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Assessment challenges in the clinical environment*

Abstract

The assessment of students' performance in the clinical legal education course presents a challenge for a variety of reasons. Factors to be considered are large student numbers, language barriers, a large and diverse client pool, students working in pairs, specialised units within the clinic, education and experience variances amongst students, different levels in students' knowledge of substantive and procedural law, different levels of experience in clinical supervision and assessment, student expectations and prescribed exit-level outcomes for the course. The setting of parameters for assessment and mark allocation, as well as further methods of assessment, not currently used, are discussed.

Uitdaging rondom studentebeoordeling in regsklinieke

Die beoordeling van studente se prestasie in the kliniese regskursus bied om verskeie redes sekere uitdagings. Faktore wat in ag geneem moet word, is groot studentegetalle, taalhindernisse, 'n groot en diverse kliëntebasis, studente wat in pare werk, spesialis eenhede binne die kliniek, 'n variasie in opvoeding en ondervindingvlakke onder die studente, die verskillende vlakke van studente se kennis van die substantiewe reg en prosesreg, verskillende vlakke van ondervinding in kliniese toesighouding en beoordeling, studenteverwagtinge en voorgeskrewe uitkomste vir die kursus. Die daarstel van 'n raamwerk waarbinne die beoordeling en puntetoekenning moet geskied, sowel as verdere beoordelingsmetodes, wat tans nie gebruik word nie, word bespreek.

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1. Introduction

The proper assessment of students' performance in the clinical legal education course presents a challenge for a variety of reasons. This article will focus mainly on the South African experience, and in particular that of the Wits Law Clinic.[1]

When assessing knowledge acquired in theoretical substantive law courses, the parameters and patterns are mostly established and pre-determined, for example, study material and course packs are made available in advance, lectures are outlined and structured in a manner that does not differ significantly from year to year, tutorial intervention is prescribed and assignments and guidelines for completion are unambiguous.

To set the parameters for assessment in clinical legal education, being largely a practical course, is not as clear-cut. Prior to the setting of the parameters for assessment and mark allocation, specific factors which may influence the assessment methodology, need to be considered. These factors will be discussed, indicating the rationale for the current preference of assessment methodologies.

2. Factors that influence assessment

2.1 Large student numbers

The ideal ratio between clinical supervisor ("clinician") and students in clinical courses has been suggested to be between 1:7 and 1:12.[2] The ratio of a maximum of 1:12 was proposed by the United Kingdom Clinical Legal Education Organisation.[3] At the Wits Law Clinic the ratio over the past three years has ranged between 1:38 and 1:46.[4] Due to the shortage in supervisors, students are required to work in pairs,[5] thus reducing the contact time between clinician and student pairs to a ratio of, at least as far as clinical work is concerned, between 1:19 and 1:23.

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1 The Law Clinic of the School of Law of the University of the Witwatersrand, Johannesburg, South Africa.

2 Shrag 1996:175.

3 Grimes & Brayne 2004:86. The authors noted that "US models advocate 8:1, presuming the staff is dedicated largely to the clinical programme". See also discussion in paragraph 4 hereof, relating to the increased supervision time when larger student numbers are accommodated.

4 Du Plessis 2008:11. This number may increase, depending on the number of externs (students generally seconded from foreign universities and placed in the programme for a semester or a year) accommodated in the course. The supervision ratio differs amongst clinicians, depending on the supervision allocation each year, as is explained later in this paragraph. The externship model is explained in Mahomed 2008:56 and defined as a programme that "consists of placing law students in public or private law offices outside the law school where they work under the supervision of attorneys who are not employed by the university". The Wits Law Clinic also accepts externs from other jurisdictions to be placed into its programme.

5 Du Plessis 2008:11.

A consistent theme throughout this paper will be how an unsatisfactory ratio between clinician and students pose a major challenge in assessing the various components of the course.

At the Wits Law Clinic the clinician:student ratio may vary from one academic year to the next, depending on factors such as student numbers,[6] availability of clinicians,[7] possible restructuring within the specialised units,[8] the seniority of the clinicians, the lecturing timetable of clinicians who also teach academic courses at the Law School and the requirements of specific funders.[9]

The clinic aims to ensure, where possible, an even distribution of student supervision amongst the clinicians. An uneven supervision allocation may result for a number of reasons. To illustrate: there was a decline in student numbers during 2009, two additional professional assistants were appointed, and two senior clinicians who resigned, were replaced.[10] The clinic, after these appointments, has 10 clinicians. Of these 10 clinicians, one was on a year's study leave,[11] one of the senior clinicians who was replaced, was allocated to the refugee unit and was not able to supervise students, due to the requirements of the funder of the unit.[12] Only 10 pairs of students were allocated to the clinical director, due to the administrative requirements of such appointment. Another senior clinician was replaced by a junior attorney and allocated only 10 pairs for the year. The two professional assistants (as clinicians), who are junior attorneys, were also only allocated 10 pairs of students each. The majority of students were allocated to the remaining five senior clinicians.

Each student spends a compulsory two hours in the clinic every week. Each clinician spends a minimum of four hours per week in the clinic and conducts a 45-minute tutorial with each student pair every week. All the clinicians lecture in the specific specialised units for 90 minutes every week for a block of four weeks. All the clinicians also spend 90 minutes per week, for another four

6 Student registration, excluding externs, for the course over the past number of years was: for 2005: 250 students, for 2006: 280 students, for 2007 and 2008: 308 students. See Du Plessis 2008:11. 228 Students registered for the course in 2009.

7 Every year, since 2000 (except for 2008), a different clinician was granted a year-long study leave ("sabbatical"), by the university.

8 For example: the general litigation unit, which accommodated two clinicians was restructured during 2007 and replaced by the consumer unit and the evictions unit. During 2008 a housing unit was incorporated with the evictions unit. During 2009 additional clinicians were placed with the delict and labour units, due to large volumes of cases.

9 For example: in the refugee unit, the funders require the finalisation of a specific amount of litigation each year, which is not necessarily aimed at or appropriate for student teaching. This resulted, during 2009, in one of the clinicians heading this unit, not supervising any students, whilst the second clinician allocated to this supervising only approximately half of the students who may normally be allocated to a specialised unit.

10 See De Klerk & Mahomed 2006:316, commenting on the ongoing challenge in replacing specialist supervisors.

11 Also referred to as "sabbatical". The Wits Law Clinic generally allows on clinician every year to take study leave, subject to the requirements of the university.

12 See footnote 9.

weeks, conducting trial advocacy exercises. The remainders of the weekly 90 minute lectures during the year are distributed amongst the clinicians.

