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Clinical Legal Education Through the Looking-Glass

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And all the little oysters stood
And waited in a row.
'The time has come', the Walrus said,
'To talk of many things:'¹

I. *Introduction*

This paper describes the implementation of a clinical legal education program at the University of Western Ontario. By coincidence, the paper was completed just as a major change in direction was unfolding in the program. The origin and purposes of clinical education I will leave to another occasion. Suffice it to say that my answer to the question, "does a law school need clinical education?", is a resounding "yes".

The phrase "clinical legal education" has been used to describe a variety of programs in Canadian and American law schools. This paper is limited to a discussion of programs in which full-time law students work for clients in return for course credit in law school, not to simulation exercises, moot courts, mock trials, and volunteer work for legal aid services.

Clinical legal education has several objectives, some or all of which can be pursued at the same time. These objectives include: the acquisition of an understanding of the theory and practice of law in context; skills for self learning; skills to identify choices, make decisions and implement them; law practice skills and moral education. The objectives also include the development of interpersonal skills and the provision of legal services to the poor. The variations in the programs occur when the law school and the clinical instructor emphasize one or more of these objectives in a particular program.

Clinical legal education is commonly understood as a specific type of program in which the student works for clients, while receiving supervision and instruction in related topics such as interpersonal skills and professional ethics. It can also be understood as a methodology. Case analysis or the memorization of a set of rules and exceptions are teaching methods widely used in law schools. Both are useful, but cannot give enough of the picture in some subject areas to leave the student with even

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1. Lewis Carroll, "The Walrus and the Carpenter", *Through the Looking-Glass*, ch. 4.

a general understanding. Knowledge about law is not separable from “knowledge how” to practice law. This distinction, which parallels law school training and post-law school education, is arbitrary, and ignores an excellent vehicle for helping students to understand both dimensions while they are in law school. A clinical methodology can be used for courses such as civil procedure and evidence to provide a better understanding of the subject for the student. Courses such as commercial or corporate law can be taught with a clinical methodology, encouraging students to reflect on what they are doing rather than to uncritically adopt the practices and values of their future law firms employers. Clinical methodology has a great deal to offer legal educators.

After a law school decides to establish a clinical program, the next step is implementation. In 1973 the Faculty of Law at the University of Western Ontario started on the road of implementation. In this paper I will discuss the major relevant considerations for implementation: funding, programming, and administration, with specific reference to the situation at the faculty’s fifteen-year project, the London Legal Clinic.

II. *Funding of Clinical Legal Education*

The Ontario Legal Aid Plan has provided substantial funding for university-based clinics since the mid-1970s. It is difficult to determine how much of the budget provides the service to clients and how much is necessary for the educational aspect of the program, and, as evidenced by the report of Mary Jane Mossman, this relationship has had its stormy periods.

In 1978 Mr. Justice Samuel Grange conducted an inquiry into the clinical delivery of legal services in the Province of Ontario.² As a result of his recommendations, a Clinic Funding Committee was set up under the Legal Aid Act³ and it continues to administer legal clinics. The Committee includes representatives of the Law Society of Upper Canada and the Attorney General of Ontario. The Committee employs a staff to administer community legal clinics, including the university-based clinics.

There are now approximately sixty-four legal clinics in Ontario, most of them managed by a community board of directors, with legal services provided by lawyers and community legal workers. Parkdale Community Legal Services in Toronto includes a university clinical program and is managed by a board of directors with university and community representatives. With the closing of the London Legal Clinic,

2. Grange, “Report of Commission on Clinical Funding”, The Honourable S.G.M. Grange, Commissioner, October 25, 1978.

3. R.R.O. 1980, Reg. 575, s. 148-159.

only Legal Assistance of Windsor remains in the clinic system, with the Dean of the Law Faculty serving as the administrative equivalent of the community board of directors.

In 1981 Professor Mary Jane Mossman, then Clinic Funding Manager under the Clinic Funding Committee, conducted a study of the role of student legal aid projects in the over-all context of the delivery of legal aid. Her recommendation to defund student operations and to deliver the general client services by community-based clinics shocked the universities. She recommended that “what the [Ontario Legal Aid] Plan needs from student projects and the universities are demonstration projects, experiments, and broad research and law reform activities in poverty law and in legal aid services”, a “unique role”⁴ in relation to the Plan. The Ontario Law Deans opposed Professor Mossman’s proposals on the ground that the removal of widespread case activity would be detrimental to successful operation of the clinical programs.⁵ Although the Clinic Funding Committee was to consider her report in 1982, the Committee has not reached a conclusion as to whether her proposals, or indeed any other specific policy in relation to university clinics, will be implemented.

In 1986 a second legal clinic was opened in London. Managed by a community board of directors, it is consistent with the model used in the majority of clinics in the province.⁶ Unaffiliated with the university, it is located in the eastern section of the downtown area, less than three blocks from the first location of the London Legal Clinic. Members of the local bar and of the university were initially worried that this new clinic would replace the London Legal Clinic, in line with the recommendations of the Mossman Report. Although there was sufficient demand for services to keep both offices operating at maximum capacity, a decision was made early in 1989 by the University and by the Clinic Funding Committee to close the London Legal Clinic as of April 30, 1989.

