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United in our challenges — Should the model used in clinical legal education be reviewed?*

Summary

The University of the Witwatersrand Law Clinic has used the in-house real-client model of clinical legal education since 1973. Now, 30 years later, the author reflects on the challenges that this model poses, particularly in light of the evolution of clinical teaching in the 21st century. This paper considers various models used in clinical teaching, with particular emphasis on the “real-client” model as used in clinical teaching at the University of the Witwatersrand Law Clinic. Various challenges posed by this model are identified and discussed. In conclusion certain recommendations are put forward on how to deal with these challenges.

Eenheid in ons uitdagings — Behoort die model wat gebruik word in kliniese regs onderrig hersien te word?

Die Universiteit van die Witwatersrand Regskliniek gebruik sedert 1973 die binneshuise ware kliënt-model in kliniese regs onderrig. Nou, ongeveer 30 jaar later, neem die skryfster hierdie model en die uitdagings wat dit bied onder oë, veral gesien in die lig van evolusie van kliniese onderrig in die 21^{ste} eeu. Die artikel oorweeg verskeie modelle wat in kliniese onderrig gebruik word, met besondere klem op die “ware klient”-model soos gebruik in kliniese onderrig by die Universiteit van die Witwatersrand se Regskliniek. Verskeie uitdagings wat die model bied word geïdentifiseer en bespreek. Ten slotte word sekere aanbevelings gemaak oor hoe hierdie uitdagings hanteer kan word.

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Clinical courses have become stale, following essentially the same formula since their inception. It appears that these courses are trapped in a certain mould with little growth or innovation being apparent over the past number of years.¹

1. Introduction

Clinical legal education² at University Law Clinics in South Africa is generally premised on the idea of providing access to justice to the poor and marginalised.³ It was with this thought in mind that most, if not all clinical programmes in South Africa were initiated. In time, a teaching model was developed around what is essentially a client-centred approach, adopted by many South African law clinics. For the purposes of this paper, I will refer to this model as the “real-client” model.

Using the real-client model in clinical teaching poses several challenges, the most crucial of which is that clinical programmes in South Africa tend to be extremely service-orientated and as a result their educational goals are often neglected.⁴ Considering the present dispensation of law clinics within the university environment, where most academics are required to research and publish, coupled with the obligations of the state and the legal profession to provide efficient access to justice, the question may be posed: Has the time not arrived for South African clinicians to re-evaluate the methodology used in clinical teaching?⁵

The purpose of this paper is to reflect on the challenges of the real-client model with particular reference to the experiences of students and clients at the University of the Witwatersrand Law Clinic (hereinafter referred to as the Wits Law Clinic) and to provide some thoughts on how to address these challenges.

2. Clinical programmes in South Africa

Clinical legal education programmes in South Africa began in the early 1970's.⁶ The Wits Law Clinic, established in August 1973, is one of the oldest clinics in South Africa. Several authors have argued that the underlying reasons for the inception of clinics were based on both the political and social needs of the country at the

1 De Klerk 2006:245-246.

2 Clinical legal education has been defined in several ways. De Klerk 2005:929; McQuoid-Mason 1977:346 & 1986:189. For the purpose of this paper it refers specifically to the teaching of law students in a live-client environment for credit towards a law degree.

3 McQuoid-Mason 1999:90-91 where he submits: “In a developing country such as South Africa where there are vast economic and social differences between rich and poor, and where the majority of the population do not have access to proper legal services, law clinics take the form of legal aid clinics and deal predominantly with poverty law matters.” Also see De Klerk 2005:940.

4 The goals of clinical legal education are discussed in De Klerk *et al* 2006:279.

5 De Klerk *et al* 2006:50-51.

6 Wimpey & Mahomed 2006:2; De Klerk 2005:930.

time.⁷ With a lack of government subsidies for access to justice programmes, university students, particularly law students, took it upon themselves to bridge the gap.⁸ It is against this background that the real-client model was developed.⁹ It resulted in the perception that law clinics are merely complimentary to the state-funded legal aid programmes,¹⁰ as the earlier clinics emphasised service to the poor and very little attention was devoted to clinical teaching.

