CLINICAL LEGAL EDUCATION AND ACCESS TO JUSTICE IN GHANA AND CANADA

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Abstract

Law clinics have had a late start in Ghana, compared with similar initiatives in Canada. Although there have been consistent calls for the establishment of law clinics at various faculties of law across the country, development on the ground has been slow. Unlike Canada, no law school at present in Ghana has a law clinic that engages students in actual client representation. However, a comprehensive plan is now being introduced to provide legal aid and advice to the poor, and the Ghana Legal Aid Commission is taking steps to institute law clinics across the country's faculties of law. Nevertheless, it is yet to be seen how this will be achieved.

This thesis takes the extra step by being quite specific about how one would go about setting a Law Clinic in Ghana. The thesis looks at the potential contributions of such law school clinical programs to experiential legal education, access to justice, and the fostering of a culture of social justice advocacy. The thesis also draws on the Canadian experience and the experience of the development and work of the Law Centre Clinical Program of the University of Victoria Faculty of Law. The thesis uses the resulting examination as a starting point to examine what a Law Centre type clinic in Ghana would look like, and what it would take to set it up.

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Dedication

This thesis is dedicated to my parents, James Frimpong and Mary Adjei, of blessed memory.

Chapter One: Introduction

1.1. Background

The year 2018 marked the beginning of an important period in the history of legal aid in Ghana. It was the year when Ghana enacted a new *Legal Aid Commission Act, 2018* (Act 977), an Act of Parliament that replaced the old *Legal Aid Scheme Act, 1997* (Act 542).[1] It was also a time when the country faced numerous challenges in its legal aid and justice delivery system.[2] The *Legal Aid Commission Act*, 2018 introduced many changes that could fundamentally alter publicly funded legal services, anticipating greater participation by the voluntary sector in the delivery of legal services and additional funding of alternatives to litigation.

Following the enactment of the *Legal Aid Commission Act, 2018,* Ghana's Legal Aid Commission appointed a taskforce ("the Taskforce") to investigate and present proposals for reforms to legal aid.[3] In its draft report, the Taskforce bemoaned a decline in legal aid services

[1] *Legal Aid Commission Act of Ghana, 2018* (Act 977).

[2] See e.g., "Statement on Visit to Ghana by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights", *United Nations Human Rights* (Accra: 18 April 2018), online: <www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22951&LangID=E>, wherein the problem appears to be acute in the criminal justice system, because the UN Special Rapporteur has aptly described some of the injustices arising from a lack of legal representation in the Ghanaian criminal justice system, in the following terms: "The incidence of excessively prolonged and arbitrary pre-trial detention has been widely documented and criticized by human rights bodies and organizations at the national and international levels. Despite the existence of a number of constitutional and legal safeguards designed to prevent arbitrary pre-trial detention, they appear to be routinely ignored and violated by the law enforcement and judicial authorities. There are reported cases of remand prisoners who have been detained for over 10 years, and in some cases, for longer than the maximum sentence that can be imposed on crimes that they are accused of. While a program such as the Justice for All Program has significantly contributed to reducing the remand prison population since its inception in 2007, it has not, and is not designed to, address the systemic causes of the problem, including the lack of capacity on the part of the law enforcement and judicial authorities to investigate, prosecute, process and manage cases, efficiently and effectively. *The lack of effective legal representation is especially problematic* in death penalty cases. Some prisoners have reportedly been sentenced to death without being represented by a lawyer. The prisoners affected are overwhelmingly poor. Similarly, the consequences of prolonged imprisonment are devastating, particularly in light of deplorable conditions of detention. The prisons are often extremely overcrowded, and do not provide for adequate food, health care or sanitation facilities, leading to widespread communicable diseases among the prisoners. Again, the well-off will almost never be subjected to such treatment" [Footnotes omitted, and emphasis added].

[3] See Law and Development Associates, *Legal Aid Policy for the Legal Aid Commission, Ghana* (Report submitted to the Executive Director of the Legal Aid Commission & Accountability, Rule of Law and Anti-Corruption Program, February 2019) [On file with author; disclaimer: the author of this thesis provided research assistance in drafting the Legal Aid Policy].

and *pro bono* work as one of the main challenges faced by the Legal Aid Commission in fulfilling its constitutional mandate to ensure access to justice for indigents.[4]

The Taskforce subsequently looked at the issues of access to justice and education of lawyers, whereupon it recommended measures to sensitize a *pro bono* culture among lawyers. In particular, the Taskforce recommended that the Legal Aid Commission encourage and support the establishment of legal aid centres in law faculties across the country.[5] In its view,

> Students of the law are a greatly untapped potential in assisting in the provision of legal aid services. In order to utilize this potential, the Commission, in collaboration with the various law faculties, should establish legal aid Centres in the various law faculties across the country to equip potential lawyers with the skills and importance of legal aid.[6]

It is apparent from the recommendation that the Taskforce envisioned a legal aid centre as a program that engages law students in legal services during law school. Ideally, that program would involve real cases and clients who cannot afford the services of a lawyer. The program would however aim at not only expanding access to legal aid services. The program would also provide a methodology to facilitate specific learning outcomes – equip potential lawyers with the skills and values of legal aid.

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[4] The Ghana Legal Aid Commission is a public corporation established by the Parliament of Ghana to provide legal aid services to indigents, as required by the Constitution of the Fourth Republic of Ghana, 1992. See Ghana *Legal Aid Commission Act*, 2018 (Act 977); *Constitution of Ghana*, 1992, art 294.

[5] "Statement on Visit to Ghana by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights", *United Nations Human Rights* (Accra: 18 April 2018), online: <www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22951&LangID=E>, 61-62. This initiative follows a recommendation by the United Nations in its *Guidelines and Principles on Legal Aid*, whereupon the United Nations identifies the need to diversify legal aid service providers by adopting a comprehensive approach, including encouraging the establishment of university law clinics. See United Nations, *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, GA Res 67/187, UN Doc A/Res/67/187 (Vienna: 20 December 2013), *Guideline 16*, online: <www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf>.

[6] See Law and Development Associates, *Legal Aid Policy for the Legal Aid Commission, Ghana* (Report submitted to the Executive Director of the Legal Aid Commission & Accountability, Rule of Law and Anti-Corruption Program, February 2019). Moreover, in its 2011 Report, the Constitutional Review Commission recommended that the Legal Aid Commission should collaborate with the General Legal Council and law schools to ensure that a culture of legal aid is instilled in law students. See Constitution Review Commission, *Report of the Constitution Review Constitution: From a Political to a Developmental Constitution* (Submitted to the President of the Republic of Ghana, 20 December 2011) at 667.

The Taskforce's recommendation when successfully implemented will undeniably contribute significantly to improving access to justice in Ghana; it will support practical training and experiential legal education, expand access to legal aid and foster a culture of social justice advocacy. However, a comprehensive plan of how that would be achieved is yet to be seen.

The thesis research reveals that the development of law clinics in Ghana raises some possibilities, issues, and barriers for consideration:

i. Where would the first law clinic be located and why?
ii. What services would it provide?
iii. How would people learn about it? From where would it draw its clients?
iv. What would have to change in the chosen Law School's curriculum? How would students get credit, and what would that mean in terms of currently required courses (i.e. would some currently required courses have to become not required in order for students to participate)?
v. How would the Bar react to it, and how would one get their support?
vi. What funding and staff would be required?
vii. What regulatory changes would be required?

This thesis fills a gap in the development of law clinics in Ghana. The enactment of the new *Legal Aid Commission Act, 2018* indicates that the legal environment is shaping to favor the development of law clinics. This thesis takes the extra step by being quite specific about how one would go about setting one up. This thesis will look at the potential contributions of such law school clinical programs to experiential legal education, access to justice, and the fostering of a culture of social justice advocacy. It identifies what might be a prototype law clinic in Ghana. The thesis draws on the Canadian experience and the experience of the development and work of a clinic associated with one Canadian law school.

Unlike Ghana, law clinics have been a part of the Canadian legal system for decades.[7] Currently, most Canadian law schools offer clinical law programs.[8]

Indeed, scholars, clinicians, and students have described these clinical programs as important learning opportunities that improve access to justice and legal education.[9] Canadian clinicians are more likely to report "meeting significant access to justice needs in the community".[10] A case study on the Law Centre of the University of Victoria also found that the program responds well to gaps in access to justice, particularly at the individual level.[11]

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[7] Frederick H Zemans & Lester Brickman, "Clinical Legal Education and Legal Aid – The Canadian Experience" (May 1974) *Council on Legal Education for Professional Responsibility, Inc*, vol VI, no 13, online: https://digitalcommons.osgoode.yorku.ca/scholarly_works/2726.

[8] See, for example, the following (partial) list of clinical programs: University of Victoria Faculty of Law (Business Law Clinic, Law Centre, Environmental Law Centre: <www.uvic.ca/law/jd/lawclinics/index.php>; University of British Columbia Faculty of Law (programs include Business Law Clinic, Indigenous Community Legal Clinic, Innocence Project, International Justice & Human Rights Clinic, Rise Women's Legal Centre, Law Students' Legal Advice Program [LSLAP]: <allard.ubc.ca/community-clinics>); University of Alberta Faculty of Law (Low Income Citizens Clinical Law program: <lawschool.ualberta.ca/news/main/2012/March/LowIncomeCitizensClinicalProgram.aspx>); University of Calgary (many clinical courses, see <law.ucalgary.ca/future-students/calgary-curriculum/experiential-learning>); University of Saskatchewan College of Law (Clinical law program: <law.usask.ca/experientiallearning/clinical-law-and-classic.php>); Robson Hall, University of Manitoba (Legal Help Centre program and more: <law.robsonhall.ca/clinical-learning>); University of Toronto Faculty of Law (several clinical programs available: see <www.law.utoronto.ca/centres-programs/legal-clinics>); Osgoode Hall Law Sch,,ool (several clinical programs available, see <www.osgoode.yorku.ca/programs/juris-doctor/jd-program/clinics-intensives/>); Queen's Law (several clinical programs, see <law.queensu.ca/programs/jd/experiential-learning/clinics>); University of Ottawa (clinical programs include the University of Ottawa Community Legal Clinic and an Environmental Law Clinic, see <commonlaw.uottawa.ca/en/students/student-centre/course/clinics>); University of Western Ontario Law (clinical programs include the Community Legal Services, Business Law Clinic and Sports Solution Clinic: <law.uwo.ca/legal_clinics/index.html>); University of Windsor Faculty of Law (variety of clinical programs: <www.uwindsor.ca/law/341/clinical-and-experiential-learning>); McGill Law (see <www.mcgill.ca/law-studies/bcljd-studies/clinical-legal-education>); Dalhousie Law (see <www.dal.ca/faculty/law/programs/jd-admissions/externships-clinics.html>). For a description of the clinical programs in Canada, see also Gemma Smyth, Samantha Hale & Neil Gold, *Clinical and Experiential Learning Programs in Canadian Law Schools* (8 July 2016) [On file with author].

[9] See e.g. Janelle Anderson, "Clinical Legal Education: Perspectives from Former Clinical Law Students" (2014) 37 Man L J 427; Gemma Smyth, Samantha Hale, & Neil Gold, "Clinical and Experiential Learning in Canadian Law Schools: Current Perspectives" (2017) 95:1 Can B Rev 151; Alexander FD Stirling, *Measuring the Access to Justice Impacts of a Law School Clinical Program* (Master of Public Administration, School of Public Administration University of Victoria, 28 July 2017) [Unpublished].

[10] Gemma Smyth, Samantha Hale, & Neil Gold, "Clinical and Experiential Learning in Canadian Law Schools: Current Perspectives" (2017) 95:1 Can B Rev 151 at 171.

[11] Alexander FD Stirling, *Measuring the Access to Justice Impacts of a Law School Clinical Program* (Master of Public Administration, School of Public Administration University of Victoria, 28 July 2017) [Unpublished]. See also Colleen F Shanahan et al, "Measuring Law School Clinics" (2018) 92:3 Tul L Rev 547.

Moreover, Canadian legal educators are, overall, highly supportive of clinical and experiential legal education, and are likely to see clinical programs as critical to student learning, "making what they learn in law school useful and relevant to their future work as legal professionals".[12]

One 2012 study, surveying the experiences of past clinical law students from another Canadian clinical program, supports these findings.[13] The survey represents an example of empirical research on clinical legal education and students' general perceptions of the impact of their law school experience, and more specifically, of their clinical law experience. According to the participating law students, the law clinic program provided an education that both deepened and broadened their appreciation of the law as a dynamic process for learning the practical components of the law and for the pursuit of justice.[14] Indeed, the students surveyed were critical of the inadequacies of the traditional law school curriculum in preparing them for practice; in their view, the traditional curriculum was focused on legal concepts, legal analysis, and substantive legal doctrine. While effective at helping students learn about the law, the traditional curriculum does little to prepare a law student to learn how to *practice* law.

Clinical programs can improve legal education because they enable the students to practice key performances under conditions similar to the practice of law more than do more traditional methods of instruction. Hence, in concrete, real-life scenarios, rather than abstract, hypothetical, classroom scenarios, law students also learn how to practice as lawyers: interview a real client, distill material facts from the narration by the client, identify the relevant legal issues, find the applicable law and procedures, and advocate for the client before a court. In this way, law students begin to learn how to practice law as they grapple with the conditions and realities of legal practice.[15]

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[12] Gemma Smyth, Samantha Hale, & Neil Gold, "Clinical and Experiential Learning in Canadian Law Schools: Current Perspectives" (2017) 95:1 Can B Rev 151 at 164.

[13] Janelle Anderson, "Clinical Legal Education: Perspectives from Former Clinical Law Students" (2014) 37 Man L J 427.

[14] *Ibid.*

[15] Janelle Anderson, "Clinical Legal Education: Perspectives from Former Clinical Law Students" (2014) 37 Man L J 427.

Law clinics are, however, not free from challenges in Canada.[16] In 2017, a study conducted interviews with deans, clinicians, and professors across Canada to investigate the challenges in strengthening clinical and experiential legal education in Canada.[17] In that study, the researchers found a wide range of clinical and experiential education initiatives in law schools across Canada. The research findings also showed significant progress on the legitimatization of clinical legal education. However, the researchers found that although clinical legal education has made greater inroads as part of the mainstream law curriculum, funding and curricular integration remain problematic.[18] The researchers also identified uncertainty regarding regulation from law societies, governments, and within universities as significant concerns of deans. Among the concerns regarding law societies' impact on clinical programs in Canada were existing and potential restrictions on student practice.[19]

Indeed, these concerns in Canada are much alive in Ghana. In Ghana, curriculum reform will undeniably impose significant costs on law schools. Moreover, the university law departments are inflexible in adopting practical components to the law curriculum.[20] The uncertainty regarding restrictions on student practice is also a potential challenge to the development of clinical programs in Ghana. In Ghana, as in Canada,[21] the general rule is that no one other than a practicing lawyer is permitted to practice law.[22] The current regulatory

[16] See Gemma Smyth, Samantha Hale, & Neil Gold, "Clinical and Experiential Learning in Canadian Law Schools: Current Perspectives" (2017) 95:1 Can B Rev 151 at 171.

[17] Ibid.

[18] Ibid at 177.

[19] Ibid at 168.

[20] See generally, Samuel O Manteaw, "Clinical and Experiential Legal Education in Ghana: An Introduction and Proposals for Reform" (2005-2007) 23 UGLJ 55.

[21] See generally Lisa Trabucco, "Lawyers' Monopoly: Think Again: The Reality of Non-Lawyer Legal Service Provision in Canada" (2018) 96:3 Can B Rev 460.

[22] The *Legal Profession Act of Ghana* defines "practice" as "practice as a barrister, solicitor or advocate or in a like capacity, by whatever name called." See *Legal Profession Act of Ghana* at s 56. The practice of law, as contemplated under the Act is therefore ubiquitous. It encompasses "a broad range of services such as conducting cases in court, preparing papers necessary to bring about various transactions from conveying land to effecting corporate mergers, preparing legal opinions on various points of law, drafting wills and other estate planning documents and advising clients on legal questions. The term also includes activities that comparatively few lawyers engage in but that require legal expertise such as drafting legislation and court rules". See Bryan A Garner, ed,

framework of the legal profession in Ghana expressly prohibits a person who is not licensed as a lawyer from practicing as a lawyer, drawing or preparing a legal document for a gain, or holding themselves out as a lawyer.[23] The law makes no exceptions for legal practice without a licence. Thus, law students do not have the authority to engage in the practice of law, as the law makes no provision for them to do so. It is impossible to imagine, however, that students learn the practice of law without the opportunity to practice it. And since learning is defined as a change in behaviour as a result of practice, learning without practice is necessarily disadvantaged.

Although law clinics are not free from challenges in Canada, there is no doubt that the clinical program has made greater inroads as part of the mainstream law curriculum in many Canadian law schools.[24] The Law Centre of the University of Victoria Faculty of Law is a good example of a major Canadian law school clinical program that has emerged as a key component of not only the curriculum of the Faculty but also as part of the overall plan to promote access to justice.[25] This thesis will explore the experience of the development and work of the Law Centre of the University of Victoria Faculty of Law. The thesis considers how the Law Centre has been responding to curriculum integration, funding, and the current regulatory regime of student practice in the Province of British Columbia.

The Law Society of British Columbia (LSBC), as the regulator of the legal profession and the practice of law in the Province where the Law Centre is situated, contemplates and makes provisions for student practice.[26] The LSBC has enacted Temporary Articles Rules that define

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Black's Law Dictionary (St Paul, MN, 2004) cited with approval by the Supreme Court of Ghana in *Korboe v Amosa*; *Ex parte Teriwajah* (CIV APP, No J4/56/2014).

[23] *Legal Profession Act of Ghana* at ss 8(1) and (2), which stipulate, "[a] person, other than the Attorney-General, or an officer of Attorney-General's department, shall not practise as a solicitor unless that person has in respect of that practice a valid annual solicitor's licence issued by the Council duly stamped;" and "[a] person shall not be issued with a solicitor's licence unless that person has been previously enrolled as a lawyer".

[24] See Gemma Smyth, Samantha Hale, & Neil Gold, "Clinical and Experiential Learning in Canadian Law Schools: Current Perspectives" (2017) 95:1 Can B Rev 151.

[25] *The Law Centre*, online: <thelawcentre.ca/>.

[26] Law Society of British Columbia, *Law Society Rules 2015* (Vancouver, British Columbia: Law Society of British Columbia, effective 1 July 2015; updated March 2021) at rules 2-70(6).

requirements for student practice in that Province.[27] The Temporary Articles Rules enable "a student at a common law faculty of law in a Canadian university" to enroll in the Temporary Articles program. When enrolled, the Temporary Articles Rules permit the student to provide several legal services. This thesis examines the Temporary Articles Rules to identify how they provide for student practice in the Province. It will then examine how these regulatory measures impact clinical legal education.

The research in the Ghanaian context will focus mainly on examining what might be a prototype law clinic in Ghana. The thesis uses the Law Centre of the University of Victoria Faculty of Law as a starting point to examine what a Law Centre type clinic in Ghana would look like, and what it would take to set it up.

1.2. Research Questions

This thesis examines how law clinics can be an effective innovation to facilitate access to justice in Ghana and Canada. Thus, the following research questions will be explored further:

- What elements of the legal environment in Canada and Ghana favor the development of law clinics?
- How has the Law Centre of the University of Victoria Faculty of Law been responding to access to legal aid, curriculum integration, funding, and regulatory restrictions?
- What might a Law Centre type clinic in Ghana look like, and what would it take to set it up, and in particular, how will such a clinic respond to access to legal aid, curriculum integration, funding, and regulatory restrictions?

There have been several studies on access to justice in Ghana (and certainly a more developed robust jurisprudence in Canada, including a journal dedicated solely to the subject[28]). However, to the author's knowledge, no studies have hitherto examined the situation in Ghana from the

[27] Ibid.

[28] The Windsor Yearbook on Access to Justice [WYAJ].

perspective of clinical education. Thus, this thesis is timely, original, and will advance knowledge, especially in Ghana.

1.3. Research Method

This study investigates the differing approaches to the clinical method in Ghana and Canada, using two comparative case studies. The first compares the approaches adopted by Ghana and Canada in the provision of legal aid and legal education. In that context, the thesis investigates elements of the legal environment in Canada and Ghana that favor the development of law clinics. Subsequently, the second case study examines the approaches to clinical programs in Canada and seeks to evaluate how those approaches may be relevant in the Ghanaian context.

There are advantages and limitations to the scope of the thesis and the research approach that should be immediately noted. The thesis focuses on the UVic Law Centre of the University of Victoria, Canada. The choice of the UVic Law Centre was informed by the Law Centre's practice of combining legal aid with student learning. That practice is of great interest – especially so in light of the recommendation of the Ghana Legal Aid Commission's Taskforce that the Commission collaborates with the various law faculties to establish legal aid centres in the various law faculties across the country to equip potential lawyers with the skills and values of legal aid.[29]

It is worthy of mention that there are other clinics in Canada, and as some of the materials in this thesis show,[30] there are at least four or five different approaches to clinical education. The UVic Law Centre uses a representational approach and provides a range of legal services. Other clinics undertake law reform initiatives. Others also provide legal information and resources.

[29] See Law and Development Associates, *Legal Aid Policy for the Legal Aid Commission, Ghana* (Report submitted to the Executive Director of the Legal Aid Commission & Accountability, Rule of Law and Anti-Corruption Program, February 2019). Moreover, in its 2011 Report, the Constitutional Review Commission recommended that the Legal Aid Commission should collaborate with the General Legal Council and law schools to ensure that a culture of legal aid is instilled in law students. See Constitution Review Commission, *Report of the Constitution Review Constitution: From a Political to a Developmental Constitution* (Submitted to the President of the Republic of Ghana, 20 December 2011) at 667.

[30] For a description of the clinical programs in Canada, see also Gemma Smyth, Samantha Hale & Neil Gold, *Clinical and Experiential Learning Programs in Canadian Law Schools* (8 July 2016) [On file with author].

And others also specialise in particular areas of the law. Further research is needed to evaluate the value of these alternative approaches.

This thesis is a paper – based study. The aim of this study is to provide a foundation for further studies into the establishment of clinical programs in Ghana. The paper based study evaluates the current landscape of available information pertaining to the elements of the legal environment in Canada and Ghana that favor the development of law clinics and approaches to clinical initiatives in both jurisdictions. The study examines domestic legislation, court jurisprudence, works of legal educators and organisational documents (including syllabi, reports, and policy documents) relevant to clinical legal education and access to justice in Ghana and Canada. This thesis also uses an interdisciplinary approach that draws from scholarship on curriculum design and learning outcomes to understand intended learning outcomes for clinical legal education.