2.1.1 Assessing interviewing skills

Even when students are working in pairs, it is not possible for the clinician to attend on every consultation conducted with the clients.[13] To address this shortcoming, or at least to compensate for the lack of direct supervision during clinic consultations, students are given lectures on interviewing and statement taking skills.[14] The first assessment challenge is experienced at this stage already, as the lack of direct supervision during consultations means that interviewing skills remain unassessed, both in relation to knowledge retained from the lectures and the practical application thereof. In practice, clinic consultations would work as follows: the students consult with the clients and relay a summary of the clients' problems to the clinician on duty. The clinician will then either direct the student pairs towards solutions, call for additional information from the clients or identify the problems as cases that can immediately be taken on by the clinic for litigation.[15] Given the significant number of students and the equally significant volume of clients to be assisted in a four-hour clinic session,[16] students inevitably waste valuable consultation time while queuing for their turn to discuss a client's problem with a clinician. The clinician's attention remains focused for the entire session on directing students on how to service the clients during the consultation time available. As a result there is little or no time to assess students' interviewing skills in the clinic environment.[17]

13 Clients do not book consultation times in advance. The clinic operates on a walk in and first-come-first-served basis. See De Klerk & Mahomed 2006:309. The average number of monthly client consultations in the clinic is 900 (see Du Plessis 2008:11). At the Wits Law Clinic there are eight different clinical units operating at four-hour shifts weekly (i.e. family law, refugee law, consumer law, labour law, housing and evictions law of delict (tort), criminal law (directly at a criminal court) and a general unit operating off-campus).

14 See assessment of file work later in paragraph 3.1. The quality of students' statements is specifically assessed.

15 The cases are discussed during weekly tutorials with the individual student pairs, where students are instructed by their clinicians. See Du Plessis 2008a:127.

16 The approximate client interviews for 2007 were 8 777 and 1 800 files were opened. The approximate client interviews for 2008 were 9 824 and 1 847 files were opened. See Mahomed 2008:62-63 for more statistical data.

17 Students are required to take down comprehensive statements from clients in matters that are approved by the supervisor in the clinic. These statements are assessed (see paragraph 3.1).

2.2 Language barriers

Whereas the university's language of instruction is English,[18] calling for all registered students to be proficient in English, clients who frequent the clinic are often not able to articulate their problems in English.[19]

The range of languages presents two primary problems. Firstly, one student out of a pair may be fluent in the language the client wishes to communicate his/her problems in, thereby isolating that student from his/her student partner (who may not know the language) during all communication with the client. Such a student may also be identified by fellow students to consult with all clients wishing to communicate in that particular language, effectively limiting his/her access to the pool of clients.[20] This scenario limits the assessment of the consultation and statement taking to one of a pair of students. All further communication with the client, should a matter be taken on for litigation, is necessarily through that particular student. The assessment has a positive and negative implication: should the student, to the detriment of his/her partner, who can not communicate with the client, be credited for all that is done right? Alternatively, should the same student be penalised for what may go wrong due to (mis)communication?

Secondly, there may be no student or other staff members available to interpret the language the client wishes to communicate in. All communication will then necessarily be in either English or another language, which may be a second or third language for both the client and the student. Should this unsolicited scenario influence the assessment of the student, be it positively or negatively?

Language barriers in effectively serving the poor, also pose as a significant challenge in India.[21] University and student instruction languages are English and Hindi, but many of the clients speak only the local state language and students often come from several Indian states. Interpreters are necessary to assist with the complex communication needed for competent representation. Learning to work with interpreters is regarded as a useful professional skill for students to develop in a hybrid clinic setting.[22] These skills may be assessed.

18 University of the Witwatersrand, Johannesburg. Language Policy, adopted on 14 March 2003. web.wits.ac.za/NR/rdonlyres/86CE4FF3…/0/languagepolicy.pdf. (accessed on 9 October 2009).

19 Du Plessis 2008a:121. South Africa has eleven official languages, namely English, Afrikaans, Sesotho, Setswana, Venda, Tsonga, Xhosa, Zulu, SiSwati, IsiNdebele and Sepedi.

20 This specific student may also be called away from his/her consultation to act as interpreter for another student pair.

21 Barry 2007:47.

22 Barry 2007:47. The development of this skill in students is useful given the strong possibility that their careers will involve the use of interpreters.

2.3 Client pool

The client pool mainly consists of the indigent in the community and clients have to qualify for legal aid in terms of the clinic's means test. In certain instances cases may be taken on despite a client not qualifying for legal aid in terms of the means test,[23] provided that the merits present with good teaching opportunities.[24] The typical profile of a client was aptly described as follows:

> … (W)hen consulting, clinic clients 'tend to present to the clinic lawyer a rather large package of problems, half of which have nothing to do with the law and the other half so intertwined with poverty that their actual legal problems are often very hard to extract' and '(f)ormulating the mandate is only half the battle won' …[25]

When students are presented with what often amounts to an incoherent mish-mash of problems, they are required to distinguish between what would be relevant in law and what could be referred for some other form of (often social) intervention.

Although a fair number of these cases will not be taken on for litigation, the student's ability to assist the client in distinguishing the various pockets of their general problem is deserving of assessment. Files are often not opened for these clients, but they are assisted by the students during the consultation. The students discuss such clients' problems with the clinician in the clinic whereafter the client will be advised. These matters are generally resolved during the clinical session by way of reference,[26] a telephone call, a letter[27] or general legal advice. The impression the clinician and students are left with, is that of clients leaving the clinic satisfied and with new insight into their problems. Although students act on instructions from the clinician, due to the volume of these types of instructions (which are not recorded as files are not opened), this intervention and assistance by the students may go unnoticed by the clinician.

Possible solutions may be found in bringing these matters to the clinician's attention during the weekly 45-minute tutorials with each student pair, or in

23 The clinician and the clinical director will in these exceptional cases exercise their discretion within the guidelines issue in terms of Rule 115A.4 of the Law Society of the Northern Provinces, which reads: "… the services may be rendered only to persons who, in the opinion of the Council, would not otherwise be able to afford them; and the Council may from time to time issue guidelines for the assistance of clinics in determining to whom services may be rendered; …". See http://www.northernlaw.co.za/content/view/105/128/ (accessed on 9 October 2009)

24 In these matters where the clinician and clinical director specifically exercise their discretion, within the guidelines of Rule 115A.4 of the Law Society of the Northern Provinces, the client is required to pay all the disbursements in the case. Only the legal assistance will be free. In other matters where the client qualifies for legal aid, the disbursements will be borne by the clinic and legal assistance will be free.

25 De Klerk 2007:97.

26 Clients are sometimes referred to other institutions who can appropriately deal with their problems, for example, the Commission for Conciliation, Mediation and Arbitration (CCMA), the different pension fund adjudicators or the various ombuds.

27 All such letters (referred to as "once-off" letters), signed by the clinician are recorded and copies thereof are filed in a separate folder, kept by the clinic administration.

the form of a reflection journal, compiling a portfolio of such matters, through self-evaluation by the student or evaluation by the client or a student peer. Although perhaps appropriate, these suggested possible solutions do not come without their own challenges.[28] An alternative solution may be for the students to take down comprehensive statements from such clients and add a summary of the assistance provided. These can be taken into account when the file assessments are conducted at the end of the academic year.[29]

2.4 Working in student pairs

During the first lecture of the year, students are requested to choose a partner with whom they will work for the duration of the course.[30] Clinicians only allocate a partner to a student in the rare instances where students are unable to. Working in pairs afford definite benefits for students, such as having a partner to discuss the case with,[31] to plan strategy and the execution thereof together and draft the necessary documents and correspondence.[32] Assessment of a student individually when they work in pairs can, however, become problematic.[33] It is often difficult for the clinician to distinguish, by the end of the year when the assessment on case file work is done,[34] whether both individuals contributed equally. The clinician may furthermore find himself/herself in an unenviable situation should students query the mark allocation.