Since 1994, the South African state legal aid system has undergone intensive transformation with greater commitment towards providing access to justice to the poor and marginalised.¹¹ In addition, the law societies in various provinces have either implemented or are in the process of implementing policies prescribing *pro bono* commitments from practitioners.¹²

The 1990's witnessed several clinical legal education programmes at various universities evolve from being mere legal aid centres to mainstream curriculum courses within the law degree. Some universities¹³ have called on clinical staff to reflect on their role within the academic institute and to add educational value to their programmes. Several clinical programmes are now required to define their goals and to develop an appropriate curriculum, teaching methods and effective assessment criteria.¹⁴ Clinicians at some universities have been appointed as members of the academic staff and as a result, are required to research and publish. Teaching as opposed to access to justice is increasingly seen as the

- 7 Franklin 1986:61. Clinical Programmes in the United States of America began in a similar way. In the 1960s with an increase in anti-war demonstration and an increase in poverty, students committed themselves to changing this system. Thus the first grants received for Legal Education were for providing opportunities for service as opposed to teaching of professional skills. This laid the foundation for the development of clinical legal education programmes as we understand them today. Bengtsson 2002:15; Tarr 1993:2.
- 8 Wimpey & Mahomed 2006:2.
- 9 De Klerk 2005:247 where he states: "When one looks at the development of clinics in the past decade since 1994, one is left with the distinct impression that access to justice has dominated the clinical agenda and that clinical legal education has adapted only insofar as it was necessary to accommodate this role."
- 10 Justice Initiative Database on CLE 2001:3 where it is stated that: "In countries where there are few or no government-funded legal aid programmes, or where there is little concept of *pro bono* service in the legal profession and private legal NGO's are overextended, clinical programmes become the primary focus of efforts to fulfill the need for provision of needed legal services to the poor."
- 11 The obligation on the State to provide adequate access to justice was enshrined by the enactment of sections 35 and 28(1)(h) of the Constitution of 1996.
- 12 Wimpey & Mahomed 2006:14. The Legal Services Sector Charter, December 2007, lists objectives of the charter, *inter alia*, to: ensure access to justice in all respects namely- (a) access to legal services; (b) access to legal work; (c) access to courts; (d) access to the profession.
- 13 For example at the University of Witwatersrand a document has been drafted which is titled "The University of the Witwatersrand, Johannesburg, Strategic plan, Wits 2010. A University to call our own —The School of Law's response." In this document the School of Law's mission statement has identified its core business as teaching, research and community service.
- 14 Bengtsson 2001:17.

primary goal of clinical programmes. However, achieving the correct balance continues to be the challenge.¹⁵

The Report of the Committee on the Future of the In-House Clinics states:

Clinical education is first and foremost a method of teaching. Among the principal aspects of that method are these features: students are confronted with problem situations of the sort that lawyers confront in practice; the students deal with the problems in role; the students are required to interact with others in attempts to identify and solve the problems; and, perhaps most critically, the student's performance is subjected to intensive critical review.¹⁶

3. Models used to teach clinical legal education

There are three main models used in clinical programmes. These are:

3.1 The externship model

This model is also referred to as the out-house real-client ('real-world') model or the 'participation — observation'¹⁷ model. Franklin has defined the externship programme as one 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".¹⁸ Within this model students could also be placed at various courts, prisons or any other organisations that would allow students to learn legal skills by observation.

The advantages of this model are that students learn by observation and gain work experience. The model is also relatively cost effective, as opposed to in-house clinics. The externship model could also benefit clinicians by allowing them space and time for research and writing.

These benefits are however overshadowed by several challenges, including problems relating to the assessment of students,¹⁹ supervision, monitoring and ensuring that the students derive sound educational value.²⁰

15 Wimpey & Mahomed 2006:17-18.

16 Report of the Committee on the Future of the In-House Clinic 1992:511.

17 McQuoid-Mason 1977:348; Brayne *et al.* 1998:14; Franklin 1986:134.

18 Franklin 1986:134.

19 As students are not under close academic supervision during this period, developing an objective assessment is problematic.

20 Tarr 1993:7 where she submits: "The main disadvantage is the lack of control over the quality of educational experience."

