manner in order to “sound like a lawyer,” but has the result of making issues less clear.

At times we find that some lawyers and paralegals attempt to take advantage of our students’ inexperience by intimidating them. We sit down with the student and explain the tactics of their opponent. We ensure that our response is firm yet civil and professional.

Many clients do not have English as their first language. If a student is not satisfied that a client fully understands what is said, we are able to provide a translator through the auspices of Legal Aid Ontario, our main funder. The translator can be available by phone or in person. As will be seen later, every document drafted by a student is reviewed and approved by a lawyer before it is sent.

(f) Trial and Hearing Preparation

Prior to a trial or hearing, we have what we call the 45-20-5 rule. A student is required to meet with the supervising lawyer on at least three occasions, 45 days, 20 days, and 5 days before the trial.

The initial meeting at 45 days is intended to outline what has to be completed for trial preparation. Has all disclosure been given or received? If we are the plaintiff, what is the cause of action? What do we have to prove, and how do we prove it? Do we have witness statements? Do pleadings need to be amended?

At this point we have the student start putting together their "trial book." The trial book will consist of the following:

- Pleadings
- Research memo
- Index of exhibits
- Witness statements/contact information
- Opening
- Direct and cross-examination questions
- Closing
- Chronology of the case (optional)

During the next few weeks, students are to identify the documents to be introduced as exhibits, draft their questions for the witnesses, and draft their openings and closings.

This is also the best time to make a formal offer to settle a civil case if one has not yet been made. In Canada, the opposing party is usually ordered to pay additional legal costs if, after judgment is rendered, the successful party does better than its offer.

At the 20 day meeting, the lawyer will review the drafts and the document list, and make suggestions for revision. Students will be told to arrange preparation meetings with their clients and any witnesses, and put together their document brief and their case brief.

At the 5-day meeting, the lawyer and caseworker will review the document brief. The brief is a bound volume with numbered tabs for each document. Normally the entire brief is introduced at trial as Exhibit 1, thus making the introduction of numerous exhibits unnecessary. We will cooperate if the opposing party wishes to do the same.

Similarly, the case brief contains any statutes or cases to be relied upon in final argument.

They are bound with numbered tabs, and the relevant portions highlighted for the judge.

At this point, final meetings with the client to review questions are arranged. Students are encouraged to attend at the court or tribunal with their colleagues on other cases so they know their way around and know what to expect.

(g) Ethics and Professional Responsibility

Ethics and professional responsibility issues arise regularly. To take two simple examples, can we call a client and leave a message on his/her home phone? How do we deal with self-represented litigants?

The basics of ethics and professional liability are discussed during training at the beginning of the term. During duty hours, and during individual meetings with lawyers, students take part in discussions about issues that arise in our clinic.

(h) Debriefing and Next Steps

Following the trial/hearing, the supervising lawyer will meet with the student to discuss what happened. What went right? What went wrong, and why? How could the student be better prepared? Was the theory of the case accurate? Could the client have been better prepared for their evidence?

We will also discuss any next steps. If we were successful, we discuss the process for collecting on a judgment. We also discuss the contents of the written report to the client.

(i) How Do We Track What Students Are Doing?

As part of our responsibilities to our clients, clinic lawyers must ensure that the students are working on the files in a timely way and following instructions from the lawyer, and ensure that students are following clinic policies and procedures. How can a clinic do that with dozens of students working on files at any given time?

The key is to have multiple methods of tracking at various points in the course of a term that lawyers can check regularly to ensure your students are doing quality work. Below are the methods we use.

1. **Supervising lawyers review all incoming and outgoing documents.** Any incoming document is initialled by the lawyer to signify it has been seen. The document is then scanned and the electronic copy is stored on Time Matters so it can be seen at any time from the lawyers' desk. The original is placed by the student in the file.

Outgoing documents such as correspondence and pleadings are submitted by the student to the supervising lawyer. The lawyer reviews it online, attaches a macro showing it has been approved, and the document then goes to staff for printing.

2. **Weekly file progress reports are reviewed by the lawyer supervising the file.**

Each student must submit a weekly report with a few sentences showing what has happened in the past week, and plans to push the file forward in the coming week. If it appears that a file is stalled, the lawyer can review the student's dockets, and contact the student if necessary.

3. **Students must docket their time as they would in a law firm.** Supervising lawyers can review the dockets for a particular file from their desk. In addition, I receive a monthly report from staff on the total hours docketed by each student. There is no particular docketing goal, as the activity on any given file may be different. If any students have unusually low docketing hours, we will investigate.

4. **Duty hours.** Students are required to attend one duty hour per week in the clinic. Attending are students, a supervising lawyer, some first year law students who are observers, and occasionally a member of the faculty. During the hour, some students will

take part in an intake interview with a new client, while the remaining students discuss issues with one of their files. All students are expected to take part in the discussions. This provides an opportunity to give supervising lawyers some time to deal with file issues.

5. **Regular meetings with supervising lawyers.** Students are expected to arrange a meeting with a supervising lawyer when an issue arises that they cannot resolve on their own.

6. **Use of technology.** Having network access along with a legal database application is essential for supervision. While we use Time Matters by Lexis Nexis, there are many other applications available, such as PC Law, Amicus Attorney, Clio, and others. Clio is a cloud-based application. Many applications are provided free to student clinics.