2.5 Specialisation

Students registered for the course are divided into groups that are allocated to a specialised unit,[35] thereby exposing them to different clinical and legal

28 See discussion in paragraphs 3.1, 4 and 5.2 with the suggestions and time constraints.
29 See discussion in paragraph 3.1.
30 Students generally choose partners they feel comfortable with and clinicians are reluctant to interfere. As Chavkin 1994:211 points out, race, gender, sexual orientation, ethnicity and socio-economic status are some factors that may impede meaningful interaction between students and law schools are not designed to facilitate dealing with diversity and difference. He further cautions that care and sensitivity should be applied, should clinicians decide to pair students when any of these factors are present.
31 Chavkin 1994:213 indicates that in pairs, students "can filter client life experiences through multiple personal life experiences and thereby potentially develop richer and more accurate understandings of their clients".
32 See discussion of this assessment allocation in paragraph 3.1. See Haupt & Mahomed 2008:278. Also see Hyams 2006:89 on "Student teaming" and Chavkin 1994:203-208 on the advantages of pairing students.
33 See Chavkin 1994:227-229. He also comments that 'clinical supervisors often see the end-product of "joint" effort without having an opportunity to fully observe the process of production'.
34 Assessment of case file work is discussed in paragraph 3.1.
35 During the first lecture of the course, students are informed that they have the opportunity to choose a specific unit, provided the clinic times for such a unit can be accommodated in their timetable, as well as the availability of placements in such a unit. See De Klerk & Mahomed 2006:312.

procedures. As a result, different students will be exposed to different court systems, such as the high court,[36] magistrate's court,[37] consumer court,[38] labour court,[39] criminal court[40] and central divorce court.[41] Generally only students litigating through the high court will have the experience of briefing and working with counsel. Often matters are disposed of through administrative procedures and no court pleadings are drafted.[42] Matters are also often settled before students are exposed to any of the formalities of litigation.

In ensuring that students are assessed in an even-handed manner across the different specialised units, strict guidelines for assessment methods are essential. This may result in the clinician having to simulate litigation procedure drafting in matters where students did not have practical experience to the full curriculum. The standard and quality of work in the different units and assessment of file work should ideally be monitored by the director of the clinic.[43] In the absence of monitoring by the director of the clinic,[44] there can also be a form of peer review by allowing the clinicians of the different units to have insight into the activities of other units.[45]

2.6 Education and experience variants amongst students

Legal problems obviously do not manifest in a vacuum. It is equally obvious that in order to best achieve the required outcome of students properly assisting clients with their legal problems (which includes being able to draft proper court pleadings), they must in the first instance be able to correctly identify the client's legal problem. Students often struggle to de-compartmentalise the different subjects of the substantive law as taught to them in their first three

36 All units may be exposed to this court, but may generally not be the first court to be used in their cases.
37 For example the consumer unit, the housing and evictions unit, the delict unit and the general unit (excluding the refugee unit generally, the labour unit and the family unit).
38 Used exclusively by the consumer unit.
39 Used exclusively by the labour unit.
40 Used exclusively by the criminal unit.
41 Used exclusively by the family unit.
42 For example: labour law procedures in the Commission for Conciliation, Mediation and Arbitration (CCMA), applications to the relevant government authorities for the assistance of refugees and asylum seekers, pension fund queries, assistance with the reporting of deceased estates and debt review matters.
43 The director currently monitors the case file intake and the success rate, by signing off on matters finalised and files that are to be closed, in the different units. Monitoring of quality, standard and assessments in the different units remain ongoing, but cognizance need to be taken of the limited time available to the director who, apart from the administrative duties, also supervise students as a clinician.
44 All examination question papers and assignment instructions across the different units, although drafted by the clinicians responsible for the different specialised units, are monitored by one designated senior clinician, to ensure that the standard is maintained across the different units.
45 Although a suggested necessity, cognizance needs to be taken of the limited time available to the supervisors, as discussed in paragraph 4.

years of study.[46] This is remedied by not only presenting the substantive law in clinical context, but also through exposing students to areas of legal practice outside the scope of the law clinic and the practices of the social and/or business environment within which the client's legal problem manifests.[47] Legal insight is required in the consultation phase already, where clients' statements are taken by the students.

Students' (all of whom are in their final year of LLB studies) education levels and experience of the environment outside the constraints of law vary.[48] Some students will have the advantage of being better equipped to understand the circumstances surrounding clients' problems, than others. For some students additional tutorial intervention may be required to address these skills shortages. The law faculty of the University of New South Wales,[49] Australia, regards the inclusion of two enrichment subjects, specifically aimed at indigenous students,[50] as key developments. These are taught during weekly small group tutorials, which was at the time of publication not yet evaluated.[51] Cody, however, indicated during 2009 that these courses are now internally evaluated and that a 2009 survey of indigenous students' experience of the law school courses was favourable.[52]

46 Du Plessis 2007:59.

47 For example: to best assist a client who presents with a problem relating to his/her immovable property being attached and sold in execution, merely informing the client that "you were in arrears in the payment of your mortgage bond, therefore you are in this dilemma," is not enough. The students need to be able to explain for instance, application procedures which involve valuations, assessing clients' income and repayment abilities and conveyancing procedures. Clients often make telephonic arrangements directly with staff at the bank, not realising that such arrangements are of no effect in terms of the standard non-variation clause in the mortgage bond. Clients do not realise that once the matters are handed to attorneys for legal intervention, they may not make arrangements directly with the bank. Students are now compelled to read the relevant documents and court pleadings and explain the consequences to their clients, who clearly did not read or understand these documents and pleadings.

48 Some students will have had personal experiences of, for example, entering into credit agreements, purchasing immovable property and obtaining finance through banks, opening and maintaining bank accounts, assisting family members in divorces or the obtaining of family violence interdicts, reporting and administering estates of deceased family members, whereas other students may not have had such personal exposure.

49 Cody & Green 2007:52.

50 Indigenous students are not required to do both these alternative subjects. Students appear to appreciate the availability of extra support rather than resist it. See Cody & Green 2007:53.

51 The primary purpose of these tutorials is to develop students' academic skills, including oral communication, problem solving, comprehension and legal writing skills and to develop their critical and analytical skills. An issue identified by Indigenous students interviewed, is the lack of relevance of the material that students are confronted with. See Cody & Green 2007:53.

52 This was confirmed in an email by Cody to the author on 13 October 2009. (Copy of email on file with author.)

The challenge, when assessing students, lies in the extent to which any social or other disadvantage of the students must be factored into such assessment.

A philosophy, which may be shared with students, is to empower themselves through continuous legal research,[53] to read over a broad spectrum outside the law and increase general knowledge,[54] to know the environment in which they practice and to understand the core of attorneys' practice.[55] Clients' problems should be seen in a broader context,[56] where after they can start to de-compartmentalise the various sections of the applicable substantive law and apply it to the problem on hand. Sound knowledge, good command of written and spoken language and impeccable ethical conduct will instill a sense of confidence and ensure that they present themselves to both their clients and the court with authority.