This thesis is however limited by the paper based methodology. The thesis would have benefitted from actually talking to people in both jurisdictions who have an interest in clinical legal education. There are diverse stakeholders including deans, law lecturers, clinicians, the bar, and perhaps other constituencies (including students and regulatory bodies like the law societies in Canada and the General Legal Council of Ghana) that have an interest in clinical legal education. Further research could be undertaken to understand the perspectives of these stakeholders in the development of clinical initiatives.[31] The practising profession, for instance, can assist in (re)defining what graduates need to be able to serve clients and society. The current learning outcomes identified by the practising profession in Ghana and Canada, when examined from an educationalist perspective, suffer from several weaknesses.

[31] For a similar project in the Canadian context, see Gemma Smyth, Samantha Hale, & Neil Gold, "Clinical and Experiential Learning in Canadian Law Schools: Current Perspectives" (2017) 95:1 Can B Rev 151.

1.4. Structure of the Thesis

Following this introductory chapter, Chapter Two provides an overview of the clinical method. It explains the concept and its role in educating law students and helping to widen access to justice.

Chapter Three then investigates clinical legal education in Canada, examining the extent to which the existing framework for legal aid and legal education in Canada creates scope for the adoption of the clinical method to enhance access to justice. Chapter Four entails an examination of the current regulatory framework for student practice. Chapter Five investigates how law school clinics in Canada integrate legal aid with legal education in their programs. Here, the thesis cites the University of Victoria Law Centre as its case study. The study will address issues of legal aid, funding, curriculum integration, and regulatory compliance.

Following this, Chapter Six investigates clinical legal education in Ghana, determining the extent to which the existing framework for legal aid and legal education in Ghana also creates scope for using the clinical method to enhance access to justice. Next, the Chapter proceeds to investigate the current regulatory framework of legal practice in Ghana, and how this affects student practice. Chapter Seven uses the Law Centre of the University of Victoria Faculty of Law and the examination in the Ghanaian context as a starting point to examine what a Law Centre type clinic in Ghana would look like, and what it would take to set it up. The purpose of using a Canadian law school example in this thesis is simply to present ideas for consideration, discussion, and debate. This thesis does not intend to suggest that this is the only way to develop an effective clinical program.

Finally, Chapter Eight concludes the thesis by summarizing the research findings and highlight areas for further investigation.

Chapter Two: The Clinical Method

2.1 The Clinical Method

The term clinical legal education means different things to academics, legal practitioners, and students.[32] Richard Grimes, a leading author on the subject, has defined the clinical method to mean,

> a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world here it is practiced. It almost inevitably means that the student takes on some aspect of a case and conducts this as it would be conducted in the real world.[33]

Grimes' definition succeeds in accentuating an educational element of the clinical method. That definition however neglects a legal aid component of the clinical method. Grimes definition, therefore, provides limited guidance in the context of this thesis.

In that regard, the author of the current thesis finds the works of Richard Wilson very useful.[34] In 2017, Richard Wilson conducted ground-breaking research on the global reach and growth of law clinics.[35] In his work, Wilson identified the law clinic concept as having different meanings in different jurisdictions. Wilson, however, notes that law clinics in all jurisdictions

[32] For a review of such definitions, see, for example, Cosmos Nike Nwedu, "Enhancing Legal Aid through University Law Student Engagement: A Case Study of EBSU Law Clinic Model" (2017) 24:3 Int'l J Clinical Legal Educ 98 at 103-108.

[33] For a review of such definitions, see, for example, Cosmos Nike Nwedu, "Enhancing Legal Aid through University Law Student Engagement: A Case Study of EBSU Law Clinic Model" (2017) 24:3 Int'l J Clinical Legal Educ 98 at 104.

[34] Richard J Wilson, *The Global Evolution of Clinical Legal Education: More Than a Method* (New York: Cambridge University Press, 2017) at 10. Richard Wilson is Professor of Law and Director of the International Human Rights Law Clinic at American University's Washington College of Law. He has worked as a consultant to, or taught on law school clinical programs in Mexico, El Salvador, Nicaragua, Guatemala, Panama, Peru, Ecuador, Colombia, Chile, Argentina, South Africa, Slovakia, Lithuania, Czech Republic, Georgia, Turkey, Ukraine, and China. He has also taught on regional clinical training programs and served as a consultant to Soros-funded programs in Central and Eastern Europe, AID, and the UNHCR. In addition, he has written extensively on clinical legal education and access to justice issues.

[35] Richard J Wilson, *The Global Evolution of Clinical Legal Education: More Than a Method* (New York: Cambridge University Press, 2017). See also Richard J Wilson, "Training for Justice: The Global Reach of Clinical Legal Education" (2004) 22:3 Penn St Int'l L Rev 421.

"involve law students in learning law by guided practice during law school."[36] Wilson adds that ideally "that setting involves real cases, clients, or other project-based work with clients communities, usually with the poor or other marginalized populations without access to counsel."[37] Wilson went further to identify five elements that underlie an ideal model of a law clinic. These five elements are:

(1) provision by students of real legal services to actual clients with real legal problems;
(2) students are responsible for their decisions in the cases, but are closely supervised, with carefully controlled workloads, by an attorney licensed to practice law in the relevant jurisdiction, preferably a professor who shares the pedagogical objectives of clinical legal education;
(3) clients served by the program are generally people, groups, or organizations that are not able to afford the cost of legal representation or they come from traditionally disadvantaged, marginal, or otherwise underserved communities;
(4) academic credit commensurate with effort is awarded for clinic casework; and
(5) casework by students is preceded or accompanied by a law school course, for credit, on the skills, ethics, and values of practice, as well as the necessary predicate doctrinal knowledge for the area of practice of the clinic.[38]

Wilson's definition of the clinical method offers what is likely the broadest meaning of clinical legal education and as such, provides a working definition for this study. This thesis works from this definition because it most closely relates to the tradition of integrating legal aid with clinical practice, which is of great interest to this thesis – especially in light of the Taskforce recommendation for partnership between the Ghana Legal Aid Commission and law schools for the operation of legal aid centers in tandem with the training of law students.

[36] Richard J Wilson, *The Global Evolution of Clinical Legal Education: More Than a Method* (New York: Cambridge University Press, 2017) at 1.

[37] Richard J Wilson, *The Global Evolution of Clinical Legal Education: More Than a Method* (New York: Cambridge University Press, 2017) at 1.

[38] Richard J Wilson, *The Global Evolution of Clinical Legal Education: More Than a Method* (New York: Cambridge University Press, 2017) at 10.

2.2 Role of the Clinical Method

2.2.1 Educating Law Students

Clinical legal education has emerged in contemporary times for a number of reasons. Principally, the emergence of the clinical method is in some ways a comment on the instructional objectives of law schools and upon the various methods of instruction which the schools tend to employ. Traditionally, the law curriculum has focused on engaging students to learn about the practice of law and using the case-method and lecture method to promote understanding of the students.

Clinical legal education, on the other hand, emphasize methods that focus on students learning legal practices by practicing legal behaviours.[39] Generally, the use of the clinical method is based on the idea that clinical law experiences have a greater likelihood of providing law students with practice of key performances under conditions similar to the practice of law than do more traditional methods of instruction. The *Best Practices for Legal Education* published by Clinical Legal Education Association in the United States creates a significant impact for the clinical method.[40] The *Best Practices for Legal Education* report emphasizes that law schools articulate their instructional objectives in ways that focus not only on what the school's students should know and understand, but also will be able to do after graduating and how they will do it in addition to what they will know.[41] The importance of specifying such intended learning outcomes is well-recognized by educational theorists. Educational theorists most frequently describe learning outcomes as having three components: performances, conditions, and criteria.[42] In this regard, learning outcomes focus on answering three questions:

1. What are the performances? This means what will the learner be able to do after the experience.

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[39] Neil Gold, "Legal Education, Law and Justice: The Clinical Experience" (1979) 44:1 Sask L Rev 97.At 109

[40] Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map*, 1st ed (Clinical Legal Education Association, 2007), online: www.cleaweb.org/Resources/Documents/best_practices-full.pdf.

[41] Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map*, 1st ed (Clinical Legal Education Association, 2007), online: www.cleaweb.org/Resources/Documents/best_practices-full.pdf.

[42] Robert F. Mager, *Preparing instructional objectives* (Belmont, Calif.: Pitman Learning, 1975). See also

2. What are the conditions? This means under what circumstances are the performances expected to occur.
3. What are the criteria? This means what types of evaluation are the professor using and what is considered acceptable.

This approach of describing learning outcomes provides a good planning tool for a clinician in the law clinical curriculum. Most of the legal education that the traditional law school methods offer leads students to believe that if they understand legal principles and can ascertain the facts relevant to a particular problem, they then need only apply the principles to the facts to find the just solution. The clinical experience, however, intends different learning outcomes for the students. Clinical legal education as it is discussed in this thesis is practise based, intends to provide students with ample opportunity to practice key performances under conditions similar to the practice of law. For example, when presented with an ethical problem, the student should accurately decide whether or not measures should be taken to eliminate the problem and provide justification for making such a decision. The clinical method thus generates an ability to discern and deal with ethical issues that guide lawyers' approaches to their work.

2.2.2 Helping to Provide Access to Justice

Aside from its educational purpose, helping to provide access to justice is central to the clinical method. Access to justice has been recognized as fundamental to any legal system. It is argued as a basic right, which enables the realization of human rights.[43] Thus, a lack of effective access to justice is frequently identified as a major barrier to realizing appropriate resolution to matters that

[43] As far back as the 1970s, Mauro Cappelletti and Bryant Garth, in their ground-breaking work documenting access to justice as the newest wave in the worldwide movement to make rights effective, found increasing global recognition of access to justice as a fundamental right. In particular, Cappelleti and Bryant Garth found that globally, "[t]he right to effective access is increasingly recognized as being of paramount importance among the new individual and social rights, since the possession of rights is meaningless without mechanisms for their effective vindication. Effective access to justice can thus be seen as the most basic requirement-the most basic 'human right' – of a modern, egalitarian legal system which purports to guarantee, and not merely proclaim, the legal rights of all"; see Mauro Cappelletti & Bryant Garth, "Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective" (1978) 27:2 Buff L Rev 181 at 184-185. Moreover, the United Nations, while adopting the *2030 Agenda for Sustainable Development*, recognized access to justice as instrumental for development. Among the 17 Goals outlined in the above Agenda, Goal 16 represents a call to action by all countries – both developed and developing – in a global partnership to "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels". See United Nations, *The 17 Goals* (Department of Economic and Social Affairs: Sustainable Development, n.d.), online: <sdgs.un.org/goals>.

require a justice solution. However, for a variety of reasons, including differences in the way that legal systems operate, the extent to which lower-income earners and other disadvantaged groups can access justice – and the quality of that justice – has typically been problematic worldwide. Research has consistently found that in many countries, people who are deprived of basic rights and remedies do not benefit from the relief that could be available to them through the legal system and often through other related social and economic systems.

In many instances, the lack of access to justice is primarily a question of financial means.[44] Low-income and other disadvantaged groups have limited access to legal services to seek redress or resolve their legal problems. Too few lawyers are available to provide free or lower-cost services to people who are unable to pay or have only limited ability to pay and this is identified as a major obstacle to ensuring access to justice.

But the inability to realize effective access to justice is not just a matter of lack of financial resources. Ensuring access to justice is also a question of legal literacy and awareness of legal rights, as well as of the laws and institutions available to address their legal problems. On this point, Frank Bloch observes that "justice is inaccessible to a large number of people simply because they are unaware of laws and legal institutions, not to mention specific legal rights".[45] In such instances, having access to legal representation is not enough: "it is not just a question of having access to legal representation; access-to-justice initiatives must first address this lack of knowledge by bringing basic legal awareness or legal literacy to the general population."[46] Bloch likewise observed that the denial of access to justice is attributable to the fact that in many instances, the only available legal regime fails to allow access to its institutions and does not provide effective remedies. In such instances, the solution would be for access-to-justice initiatives to "reform the law and the legal system itself. This kind of access-to-justice work challenges the

[44] Frank S Bloch, "Access to Justice and the Global Clinical Movement" (2008) 28 Wash U J L & Pol'y 111 at 119. See also United Nations Office on Drugs and Crimes, *Global Report on Legal Aid* (New York: The United Nations), online: <www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-_FINAL.pdf>.

[45] Frank S Bloch, "Access to Justice and the Global Clinical Movement" (2008) 28 Wash U J L & Pol'y 111 at 119.

[46] *Ibid.*

legal status quo (as opposed to providing representation in the existing system or education about existing legal rights".[47]

Clinical legal education has arisen in recent times not only from an urge to improve student learning but also to support the delivery of access to justice. The literature demonstrates a service provision and justice education aspect of how law schools can contribute to access to justice. Some proponents present clinical legal education as a means by which law schools can contribute to the provision of legal services. As Aiken & Wizner, for example, observed:

> law schools do have some obligation to contribute to the solution of the crisis in access to justice, and it seems obvious that the obligation is best accomplished by law school clinics *assisting* low-income individuals and communities that are underserved or have particular difficulty obtaining lawyers because of the nature of their legal problems.[48]

In this connection, clinical legal education is conceived as offering opportunities for law students to aid in increasing access to justice in the sense that they provide a wide range of otherwise unavailable legal services. Many also seek to improve access to justice with innovative schemes, through various types of law reform activities, and, most importantly, by instilling in future lawyers a greater sense of public responsibility.[49] Some scholars however have a concern with creating an impression that the potential contribution of student clinics to access to justice is greater than it is. While students certainly can and do contribute, that contribution is very small when measured against the enormous scale of unmet legal needs. Indeed, no single clinic is likely to be able to meet the complex and variegated needs of an entire community. As Drew and Morriss have observed, "[t]o the extent that the needs of the poor for access to legal services are larger than can be met by clinical programs (as they are), this may not matter to a clinic's design.

[47] Frank S Bloch, "Access to Justice and the Global Clinical Movement" (2008) 28 Wash U J L & Pol'y 111 at 120.

[48] Jane H. Aiken & Stephen Wizner "Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice" (2004) 73 Fordham L Rev 997 at 997.

[49] Prof Frank S Bloch, "Access to Justice and the Global Clinical Movement" (2008) 28 Wash UJL & Pol'y 111 at 112.

Any given law clinic is likely to have a sufficient population of low-income individuals to absorb the full capacity of the clinic to provide services."[50]

Some observers of clinical legal education also envision the clinical method as an element of an overall plan to encourage social justice culture in law students to become promoters of social justice strategies. The promotion of access to justice through clinical legal education in this context is conceived as a long-term added benefit of the program. As Walsh et al suggested:

> [clinical legal education provides the students] the opportunity to not compromise their principles, but to consider how the law affects the daily lives of people different from them and how to support them in understanding their legal obligations under the law without further marginalizing or stigmatizing them. This critical experience then provided them with a productive framework to achieve a greater understanding of the dynamic relationship between academic knowledge and its practical application to the legal and justice issues that may arise in their future work.[51]

This view of clinical legal education presents the program as a means of fostering a commitment in law students to justice and not just the law and training a successive generation of a legal profession that is sensitive to the needs of society. In this connection, the inclusion of social justice elements in clinical legal education is based on promoting 'justice education' – the notion that legal educators should see their role as something more than helping law students to become competent technicians of law. Legal educators should instill in law students an understanding of, as well as a commitment to, justice and legal ethics. Given a particular case, the students will accurately identify the ethical challenges involved, and accurately incorporate the implications of such challenges for the client, the case, and the legal system. Lawyers must not only be able to identify critical factors and their implications, they must be able to also take these factors into account when making decisions and advising clients.

5.3. Curricula Integration

[50] Margaret B. Drew & Andrew P. Morriss, "Clinical Legal Education & Access to Justice: Conflicts, Interests, & Evolution" in Samuel Estreicher & Joy Radice, eds, *Beyond Elite Law* (New York, USA: Cambridge University Press, 2016) at 194 – 218.

[51] Christopher Walsh et al, "Strengthening Access to Justice Through Clinical Legal Education (CLE)" (2012) 6:4 Transforming Government: People, Process and Policy 380 at 385.

The service provision and the justice education elements of clinical legal education demonstrate that law schools can contribute to access to justice from two perspectives: by creating an avenue for law students to employ their classroom theoretical knowledge (or even the knowledge acquired at the clinic) to assist in the provision of legal services and by encouraging a social justice culture in the legal profession. Clinical legal education can, therefore, serve a university's mission in working within and for society, beyond just its role in teaching and research, to contribute to access to justice.

Thus, the clinical method provides a new way to deliver legal aid: not only does it support the delivery of legal aid to fill a gap that has not been adequately addressed by governmental legal aid programs; but it also provides an opportunity to encourage a culture of social justice and public service among law students. In addition, the clinical method offers an opportunity for law students to gain the necessary knowledge and skills to recognize, understand, and respond to access issues.

Chapter Three: Legal Aid and Legal Education in Canada

3.1. Legal Aid

3.1.1. Access to Justice Ideals

In Canada, access to justice and human rights protection have been recognized as constitutional commitments that are central to the legal system.[52] Part I of the Constitution Act of Canada, 1982, contains a charter of rights and freedoms, entitled, "Canadian Charter of Rights and Freedoms" dedicated to the protection and promotion of a wide range of rights, including fundamental freedoms, democratic rights, legal rights, and equality rights.[53] In recognition of vulnerable groups in society, the *Canadian Charter of Rights and Freedoms* makes it very clear that every individual is equal before the law and has the right to equal protection and equal benefits of the law without discrimination.[54]

The *Canadian Charter of Rights and Freedoms* expresses the rule of law as one of the underlying principles for ensuring the protection and benefits of the law for everyone. The Preamble of the *Charter* makes it clear that Canada is founded upon principles that recognize the rule of law.[55] Melina Buckley, a lawyer and legal policy consultant who serves as counsel to the Canadian Bar Association in its right to civil legal aid litigation, has expressed access to justice as implicitly linked to the rule of law:

> From this perspective, the emphasis is on access to the courts and to effective remedies. It is only when access is assured that the courts can play their primordial role as guardians of the justice system and the rule of law. The rule of law necessarily requires that every person, regardless of wealth or circumstance, be entitled to justice in a court of law. Part of the substantive enjoyment of every right is that one is able to enforce it through the courts.[56]

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[52] See Melina Buckley, "Searching for the Constitutional Core of Access to Justice" (2008) 42 SCLR 567.

[53] *Constitution Act of Canada*, 1982, Part 1, cited as *Canadian Charter of Rights and Freedoms.*

[54] Canadian Charter of Rights and Freedoms, section 15 (1).

[55] Canadian Charter of Rights and Freedoms, the Preamble. See also *Re Manitoba Language Rights*, [1985] 1 S.C.R. 721, where the Supreme Court of Canada held that, "[t]he principle of rule of law, recognized in the Constitution Acts of 1867 and 1982, has always been a fundamental principle of the Canadian constitutional order."

[56] Melina Buckley, "Searching for the Constitutional Core of Access to Justice" (2008) 42 SCLR 567 at 572.

The Supreme Court of Canada has also expressed access to justice as an underlying principle of the rule of law. Buckley referenced the decision of Dickson CJ (as he then was) in *B.C.G.E.U v British Columbia* (Attorney-General).[57] In that case, Dickson CJ pronounced what Buckley expressed as the most robust judicial pronouncement of the extricable relationship between the rule of law and access to justice:

> Of what value are the rights and freedoms guaranteed by the Charter if a person is delayed or denied access to a court of competent jurisdiction in order to vindicate them? How can the courts independently maintain the rule of law and effectively discharge the duties imposed by the Charter if court access is hindered, impeded or denied? The Charter protections would become illusory, the entire Charter undermined.
>
> There cannot be a rule of law without access, otherwise the rule of law is replaced by a rule of men and women who decide who shall and who shall not have access to justice.[58]

Although *BCGEU* is often presented as a case purely about physical access to the courts, Buckley notes that intangible barriers to accessing justice were also at issue in that case. More specifically, Buckley notes that Dickson C.J.C quoted with approval a passage from the Court of Appeal decision referring to "interference from whatever source".[59] Other cases have held that the rule of law protects access to the courts beyond physical access and gives rise to the constitutional obligation to set aside court hearing fees and to order the government to provide for fee waivers for impecunious litigants.[60] In *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General),*[61] the Supreme Court of Canada decided that a court hearing fees, which had been demonstrated to hinder the access by low-income persons to the court, was unconstitutional in that it violated the principle of access to justice and thereby offended the rule of law.[62] In arriving at this decision, the Court expressed that "[a]s access to justice is fundamental to the rule of law,

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[57] *B.C.G.E.U v British Columbia* (Attorney-General) [1988] 2 S.C.R. 214 cited in Melina Buckley, "Searching for the Constitutional Core of Access to Justice" (2008) 42 SCLR 567 at 572.

[58] *B.C.G.E.U v British Columbia* (Attorney-General) [1988] 2 S.C.R. 214 at paras 24 & 25.

[59] Ibid at para 26.

[60] Melina Buckley, "Searching for the Constitutional Core of Access to Justice" (2008) 42 SCLR 567 at 573.

[61] *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General),* 2014 SCC 59, [2014] 3 S.C.R. 31.

[62] Ibid.

and the rule of law is fostered by the continued existence of the s. 96 courts, it is only natural that s. 96 provide some degree of constitutional protection for access to justice."[63]

3.1.2. A right to legal aid

Indeed, in limited circumstances, in both criminal and civil proceedings, the courts have recognized that individuals may have a right to government-funded counsel. In the case of *New Brunswick (Minister of Health & Community Services) v G (J)*,[64] the Supreme Court of Canada recognized a right to legal aid in contexts outside of a criminal offence – in this case, child protection proceedings.

The Supreme Court of Canada has, however, refrained from recognizing a freestanding generalized entitlement to publicly funded legal assistance.[65] In *British Columbia (Attorney General) v Christie*,[66] the Court rejected an argument that the rule of law provides a general right to counsel, such that the Court could strike down a government action or any legislation found to be inconsistent with the right to counsel. In that case, the respondent argued that British Columbia's *Social Service Tax Amendment Act (No 2), 1993*, which imposed a seven percent tax on the price of legal services in the Province, was unconstitutional because it makes it impossible for low-income clients to retain legal services. In its judgment in *British Columbia (Attorney General) v Christie*, the Supreme Court of Canada recognized "[a]ccess to legal services [as] fundamentally important in any free and democratic society".[67] Nevertheless, the Court rejected an overreaching constitutional right to legal aid: "a review of the constitutional text, the jurisprudence and the history of the concept does not support the respondent's contention that

[63] Ibid at para 39.

[64] [1999] 3 SCR 46.

[65] For an excellent overview of the Canadian jurisprudence regarding the right to legal aid, see, Erika Heinrich, *Canadian Jurisprudence Regarding the Right to Legal Aid* (2 September 2013) *Lawyers' Rights Watch Canada*, online: <www.lrwc.org/wp-content/uploads/2013/09/Canadian-Right-to-Legal-Aid.E.Heinrich.pdf>.

[66] [2007] 1 SCR 873, 2007 SCC 21.

