The Code of Professional Conduct and Access to Justice: Ethical Practice in a Legal Clinic Context

Student Guide with Questions

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I. Introduction

a. Lawyer Ethical and Professional Obligations in the Legal Clinic Context

This guide focusses on issues relating to ethical practice in legal clinics in Canada with a focus on how legal clinic students and lawyers might interpret their obligations pursuant to their governing Professional Code of Conduct. While legal clinics in Canada are diverse in terms of geographic location, funding models, relationships with law schools, and more, they typically have in common an access-to-justice mandate and a focus on providing free legal services to low-income and historically marginalized clients and communities.[2] Many legal clinics focus their services on

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[2] Sarah Buhler, Sarah Marsden and Gemma Smyth, *Clinical Law: Practice, Theory, and Social Justice Advocacy* (Toronto: Emond, 2016) 2.

what has been called “poverty law”. Poverty law has been described as “the areas of law that disproportionately affect low-income individuals or disadvantaged communities” and “the areas of law around which a low-income community of interests can easily coalesce.”[3] For example, residential tenancies law, income support law, or workers’ rights law can all be described as falling within the area of poverty law.[4] Many legal clinics embrace a “community lawyering” approach to practice. Karen Tokarz and her co-authors explain that community lawyering emphasizes “building and sustaining relationships with clients, over time, in context, as part of and in conjunction with communities.”[5] Community lawyering is also typically characterized by larger social or economic justice aspirations. Muneer Ahmad explains that community lawyering is a “mode of lawyering that …is committed to partnerships between lawyers, clients, and communities as a means of transcending individualized claims and achieving structural change.”[6] Similarly, Lenny Abramowicz explains that one of the significant features of legal clinics is a focus on community development, community education, and aw reform.[7] Many clinics also provide clinical legal education or other opportunities to law students, who work directly with clients under lawyer supervision. While each lawyer or law student working in a legal clinic setting brings their own values, norms and ideals to their work, many legal clinics embrace values that include a commitment to client empowerment, a desire to work againstthe oppression of vulnerable clients and communities, and a focus on equity and social justice.[8]

We are living through a period of growing inequality and the erosion of many protections and supports for vulnerable members of society. Many of the problems that clients bring to legal clinics are often rooted in these conditions of “organized abandonment”[9] and systemic social

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[3] Lenny Abramowicz, “The Critical Characteristics of Community Legal Aid Clinics in Ontario” (2004) 19 Journal of Law and Social Policy 70 at 76. Douglas Hay has referred to as ‘low law” (referring to law practiced in lower courts and in areas that are typically not in the purview of lawyers and legal scholars) Hay, C. Douglas. "Legislation, Magistrates, and Judges: High Law and Low Law in England and the Empire." Lemmings, David, ed. *The British and Their Laws in the Eighteenth Century* (London: Boydell Press, 2005).

[4] Abromowicz, *ibid*.

[5] Karen Tokarz, Nancy L Cook, Susan Brooks and Brenda Bratton Blom, “Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education (2008) 28 Wash UJL & Pol’y 359 at 364. Emphasis in original.

[6] Muneer Ahmad, “Interpreting Communities: Lawyering Across Language Difference” (2007) 54 UCLA L Rev 999 at 1079.

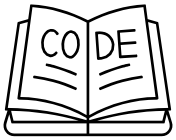
[7] *Supra* note 3.

[8] Corey S Shdaimah, “Legal Services Lawyers: When Conceptions of Lawyering and Values Clash” in Leslie C Levin and Lynn Mather, eds., *Lawyers in Practice: Ethical Decision making in context Chicago:* University of Chicago Press, 2012 317 at 317.

[9] Ruth Wilson Gilmore, “Organized abandonment organized violence: devolution and the police”. UC Santa Cruz, Santa Cruz, 2015, online: https://thi.ucsc.edu/event/ruth-wilson-gilmore-2/.

injustice - conditions that are often sustained by the operation of law and legal systems. Lawyers and students working in legal clinics often confront, with theirclients, the reality that law upholds oppressive conditions, and that justice institutions are too often not sites of “justice” for marginalized clients and communities, but may in fact be traumatic or even violent.[10] Indeed, it is common for members of marginalized communities to enter the legal system not voluntarily,but rather in a “defensive or vulnerable position."[11] They may be caught up in criminal law processes, or summoned to court under threat of eviction, loss of income, or deportation. Other clients may seek to assert rights or make claims in a legal system that is opaque and not built with their realities in mind.[12] It is our experience that it does not take long for legal clinic lawyers and students to develop or deepen a critical perspective onlaw and traditional approaches to legal practice as a result of these realities. How can the Code of Conduct speak to these realities and help guide ethical legal practice within these difficult conditions?

b. Professional Codes of Conduct and their Limits



In Canada, all lawyers are governed by their specific province or territory’s Code of Professional Conduct. These Codes are published in accordance with each law society’s legislated authority to regulate the legal profession in the public interest.In 2009, the Federation of Law Societies of Canada created what is known as the Model Code of Professional Conduct (hereinafter “the Model Code” or “the Code”). The Model Code can be found here: https://flsc.ca/what-we-do/model-code-of-professional-conduct/. Since 2009, all law societies outside of Quebec have adopted a version of the Model Code. This means that there is a “high degree of uniformity in the rules of conduct across the provinces.”[13] However, it is important to note that some important differences exist among provincial and territorial Codes: lawyers and law students must consult their governing Code in any given circumstance.

The Model Code sets out a series of statements of principle, rules and commentaries. Topics covered in the Model Code include competence, quality of service, conflicts of interest, the duty of confidentiality, withdrawal from

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[10] See Nancy Cook, “Looking for Justice on a Two-Way Street” (2006) 20 Wash UJL & Pol’y 169 at 183.

[11] Tonya L Brito et al, “Racial Capitalism in the Civil Courts” (2022) 122 Columbia L Rev 1243 at 1246.

[12] Resisting white supremacy means understanding the paramountcy of the role of law in the history and ongoing process of settler-colonization and considering ways of untangling fairness and justice from colonial legal processes. See Patricia Monture-Angus, *Thunder in My Soul: A Mohawk Woman Speaks* (Fernwood Publishing: Canada, 1995).