By co-operating, legal aid plans and the universities benefit beyond the extent of their separate funding means. The university-based clinics, with their unpaid workforce of law students, are able to provide more legal service than the same number of paid staff in a clinic without students. As Mr. Justice Allen Linden has observed, “These law school clinics serve public relations goals. . . [The community] come[s] to realize that the legal

4. Mary Jane Mossman, “University Clinics and Student Legal Aid Societies: A Review”, (October, 1981), A Report Prepared for the Clinic Funding Committee and the Legal Aid Committee of the Ontario Legal Aid Plan, at p. 107.

5. Greg M. Dickinson, “A Descriptive and Analytical Report on Clinical Legal Education at the Faculty of Law, University of Western Ontario”, 1982, p. 17.

6. Neighbourhood Legal Services (London & Middlesex) Inc.

profession is interested in their welfare. The Legal Aid Plan has an interest in retaining the good will of the public by preserving these visible legal service centres.⁷ In addition, Mr. Justice Linden has noted that the work of students and faculty members in the clinics promotes good relations between the Legal Aid Plan and the students when the latter become members of the bar.⁸ Students are also presented with an opportunity to consider a career in clinical or legal aid work, a factor that should be of concern to the legal profession and to legal aid plans interested in maintaining the quality of service to the whole of the client community.

From the university's point of view, the cost of running a clinic is on a level with other courses, especially if costs for the supervisory of casework is borne by an external funder. Professor Dickinson, a former Director of the London Legal Clinic, analysed the cost per credit to the University of Western Ontario for its two clinical programs and concluded that they were within the range of other courses at the Faculty of Law at the time.⁹ This assumed the continuation of funding from the Ontario Legal Aid Plan, funding that continued until April 30, 1989. Since 1987, without a full time faculty member in place, the costs to the university have decreased. Although there was also a slight decrease in the number of available student positions, it appeared that, relative to other courses, the clinical program was still in the same range or even less expensive. The Faculty of Law at the University of Western Ontario was thus in a position to provide clinical programs, which have the reputation of being expensive, at the same cost range per credit as its other courses. However, even if it was shown that the costs per credit were greater than those for other courses, I would still argue that a law school should nonetheless provide its students with the option of clinical education. It is worth noting that the clinical program provides the university with, among other things, a valuable opportunity to have a positive presence in the community.

The external funder's concern to provide quality service to clients should also be a concern of the law faculty. In poverty law service, client demands often exceed the capacity of the legal service agency. This means that the setting of priorities for service is an important part of the operation of a legal clinic, whether or not the clinic is part of a university program. The clinic likely has to set priorities for service that accord with the mandate of the legal aid plan and the university, but, given the will

7. Letter from Allen M. Linden to John D. Bowlby, dated July 23, 1975, p. 2.

8. *Ibid.*, p. 2-3.

9. Dickinson, "A Report", p. 144.

to realize the clinic project jointly, this should not be an insurmountable task.

The problem of resources has been looked at from another angle. With this analysis, government funding of public interest law, for example in Ontario the funding of legal clinics, is perceived to affect legal education in supposedly neutral university programs. For example, Glasbeek and Hasson suggest that since clinics are restricted to individual case representation this sends a message to law schools that other approaches to legal problems of the poor, such as “anti-competitive, collective and public law activities”, are not valuable lawyers’ work.¹⁰ There is always a threat that, if clinics go beyond the case-by-case services that government wishes to support, their funding may be reduced or withdrawn.

Although Glasbeek and Hasson do not refer specifically to university-based clinics, the impact of government funding policy is even more direct in their case. Law schools themselves are funded indirectly by government, and the provision of government funding indirectly or directly is not necessarily bad. It is important for the law school to define the purposes of its clinical program and to ensure that those purposes are realized. The funding of clinical programs by government allows the law school to broaden its curriculum at much less cost to the university than is the case where the whole of the cost of the clinical program is borne by the school itself. The government receives the short term benefit of providing service to clients and the longer term benefit of exposing more law students to the idea of a career in public interest law.

While it is not necessary to restrict services to poor clients, services in most clinical programs are offered only to clients who cannot otherwise obtain legal assistance. Certainly, if clients who can pay something are accepted, there would not be the same necessity for government funding. However, in Canada, offering services to people who are not “in need” may jeopardize the flow of federal funding to the province related to those legal services.¹¹ Without federal funding assistance, the province might be less likely to assist with the funding of the clinic to the extent provided by the province’s agreement under the Canada Assistance Plan. The federal government contributes toward the cost of programs for the “provision of adequate assistance to and in respect of persons in need”.¹² The definition of “person in need” is provided in detail in the Plan and includes a means test established by the province.

10. H. Glasbeek, R. Hasson, “Some Reflections on Canadian Legal Education” (1987), 50 *Mod. L. Rev.* 777, at p. 798 to 799.