3.2 Simulation clinics

Simulation means an exercise in which the student assumes the role of a lawyer confronted with a problem which resembles as closely as possible a real situation.²¹

There are many advantages to using simulation exercises. The facts used to teach can easily be manipulated to achieve the goals of the exercise and allows the teacher to concentrate on particular issues.²² Assessment of the performance poses no real problems, as the exercise takes place in a structured environment. Also, simulation exercises are cost effective, requiring only adequate premises and human resources. Because of the absence of actual clients, issues around professional duties are mostly absent. Finally this process is less time consuming than those involving real clients and often are repeated from year to year.²³

The disadvantage of this model is that students often find it less stimulating and rewarding than when dealing with real clients. As Tarr appropriately states:

simulations have limited value and do not begin to teach a fraction of what is taught in live-client clinics. Simulations do not create experience upon which students can draw to learn and develop their skills. Only real cases create the challenge of interviewing a person who is both similar to and different from the students ...²⁴

3.3 The in-house real-client teaching model

The in-house real-client teaching model provides an opportunity for students to learn through practise. It is also referred to as 'experiential learning', whereby students learn while at the same time assisting clients with their legal matters.²⁵

This model has been described by Brayne *et al.* as follows:

In this model the clinic is based in the law school (hence 'in-house') and the unit is offered, monitored and controlled in-house too. The clients are real, with problems requiring actual solutions (hence 'real-client'). The client base may be selected from the general public at large or from a section of the public ...²⁶

21 Report of the Association of American Law Schools — American Bar Association Committee on the Guidelines for Clinical Legal Education 1980:12.

22 McQuoid-Mason 1977:348 argues that: "Simulation has the advantage of being controlled by the teacher, which ensures that cases are completed before the end of the academic year and enables students to participate in, and observe the workings of, the legal process." See also Franklin 1986:13.

23 Brayne *et al* 1998:15; Tarr 1993:5.

24 Brayne *et al* 1998:15; Tarr 1993:5.

25 Vawda 2003:4 states that: "They are typically confronted with real-life problem situations which are not discrete, pre-packaged legal problems, but messy, raw life experiences in all their concreteness and complexity."

26 Brayne *et al* 1998:12.

In most cases clients are interviewed by the students, their matters discussed with the clinician and a way forward determined.

Within this model students are typically taught the following skills: How to conduct interviews; statement taking; drafting of letters and legal documents; analysis and problem solving; ethical responsibilities and procedural application. Many argue that this model defines the unique characteristics of clinical programmes, namely teach through practice.²⁷

The real-client model provides the foundation on which the goals of clinical legal education have been defined. These goals have been defined as:

The goal relating to professional responsibility; judgment and analytical abilities; substantive law; applied practice skills; legal services to the community; learning and working in groups; and integration of all or some of these goals.²⁸

Although these goals have been modeled on the real-client method, it does not make the method itself perfect. The reality is that this model poses several challenges for all parties concerned, namely the client, clinician and student.²⁹ These challenges include funding concerns, client numbers, supervision, infrastructure, assessment, the continuity of service and a high standard of professionalism from both clinician and student.

The goal of access to justice, while laudable, cannot be fulfilled by legal clinics alone. There are great risks in putting students in charge of large numbers of cases without adequate guidance or supervision. Clinics should always be seen as part of an overall strategy of access to justice, not the primary component.³⁰

4. The Wits Law Clinic

At the Wits Law Clinic clinical legal education is taught using a combination of the real-client teaching model, simulation exercises and plenary lectures. The programme has best been described as a credit bearing, compulsory, in-house specialised programme³¹ for all law students in their final year of study. In short the key characteristics of the programme are as follows:

27 Brayne *et al* 1998:15.

28 Steenhuisen "The goals of Clinical Legal Education" in De Klerk *et al* 2006:279, where it is submitted that: "Clinical education and especially the live client model is regarded as the best learning opportunity when it comes to the integration of these goals."

29 McQuoid-Mason 1977:347 where he states that: "The main disadvantage of a legal aid clinic is that if it is too service-orientated it may be reluctant to limit its case-load which then leads to: repetition, low level work, heavy case loads, strain on students' time, failure to focus on underlying legal concepts and loose supervision."

30 Justice Initiative Database on CLE 2001:3.

31 In January 2000 specialised clinic units were introduced. Presently the clinic offers the following units: delict, labour, family, refugee, eviction and a general unit which in turn specialises in the law of contract and consumer law. Each clinical attorney has developed specialised skills in specific areas of law. See McQuoid-Mason 1986:194

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- Students are paired with a partner with whom they work as a team.³²
- Student pairs are then allocated to one of seven clinicians and work closely with that clinician.³³
- As all the clinicians have specialised knowledge in a particular area of law, students will participate in the allocated units for the duration of the academic year.
- Clients are seen on a 'first come first served' basis.³⁴
- Individual clinicians are responsible for managing their weekly clinic intake sessions where students screen members of the public for suitable cases.³⁵
- Case loads are allocated to each student pair, and all professional activities on the files are closely monitored during the weekly tutorial sessions.³⁶
- Apart from clinic sessions students also attend plenary lectures where matters relating to the drafting of documents, professional management, ethics, numeracy skills, interviewing skills and statement taking, trial skills and social justice are taught.
- A simulation exercise is adopted when teaching trial advocacy.
- Student assessment comprises of the following:

Written test on law and procedure ³⁷	10%
Drafting test ³⁸	20%
Oral exam ³⁹	10%

where it was proposed that developing specialised clinics may help reduce the volumes of cases. Initially when the specialised units were introduced at the Wits Law Clinic, clinicians believed the same. However, over the years the volumes of cases continue to increase.