[13] Alice Woolley, Richard Devlin, and Brent Cotter, *Lawyers’ Ethics and Professional Regulation* (fourth ed). LexisNexis, 2021 at 10.

representation, the role of the lawyer as advocate, and more. In its preface, the Model Code is clear that it is not meant to be an exhaustive guide to all possible ethical issues that lawyers might face, but that its principles are "important statements of the expected standards of ethical conduct for lawyers and inform the more specific guidance in the rules and commentaries." To reiterate, the Code of Conduct does not, and cannot, provide an exhaustive guide to lawyers seeking to practice ethically or resolve ethical issues. Indeed, many rules in the Code are quite general and discretionary in nature – for example stipulating that a lawyer "may" take a certain course of action. Thus, as Woolley and her co-authors point out, lawyers seeking to be ethical must "look beyond the Code."[14]

Alan Hutchinson has said that Codes of Conduct seem premised on the assumption that lawyers are a "homogenous group who engage inbroadly similar work."[15] However, we know that a one-size-fits-all does not describe legal practice in the real world. AsLynn Mather and Leslie Levin write, "while there are continuities across [legal practice] fields, we…find that each practicearea has its own particular norms and challenges, shaped not only by substantive, procedural, and ethical legal rules, but also by clients, practice organizations, economics, and culture."[16] This observation rings true in legal clinic settings, which often seem to operate in a world far from the one imagined in the Model Code. Although the Model Code places a value on access to justice (by encouraging lawyers to provide pro bono services, and by permitting unbundled services, for example)[17], it is premised on a traditional lawyering paradigm that for the most part assumes a lawyer in private practice working with an individual client who has a discrete legal problem to which the lawyer can apply his or her expertise. It seems to assume that clients have the financial means to select, retain, and pay their lawyers to solve their legal problems, and that lawyers have the time and resources to explore the "full range of client needs."[18] The Code also, for the most part, assumes a traditional adversarial litigation context.[19] In sum, lawyers working in legal clinic contexts may not easily see the realities, complexities, and constraints of their work reflected in the Code.[20] As Robert Granfield has stated, "the rules ofprofessional responsibility are theoretically

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[14] *Ibid* at 11.

[15] Allan C. Hutchinson, *Legal Ethics and Professional Responsibility* (Second Edition) Irwin Law, 2006 at 13.

[16] Lynn Mather and Leslie C Levin, "Why Context Matters" in Lynn Mather and Leslie C Levin, *Lawyers in Practice: Ethical Decision Making in Context* (Chicago: University of Chicago Press, 2012) 3 at 3.

[17] See Rule 4.1 Commentary 2 and Rule 3.4-2A.

[18] Louis S Rulli, "Roadblocks to Access to Justice: Reforming Ethical Rules to Meet the Special Needs of Low-Income Clients", (2014) 17:4, U of Pennsylvania J of L & Soc Change 382 at 383.

[19] See John-Paul Boyd, "The Need for a Code of Conduct for Family Law Disputes" (April 29, 2016), online: https://www.slaw.ca/2016/04/29/the-need-for-a-code-of-conduct-for-family-law-disputes/

[20] Rulli, *supra* note 18.

universal, but in fact offer little guidance to help resolve the complex problems that poverty lawyers confront in their daily practices."[21]

As we set out in this Guide, clinic lawyers and scholars have thought deeply about how to practice ethically in the unique and complex environments of legal clinics.While traditional approaches have envisioned legal problems as individualized and disassociated from wider contexts, clinic lawyers have often adopted a more expansive view. They have argued that lawyers have a role in wider questions of justice and have a responsibility to engage with injustice and work to change systemic harm. Justice means fairness, transparency, accountability, and humility, and a commitment to justice informs clinic lawyers interpretation of the rules governing lawyers.

c. Overview of this Guide

This guide highlights some key aspects of the Code of Conduct rules governing lawyer conduct as they apply in the legal clinic setting. It is specifically intended to be used in legal clinic settings where law students work for pay, or as part of their legal education. It is not an exhaustive accounting of all of the rules that apply to clinic practice but rather is an introduction that is intended to highlight how specific rules might apply in a poverty law setting including core skills that are not traditionally conceptualized as key to lawyering including relationality, critical reflective analysis, and attention to context.[22] It is a starting point for encouraging law students to consider what kind of lawyers they want to be, and to reflect on how the Model Code might be interpreted in legal clinic settings.

This work is informed by our experiences working in and with legal clinics, our review of the literature, and our consultations with Canadian legal clinic lawyers. [23] Our consultations with lawyers sought to focus on ethical issues that arise most often in clinic settings, and to discuss how lawyers interpret their governing Code of Conduct. Throughout this Guide, we refer to the Model Code. As noted above, lawyers and law students should always refer to their jurisdiction's Code of Professional Conduct because despite broad uniformity across jurisdictions, some differences between the Model Code and individual provincial and territorial Codes do exist.

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[21] Robert Granfield, "The Politics of Decontextualized Knowledge: Bringing Context into Ethics Instruction in law Schools" in Kim Economides, ed., *Ethical Challenges to Legal Education and Conduct* (Oxford: Hart Publishing, 1998) 299 at 309.

[22] Sarah Marsden and Sarah Buhler. "Legal Competencies for Access to Justice: Two Empirical Studies" (2017) 34 Windsor YB Access Just at 187.

[23] Consultations took place in 2018-2019, prior to the Covid-19 pandemic. The arrival of the pandemic and a variety of related and unrelated issues meant that our project was quite delayed. The project receivedResearch Ethics Board Approval from the University of Windsor (Oct. 17, 2019) and Research Ethics Board approval from the University of Saskatoon (BEH-18-152).

II. Interpreting the Code of Conduct in Legal Clinics: Select Issues

In this section, we discuss several common ethical issues that arise in legal clinic practice and consider how lawyers and law students might interpret and understand their obligations pursuant to the Model Code. As noted above, this section is not an exhaustive overview of all relevant Model Code rules nor of all the ethical issues that arise in legal clinic practice. However, the discussion herein provides a starting point for consideration of a range of ethical issues that may arise in legal clinic practice.

a. Client Advising and Conceptualizing the Lawyer/Client Relationship

Rule 3.2-2 of the Model Code states that "When advising a client, a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter. Commentaries to this rule state as follows:

> [2] A lawyer's duty to a client who seeks legal advice is to give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law and the lawyer's own experience and expertise. The advice must be and undisguised and must clearly disclose what the lawyer honestly thinks about the merits and probable results.
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> [3] Occasionally, a lawyer must be firm with a client. Firmness, without rudeness, is not a violation of therule. In communicating with the client, the lawyer may disagree with the client's perspective, or may have concerns about the client's position on a matter, and may give advice that will not please the client. This may legitimately require firm and animated discussion with the client.

Robert Dinerstein has written that traditional approaches to client counseling and advising assume that "clients should be passive and delegate decision-making responsibility to their lawyers" who provide technical and disinterested professional advice.[24] Dinerstein notes that the traditional approach requires lawyers to ask questions to

> adduce the information necessary to place the client's problem within the appropriate conceptual box. At the proper time, [the lawyer]…advises the client about the course of action he recommends…Alternatively, [the lawyer] may provide a relativelyterse recitation of technical adviceand let the client decide how to

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[24] Robert D. Dinerstein, "Client-Centered Counseling: Reappraisal and Refinement" in Susan D Carle, ed., *Lawyers' Ethics and the Pursuit of Social Justice: A Critical Reader* (New York: New York University Pres, 2005) 151 at 151.