[67] *British Columbia (Attorney General) v Christie* [2007] 1 SCR 873, 2007 SCC 21 at para 23.

there is a broad general right to legal counsel as an aspect of, or precondition to, the rule of law."[68]

In addition, the Supreme Court of Canada has even rejected an overreaching constitutional right to counsel in criminal matters. In *R v Prosper*,[69] it was argued that the *Canadian Charter of Rights and Freedoms* imposes a positive obligation on the government to provide free legal services to a person who has been arrested or detained. The Supreme Court rejected this argument. Moreover, in *R v Prosper*, the Supreme Court of Canada decided that the government did not have a constitutional obligation to provide an accused person with free and immediate 24-hour duty counsel upon his or her arrest or detention. The Court went on to decide that while the government must provide the accused with an immediate opportunity to speak with counsel and inform the accused of the availability of legal aid duty counsel, it has no obligation to provide or pay for a lawyer.

3.1.3. Access to Justice Challenges

In Canada, there are thirteen provinces and territories and each jurisdiction has a legal aid program that is established and administered by the provincial or territorial government.[70] Each legal aid plan is administered by a public corporation, established by the legislature to administer and provide legal aid in the Province or Territory. For example, the Legal Services Society of British Columbia is a public corporation established by the British Columbia Legislature. It is charged with the responsibility to "assist individuals to resolve their legal problems and facilitate their access to justice".[71] The Legal Services Society is also mandated to "establish and administer an effective and efficient system for providing legal aid to individuals in British Columbia".[72]

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[68] *Ibid.*

[69] [1994] 3 SCR 236.

[70] See Department of Justice, Canada, *Legal Aid Program*, online: www.justice.gc.ca/eng/fund-fina/gov-gouv/aid-aide.html. The Department of Justice's website provides links to the provincial and territorial legal aid planss in Canada.

[71] *Legal Services Society Act* [SBC 2002] at c 30, ss 9(1)(a) and (b).

[72] *Ibid* at c 30, s 9(1)(b).

However, maintaining an effective and efficient system for providing legal aid to individuals in British Columbia may not be an easy task for the Legal Services Society. That issue appears to arise from lack of funding and the limited capacity of the Legal Services Society to determine the type of services it can provide and the priorities for allocating funding.

The underfunding of the Legal Services Society is one of the most significant contributors to the gap in service to low and middle-income earners – a gap that law clinics in part try to fill. For instance, it was reported in 2017 that the Legal Services Society suspended providing immigration and refugee services due to a lack of funding.[73] The funding received from the government is also subject to a Memorandum of Understanding (MOU) between the Legal Services Society and the Ministry of Attorney-General. The MOU seeks to determine the roles and responsibilities of the Legal Services Society. It also stipulates the types of services LABC can provide with provincial government funding and the priorities for allocating that funding. In addition, the MOU defines how criminal cases are to be categorised and funded.[74] By this, the government constrains the work of the Legal Services Society by manipulating the funding envelope, so the services the Legal Services Society can provide and how cases are to be funded are largely determined by the government.

It is therefore not surprising that in 2006, the Canadian Bar Association sought a series of declarations and orders from the Supreme Court of British Columbia regarding the provision of civil legal aid in British Columbia.[75] The Canadian Bar Association contended that BC Civil Legal Aid is inadequate because matters that engage fundamental interests are excluded from coverage, financial eligibility guidelines exclude many poor people and, where legal aid coverage is provided, the services provided are too restrictive. Among the orders that the Canadian Bar Association sought was the order that BC Civil Legal Aid is provided in all legal matters where the fundamental interests of poor people or their dependents are at stake. Much to the chagrin of the Canadian Bar Association and all those unable to afford a lawyer but desirous

[73] "B.C. legal aid suspends immigration and refugee services due to lack of funding" *Canadian Broadcasting Corporation (CBC)*, June 29, 2017, online: www.cbc.ca/news/canada/british-columbia/b-c-legal-aid-suspends-immigration-and-refugee-services-due-to-lack-of-funding-1.4181352.

[74] Ibid.

[75] *Canadian Bar Association v. HMTQ et al*, 2006 BCSC 1342.

to benefit from the legal aid plan, the Supreme Court dismissed the case, holding that the Canadian Bar Association lacks the public interest standing to sustain the action.[76]

Ensuring access to justice remains a challenge in Canada. The *Rule of Law Index, 2020*, published by the World Justice Project sheds light on that observation.[77] Canada rates well compared with all countries surveyed, but relative to European and North American countries and other high-income countries, it has a relatively low rating on delays in the civil justice system and the cost of accessing legal representation[78] – a point that former Chief Justice of Canada Beverley McLachlin made in the Foreword in a book *Middle Income Access to Justice* in commenting on similar earlier findings by the World Justice Project.[79]

The main effect of the problem is an increase in self-represented litigants throughout the Province. According to current research, specifically from a recent Canadian *National Self-Represented Litigants Project*,[80] a significant number of British Columbians attempt to resolve their legal problems without legal advice or representation. The *National Self-Represented Litigants Project* found that in British Columbia 57% of litigants appearing in provincial court in family-related matters were self-represented. The research found that litigants decide to represent themselves because they cannot afford the help of a lawyer. Indeed, almost all self-represented

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[76] Lorne Sossin, in his article on "The Justice of Access: Who Should Have Standing to Challenge the Constitutional Adequacy of Legal Aid" have criticized the decision in The Canadian Bar Association v. HMTQ et al, 2006 BCSC 1342. In that article, Sossin argued that that the Court misconstrued the test for public interest standing and failed to appreciate the role of Charter principles, including the principle of access to justice, in applying this test. See Lorne Sossin, "The Justice of Access: Who Should Have Standing to Challenge the Constitutional Adequacy of Legal Aid" (2007) 40:2 UBC L Rev 727.

[77] Juan Carlos Botero, Mark David Agrast, & Alejandro Ponce, *World Justice Project: Rule of Law Index, 2020* (Washington, DC: World Justice Project, 2020), online: <https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf.

[78] Juan Carlos Botero, Mark David Agrast, & Alejandro Ponce, *World Justice Project: Rule of Law Index, 2020* (Washington, DC: World Justice Project, 2020) at 28,29

[79] Michael Trebilcock, Anthony Duggan, & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012).

[80] Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (National Self-Represented Litigants Project (NSRLP), Law Foundation of Ontario, Law Foundation of Alberta, Law Foundation of BC & Law Society of BC, 2013), online: <representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf>.

litigants in the above study referred to financial reasons as the basis of their decision to represent themselves.[81]

As Eberts describes,[82] the problem of cost affects litigants, with many encountering cost barriers to securing access to justice or legal services. However, this statement is more complex than it might seem at first. For many potential clients, the cost problem is absolute: they are without the means to secure adequate food or shelter, let alone legal services. For others, the problem of cost is a relative one: faced with a choice about how to deploy their modest resources, these potential clients would prefer to purchase a house, save for retirement, or help their children through university. The alternatives that compete with legal services for the dollars of these modest consumers may vary, but the cost issue for them is, at least initially, relative and not absolute. However, at some stage, as costs elevate with lengthening proceedings or increased complexity, the relative cost problem becomes an absolute one: the plaintiff or defendant simply runs out of money.[83]

A proposal that often arises in the Canadian debate about how to improve access to justice is to expand the pool of legal services providers, which is currently largely restricted to lawyers. Within this pool are law students.[84] This proposal is commonly based on the assumption that through their clinical programs, law schools and law students have been noted as potential avenues to address various "access to justice gaps" in the Canadian legal system, including the use and promotion of a *pro bono* model of service delivery.[85] In addition, the engagement of law students in the provision of legal services is also often identified as a way to encourage a culture

[81] *Ibid* at 39.

[82] Mary Eberts, '"Lawyers Feed the Hungry': Access to Justice, the Rule of Law, and the Private Practice of Law" (2013) 76:1 Sask L Rev 115 at 125.

[83] *Ibid.*

[84] Creating or regularizing the provision of legal services by "paralegals" has also been one of the proposals that often arise in Canada about how to improve access to justice by expanding the pool of legal services providers. See David Wiseman, "Paralegals and Access to Justice for Tenants" in Trevor C.W. Farrow and Lesley A. Jacobs, eds, *The justice crisis* (Vancouver; Toronto: UBC Press, 2020)

[85] Gemma Smyth, Samantha Hale, & Neil Gold, "Clinical and Experiential Learning in Canadian Law Schools: Current Perspectives" (2017) 95:1 Can B Rev 151 at 171-172.

of *pro bono* among lawyers. Such medium is also identified as a way to provide experiential training for law students.

In 2013, the Canadian Bar Association appointed an Access to Justice Committee to look into access to justice in Canada and make proposals for reforms. In its Report, the Access to Justice Committee identified law schools and law students as having the potential to help improve access to justice. The Access to Justice Committee expressed that, "[a]n important avenue for advancing access to justice is by engaging the legal academy to a greater extent than at present."[86] The Access to Justice Committee, therefore, made the recommendations for "substantial experiential learning experience [as] a requirement for all law students." It also recommended that "all law schools in Canada have at least one student legal clinic that provides representation to low-income persons."[87] This thesis seeks to shed light on the access to justice potential of law students reporting and reflecting on the development and works of the Law Centre of the University of Victoria Faculty of Law.

3.2. Legal Education

3.2.1. Higher Legal Education Institutions in Canada

Canada's legal education, in the sense of preparation for admission to the Bar and legal practice, consists of three fairly distinct stages.[88] Candidates for admission to the bar must earn a Canadian law degree or its equivalent, completed a law society bar admission program, and complete a period of apprenticeship known as articles. Currently, the successful attainment of a Canadian common law degree satisfies the regulators' academic requirements. The bar admission and articling stages provide practical training for the practice.[89] It should be noted however that at least at present one jurisdiction in Canada – Ontario permits either articling or completion of a set of practical courses in a dedicated program or at an accredited law school

[86] Canadian Bar Association Access to Justice Committee, *Reaching Equal Justice Report: An Invitation to Envision and Act* (Ottawa, Canada: Canadian Bar Association, 2013) at 123.

[87] Ibid.

[88] See Task Force on the Canadian Common Law Degree, *Consultation Paper* (Federation of Law Societies of Canada, September 2008), online: <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/notices/08-10_consultation-paper.pdf>.

[89] Ibid.

that emulates the articling experience and develops practical skills.[90] Other jurisdictions, including British Columbia, are considering similar ideas as an alternative to articling.

This thesis will address the academic component of legal education in Canada, by looking at the teaching objectives, teaching methods, scope of the curriculum, and duration of the study, while also identifying the role of the clinical method at this stage.

3.2.2. The Goals of Higher Legal Education in Canada

The Canadian law degree is assessed based on the competencies developed in the program, rather than through the teaching of specific core modules.[91] Across Canada, each jurisdiction has a statute that sets out the general contours of the legal profession and training for its Bar. The statute also sets up a law society with the authority to regulate the legal profession and training for its Bar. The Federation of the Law Societies of Canada (FLSC) is the coordinating body of the fourteen Provincial and Territorial law societies. The FLSC, through its Task Force on the Canadian Common Law Degree, seeks an approach that ensures that candidates for entry into law society bar admission programs meet required standards for the practice of law, in the public interest.[92] To assess the academic qualifications of persons seeking admission to the bar, the Federation has established a "National Requirement" statement, whereupon all approved law school programs were to be reviewed annually to ensure that this standard was met.[93] In essence, the National Requirement statement places "a greater emphasis on producing practice-ready

[90] See Law Society of Ontario, *Law Practice Program*, online: lso.ca/becoming-licensed/lawyer-licensing-process/law-practice-program.

[91] See Sue Prince, "The same but different: What can we learn from Canadian attitudes to legal education?" in Richard Grimes, ed, *Re-thinking Legal Education under the Civil and Common Law: A Road Map for Constructive Change* (Publication Statement, New York: Routledge, 2017) at 173.

[92] See also Task Force on the Canadian Common Law Degree, *Consultation Paper* (Federation of Law Societies of Canada, September 2008), online: <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/notices/08-10_consultation-paper.pdf>.

[93] Federation of Law Societies of Canada, *National Requirement* (Ottawa, Canada: Federation of Law Societies of Canada, 2018), online: <docs.flsc.ca/National-Requirement-ENG.pdf> See also Task Force on the Canadian Common Law Degree, *Consultation Paper* (Federation of Law Societies of Canada, September 2008), online: <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/notices/08-10_consultation-paper.pdf>.

lawyers: heavily built around analytical context, but with additional elements involving legal skills and professional responsibility".[94]

3.2.3. Methods of Higher Legal Education in Canada

Historically, the method of legal education in Canada has followed the Langdellian case method of teaching.[95] This emphasizes the student's analysis of judicial reasoning, with the majority of law school courses being taught through documents, cases, and statutes, as reported in case books or course books. However, Sue Prince, commenting on the Federation's National Requirements and implications for methods of legal education in Canada, observed that Canada's law schools have embraced a more reflective and practical approach that focuses on the need for awareness of ethical issues, and professional responsibility.[96] It has also been observed that many of these law schools have integrated a clinical practice tradition. According to Sue Prince,

> [t]he types of the clinical program on offer are innovative and emphasize both academic knowledge in an applied setting alongside the practical skills, competencies around problem-solving and the development of a set of values-centered on professional responsibility and ethics.[97]

There are varying experiential learning programs available to Canadian law students. These include articling, the law practice program as an alternative to articling, simulated learning in the classroom, work-based learning, externships, volunteer work, as well as clinical law programs.[98]

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[94] See Sue Prince, "The same but different: What can we learn from Canadian attitudes to legal education?" in Richard Grimes, ed, *Re-thinking Legal Education under the Civil and Common Law: A Road Map for Constructive Change* (Publication Statement, New York: Routledge, 2017) at 173.

[95] See generally Maxwell Cohen, "The Condition of Legal Education in Canada" (1950) 28:3 Can B Rev 267 at 287, noting that "the 'case-method' has greatly influenced Canadian professional teachers and, although the classical technique may not be used fully by all teachers for all courses, there is general agreement among most full-time teachers that the majority of courses should be taught through the original documents, through cases and statutes, scientifically classified and edited, in case books or course books".

[96] See Sue Prince, "The same but different: What can we learn from Canadian attitudes to legal education?" in Richard Grimes, ed, *Re-thinking Legal Education under the Civil and Common Law: A Road Map for Constructive Change* (Publication Statement, New York: Routledge, 2017) at 176.

[97] *Ibid* at 176-177.

[98] For listing of Experiential Learning Programs in Canadian Law Schools, see Douglas D. Ferguson, "Experiential Learning Programs in Canadian Law Schools" *Canadian Bar Association* (April 2013) at www.cba.org/CBA/cle/PDF/JUST13_Paper_Ferguson.pdf.

Articling is the experiential learning program during the bar admission program, which operates under the auspices of a provincial or territorial law society. It involves a clerkship with an experienced legal practitioner usually running not less than nine months.[99] As indicated above, there is also the Ontario Law Practice Program (LPP) as an alternative to articling. The Law Practice Program consists of a four-month training course and a four-month work placement. Candidates enrolled in the Law Practice Program are required to complete both the training course and the work placement.[100]

The rest of these experiential learning programs are undertaken at the university level. The simulated learning model is credit-based. It takes the form of trial practice classes such as classroom mooting on hypothetical cases or teaching law transactions, for example, identifying the key elements of a contract, assisting with negotiation, and drafting a contract. Work-based learning (usually called cooperative education (co-op) program) is also a credit-based experiential learning program. Work-based learning combines terms in the classroom with terms in a working environment. Registration is optional. Once accepted, the work-based learning program becomes a substantive part of the legal education of the law student before graduation. To this end, the student alternates study terms with full-time paid legal work in Canada or overseas.[101]

Externships or placements can also form part of a course. In most cases, students are placed with legal institutions to understudy the work of these institutions. The participating students are usually required to draft a major research paper and make a presentation to the other students or participants at the end of a term. The University of Victoria Faculty of Law, for example, has an externship or placement aspect in its Access to Justice course.[102] The original idea is not for the students to provide legal services, although it might be incidental to the

[99] See generally John Law, "Articling in Canada" 43 Saint Texas Law Review 449 (2002).

[100] See Law Society of Ontario, *Law Practice Program*, online: lso.ca/becoming-licensed/lawyer-licensing-process/law-practice-program.

[101] See e.g. University of Victoria Law Faculty, "Law Co-operative Education Program: Law Co-op Student Handbook"

[102] During the 2017-2018 academic year, I participated in this course.

interaction between the student and the institution. The primary purpose is for the students to understudy these institutions.

Volunteer work is student-initiated and administered. It is an extracurricular activity and non-credit-based.[103] Students during the academic year or a university break may apply to volunteer for an organization to perform pro bono work. A very pragmatic and visionary program by the students is their Pro Bono Student Canada (PBSC).[104] PBSC which was established in 1996 has reached 22 of Canada's 23 law schools. It has become the national coordinating body for volunteer work among the students. It is a network of law students which matches students who want to perform pro bono work with the public interest and non-governmental organizations, government agencies, and courts and tribunals. An excerpt from its website indicates that in 2018-2019, 1,607 law student volunteers – a quarter of all law students in the country – will provide free legal services to these community organizations.

The program shares a vision to provide an alternative opportunity "to train future lawyers by providing practical, supervised learning experiences for students." The idea behind a national pro bono program is also meant to encourage "a culture of pro bono in the profession and to increase access to justice for low-income individuals and non-profit organizations."[105]

Depending on the placement, the services that the students assist in would range from public legal education, advocacy, legal research, and client intake/document assistance. The swift expansion in the program is attributable to the flexibility it affords to the universities and its relative cost-effectiveness. The program is decentralized. Students have the option to choose where to work or the organization that suits their circumstances. This flexibility has enabled the adoption of the program in various forms at universities across Canada. For instance, York

[103] The Laval University, however, offers the PBSC program as a for-credit course. See Douglas D. Ferguson, "Experiential Learning Programs in Canadian Law Schools" *Canadian Bar Association* (April 2013) at www.cba.org/CBA/cle/PDF/JUST13_Paper_Ferguson.pdf.

[104] Pro Bono Student Canada at www.probonostudents.ca. For a description of the Pro Bono Student Canada program, see e.g. Sebastian De Brennan, "Rethinking Pro Bono: Students Leading a Legal Hand" (2005) 15:1 Legal Education Review 3.

[105] Pro Bono Student Canada at www.probonostudents.ca.

University has adapted part of the program into a Family Law Project.[106] The project places 60 volunteers who assist self-represented litigants across five (5) courts for a weekly 3 to 4-hour shift. Under the project, the students help in client assistance and intake services including filling out court forms and with other various tasks, including applying for custody, access, and child support, filing motion, drafting court orders. The University of Victoria chapter, also, has adapted its chapter into different project models meant to accommodate a diverse array of organizations and projects. Projects can focus on legal research and writing, public legal education, client intake, and assistance, or advocacy.[107]

PBSC is, however not administered by the law schools. The role of the law schools involves housing the chapter and the designation of a faculty or staff member as an on-site contact person for the program, who provide support when and where necessary. The coordinating role at each participating law school often involves two law students.

Aside from these experiential programs, law clinic courses or clinical law programs have a prominent place in Canadian law schools. These programs typically have an academic (or a classroom) component and a clinical program. The academic component introduces or teaches the students the substantive law and the clinical program allows the students to apply the substantive law in the practical and real client context. Aside from these educational objectives, supporting legal aid access is at the heart of clinical law programs. A Canadian law professor, Julie Macfarlane, provides a clear statement on the mission of clinical law programs,

> A hallmark of the clinical legal education movement was the clarity of its mission and vision for both law schools and communities. The early clinics were motivated by an ethos of public service and a desire to bring access to justice to underserved and marginalized groups within the community. In the process, students would acquire important practical skills, and they would be radicalized by their exposure to real clients with real-life problems, typically those who are neglected and excluded by the legal system and mainstream legal services.[108]

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[106] Pro Bono Student Canada, York University, "Family Law Project" at www.osgoode.yorku.ca/pro-bono-students-canada/family-law-project/.

[107] See Pro Bono Student Canada, University of Victoria at pbsc.uviclss.ca.

[108] Julie Macfarlane, "Bringing the Clinic into the 21st Century" (2009) 27:1 Windsor Yearbook of Access to Justice 35 at 36.

Thusly, a distinctive feature of clinical legal education is the combination of student learning with community service, and as an institutional arrangement by the law schools. The nature of the Pro Bono Student Canada programs comes close to clinical legal education, as PBSC also combines student learning with community service. While the clinic and pro bono are similar, they are not synonymous. They are concerned with different objectives and different structures. The core difference is that clinical law programs provide practical experience for students in a closely supervised, structured, service-learned environment.[109] Hence, clinical students have the advantage in most cases of both practitioner and academic supervision. Moreover, the legal services and legal education context of clinical law programs is more intentional.

In effect, the continuous evolution of experiential programs serves four core purposes. First, all experiential programs serve as a viable means of educating law students to understand, appreciate and become engaged in the practices that underlie the legal profession and the legal system in general. This aspect of legal education expands the capacity of law schools to integrate both academic and professional legal education in their law school program, aside from the lecture format. Second, there are experiential learning programs, which seek to provide an opportunity for students to gain first-hand experience of issues of access to justice. The educational cum access to justice objective is to encourage a culture of pro bono or 'civil professionalism' in law students and a successive generation of lawyers. Third, there are experiential learning programs that integrate these two purposes with the added value of providing an opportunity for law students to support the delivery of legal aid services. Fourth, the side-benefit of the latter programs serves the law schools, by expanding the capacity and the commitment of the schools in public engagement and support of the delivery of legal services.

In effect, in Canada, law clinics sit within varying programs. Law clinics are, however, all-inclusive. They integrate these four purposes as an experiential learning program, as a means of encouraging a culture of pro bono in law students, and as a means of supporting legal aid services, and serving the law schools by expanding their capacity and commitment in public engagement and community service. The role of law schools in clinical law programs provides

[109] See e.g. John Corker, "How does Pro Bono Students Australia (PBSA) fit with clinical legal education in Australia?" (Paper delivered at the 3rd International Journal of Clinical Legal Education Conference, Melbourne, 13-15 July 2005) at 6.

an advanced opportunity for the realization of these ends. These distinctive features make clinical law programs crucial and a necessary, if not sufficient, part of the Canadian law school curriculum for student learning and access to justice.

Chapter Four: Regulation of Student Practice

This thesis chapter explores the different supports or restrictions on law school clinics resulting from the regulatory framework of legal practice in Canada and outlines the impact they can have on the students, clinicians, and their institutions. The thesis will focus on the applicable regulatory framework currently in effect in the province of British Columbia. The thesis addresses the regulator's authority over student practice, the purpose for regulating student practice, permitted student activities, eligibility requirements of student practice, supervision requirements, and professional and ethical matters.