11. Canada Assistance Plan, R.S.C. 1970, c. C-1 as amended.

12. Canada Assistance Plan, Preamble.

In my view, a clinical program in poverty law, in addition to its positive effect on the community, also offers students, most of whom have had no previous contact with poor people, the challenge of dealing with difficult and pressing problems that they have not considered before. To some extent this balances the heavy emphasis in many law faculties on business, corporate, and property law. It encourages students to look for solutions outside the limits of the remedies they have encountered in other courses. It is fundamental that the service provided by the clinic must always be of good quality and offered in a considerate, thoughtful manner: using poor clients as subjects for experimentation and possibly failure by students, is contrary to the concept of professional responsibility that the clinic should be trying to teach.

III. *Program*

What types of clinical courses should be offered? A law faculty should offer a spectrum of choices for clinical education. At one end, there should be a full term program, which includes full time attendance at the clinic and responsibility for cases, a legal professions seminar, a legal skills seminar, group meetings for case discussion, and a written memorandum. The seminars can be offered to clinical and non-clinical students at the same time. The program offered at the London Legal Clinic represented the next step in the spectrum. This was a substantial program, but it allowed for a non-clinical course to be taken along with the clinical program instead of a full term of clinical seminars. Clinics in specific subjects, such as family law, criminal law, civil procedure, and administrative law would be another degree in the range of clinical programs. The lower credit weight clinical programs may only involve the students in three or four active cases at a time, but should include the component for reflection. For the benefit of both student and clients, the period in which the student handles clinic cases should be no less than one term, that is, four months. The case work could also be spread over two terms, especially for the single subject clinical programs, allowing more time for development of the cases. Finally, there could be a clinical component in courses that are now taught by other methods, such as civil procedure or evidence.

IV. *History of the London Legal Clinic*

In the early 1970s the Faculty of Law at the University of Western Ontario responded to the tenor of the times by taking a decision to add a clinical education program to its curriculum and in 1974 the University Legal Clinic opened its doors. It was a storefront office located to the east

of the downtown area of London. The staff comprised a full-time faculty member, Professor Alan Bryant, a secretary, and ten law students. Students represented clients on landlord and tenant matters, summary conviction criminal charges, family, and consumer problems. Students attended two weekly seminars, one on aspects of practice, given by the Director, the other, on broader issues of practice, given by guests from the community. The course was a “hands on” experience for students: when Greg Dickinson was hired as a staff lawyer in 1975, students assisted in building the partitions required to create private office space. Externships were provided with the County Court bench, now the District Court of Ontario, the Crown Attorney’s office, and, occasionally with criminal defence lawyers. The students earned ten academic credits for successfully completing the program. They were required to take at least one major (4 credit) course or two smaller credit courses at the law school during their clinical semester.¹³

The first year’s budget was \$21,850, provided from a variety of sources, including the law school, the federal Department of Justice, and the Ivey Foundation. In 1975 an agreement reached with the Ontario Legal Aid Plan brought relative stability to the clinic’s budget. The Area Director of Legal Aid, Gretta Grant, Q.C., arranged for duty counsel to provide advice for clients whose problems could not be handled by a student, and a member of the local bar was retained to act as a liaison person for the duty counsel project. The university agreed to fund the full-time faculty member as Director. The other staff salaries and operating costs were funded by the Ontario Legal Aid Plan. To reflect the wider community interest, the name of the agency was changed to the London Legal Clinic and described on the letterhead as “a joint project of the Ontario Legal Aid Plan and the Faculty of Law, University of Western Ontario”.

With direction provided by David L. Johnston, then Dean of the Faculty of Law, a task force was established in 1975 to plan clinical education within the Faculty over a five year period. The task force (Professors Alan Bryant and Peter Barton, and law student John Askew) made three major proposals. First, it proposed a centralized administration for clinical programs: one person on the faculty was to have responsibility for administrative supervision of all client-contact courses, including the volunteer program, then called the Student Legal Aid Society. This person was to be “a source of inspiration as to possible areas of curriculum development” and “would ensure a presence within the

13. “Report of the Task Force on Clinical Legal Education”, 1975, Faculty of Law, University of Western Ontario. p. 4-5.

Faculty of another Faculty member committed to clinical education".¹⁴ This proposal has not yet been implemented. In July, 1989 the faculty hired a director of clinical education, which amounts to a step in this direction.

Second, the Task Force proposed low credit clinical education programs so that, before graduation, all students would be required to experience at least some contact with clients. This contact was to be through involvement in: (i) a cluster program with client contact; (ii) the London Legal Clinic; (iii) the Student Legal Aid Society; (iv) Advanced Family Law; and, (v) Advanced Civil Procedure.¹⁵

Thus far the university has not implemented a requirement for clinical credit. In the fall semester of 1977 a four credit clinical course with a two credit seminar component in criminal law was started, consistent with the recommendation of the Task Force.¹⁶ However, since the 1970s there has been a decline in clinical course offerings: Advanced Civil Procedure is no longer in the course calendar; the course in clinical family law, now called Family Court Practice, and the Clinic in Criminal Law Practice, although remaining part of the curriculum, have not been offered for several semesters. The reason for this decline has not been made public; however, in my experience there continues to be a demand by students for a variety of clinical course options.