> proceed. The lawyer…tends not to value client input, for he believes that the client has little of value to contribute to the resolution of his legal problem.[25]

Rule 3.2-2 certainly provides leeway for lawyers who take this traditional approach to client advising.[26]

Clinical law scholars and practitionershave long critiqued the traditional approach to client advising, noting that it can be paternalistic and may replicate within the lawyer-client relationship the very patterns of oppression and subordination that clients experience elsewhere in their daily lives.[27] Thesecommentators have noted that the traditional model can promote a charity model which applies a framing of victim (client) and saviour (lawyer) that erodes the agency and autonomy of the client.The victim/saviour framing posits law students/lawyers as the expert in the relationship and the client as a passive recipient of legal expertise.[28] In reality, lawyers and law students often have more to learn from their clients than our clients do from us.

In response, clinic lawyers and scholars have been at the forefront of the development of a model of the lawyer-client relationship that put clients at the centre, and that seeks to deeply value the autonomy, complexity, and contexts of clients' lives and experiences. Known as "client-centred lawyering", this approach seeks to support client agency and autonomy, and to "reaffirm human dignity and [to] challenge to the subordination that clients regularly experience" in their day to day lives.[29]

Clinic lawyers have also critiqued the ways that traditional approaches to the lawyer-client relationship have tended to isolate legal issues from the complex contexts within which they arise, and todisassociate legal issues from systemic structures and patterns. Sameer Ashar describes this as "the removal of the lawyer-client relationship from the socio-political sphere and the chiseling of clients away from their political and racial solidarities."[30] As noted above, clinics have often embraced community lawyering approaches which seek to ensure that client problems are addressed in context, and that legal clinics keep larger questionsof systemic social and economic justice at the forefront in their work. Thus, for example, Shin Imai suggests that lawyers should seek to understand a "community

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[25] *Ibid.*

[26] *Ibid* at 155.

[27] See for example, the work of Gerald Lopez who discusses lawyers' tendencies to reenact hierarchies in their relationships with clients. See Gerald P Lopez, *Rebellious Lawyering : one Chicano's Vision of Progressive Law Practice* (Boulder: Westview Press, 1992) 23.

[28] For critique of this framing, see Michelle S. Jacobs, "People From the Footnotes: The Missing Element in Client-Centred Counseling" (1997) 27 Golden Gate U. L. Rev.

[29] Shdaimah, *supra* note 8 at 321. See also Dinerstein, *supra* note 24 and Michelle S. Jacobs, ""People From the Footnotes: The Missing Element in Client-Centred Counseling" (1997) 27 Golden Gate U. L. Rev. n

[30] Sameer M Ashar, "Law Clinics and Collective Mobilization" (2008) 14 Clinical L Rev 355 at 359.

perspective" in consideration of legal problems.[31] This requires community lawyers to learn about the communities in which they are working, but more importantly, to build relationships withthese communities.[32] It requires lawyers and law students to understand notions of solidarity, liberation from oppression, decolonization,[33] and working together with clients advocating for justice– all as central tenets of working in a poverty law context.[34]

Marlene Nourbese Phillips and Leanne Betasemosake Simpson offer a wonderful metaphor that can be adopted when conceptualizing the lawyer client relationship within the legal clinic setting. [35] They speak of the act of breathing as an act of solidarity. To conspire comes from the Latin and literally means to breathe. They explain that to "co-conspire" is to breathe together. How can we conspire with our clients/each otherwithout taking breath/voice away from one another? Knowing that others breathe in what we exhale, how do we ensure that weexhale is healthy as it will be inhaled by others? Why is it important to avoid being 'saviours'? While there is a great deal of ocus on concepts such as 'wellness' and 'self-care' in legal clinic scholarship, these ideals can be overly individualized. [36] Some approaches to trauma informed lawyering, for example, risk detaching the trauma experienced by many clients from its sources which tend to be systems of oppression including settler-colonization.

[37] Breathing with another in relation to one another means more than just becoming empathetic. Rather, it means that we, as lawyers and law students, need to engage not only with individual clients, but we also need to work with our clients collectively to disrupt systemic injustice. Natalie Clark offers important insights on this topic in her critique of trauma informed approaches and encourages us to consider violence-informed witnessing which places a responsibility on the practitioner to co-conspire to address the causes of violence in addition to its manifestations.[38]

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[31] Shin Imai, "A Counter-pedagogy for Social Justice: Core Skills for Community Lawyering." (2002) 9 Clinical Law Review 1.

[32] See Cook, *supra* note 10.

[33] Patricia Barkaskas and Sarah Buhler, "Beyond Reconciliation: Decolonizing Clinical Legal Education" 26 J Law and Soc. Pol'y 1.

[34] Adrian Smith, "Seeing Like a Clinic" (2022) 59 Osgoode Hall Law Journal 1.

[35] Ga(s)p: Marlene Nourbese Philips, Leanne Betasemosake Simpson: https://www.youtube.com/watch?v=B3w_hwAhQd8

[36] For critiques of these concepts, see for example: Dian D. Squire and Z Nicolazzo, "Love My Naps, But Stay Woke: The Case Against Self-Care" (May 2019) About Campus: file:///Users/roginjl/Downloads/SquireNicolazzo2019.pdf

[37] Natalie Clark "Red Intersectionality and Violence-informed Witnessing with Indigenous Girls" (2016) 9 Girlhood Studies 2.

[38] *Ibid*.

b. Advocacy Ethics

Rule 5.1 of the Model Code addresses the lawyer's ethical obligations in his or herrole as an advocate. Rule 5.1-1 states:

> 5.1-1 When acting as an advocate, a lawyer must represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy, and respect.

The ensuing commentaries provide details about this balancing act that lawyers must undertake in their roles as advocates. The commentaries make it clear that the lawyer's role is "openly and necessarily partisan", and the lawyer has a "duty to the client to raise fearlessly every issue, advance every argument and ask every question" to advance the client's cause.Yet the lawyer maintains a duty to the administration of justice, meaning they must never cross the line to illegality, dishonesty, or disrespect for the process. Commentary 8 notes that in civil proceedings, the lawyer should not resort to "frivolous or vexatious objections, attempts to gain advantage from slips or oversights...or tactics that will merely delay [or harass the other side." The lawyer must also maintain civility and respect within adversarial proceedings.

Monroe Freedman and Abbe Smith have stated that "the central concern of lawyers' ethics...is how far we can ethically go - or how far we should be required to go – to achieve for our clients full and equal rights under the law."[39] This question has particular salience in poverty law contexts, where clients regularly experience rights' violations and regularly encounter barriers to full and equal participation in society. Scholars and clinicians who have considered the specific ethical duties of lawyers who are advocating for vulnerable or marginalized clients have suggested that it is possible to argue that lawyershave a heightened duty of "zeal" in representing poor clients whose basichuman needs and survival are at stake. This is so often the case in poverty law matters where clients' income, housing, or immigration status, for example, are under threat in legal proceedings. As Kathryn Sabbeth argues, "Meeting basic human needs is an essential prerequisite for an equal society. When those basic needs are jeopardized, extra protection is warranted."[40] Of course, the harsh realityin legal clinics is that time and resources are always limited – this itself reflects systemic injustice and access to justice issues resulting from underfunding of legal aid and "the ongoing inequality in the distribution of lawyers" between wealthy and poor communities.[41]

Legal clinic lawyers and students must therefore deeply appreciate their obligations as loyal advocates for clients whose basic human needs are often at stake, all while ensuring that they do not

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[39] Monroe H Freedman and Abbe Smith, cited in Kathryn A Sabbeth, "Zeal on Behalf of Vulnerable Clients" (2015) 93 NCL Rev 1475 at 1476.