4.1. The Regulator's Authority Over Student Practice

The current regulatory framework for the practice of law and the legal profession in British Columbia derives from the Legal Profession Act 1998 ("BCLPA").[110] One of the acts of the BCLPA was to establish the Law Society of British Columbia as the body responsible for overseeing the regulation of law practice and the legal profession in the jurisdiction.[111] Section 3 stipulates the object and duty of the Law Society. The LSBC's overarching statutory mandate in section 3 of the BCLPA is stated in the broadest possible term as to "uphold and protect the public interest in the administration of justice."[112] The provisions of section 3 set out how this overarching objective is to be achieved. Those means are framed expansively and include "regulating the practice of law," "preserving and protecting the rights and freedoms of all persons", and "ensuring the competence of lawyers."[113]

As this thesis uses the British Columbian regulatory scheme, reference should be made to the Supreme Court of Canada decision in *Law Society of British Columbia v. Trinity Western University* ["Trinity Western"].[114] In that case, the Supreme Court of Canada expressed deference to LSBC over the BC regulatory regime of the legal profession in the Province. The Trinity

[110] British Columbia Legal Profession Act [SBC 1998] at c 9.

[111] British Columbia Legal Profession Act [SBC 1998] at c 9, s 2.

[112] British Columbia Legal Profession Act [SBC 1998] at c 9, s 3.

[113] British Columbia Legal Profession Act [SBC 1998] at c 9, s 3.

[114] Law Society of British Columbia v. Trinity Western University, 2018 SCC 32, [2018] 2 S.C.R. 293.

Western case concerns the decision of the LSBC to withdraw its approval of the proposed law program at Trinity Western University. The Supreme Court of Canada affirmed the decision of the LSBC.[115] In arriving at that decision, the Court confirmed its deference to the very broad authority of the LSBC to regulate entry into the legal profession in BC, and to establish criteria for entry. The Court, while confirming the regulatory authority of the LSBC, held as follows:

> The legal profession in British Columbia, as in other Canadian jurisdictions, has been granted the privilege of self-regulation. The statutory object of the LSBC is, broadly, to uphold and protect the public interest in the administration of justice. That object is set out in s. 3 of the LPA.[116]

The Supreme Court of Canada went further to hold that the LSBC has the regulatory authority to establish structures and policies for regulating the legal profession in the Province:

> To that end, where a legislature has delegated aspects of professional regulation to the professional body itself, that body has primary responsibility for the development of structures, processes, and policies for regulation. This delegation recognizes the body's particular expertise and sensitivity to the conditions of practice.[117]

Thus, the regulation of the legal profession is subject to the regulations of the law societies as the professional governing bodies that partly define the practice of law including licencing practitioners, the terms of legal practice, and other matters such as minimum admission criteria.

The LSBC was given broad regulatory powers to make rules of general application to govern the legal profession and consistent with the purposes, scope, and objectives of the enabling statute.[118] In particular, it is empowered to establish rules regulating the practice of law.

As a general rule, in British Columbia, only practising lawyers have the authority to engage in the practice of law. Section 15 of the BCLPA, which provides for the authority to practice law in the province, expressly stipulates, "[n]o person, other than a practising lawyer, is

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[115] Ibid.

[116] Ibid at para 32.

[117] Ibid at para 37.

[118] See *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360, where the Supreme Court confirmed the rule-making authority of law societies and held that such authority requires an expansive construction.

permitted to engage in the practice of law." Although the BCLPA creates exemptions for nonlawyers, the Act does not expressly contemplate law students.

The only exemption that comes close to permitting the involvement of unqualified students in the practise of law is the provision about articled students. Under the BCLPA, an articled student means a person enrolled in the LSBC's admission program. The BCLPA exempts an articled student from unauthorised practise of law, and enables the LSBC to regulate the extent to which an articled student may practise law. These exemptions were therefore developed to accommodate law students who have been enrolled in the LSBC's admission program.

The BCLPA's Rules, which derive from the BCLPA and that rule-making authority of the Law Society over exemptions for articled students, have however established temporary articles rules that contemplate and accommodate clinical law students.[119] The Temporary Articles Rules enable "a student at a common law faculty of law in a Canadian university" to enroll in the Temporary Articles program. Clinical program students are therefore required to get temporary articles, thus becoming articled students under the BCLPA. The regulatory regime permits students in law clinics to engage in some levels of practice so long as they get prior authorization and are subject to appropriate supervision.

4.2. Purpose of Regulating Student Practice

From a contextual reading and understanding of the laws, rules, policies, and initiatives of the LSBC it is clear that the LSBC's decision to recognize and regulate student practice reflects the statutory objectives governing the LSBC. It would seem that the *Temporary Articles Rules* were designed to serve three main purposes that are reflected in student practice: (a) to empower practical training, (b) to support legal aid, and (c) to safeguard the public interest in the administration of justice. The discussion below supports this position.

[119] See *British Columbia Legal Profession Act* [SBC 1998] at c 9, s 3; Law Society of British Columbia, *Law Society Rules 2015* (Vancouver, British Columbia: Law Society of British Columbia, effective 1 July 2015; updated March 2021), rules 2(70) and (71).

To a large extent, the enactment of the *Temporary Articles Rules* to accommodate law students was driven by the agenda of empowering practical training in faculties of law.[120] Aside from the current trend in the legal profession towards an emphasis on upgrading lawyer competency,[121] the *Temporary Articles Rules* assist the Law Society's mandate to ensure the competence of lawyers and establish standards and programs for the education, professional responsibility, and competence of lawyers and applicants seeking admission to the Bar.[122]

It would appear that the *Temporary Articles Rules* were also devised as a mechanism to support legal aid. The enactment of these Rules seems to follow the findings and recommendations of a Delivery of Legal Services Task Force, constituted by the Law Society.[123] This Delivery of Legal Services Task Force was mandated by the Law Society to examine the model through which legal services are delivered in British Columbia and recommend changes that would enhance the public's access to competent and affordable legal services. In its report, the Delivery of Legal Services Task Force found that "clinical programs provide valuable legal services to the public".[124] It was this concern that caused the Task Force to recommend the

[120] This purpose also follows the recognition of student practice as a means of encouraging practical training. For example, in its *Futures* report, the CBA recommends "new models for legal education", including structured and "innovative" programs focusing on skills integration. The CBA notes that, throughout its consultations, "lawyers of all generations expressed a desire for more practical opportunities for learning through clinical and work placements", and therefore, calls for regulators to ease restrictions on student participation in legal practice; see The Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada* (Ottawa: Canadian Bar Association, 2014) at 58-60, online: <www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf>.

[121] See Federation of Law Societies of Canada (FLSC), *New Requirements* (Ottawa, Canada: Federation of Law Societies of Canada, 2018), online: <docs.flsc.ca/National-Requirement-ENG.pdf>; Task Force on the Canadian Common Law Degree, *Consultation Paper* (Ottawa, Ontario: Federation of Law Societies of Canada, September 2008) at 15, online: <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/notices/08-10_consultation-paper.pdf>; Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada* (Ottawa: Canadian Bar Association, 2014) at 58-60, online: <www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf>.

[122] British Columbia Legal Profession Act [SBC 1998] at c 9, s 3.

[123] Delivery of Legal Services Task Force, *Final Report* (Reported submitted to The Benchers of the Law Society of British Columbia, 1 October 2010), online: <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/legalservices-tf_2010.pdf>.

[124] *Ibid* at 15.

exemption of "student legal advice programs or clinical law programs run by, associated with, or housed by a law school in British Columbia"[125] from unauthorized legal practice.

Moreover, it would seem that the *Temporary Articles Rules* were initiated as a necessary measure of quality assurance to protect the public interest in student practice and law school clinics. There is no doubt that students perform a significant amount of legal work. As discussed below, the LSBC permits students to give legal advice, prepare legal documents, and represent clients in some stipulated court proceedings.[126] Clinical scholars and researchers have expressed that working as lawyers on behalf of clients, law students experience the ethical issues lawyers face every day, such as conflict of interest and competency issues.[127] However, to the extent that such ethical issues may arise, it is mitigated by the formal safeguards in place through the *Temporary Articles Rules*. These safeguards include the requirement that students comply with the ethical "the Legal Profession Act, the Law Society Rules, the Code of Professional Conduct Handbook and any other requirements of the Society applicable to articled students."[128] The *Temporary Articles Rules* also require supervision by a practising lawyer.

4.3. Permitted Student Activities

The *Temporary Articles Rules* permit substantive activities that law students who are enrolled in temporary articles can provide. The Rules allow students to appear as counsel in court, in both civil and criminal matters, and a wide range of court proceedings.[129] Moreover, although it is not

[125] *Ibid.*

[126] *Law Society Rules 2015* (Vancouver, British Columbia: Law Society of British Columbia, effective 1 July 2015; updated March 2021), rules 2 (60).

[127] See generally Alexis Anderson, Arlene Kanter & Cindy Slane, *Externships and Ethics: A Primer on Confidentiality, Conflicts, and Competency Issues in the Field and in the Classroom (2004) 11 Clinical Law Review 473*; (discussing ethical issues for law students in externship programs); Peter A Joy & Robert R Kuehn, "Conflict of Interest and Competency Issues in Law Clinic Practice" (2002) 9 Clinical Law Review 493; James E. Moliterno, "In-House Live-Client Clinical Programs: Some Ethical Issues (1999) 67 Fordham L Rev 2377.

[128] Law Society of British Columbia, *Temporary Articles Enrolment*, Part H: Applicant's Authorization and Undertaking, online: www.lawsociety.bc.ca/Website/media/Shared/docs/forms/MS-admissions/art-temp-app.pdf.

[129] Section 2(7) of the *Law Society Rules* stipulates the broadest possible range of cases and ancillary work connected to *Court and Tribunal Appearances by Temporary Articled Students:*

(1) a person enrolled in temporary articles may under the supervision of practicing lawyer or in attendance appear as counsel

(a) in the Supreme Court of British Columbia in Chambers on any

(i) uncontested matter, or

(ii) contested application for

(A) time to plead,

(B) leave to amend pleadings, or

(C) discovery and production of documents, or

(iii) other procedural application relating to the conduct of a cause or matter,

(b) before a registrar or other officer exercising the power of a registrar of the Supreme Court of British Columbia or Court of Appeal for British Columbia,

(c) in the Provincial Court of British Columbia

(i) on any summary conviction proceeding,

(ii) on any matter that is within the absolute jurisdiction of a provincial court judge,

(iii) on any matter in the Family Division or the Small Claims Division, or

(iv) when the Crown is proceeding by indictment or under the Youth Criminal Justice Act (Canada) in respect of an indictable offence, only on

(A) an application for an adjournment,

(B) setting a date for preliminary inquiry or trial,

(C) an application for judicial interim release,

(D) an application to vacate a release or detention order and to make a different order, or

(E) an election or entry of a plea of Not Guilty on a date before the trial date,

(d) on an examination of a debtor,

(e) on an examination for discovery in aid of execution, or

(f) before an administrative tribunal.

(2) A person enrolled in temporary articles is not permitted under any circumstances to do any of the following in a Supreme Court proceeding:

(a) conduct an examination for discovery;

(b) represent a party who is being examined for discovery;

explicitly stated, the activities section can be read as authorizing law students to "provide all legal services that a lawyer is permitted to provide", so long as the consent and supervisory requirements are met.[130] This includes interviewing the client, giving legal advice, negotiating with the opposing counsel, and drawing, revising, or settling a legal document (such as a petition; affidavit; document for use in a proceeding – judicial or extrajudicial – and a will, deed of settlement, trust deed, or power of attorney).[131] The *Temporary Articles Rules* also purport not to limit student involvement in broad areas of law, including both public and private legal matters. The right to represent a range of clients, from indigents to various government bodies, is also permitted under the *Temporary Articles Rules*.

The *Temporary Articles Rules* do both students and clients a service by liberalizing the permitted activities that a temporary articled student may provide. The liberal positions of the *Temporary Articles Rules* are more consistent with engaging student practice in a broad spectrum of legal matters. This flexibility is advantageous, given the diversity of law clinics' work. It also enables students to gain practical experience in their chosen fields of law.

4.4. Eligibility Requirements

Section 2(70) of the *Law Society Rules* prescribes requirements for students who wish to enroll in a temporary articles program. An eligible student must be duly enrolled at a faculty of law and also enrolled in(?) a law school clinical program.[132] An eligible student must also be certified by the supervising lawyer of that clinical program.[133]

(c) represent a party at a case planning conference, trial management conference or settlement conference.

[130] See Law Society of British Columbia, *Law Society Rules 2015* (Vancouver, British Columbia: Law Society of British Columbia, effective 1 July 2015; updated March 2021) at rule 2(60) (1).

[131] *British Columbia Legal Profession Act* [SBC 1998] at c 9, s 1, defining the meaning of "practice of law".

[132] The *Temporary Articles Rules* also appear to strongly encourage a full-time clinical semester, rather than a part-time or single course in which traditional classes or seminars are mixed with clinical work: "The Executive Director must not grant temporary articles for a period exceeding 3 months." See Law Society of British Columbia, *Law Society Rules 2015* (Vancouver, British Columbia: Law Society of British Columbia, effective 1 July 2015; updated March 2021) at rules 2-70(6).

[133] Law Society of British Columbia, *Law Society Rules, 2015* (Vancouver, British Columbia: Law Society of British Columbia, effective 1 July 2015; updated March 2021) at rule 2(57).

However, the *Temporary Articles Rules* do not stipulate a requirement for any specific academic qualification, leaving the specific academic requirement to the law faculties to determine The *Temporary Articles Rules* only require an understanding of the ethical norms of the legal profession.[134] This flexibility in academic qualification for enrolment in the program of the temporary article is arguably an important development and evolution of legal clinics, as it allows for significant flexibility in the academic requirements for legal practice by students. It may not be necessary in most instances for law societies to mandate (or require) the completion of specific courses. This is particularly so given the diversity of the clinical program. The requirement that students comply with the Legal Profession Act, the Law Society Rules, the Code of Professional Conduct Handbook ensures adherence to ethical and professional requirements.

In addition, the *Temporary Articles Rules* do not set semester requirements, but open supervised practice opportunities to students in their first, second, and third years of study. This regulatory scheme appears as a sound policy of enabling all law students, even in their first year of study, the opportunity to engage in the practice of law.

4.5. Supervision Requirement

The overriding factor emerging from the *Temporary Articles Rules* as a primary determinant of quality assurance in student practice is the quality and degree of supervision of student practitioners. The *Temporary Articles Rules* specify the number of supervision requirements to be fulfilled by the clinical lawyer. For example, the Rules require the clinical lawyer to ensure that the student is competent to provide the services offered. The supervising lawyer must also supervise the student to the extent that it is necessary for the circumstances, also ensuring that the student is properly prepared before acting in any proceedings or other matter.

[134] Law Society of British Columbia, *Temporary Articles Enrolment*, Part H: Applicant's Authorization and Undertaking, online: <www.lawsociety.bc.ca/Website/media/Shared/docs/forms/MS-admissions/art-temp-app.pdf>, which requires students applying for temporary articles to undertake that "while enrolled in the Law Society Admission Program, I will comply with the Legal Profession Act, the Law Society Rules, the Code of Professional Conduct Handbook and any other requirements of the Society applicable to articled students".

The supervisory requirements of the *Temporary Articles Rules* assist the Law Society's mandate of protecting the public interest in the administration of justice. They serve as a quality assurance mechanism for ensuring that the clients of student practitioners have access to competent legal services. Consequently, law clinics must ensure that they comply with these Rules, which generally require law students to be capable of appearing in the courts and handling legal work for clients. The Rules also require the clinic lawyers to be able to supervise and instruct the students, as necessary. The question of whether the student has the legal ability and training to fulfill his or her responsibilities to the client is based entirely on the judgment of the respective clinical lawyer or law school.

Temporary Articles Rules operate to require clinical programs to be supervised by practicing lawyers. This is significant in that it burdens law schools as they cannot use traditional academic staff in these clinics, but rather must employ clinical practitioners. So, arguably, even with a supportive regulatory framework there are institutional hurdles that have to be overcome.

Another important issue is the regulation of student practice is also the requirement of insurance. Only licensees are insured to practice law. The regulator's view on the public interest – and the public interest policy objective of protecting citizens from losses sustained through malpractice – inform some of this. There is therefore the need for insurance for clinical programs. This is an expense for the university, but without that insurance, there is significant potential exposure to liability.

4.6. Professional and ethical matters

As law students become increasingly involved in law school clinics as student-lawyers, and most clinical students perform important legal work by providing access to courts and legal services for the public, questions also arise regarding the ethical obligations of law school clinic students and the ethical environment of law school clinic practice.

Although the Law Society emphasizes the ethical responsibilities of law students, its rules do not explicitly require students to face professional discipline if they violate the applicable rules of professional conduct, but state that the supervising lawyer assumes professional responsibility for the student's work and "is responsible for the actions of students

acting under his or her direction."[135] Although law clinic students violating ethics rules may not face professional disciplinary action, the Law Society may revoke the right to practice law under the temporary articles, which can take place "at any time for any reason without giving notice to the temporary articled student and without holding a hearing."[136] In addition to having their student practice rights revoked, and whether or not a clinical student faces the possibility of professional discipline, ethical misconduct may affect their application for admission to the Bar. In British Columbia, the Legal Profession Act requires the Law Society not to admit any person into the Bar unless the applicant demonstrates, among others, "the person is of good character and repute."[137]

Regardless of whether law students have ethical obligations as lawyers and may face disciplinary actions for violating these obligations, there are some reasons to structure clinic programs to reinforce the ethical obligations of clinic students.

Supervising clinical faculty have an ethical duty to ensure that all clinical students follow the rules of ethics. That responsibility is reflected in the Law Society's *Code of Professional Conduct* which requires that "[a] lawyer acting as a principal to a student must provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession."[138]

Moreover, pedagogically, holding clinic students to the same ethical standards as lawyers instills and reinforces professional values in law students.[139] "Unlike traditional law school ethics courses where law students learn the rules of ethics and consider their professional responsibility in the context of problems or hypothetical situations, in clinical courses law students take on the

[135] Law Society of British Columbia, *The Code of Professional Conduct for British Columbia* (Vancouver, British Columbia: Law Society of British Columbia, effective January 1, 2013), ch 6.

[136] Law Society of British Columbia, Law Society Rules 2015, (Vancouver, British Columbia: Law Society of British Columbia, Effective July 1, 2015; updated March 2021), rule 2-70(9).

[137] British Columbia Legal Profession Act, [SBC 1998] Ch 9, section 19(1).

[138] Law Society of British Columbia, *The Code of Professional Conduct for British Columbia* (Vancouver, British Columbia: Law Society of British Columbia, effective January 1, 2013), ch 6.

[139] Peter A Joy, "The Ethics of Law School Clinic Students as Student-Lawyers" (2004) 45:4 S Tex L Rev 815.

role of a lawyer for clinic clients and must "grapple with the real-life demands of being a lawyer." As lawyers for their clients, students experience firsthand similar pressures of law practice and ethical dilemmas that they will experience after graduation. Clinical faculty play a critical role in the development of law students' professional identities by engaging their students in the process of critique, self-critique, and self-reflection concerning the students' work, including how the students identify and resolve ethical issues. By holding clinical students to the same ethical standards as lawyers, faculty ensure that each student receives an authentic experience and introduction to the actual mores of the legal profession."[140]

4.7. Conclusion

The discussion above suggests that British Columbia's regulation of student practice has the potential to empower law clinics in improving access to legal aid and providing practical training for law students. The Temporary Articles Rules appear to provide a wide scope of student practice. Aside from stipulating the courts that a student may appear as an advocate and the kind of proceedings that the student may represent a client, the Temporary Articles Rules purports not to limit the student from performing tasks associated with legal practice in British Columbia that include the trial of cases in courts and tribunals, interviewing the client, giving legal advice, negotiating with the opposing counsel, and drawing, revising, or settling a legal document (such as a petition; affidavit; document for use in a proceeding – judicial or extrajudicial – and a will, deed of settlement, trust deed, or power of attorney). In comparative terms, this provision represents a significant development in the regulation of student practice in British Columbia.

Another development in the regulation of student practice in British Columbia is the flexibility in terms of the academic requirements for student practice. Aside from emphasizing a need for the students' understanding of the ethical responsibilities in the practice of law, the Temporary Articles Rules do not stipulate any academic prerequisites. They do not require students to have taken any particular courses. This provision allows for significant flexibility in how law schools develop their clinical programs.

[140] Peter A Joy, "The Ethics of Law School Clinic Students as Student-Lawyers" (2004) 45:4 S Tex L Rev 815 at 835-836.

The requirement of supervision of student practice by practising lawyers is significant in that it burdens law schools as they cannot use traditional academic staff in these clinics. So, arguably, even with a supportive regulatory framework there are institutional hurdles that have to be overcome. Moreover, law schools are required to develop their clinical programs to ensure that all clinical students follow the rules of ethics. That responsibility, as stated above, is reflected in the Law Society's *Code of Professional Conduct* which enjoins "[a] lawyer acting as a principal to a student must provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession."[141]

In summary, the current framework of student practice in British Columbia is permissive, subject to restrictions.

[141] Law Society of British Columbia, *The Code of Professional Conduct for British Columbia* (Vancouver, British Columbia: Law Society of British Columbia, effective January 1, 2013), ch 6.

Chapter Five: University of Victoria Law Centre

This thesis chapter examines the particular experience of the development and work of the Law Centre of the University of Victoria Faculty of Law. The thesis chapter begins by providing a background to the Law Centre. It then examines the works of the Law Centre on access to legal aid and legal education. Following that, the thesis will study how the Law Centre responds to the issue of curriculum integration, funding, and the current regulatory framework on student practice, as discussed above.

5.1. A Brief History

The Law Centre represents a program established by the University of Victoria Faculty of Law.[142] It was established in 1977, three years after the establishment of the Faculty of Law.[143] From the outset, the Faculty generally recognized the law clinic method, and the Law Centre was an integral component of its law programs.

The incentive for a clinical component of the Law Centre runs parallel to those that led to the establishment of the Faculty of Law. The Faculty was founded based on a strong commitment to a community-centred approach to legal education, and an expansive approach to the methods of that legal education.[144] Here, the works of the local Bar, before the Faculty was established, are worth critical consideration.

The establishment of the Faculty of Law met considerable support from the Victoria Bar, which felt the need for a law faculty in the Victoria community. The legal profession was subsequently influential in shaping the Faculty's foundational ideology.

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[142] *The Law Centre*, online: <thelawcentre.ca/>.

[143] University of Victoria, *The Law Centre Turns 40* (18 June 2017), online: <exhibits.library.uvic.ca/images/13835/full/full/0/default.jpg>.

[144] University of Victoria, *Report of the Ad Hoc Committee on the Faculty of Law at the University of Victoria* (Victoria, BC: University of Victoria, 1973).