Third, the Task Force proposed the establishment of a Law Centre that would house the London Legal Clinic, the Ontario Legal Aid Plan, Continuing Legal Education (for lawyers), Community Legal Education (for the public), and the clinical cluster programs of the Faculty of Law.¹⁷ Part of this proposal was realized in 1976. When the leases and space arrangements were finalized, the office of the Area Director of Legal Aid and the London Legal Clinic moved into shared space in the downtown core area of London, within a block of the courthouse. This model was unique in Canada at the time.¹⁸ The Clinic in Criminal Law Practice, when offered, was run from the office of the London Legal Clinic. The Student Legal Aid Society, now called Community Legal Services, continued to offer its services from the law school building on the university campus. A "review lawyer" was hired to supervise the student

14. "Report of the Task Force", p. 44-45.

15. Advanced Family Law was a course with seminars and a component of acting as duty counsel or representing clients in Provincial Court (Family Division). Advanced Civil Procedure was a course in which students worked in groups with a faculty member on civil cases beyond the permitted case requirements for students.

16. Dickinson, "A Report", p. 14-15.

17. "Report of the Task Force", p. 48.

18. Dickinson, "A Report", p. 14.

volunteers. The Family Court Practice course, when offered, was run from the Community Legal Services office.

Along with a move to another office location in 1976, a second staff lawyer was hired and the course enrollment was increased to 12 students per semester. However, in 1987, the Director position was not filled; the two staff lawyers became associate directors and were jointly responsible for the management of the Clinic. Along with a reduction in staff in 1987, the number of students in the Clinical Education Course was reduced from 12 to 10. By way of contrast to the first year budget, the 1988-1989 budget of the London Legal Clinic was approximately \$297,000.

In the 1988-1989 year, clinical education at the Faculty was again the subject of discussion and at the time of writing is still in the process of being changed. The first public report of the change was carried in the London Free Press on January 18, 1989 in a story headlined "Poor people 'losers' as clinic closes".¹⁹ Several local groups concerned with legal services to the poor, including the community Board of Directors of Neighborhood Legal Services and local lawyers' organizations, the Middlesex Law Association, and the Criminal Lawyers' Association spoke out in the community about the need for the continuation of the London Legal Clinic. What reason was given for the closing of the London Legal Clinic? "The law school now says that funding cutbacks are preventing it from living up to its understandings with Clinic Funding, which is apparently only too willing to take this position as an excuse to close the clinic."²⁰ Exactly how the decision was reached between the two funders to close the London Legal Clinic has not been publicly explained in any more detail.

In place of the London Legal Clinic, the law faculty, at a meeting on February 1, 1989, adopted a proposal²¹ to replace the London Legal Clinic Program with three options for courses in clinical education to be run out of the office in the Faculty of Law building on the university campus. The proposal involves replacing the three lawyers of the legal clinic staff and the review lawyer who supervised casework for the volunteer program on campus with a director of clinical education and a staff lawyer. The proposed courses include two courses weighted at two credit hours involving the carriage of about three active files and a one hour seminar. The third course is an intensive one intended for third year students. Students will carry a minimum of 10 active files and attend two hours per week in a "seminar/workshop" setting. Implementation of the

19. At p. B2.

20. C. Bentley, "Law school and government ignoring legal clinic clients?", London Free Press, Feb. 1, 1989.

21. As of August 1, 1989, not yet approved by the Senate of the University of Western Ontario.

changed courses is planned for the fall of 1990, if they are approved. In the meantime, the faculty is planning to continue the 10 credit hour program similar to the program which was offered at the London Legal Clinic. The proposed new courses amount to an expansion of the previous volunteer program offered at the university campus under the name of Community Legal Services. In my view, the proposed courses will not equal or improve the program which was in place at the London Legal Clinic.

Can these new courses offer the essential components of a quality clinical education program? We will have to wait to find out the answer. The essential component of supervision may be difficult to maintain with two lawyers supervising the work of forty students per semester in the three courses plus the students involved in other volunteer and clinical offerings which may be maintained. In addition, the location of the university campus in London makes it difficult for many potential clients to find their way to the office. In my experience, for potential clients of a poverty law service even more of a barrier than the public transportation is the intimidating feeling of going to the campus and somehow locating one small office in the maze of buildings and people at the university. The downtown location had the advantage of being readily accessible to the bus system and closer to the areas of the city with which most of the public are generally familiar.