[40] Sabbeth, *ibid*, at 1501.

[41] *Ibid* at 1504.

cross the line into unethical tactics or practice. This can lead to difficult ethical considerations in some cases. For example, Deborah Rhode discusses the scenario of a client who requests assistance applying for a certain social assistance benefit.[42] The lawyer believed that the client was legally ineligible for the benefit because the client had another source of income. However, the social assistance regime was "grossly inadequate" and did not meet the basic survival needs of the client and her family. Rhode discusses this issue as an issue of advocacy ethics: should the lawyer advocate for her client knowing that she is likely ineligible for the benefit, but also believing that her ability to survive might depend on receiving it? Rhode concludes that such circumstances "can justify partisan practices that would be indefensible in other contexts."[43] What is clear is that in any given case, legal clinic lawyers must think carefully through their strategies, and should be transparent about their ethical duties in their conversations with their clients. The harsh reality in some cases may be that the current legal system cannot provide substantive justice for clients facing threats to their basic survival needs. This underscores once again the need for systemic advocacy for reform of systems to support vulnerable members of society.

c. Competence and the Duty not to Discriminate

What skills do we need in order to be competent to work with people/communities who we do not share the same identity (gender, gender identity, sexual orientation, race, class, ability)? How do we know when we're competent to do this work? How do our privileges impact our work with clients and communities? Consider what privileges you bring to your work at the clinic. Consider how privilege and power play out in the lawyer/client relationship.

Some legal ethics training materials focus on "how to" guides with respect to lawyer competence and how to effectively communicate with specific populations. These guides can be immensely helpful in terms of providing an educational basis to guide encounters with a vast diversity of people. However, as a whole, the question of 'how to work with clients' who bring a myriad of life experiences to the lawyer-client relationship runs the risk of pathologizing particular identities. As well, 'how to' questions run the risk of eliciting taxonomic answers that fail to capture the nuance of the ways in which identities intersect and the ways in which oppression interlocks, resisting categorization and compartmentalization.[44]

Lawyer competence in the legal clinic

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[42] *Ibid* at 1485.

[43] *Ibid* at 1487.

[44] For discussion of intersectionality, see: Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1991) 43 Stanford Law Review 6. For discussion of interlocking oppressions and identities, see Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment* (Routledge: USA, 2008).

context means fostering far more than what are traditionally thought of as legal skills. It means fostering emotional intelligence, active listening, reciprocal learning, cultivating and anti-racist/ decolonial ethos, and developing an ethic of care. Developing an ethic of care is a concept rooted in Black abolitionist thought

[45] as well as Indigenous scholarship including Indigenous legal orders.[46] It is a rejection of approaches to lawyering that individuate and pathologize trauma as if trauma can be separated from socio-political structures such as colonialism and slavery.[47] Developing an ethic of care means to transform questions such as 'what's wrong with you' to questions of 'what happened to you'. It also means that we must learn about the socio-legal-political structures that cause oppression. Rule 6.3-1 of the Model Code mandates that lawyers must not discriminate against colleagues, employees, clients, or any other person. Lawyers are required to commit to equal justice for all and to respect the dignity of all people which includes treating all persons fairly and includes treating all persons fairly and without discrimination. Indeed, as per the Model Code, lawyers have a heightened responsibility to understand human rights and workplace health and safety laws in force in Canada and to honour the obligations outlined.[48]

The Model Code includes specific commentary about lawyer obligations towards Indigenous people which includes an understanding that "Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases".[49] Further, lawyers are mandated to "take particular care" to avoid engaging in behaviours that are discriminatory towards Indigenous people.

Significantly, the Federation of Law Societies of Canada has recently released a Consultation Report setting out a raft of proposed amendments to the Model Code in response to Call to Action 27 of theTruth and Reconciliation Commission.[50]

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[45] See for example: Angela Y. Davis, Gina Dent, Erica R. Meiners, and Beth Ritchie, *Abolition. Feminism. Now.*, (Haymarket Books: Chicago, IL, 2022); Rodney Diverlus, Sandy Hudson, and Syrus Marcus Ware, *Until We Are Free: Reflections on Black Lives Matter in Canada,* (University of Regina Press: Regina, MB, 2020); Mariame Kaba, *We Do This 'Til We Free Us: Abolitionist Organizing and Transformative Justice,* (Haymarket Books: Chicago, IL, 2021); Shiri Pasternak, Kevin Walby, and Abby Stadnyk (eds), *Disarm, Defund, Dismantle*, (Between the Lines: Toronto, ON, 2022).

[46] *Supra,* note 12.

[47] For discussion of the history and legacy of slavery and colonialism in Canada, see: Robyn Maynard, *Policing Black Lives in Canada: State Violence in Canada from Slavery to the Present,* (Fernwood Publishing: Nova Scotia, Canada, 2017).

[48] Rule 6.3-1 and accompanying commentary.

[49] Rule 6.3-1, Commentary 3.

[50] Federation of Law Societies of Canada, *Consultation Report: Draft Amendments in Response to Call to Action 27 Model Code of Professional Conduct* (November 28, 2023) online: https://flsc.ca/wp-content/uploads/2023/11/Code-Consultation-Report-2023v2.pdf

These draft changes are expansive and would involve amendments and additions throughout the Model Code. For example, a statement would be added to the Preface to the Model Code that "lawyers must understand that the legal profession has a role to play in efforts to seek reconciliation with Indigenous peoples." Changes are proposed to various rules in the Model Code, including a commentary that states that a "competent lawyer" would "employ trauma-informed and culturally- informed practices as appropriate."[51] Further, the new proposed Commentary4C to Rule 3.1-2 states that "To provide competent service to clients from various cultures, it is important that a lawyer demonstrate an openness to learning about cultures other than their own, and a willingness to listen, to understand and to apply perspectives other than their own as may be appropriate to a matter." The proposed amendments also state thatlawyers are encouraged to develop and maintain knowledge about reconciliation, Indigenous laws, an understanding of the legacy of colonialism and the "legal profession's role in the enduring harms to Indigenous peoples that resulted fromcolonialization" as part of their duty of competence.[52]

The proposed amendments to the Model Code in response to TRC Call to Action 27 are significant and will be highly relevant to legal clinic lawyers. The amendments embrace an approach that takes a broader view of lawyer competence than we see in the current version of the Model Code. They even arguably challenge historicnotions of professionalism that scholars like Constance Backhouse have identified in traditional norms of professional conductfor lawyers.[53] While the proposed amendments have not yet been adopted, legal clinic lawyers and students would benefit from reading the Consultation report and the proposed amendments and understanding and integrating the proposed rules and commentaries into their work.