In October 1966, the local Bar passed a resolution to support the institution of the Faculty of Law,[145] proposing a comprehensive plan that advocated a community-centred approach to legal education, as well as an expansive approach to teaching. Following the above resolution, the Victoria Bar Association submitted a *Brief to the Senate of the University of Victoria in Support of the Establishment of a Faculty of Law at the University*.[146]

In that *Brief,* the local Bar vigorously advocated for a community-centred approach to legal education, stressing that the Faculty of Law must "train persons who can meet the functions of government".[147] The Bar also emphasized that the program should be structured in a way that would make an "impact at all levels on the community at large".[148] The Victoria Bar Association was likewise emphatic about the Faculty needing to "provide the opportunity for a continuing examination of the role of law in the community".[149]

In addition, the Bar Association recommended an expansive approach to teaching methods, as touched upon earlier in this thesis. In its *Brief,* the Association advocated for the advantages of "creating a Faculty of Law in which the traditional methods of teaching law in Canada would be expanded and improved to ensure that development of law is in step with social change".[150] The Victoria Bar Association expressed dissatisfaction with overreliance on the case method and class discussion. The case method was seen to be inadequate for teaching students, given "the growing complexities of modern society".[151] As such, the Bar specified that "the teaching of law be supplemented by other methods".[152] In turn, the Faculty was to adopt "a broad educational background, coupled with a variety of interest and experience", which the Bar Association

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[145] Victoria Bar Association, *A Brief to the Senate of the University of Victoria in Support of the Establishment of a Faculty of Law at the University* (Victoria, BC: Victoria Bar Association, 1966) at 1.

[146] *Ibid.*

[147] *Ibid* at 4-5.

[148] *Ibid* at 5.

[149] *Ibid* at 6.

[150] *Ibid* at 2.

[151] *Ibid* at 2.

[152] *Ibid* at 2.

considered as "essential elements of legal education and to the successful practice of law".[153] Consequently, the Bar Association recommended the combination of doctrinal courses with experiential programs, which would provide students with an "opportunity to study the functions and methods of government and administrative bodies, and the observation by students of how the law works in government and daily practice".[154]

Ultimately, what is most notable in the Victoria Bar Association's *Brief* is advocacy for a community-centred approach to the purpose of legal education and an expansive approach to the methods of legal education. The Faculty of Law at the University of Victoria is fundamentally a community-based institution, which links its program to meeting community needs and demands through an integrated curriculum. It describes itself as "one of Canada's leading law schools, known for the strength of [its] academic program, approach to experiential learning, and [its] commitment to community engagement and social justice".[155]

Aside from the local Bar, another major impetus for the clinical method at the University of Victoria Faculty of Law was the creation of a Clinical Legal Education Committee. In 1976, said Faculty of Law appointed a Clinical Legal Education Committee to look at its clinical legal education.[156] This Committee had its terms of reference directed towards examining the nature of the clinical methodology: its viability, and practicability, as well as its relative place in the curriculum.[157] The Clinical Legal Education Committee presented a report to the Faculty, vigorously arguing in favour of clinical offerings at the Faculty of Law, noting that "the clinical program offers a different methodology of learning through doing and relating the knowledge to the practice and process so that both are improved".[158] The above report highlighted that the

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[153] *Ibid* at 6.

[154] Victoria Bar Association, *A Brief to the Senate of the University of Victoria in Support of the Establishment of a Faculty of Law at the University* (Victoria, BC: Victoria Bar Association, 1966) at 2.

[155] University of Victoria, *Faculty of Law: Law in Action*, online: <www.uvic.ca/law/index.php>.

[156] David Buchan et al, *Report of the Clinical Legal Education Committee* (Report submitted to the University of Victoria Faculty of Law, 25 February 1976).

[157] *Ibid.*

[158] *Ibid* at 53.

clinical method, when integrated with the case method, would provide a better foundation for practical training at the Faculty. As a result, the Law Centre's current clinical orientation mainly relates to the Faculty's experiential learning goals.

5.2. Overview of the Law Centre Clinical Program

The Law Centre provides a full-semester program, run for each of the three terms per calendar year. Up to fourteen law students enroll in the Program each term. Aside from these 14 students, the Law Centre is staffed by a Director (a practicing lawyer), two additional supervising lawyers, and an administrator.[159] An interdisciplinary approach is adopted on the Program, with a registered social worker on the staff, along with a University of Victoria social work student on practicum placement.[160] As noted in the part 5.3.1. of this chapter, this interdisciplinary approach by the Law Centre is an important recognition that many access to justice problems are not solely legal ones, but originate in mental, psychological, social, and economic issues, and can only be solved by involving services that address those issues as well.

The clinic students typically handle 30-40 files in diverse areas of the law, providing legal advice, assistance, and representation before the courts and tribunals. Upon successful completion, students are awarded 7.5 credits toward their law degree.

The Law Centre uses a lottery/ballot method to select students for the Clinical Program.[161] This method is a randomized selection process that gives every student an equal chance to register in the clinical course. It is a random selection from all eligible students who express interest. The Law Centre however gives priority admission to students who are in their third year of legal studies and students who have taken the three following courses: Law of Evidence, Criminal Procedure, or Family Law. The Law Centre do not average grades for enrolment in the Law Centre Clinical Program. At the Law Centre motivation and interest of a student count more than academic grades. The Law Centre does not require high grades for enrolment in the clinical

[159] See The Law Centre, *Meet Our Team*, online: <thelawcentre.ca/our-team/>.

[160] *Ibid.*

[161] University of Victoria Faculty of Law, *LAW 350 Law Centre Clinical Term: Ballot and Registration Information, Fall Term 2021*, online: www.uvic.ca/law/jd/courseregistration/index.php.

program. Selection is primarily based on the motivation of the students to participate in the Clinical Program.

The selection approach of the Law Centre is recommendable. As indicated, the Law Centre does not require academic grades for selection into the clinic program. It might be argued that requiring an average grades ensure students are academically strong. However, a student's motivation and interest in litigation practice, client concerns, and proper supervision appears to be more determinative of their success as a student practitioner. The selection process is also transparent and non-discriminatory and to ensure equity in students' opportunities to undertake clinical courses. The prerequisite for selection are clearly articulated in the Ballot and Registration Information sheet of the Law Centre, and that sheet and the application form is also available on the Faculty's website.[162]

5.2. Law Centre Contributions to Access to Justice and Legal Education

5.2.1. Access to Justice Goals

The delivery of legal aid services has been an integral part of the Law Centre's clinical program. The Law Centre identifies itself as "a poverty law office, with social justice objectives, contributing to access to justice in the community".[163] There are many related reasons for the Law Centre's public-service orientation. First, there is a significant public commitment to community-based programs expressed in the mission of the University of Victoria Faculty of Law. The Law Centre forms an integral part of the community-based initiatives undertaken by the Faculty.[164]

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[162] [162] University of Victoria Faculty of Law, *LAW 350 Law Centre Clinical Term: Ballot and Registration Information, Fall Term 2021*, online: www.uvic.ca/law/jd/courseregistration/index.php.

[163] University of Victoria Faculty of Law, *The Law Centre Clinical Program – Law 350: Course Description*. [On file with author]

[164] The Faculty of Law undertakes a number of community-based initiatives aimed at supporting social justice in the Victoria community. The Faculty has its Access to Justice Centre for Excellence (ACE), established in 2015 as a response to growing concern within the justice community about the problem of diminishing access to justice, and in the belief that there is a unique and important role that the academy can and should play in the resolution of this problem. See University of Victoria Faculty of Law, *Access to Justice Centre for Excellence (ACE)*, online: <http://www.uvicace.com/>. Aside from this, the Faculty integrates a significant element of access to justice and interdisciplinary studies into its law curriculum. The Faculty has an "Access to Justice" course, for example, which specifically examines the fact of diminishing access to justice and its far-reaching implications for the public, justice system and society as a whole. The aim of the course is "to give students both a theoretical framework and practical information to help them recognize, understand and respond to access issues". See University of Victoria Faculty of

A further reason favouring significant involvement of the Faculty of Law and Law Centre in the legal aid program is the wide range of activities included in the overall plan to promote access to justice. For example, in 2013, an Access to Justice Committee, constituted by the Canadian Bar Association ("Access to Justice Committee"), concluded that "[l]aw schools support both private and public delivery of legal services and have a direct role in providing legal services through legal clinics".[165] The Access to Justice Committee found that "[a]n important avenue for advancing access to justice is by engaging the legal academy to a greater extent than at present".[166] As a result, the Committee vigorously recommended that legal aid programs be designed to reach out to the most helpless members of society. It identified the broadest possible areas that could be made available for these individuals, indicating these as *essential legal needs*: "those arising from legal problems or situations that put into jeopardy the security of a person or that person's family's security – including liberty, personal security, health, employment, housing or ability to meet the necessities of life and extending to other urgent legal needs."[167] The Access to Justice Committee report also includes recommendations about additional student legal clinics and the fact that students should be exposed to experiential education.[168]

Consequently, current models for legal aid programs in Canada mostly relate to addressing essential legal needs in the community. The Legal Services Society of British Columbia is the public corporation established by the Legislative Assembly of the Province to assist individuals to resolve their legal problems and facilitate their access to justice.[169] In that regard, the Legal Services is also required by the Legal Services Society Act to "establish and administer an

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Law, *Law 325 Access to Justice*, online: <www.uvic.ca/law/assets/docs/pcisspring2017/201701%20325%20Access%20to%20Justice%20McHale.pdf..

[165] Canadian Bar Association, *Equal Access to Justice* (Ottawa, Canada: Canadian Bar Association, 2013), 120, online: <https://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf>.

[166] *Ibid.*

[167] Canadian Bar Association Access to Justice Committee, *Reaching Equal Justice Report: An Invitation to Envision and Act* (Ottawa, Canada: Canadian Bar Association, 2013) at 11.

[168] Ibid at 123.

[169] *Legal Services Society Act*, [SBC 2002] Ch 30, s 9(1)(a).

effective and efficient system for providing legal aid to individuals in British Columbia."[170] The services that the Legal Services Society provides include criminal charges, mental health and prison issues, serious family problems, child protection matters, and immigration problems.[171]

Research has shown, however, that unmet legal needs and the demand for legal services far exceeds availability and what can reasonably be provided by the publicly funded legal aid programs.[172] This might be the case when one considers that the Legal Services Society has the mandate to serve a Province with a population of over 5.1 million people,[173] with over one million individuals living in poverty.[174] From this end of the spectrum, the Law Centre contributes to supplementing the publicly funded legal aid services.

As such, the Law Centre prioritizes the provision of legal services to areas that could easily be identified as falling under the category of *essential legal needs*. The Centre's services cover criminal matters; divorce, support, and other family law matters; human rights complaints; civil disputes; hearings before administrative tribunals that deal with matters such as employment insurance, welfare, landlord and tenant disputes, and the Canada Pension Plan.[175] These services supplement those provided by the Legal Aid Services of British Columbia. The contribution that the Legal Services Society makes in the provision of legal aid services in the Province also lies in the number of people it serves. The Law Centre reports helping over 2,000 clients annually.[176]

The Law Centre supports access to justice through the delivery of legal aid services. With the support and advice of clinical law instructors in the clinic, students manage files from start to

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[170] Ibid at section 9(1)(b).

[171] Legal Aid BC, *Legal representation by a lawyer*, online: <https://lss.bc.ca/legal_aid/legalRepresentation>.

[172] Canadian Bar Association Access to Justice Committee, *Reaching Equal Justice Report: An Invitation to Envision and Act* (Ottawa, Canada: Canadian Bar Association, 2013) at 43.

[173] BC Stats, *2020 Sub-Provincial Population Estimates Highlights* (Reference date: July 2020), online: www2.gov.bc.ca/assets/gov/data/statistics/people-population-community/population/pop_subprovincial_population_highlights.pdf.

[174] See

[175] Law Centre, *How We Help*, online: <thelawcentre.ca/how-we-help/>.

[176] Law Centre, online <https://thelawcentre.ca/>.

finish, including interviewing; counseling; research; problem-solving; document drafting; legal correspondence; negotiating and mediating resolutions, and providing representation at trials and hearings. The students may also represent clients in court or before administrative tribunals.[177] This is possible, because, as discussed below, the *Temporary Articles Rules* enacted by the Law Society of British Columbia enable students under the supervision of the law school to practice law.[178]

Aside from providing legal services, the Law Centre also integrates a wide range of services beyond legal. The Law Centre through its social worker offers a range of services beyond legal. At the Law Centre, students are allowed to approach a client's legal problems from an interdisciplinary perspective, working alongside the clinic's staff social worker. Additionally, the Law Centre provides social work services that include short-term counseling, referrals, assessment, crisis intervention, and general advocacy. Students working with the clinic's social work staff essentially assist clients with the non-legal issues underlying their various legal matters.[179]

The provision of services beyond legal is an important recognition that many access to justice problems are not solely legal ones, but originate in mental health, psychological, social, and economic issues, and can only be resolved by involving services that address those issues as well.[180] The goal of including this holistic approach in the Law Centre's work is therefore based

[177] University of Victoria Faculty of Law, *Law Centre Clinical Program - Law 350: Course Description* [On file with author].

[178] See Law Society of British Columbia, *Law Society Rules 2015* (Vancouver, British Columbia: Law Society of British Columbia, effective 1 July 2015; updated March 2021) at rules 2-70(9). The scope of this Rule is discussed further under section 3.2.2 of this chapter, and under the heading *Regulation of Student Practice*.

[179] Susan Noakes, "Transformative Social Work in the Criminal Justice Field" (2014) 23 JLSP at 175-187; Susan Noakes, "The Effective Roles of a Social Worker in a Clinical Legal Education Practice" (2013) 37 MLJ 449. Susan Noakes is the staff social worker at the Law Centre.

[180] See generally Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Canada Department of Justice, 2007) at , online: https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/rr07_la1.pdf. *This publication was a survey that was conducted to understand the Legal Problems of Everyday Life*. In that survey, the respondents were asked if the justiciable problems they experienced had contributed to or caused adverse effects in several areas of life. These were: consequences for physical and mental health, on patterns of alcohol or drugs use, on the occurrence of violence in family and other areas of personal life and on feelings of personal safety and security. Overall, the

on the premise that the combination of legal and social services will provide more appropriate and effective ways of addressing clients' legal matters, which are often intertwined with other non-legal factors, like health, education, employment, family circumstances, disability, and poverty. The rationale underpinning this holistic approach is that the delivery of justice should not only consist of applying the law; it should also present a solution that satisfies the client's legal and non-legal needs.

Moreover, by addressing the non-legal needs of their clients in a clinical/ experiential setting, students learn that legal problems do not emerge in isolation and that they need to address these problems by working with other professionals and disciplines. A two-year Holistic Lawyering Project, which interviewed clients, students, and staff at the Law Centre from 2008-2010, shed light on the transformative potential of such an interdisciplinary approach. [181] The Holistic Lawyering Project demonstrated how the law student is "transformed" within such interdisciplinary practice. The Project, in discussing the student's experiences in such holistic practice, noted that "the acquisition of a broader social understanding was a significant experience, one that worked to transform their outlook on the role of law within society".[182] The Project also identified that after engaging with a social worker to address the client's legal problem, law students "come to understand the significant limitations of a formal legal approach that does not take into account the social issues facing clients".[183]

The Law Centre's services have also been structured in a way that makes it more accessible. For instance, the Law Centre is currently annexed to the Victoria Courthouse, thereby allowing easy access by the public. Aside from that, the Law Centre has established referral

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survey reported that 38.1 per cent of all respondents with one or more problems reported having a health or social problem that they attributed directly to a justiciable problem.

[181] See Gayla Reid & John Malcolmson, *Holistic Lawyering Project University of Victoria Faculty of Law Clinical Law Program Final Report* (2010) [Unpublished, archived at University of Victoria Faculty of Law], cited in Susan Noakes, "Transformative Social Work in the Criminal Justice Field" (2014) 23 JLSP at 175-187.

[182] See Gayla Reid & John Malcolmson, *Holistic Lawyering Project University of Victoria Faculty of Law Clinical Law Program Final Report* (2010) [Unpublished, archived at University of Victoria Faculty of Law], cited in Susan Noakes, "Transformative Social Work in the Criminal Justice Field" (2014) 23 JLSP at 175-187.

[183] See Gayla Reid & John Malcolmson, *Holistic Lawyering Project University of Victoria Faculty of Law Clinical Law Program Final Report* (2010) [Unpublished, archived at University of Victoria Faculty of Law], cited in Susan Noakes, "Transformative Social Work in the Criminal Justice Field" (2014) 23 JLSP at 175-187.

programs with the courts, the local bar, and other help agencies including the Together Against Poverty Society and the Tenant Resource & Advisory Centre. The Law Centre reports that these institutions have been responsive in such a collaborative effort.[184] Moreover, the Law Centre also maintains a website that provides information about its programs.

5.2.2. Legal Education Goals

The Law Centre also maintains a tradition of clinical practice. The Law Centre defines its educational objectives in its *Course Description*, firstly as providing students with a clinical legal education component to their legal education, whilst at the same time offering legal services to the public as an outreach of the University. In this setting, clinical legal education involves students assuming the role of legal counsel, directly assisting clients with their legal problems. The Law Centre's *Course Objectives* are listed below:

- Experience clinical legal education as a method of learning law
- Learn professional role, responsibility, and ethics
- Develop legal skills of practice management, interviewing, counselling, research, problem-solving, document drafting, legal correspondence, negotiation, mediation, and courtroom advocacy,
- Practice and develop confidence in relevant legal skills in a supportive environment
- Weigh the effectiveness of a problem-solving approach of counsel alongside traditional adversarial representation in responding to different situations affecting clients
- Appreciate the uncertainties inherent in factual and legal determinations, and how to manage uncertainty in legal opinions, advice, and decision-making
- Learn about the challenges faced by disadvantaged and marginalized members of our society, approaches to providing access to justice, and contribute to individual and social justice while serving in the clinic.
- Critically examine the law and legal processes in context with a view to law reform.
- Develop habits of life-long learning applicable to the practice of law

The use of such broad words, "experience", "learn", "develop," "practice," "appreciate" and "examine" opens the course objectives of the Law Centre to criticism. One can criticize most of these objectives as vague and do not describe what the successful student does during the clinical course (performance), the circumstances under which the student does it (conditions), or how well the student does it (criteria). These three elements are missing in nearly all of the objectives.

[184] University of Victoria Faculty of Law, Law Centre Clinical Program: Continuing Program Activity Report, (15 April 2021) (On file with author).

One might reasonably argue that these goals could be achieved with traditional case-based instruction. It is recommended that the Law Centre redesign its intended learning outcomes. A good statement of a learning outcome would describe what the student will (be able to) do, when they will do it, and how well. For example, instead of stating that the students will learn about the challenges faced by disadvantaged and marginalized members of the students, the Law Centre could be more specific about where/when the students will learn the challenges, and how they can accurately identify the implications of these challenges. In this context, a good statement of a learning outcome would describe that given a particular case, the students will accurately identify the social challenges involved, and accurately incorporate the implications of such challenges for the client, the case, and the legal system. Lawyers must not only be able to identify critical factors and their implications, they must be able to also take these factors into account when making decisions and advising clients.

5.3. Curricula Integration

It appears the University of Victoria Faculty of Law has structured its curriculum in a manner that allows its students to gain a great deal of both academic training and practical training.

The UVic Faculty of Law appears to realize this by structuring its program in a way that students during their first year of law school receive basic training in both public and private law subjects. These subjects are Constitutional Law, Criminal Law, Law, Legislation and Policy, Contracts, Legal Process, Property, and Torts. The first-year students also take classes in Legal Research and Writing. The Legal Research and Writing subject aim to give the students the knowledge and tools to perform effective legal research, analysis, and writing.[185]

In the upper-year (second year and third year) students have the opportunity to explore different areas of the law through elective classes. The Faculty of Law also provides a wide range of practice-oriented courses for upper-year students. In addition to some elective classes, students could take advanced legal research and writing classes, seminar classes emphasizing

[185] One problem with the UVic Faculty of Law curriculum is that it assigns Ethics and Legal Professionalism as an upper year course. The author of this thesis recommends that this course be assigned to the first year program such that, as in the Legal Research and Writing course, it will provide a foundation for the upper year courses.

legal scholarship (through the Appeal Journal course[186]). There are also some practice oriented courses where the students could choose between working at law school clinics (that is the Law Centre, the Environmental Law Clinic, or the Business Law Clinic), mooting, and interning at law firms or in government or a public interest organization.

This hybrid approach to the UVic Faculty of Law curriculum integrates practical training with academic training. It gives the law students considerable opportunity to appreciate both the academic component and the practical component of the law.

Indeed, scholars writing on the law school curriculum have expressed a similar integrated approach. As discussed above, the Carnegie Foundation Report of 2007: Educating Lawyers: Preparation for the Profession of Law took a similar approach when the researchers suggested three conceptual apprenticeships that law schools should endeavour to integrate into their curriculum.[187] In addition to this Report, Lorne Sossin, a former dean of the Osgoode Hall Law School of York University, Canada, writing on the subject also cited expressed academic and practice-oriented courses on how the law school curriculum could fit together and relate to the overall educational enterprise.[188] Sossin supported recommendations including (1) maintaining basic doctrinal courses but infusing them with factual context, problem-solving, ethics, and professionalism; (2) more active techniques in the second year, such as simulations and role-play to teach additional skills – even in large classes; and (3) devoting the third year to experiential education, thereby allowing students to deploy skills and knowledge acquired while working with real cases.[189]

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[186] The Appeal Journal is a double-blind, peer-reviewed law journal published through the Faculty of Law at the University of Victoria. The Journal publishes articles, case commentaries, and book reviews that offer insightful commentary on Canadian and comparative law. This law journal also promotes legal scholarship in its political, philosophical, and social contexts. Appeal is student-run, and its Editorial Board aims to publish primarily student compositions. See University of Victoria Faculty of Law, *Appeal: Review of Current Law and Law Reform*, online: www.uvic.ca/law/jd/appeal/index.php.

[187] William M Sullivan, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007).

[188] Lorne Sossin, "Experience the Future of Legal Education" (2014) 51 Alberta Law Review 849.

[189] Ibid at 855.

Admittedly, the clinical method is not a panacea. The structure of the UVic Faculty of Law curriculum however demonstrates that integrating academic training with practical training is necessary to enhance the learning experience of students. Such an integrated curriculum, as Sossin suggests, "points the way forward to a distinctly engaging, relevant, and collaborative model of learning that is well-suited to advancing the ensuring missions of law schools".[190]

5.4. Funding

Moreover, as indicated above, funding a clinical program has been cited as a major issue that Canadian law clinics deal with. In the 2017 study, the researchers found that even when clinics are funded through relatively solid government funding, there are ongoing concerns regarding the variances of government funding and its continuing sustainability. This is particularly the case in the context of British Columbia. As discussed above, in British Columbia, the provincial government funding comes with a Memorandum of Understanding that stipulates the type of cases and services that the Legal Services Society should provide. The provincial government also stipulates how these cases and services are to be funded.