V. *Clinical Legal Education Program Content*

Two main features characterize clinical course content: intensively supervised casework for clients, and the provision of opportunities for students to reflect on and criticize their experiences. Opportunities for reflection are provided in seminars and group meetings, where individual cases are discussed or where role-playing is used. Non-directive supervision, in which the student is encouraged to consider the way that a particular case fits into his or her understanding of moral responsibility or of "legal theory", and a written memorandum or essay in which the student considers a topic related to work in the clinic, also provide possibilities for reflection. These opportunities meet one of the main criticisms of clinical training described in a study by Professor Harry Arthurs.²² Simulations and role playing, while useful for achieving certain educational goals, are not the equivalent of a clinical program.²³

22. H.W. Arthurs, "The Study of the Legal Profession in the Law School" (1970), 8 Osgoode Hall L. J. 183, at p. 190.

23. See for example Jan C. Costello, "Training Lawyers for the Powerless: What Law Schools Should Do to Develop Public Interest Lawyers" (1985), 10 Nova L. J. 431, at p. 442; George Grossman, "Clinical Legal Education: History and Diagnosis" (1974), 26 J. Legal Educ. 162, at p. 185.

Externships in government legal departments, law offices, and judges' offices can be offered either as part of a clinical course option or simply as one of the faculty's clinical options.²⁴ Externship as a clinical option, if it accounts for the whole of the student's clinical exposure, is not desirable.

As a solution to the problems he observed during a study of relationship of clinic student and supervising lawyer, Professor Condlin suggested placement in local law offices as an alternative to the "conventional clinic".²⁵ While I agree with his conclusion that there must be time in the clinical program for reflection, the law office setting allows practitioners even less time to reflect than clinical supervisors; it offers the student fewer, not more, possibilities to make decisions and to act on them. Regular meetings with the clinical professor during the externship would provide the same sort of opportunities to criticize that is present in a good clinical program. Reduced opportunity for direct contact with clients, to experience decision-making and to face ethical problems, and the difficulty for the law school to control the quality of external placements, make externship preferable as an addition to a clinical program with direct client work, rather than as the whole of the clinical course.

VI. *Program at the London Legal Clinic*

When students arrived at the clinic they were assigned to a supervising lawyer. In that setting, five students per lawyer was the maximum that would allow the supervisor to spend time with each student and also ensure good service to the clients. Each student had responsibility for approximately 20 to 30 files. The supervisor took direct responsibility for appeal cases, and for clients in particularly difficult or urgent situations.

The supervisors conducted a seminar of two hours duration once a week and additional orientation seminars during the first three to four weeks of each term. Seminars dealt with the development of interpersonal skills, such as interviewing, and negotiation; law practice skills, such as drafting, preparation for trial, examination and cross-examination of witnesses; and, professional ethics and responsibility. The format of the seminar varied: some topics were presented through discussion or demonstration by lawyers and judges from the community,

24. Externships must include supervision and evaluation of the student's work by the external lawyer and by the faculty clinical instructor. For a discussion of externships see: Henry Rose, "Legal Externships: Can They Be a Valuable Clinical Experience for Law Students?" (1987), 12 *Nova L. Rev.* 95.

25. Robert Condlin, "'Tastes Great, Less Filling': The Law School Clinic and Political Critique" (1986), *J. Legal Educ.* 45, at p. 63ff.

others through role-playing by students and criticism from other participants. Many members of the local bar and bench presented seminars and provided other support to the clinic over the years, a very valuable resource to a clinical program. The students were required to be in the clinic to interview clients and to work on their cases for a minimum of 15 hours per week.²⁶ They attended court on all their cases, whether or not the cases occurred during their hours on duty at the clinic. Because the students knew in advance about conflicts between court appearances and classes at the law school, they were able to work out arrangements to keep up with their work in their other course or courses.

Clinic students were offered an option to participate in three externship programs. Each student could spend seven working days with the District Court Judges in Middlesex County. In addition, he or she could choose to spend a week in the office of the Crown Attorney or the Provincial Court (Family Division) Judges. Each of these offices, though busy, offered the student a chance to observe and, when the need arose, to assist with the drafting of a judgment or with research. The drawback was that the externship experiences varied considerably for each student: all cases are not equally challenging. The other variable was that the student's own personality affected the degree to which she or he participated actively in the work of the placement office.

The Law Society of Upper Canada restrictions on practice leave scope for a program that permits law students to represent clients in court proceedings. Specific legislation, such as the Landlord and Tenant Act,²⁷ permits litigants to be represented by agents, as exceptions to the general prohibition against representation by non-lawyers.²⁸ Clients at the London Legal Clinic were informed that their representative was a law student and the retainer they signed included their consent to being advised and represented by students. The students had direct responsibility for certain files within the practice restrictions. Since "a file" is not a precise measurement of workload, the number varied according to its level of difficulty and the ability of the student. Each student was assigned to a supervisor who was familiar with the cases transferred at the term changeover. Supervisors and students did not specialize, aside from areas of personal interest; they generally worked on cases in all areas of the clinic's practice.