The Model Code is currently still mostly silent on colonialism and other forms of structural oppression – but this could be changing in a significant way if the TRC amendments discussed above are adopted. Regardless of whether the TRC amendments to the Model Code are adopted, legal clinic lawyers have long known that competency in the legal clinic context requires an understanding of colonization, racism (and in particular, anti-Black racism), homophobia, ableism, transphobia, xenophobia, classism, misogyny, and how all of these forms of

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[51] *Ibid* at 12.

[52] *Ibid* at 18.

[53] As Professor Backhouse has pointed out, the Code and included notions of 'professionalism' and 'civility' are rooted in the white supremacist history of law societies and the legacy of these origins continue to guide and inform the regulations that lawyers are bound by. "The norms of the legal profession historically have been framed around deeply entrenched notions of masculinity, white supremacy, and class privilege" Constance Backhouse, "Gender and Race in the Construction of "Legal Professionalism": Historical Perspectives" in Adam Dodek and Alice Woolley (eds) *In Search of the Ethical Lawyer: Stories from the Canadian Legal Profession* (University of British Columbia Press: Canada, 2016) at 138.

oppression intersect at the interstices of 'poverty'.

d. Effective Communication, Research, and Writing

There are many attributes that are integral to being a 'competent' lawyer. While the definition of lawyer competence in the Model Code predominantly focuses on skills relating to legal research, writing,

case analysis, investigation, advocacy,and problem solving, the rule also includesthe ability to effectively communicate with one's client. Legal clinic law students are often surprised to find that one of the most challenging aspects of working in a legal clinic setting is connecting with their clients, gaining the trust of their clients,learning the importance of anti-racism and decolonial frameworks in the law student/client relationship, and learning how to communicate effectively. These attributes are all important aspects of lawyer competence in relation to communication.

Rule 3.2-1 of the Model Code mandates that:

> A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

Part 3 of the Commentary of that rule reads:

> [3] A lawyer has a duty to communicate effectively with the client. What is effective will vary depending on the nature of the retainer, the needs andsophistication of the client and the need for the client to make fully informed decisions and provide instructions.

The Model Code provides no clear guidance with respect to what this means in the context of poverty law. It is clear however that what is required in order to fulfill this professional obligation is dependent upon the needs and abilities of the client. The commentary states that effective communication requires the lawyer to adjust their approach depending on the needs and abilities of the clients they work with, and it is also incumbent on the lawyer to explore what effective communication might look like for their clients. It may, as Pooja Parmar writes, require lawyers to engage in "ethical translation" in order to "not only translate social realities into legal facts, but…also… to translate claims that arise from…one legal system (e.g. an Indigenous legal system) into claims that will make sense within another legal system (i.e. the common law)."[54]

Effective communication will look different depending on the client and the lawyer or law student must get to know the client

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[54] Pooja Parmar, "Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence" (2019) 97 Can bar Rev 526.

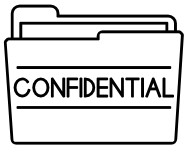
including but not limited to the client's lived experience including intersecting oppression and its impact on the client's life, language barriers, level of education and literacy, what makes the client feelsafe and what can be done to ensure we, as lawyers and law students, are viewedas trustworthy. These are questions we ought to be asking ourselves as weapproach our clients and the legal challenges they might be facing. All of the above requires building trust. It is our experience that clinics that work over time to build relationships with the communities in which they work create a foundation for trust in individual lawyer-client relationships at the clinic.

Rule 3.1-1 includes effective legal research and writing as part of a competent lawyers' skills. In most clinic settings, law students will have taken at least a first-year course in legal research and writing. These skills continue to behoned in the course of working in legalclinics. As per the Model Code, legal research and writing is subsumed under the rule of lawyer competence. Competently researching a legal matter with respect to a lawyer-client retainer is conceptualized as researching the legal precedent and applying law to new sets of facts as presented by the individual client whose matter we work on. In legal clinics, lawyer competency in research may go farther than researching legal precedent. It requires us to understand the socio-political context within which the client's legal troubles arose as well as the client's identity and history. Legal research may require, for example, researching the history of the Indigenous people's land that the legal clinic stands on, the history of anti-Black racism, the history of state-sanctioned violence levied at particular people and communities of which the client may belong. It also involves creativity and the willingness in appropriate cases to make novel arguments in order to advance justice. For example, if criminal courts have recognized anti-Indigenous racism, anti-Black racism, and misogyny, how can we take those arguments and apply them to other legal contexts such as housing, social benefits, and civil matters? Are there systemic arguments or even legal or constitutional challenges that can be made that might advance justice?

Effective legal writing comprises an important part of lawyer competence. A plain language movement has evolved which encourages dispensing with archaic legal writing that is generally incomprehensible to anyone who has not been to law school. Judicial legal writing is becoming more attuned to the need forlegal rulings to be accessible to the public and especially to the parties involved in the litigation. Just as legal research requires getting to know your client in order to have a full understanding of the legal issue to be researched, legal writing requires understanding your client's needs, abilities, and what effective writing and communication might look like for them. A perfectly well written letter to a client drawing on plain language is utterly useless for a client who faces barriers to reading. Conversely, there is often a misguided assumption that clients living in poverty are uneducated and unable to understand complex legal writing and concepts. It is important to ascertain with

the client what their preferences and abilities are with respect to communicating effectively.

We emphasize the need to reflect on one's own life experience, privilege, emotional intelligence, and communication capabilities in order to foster the ability to communicate well with a diverse people facing a myriad of challenges and bringing a whole host of life experiences to the lawyer-client relationship.



e. Confidentiality

Many clients accessing services at legal clinics are precariously housed, unhoused, or experiencing homelessness and many often have intermittent access to theinternet or stable cell phone service. It can be common for a client to have access to acell phone or internet access at the intake phase but then lose access due to lack of funds. This poses serious challenges for maintaining the lawyer/client relationship. For example, if we know that a particular client frequents a local drop-in centre or shelter and we urgently need to get a hold of the client, is it in line with our professional obligations to call the drop-in centre and leave messages which would reveal the confidential information that the person has the legal clinic as counsel? Orif we have an existing client who we are in touch with that we also know is a friend or family member of the client we are trying toget a hold of, are we able to ask about getting in touch with the missing client?

Rule 3.3-1 of the Model Code stipulates the following with respect to confidential information:

> A lawyer at all times must hold in strict all information concerning the business and affairs of a client acquired in the course of the professional relationship and must not divulge any such information unless:
>
> (a) expressly or impliedly authorized by the client.
> (b) required by law or a court to do so.
> (c) required to deliver the information to the Law Society; or
> (d) otherwise permitted by this rule.