The Law Centre's major funding agency is the Law Foundation of British Columbia ("the Law Foundation").[191] Unlike the provincial government that tends to skew legal aid funds to achieve its policy objectives, the Law Foundation is not publicly funded – it does not receive most of its money from the government. The Law Foundation of British Columbia is a non-profit foundation, established under *British Columbia (BC) Legal Profession Act.*[192] The Law Foundation was created by the *Legal Profession Act* to receive and distribute the interest on clients' funds held in lawyers.[193] The *Legal Profession Act* directs the Law Foundation to distribute these funds in five areas: legal education, legal research, legal aid, law reform, and law

[190] Ibid at 868-869.

[191] See the Law Centre, *Cumulative Activity Report* (Submitted to the Law Foundation of British Columbia's Continuing Program, 15 April 2020) [On file with author].

[192] *BC Legal Profession Act* [SBC 1998] at c 9, s 58. For an overview of the history of the Law Foundation of British Columbia, see The Law Foundation of British Columbia, History of the Law Foundation, online: www.lawfoundationbc.org/about-us/history/.

[193] See *BC Legal Profession Act* [SBC 1998] at c 9, s 58.

libraries.[194] The financial support that the Law Centre receives from the Law Foundation explains the legal profession's direct interests in making law school resources available to support legal aid and legal education, which are precisely among the main purposes for establishing the Law Foundation.[195] Moreover, unlike provincial government funding, the Law Foundations' funding typically is not included in the Memorandum of Agreement (although as part of its priorities, the Law Foundation grants are to be used to assist in the provision of legal aid services and assist in the academic and professional development of students).[196] This arrangement provides enough flexibility for the Law Centre to determine the type of cases and services to provide.[197]

5.5. Supervision

The instructional strategies used by the Law Centre appear to result in many desirable achieved learning outcomes.

Its clinical session starts with an introductory seminar in the classroom, a kind of mini-course, which provides students with knowledge of essential policies, legal and ethical principles, and legal skills so that they can effectively learn and serve in the clinic.[198] The syllabus for the seminar includes client interviewing and counseling; strategic planning and problem-solving; factual investigation and analysis; courtroom advocacy and procedures; negotiation; rules of professional conduct; practice management; law office procedures, and trial skills such as cross-examination, objections, and final submissions.[199] As part of this seminar, the

[194] See *BC Legal Profession Act* [SBC 1998] at c 9, s 58.

[195] The *BC Legal Profession Act* directs the Law Foundation to distribute these funds in the areas of legal education, legal research, legal aid, law reform, and the establishment, operation, and maintenance of law libraries in British Columbia. See also *BC Legal Profession Act* [SBC 1998] at c 9, s 61(1).

[196] Law Foundation of BC, *Mandate, Mission and Strategic Priorities*, online: www.lawfoundationbc.org/about-us/mandate-mission-and-strategic-priorities/.

[197] See University of Victoria, *Law Foundation of British Columbia Continuing Program Activity Report*. [On file with author].

[198] University of Victoria Faculty of Law, *Law Centre Clinical Program – Law 350: Course Description*. [On file with author].

[199] University of Victoria Faculty of Law, *Law Centre Clinical Program – Law 350: Course Description*; University of Victoria Law Centre, *Orientation: Instructor Notes* [On file with author].

Law Centre also introduces the students to a holistic (multi-disciplinary) approach to resolving clients' problems.

More intensive analysis of the law subsequently develops through simulated exercises, where the students engage in the examination of problems that appear at the office. During these simulated exercises, which make up a significant part of the seminar, the students work on a simulated case.[200] As with most simulations, the students are taught a theory class for each of the topics, after which they participate in and observe legal skills or advocacy exercises relating to the topic, based upon a set of facts, and followed by in-class feedback and discussion.

Once the seminar is completed in the classroom, students practice the skill with "live clients" in the clinic. Upon attendance of the Law Centre, the students receive an ongoing caseload of client files, as well as regularly interviewing new clients seeking assistance.[201] The files handled by Law Centre students involve diverse areas of law, including criminal, family, human rights, civil litigation, employment, debtor-creditor, incapacity planning, wills, residential tenancy, and social welfare benefit appeals. With the support and advice of clinical law instructors at the clinic, the student handles all aspects of a file, including interviewing, counseling, research, problem-solving, document drafting, legal correspondence, negotiating and mediating resolutions, and providing representation at trials and hearings.

The teaching in the Law Centre takes two forms: supervision and case rounds. The supervisory component entails a constant review of the student's case file with a clinical law supervisor. There is also a weekly case commentary and planning meeting, at which students discuss their experiences, along with any legal or ethical issues that arise. During the case round, the students present the cases that they are handling, while the clinical instructors and other students make comments and discuss appropriate strategies. Specific themes relating to the cases that may be discussed include case planning, outcome prediction, legal and factual analysis, and analyses of relationships and interactions with the clients or other actors involved. This is aside

[200] Ibid.

[201] *Ibid.*

from a one-to-one performance review between the students and supervising lawyers.[202] Students then take their case files and draft the necessary documents or take the next appropriate step.

In addition, the Law Centre has developed a structured clinical program, which provides students with an opportunity to confront ethical issues in their role as lawyers. The Law Centre explicitly discusses rules of professional conduct and legal ethics as part of its four-week orientation.[203] The clinic involves the student in office procedures, focusing on their ethical responsibilities, maintenance of client confidentiality, avoidance of conflicts of interest, expediting of litigation, presentation of meritorious claims and contentions, the importance of truthfulness in statements to others, and exercise of candour toward the tribunal.

The Law Centre has also developed a *Desk Reference,* which brings together in one volume, the standards, policies, and procedures that the clinical program has developed to promote the educational goals of its students and the Faculty of Law. The purpose of this *Desk Reference* is to facilitate cooperative relationships with the parties being dealt with and to ensure that the clinic, including its student-lawyers, does not fail in its responsibility to its clients, which is primarily to effectively pursue the legal matters entrusted to it.[204]

5.6. Conclusion

There are several ideal practices that one may be able to draw from the above studies. The Law Centre engages law students to provide real legal services to actual clients with real legal problems. At the Law Centre, the students are responsible for handling cases but are closely supervised by lawyers licensed to practice law in the province, and lawyers also share the legal aid and pedagogical objectives of clinical legal education. The clients that the Law Centre serves are generally individuals that are not able to afford the cost of legal representation or they come from traditionally disadvantaged, marginal, or otherwise underserved communities. This approach of the Law Centre also forms an important component of the overall plan to promote

[202] University of Victoria Faculty of Law, *Law Centre Clinical Program – Law 350: Course Description*. [On file with author].

[203] *Ibid.*

[204] University of Victoria Law Centre, *The Law Centre Clinical Program: Desk Reference* [On file with author].

access to justice. The casework by the students of the Law Centre is also preceded or accompanied by an introductory seminar in the classroom, a kind of mini-course, which provides students with knowledge of essential policies, legal and ethical principles, and legal skills, as well as the necessary predicate doctrinal knowledge for the area of practice of the clinic. in addition, other important factors also figure in the strength of the Law Centre's clinical program. The Law Centre is also generally accepted by students, faculty, and the legal profession as an essential curricula component of legal education as well as the legal aid system in the Province. It is recommended that the Law Centre redesign its intended learning outcomes to reflect what the student will (be able to) do, when they will do it, and how well.

Chapter Six: Legal Aid and Legal Education in Ghana

6.1. Legal Aid

6.1.1. Access to Justice Ideals

As in Canada, access to justice and human rights protection are constitutional commitments that are central to the Ghanaian legal system. Chapter Five of the *Constitution of Ghana* also contains a charter of rights and freedoms, entitled, "Fundamental Human Rights and Freedoms",[205] dedicated to the protection and promotion of a wide range of rights, including civil and political rights, as well as economic, social, and cultural rights.[206] The scope and magnitude of guaranteed fundamental human rights and freedoms are such that Article 33(5) of the *Constitution of Ghana* makes it very clear that the rights and freedoms specified in its Chapter Five are not intended to be exhaustive or exclusive of other rights, duties, declarations or guarantees relating to fundamental rights and freedoms, "which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man".[207]

Moreover, the *Constitution* sets out in Chapter Six, "Directive Principles of State Policy". These serve as guiding principles for government policies and initiatives, directing the government towards the establishment of a just and free society.[208] In recognition of vulnerable groups in

[205] The rights and freedoms set out in Chapter Five of Ghana's *Constitution* have been described as "some of the most crucial mechanisms created by the Constitution for ensuring the attainment and sustenance of the political, social, economic and cultural foundations of a modern democracy".[205] See *Awuni v West African Examination Council* [2003-2004] SCGLR 471, per Sophia Akuffo JSC.

[206] The scope and magnitude of guaranteed fundamental human rights and freedoms are such that the 1992 *Constitution* at art 33(5) makes it very clear that the rights and freedoms specified in Chapter Five are not intended to be exhaustive or exclusive of other rights, duties, declaration and guarantees relating to fundamental rights and freedoms "which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man".

[207] *Constitution of* Ghana, 1992, art 33(5).

[208] According to the introductory Article of Chapter Six of the *Constitution*, "The Directive Principles of State Policy contained in this Chapter shall guide all citizens, Parliament, the President, the Judiciary, the Council of State, the Cabinet, political parties and other bodies and persons in applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions, for the establishment of a just and free society". The Article stipulates: "[t]he President shall report to Parliament at least once a year all the steps taken to ensure the realization of the policy objectives contained in this Chapter and, in particular, the realization of basic human rights, a healthy economy, the right to work, the right to good health care and the right to education."

society, the *Constitution* mandates the state to direct its policy towards ensuring that "every citizen has equality of rights, obligations, and opportunities before the law".[209] The *Constitution* also requires the state to enact appropriate laws to ensure the "protection and promotion of all other basic human rights and freedoms, including the rights of the disabled, the aged, children and other vulnerable groups in the developmental process".[210]

Over the years, the government of Ghana has undertaken several initiatives, aimed at giving legal protection to the rights of certain socially disadvantaged groups and individuals. Among these reforms is the *Children's Act, 1998* (Act 560) to protect the rights of children; the *Persons with Disability Act, 2006* (Act 715), to protect and promote the rights of persons living with disability; the *Domestic Violence Act, 2007* (Act 732) to protect women and girls from all forms of violence in all environments, and an *Aged Persons' Bill* to protect the rights of the aged. Recently, the government enacted the *Legal Aid Commission Act, 2018* (Act 977) to replace the old *Legal Aid Scheme Act, 1997*. This new *Legal Aid Commission Act* seeks to strengthen legal aid for indigents.

As in Canada, the Supreme Court of Ghana has been vocal in the realization of access to justice for the public. In *Center for Juvenile Delinquency v Ghana Revenue Authority and Another*,[211] the Supreme Court of Ghana was invited to consider the contemporary meaning and legal requirements of a fundamental guarantee of access to justice, as it relates to human rights protection. The legal issue in *Center for Juvenile Delinquency v Ghana Revenue Authority and Another* was whether legislation that prevented a person from filing a case with the courts without that person quoting his or her Taxpayer Identification Number (TIN) was unconstitutional, in that it violated the principle of access to justice and offended the constitutional guarantee of human rights protection.[212] The Supreme Court struck down the TIN requirement as unconstitutional, as it restricted access to the courts for individuals who did not have a TIN. While the Court struck

[209] The Constitution of Ghana, art 37(2)(b).

[210] The Constitution of Ghana, art 37(1).

[211] (J1/61/2018) [2019] GHASC 29 (30 July 2019).

[212] *Center for Juvenile Delinquency v Ghana Revenue Authority and Another* (J1/61/2018) [2019] GHASC 29 (30 July 2019).

down the legislation, based on the issue of cost or delay in obtaining a TIN, intangible barriers to accessing justice were also at issue, namely, "geographic, illiteracy, financial and gender-specific challenges", which the majority of Ghanaians faced when accessing public services. More specifically, the Supreme Court ruled that access to justice goes beyond physical access to the courts. The Court expressed that the importance of the right of access to the courts lies in the fact that it enables every person to enjoy all the other fundamental human rights and freedoms enshrined in Chapter Five of the 1992 Constitution. Further, access to justice enables people who are more vulnerable to socio-economic hardships, discrimination, and general human rights abuses to access and enforce their inalienable human rights.[213]

6.1.2. Statutory Provisions for Legal Aid

In Ghana, as in Canada, there is no overarching constitutional right to legal aid. The Constitution only guarantees legal aid as an entitlement in constitutional matters.[214] It does, however, authorize the Ghanaian Parliament to enact laws and programs regulating the grant of legal aid in matters other than constitutional matters.[215] It is difficult to precisely establish the time and date that legal aid began in Ghana, although the practice of assigning private counsel to defend persons unable to afford a lawyer began around the early 1940s. It was a practice initiated by the courts, but such assistance was confined to murder cases and laid solely at the discretion of the courts, with no legislative backing.

The first legislative backing for legal aid appeared in the *Courts Act, 1971* (Act 372), wherein section 110(1) stipulates:

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[213] *Ibid.*

[214] See *Constitution of the Republic of Ghana, 1992* at art 294(1), which stipulates that "[f]or the purposes of enforcing any provision of this Constitution, a person is entitled to legal aid in connection with any proceedings relating to this Constitution if he has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings".

[215] See *Constitution of the Republic of Ghana, 1992* at art 294(3), which stipulates that "Parliament may, under

that clause provides for the granting of legal aid in such matters other than those referred to in clause (1) of this article as may be prescribed by or under that Act".

> The Supreme Court, the Court of Appeal or the High Court may at any time assign a lawyer by way of legal aid to any party to any proceedings whatsoever before the Court in respect of which the Court is of the opinion that it is desirable in the interests of justice that the party should have legal aid and that the person has not sufficient means to obtain the services of a lawyer.[216]

Nevertheless, this court-administered legal aid was limited. There was no established legal aid service; the law gave the judge sole discretion to grant legal aid. Robin Luckman, writing in the 1970s, also found that this legal aid scheme administered by the courts covered the most serious criminal offences. There was little or no provision for legal aid in civil matters.[217] The fact that the provision of legal aid services was laid solely at the judge's discretion, and limited to serious criminal offences, was problematic. It was against this background that the Learned Editors of Review of Ghana Law called for the introduction of a legal aid system into Ghanaian law, with the possible inclusion of legal aid services to persons appearing before administrative tribunals.[218]

The first substantive legislation that dealt exclusively with legal aid was enacted in 1987. The *Legal Aid Scheme Law, 1987* (PNDCL 184) was enacted to deal exclusively with legal aid and related matters. This Law did not abolish the court-administered legal aid but rather established a Legal Aid Board as a single point for the administration of legal aid. It was the mandate of the Legal Aid Board to develop a comprehensive legal aid program and policy, supervise the administration of legal aid, and approve the selection of legal practitioners for participation in the legal aid program.

The *Legal Aid Scheme Law* made it mandatory to provide legal aid services to persons being tried for offences punishable by death or life imprisonment. For all other criminal offences, a person must earn less than the government minimum wage to be entitled to legal aid services.[219] In respect of civil matters, the Law applied to cases involving landlords and tenants,

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[216] *Courts Act, 1971* (Act 372) at s 110(1).

[217] Robin Luckham, "The Market for Legal Services in Ghana" (1976) 8:1 Review of Ghana Law 7 at 21.

[218] *Miscellany – at – Law: Administrative Tribunals and Legal Aid* [1973] 5 RGL 161.

[219] As of June 2021, the daily minimum wage in Ghana stood at 12.53 Ghanaian cedis (GHS) (approximately 2.09 U.S. dollars). See Ghana Business News, "National Daily Minimum Wage for 2021 is GH¢12.53", *Ghana Business*

insurance, inheritance, and the maintenance of children. However, the Law also gave the Legal Aid Board discretion to provide legal aid services to any person who, in the Board's opinion, required legal aid services. These discretionary powers of the Board were broad enough to cover all other matters for any person whatsoever, once the Board was satisfied that it was necessary to provide such a service. Under *Legal Aid Scheme Law*, the Scheme's legal personnel consisted of staffed legal practitioners and volunteer lawyers, selected by the Ghana Bar Association to assist the Scheme. The Law also encouraged the National Service Board to assign to the Scheme newly graduated law students to perform national service under the Scheme. Under the national service program, Ghanaian students who graduate from accredited tertiary institutions are required under law to do a one-year national service to the country.[220]

Later, in 1997, the Ghanaian Parliament enacted the *Legal Aid Scheme Act, 1997* (Act 542) to replace *Legal Aid Scheme Law, 1987* (Act 184). Act 542 essentially re-enacted the PNDCL 184. While the *Legal Aid Scheme Act, 1997* appears to have made elaborate provisions for legal aid services, ensuring access to legal aid services remains a challenge.

In 2018, Ghana enacted new legislation to regulate various aspects of legal aid, namely, the *Legal Aid Commission Act, 2018* (Act 977). In the Preamble to the new law, it is stated that it deals with the establishment of the Legal Aid Commission and provides for related purposes. The *Legal Aid Commission Act* introduces some novel provisions into legal aid service in the country. Among others, the new law establishes a Legal Aid Commission, whereas the old *Legal Aid Scheme Act* established a Legal Aid Board. A sharp distinction must be drawn between these bodies because the new law establishes the Legal Aid Commission as an institution: a body corporate with perpetual succession.[221] The new Act also stipulates the object of the Legal Aid Commission as providing legal aid to an indigent. Unlike the previous law, which established that a person must earn minimum wage to be entitled to legal aid service, the new *Legal Aid Commission Act* does not make such stipulations. Moreover, unlike the previous law that sought

News June 5, 2021, online: www.ghanabusinessnews.com/2021/06/05/national-daily-minimum-wage-for-2021-is-gh%C2%A212-53/.

[220] See Ghana National Service Scheme Act, 1980 (Act 426).

[221] Legal Aid Commission Act, 2018 (Act 977) at s 1.

to determine matters in respect of which legal aid may be offered, the *Legal Aid Commission Act* does not make such determination. The new law enables the Legal Aid Commission to determine who or which class of person, and in respect of which matters, legal aid may be offered, as well as to determine priorities in respect of such persons or matters. This provision is necessary to encourage flexibility in the provision of legal aid. It is yet to be known the services that the Commission will provide.

Another major legislative inroad into legal aid in Ghana is the establishment of various Divisions of the Legal Aid Commission. Section 20 of the *Legal Aid Act* establishes three Divisions of the Commission. It also empowers them to establish other divisions as and when necessary. The Divisions established by the Act are the Citizens Advisory Division, the Public Defenders' Division, and the Alternative Dispute Resolution Division.

The Citizens Advisory Division essentially gives free legal advice to citizens, to broaden access to justice. It is also responsible for bringing the Commission's services to the attention of the public through advertisements. The creation of a Citizen Advisory Division of the Commission solves a major problem that has confronted legal aid services since their inception in Ghana, which is the public's general ignorance of the existence of such services.[222] Moreover, in Ghana, many people have limited or no knowledge of their legal rights or entitlements. This leads to infringement of the rights of others and denial of entitlements to those who deserve and have a right to them.[223] By educating the public about their rights and the availability of legal aid services, those who are most in need of such services will be aware of their rights and the resources available to protect those rights.

The Public Defenders' Division of the Commission is responsible for offering legal assistance to protect a person's fundamental human rights, particularly the right to a fair trial,

[222] A recent study in Ghana found that 79% of all respondents had practically no knowledge of the existence or operation of the Legal Aid Scheme. See Law and Development Associates, *2012 Baseline Survey of the Justice Sector of Ghana* (Ministry of Justice and Attorney-General's Department and the United Nations Development Program (UNDP), December 2012) at 26.

[223] See Raymond Atuguba et al, *Access to Justice in Ghana: Real Issues* (Accra, Ghana: Civic Foundation, 2006) at 25.

liberty of the person, and equality before the law. It is also responsible for providing legal aid services to persons in prison or police custody, as well as to juveniles and their defenders at trial.

Meanwhile, the Alternative Dispute Resolution Division is tasked under the Act with mainstreaming ADR in the Commission's operations and assisting people in resolving their disputes via ADR mechanisms. This Division responds to the constitutional definition of legal aid, which includes anything that is undertaken in proceedings, including reaching a compromise.

The *Legal Aid Commission Act* also makes provision for the independence of the Commission. Section 4 stipulates that "except as otherwise provided by the Constitution or any other law not inconsistent with the Constitution, the Commission is not subject to the direction or control of any person or authority in the performance of its functions."[224] This development is also in line with the recommendations of the Constitutional Review Commission, which proposed in its Report of 2011 that the Legal Aid Commission be established as an independent constitutional body.[225] In its Report, the Constitutional Review Commission also recommended that the Legal Aid Commission be funded in the same manner as other independent constitutional bodies such as the Commission on Human Rights and Administrative Justice and the National Commission for Civic Education. By this new arrangement, and to safeguard the independence of the Commission, no authority other than the Commission itself may determine the estimate of its administrative expenses, and these expenses are to be laid before Parliament for approval.

Under the previous law, the Legal Aid Board was required to submit the detailed estimates of the budget for the Scheme to the Ministry of Justice and Attorney-General who in turn submits the Minister of Finance[226]. The Minister of Finance in turn submits the budget before Parliament as part of the estimates of the revenues and expenditure of the Government of

[224] *Legal Aid Commission Act of Ghana, 2018* (Act 977) at s 4.

[225] See Constitution Review Commission, *Report of the Constitution Review Constitution: From a Political to a Developmental Constitution* (Submitted to the President of the Republic of Ghana, 20 December 2011) at 667, para 176.

[226] Legal Aid Scheme Act of Ghana, 1997, section 28.

Ghana.[227] In light of its ministerial responsibility for the Scheme, the Ministry of Justice and Attorney-General has the power to modify the budget for the Commission.

But, it appears that under the new arrangement, no authority, including the Minister of Finance, has the power to review the budget as determined by the Legal Aid Board.[228] The only exception relates to cases where Parliament has the power to reject "fundamentally unreasonable estimates" laid in Parliament by the Legal Aid Board.[229]

The Legal Aid Commission of Ghana enjoys greater financial autonomy than the Legal Services Society of British Columbia. The funding received from the provincial government is subject to a Memorandum of Understanding (MOU) between the Legal Services Society and the Ministry of Attorney-General. Under the BC framework, it is the provincial government that determines and disburses the administrative expenses of the Legal Services Society (although the Legal Services Society submits its report and financial statements to the provincial government)[230]. In Ghana, however, it is the Legal Aid Commission that determines its administrative expenses and Parliament disburses the fund (although based on what it finds as fundamentally unreasonable estimates). This provision provides significant financial autonomy to the Legal Aid Commission of Ghana as compared to the Legal Services Society of British Columbia.