The cases included a large number of summary conviction matters under the Criminal Code and the Provincial Offences Act.²⁹ After the

26. The students usually spent about 30 to 40 hours per week on clinic work.

27. R.S.O. 1980, c. 232, s. 118, as amended.

28. Law Society Act, R.S.O. 1980, c. 233, s. 50(1), as amended.

29. R.S.O. 1980, c. 400, as amended.

startup years, these cases made up the majority of clinic casework. The advantage of these cases was that they proceeded through the courts quickly and that a student was likely to be responsible for matters from initial interview to trial within one term. In Provincial Court (Family Division), the students handled child welfare matters; applications for support, custody and access; and representation of debtors in enforcement proceedings. They did not handle cases where custody was in dispute or where there were allegations of serious child abuse. For such cases, and others, such as indictable offences, which were beyond the practice areas of students, a legal aid certificate might be granted under that part of the Ontario Legal Aid Plan which funds service by lawyers in private practice. Cases in Small Claims Court, and landlord and tenant matters in District Court, provided the students with exposure to civil proceedings. Most of the remaining cases were in the administrative law area, such as welfare, family benefits, rent review, Canada Pension Plan, and immigration.

VII. *Clinical Students*

As described above, the University of Western Ontario Task Force of 1975 recommended that all law students be required to obtain credit for clinical work before graduation. That idea remains valid today.

In 1970, Professor Gorman, writing about the American situation at the time, proposed that clinical programs should be voluntary for both faculty and students. For faculty, this could be done, he suggested, by special effort in the recruiting process. For students, he felt that at that time clinical legal education was too new to make it compulsory.³⁰ However, subsequent experience in both Canada and the United States makes this argument no longer valid, even if it was valid at that time.

It is difficult to establish admission criteria for the program in clinical education. Students are better able to benefit if they take the clinic after the first term of second year. Part of the program could be done on a volunteer basis by interested first year students, for example, initial client interviews or research assistance, but a volunteer program is outside the scope of the present discussion, which is confined to clinical programs for credit.

Ontario law schools now have a certain number of required subjects in second and third years, such as philosophy of law, international law, and legal writing requirements.³¹ For example, in the late 1988-1989

30. Robert Gorman, "Clinical Legal Education: A Prospectus" (1970), 44 So. Calif. L. Rev. 537, at p. 564.

31. 1988-89 calendar for the Faculty of Law, University of Western Ontario, p. 22 to 23.

year, students at the University of Western Ontario Faculty of Law, within their 14 to 16 credit hours per term, were required to take courses in administrative, company, evidence and income tax law in second year; civil procedure and trusts in third year. In addition, during second and third year they were required to take a course with a legal writing requirement and a course in philosophy of law or law in the international setting. In my opinion, a clinical requirement should also be added. Students should have a variety of clinical programs available and they should be required to take at least one such course before graduation.³² If resources are limited, it may be necessary to set a maximum number of clinical course credits that can be taken, so as to ensure that there will be sufficient places in clinical programs for all students.

The value of clinical legal education is not limited to those who intend to practice law. All law students need to learn about law in context and to experience the moral development, self-learning skills, and other advantages of clinical education that do not flow from the traditional curriculum. Academic commentators have found that students respond enthusiastically to clinical programs, whether because of “enormous dramatic appeal”,³³ “alleviating the boredom of third year”,³⁴ preparation for articling, or excitement about the challenges of learning at the clinic. Students themselves approve of such programs. The majority of students who responded to Professor Dickinson’s 1981 survey of graduates from the London Legal Clinic program considered their clinical experience to be better preparation for a career in law than their law school experience excluding the clinical program.³⁵ In weighing the decision to add a clinical course requirement, a survey similar to the one conducted by Professor Dickinson may help the Faculty assess the degree to which students and graduates consider clinical education to be important in their law school experience. Seven more years of experience may add an additional perspective for the graduates of clinical programs.

In 1988-1989, the clinical option in the curriculum at the University of Western Ontario was limited to 20 students per year. In 1990-1991, the number may be increased to 80 students per year, but without the full range of clinical options. Several studies of clinical education in the Faculty of Law have been conducted over the years. The following

32. For a discussion of required or voluntary clinical programs see: Gorman, at p. 569.

33. Arthurs, at p. 189.

34. Norman Redlich, “The Moral Value of Clinical Legal Education: A Reply to Professor Condlin”, David L. Luban, ed., *The Good Lawyer*, p. 350.

35. Dickinson, “A Report”, p. 106ff. Survey administered to 158 former University of Western Ontario students of the clinical education program and the clinic in criminal law practice between 1974 and 1981. There was a 72% return rate.

comment from the 1975 report remains true. "The major prerequisites of a successful program in Clinical Education are a Faculty commitment, assured funding, client contact, and close supervision."³⁶ It is my view that these basic elements remain valid and that what remains to be done is to implement them in a range of clinical programs which will be part of the education of every law student.

VIII. *Administration*

This is the final topic that I will consider in this paper. Relevant aspects of the subject include management structure, personnel, office location, and long-range program planning and evaluation.