- 32 In 2008, 308 students registered for the course.
- 33 The ratio of student to clinician at Wits is on average 1:40. This ratio is not ideal. See De Klerk & Mahomed 2006:308.
- 34 Client appointments are not made for the initial consultation. Clients simply walk into the clinic and are screened accordingly. This has however contributed to the large numbers of clients that the clinic has to consult with on a daily basis.
- 35 On average the clinics screen between 20-50 people per working day including student vacations.
- 36 As a result of the large number of clients that are screened, students' case loads average between 5 and 10 files per student pair per year. Although 45 minutes have been allocated for weekly tutorials, the time spent with the students may vary depending on the complexity of the files that are dealt with.
- 37 This test was introduced in 2008. During the first teaching block students learn substantive law and procedure specifically relating to their unit of allocation. At a planning meeting held in November 2007, clinicians felt that this test was necessary in order to improve the students' level of knowledge in the specialised field of their unit.
- 38 This test seeks to assess students' ability to draft legal documents and understanding of legal ethics.
- 39 Oral examinations are conducted once a year by two clinicians sitting together. Students are assessed on their portfolios and on the rules of ethics that govern professional practice.

Written assignment ⁴⁰	10%
File assessment ⁴¹	50%

- Clinicians are also responsible for the training and mentoring of candidate attorneys completing their apprenticeship at the clinic. Presently there are eleven candidate attorneys employed at the clinic.

Initially, clinicians were only required to teach and not publish and consequently were able to invest all their time in teaching and on litigating their matters. However, the University of Witwatersrand, in terms of its 2010 Vision Plan, has emphasised research and publication as its main priority thus expecting all academic staff members, (including clinicians), to produce research material. It is in line with this shift in priority that the clinicians began to reflect on the challenges that the above model presents.

5. Challenges

The challenges presented by the real-client model involve resources; clients' needs; students' needs; difficulties around assessment; time constraints and the challenges to balance the learning amongst students. These are discussed below.

5.1 Resources

In order to facilitate an effective real-client teaching model, extensive resources are required. These include financial security, human resources and appropriate infrastructure. This model tends to strain resource budgets and most universities are reluctant to respond favourably to this.

From a financial perspective this model poses an extreme challenge. Operational costs such as telephone accounts, photocopying, faxing, stationery and transport are unavoidable. As most universities are reluctant to subsidise these costs, clinicians are forced to raise funds. Aside from the fact that it is not easy to secure outside funding, once such funding is secured, it is essential to comply with funders' requirements.⁴² The Wits Law Clinic is currently funded by several organisations, each with their own sets of requirements. While attempting to comply with these requirements, clinicians continuously find themselves responding to several demands at once. For example one of our primary funders

40 Students are required to attend at any court, witness a case being conducted and thereafter write a report on the matter.

41 A file assessment or portfolio assessment entails the allocation of a mark based on the file work done by the student over the course of the year. It is based on a range of criteria, such as, the quality of statements; students' analysis of the problem; the ability to assess and plan strategy etc.

42 Brayne *et al* 1998:16 submits that: "Those advocating the development of clinics must be prepared to address the issue of funding head on. A starting point might be to try to identify sources of funding. 'Hard' money ... There are, however, difficulties, notably the over-reliance on soft money and the vulnerability that this can produce (that is, the law school does not take financial responsibility for the clinic, which then rises or falls at the whim of the external funder)."

requires that a minimum number of files be opened each year. In order to meet these requirements one could easily compromise on the quality of the files.