The most relevant exception to the strict rule regarding confidential information for our purposes is contained in subsection(a). Issues relating to divulging confidential information can most often be dealt with in the initial retainer or at the intake phase of the lawyer/client relationship. Questions about alternative ways of getting a hold of the client can be asked and it is wise to make these inquiries even if the client notes that they have a stable address and cell phone service at the time of intake.The client can also be asked to sign consent forms for the legal clinic to contactplaces that the client frequents, or to contact friends or family members, for the sole purpose of getting a hold of the clientif the need arises. Although these initial steps may not wholly remedy the problem when it arises, they may provide a basisfor the 'expressly or impliedly authorized' exception to the rule concerning confidentiality.

f. Conflicts of Interest

Rule 3.4-1 of the Model Code articulates that lawyers must not act or continue to act for a client where there is a conflict of interest, subject to certain exceptions. The rule against acting while in a conflict of interest arises from the duty of loyalty owed by lawyers to their clients. Where a lawyer's loyalty is divided or may be divided, the question of conflict arises. Conflicts most commonly arise in situations of joint retainers, acting against a former client's interest, systemic conflicts, and personal interest conflicts.

A joint retainer conflict might arise if a lawyer represents two co-accused in a criminal proceeding and one of the clients expresses that they feel the other co-accused is to blame for the offencealleged. The lawyer would not be able to continue to represent both parties as they would be in a conflict.[55] They would haveto prioritize one client's liberty over the other's and their loyalty to both clients would be divided. Acting against a former client's interest occurs when a party adverse to a former client's interests wantsto be retained. This can potentially be a conflict situation as the lawyer or legal clinic holds confidential information about the past client that may be of use to the potential new client and by retaining the new client, the lawyer or legal clinic maybe perceived to be acting against the interests of the past one.

Systemic conflicts can arise in a wide variety of circumstances. One instance might be where a client's legal matter conflicts with the mandate of the legal clinic or advancing that client's interests in a particular way could set a precedent that is harmful to other existing legal clinic clients.[56] An example of a personal conflict might be that a client might attend the legal clinic because of a grievance with their landlord. If the lawyer is related to the landlord, the lawyer would likely be in a conflict situation as a result of their personal relationship with the landlord.

Conflicts of interest pose challenges in the context of poverty law. Legal clinics are often the only option available to people living on low-income. If the legal clinic is unable to take on a new client due to a conflict of interest, that person may have no other means to be represented by a lawyer. Lack of access to legal representation poses serious challenges to individuals seeking legal redress or being harmed by violent legal processes and is currently an access to justice crisis in Canada and elsewhere. The situation where a client is retained, and a conflict of interest arises well into the retainer forcing the lawyer or legal clinic to withdraw service poses even more barriers for the client which is compounded in situations where the lawyer is unable (due to reasons of confidentiality) to disclose the source of

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[55] Note that there are specific rules with respect to representing co-accused in the criminal context. For further discussion of those rules, see *R v Silvini* (1991), 68 CCC (3d) 251 (ONCA) and *R v Neil*, 2002 SCC 70.

[56] This situation is explored by Richelle Samuel in the context of situations where the retainer of a client who is racist may conflict with the mandate of the legal clinic: "Legal Ethics and Moral Dilemmas: Strategizing around Race in the Provision of Client Service" (2001) 16 Journal of Law and Social Policy 3.

the conflict. While navigating issues of conflicts of interest, it is essential to seek the advice of a colleague or for law students, their supervising lawyer. It is also crucial that where a conflict arises the confidentiality of all clients is guarded closely and that every step is taken to minimize any prejudice to the client/former client or potential client when a conflict arises.

There are many questions about how legal clinics ought to handle conflicts of interest given the reliance on free legal services by people living in poverty or experiencing houselessness. Some may feel they can navigate the conflict without harming client interests while others adhere strictly to the letter of the rule prohibiting lawyers to act while there is a conflict or a perception of a conflict. We adopt the strict adherence approach for a number of reasons. It is important not to create two different standards or models for how to deal with conflicts in the context of poverty law; it is important not to create one standard for low-income clients where there is no alternative legal service and one standard for those who may have other options for legal representation. The rules of professional conduct should not be altered in order to allow lawyers to proceed notwithstanding the conflict. Rather emphasis should be placed on the government to be held accountable for the lack of legal services available in these situations. Relatedly, the government and regulators ought also to be held accountable for the lack of legal services in situations where a client living in poverty requires independent legal advice (ILA).

Understanding the harm that a conflict of interest can have on a client or potential client, it is crucial that conflicts checks be done prior to the scheduling of an intake for all potential clients. This is to ensure that the client is aware of their options for legal representation as early as possible. Close attention during the intake andthroughout the retainer must be paid toensure a conflict does not arise. If a clear conflict does arise, steps must be taken immediately to end the retainer and to tryto provide the client or potential client with all available resources to assist them to find alternate representation or with the relevant information to proceed with their legal matter unrepresented. As well, wepromote an approach that draws attention to issues of lack of access to lawyers and support much greater access to justice for vulnerable communities.

g. Optional and Mandatory Withdrawal from Representation

The Model Code outlines the situations when it is permissible or mandatory for the lawyer to withdraw from representation as follows:

> **Withdrawal from Representation**
> 3.7-1 A lawyer must not withdraw from representation of a client except for good cause and on reasonable notice to the client.
>
> **Optional Withdrawal**
> 3.1-2 If there has been a seriousloss of confidence between the lawyer and the client, the lawyer may withdraw.

Obligatory Withdrawal

3.7-7 A lawyer must withdraw if:

a) discharged by a client.

b) a client persists in instructing the lawyer to act contrary toprofessional ethics; or

c) the lawyer is not competent to continue to handle a matter.

Withdrawing from representation presents specific challenges in legal clinic settings because these are often the only legal services available to clients living in poverty. Lawyers and law students must be keenly aware of the lack of choice our clients have when it comes to legal representation. It may be prudent to explain to a potential client at the outset that the lawyer client relationship is built ontrust and confidence. A lawyer may be required to withdraw from representationwhere there is a serious loss of confidenceand in these circumstances, the client would be left without legal representation (in most cases). A loss of confidence may manifest in a number of ways. Abusive behaviour on the part of the client directed at the lawyer or law student may be indicative of a lack of confidence. For example, where the client persistently exhibits racist, sexist, transphobic, queerphobic, or ableist behaviour, in some circumstances, this behaviour may bereflective of a serious lack of confidence causing the lawyer to withdraw.[57]

Where appropriate, all indications that a client may have lost confidence in the lawyer must be explored and attempts must be made to restore that confidence. For example, there are many circumstances where a client may feel frustrated and may direct that frustration towards the lawyer or law student. A client may even say they want to "fire" the lawyer. It is incumbent on the lawyer to explore that frustration as opposed to being reactive which can escalate the situation and can result in the end of the retainer. It would be unethical to end a retainer at the first indication that a client has lost confidence. All possible efforts must be made to remedy the breakdown in the relationship. This obligation is heightened when the client has no other option for legal representation.