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[227] See the Constitution of Ghana, article 179(1).

[228] The Supreme Court of Ghana in *Brown v Attorney-General* decided on whether the Minister of Finance may review the administrative expenses of public corporations, in this case, the Audit Service. In the *Brown* case, the Court held that it is unconstitutional for any authority, including the Minister of Finance, to review the salaries and allowances as determined by the Audit Service Board. The only exception relates to very limited cases where Parliament under Article 179(2)(b) has the power to reject fundamentally unreasonable estimates‖ laid in Parliament by the Audit Service Board. It is not clear whether the decision of the Supreme Court applies to independent constitutional bodies which includes the Legal Aid Commission. However, the Constitutional Review Commission expressed that by inference from this decision, and to safeguard the independence of those institutions, no authority other than these independent constitutional bodies may determine the estimates of their own administrative expenses. See Brown v. Attorney-General [2010] SCGLR 183. The Constitutional Review Commission cited this case when discussing current state of the law on the issue of conditions of service of public office. See Constitution Review Commission, *Report of the Constitution Review Constitution: From a Political to a Developmental Constitution* (Submitted to the President of the Republic of Ghana, 20 December 2011) at 290.

[229] ibid.

[230] Legal Aid BC, *Annual Legal Service Plan Report, 2019/20*, online: lss.bc.ca/sites/default/files/2020-08/AnnualServicePlanReport_2019_3.pdf.

The Legal Aid Commission of Ghana is, however, not truly independent. The Legal Aid Commission Act maintains an oversight responsibility exercised by the Minister of Justice. The Minister of Justice retains certain powers in relation to regulations and guidelines. Under section 56 of the Legal Aid Commission Act, the Ministry of Justice and Attorney-General is given the power to make Guidelines in the form of a Legal Aid Guide for purposes of the administration of the Commission, although this Legal Aid Guide may be based on the advice of the Commission. In addition, the Legal Aid Commission Act also gives the Minister of Justice the power to make regulations to provide for the operation of the Commission; and provide for any other matter necessary for the effective implementation of the provisions of the Act.

From these provisions, it can be said that the Minister of Justice may make provisions similar to those exercised by the Ministry of Attorney-General over the Legal Services Society. Thus, just as in the Memorandum of Understanding issued by the Ministry of Attorney-General regarding the Legal Services Society, the Ministry of Attorney-General may use the Legal Aid Guide and the Regulations to determine the types of services the Legal Aid Commission can provide with the funding made available by Parliament, and priorities for allocating that funding. In addition, the Legal Aid Guide and the Regulations may also be used to define how the cases and services that the Commission will provide are to be categorised and funded.

By these arrangements, it can be concluded that the situation in Ghana is much like B.C., in that there has been belated accommodation of funding provisions for the Legal Aid Commission without changes to the ministerial oversight of the Minister of Justice on the Commission. With this arrangement, the government of Ghana may constrain the work of the Legal Aid Commission by manipulating the Legal Aid Guide and the Regulations, so that even if the Commission appears independent (on paper), the services it can provide are largely determined by the government.

6.1.3. Access to Justice Challenges

In relative terms, ensuring access to justice is a major challenge facing human rights protection in Ghana, and the lack of access to legal services has been particularly problematic. Perhaps the most sobering piece of evidence on the access to justice problem is the *Rule of Law Index, 2020,*

published by the World Justice Project.[231] Ghana rates are very low compared to Canada. The above report noted that Ghana ranks around 50th worldwide in eight categories of the rule of law. In these areas, Ghana ranks 51st in the area of criminal justice and 46th in civil justice.[232] These abysmal rankings, compared to the rankings of Canada referred above,[233] also result in part from shortcomings in the affordability of legal advice and representation.[234]

A major challenge facing access to justice in Ghana is that very few people are aware that these legal aid services exist.[235] A national survey of Ghana's justice sector in 2012 found that 79% of all the respondents had practically no knowledge of the existence or operations of the Legal Aid Board.[236] Undoubtedly, many people would access the Scheme's services if they knew of its existence. It consequently requires the benevolence of judges to advise persons to seek assistance under the Scheme, but there is no duty imposed on a judge to do so, even where it is manifestly clear that someone needs legal aid. This was the situation in *Republic v Wahab Amidu and Others*,[237] where the Appellant in a robbery trial argued on appeal that the trial judge had erred in failing to advise him to seek legal assistance under the Legal Aid Scheme. The Appeal

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[231] Juan Carlos Botero, Mark David Agrast, & Alejandro Ponce, *World Justice Project: Rule of Law Index, 2020* (Washington, DC: World Justice Project, 2020), online: <https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf.

[232] Juan Carlos Botero, Mark David Agrast, & Alejandro Ponce, World Justice Project: Rule of Law Index, 2020 (Washington, DC: World Justice Project, 2020) at 28, 29.

[233] Juan Carlos Botero, Mark David Agrast, & Alejandro Ponce, World Justice Project: Rule of Law Index, 2020 (Washington, DC: World Justice Project, 2020) at 28, 29.

[234] *Ibid.*

[235] Law and Development Associates, *Survey of the Justice Sector of Ghana* (Report submitted to the Ministry of Justice and Attorney-General's Department and United Nations Development Program (UNDP), United Nations Development Program, December 2012) at 26, online: <procurement-notices.undp.org/view_file.cfm?doc_id=26941>.

[236] Law and Development Associates, *Survey of the Justice Sector of Ghana* (Report submitted to the Ministry of Justice and Attorney-General's Department and United Nations Development Program (UNDP), United Nations Development Program, December 2012) at 26, online: <procurement-notices.undp.org/view_file.cfm?doc_id=26941>.

[237] *Republic v Wahab Amidu and Others* [Unreported], Crim App No H2/2/2018, dated 23 May 2018 (Court of Appeal), reported on dennislawgh.com as [2018] DLCA 4671.

Court held that a judge had no obligation to advise an accused person to seek legal aid under the Scheme.[238]

Moreover, the Ghana Legal Aid Commission, as the public corporation established to administer legal aid service for indigents, has not been able to maintain an effective and efficient legal aid program. In 2012, Renee Morhe, a Ghanaian law professor, conducted a ground-breaking study to gain a deeper understanding of the challenges facing lawyers in the provision of legal aid services in Ghana.[239] In this study, Morhe identified three major challenges to the provision of legal aid services in Ghana. First, she affirmed the increasing outcry over an inefficient legal aid system, finding that this inefficiency was largely attributable to the issue of resources. For example, she found that legal aid offices were not easy to reach in Ghana, as there was just one in each region (the largest region covering a total land area of 70,384 square kilometres[240] and these offices being situated in the regional capitals, with no district offices). Consequently, legal aid services were out of reach for those living outside the regional capitals. Morhe's study also identified problems involving the availability of or access to regional directors,[241] with only one regional director for each region. Moreover, these directors were not only representing legal aid applicants at court, but they were also performing general administrative duties and conducting legal outreach programs.

In addition, Morhe found that lawyers were generally unwilling to accept legal aid cases because they were not well remunerated.[242] Apart from being meager, lawyers' fees are not often paid on time and the method of payment is rather cumbersome. Thus, there was a general

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[238] Explaining further, the Court noted that "it is only in murder trials that require the accused to be mandatorily represented by Counsel, either of his choice of assigned by the court and therefore it was not mandatory for the appellant to be represented by Counsel for the offence of robbery. There was also no legal obligation on the court to advise the appellant to go for Counsel".

[239] Renee Aku Sitsofe Morhe, "An overview of legal aid for criminal cases in Ghana: the history and challenge of providing legal aid" (2012) 38:1 Commonwealth L Bull 105.

[240] Ghana Statistical Service, *Population and Housing Census*, 2010 (Accra, Ghana: Ghana Statistical Service, 2012) at 2.

[241] Renee Aku Sitsofe Morhe, "An overview of legal aid for criminal cases in Ghana: the history and challenge of providing legal aid" (2012) 38:1 Commonwealth L Bull 105 at 112-113.

[242] *Ibid* at 113.

unwillingness to accept legal aid cases, combined with ineffective legal aid and exacerbated by a general shortage of experienced lawyers to offer legal aid services.[243] As a result, the above study found that the regional directors depended largely on past and present national service personnel to alleviate the shortage of lawyers offering legal aid.[244]

The main effect of the lack of an efficient legal aid program in Ghana, as in British Columbia, is also the rise in self-represented litigants. Although there is no work in Ghana on this kind of issue, the case of *Bako-Alhassan v Attorney General*[245] sheds light on the general problem of self-represented litigation in Ghana. In that case, a Ghanaian citizen representing herself, issued a writ of summons before the Supreme Court of Ghana, seeking the formalization, simplification, and streamlining of the rules of procedure to help such self-represented persons prosecute their cases effectively, even if not professionally or efficiently.[246] Much to the chagrin of the Plaintiff and all those unable to afford a lawyer but desirous to represent themselves in legal proceedings before the courts, the Supreme Court dismissed the case. The Court held that Ghana's legal system could not have a dualist system of procedure for self-represented and represented litigants.

In its judgment in the *Bako-Alhassan* case, the Supreme Court of Ghana however made two recommendations for a strengthening of legal aid provision in Ghana. The Supreme Court of Ghana called for a review of the law regulating the provision of legal aid to make it more accessible to the general public and to ensure that the lawyers assigned cases under the Scheme were monitored.[247] The Court also called on the legal profession to institutionalise a *pro-bono* legal scheme, under which lawyers will undertake a minimum number of hours of *pro-bono* service.

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[243] *Ibid* at 115.

[244] National service personnel are newly qualified lawyers or university law graduates attached to each regional legal aid office.

[245] [2013-2014] 2 SCGLR 823.

[246] *Bako-Alhassan v Attorney General* [2013-2014] 2 SCGLR 823.

[247] *Bako-Alhassan v Attorney-General* [2013-2014] 2 SCGLR 823.

The General Legal Council, as the regulator of the legal profession, has heeded the call for institutionalising *pro bono* service in Ghana. There is currently a bill pending before the Parliament of Ghana, seeking amendments to the *Legal Profession Act, 1960* (Act 32) to provide for, *inter alia*, additional requirements for the issuance of a practising licence. Among the new requirements is the specification that the General Legal Council shall not issue an annual practising licence, unless the applicant produces evidence to show that the person has "provided legal aid service".[248] In addition, in 2018, the Parliament of Ghana enacted a new *Legal Aid Commission Act, 2018* (Act 977).

These developments do not expressly stipulate the development of a clinical program. It has been suggested, however, that to advance the legal aid cause, the country must establish law school clinics. Morhe in her study on legal aid services made two main recommendations to improve legal aid services in Ghana: increasing lawyer participation through higher remuneration for lawyers, and the establishment of legal aid clinics in law schools.[249] About legal aid clinics, Morhe was of the view that such legal aid clinics would not only expand access to legal services but would also provide a way of positively influencing lawyers' attitudes more favourably towards the value of legal aid work, thereby ensuring that lawyers had an interest in legal aid work after graduation. Indeed, the lawyers interviewed in Morhe's study mentioned that working for the legal aid services after graduation had been useful to them, as it had exposed them to a variety of cases, both civil and criminal.[250] Private lawyers reported that their most active years of legal aid service were the first five years after they were called to the Bar.

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[248] See *Legal Profession (Amendment) Bill, 2017* at Act 32, s 8, amended.

[249] Renee Aku Sitsofe Morhe, "An overview of legal aid for criminal cases in Ghana: the history and challenge of providing legal aid" (2012) 38:1 Commonwealth L Bull 105 at 116. See also Isidore K Tufuor, "Greasing the Wheels of Legal Aid in Criminal Proceedings in Ghana: An Evaluation of the Legal and Regulatory Framework" (2019) 19 Afr Hum Rights Law J 267 at 288. Moreover, in their study on programs and policies for the extremely impoverished in Africa, Lawson, Ado-Kofie and Hulme found that "Another way that access to justice can move forward is through greater partnerships with law schools. Law schools have the potential to offer low-cost methods of providing access to justice to poor communities through the development of legal clinics, which allow students to provide basic justice support services to poor and marginalized communities, such as outreach and assistance with self-representation". See David Lawson, Lawrence Ado-Kofie, & David Hulme, eds, *What Works for Africa's Poorest: Programs and Policies for the Extreme Poor* (Warwickshire, United Kingdom: Practical Action Publishing, 2017) at 263.

[250] *Ibid* at 115.

By far, the strongest indication of interest, and innovation to develop clinics in Ghana has come from the Taskforce that the Ghana Legal Aid Commission established to look into and make proposals for reforms for legal aid in Ghana. As indicated at the beginning of the thesis, the Taskforce considered that students of the law are greatly untapped potential in assisting in the provision of legal aid services. To utilize this potential, the Taskforce has recommended that the Commission, in collaboration with the various law faculties, should establish legal aid Centres in the various law faculties across the country to equip potential lawyers with the skills and importance of legal aid.

This recommendation by the Taskforce is in line with the UN *Principles and Guidelines on Access to Legal Aid*. The UN *Principles and Guidelines on Access to Legal Aid* were adopted in 2012 as a guiding instrument for the provision of legal aid. These Principles and Guidelines reaffirm legal aid as an essential element of a justice system that is based on the rule of law. The Principles highlight, *inter alia*, the right to legal aid, the responsibility of the state, and prompt and effective legal aid service. Principle 14 encourages states to recognize and encourage partnership with lawyers' associations, universities, civil society and other groups and institutions in providing legal aid. Indeed, the United Nations noted the role that law schools and law students could play in advancing access to justice. In particular *Guideline* 72(a) encourages States to take measures to "encourage and support the establishment of legal aid clinics in law departments within universities to promote clinical and public interest law programmes among faculty members and the student body, including in the accredited curriculum of universities."[251]

Law schools and stakeholders, in general, could take a cue from the useful strategies advocated by the Legal Aid Commission Taskforce and under the *UN Guidelines and Principles on Legal Aid*.[252] The next thesis section will look at the current system of legal education in Ghana and how it favors the development of such programs.

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[251] Ibid.

[252] See United Nations, *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, GA Res 67/187, UN Doc A/Res/67/187 (Vienna: 20 December 2013), online: <www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf>. See also Auke Willems, "The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems: A Step toward Global Assurance of Legal Aid" (2014) 17:2 New Crim L Rev 184.

6.2. Study of Law in Higher Education in Ghana

6.2.1. Higher Legal Education Institutions in Ghana

In Ghana, as in Canada, the *Legal Profession Act of Ghana, 1960* sets out the general contours of Ghana's legal profession and training for its Bar. The *Legal Profession Act of Ghana* establishes Bar admission regulations for the profession. Persons seeking a call to the Bar must obtain a law degree from a Ghanaian university or its equivalent, complete a Bar qualifying course (comparable to the Professional Legal Training Course in British Columbia and similar courses elsewhere in Canada), and complete a year of pupillage (as in articling or equivalents to articling in Canada).

The General Legal Council was established by the *Legal Profession Act of Ghana* to govern the legal profession, and in particular, to oversee the organization of legal education and uphold standards of professional conduct.[253] The Ghana School of Law is the educational institution established by the General Legal Council to administer the Bar qualifying course (known as the Professional Law Course). As in the case of the Professional Legal Training Course in British Columbia, Ghana's Professional Law Course was established by the General Legal Council to provide professional and practical training to law graduates, qualifying them for admission to the Ghana Bar.[254]

However, the law degree requirement is administered by the Faculties of Law attached to universities in Ghana. The statute enacted by the General Legal Council to regulate matters concerning legal education and specifically, the Professional Law Course, are known collectively as the *Professional Law Course Regulations*. As part of regulating the Professional Law Course,

[253] *Legal Profession Act of Ghana, 1960* (Act 32) at s 1.

[254] The Professional Law Course Program is the arrangement that the General Legal Council has institutionalized to prepare law graduates for legal practice. The course lasts two years and is divided into two parts across the two years: Professional Law Parts I and II.[254] The courses offered during the first-year program (Part I) are Law of Evidence; Criminal Procedure; Civil Procedure; Law Practice Management and Legal Accountancy; Alternative Dispute Resolution (ADR); Company and Commercial Law Practice. Meanwhile, the courses offered in the second year (Part II) are Advocacy and Legal Ethics; Family Law and Practice; Practical Conveyancing and Drafting, and Interpretation of Deeds and Statutes. The Ghana School of Law also offers a second program called the Post-Call Law Course, which is offered to Ghanaians who have qualified in common law countries outside Ghana, which have a legal system that is analogous to Ghana. The duration of the Post-Call Law Course is one academic year. Post-Call students study the following subjects: Ghana Constitutional Law; the Ghana Legal System; Criminal Procedure; Civil Procedure; Law of Evidence; Family Law & Practice, and Law of Interpretation of Deeds and Statutes.

the Regulations require that a person qualifies for admission to the Professional Law Course if that person is of good behaviour and has a degree conferred by a university approved by the Council. The General Legal Council also requires that a student with a law degree should have passed final examinations in Law of Contract; Law of Tort; Criminal Law; Law of Immovable Property; Constitutional Law; the Ghana Legal System and Its History, and Equity and Succession.[255] For the *Professional Law Course Regulations* "final examinations" means the final examination held by a University or institution approved by the Ghana Legal Council.

Aside from having good character and foundational knowledge of the law, the General Legal Council purports not to require specific competencies from students. This is a major difference in enrolment requirements between Canada and Ghana's Bar admission programs. Unlike the Canadian law degree, which is assessed according to competencies, Ghana's law degree is measured through the teaching of specific core modules. This showcases an emphasize on teaching goals (coverage) as compared to intended learning outcomes (performance objectives) as outlined in Mager's book on *Preparing Instructional Objectives.*

The first law faculty established in Ghana was the University of Ghana Faculty of Law in 1962. Ghana's legal education at the university level has since evolved beyond this Faculty, and legal education providers now include four public universities, as well as several private university colleges. In terms of the institutions that provide full-time academic higher legal education and training to university students in Ghana, as in Canada, there is generally only one type of law faculty that grants a law degree: law departments or law schools attached to comprehensive universities under the administration of the Ministry of Education.

6.2.2. Methods of Higher Legal Education in Ghana

Higher legal education in Ghana focuses mainly on a knowledge-centred model, rather than integrating a skills-oriented model. The curriculum of the University of Ghana School of Law

[255] *Professional Law Course Regulations, 1984* (LI 1296), reg 2. See University of Ghana, *Handbook for the Bachelor's Degree Course Descriptions for Programs in the Humanities* (Accra, Ghana: University of Ghana, September 2017) at 330.

may be used as a microcosm of the curricula across other institutions of legal education in Ghana. The University of Ghana School of Law offers a four-year LLB program to applicants with a Senior High School background (Grade 12), as well as applicants with a two-year Post-First Degree Bachelor of Laws, holding a first degree in any discipline from a recognized university. To graduate, a student must take a minimum of 15 credits and a maximum of 18 credits per semester, amounting to a minimum of 120 credits and a maximum of 144 credits throughout a full degree program.

The first-year curriculum at the University of Ghana Faculty of Law comprises six core courses: Legal System, Legal Method, Law of Contract I and II, Constitutional Law I and II, English for Law Students, and Logic for Law Students.[256] The second-year consists of four compulsory courses: Tort I and II, Immovable Property I and II, Criminal Law I and II, and Public International Law I and II, as well as five electives: Alternative Dispute Resolution, Gender, and Law I, Criminology I and II, Administrative Law, and Introduction to African Studies.[257] The third-year is made up of two compulsory courses: Commercial Law I and II, and Company I and II, and six other courses: Natural Resources I and II, Conflict of Law I and II, International Human Rights Law I and II, Industrial Law I and II, Environmental Law I and II, and International Humanitarian Law I and II. The fourth (final) year comprises four core courses: Jurisprudence I and II, Equity and Trusts, Succession, and Taxation I and II, as well as six electives: Intellectual Property Law I and II, International Trade Law, Family Law I and II, Law of Evidence I and II, Insurance Law I and II, and International Investment Law.[258] Similar courses are offered across the law curriculum in most Ghanaian university law faculties.

Thus, on the face of it, the Ghanaian system seems to be focused on "teaching coverage" rather than "learning outcomes." Of course, it might be the case that assessment of the students involves active demonstration of knowledge (knowing about) and skills (knowing how-to). Generally, written exams are pretty good at measuring the first, but not the second.

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[256] University of Ghana, *Handbook for the Bachelor's Degree Course Descriptions for Programs in the Humanities* (Accra, Ghana: University of Ghana, September 2017) at 331.

[257] *Ibid.*

[258] *Ibid.*

That is not to say that law schools in Ghana do not integrate integrating experiential learning into their curriculum. Clinical legal education is not a novel teaching method in Ghana, at least in the sense of teaching law students lawyering skills through experiential learning. The Faculty of Law at the Kwame Nkrumah University of Science and Technology (KNUST), for example, offers a Legal English and Study Skills course as part of the first-year curriculum. That course runs through the first and second semesters. The first semester is divided into three parts: (i) Introduction: deals with the development of Legal English; British and American English Differences and Usage. (ii) Writing Legal English: Grammar & Punctuation for Legal Writing; Legal Writing Style; Standards in Legal Writing Considerations; What to avoid in Legal Writing; Creating Legal Documents; Writing Legal Letters and Emails; Internal Communications; Applying for Legal Jobs. The second semester deals with (i) Speaking Legal English: Aspects of Spoken English; Interviewing and Advising; Negotiation; Chairing a Formal Meeting; Making a Presentation; Telephoning. (ii) Contractual Legal English: Basic Concepts of Anglo-American Contract Law; Contractual Language; Structure of a Contract; Content of a Contract; Specimen Contract and Analysis.[259]

The KNUST Faculty of Law also offers a "Law Clinic, 'Moot'/Mock Trials." This course normally includes components on legal research and writing. The second-semester component adds an element of oral advocacy in a moot court or mock trial exercise. This exercise combines written and oral advocacy. The Law Clinic and Mooting course administered by the KNUST Faculty of Law represents an important step in providing clinical and experiential learning to students. However, unlike the Law Clinic courses in Canada that engage students in real-life scenarios, the law clinic courses at KNUST Faculty of Law focus on moot courts and simulations. There are little or no opportunities for students to work on real cases, with actual clients. This situation is partly attributable to the prohibition of law students from engaging in the practice of law. Indeed, two law lecturers at the KNUST Faculty of Law indicated that

> clinical legal education should be incorporated into the curriculum of all law faculties in the public universities in Ghana. While serving as a module for students to accumulate

[259] Kwame Nkrumah University of Science and Technology (KNUST), Faculty of Law, "Course Descriptions in the LLB Programme", online: law.knust.edu.gh/ad/llb-law.

credit towards their LLB degree, they will also be acquiring essential skills as they work under supervision on real-life cases. It will not be out of place for the government to introduce legislative reform to officially grant some level of audience to law clinic students.[260]

6.2.3. Problems and Reform of Ghana's System of Legal Education

Legal education in Ghana has undergone significant restructuring and development. However, many problems still exist, which prevent the Ghanaian system of legal education from progressing. The Ghanaian system has been focused on a knowledge-centred education model, rather than integrating a skills-oriented model. There has been a lack of clear intended learning outcomes and the design of effective teaching methods.