2.7 Knowledge of substantive and procedural law

Since students accepted in the clinical legal education course are in their final year of LLB studies, a clinician could realistically expect the students to have acquired a specific level of knowledge of substantive and procedural law. Students are lectured in the first four weeks of the course,[57] where the applicable substantive and procedural law, specifically pertaining to the specialised unit in which they will be trained, is reviewed and reinforced. Students are handed lecture plans, indicating outcomes, methodology, assessment methods and

53 See Motala 1996:696-697, who discusses skills classes in legal research, analysis and writing, the process of analysis and structured reasoning to assist students in "thinking like lawyers". He further indicates that law schools' inadequate teaching of research skills and legal opinion writing results in attorneys' reluctance to write opinions "where legal research of primary and secondary sources is needed." These legal problems are then left for advocates to handle. These skills courses may "prepare students to go beyond looking at their teacher's favourite textbook or treatise for answers to legal problems".

54 See Iya 2008:37, 41, 42, who states that, in aiming through clinical legal education to best equip future lawyers to operate effectively in a changing global environment, diversity management "can ensure an environment of better understanding and appreciating diverse viewpoints and experiences exchanged among individuals or groups, thereby expanding their horizon for managing even better external/global conflicts and challenges." These different viewpoints and experiences "encourage and prepare students to better understand the external world and global trends and to become better future lawyers."

55 Iya 2008:49. This includes "accepting that the legal profession is increasingly becoming global in the context of lawyers being faced with arrays of problems that involve multicultural considerations."

56 Motala 1996:698 holds that a future lawyer must be taught "how to provide an objective opinion. This teaches the future lawyer to explore the problem, to evaluate the strengths and weaknesses of both parties' arguments, and to arrive at a conclusion based on his or her own analysis."

57 The students are lectured by the clinician, in their specialised units, for 90 minutes per week.

prescribed and recommended material for all these lectures. In the fifth week,[58] students are assessed, by way of a written examination.

Despite all these opportunities for instruction, some students remain less than capable in carrying over their knowledge and application of substantive and procedural law into clinical practice. These weaknesses impact on their case work. The assessment challenge lies in the fairness of subtracting a percentage of marks for these weaknesses when students' case file work is assessed, as students were already formally assessed on their knowledge of substantive and procedural law.

2.8 Experience in supervision and assessment

A further factor to be considered is the experience of the clinician. The more experienced clinician may be perceived (and often rightly so) to be able to maintain a certain standard in their assessment methods and it is advisable for a less experienced clinician to, at least initially, conduct assessments under the supervision of a more experienced clinician. The flip-side of this method is the possibility of new insights offered by the less experienced clinician to his/her senior.[59]

2.9 Student expectations

Assessment methods form part of the planning of the curriculum. During this planning phase, it is advisable to take cognizance of students' expectations.

A 2005 survey was conducted to establish students' expectations of their law degree.[60] The survey was conducted among third- and fourth-year law students at the University of KwaZulu-Natal (UKZN) and the Nelson Mandela Metropolitan University, Port Elizabeth (NMMU). The author indicates that the findings need to be treated with caution, because "whether or not law students were in fact being taught the desired skills and values at their institutions was not clear." The views of about 25% of the students were reflected.[61] The findings indicated that the seven most important courses and the five most important skills identified by law students are the same as those recommended by the law deans in 1997.[62] UKZN students listed, in order of priority, the seven most important courses as: contract, delict, commercial law, family law,

58 The fifth lecturing week coincides with the end of the first term.

59 When the specialised units were introduced during 2000, the clinic was staffed by seven clinicians. The family unit and the (then) general unit were supervised by two clinicians each. The labour unit, criminal unit and delict unit were each supervised by a single clinician. See De Klerk & Mahomed 2006:308, 315. During 2009 (with a clinician component of ten), the labour, refugee and delict units were supervised by two clinicians each. The other units were each supervised by a single clinician. (The family unit is normally supervised by two clinicians, but during 2009 one of these clinicians was on sabbatical).

60 McQuoid-Mason 2006:169.

61 McQuoid-Mason 2006:169. See also Du Plessis 2008:4.

62 See McQuoid-Mason 2004:102 for a discussion of the law dean's suggestions.

constitutional law, criminal procedure and civil procedure. NMMU students listed, in order of priority: contract, commercial law, property, criminal law, family law, delict and civil procedure. UKZN students listed trial advocacy, research and problem solving, legal writing, dealing with ethical issues and litigation skills as the five most important skills they would like to learn during LLB. NMMU students listed trial advocacy, research and problem-solving, legal writing, interviewing and counselling, and litigation as the most important skills they wanted to acquire.[63]

A survey conducted amongst final year LLB students who enrolled in the clinical legal education course at the University of the Witwatersrand identified their needs and expectations of the course as follows:[64] Seventy nine percent of the students indicated their most valuable experience was the ability to help clients and learn attorneys' practice in the process. The same percentage of students further indicated a need to include training in trial advocacy, drafting of court pleadings, interviewing and assisting clients, refining research skills and visiting courts to observe cases being heard. Eighty seven percent of the students indicated a need to be instructed in smaller, rather than large groups. Ninety two percent of the students found the clinical course to be successful in providing a bridge between legal theory and practice.[65] The Statistical data quoted represents 80 students registered in the clinical legal education course at the Wits Law Clinic. The data was gathered from 2004 to 2007.[66] Assessment methods may be adapted to ensure that the students' expectations are addressed.

2.10 The South African Qualifications Authority

The final factor to consider is the prescribed a set of exit-level outcomes for the revised LLB degree as set by The South African Qualifications Authority (SAQA),[67] which include the supporting of specific outcomes and associated assessment criteria for each outcome.[68] Of the ten SAQA outcome levels, clinical legal education has direct application in at least five of them.[69]

63 McQuoid-Mason 2004:102.
64 Du Plessis 2008:4.
65 Du Plessis 2008:4.
66 Du Plessis 2008:4.
67 For a discussion of these exit-levels, see McQuoid-Mason 2006:166-172 and Du Plessis 2008:4.
68 Law students should be assessed, *inter alia*, by performance tasks such as written an oral assignments, projects, case studies, moot courts, role plays, mock trial, client counselling exercises, observation and assessment of work in live client clinics — all with the emphases on problem solving. See Government Gazette 23845 of 2002-09-20.
69 De Klerk 2006:939.

3. Setting the parameters for assessment and mark allocation

Towards the end of each academic year, the clinicians meet to review the curriculum and assessment procedures used during that specific year. This meeting also serves as a planning session for the curriculum and assessments to be implemented during the following academic year. During this meeting, cognizance is also taken of written feedback, by way of a set form completed by students at the end of the academic year, where they evaluate the course. As a result, there may be differences in the structure of the curriculum and, specifically assessments, from year to year.[70]

For the 2009 academic year, a method of assessment was adopted whereby the mark allocation for the year comprise of the following: file work - 50%; written test at the end of the first term (covering the substantial and procedural law pertaining to the specialised unit) -10%; a written assignment on the attendance and review of a court case - 10%; a written test on the drafting of court pleadings - 10%; an oral examination - 15% and trial advocacy skills - 5%.[71] The advantages and challenges of these methods will be discussed.