1. *Management Structure*

Should a university-based clinic have a community board of directors or advisors? On the basis of my personal observation of community boards, I do not agree that placing members of local professional and client groups on a board of directors necessarily makes the clinic either responsive to the community or well-managed. The value of a community board is dependant to a large degree on the individuals involved and their ability to have an overall vision for the clinic, not just the promotion of the interests of their particular stakeholder group. It is certainly possible for a clinic to be responsive to the community without such a board. In a university-based clinic, the law faculty is concerned to maintain control of the quality of the program; however, this does not necessarily exclude a community board. The right solution depends on the local situation. Other options for the management structure are: a management committee, which includes the clinic director, dean of the law school, other faculty members and possibly advisers from the community; or a clinic director answering to the law school dean.

The management structure at the London Legal Clinic was to have the Director answer to the Dean. There was no community board for the clinic. This may have been a factor in the decision by the funders to close the clinic without any prior public consultation. Although members of the community protested the decision to close the clinic, there was no community board to speak out with direct knowledge of the clinic operations but not the apparent self-interest of the clinic staff.

2. *Personnel*

Obviously the personnel employed are critical to the success of the clinic. A Director of clinical programs should be a full-time faculty member

36. "Report of the Task Force", p. 49.

recruited specifically for the position.³⁷ He or she must either be offered a special appointment, so that the usual tenure requirements do not apply, or leaves of absence from day-to-day clinic work in order to have an opportunity to research and write. While it is clear from the small amount of published work on clinical legal education in Canada that the field could benefit greatly from writings by experienced clinical instructors, it is also clear that it is very difficult to reflect and write while dealing with the demands of clients, students, and funding agencies. For purposes of tenure consideration, the "scholarship" of clinical instructors should not be evaluated in the traditional manner: consideration should be given to court documents, law reform briefs, and other forms of written work produced by the clinical professor.³⁸

Much more thinking and analysis about specific aspects of clinical programs in Canada could and should be done, but few clinical teachers have the same opportunity for reflection that is available to other members of the law faculty. Supervising students, conducting cases, administering an office, presenting seminars for students, carrying out faculty administrative duties and, in some clinics, raising money, overflows every available moment for the clinical teacher. Fortunately, law faculties across the country seem to be increasingly aware of the value of providing clinical educators with an opportunity to analyse and consider changes. This could lead to more flexible staffing arrangements for clinical teachers so that the twelve month nature of the job is not a deterrent to allowing them to speak out and share their experience about this phenomenon of clinical education.

In addition to the Director, a faculty lawyer position allows other faculty members to spend a year at the clinic, while continuing with regular though reduced teaching responsibilities. This exchange of benefits permits faculty members to offer their skills to the clinic and to take back to the law school the fruits of their experience at the clinic.³⁹ Each member of the faculty should consider what she or he personally has to offer to such a program. The clinic cannot be healthy if it is operated as a mostly-severed limb of the faculty: to accomplish its educational goals it must have full support from faculty and it must be integrated into the law school curriculum.

37. For a discussion see Gorman, p. 546.

38. See discussion on this topic by Elliott Milstein, Kandis Scott, and Philip Schrag, "Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future" (1986), *Cath. Univ. L. Rev.* 337, at p. 360 to 362; and also by Grossman at p. 182 to 183.

39. For an example, see Joan Dawkins, "Living to Fight Another Day: The Story of Dalhousie Legal Aid" (1988), 3 *J. L. & Social Poly* 1, at p. 3; Harvey Savage, *The Dalhousie Legal Aid Service* (1975), 2 *Dalhousie L.J.* 505.

For supervision of cases, full time lawyers should be hired and provided with training in pedagogy and interaction with students.⁴⁰ The case volume assigned to each lawyer should allow time for working with students to develop their analytical, decision-making, and other skills, and to assist them to reflect about, and make appropriate choices in, matters of professional responsibility. There should be time for the lawyers to conduct cases, either by way of appeals or test case litigation, which accord with the overall work of the clinic. Conducting their own cases allows the lawyers to teach with a “do as I do” as well as a “do as I say” approach. In working jointly with students, the clinical instructor is also challenged to rethink previous preceptions and approaches.

Community legal workers have established an important role as para-legal staff in community legal clinics in Ontario. For example, they represent clients in tribunals or landlord-tenant issues at first hearing. They also take responsibility for a large part of the community development work carried out by legal clinics. If the clinic sees a role for itself in working with groups involved in poverty law, and in addressing broader issues than can be handled through individual cases, there should be at least one community legal worker on the clinic staff. It is difficult for students to build up working relationships with community groups or even with the government benefits office staff, because the students are only in the program for four months. A community legal worker would be able to assist the lawyers to offer consistent service to clients and community groups. The London Legal Clinic did not have funding to employ a community legal worker. In addition, as part of good quality legal service, there must be sufficient support staff to ensure that the work is completed within a reasonable time.

3. *Office Location*

The clinic office should be in a place that is accessible and convenient to clients. Usually this is not the university campus. Accessibility to transportation services will make the office accessible to students as well as clients. The physical surroundings of the office, while not tending to opulence, should convey to the client a professionally competent atmosphere, where she or he is treated with respect.