Another situation that lawyers must be mindful of is when they judge the client to be withholding information or not being truthful. This is a common perception of clients by lawyers and is often misguided. [58] A client might provide inconsistent answers to questions, may neglect to provide what the lawyer feels is relevant information, or may be contradicted by other information or evidence.None ofthese situations necessarily means that the client is 'lying' or purposely withholdingthe truth and therefore may not be

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[57] For further discussion racism emanating from clients in legal clinic settings and the ethical obligations of lawyers, see Samuel, *ibid*.

[58] See for example: Gemma Smyth, Dusty Johnstone, Jillian Rogin, "Trauma-Informed Lawyering in the Student Legal Clinic Setting: Increasing Competence in Trauma Informed Practice" (2021) 28 International Journal of Clinical Legal Education 1. The authors discuss law students' common perception that clients are lying and how trauma informed practice may remedy this perception.

indicative of a lack of confidence in the lawyer. Clients may have a history of being betrayed by people in authority and may have strategies for survival that involve being careful not to trust professionals with certain information. Further inquiry is needed before coming to that conclusion and must be conducted in a non-judgmental, non-accusatory way, by employing an ethic of care with a view to creating confidence and trust. When a lawyer-client relationship breaks down, the lawyer might ask themselves what they brought to the interaction that might have contributed to that breakdown instead of solely focusing on the client.

h. Law Students and Lawyer Supervision

Law students are not lawyers, and it is an offence under provincial law society legislation to hold oneself out as a lawyer when not licensed to do so.[59] Rule 7.6-1 of the Model Code mandates that lawyers "must assist in preventing the unauthorized practice of law."

However, the Code anticipates the scenario of law students working in legal clinics. Rule 6.1-1 deals with lawyers' responsibilities to directly supervise individuals "to whom the lawyer delegates particular responsibilities." Supervising lawyers must follow the commentaries about the scope and quality of this required supervision. Law students generally work at legal clinics under the license of their supervising lawyer which means that law students are unable to conduct any aspect of the work at legal clinics unless it is directly supervised by a lawyer. Law students are not able to provide legal advice, communicate about a client or file with third parties, accept or reject an offer of any kind, provide undertakings, or speak in court/tribunal – without the lawyer's express permission. Law students must document and communicate all aspects of their work. Proper documentation is also crucial to ensure continuity of care of the file; often in settings that host law students, there is much turnover following the contours of academic terms. This turnover inherently prejudices clients but is often compounded when there has been a lack of attention to proper documentation. Law students must communicate all aspects of their work to their supervising lawyer, and this includes documentation (i.e. memos to file, phone calls, docketing).

Lawyer competence includes understanding one's own limitations or barriers to doing competent work.[60] Communicating with the supervising lawyer about any struggles that the student is experiencing or any barriers faced to engaging with their file work is part of the student's professional and ethical obligation. This includes communicating any

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[59] See for example s.26.1 of the *Law Society Act,* R.S.O. 1990, c. L.8, which prohibits non-licensees from practicing law or providing legal services. Section 26.2 of the Act outlines the penalties for contraventions of s.26.1.

[60] See Rule 3.1-2 and the accompanying commentary in the Model Code.

mistakes/errors/omissions made in the course of the work. It is expected that law students will make mistakes – it would be an anomaly if there were no mistakes and indeed, errors are often one of the best ways to learn. It is, however, unacceptable not to communicate with the supervising lawyer about all aspects of the work including mistakes – big or small!

Because everything the law student does at a legal clinic needs to be reviewed and approved by a supervising lawyer, time management is a key aspect of lawstudent work. Having regard to the professional obligation of having our work reviewed, law students must account for this as they organize their time including client meetings, preparation for litigation, meetings with third parties etc. Consider whether the lawyer needs to also be present, whether they need to be available to review material, and what the timelines are for each task that needs to be completed. In the context of poverty law, time management in this regard is crucial. For many clients, even getting to the legal clinic is a herculean task that might require immense resources including paying for transportation and childcare, missing work, or overcoming emotional and other barriers to accessing the physical space ofthe legal clinic. If a client visits the office and then is told they must come back because the supervising lawyer was not available to review a document or witness an affidavit adds unnecessary barriers for the client in accessing legalrepresentation.

III. Conclusions

For lawyers across practice contexts, there are inevitably gaps between what is written in the governing Code of Conduct and what an ethical approach might require in a given circumstance. As such, all lawyers must develop an ability to identify ethical issues when they arise, and to develop the judgment and moral courage to respond appropriately.[61] As noted herein, ethical issues can be particularly fraught for lawyers working in legal clinic settings. These issues tend to be entangled with larger issues of societal injustice, and are the byproducts of a system that fails tomeet the human needs and rights of its most vulnerable members.

However, the fact that ethical lawyering is difficult does not mean that lawyers and law students should shy away from a strong engagement with the Model Code and their obligations pursuant to the Model Code. Sometimes, there are simpleanswers when it comes to ethicallawyering. But more often than not, there are no easy or clear cut answers as towhat an ethical lawyer ought to do in any given circumstance. The lawyer must consider context, relationships, the voice and experience of the individual client, andlarger issues of justice. In short, the lawyermust engage in critical reflective practice. Corey Shdaimah suggests that the fact that ethical lawyering can be difficult is actually a good thing: it is “the hallmark of a reflective practitioner to be troubled.” [62] Legal clinic lawyers are working in a world

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[61] Woolley, Devlin and Cotter, *supra* note 10 at 12.

[62] *Supra* note 8 at 337.

marked by deep injustice, and in their day to day practice confront the pain and hardship unleashed by unjust systems. “Living in the contradiction” and struggling with how to act ethically is evidence that lawyers are not abandoning their values or ethical obligations in an imperfect and unjust world but rather are striving to do their best. [63] We encourage clinic lawyers and students to stay “troubled” about their ethical obligations and to use this discomfort to inspire continual reflection on their ethical roles and responsibilities.

Practice Scenarios

The following scenarios are intended to assist lawyers and law students to identify ethical issues that arise in the poverty law context. For each scenario listed, consider the ethical issue, what rule(s) of professional conduct are engaged, and how the issue(s) might be approached and resolved. Reliance on both the Model Code as well as the commentary we provide above may be used to guide answers.

(1) An intake has been scheduled for two tenants in a residential tenancies matter. In advance of meeting with the tenants, you are made aware that they are not joint tenants and that the legal issue they are facing is eviction due to a criminal act having been committed by one of the tenants.

(2) An intake has been scheduled for a tenant in a residential tenancies matter. During the intake, the client shows you the lease which indicates that it is a joint tenancy (with a person who is not your client). The issues raised involve maintenance and repair and the tenant wants to terminate the lease. What questions might arise in this situation and what are the next steps?

(3) You have a residential tenancies hearing (eviction) coming up and you are preparing the client to testify. During the preparation the client mentions that the landlord’s husband is your uncle. You did not realize the connection sooner because your uncle’s partner (the landlord) has a generic name. Your uncle will likely be at the hearing, and you think you might have to cross-examine him if you are to fully represent your client. If you end the retainer with this client, she will have no other options for legal representation, and it is a very complicated eviction hearing.