3.1 Case file work assessment

Fifty percent of a student's year mark is allocated to the file work assessment. The nine criteria that are taken into account when files are assessed are: the quality of the statement taken from the client, the ability to analyse the problem, the ability to assess and plan strategy, the execution of strategy, drafting ability, verbal communication skills, attendances (in clinic, tutorials and with skills exercises), file appearance and order and case management.[72]

70 During 2007 the assessment was structured as: file assessment, 50%; written test, 20%; written assignment/case report, 10% and oral examination, 20%. See Haupt & Mahomed 2008:279 and the Wits Law Clinic Manual 2007:11. The 2008 assessment structure changed to: file assessment, 50%; written test (end of first block on law and procedure), 10%; written test (end of third block on drafting skills), 20%; written assignment/case report, 10% and oral examination, 10%. See Mahomed 2008:59-60 and the Wits Law Clinic Manual 2008:12.

71 See Wits Law Clinic Manual 2009:12.

72 Wits Law Clinic Manual, 2009:12. During 2007 the criteria for these assessments were: "quality of the statement taken from the client, analysis of the problem, ability to assess and plan strategy, execution of strategy, drafting, verbal communication skills, and sense of responsibility/attendance". See Haupt & Mahomed 2008:284. The last criterium (sense of responsibility/attendance) was more defined from 2008. Attendances now specifically refer to those in the clinic (compulsory weekly clinic duty), compulsory weekly tutorials and compulsory skills exercises that may be presented. The sense of responsibility criterium was more defined to reflect upon students' files' appearance and order and the management of their cases. See Wits Law Clinic Manual 2008:12 and Wits Law Clinic Manual 2009:12.

Upon analysis of these criteria, specific challenges for the clinician can be identified.[73]

When the quality of a statement, the first criterium, is assessed, it often becomes difficult to distinguish which of the students forming the specific pair formulated and took down the statement. Students often indicate that it was a combined effort, where one dictates and the other writes it down. Unless the students specifically indicate who was responsible for a specific statement, the clinician has no option but to award the same mark to both the students.

The clinician will find it less problematic to distinguish between the abilities of the students in the pair when assessing criteria two and three, namely the analysis of the problem and the ability to assess and plan strategy. The analysis and strategy planning are normally done during the weekly tutorials where the clinician can better observe the abilities of the individual students.[74]

The problem of distinguishing the individual performances of students when they work in pairs becomes evident again when the fourth and fifth criteria, namely execution of strategy and drafting ability is assessed. It will not always be clear which student, for example, made the telephone calls, made the file notes or drafted the pleadings.[75]

Individual assessment of the sixth criterium, namely verbal communication skills and sense of responsibility and attendance are possible.[76]

The assessment of the seventh criterium, attendances, poses no specific challenges.

Assessment of the last two criteria, namely file appearance and order and case management may become challenging. It often is difficult to distinguish the percentage of input, or lack thereof, of the students forming the specific pair.

The apparent assessment difficulties when students work in pairs, seem to be the drafting of client statements, execution of strategy and drafting of court pleadings, file appearance and order and case management. The statement taking and drafting difficulties can be overcome by requiring each student to draft these separately. But for file appearance and order, the remaining

73 Every student pair may have between six to ten case files per year. Statistics are available from the Wits Law Clinic.

74 Although the clinician gets to know the students under his/her supervision well during the course of the year, it is advisable for the clinician to keep separate notes regarding individual students' tutorial performances throughout the year. This will ensure objectivity when assessing the large number of students' performances on an individual basis.

75 The same reasoning apply in that students often indicate that these efforts were combined attempts, leaving the clinician with no option but to award the same mark to both the students.

76 Note that "verbal communication skills" refer to more than a student's command of the English language. The use and application of legal terminology are considered. Students also need to learn how to "pitch" their communication, for example: a student is required to use the correct legal terminology and referencing when communicating with a colleague, whereas the same information needs to be transferred into plain language when communicating with a less sophisticated client.

challenges may be overcome by requiring students to make file notes, under their own names, of activities undertaken in their file work. They may also indicate on these notes when these were combined efforts.

Chavkin recognises the difficulties when "joint efforts" must be evaluated and suggests one of two models a clinician can choose from when evaluating student casework.[77] Students are held liable jointly and severally for team work under the first model. Under the second model, students bear individual liability to the extent in which the clinician can identify individual work.[78] The procedure followed at the Wits Law Clinic when assessing students' case file work, corresponds with Chavkin's second model.

3.2 Written tests

The students are assessed in two written tests, one of which is conducted at the end of the fifth week, which coincides with the end of the first term, comprising the content of unit specific lectures and for which ten percent of the year mark is allocated.[79] The second written test, at the end of the year, and for which another ten percent of the year mark is allocated, comprise the drafting of legal documents, focusing on drafting done in the specialised units.[80] All students, regardless of the specialised unit they were allocated to are required to answer a common set of questions on legal ethics.[81]

3.3 Written assignment

All the students are required to attend a court case, whether trial or application proceedings, and submit a written report thereon.[82] Assessments of these reports prove not to be problematic, as guidelines are provided.[83] Advantages of using this method of assessment include the relatively easy setting of the assignment, the possibility of good student grades and the relatively ease of marking the assignments, provided student numbers are not excessive.[84] Challenges include the marking of large quantities of assignments, ensuring

77 Chavkin 1994:227, 235, 236.
78 For discussion of these models, see Chavkin 1994:236.
79 See discussion of this written test in paragraph 2.7.
80 These assessments will be conducted by the clinicians heading their specific specialised units. Court pleadings typical to the specialised unit within which students were trained are assessed.
81 This part of the written examination paper is set and marked by an individual clinician, thereby maintaining a standard of assessment across the various specialised units.
82 Ten percent of the year mark is allocated to this assignment.
83 The guidelines are drafted by the clinician responsible for the setting of this assignment and are made available to the students. The guidelines indicates elements such as, identifying the court, the parties involved, legal representatives, the case number, facts of the case, witness submissions, cross examination and final judgment. An analysis of the judgment is also required. See Haupt & Mahomed 2008:289.
84 Haupt & Mahomed 2008:289.

fairness when assignments are marked by different clinicians and a lack of authenticity in students' work.[85]

3.4 Oral examination

Oral examinations, which contribute 15% of the year mark, are conducted at the end of the academic year. These examinations of individual students,[86] are conducted by two clinicians,[87] and are aimed at assessing a student's ability to verbally express the knowledge gained in his/her case file work and legal processes associated with the case work. A portion of this oral examination is allocated to assessing students on the rules of legal ethics.[88] No standard questions are set, as individual case work differs. Questions may be recorded in writing by one of the clinicians to motivate the grade allocated to the student.