7. **Student Supervisors.** During each summer, we hire 10-12 students to handle all of our cases. During the academic year, these students become “supervisors.” Their role is to run a duty hour as well as act as a resource for their fellow students on questions about policies and procedures. They do not have a role in supervising the file work (which is the responsibility of the lawyer) but can let a lawyer know if a student is experiencing any problems.

8. **Clinic staff meetings.** Our lawyers and staff meet monthly, and discuss any problems with students following clinic policies and procedures.

9. **Future court appearances are documented.** If a court case is adjourned to another day (which is common for our criminal files), the student must fill out a form with the new date, which is added to the calendars of the student and the supervising lawyer.

10. **Using a “bring forward” (BF) or tickler system.** We enter limitation periods in our calendar system as soon as a file is opened. Students are urged to use Time Matters as a tickler system to track upcoming deadlines for individual files. This skill is essential to future success in private practice.

4. CLASSROOM COMPONENTS

(a) What We Want Students to Learn in the Classroom

Classroom time consists mainly of lectures followed by simulation exercises and discussions of professional responsibility problems. The lectures provide the theory or principles of the skills taught, which are then reinforced by the simulations and even more so in their file work.

(b) Lecture Topics

Our lecture topics include the following:

- Values and expectations
- Resolving professional responsibility issues
- Client interviews and counselling
- Research and writing
- Theory of the case

- Negotiation plans
- Pleadings
- Trial books
- Direct and cross-examination
- Openings and closings

(c) Simulations

During the course we have a number of simulations, all based on a fact situation appropriate for Small Claims Court. Students take part in a client interview, a negotiation, and a full trial. Actors portray the witnesses, and the students' performances are assessed by members of the private Bar. We use rubrics to provide a common basis for the assessments. Simulations comprise 40% of the final grade.

(d) Ethical Problems

During the course we provide the students with four ethical or professional responsibility problems. For example, what if the opposing lawyer appears to have a drinking problem? What if your client urges you to contact the other party directly? What constitutes a conflict of interest? These problems are discussed during class, and students are expected to refer to the Rules of Professional Conduct in providing their answers.

(e) Access to Justice

A constant theme during lectures or duty hours is access to justice. We want our students to understand the importance of the justice system to a healthy democracy, and to see the

obstacles encountered by low income Canadians. While the amounts involved are often low, their importance to our clients is huge.

For example, if a client is ordered evicted by the Landlord and Tenant Board, he/she could end up homeless. What is the impact on his/her children? What if the client suffers from mental illness?

We try to impart understanding of the impact of the justice system on our clients in the hope our students will carry this concern with them throughout their careers.

5. RESOURCES FOR STUDENTS

(a) *Online Materials*

The following materials are provided online for our students:

- Interview model
- Legal research model
- Opinion letter model
- Negotiation model
- Sample negotiation plan
- Sample video interview
- Professionalism/ethics case studies
- Powerpoints for lectures
- Trial simulation video
- Caseworker manual
- Fact situation documents, including pleadings, research memo, witness statements

(b) Caseworker Manual

Perhaps the most important resource for our students is our Caseworker Manual. It provides significant detail on how to handle a file in each area of law, as well as general information on our policies and procedures. Students are asked to consult the Caseworker Manual first before coming to see a lawyer with a question.

(c) Policies and Procedures

Our extensive policies and procedures are available on our network to all students. Their topics include file management, service of documents, rules for meeting with clients, and expense claims.

6. CONCLUSION

The supervision system at Community Legal Services has proven very effective over the years. The supervision strategies allow lawyers to provide the guidance and learning students need to represent real life clients. Our tracking system ensures that students are fulfilling their responsibilities and clients are protected.

Our classroom component gives students the theory and principles of the skills they are learning, while our online resources set out skill models, fact situations, and our caseworker manual.

Students are often able to settle cases, but if we go to trial, we win more often than we lose. Having a brief weekly progress report ensures that the students are accountable for moving a file along. We are able to check student dockets for any given file at any given time. Every incoming and outgoing document is reviewed by a lawyer.

In other words, our lawyers know their files and are giving our students the guidance and supervision they need. This is a win-win for our clients and our students. Our clients, who had nowhere to turn for help, receive top quality legal services. For our students, they learn the best practices for their future legal careers.

We regularly receive feedback from our graduates, who usually work at small to medium size firms. Many of them tell us that their clinical experience was the best part of law school, or how much their clinical experience helped their career. Here is a note from a Western Law graduate who sent me an email not long ago:

Today I am starting my new job as a litigator... in my hometown... and I just wanted to thank you for the experience I had at Community Legal Services. Taking [clinical courses] was by far the best experience I had at Western, and not only helped prepare me for my articling and legal practice as a litigator, but significantly helped me get this position. I really appreciate the experience and opportunity I had with you, and will always look back fondly on my time at CLS, which will always be an important part of my career development.

My colleagues Gemma Smyth and Marion Overholt said it best about what it means to supervise students in the clinical setting:

Supervising law students is an opportunity to mentor them, helping identify skills, abilities, and values that may not have previously been identified, nurtured, or valued. Students come to law school with incredible personal and professional experiences, which contribute to and advance the mutual learning experience. Supervision in this context can be immensely gratifying, particularly when supervisors are able to participate in the development of the next generation of social activist lawyers.⁶

⁶ Gemma Smyth and Marion Overholt, "Framing Supervisory Relationships in Clinical Law: The Role of Critical Pedagogy" (2014) 23 *Journal of Law and Social Policy* 62 at 70.