[63] *Ibid.*

(4) Your supervising lawyer tells you that your file, which is a joint retainer, has to close due to a conflict of interest. You disagree that there is a conflict. What should you do?

(5) Your client is having issues with another tenant who lives in the same building and wants the landlord to intervene. After a few initial phone calls and after meetings with the client, you get the name of the other tenant. You realize that you represented the other tenant in an eviction hearing that was premised on interference with the reasonable enjoyment of another tenant. This hearing dealt with a different address than the one your current client resides at. What issues does this present?

(6) You have been working on a residential tenancies file (maintenance and repair issue) for a number of months. Your client came to Canada as a refugee. In preparation for the hearing, you have met twice in order prepare your client to testify. This is a tenant application, so the client's testimony is obviously crucial to the case. At both prior meetings, the client's version of the chronology of the events changed. In response to these changes, you have spent a great deal of time re-working the theory of the case. The day before the hearing you meet with the client to continue preparing for the hearing. Once again, your client's version of the events changes – specifically around the issue of the evidence of notice given to the landlord regarding the maintenance concerns.

(7) You are conducting a hearing at a residential tenancies tribunal. You finish your hearing and you receive a favorable ruling. Your supervising lawyer has left but you stay behind to observe other proceedings. In one matter that you observe, the tenant is unrepresented and tenant duty counsel has already left for the day. The adjudicator asks you to provide legal advice to the tenant. What are your obligations?

(8) You have a refugee client who has experienced extreme violence. Every time you meet or speak with this client, you experience panic attacks and have difficulty sleeping. You experience reluctance to do any work on the file because of the impact it is having on your ability to cope. What are your obligations?

(9) Your client has missed three scheduled appointments with you, and you have an upcoming hearing. You need to meet with the client and get her instructions. She finally attends and you smell alcohol on her breath. She yells at you and storms out of the office. What steps can/should you take?

(10) You have an Indigenous client who is being evicted from her housing for non-payment of rent. She is a single mother with two children and has not been able to find alternative living arrangements. She wants to maintain her current housing situation but her chances of winning the eviction hearing are slim. What are your obligations here?

(11) You have advised your client that they do not have a strong case and will likely be evicted after a hearing at the residential tenancies tribunal. You have met with the client multiple times and spoken to her on the phone and each time you advise that she will likely be evicted. She always responds by saying things like “you have to have hope” and “well we’re not going to win if you keep saying we’re not going to win” “have a positive attitude” – “I believe in justice and I know we’ll win”. What can you do to manage expectations?

(12) You are preparing for an upcoming hearing at the social benefits tribunal and are interviewing your client about a social assistance overpayment. He inadvertently discloses to you that he has created a fake identity to obtain social assistance so that he can receive it at two separate addresses. The upcoming hearing involves his fake identity/address, and it is also the identity that he used when becoming a client at the clinic. He says that he does not consent to you divulging this information to anyone. What if anything do you do?

(13) Your client has recently lost his housing. He has nowhere to go. He attends a meeting with you at the clinic and hands you a small, locked box. He advises that he would like you to hold on to it for him – it has his ID in it and he is worried that it will get stolen at the shelter he will be staying at.

(14) You are covering the front desk reception area and are answering the phones. A client calls and says they want to book an intake with respect to a landlord and tenant matter. He says that his apartment has leaky pipes, that water is flowing into the apartment, and that he is sure there are harmful chemicals in the water. He believes that the landlord put DDT, arsenic, and mercury in the water in order to intentionally harm tenants he deems to be contrary. What are your next steps?

(15) You have a client who is charged with theft under. He often says things that don’t make sense to you, and you think he has mental health issues. He tells you that he had permission to take the items in question, from the store owner, from the police, and from God. He is adamant that he does not want to plead guilty, and he wants a trial. How should you proceed?

(16) You are conducting a hearing at a social benefits tribunal. The adjudicator asks you the following question: “Well counsel, did you follow up with the doctor? What did the doctor say more recently about your client’s condition?” You have indeed followed up with the doctor and the information provided to you was not helpful, in fact is harmful, to your client’s SBT hearing. How should you respond?

(17) You are waiting outside of the residential tenancies tribunal hearing room with your client. When your client leaves for a minute, a senior lawyer approaches you and says “I think I know your client – what is his name? I think he was my client – did you know he was my client?” The lawyer seems to be suggesting that the legal clinic “scooped” his client. Howshould you respond?

(18) You have an intake booked for a criminal law file. You are aware in advance that the client/accused has a brain injury. When you go to the waiting room to meet your client, his mother is seated next to him. You explain that you will meet with him first and then you will come out and speak to her. She insists on coming into the intake room. She explains that he has difficulty remembering anything and that she needs to let you know all of the details. What do you do?

(19) You have a client who has come to you with a legally valid disability benefits denial appeal. The client has been diagnosed with various mental health issues and Fetal Alcohol Syndrome. The client often becomes angry when you meet with him; he is frustrated at the slowness of the process and that he is always being asked to provide documents that he doesn’t have. One day during a client meeting he becomes frustrated. Despite your best efforts to alleviate his frustrations, he begins swearing at you and then says “you’re fired. I want a real lawyer.” He then leaves the clinic. What do you do? What are the next steps on the file?

(20) Your client is facing eviction proceedings at the residential tenancies tribunal. The landlord alleges that she has gathered so much “garbage” in her apartment that she is posing a risk to other tenants. The landlord also says that she is harassing him by sending him constant faxes and voice mail messages. She sent him hundreds of faxes over a very short time frame. The social worker at the clinic is working with her and she also has herown therapist. She is at risk of being charged criminally for criminal harassment. You advised the client not to contact the landlord on her own and that you will make all contact with the landlord on her behalf. Initially she agreed to this but then you find out that she has

continued sending faxes and in the faxes, she tells the landlord that she now has a lawyer, and she makes representations about what the clinic will do (i.e. “My lawyer told me they are going to sue you”!). What are the next steps on the file?

(21) You have a residential tenancies file where the client is facing eviction for non-payment of rent. You contact the landlord who inadvertently tells you that he lied about one of the payments – the tenant did in fact pay in cash, but the landlord needs the money so is going after the tenant. The landlord has told you this information over the phone.

(22) You are the litigator on a criminal file. The client made a number of remand court appearances prior to retaining the legal clinic. Students from the legal clinic have appeared twice and more time is needed to confirm our client’s instructions. On the last appearance, the Justice of the Peace indicated we had to be prepared to set a trial date on the next appearance. We’re not ready to do so. Is it ethical for us to send further disclosure requests to the Crown to try to provide us with more time?

(23) You are conducting a sentencing hearing after your client was found guilty of theft under. You are aware that your client has many prior convictions for the same offence. The Crown does not seem to be aware of this. What are your obligations and how should you proceed?