The advantages of this form of assessment, is that more aspects of a student's knowledge can be assessed, grading is faster and students are afforded the opportunity to present their knowledge verbally, which is specifically advantageous to students with poor writing skills.[89] Maintaining relevant, but new sets of questions, specifically when evaluating a student's knowledge of legal ethics, is challenging, as students who completed their oral examinations, tend to pass questions on to students who are still awaiting their turn. Although the majority of questions posed to students would revolve around their case file work, some of the question will relate to the weekly formal 90-minute lectures. As these lectures are not compulsory,[90] students are often unable to address question emanating from the lectures. Conducting oral examinations on such a large number of students is time-consuming and clinicians often find them exhausting.[91]

3.5 Trial advocacy skills

Trial advocacy skills forms part of the clinical legal education course, as it is a skill of practice. Five percent of the year mark is allocated to trial advocacy skills.[92] The teaching and assessment of this module of the course has proved

85 "There exists a danger that the work presented may not be that of the student, that is, lack of authenticity" or plagiarism. See Haupt & Mahomed 2008:289. Plagiarism needs to be dealt with in terms of the rules of the university.

86 For the oral examinations, the student pairs are split and students are examined individually.

87 The student's supervising clinician and another clinician acting as an external examiner.

88 Two 90-minute weekly lectures are allocated for teaching on legal ethics. Another such lecture is presented by the Attorneys Fidelity Fund on this topic.

89 Haupt & Mahomed 2008:288.

90 By "not compulsory" is meant that no roll-call or attendance register is kept. Attendance registers are kept for the weekly tutorials and clinic duty sessions.

91 Two clinicians will typically have to conduct 15-20 minute individual oral examinations on their combined allocated students, which may be as many as 92 students. These examinations necessarily run over a number of days.

92 Although trial advocacy skills formed part of the curriculum for the past number of years, the skills exercises were not assessed during 2007 and 2008, for reasons set

to be the most challenging. The techniques are taught during the weekly 90-minute lecture session.The challenge arises when the students need to be assessed, preferably in a practical environment. For the past number of years more than 300 students were registered annually for practical legal studies,[93] making meaningful individual assessment problematic. Each student should ideally be assessed on his/her litigation skills when representing both a plaintiff and a defendant. Proper assessment requires each student to be evaluated in both roles for a reasonable length of time. Student numbers and time constraints render this impossible.

Various scenarios have played out over the years,[94] but the most effective method proved to be to divide the students in groups in which they all play different roles during a mock trial. However, this method ultimately remains unsatisfactory as a proper measure of performance and knowledge applied in practice.

4. Time constraints

Time demands on clinicians are acute, mainly due to the student numbers, and the resulting higher case loads. The average contact hours of law school academics at the Law School during 2007 were eight to twelve hours per week, whilst the average contact hours of clinicians, who are also appointed as academic staff at the Law School, during the same period were between 23 and 24 hours per week, in addition to which candidate attorneys must be supervised and client files must be dealt with and maintained throughout the year.[95] Clinicians and the director of the clinic is required to submit reports and statistical data to funders regularly, which is time consuming. Clinicians,

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out in this paragraph. These exercises were assessed during 2009 by way of awarding a mark (5% towards the year mark) to a group of students working together.

93 Haupt & Mahomed 2008:280. For both 2007 and 2008, 308 students were registered for the course. The number of students registered for the course decreased to 228 during 2009, resulting in the assessment of the trial advocacy exercises.

94 For example: dividing the students into groups and allocating a group mark, which proved to be unfair, as the efforts of the individuals in the group varied; students being provided with a case study, leaving them to allocate roles to different individuals — however, the students (the majority of them) who assumed roles of witnesses could not prove their abilities as litigators (method adopted during 2009). For some years, The Black Lawyers Association was contracted to run the trial advocacy programme (during 2006) whilst the Johannesburg Bar Council assisted by seconding junior advocates to assist with conducting mock trials during other years (2007 and 2008). Videotaping student performances for criticism and comment were suggested, but proved to be even more time consuming.

95 De Klerk 2007:104. The Law School academics teach larger groups of students in a classroom setting, whilst the students in clinical legal education are trained in smaller groups for conventional lectures, in student pairs for tutorials and then the time spent in the clinic. The manner in which clinical legal education is taught, therefore calls for more contact hours with students.

as academics, are also required to comply with the university's minimum requirements for peer-reviewed and accredited publication output.[96]

Academic staff, designated as clinicians, and as such also assuming the roles of practicing professionals are burdened with additional hours, as "real-client clinics cannot simply close during student vacations".[97] Clinicians and their students are subject to the same professional responsibilities and time management challenges that are experienced in any private practice, as well as the additional time constraints experienced when dealing with more complex matters.[98] In an attempt to address the challenge of time management, a narrower definition of specialised units and the limiting of files taken on by students, to those which have good educational merit, were proposed.[99]

5. Further methods of assessment

There are further suggestions for assessment, which are not currently used by the Wits Law Clinic.

5.1 Formal feedback to students after the first semester

From 2000 to 2002 students did one rotation within the specialised units. Students served the first semester in one unit, changing units for the last semester. The students were assessed by way of an oral examination and file assessments at the end of the first semester and the process was repeated in their second rotation unit at the end of the year.

The advantage of this rotation was to afford students the opportunity of experiencing more than one specialised unit.[100] The increase in student numbers resulted in shortened time that the clinician had to train a larger number of students during a semester.[101]

This approach also posed a challenge in assisting clients. A semester consists of approximately four months of effective clinic duty. Few cases can be completed during a four-month period and both clients and students were left with an unsatisfactory experience. New sets of students rotating to file work started by students from the first semester, had to study files that they had not opened, often resulting in clients, who can hardly afford it, to attend

96 Du Plessis 2008a:128. Ten clinicians were designated to the clinic during 2009. Seven clinicians are academic staff of the university and have to comply with these requirements. Three clinicians are fixed term contract employees and are exempted from these requirements.

97 Mahomed 2008:66.

98 Mahomed 2008:66.

99 Mahomed 2008:66-67.

100 The clinician:student ratio during that time was between 1:20 and 1:24. Although that ratio was still more than the recommended ratio of between 1:7 and 1:12, it was more attainable to do this full mid-year assessment than it would be with the current ratio of between 1:38 and 1:46.

101 Mahomed 2008:66 and see time constraints in paragraph 4.

on the clinic for additional consultations with the new pairs of students.[102] A further challenge was in re-training students on files already opened and often leaving the new student intake to deal with mistakes made by the previous group. This resulted in time delays in the finalisation of matters, often leaving the students with even less time to devote to new matters.

A suggestion for the current allocation of students to one specific unit for the academic year is to do an informal assessment of students' file work at the end of the first semester. At the start of the second semester, feedback to students can focus on strengths and weaknesses found in their first semester work. Students may then focus on their strengths and increase their efforts where weaknesses were identified.