Real-client clinics require appropriate infrastructure including private consultation areas,⁴³ receptionist facilities, filing space and cabinets. Thus, establishing the ideal clinical setting adds a further burden to already stretched financial resources. Although the Wits Law Clinic has consultation facilities, accommodating on average twenty pairs of students and a large number of clients in one clinic session has proved challenging.⁴⁴

Sustaining an effective real-client teaching model requires human capacity. Clinics that adopt this model should have secretaries, administrative clerks, financial managers, a receptionist and sufficient full time clinicians to provide adequate supervision for the students.⁴⁵ It has been said that the ideal student to supervisor ratio should be 1:7⁴⁶ to 1:12.⁴⁷ Most universities are however reluctant to provide the necessary means to employ enough clinicians in order to achieve this ideal, which detracts from the effectiveness of the model as a teaching tool.⁴⁸ Since 2004 the student numbers at the Wits Law Clinic have increased while the number of clinicians employed has remained the same, resulting in the high student to clinician ratio.⁴⁹

5.2 Clients

Real-client clinics operate within a live-client context, therefore it comes as no surprise that one needs clients to sustain this model. Several clinics are not able to attract sufficient clients for various reasons, including the fact that some clinics are inaccessible to the clients. University campuses are mostly situated in urban areas which may be inaccessible to clients in rural or peri-urban areas. In response, several satellite clinics have been set up by some clinics.⁵⁰

The Wits Law Clinic consults with⁵¹ large numbers of clients as is reflected in the table below titled 'Interviews Conducted'. Since 2004 the Wits Law Clinic has,

43 Although some clinics, for example, the Wits Law Clinic and Natal Law Clinics, were facilitated under trees or in churches in the early 1970's, these environments do not always prove to be ideal, due to continual problems relating to confidentiality and the safekeeping of the files.

44 Since 2004 the student numbers at the Wits Law Clinic have increased by approximately 20%.

45 McQuoid-Mason 1986:193 states that: "A full time supervisor has the advantage of devoting all his time to ensuring the smooth running of the clinic."

46 Schrag 1996:175.

47 As proposed by the UK Clinical Legal Education Organisation (CLEO). See www.ukcle.ac.uk/resources/cleo/practice.html

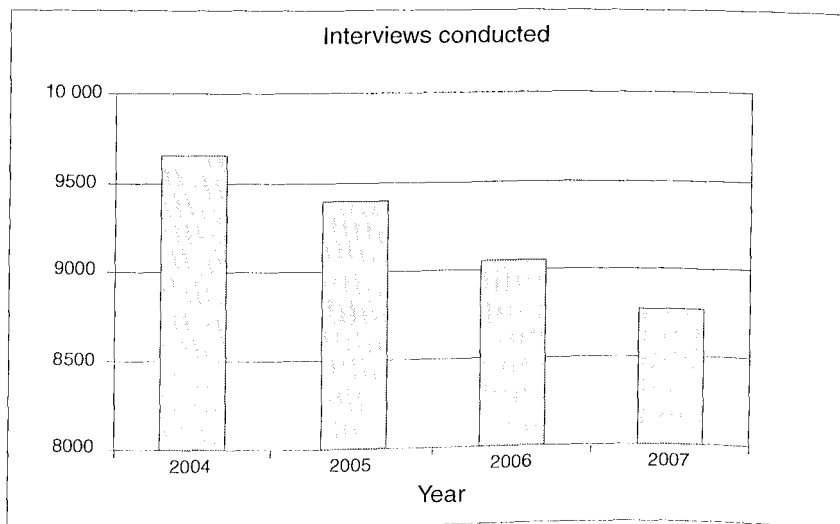
48 McQuoid- Mason 1986:194.

49 Refer to footnote 33.

50 For example the University of Johannesburg Law Clinic has established several satellite law clinics at strategic positions around Johannesburg. The University of Pretoria Law Clinic has also established a satellite clinic at the Hatfield Community Court.

51 Vawda 2003:1 where he submits: "We face the added pressures of being among a few service providers in the context of large-scale poverty, where institutional legal

however, witnessed a decrease in client consultations. This can be attributed to a number of factors, including the increase in governmental organisations committed to assist with access to justice, the increase in attorneys committed to accept *pro bono* referrals and the initiative by clinicians to narrow their areas of specialisation.⁵²



Generally, however, students and clinicians continue to carry large case loads.⁵³ Statistics for the Wits Law Clinic for 2004 reveal that 9600 clients were interviewed during the year and over 1800 files were opened. In 2005 9400 clients were interviewed and approximately 1750 files opened. In 2006 approximately 9000 clients were interviewed and approximately 2088 files were opened. In 2007 approximately 8777 clients were interviewed and approximately 1800 files were opened.

aid systems cannot cope with demand. So in addition to providing much-needed services, there is also the pressure to cope with large volumes." Also see McQuoid-Mason 1986:194. Large numbers of client consultations could be controlled by introducing an appointment system. For example at the University of Pretoria Law Clinic clients are consulted on an appointment basis. This helps in limiting the number of consultations and assists in limiting the number of matters taken on. Also See Haupt & Mahomed 2008:16.