One result of this knowledge-centred educational model is that the courses tend to be centred on theory. Ghana's law faculties rarely include practical or skills-based courses in their curriculum. The majority of these legal subjects covered do little to expose law students to the practical challenges of actual legal practice.[261] The only courses that introduce students to the ramifications of legal practice are legal research and writing courses. The teaching component of these courses engages students in drafting legal documents and conducting mock trials and moot courts before the faculty. In these courses, the instructor designs facts or simulated "cases" to engage the students in moot courts or simulations, respectively. As a consequence, law students graduate without adequate practical or applied legal experience.

This knowledge-based focus is particularly problematic in the context of Ghana's *Legal Profession Act,* wherein section 13(3) stipulates that the General Legal Council shall not issue a qualifying certificate to anyone, unless they satisfy the Council that they have attained the necessary standards of proficiency in the law, obtained adequate practical experience in the law,

[260] Ernest Owusu-Dapaa & Ebenezer Adjei Bediako, "Austerity in Civil Procedure: A Critical Assessment of the Impact of Global Economic Downturn on Civil Justice in Ghana" (2015) 8:4 Erasmus L Rev 210 at 223.

[261] See generally, Samuel O Manteaw, "Clinical and Experiential Legal Education in Ghana: An Introduction and Proposals for Reform" (2005-2007) 23 UGLJ 55.

and are otherwise qualified to practice as lawyers.[262] The above section of the *Legal Profession Act of Ghana*, *therefore,* seeks to govern the learning outcomes, which is to guarantee the national standard of the legal qualification.

The Professional Law Course and Pupillage Program provide practical training in the practice of law, as anticipated in the *Legal Profession Act of Ghana*, section 13(3). However, the existence of these aspects of legal education does not eliminate the relevance of section 13(3) of said Act to undergraduate study. Indeed, as commented elsewhere in the Canadian literature, "law schools have a significant role to play in combining the doctrinal and theoretical education with the tools necessary for practical application".[263]

The other problem facing Ghanaian law schools is that effective, skills-oriented, and experiential teaching methods are not fully developed or applied. Law schools in Ghana have long focused on the case method and lecture approach, which offer limited opportunity for practice or training in the skills associated with the legal profession and real-life situations. As a result, many law graduates lack the requisite foundational knowledge and skills to handle real cases, despite being familiar with legal theories, legal writing, and classroom discussion.

6.3. Regulation of Student Practice

Chapter six of the thesis has highlighted reforms to Ghana's legal aid and legal education systems, in favour of developing the clinical method in Ghana. However, there can be little or no success through such reforms without considering the extent to which law students are permitted to engage in the practice of law. In Ghana, as in Canada, the general rule is that no one other than a practicing lawyer is permitted to practice law.[264] The current regulatory framework of the legal

[262] *Legal Profession Act of Ghana* at s 13(3).

[263] Task Force on the Canadian Common Law Degree, *Consultation Paper* (Federation of Law Societies of Canada, September 2008), online: <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/notices/08-10_consultation-paper.pdf>.

[264] The *Legal Profession Act of Ghana* defines "practice" as "practice as a barrister, solicitor or advocate or in a like capacity, by whatever name called." See *Legal Profession Act of Ghana* at s 56. The practice of law, as contemplated under the Act is therefore ubiquitous. It encompasses "a broad range of services such as conducting cases in court, preparing papers necessary to bring about various transactions from conveying land to effecting corporate mergers, preparing legal opinions on various points of law, drafting wills and other estate planning documents and advising clients on legal questions. The term also includes activities that comparatively few lawyers

profession in Ghana expressly prohibits a person who is not licensed as a lawyer, from practicing as a lawyer, drawing or preparing a legal document for a gain, and holding himself out as a lawyer.[265] The law makes no exceptions for the practice of law without a licence.[266]

Thus, law students do not have the authority to engage in the practice of law, as the law makes no provision for them to do so. This is even the case with students enrolled in the Bar qualifying program. Neither does the law make provision for newly qualified lawyers who are undertaking their pupillage (as in articling in Canada). In *Klu v Laryea*,[267] Ghana's Court of Appeal issued a decision on the scope of a pupil's duties whilst serving pupillage. The Court held that a person undertaking pupillage does not have the authority to practice law, as he or she has not yet obtained a licence to practice. Consequently, anyone practicing law without a licence is engaging in the unlawful practice, for which there are severe repercussions. The *Legal Profession Act of Ghana* criminalizes the practice of law without the appropriate certification. Anyone found liable is fined or subjected to a term of imprisonment. Moreover, any process borne out of uncertified law practice shall be void.[268]

In 2016, the Supreme Court of Ghana was called upon in *Korboe v Amosa*; *Ex parte Teriwajah*[269] to review a decision of the Court of Appeal, which held that a lawyer without a

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engage in but that require legal expertise such as drafting legislation and court rules". See Bryan A Garner, ed, *Black's Law Dictionary* (St Paul, MN, 2004) cited with approval by the Supreme Court of Ghana in *Korboe v Amosa*; *Ex parte Teriwajah* (CIV APP, No J4/56/2014).

[265] *Legal Profession Act of Ghana* at ss 8(1) and (2), which stipulate, "[a] person, other than the Attorney-General, or an officer of Attorney-General's department, shall not practise as a solicitor unless that person has in respect of that practice a valid annual solicitor's licence issued by the Council duly stamped;" and "[a] person shall not be issued with a solicitor's licence unless that person has been previously enrolled as a lawyer".

[266] There are, however, individuals such as insurance adjusters, real estate agents, land surveyors, police officers, and chartered accountants, who provide legal services in the ordinary cause of carrying out their professional activities. See, for example, Chartered Insurance Institute of Ghana, online: ciig.edu.gh/; Ghana Real Estate Professionals Association, online: www.repagh.org/; Ghana Institution of Surveyors, online: ghis.org.gh/.

[267] *Abraham Okan Klu v Joseph Agyei Laryea*, Suit No. H1/130/2019 [Unreported]. For commentary on this case, see Francisca Serwaa Boateng, "The Conundrum of the Ubiquitous Solicitor's License Saga: Has the Spectre Created by the Supreme Court Come to Haunt Pupils in Klu v Laryea?" (20 July 2020) *Modern Ghana*, online: <www.modernghana.com/news/1018433/the-conundrum-of-the-ubiquitous-solicitors-licens.html>.

[268] *Korboe v Amosa* (CIV APP No J4/56/2014).

[269] *Korboe v Amosa*; *Ex parte Teriwajah* (CIV APP, No J4/56/2014).

valid licence to practice cannot practice law. The Supreme Court also held that any process originating from a lawyer without a licence was null and void, thereby affirming the Court of Appeal's decision. The Supreme Court held that a litigant who fails to verify the legal capacity of the hired lawyer cannot claim miscarriage of justice, because the writ endorsed by the unlicensed practitioner is without legal effect.

The above Supreme Court decision has broader policy implications, not only for practicing lawyers but also for law students. In *Ex parte Teriwajah*, the Supreme Court held unequivocally that "[a] solicitor without any solicitor's license has no statutory power to appear in court or prepare any process as a solicitor within a period".[270] The Court also held that "[a]ny interpretation that seeks to relax this clear and unambiguous provision would run counter to the purpose for which the statute was enacted for the regulation and discipline of the profession".[271]

The requirement of a licence to engage in the practice of law is, undoubtedly, a sound policy, presenting a "control mechanism" that can "regulate the conduct of lawyers to ensure their continuous enrolment at the Bar".[272] Nevertheless, the Supreme Court's decision on this matter does not foreclose consideration of permitting law students to engage in the practice of law; arguably, with the institutionalization of law clinics, the exemptions created for student practice could play a bigger role in assisting the General Legal Council's mandate under the *Legal Profession Act of Ghana.*

The *Legal Profession Act of Ghana* encourages the integration of theoretical and practical instruction into legal education. As part of regulating the organization of legal education, the Act requires the General Legal Council to, *inter alia*, establish "courses of instruction for students and, generally… affording opportunities for students to read and obtain practical experience in the law".[273] This focus of the Act is made even clearer by the fact that it requires the General Legal Council to issue a qualifying certificate only to those who have satisfied the Council's

[270] *Ibid.*

[271] *Ibid.*

[272] *Ibid.*

[273] *Legal Profession Act of Ghana* at s 13(1)(c).

criterion of having attained the necessary standards of proficiency in the law, having obtained adequate practical experience in the law, and being otherwise qualified to practice as a lawyer.[274]

From these provisions, any new rule on student practice would not only support the fulfillment of the purpose stated in section 13(3) of the *Legal Profession Act of Ghana*, ensuring practical training throughout legal education in Ghana; it will serve as a mechanism to support access to legal aid. Moreover, it wwould be mechanism for quality assurance in student practice. A lack of provision for student practice, considered in the context of section 13(3) of the *Legal Profession Act of Ghana* – which stipulates the purpose of legal education as encouraging newly qualified lawyers to attain the necessary standards of proficiency in the law, obtain adequate practical experience in the law, and otherwise qualify to practice as a lawyer – appears to be a major gap in the laws of Ghana.

[274] *Legal Profession Act of Ghana, 1960* at ss 13(3)(a), (b), (c).

Chapter Seven: A Model Law Clinic in Ghana

This chapter describes one vision of a law clinic in Ghana. The purpose of including it in this thesis is simply to present ideas for consideration, discussion, and debate. This thesis does not intend to suggest that this is the only way to develop an effective clinical program.

The vision of a Law Clinic model described in this chapter is based on the examination of the development and works of law clinics in Canada, and the particular experience of the University of Victoria Law Centre. This vision is also informed by the legal environment that is shaping in Ghana to favor the development of law clinics.

i. Location

The KNUST Faculty of Law offers a desirable location to begin a clinical program in Ghana. The KNUST Faculty of Law has already made promising strides in the right direction by introducing and running a "Law Clinic and Mooting" module.

This thesis recommends that actual client representation should be incorporated in the Law Clinic and Mooting curriculum. The Law Clinic initiative could be tailored to fit into other law schools in Ghana.

ii. Service Areas of Student Involvement

The Law Clinic should initially be set up with a general mandate. The clinic should deal with a wide range of matters, including human rights, criminal law, health law, juvenile justice, family law, and landlord and tenant law. One reason for adopting a general mandate is the perceived lack of specialized curricula at the Faculty of Law. Given the absence of any other law clinic in the country, the clinic should not turn clients away on the basis that their case does not fall within a specialist mandate.

The Law Clinic should also offer more than legal services – including education and awareness and include social services like the Law Centre of the University of Victoria provides. That is important because many access to justice problems are not solely legal ones, but originate in mental, psychological, social, and economic issues, and can only be solved by involving services that address those issues as well.

iii. Access to the Clinic's Services

The clinic should operate from off-campus of the University because accessibility to the population should be a primary consideration. Here, the Law Centre experience is relevant. As indicated above, the Law Centre is currently annexed to the Courthouse in Victoria. That location makes the Law Centre more accessible to the public. Moreover, the provincial courts make referrals to the Law Centre. The Law Centre also maintains a referral system with other helping agencies in the community, including the Victoria Bar, the Together Against Poverty Society, and the Tenant Resource & Advisory Centre. In addition to these, the Law Centre maintains a website that provides information about its services.

The Law Clinic should also be annexed to the courts, and its services should also be made known to judges and lawyers. The Law Clinic should collaborate with other helping agencies. The Law Clinic should also maintain a website.

iv. Curriculum Reform

The KNUST Faculty of Law would have to offer a Law Clinic course, and that clinical course should be for a full semester (the student taking no other courses at that time). The clinical semester should be elected in the first semester or second semester or the summer session between academic years. This full-semester clinic should be open to third- and fourth-year students. The recommendation for a full-time semester clinical course is to prevent conflicts that may arise between the demands of the clinical course and the demands of other traditional courses the student might be taking during that semester. The Law Clinic curriculum should also be designed to reflect what the student will (be able to) do, when they will do it, and how well.

It is recommended that the Law Clinic uses a lottery/ballot method in selecting students for the clinical program. As explained in the Law Centre context, academic performance is not necessarily a predictor of interest in social justice experience, or of the other skills and dispositions that would make one successful in a clinic. And, for a pilot study, one would probably select a "random sample" from those who express interest. There should however be an intensive orientation session that would provide students with knowledge of essential policies, legal and ethical principles, and legal skills, to effectively learn and serve in the clinic.

Partly through lack of experience but also partly because of the time element and other considerations, I will not go into great detail in trying to draw up the curriculum of the Law Clinic. Should the KNSUT Faculty of Law, or other law schools, approve the recommendation that a full clinical semester is proceeded with, then I believe it essential that a considerable amount of work be done at a reasonably early date designing the Law Clinic. One other suggestion would be to explicitly study and evaluate the implementation of the pilot clinic, perhaps engaging other disciplines who do such empirical research and can design a relevant evaluative framework. This might involve collaboration on the design, observation, and data collection on the implementation, redesign, etc.

v. Support from The Bar

An important factor that could influence the set up of The Law Clinic, and similar future initiatives, is the attitude of the legal profession and practicing lawyers towards The Law Clinic. The legal profession might be concerned over the quality of service forthcoming from the clinics.[275] This has also occurred before the introduction of The Law Centre. The Clinical Legal Education Committee that was set up to look into clinical legal education at the UVic Faculty of Law expressed that at the initial stage the local bar associations were generally skeptical of the quality of service the clinics will provide.[276]

The concern over the quality of service may occur with the setup of The Law Clinic. The Supreme Court of Ghana has strongly cautioned against any effort to permit unqualified persons to practice law. In *Korboe v Amosa*; *Ex parte Teriwajah*, the Supreme Court of Ghana held as follows:

> strict compliance with the law as is stated in section 8(1) of Act 32 [the *Legal Profession Act of Ghana*] is what will ensure that unqualified persons do not practice law when they are not permitted to. There is the need to maintain high ethical and professional standards in the legal profession by strict compliance with the requirements of licencing of persons

[275] See generally *Korboe v Amosa*; *Ex parte Teriwajah* (CIV APP, No J4/56/2014).

[276] David Buchan et al, *Report of the Clinical Legal Education Committee* (Report submitted to the University of Victoria Faculty of Law, 25 February 1976).

> as lawyers under Act 32. This will in addition maintain the integrity of the legal profession. There is therefore the need to maintain high ethical and professional standards.[277]

In the *Ex parte Teriwajah* case, the Supreme Court of Ghana decided that a lawyer who has not renewed his licence cannot practice, and any proceedings by such a lawyer are void. It is worthy of note that in the *Ex parte Teriwajah* case, the Ghana Bar Association, as the main professional body of the legal profession in Ghana, submitted an amicus curie brief where the Bar Association took the view that the failure of a lawyer to renew their licence nullifies processes prepared by such a lawyer. The position taken by the Ghana Bar Association was shared by the Ministry of Justice and Attorney-General of Ghana which also prepared an amicus brief to assist the court.

Although the *Ex parte Teriwajah* case concerns the failure of lawyers to renew their practising certificate, the position taken by the Supreme Court of Ghana, the Attorney-General and the Ghana Bar Association points to the attitude of the legal profession generally towards unqualified persons, which includes students undertaking their undergraduate law program. The legal profession in Ghana is therefore likely to oppose the idea of The Law Clinic over the quality of service and maintaining high ethical and professional standards in the practice of law.

One could argue that the reason the Ghana bar would want someone practicing law to be a fully certified lawyer is that bad consequences for clients or others might be more likely to happen. While it seems to have face validity, there is little or no data showing that clinic student practices have resulted in bad consequences. The development of the Law Clinic and clinic student practice, however, may serve valuable purposes. In particular, the *Legal Profession Act* by section13 provides for the arrangements for legal education. That section stipulates that the General Legal Council shall not admit anyone into the Ghana Bar unless the person satisfies the Council as having obtained the necessary standards of proficiency in the law, as having obtained adequate practical experience in the law, and as having otherwise qualified to practise as lawyers. In addition to that, section 13 of the *Legal Profession Act* also directs the General Legal Council to establish courses of instruction for students, and generally, for affording opportunities for students to read and to obtain practice experience in the law.

[277] *Korboe v Amosa*; *Ex parte Teriwajah* (CIV APP, No J4/56/2014).

These objectives of legal education as stipulated in the Legal Profession Act contemplate that law students be permitted to engage in some level of practice law including client interviews, drafting pleadings, drafting contracts and other legal documents, conducting research, and even conducting trials. That will require more than simulated cases; the students should learn experientially by providing legal services or advice to real clients. It seems surprising that the *Legal Profession Act* does not contain any provision to accommodate law students in the practice of law. That gap could be addressed by the General Legal Council. Section14 of the *Legal Profession Act* authorises the General Legal Council to make Regulations concerning matters of legal education. Section 14 when read together with section 13 appears to enable the General Legal Council to make provisions for law students in the practice of law and specify provisions of the Act that do not apply to students.

Again the *Constitution of the Ghana Bar Association* further illumines the flexibility stance that the Ghana Bar Association should take to support The Law Clinic. In particular, article 2 of the Constitution of the Ghana Bar Association states the object of the Association to include the promotion of legal education, maintenance of professional standards, discipline and etiquette, the establishment and maintenance of a system of efficient legal aid and advice, the protection of human rights and fundamental freedoms. In that regard, the Ghana Bar Association should be particularly interested in supporting The Law Clinic as that initiative will help advance the object of the Association. The Law Clinic will permit law students to obtain practical supervised experience as part of their legal education. By handling cases, the students will be exposed to professional standards, discipline, and etiquette. The legal aid practice of The Law Clinic will also support the legal aid and advice object of the Bar Association. The Law Clinic will contribute to the protection of human rights and fundamental freedoms. It is from these that the Bar Association should advocate and support the set up of The Law Clinic and similar future initiatives.

Again the enactment of the Legal Aid Commission Act, 2018 illuminates the flexible stance that the Attorney-General of Ghana should take and support the set of The Law Clinic. The Legal Aid Commission Act establishes a Legal Aid Commission and states the object of the Commission as to provide legal aid to indigent and in constitutional matters. The study in Chapter 6 of this thesis on legal aid in Ghana indicates that the Legal Aid Commission cannot

advance this object without the involvement of other legal aid providers. Indeed, the United Nations acknowledged this position in its *Guidelines and Principles on Legal Aid*, where it was suggested that States involve a wide range of stakeholders as legal aid service providers.[278] Indeed, the United Nations noted the role that law schools and law students could play in advancing access to justice. In particular, *Guideline* 72(a) encourages States to take measures to "encourage and support the establishment of legal aid clinics in law departments within universities to promote clinical and public interest law programs among faculty members and the student body, including in the accredited curriculum of universities."[279]

Therefore, it is submitted that if The Law Clinic is well established, not only would there be improved access to legal aid, but there would also be significantly improved clinical legal education, in a way that would replicate the achievements of law schools in Canada, where there are reputable clinical legal education programs. This assertion is informed by the fact that the new *Legal Aid Commission Act* has broadly defined the services of the Ghana Legal Aid Commission to include legal advice, legal representation and assistance, ADR, and raising awareness through the provision of legal education programs and law-related information.[280] These activities of the Legal Aid Commission, when incorporated into the activities of law clinics in Ghana, would be a welcome development to alter the landscape as far as law clinics and clinical legal education are concerned.

vi. Funding and Staff

The other important consideration in the establishment of the Law Clinic is funding. The general thinking in this thesis is that there would probably not be very great difficulties involved in getting funding from different programs, particularly as different government departments such as the Ghana Legal Aid Commission, the Ghana Bar Association and lawyers, and civil society organisations would be interested in the legal aid and educational objectives of the Law Clinic.

[278] United Nations, *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, G.A. Res. 67/187, U.N. Doc. A/Res/67/187 (Dec. 20, zoz2).

[279] Ibid.

[280] *Legal Aid Commission Act of Ghana*, 2018, ss 20-23.

There is a foreseeable and continued interest in legal aid services that focus on areas such as civil liberties and human rights, prison legal services, family law matters, civil disputes including welfare, employment, and landlord and tenant disputes. It is suggested that the funding made available to the Law Clinic must allow for significant flexibility in how the Law Clinic meets its legal aid and legal education objectives.

A related consideration is staffing. The Faculty and the University should recruit full-time law professors and staff with necessary practising lawyers whose function would include law teaching and providing leadership and guidance in the practice of the Law Clinic. The Law Clinic must also be staffed with a social service worker who will provide social services to address the non-legal needs of the clients. Where funding is limited, the Law Clinic provides a referral to social services in the community.

vii. Regulatory Changes

The *Legal Profession Act of Ghana* should be amended, or a separate law passed to regulate student practice. This would point to legislation that resembles the *Law Society of British Columbia's Temporary Articles Rules*. The purpose of these *Temporary Articles Rules* in empowering practical training, supporting legal aid, and protecting the public interest should be considered. The substantive nature of the activities permitted under the *Temporary Articles Rules* is ideal for maximizing the potential of the clinical method for both practical training and legal aid. However, the clinical method and accompanying legislation should not be developed at the expense of protecting the interests and rights of the public on receiving services from students. As such, when this legislation is being enacted, attention needs to be paid to service quality. The section providing for supervision under the *Temporary Articles Rules* are ideal for this purpose.

Chapter Eight: Conclusion

The legal education system of Ghana and Canada has made great gains but falls short in legal aid and experiential education. The study conducted in this thesis demonstrates that no effective reform can be implemented until there is greater collaboration between the legal profession, academics, the government, and civil society organisations. There is a need for proper collaboration and relationship among key stakeholders like the law schools, policymakers and the legal profession, the government, on the reform needs of legal education and access to justice in Ghana and Canada.

Both in Ghana and Canada, access to justice has been recognized as fundamental to the rule of law and a constitutional right. At the same time, providing practical experience for law students is a well-regarded component of the legal education process in these countries. In Ghana, in particular, practical experience is given statutory backing under the Legal Profession Act. Law clinics offer opportunities for experiential legal education, access to justice, and the fostering of a culture of social justice advocacy. Through these clinical programs, law, lawyers, and legal education can become more relevant to Ghana's and Canada's access to justice and legal education needs.

This thesis provided an examination of the Canadian experience and the particular experience of the development and work of the Law Centre of the University of Victoria Faculty of Law. The research indicates some optimal approaches to the development of law clinics in Canada. The thesis has also provided recommendations on approaches to the development of law clinics in Ghana. The thesis argues that through effective law clinics, law schools might improve experiential legal education, access to justice, and develop in lawyers a culture of social justice advocacy. Law schools in reconsidering how the structure and content of the curricula could be made more relevant for legal education and access to justice should explore experiential learning approaches and law clinics because they offer relevance.

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