5.2 Reflective journals

Reflective journals by students have been widely adopted as an assessment tool.[103] At the University of Pretoria students may use these journals to define their strategies in cases or to describe how a specific matter impacted on him/her.[104] When students are required to keep regular reflective journals, they need to be assessed rigorously, in order to ensure academic integrity.[105]

A number of law schools in Australia use the reflective journal as a compulsory element in the assessment of the clinical course.[106] At Deakin University in Geelong 30 percent of the clinical assessment is allocated to the student journal.[107] The Queensland University of Technology in Brisbane allocates 40 percent of the total mark to a professional journal and essay.[108] At Sydney's Macquarie University the reflective report counts for 40 percent[109] and at the University of Western Sydney 50 percent is allocated to the reflective journal, which is described as "a reflective diary which requires students to critically consider his or her actions, experiences and responses in light of

102 The new pair of students sometimes needed to consult in order to avail themselves of all, or missing, details in the files they took over. Consultations were sometimes requested by the clients, as they had to form a new relationship with their new student counselors and to establish a new relationship of trust.

103 Hyams 2006:84, 85. For an in-depth discussion on reflection and assessment, see Ledvinka 2006:29-56.

104 Haupt & Mohamed 2008:286.

105 Bender *et al* 2006:78.

106 Hyams 2006:84 and Clinical Legal Education Guide 2009 and 2010.

107 The remaining 70 percent is for clinical performance in the course Law Clinic MLL351, which is a unit for approximately 20 students each trimester. See Clinical Legal Education Guide 2009/2010:9.

108 Five percent is allocated for attendance at seminars, 15 percent for performance in clinic, and 40 percent for a further item of assessment to be negotiated between the facilitators and each student. Their legal clinic (organized programme) runs over a standard semester. See Clinical Legal Education Guide 009/2010:25.

109 An assignment makes up the remaining 60 percent. The additional components are assessed on a scale of 'satisfactory/fail'. The Legal Centre Program runs for a period of 10 weeks during a semester, where attendance is required on a designated day. See Clinical Legal Education Guide 2009/2010:19.

the objectives of the unit."[110] At Monash University in Melbourne,[111] Victoria, students were offered the option of writing a reflective journal in place of an assignment, counting for 20 percent of the assessment mark.[112]

Although the benefits, especially for your aspiring lawyers are plenty, the risk of students manipulating entries in pre-empting what the clinician may want to hear,[113] or entries being made in a mechanical fashion, remains. The main problem may be that it is difficult to determine how to assess insight.[114]

These journals may also serve to reflect on matters resolved in the clinic, but for which no case files were opened.[115] The main challenges in clinics with large student numbers remain, however, the time constraints in which clinicians operate.[116]

5.3 Self evaluation and peer evaluation

It has been suggested that students assess themselves against a set of given or negotiated criteria and that it be conducted privately between the clinician and student.[117] Peer evaluation has been proposed as a manner of assisting a clinician to validate their judgment of student achievement and to re-enforce with students the role of collegial decision-making in professional life.[118]

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110 20 percent is allocated for a seminar presentation and 30 percent for a research paper. The clinical legal education program is undertaken in partnership with the Macquarie Legal Centre. See Clinical Legal Education Guide 2009/2010:41.

111 The following questions must be posed as part of the reflective process: how and why does the client find him/herself in this situation, what is the policy rationale for this that might explain it?, how can the effects be mitigated?, what can I do to ensure that the injustice does not happen again?, from whose perspective is it unjust?, how and why did this affect me so much? (or why didn't it affect me at all?). See Hyams 2006:85.

112 Hyams 2006:85.

113 Mennon indicates that, when substantive knowledge is assessed, "exams follow fairly standard formats that are not dependent upon the sort of 'insider', tacit, or inchoate knowledge that the legal practitioner possesses." These exams are usually administered anonymously, cushioning teachers from subjectivity. He points out that "this protection is absent in a clinical setting." See Mennon 1998:286-287. Students may then rather want to please the clinician with their entries and thereby disguise their true experiences.

114 Hyams 2006:85.

115 See discussion in paragraph 2.3.

116 See discussion in paragraph 4. The clinician simply has no time available to monitor and assess these volumes of individual journals. In the Australian setting, these journals are to be updated and submitted either weekly of fortnightly. See Hyams 2006:85. The above information was confirmed by Hyams as still correct for 2009/2010 in an email by Hyams to the author dated 7 October 2009. (Copy of email on file with author.)

117 Advantages include the improvement in student motivation and confidence, addressing the problems of student development, identifying students' strengths and weaknesses and allowing for reflection. This process may however be flawed should students not be honest in this assessment. See the discussion in Haupt & Mohamed 2008:289.

118 Mennon 1998:277-278.

There are, however, certain risks in this form of assessment when measured against the phenomenographic model where learning is studied from the perspective of the learner, not that of the teacher.[119] The object of this type of assessment is to see how students construe the content and phenomenography takes as the only reality the student's immediate perception of the task, ruling out another student's or the teacher's perceptions.[120] In phenomenography there is a hint of a prescriptive return to the one-correct-theory: that this is the way to construe learning and that any other way is simply wrong.[121] This would imply that, during self-evaluation, the student's interpretation of what he/she has learnt and done, is correct and not what the clinician intended him/her to learn or do. The outcome of this assessment will necessarily be good.

Where students work in pairs, peer evaluation appears to be more appropriate, bearing in mind the consequences explained in the phenomenographic model. The criteria are already circumscribed by the lecture plans and a clinic manual,[122] indicating outcomes, methodology, assessment methods and prescribed and recommended material for all lectures and file work. It is submitted that, upon balancing the suggested advantages and challenges,[123] these forms of assessments should not bear a credit towards a year mark,[124] as the standard of these assessments may fluctuate, specifically within clinics accommodating large student numbers and that are subject to time constraints.

Both these forms of assessment, without attracting a percentage towards the year mark, may be accommodated during the informal assessment of students' file work at the end of the first semester and serve towards student self-development.[125]

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119 Biggs 1994:8. Phenomenography "is based on the idea that the learner's perspective defines what is learned, not what the teacher intends should be learned." See Biggs 2003:12.

120 Biggs 1994:9. The author indicated two consequences: Firstly, "a bright student will see things differently from a dumb student; the importance is the perception itself in each case, not the brightness or the dumbness which may affect the perception. The student's perspective is adopted as the only reality: brightness is a category used by an outsider, not by the experiencer." The second consequence is that "it becomes impossible to generalize across teaching/learning situations. If each individual's perspective is unique, you are left with an infinite number of perspectives."

121 Biggs 1994:9.

122 All students receive a clinic manual at the start of the course where all criteria, including assessment requirements are indicated.

123 "Advantages include the development of students' evaluative thinking skills and motivating students, as they 'own the process'. Challenges include issues of personal anxiety and exposure which could have a negative effect on the process. It remains a challenge to determine objective summative results, as students may tend to grade those components that are easier to measure or they may tend to grade towards the middle to avoid obvious offence." See the discussion in Haupt & Mohamed 2008:291.

124 At the University of Pretoria, the peer assessment component adds 3,75% to the year mark. It is, however, important to note that, due to a different teaching model used, this assessment method can be more readily adopted. See Haupt & Mahomed 2008:282.