- 52 The Legal Aid Board has now established a civil litigation unit. Several attorneys' firms have established *pro bono* units.
- 53 Schrag 1996:16 where he states that: "... a clinical teacher must decide on a proper case load. Clinics are highly motivating, and (at least in my experience) students generally don't mind putting somewhat more time per credit into clinical work than into classroom courses. Nevertheless there are some real limits on the amount of work that a clinic offering a finite number of credits can expect from students."



The increase in the number of files in 2006 is attributed to a number of factors including pressure from funders, magistrates, judges and other government officials calling on the clinic to provide legal services, especially to indigent clients whose cases have excellent prospects.⁵⁴ The decrease in the number files opened in 2007 is attributed to a new approach to client intake, as reflected in the clinic's mission statement 2006.⁵⁵

Dealing with large number of matters results in excessive strain being placed on both clinicians and students. It is within this context that one could easily forget about the educational elements of clinical legal education and get completely absorbed in providing access to justice.

It must however be noted that "students carrying excessive caseloads without adequate supervision are neither learning how to practice law, nor providing effective service to their clients".⁵⁶

5.3 Student versus client needs

Clinicians are continually faced with having to balance clients' needs against that of the students. This juggle act between the need to provide access to

54 Government agencies that frequently refer matters to the clinic include the CCMA, Consumer court, the Legal Aid Board and the Gauteng Housing Bureau.

55 Our Mission Statement 2006 reads: The Wits Law Clinic aspires to:

- Develop and provide an effective clinical legal education programme to students;
- Promote published research by clinical teachers;
- Provide quality legal services to the community.

56 Justice Initiative Database on CLE 2001:3.

justice and education is not limited to South African clinics.⁵⁷ Clients' needs can easily cloud educational goals. "Once cases are taken on, it is the clients' best interests that are paramount The willingness of staff and students to serve the client or the insistence of funders that such a service be provided can compromise the educational purpose".⁵⁸ This challenge can best be addressed by clinicians asking themselves the following questions:

- What is the primary objective⁵⁹ of the clinical programme? Should the clinic identify education of its students through using the real-client model as its primary objective? The next question that must be asked is:
- How best will clinicians achieve this objective whilst addressing the challenges that this model presents?

By raising these questions, clinicians are forced to evaluate their programmes and develop appropriate objectives. When using the real-client model clinicians must be selective in the cases they accept. Matters dealt with must contribute to the educational goal of the course.⁶⁰

At the Wits Law Clinic this juggling dynamic continues to present a challenge. As a result of its historical development, the clinic may easily lose sight of its educational purpose. Temptation to engage in matters of impact litigation is overwhelming. In 2003 when the University of Witwatersrand's School of Law prescribed its strategic mission, it emphasised the increase in research output from all academic staff members as one of its primary objectives. This requirement extends to clinicians as well.⁶¹ In terms of the university's strategic mission, clinicians agreed to work towards achieving a target of one research unit per staff member per year by 2010. Clinicians have also agreed to work towards their Doctoral qualifications. This development has forced the clinic to evaluate its strategic mission, which up until then listed "teaching" and "providing access to justice" as equally important.⁶² After a series of meetings in 2006 it was concluded

57 Brayne *et al* 1998:18 where it is stated: "A further tension again particularly prevalent in the USA, but also a notable feature in the UK real-client clinics, arises in the competing demands of the students and the clients."

58 Brayne *et al* 1998:18.

59 Words like vision and goal could also be used.

60 McQuoid-Mason 1977:347 where he submits: "For this reason some American law teachers have favoured restricting community service to "test case" litigation, on the basis that the yield from victory in a major test case is many times greater than that from winning several minor cases." Schrag 1996:12 advocates the benefits of smaller cases, because: "if a student is able to see a winning case through to the end, the opportunity to celebrate the success with a client reinforces all of the educational lessons of the clinical experience." See also Tarr 1993:3.

61 The first goal identified in the Strategic Plan Wits 2010 document is research where the university has submitted, "Our aim will be to develop our standing and reputation as a research driven university. This research focus will ensure that we operate at the leading edge of all academic disciplines with which we engage and that we respond appropriately to national, continental and international research opportunities. Our research will enrich our undergraduate and postgraduate teaching."

