

Report of the Association for Canadian Clinical Legal Education Policy Committee

March 29, 2018

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Introduction

The Policy Committee is comprised of members of the Board of Directors of the Association for Canadian Clinical Legal Education. As part of ACCLE's Strategic Planning for 2017-2018, the Board hoped to better understand the unique issues facing clinicians, academics involved in clinical legal education, and those who hold job titles in both worlds. In 2018, we surveyed our membership about their concerns. This Report contains highlights of the responses from clinicians across Canada. As we indicated in the survey, this information will be used to guide our advocacy and strategic planning.

We reviewed the data and selected three primary, overarching themes: the working conditions and status of clinicians, operational concerns, and pedagogical and instructional supports. We have removed any information that might identify a specific respondent or clinical program. Below, we review each theme in turn with a few representative quotes. Based on the responses, we also set out possible pathways that ACCLE might choose. We will discuss this Report with the ACCLE Membership with a view to developing a concrete action plan to guide our work. Please note that we use the gender inclusive term "they" throughout rather than s/he.

Background

Of the respondents, 15% identified themselves as academic-clinicians and 85% identified themselves as clinicians (including supervising lawyers, directors and clinic instructors). 3% self-identified as "other". This suggests to us that the vast majority of clinicians are not employed as faculty members in law schools.

Respondents also reported on their funding structures. The total here is more than 100% as many clinics are funded by more than one source. The largest percentage of respondent legal clinics are funded by Government Legal Aid (50%). Universities fund 36% of clinics, as do Law Foundations. 11% of clinics also receive charitable donations. 32% of respondents responded they receive “other” funds which, unfortunately, we did not require them to specify. This could include funding from collaborative research grants, other foundation grants, private revenue models, cost sharing with other bodies, or other sources.

Theme 1: Working conditions and status of clinicians

Respondents were concerned about several issues related to their working conditions and status. The largest percentage was concerned about how clinics are treated vis-à-vis the rest of the law school curriculum and other law school employees (especially professors). Similar to other reports in the U.S. and Canada, respondents were seeking to be considered a central part of the law school’s mission rather than “extraneous”. According to respondents, clinical legal education remains devalued in the overall mission of law schools and legal research. As one respondent noted, their work “...was not valued as ‘research’, it wasn’t ‘service’ and there was no way for the institution to measure this work as meaningful within its existing parameters ...”. Another respondent noted the “divide between academics and clinicians” in “pay, status, and importance”.

Academic “recognition” and “acknowledgement” were significant issues, as was the importance of creating pathways to permanence. For those with pathways to permanence (typically, tenure), respondents reported concerns about unclear job duties, high expectations in multiple categories, and conflicting roles. One respondent noted that they have to “work in two worlds” and being confused about what “counts” for purposes of permanence. The emotional and relationship-building labour of clinics was reported as receiving either no or unclear acknowledgement. One respondent wrote

our law school’s refusal to acknowledge us as employees, let alone instructors/teachers – and with that, an implicit institutional message to students that the clinic is their playground and we are their editors ... or alternatively, opportunistic legal aid employers of unpaid student interns. At best, we are the groundskeeper Hagrid to our Faculty’s Hogwarts – befriended and respected by some students, but officially extraneous within the institution.

Respondents reported seeking regularized, permanent, secure positions with clear promotion criteria that allowed for more varied pathways to achieve permanence. Respondents also raised concerns about not being included in academic governance. We do not have statistics on how many clinicians have a vote in their various faculty governance structures, but from the responses it appears the number is low.

Tensions also were apparent in that clinicians have multiple people, institutions and communities to which they “report” either formally or informally. This means that they often feel pulled in many directions. One respondent described having tasks as a clinician/ lawyer, an academic, and clinic director which are extremely difficult to balance.

Theme 2: Operational concerns

Funding was also raised as a significant issue for many respondents. Of course, funding impacts the issues raised in Theme 1: Working conditions and status of clinicians. Some reported that they had no stable funding which causes many issues including “problematic job security (with constant anxiety about whether external funding will continue, given the Faculty’s unclear commitment in the absence of that funding)”. Lack of supervisors and inadequate space were additional concerns raised.

Another set of concerns raised focused on restrictions on student practice rules. Students are barred from practicing in certain jurisdictions, and a few respondents recommended communication with Law Societies about this concern.

Theme 3: Pedagogical and instructional support

Respondents also raised concerns about balancing their duties in representing clients and their pedagogical duties to students. For some, these were occasionally at odds and, thus, raised ethical challenges. Several respondents expressed difficulty in developing meaningful curricula for clinics. Still others recommended creating a shared resource model for clinics in Canada. This listserv/ resource sharing service could include curriculum supports (including rubrics and evaluation tools), but also program information about clinics, updates, legal information and other supports. Relatedly, respondents sought materials that students could use during their clinical placements. Respondents also wanted to be connected to their colleagues across the country to reduce isolation.

Respondents also reported that these tensions made it difficult to find enough time to give meaningful pedagogical supports to students.

Analysis and Pathways Forward

ACCLE's Policy Committee discussed these results and created the following possible pathways forward. We seek feedback on both the data we collected and possible ways we can proceed as an organisation.

a) Data collection

The Committee discussed the possibility of developing more 'hard data' on working conditions and status issues (including pay, status, relationship to the university/ funder, etc.). This data could support advocacy both at the individual and collective level. We noted the importance of data collected by the Centre for Applied Legal Education (CSALE) in creating shared standards across American schools.

b) Developing and advocating for models for clinical/ experiential integration and recognition

a. Recognition of Clinical Work/ Employment issues

It was clear that a major concern for respondents was their unequal status especially vis-à-vis other faculty members. Thus, ACCLE's work might be around raising the profile of clinical legal education as a method of teaching and research. In doing so, we might look to other models in law schools, but also to other disciplines such as Medicine, Nursing, Social Work, and others as possible models. One survey respondent noted interest in the "...American Bar Association (accreditation) Standard 405. Lawyers who teach ... should be given what our US counterparts have had for decades: tenure, clinical professorships, protected research/writing time, and participation in law school governance as Faculty members." This model and others are worthy of further investigation in a Canadian context. One respondent noted, "I don't think there is a cross-Canada understanding of clinics and how people are treated. I also don't think that the more we understand clinics, the more likely we are to have a place at the policy table both in government and academia". Some respondents thought that the national scope of ACCLE would allow for us to bring clinical and experiential learning to the attention of deans and others, and to

raise its profile. Of course, exactly how one goes about advocating is a question, but one we could investigate further.

b. Guidelines and Policy Development

Other respondents were interested in other forms of policy development related to pedagogy and clinic management.

Under both a. Recognition of Clinical Work/ Employment issues and b. Guidelines and Policy Development, respondents pointed out that ACCLE might be able to call on law schools and governments to fund clinics in a way that is too risky for individual clinicians who might be precariously employed.

c) Resource Sharing/ Clearinghouse

Respondents seemed very interested in an information sharing space both on clinic pedagogy, day-to-day management issues, and research. Respondents thought we could, for example, “make action research more visible”. We could also create an online repository and/or listserv for clinicians across the country. This might also include policies related to tenure and promotion.

We look forward to discussing these issues with our membership.