125 See discussion in paragraph 5.1.

5.4 Client evaluation

Although advantages of evaluation of students' work by clients have been suggested,[126] such assessment results are inconclusive, more so when the time consumed in conducting such exercises are weighed up against the large volumes of students and clients that are to be accommodated on a daily basis. It is submitted that within the typical profile of clinic clients,[127] who are not educated in law or the practice thereof, no particular insight into the operation or application of the law can be reasonably expected.[128] The success of the application of the law is measured by the clinician during tutorial sessions. "Clients can merely comment on non-legal components such as students' punctuality, friendliness and courtesy and communication in understandable language. Whilst these characteristics are not unimportant, clients' ultimate requirement in clinical legal practice is often simply to 'put right what is wrong', irrespective of legal complexities or the duration it might take."[129] Clients may therefore complete questionnaires in a manner that is not intended to offend the student counselors to whom they entrust their legal problems.[130]

5.5 Portfolios

Portfolios were described as a collection of papers and other forms of evidence, demonstrating to others the learning and progress of the student that has taken place,[131] and furthermore as an effective method for stimulating, supporting, integrating and assessing student work.[132] A student portfolio may include all of the above assessed components, effectively assembling them into a large whole, making connections among the items of work they have done, giving a critical overview of their work and learning.[133]

In assessing a portfolio, the clinician sees a coherent and reflective picture of the student's work and development. A good assessment of a portfolio should "stimulate students to produce work which they value, safely stretch and challenge

126 "Advantages include the assistance to the clinic with quality control and allowing clinicians the opportunity to provide students with feedback, thus allowing them the opportunity to reflect on their developmental skills." See the discussion in Haupt & Mohamed 2008:291-292.

127 See De Klerk 2007:97 on the profile and education of typical clinic clients.

128 Chavkin 1994-1995:203 also indicates that "clients have enough to deal with in their lives" and they might view participation in reviews "as a condition of future service by the clinic".

129 De Klerk 2007:97.

130 Haupt & Mahomed 2008:292. "Challenges include the possibility of clients being confused or even deceitful in the response to the questionnaire, illiteracy amongst clients that defeats the purpose of the exercise and clients that may feel intimidated by the process."

131 Haupt & Mahomed 2008:283.

132 Baume 2008:1.

133 Baume 2008:1.

students, lead the students in doing things which lead directly to learning and help students to know the extent and the limits of what they know."[134]

A portfolio is uniquely the student's. Students learn to produce good work, which they value and they can come to talk naturally about their learning and their achievements. Their portfolio can serve as an effective presentation at an interview.[135] Portfolios can be perceived as fair, because it allows the students "to present their own selection and their own analysis of their own work".[136]

It is submitted that, in view of the time constraints generally experienced by clinicians, the acknowledgement that the assessment of complex skills and knowledge remain a complex task,[137] and as the various components of the course are already being assessed, the composition of portfolios should not be made compulsory and that no additional marks be allocated for the composition of portfolios. It is suggested that such a portfolio be compiled by students and presented to the clinician only in the event of them requiring a letter of reference.[138] The portfolio, "which will provide evidence of a wider range of personal and intellectual abilities and skills",[139] may be used as a basis of the letter of reference and accompany such letter.[140]

6. Conclusion

Of all the various factors that impact on assessment methodologies, the single recurring challenge remains large student numbers. The ratio between clinician and students in the context of large client numbers (with differing cultural backgrounds and languages, presenting an almost limitless range of legal complaints) within severe time constraints, not only challenges the parameters within which assessments are conducted, but also limits the scope of assessment methodologies that can be successfully applied.

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134 Baume 2008:2. The author indicates that a good assessment method is, at minimum: valid; reliable; fair; and economical.

135 Baume 2008:2.

136 Baume 2001:12.

137 Baume 2001:14.

138 Students tend to approach their supervising clinician in large numbers towards the end of the academic year for letters of reference or recommendation, when they want to apply for employment or registration with a professional body. Often students approach the clinician a year, or longer, after completion of the course. This often places the clinician in an unenviable position, as providing the same reference to all students seem unfair. When presented with a portfolio, the clinician is in a better position to categorise the student into the type of reference letter warranted. This also compel students to take responsibility for obtaining a good reference and will serve to dispel the myth in students' minds that "he/she supervised me, therefore I am entitled to a (as good as the other students) letter of reference, even if I approach her years later". It is suggested that the portfolios remain with the students and only presented to the clinician when a letter of reference is required.

139 Webb 2002:4.

140 Baume 2001:3 suggests that (prospective) employers may want to see what applicants can do, as well as what they know. It may provide evidence of work done and learning achieved, and it can show a reflection thereon.

At the time of presentation of this paper (to an international audience),[141] many comments were passed on the sheer numbers of students and clients, which was an experience that fell outside the paradigm of most of the conference delegates. The Dean of the Law School of Northumbria University, United Kingdom,[142] indicated to the delegates that, upon his visit to the Wits Law Clinic in 2006, he came to respect the unique and challenging circumstances of South African law clinics compared to those in the United Kingdom. He suggested that under such circumstances, one should rather focus on less of the possible components of the assessment methodologies, as we are not operating in an ideal clinical teaching environment.

In view of clinical legal education being a practical course, specifically aimed at allowing students to experience the preceding years of substantive law studies in practice, severe curbing of the current assessment procedures may be unwarranted. A solution may be found in limiting the number of client cases taken on, by applying the test of "whether assistance to a specific client or the acceptance of his/her case will add educational value to the student curriculum."[143]

Clinical legal education, as a form of service learning is well placed for the use of reflective journals as an assessment tool, as it will add to promoting the development of the students.[144] Due to the time constraints within which clinicians operate, together with large student numbers, proper assessment of such journals may not be possible. In recognising the value of reflection, this tool may rather be utilized by the clinician in other formats, such as allowing students to form groups where their reflections may be discussed with the clinician for a short period after their clinic session,[145] or in student pairs during the tutorials.[146] The clinician may also use reflection as a teaching tool at various stages during the academic year,[147] although reflection will remain unassessed for these purposes.

Language barriers are part of the South African landscape and will not change in the short to medium term. In aiming for a more even playing field in the varied exposure amongst students in education and general experience levels, simulations of these experiences may be generally incorporated in the introductory lectures to the students.

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141 Delegates included clinicians from the United States of America, the United Kingdom, Ireland, Australia, Japan, Nigeria, Malaysia, China, Hong Kong, India, South Africa, Israel, United Arab Emirates, Oman, and representatives of various legal aid offices around South-East Asia.

142 Professor Philip Plowden.

143 Du Plessis 2008:14.

144 Bender 2006:59 indicates that the aim of reflection in service learning is to assist students to recognise and articulate their learning to enable them to "apply it critically towards continuous learning and personal growth beyond the service learning experience, improved learning and improved service and citizenship".

145 See Bender 2006:65, for group discussions and reflection on site (at the clinic).

146 These tutorial discussions may add towards assessment of the criteria "the analysis of the problem and the ability to assess and plan strategy" when students' file work is assessed (see paragraph 3.1).

147 See Bender 2006:66. The clinician illustrates the use of reflection by designing reflective activities and uses them before, during and after the clinical experience.

A solution will not be found in limiting the student numbers, as clinical legal education is regarded as a core component of the LLB curriculum and therefore compulsory.

The only real solution may be found in the appointment of more clinicians, which will address the unsatisfactory ratio between clinician and students, allowing for the implementation and maintenance of the suggested assessment methods.

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