62 Prior to 2006 the Wits Law Clinic submitted the following as its Mission Statement:
- To provide practical legal skills training for law students and candidate attorneys;

that the clinic's priorities should include research and publications alongside its other goals.⁶³ It was decided that while the real-client model was paramount to the value of our course, strategies would be implemented to assist in overcoming the challenges of this model, including the temptation to over-ride students' needs with those of the clients. Some of the proposed measures to implement in order to achieve the new goals set for the clinic include the following:

- Improving and further developing teaching skills, for example clinicians are encouraged to attend workshops presented by the university in order to be exposed to new and/or alternative teaching methods.
- Reflection on the quality as opposed to the quantity of files that are opened, for example by setting clear standards as to acceptable case loads and by setting guidelines as to the level of professional care demanded.⁶⁴
- Allowing clinicians to take leave in order to research and write. It was proposed that clinicians take two week breaks at various intervals during the year.⁶⁵

5.4 Assessment

The dynamics on assessing students objectively whilst using the real-client model continues to be a challenge. Students consult with clients from different cultural backgrounds who speak different languages and have different levels of literacy, each client presenting his or her own set of complex or simple legal problems. Assessing students in this context, with so many variables, whilst remaining consistent, proves to be most challenging. "It is sometimes difficult to ensure that all students, especially in real-client work, are exposed to the same quality of material on which they are to be assessed".⁶⁶

The assessment process at the Wits Law Clinic is complicated by the fact that students in different units are exposed to different areas of specialisation. So for example, students in the family unit might be more exposed to matters of procedure than students in the refugee unit, dealing more in advocacy and policy issues.

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- To provide access to justice through the provision of free legal services to the poor and marginalised.

63 Our Mission Statement 2006 reads: The Wits Law Clinic aspires to:

- Develop and provide an effective clinical legal education programme to students;
- Promote published research by clinical teachers;
- Provide quality legal services to the community.

64 Brayne *et al.* 1998:19 where it is stated that: "Careful selection of cases coupled with effective supervision play a part in the attempt to guarantee that standards are maintained and that the clinic does not become service driven."

65 This has been easier said than done. To date we have only managed to take these breaks during student vacation.

66 Brayne *et al* 1998:19.

One effective way to assess students within this model is to provide regular feedback to the students and to encourage reflection on the part of the students. With the large numbers of students, clients and cases, constructive feedback and reflection is not always possible. This problem can however be resolved by ensuring that the number of files opened is limited and that each file opened serves an educational purpose.

5.5 Time constraints and continuity of services

Real-client clinics are, by their very nature, time intensive and only operate effectively if an on-going service is provided. They present similar time management challenges as those in private practice. Once a client has been screened and a file opened, professional responsibilities set in for both the clinician and the student.⁶⁷ This requires clinical teachers to supervise students closely to ensure proper management of the files. As is submitted by Vawda, "the proper implementation of the clinical methodology requires close and direct supervision of students. The ultimate goal of supervision is to ensure that the student is working effectively, efficiently and ethically for the client".⁶⁸ Clinicians generally spend a substantial amount of time working with students, in assessing merits, drafting pleadings, attending court or briefing counsel. Little time remains for formal teaching and research.

Real-client clinics cannot simply close during student vacations. There always needs to be professional staff in attendance to deal with the clients' needs and attend to files. This places a further burden on clinicians as they are not only required to teach, research and publish but also need to deal with clients' matters professionally on an ongoing basis.⁶⁹ Time constraints are dependent on the complexity of a particular matter. For example a simple dismissal matter could escalate into a complex review application or a simple divorce action could result in a complex custody battle. This raises the question, should clinics be selective in the types of matters they deal with, and if so, how will the selection criteria be determined? For the clinicians at the Wits Law Clinic constructive time management continues to be a challenge. In an attempt to address this challenge it was proposed that:

- Each specialised unit defines itself narrowly, thus limiting the number of files to be opened. For example the labour unit has restricted itself to matters involving dismissal and unfair labour practice whilst issues relating to unemployment insurance funds and pension funds are referred to other organisations.⁷⁰

67 Stilwell *et al* 2004:29. Professional responsibility is regulated in terms of several statutes including the *Attorneys Act* 53/1979 and the *Admission of Advocates Act* 74/1964.