Since 1976, the London Legal Clinic was located near the office of the Area Director of Legal Aid. From 1976 to 1986 the two offices shared office space and clients were directed to the Legal Aid or the Legal Clinic section of the office by the receptionist. In 1986 both offices required

40. For discussion about the field supervisor and “academic” supervisor being different people, see Gorman, at p. 564.

more space and wished to make the premises more accessible to people who use wheelchairs. They moved to a two-story centrally located building, where each office occupies one floor. Wheelchair access was better but required the use of a lift.

The proximity of the Legal Clinic to the Legal Aid office improved the service provided by both offices. Since distinctions between the cases handled by each office are not easy for the public to grasp, the process of obtaining legal assistance is simplified when potential clients need only go to one office location, where they can rely on the staff to direct them for the legal services requested. The ease with which referrals were made between the two offices not only saved clients an extra bus trip, but also made it less likely that there would be clients who found themselves without services because they failed to pick the appropriate office on first contact and never managed to contact the other office. Physical proximity to the Legal Aid office in 1976 was good for the London Legal Clinic because it increased the number of client contacts and shifted the major focus of Clinic activity to criminal law.⁴¹ In 1987, criminal law, at 31% of the open files that year, was the largest section of the Clinic files. The physical proximity of the Clinic and the Legal Aid Area Director's office was a positive factor in improving service to clients and ensuring efficient operation of the offices.

The 1989 proposal for change is to close the downtown location. In fact, services from the downtown location ceased on April 30, 1989. There has been some subsequent discussion about the possibility of having a small downtown office for the clinical students. This will only be worthwhile if there really are services available behind the sign on the door and if the clinical supervisor's office is at the same location. The final decision about a future downtown branch location has not yet been made.

4. Long-range Clinic Program Planning and Evaluation

Formulating the goals of the clinical program is an essential first step. There may be several related goals and they may change with the development of the program. It is thus important to know how to evaluate the work of the clinic and the work of the students in the program.⁴² Since clinical programs have been in operation for the last twenty years, there is a considerable body of experience that can be used to evaluate and guide their development. Professor Gorman suggested,

41. Dickinson, p. 14.

42. Allen Redlich, "Perceptions of a Clinical Program" (1970) 44 So. Calif. L. Rev. 574, describes a program that floundered on both these issues.

and I agree with his view, that standards and operating procedures for all clinical programs should be established and co-ordinated by an individual or committee in the law school.⁴³ The point is that the clinical program cannot be set up and then forgotten. Whether the evaluation is conducted by a community board, a management committee, or the clinical director, there must be evaluation of the program in light of the objectives of the program. And there must be on-going planning to develop new programs that improve the current program.

Over the years of the London Legal Clinic program there were *ad hoc* committees which did studies from time to time. However, certainly for the years after 1982, there was not an ongoing evaluation and planning process for the clinical program. Although this may not directly have affected the closure of the clinic, the tendency to forget about the clinic since it was such a settled program, may have contributed to the 1989 decision to end the program.

VIII. *Conclusion*

But answer came there none —
And this was scarcely odd because
They'd eaten every one.⁴⁴

Clinical education is a superior method for the accomplishment of certain educational objectives. It occupies a respectable place in law school programming. Specific aspects of a particular clinical program and how they can best be integrated into the curriculum, can always be debated. What is not debatable is that clinical education is here to stay. A law faculty must be willing to provide sufficient resources for a clinical program which will complement the remainder of the curriculum. Although universities are generally under financial constraints in the late 1980s, clinical education is too vital a part of legal education to be simply deleted from the calendar when the budget tightens. If legal educators consume their present resources without a view of the wider possibilities they may be left with the walrus and the carpenter wondering why there is no one to answer after the oysters have been eaten.

The University of Western Ontario has provided a high quality clinical program to law students for 15 years. As was found in the 1981 survey, the majority of graduates said that their clinical experience was better preparation for a career in law than their law school experience excluding the clinical program. They had developed skills in interviewing, counselling, negotiation, advocacy, drafting, research and problem-

43. Gorman, at p. 572.

44. Carroll, "The Walrus and the Carpenter".

solving. The clinical experience provided the majority of respondents with a framework within which they were able to reflect upon the ethics of practising law and increased their understanding of the theoretical principles of law studied in other courses.⁴⁵ In my view the program was accomplishing important objectives in legal education.

What could be improved about the program? It should be a requirement for all law students in the Faculty to experience a clinical legal education program before they graduate. However, this must be done with careful attention to the details of funding, programming and administration to ensure that the quality of the London Legal Clinic program is not lost. The 1989 proposals for change will involve more students than were in the London Legal Clinic program, but it is too early to know whether the plans will translate into a program as beneficial for law students and the London community as the London Legal Clinic was.

My vision for clinical education is that it will become a dynamic spectrum of course options in the law faculty, ranging from an intensive full term program to specific subject clinics with less credit weight, including the use of clinical methodology in the teaching of all courses across the calendar. In this vision every law student will experience at least one high quality clinical course, which will bring consequent enrichment to her or his work as a lawyer.

45. Dickinson, "A Report", p. 106ff.