68 Vawda 2003:6.

69 Stilwell *et al* 2004:32 where specific reference is made to a book by CH Van Zyl, *The theory of judicial practice of South Africa* (1921), wherein the author referring to attorney's conduct states: "He must serve his client faithfully and diligently and must not be guilty of unnecessary delay."

70 Other examples include: the Delict unit is selective in the types of motor vehicle accident claims they deal with. Our Consumer unit has realised its strength in dealing with Magistrate Court matters as opposed to High Court litigation.

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- Files dealt with by students must have good educational merit. Each student file opened must be justified by the elements of the teaching curriculum. It may also be easier for students to learn from less complicated matters, where simple drafting and litigation skills can be learnt, rather than matters that require the ongoing professional attention of the clinician.

5.6 Imbalances in learning

Real-client models allow students to have different learning experiences as they deal with different clients and different types of cases. The spin off is simply that some students may deal with substantial matters with good educational value, while others may not. At the Wits Law Clinic students in the refugee unit are limited to administrative disputes with the Department of Home Affairs. Most of these disputes are resolved through the exchange of letters and only a limited number of formal pleadings are drafted. The clinic is presently reflecting on what the educational outcomes for this unit should be and how to address the apparent imbalances in learning.

6. The way forward

Many argue that the real-client teaching model is a fundamental component of clinical legal education and its value is indispensable. How then do we adapt the real-client model to suit the needs of the students, the clinicians and the clients?

For many this will involve a shift in mind set from classifying access to justice as a priority to reflecting on the needs of the students and clinicians alike. McQuoid-Mason has stated that “the most successful programmes seem to combine community service work, with low case loads and close supervision backed up by carefully structured classroom instruction”.⁷¹ Others continue to debate whether the educational value lies in dealing with more complicated matters rather than less complicated matters.⁷²

The following recommendations are put forward in response to the challenges cited above:

(a) Clinics with large numbers of clients should consider:

- Client consultations by appointment only and initial screening to be conducted by a paralegal. This will reduce the number of consultations between students and clients in addition to limiting the number of files that are opened.
- *Pro bono* relationships with law firms and other non-governmental organisations should be established to allow the quantity of files to be reduced and to allow clinicians more time for research and publications.⁷³

71 McQuoid-Mason 1977:348.

72 McQuoid-Mason 1977:347.

73 Stilwell *et al* 2004:40.

(b) Clinics with limited number of clients should consider:

- Establishing working relationships with non-governmental organisations; the courts, the Legal Aid Board, the CCMA or other organisations that will refer matters to the clinic.

(c) Clinical programmes with limited resources should consider:

- Restructuring the clinical course to include placement opportunities, for example, students could observe matters at various courts or other quasi legal forums. Through this process of observation students could learn valuable skills relating to practices and procedure.
- Simulation exercises can be used to teach consultation skills and statement taking.
- In order to reduce the number of files that are being dealt with, clinicians should reflect on quality as opposed to quantity of files, ensuring that each file opened will contribute to the educational goals of the programme.

(d) Clinical programmes with large numbers of students should consider:

- Reducing the number of students, by converting compulsory clinical programmes to an elective programme. This option is bound to receive extensive criticism from the legal profession.⁷⁴
- Clinical programmes could be staggered over two or more academic years, instead of being concentrated in a single year at final year level.

(e) Clinicians wanting to increase their research output should consider:

- Attending research workshops to enhance their skills;
- Attending and presenting at conferences nationally and internationally;
- Mentorship programmes.

7. Conclusion

The ideology of clinical legal education programmes at South African universities has shifted, with the responsibility now on government to provide efficient access to justice. Universities are emphasising the need for clinicians to develop and impart more classical academic skills, thereby bringing into focus the challenge between access to justice versus education. Clinical legal education in South Africa is in a process of evolution, exposing the course to all sorts of reflections and development in its application. The sustainability of each clinical programme now depends on how each clinic defines its educational goals. As is submitted by Brayne *et al.*, "the organisation and design of the clinic, coupled with the selection of cases, must meet the predetermined educational goals".⁷⁵

74 De Klerk 2006:935.

75 Brayne *et al* 1998:19.

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The Wits Law Clinic has undertaken this exercise to reflect on its design and mission. Although a number of changes that were discussed are steadily being implemented, it is this shift in mindset that strengthens the organisation.

It is hoped that the recommendations listed above could assist many clinics experiencing similar challenges with the real-client teaching model. Clinical legal education should not remain stale nor cause clinicians to feel trapped, but rather clinicians should explore implementing other formulas that will suit their clinical programmes.

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