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Contemporary challenges facing law clinics

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By Stephan van der Merwe

The Stellenbosch University Law Clinic (SULC) held a conference in July discussing the contemporary challenges facing South African university law clinics. Before the conference began, the SULC hosted a dinner in celebration of its relaunch. The event celebrated SULC's 30th anniversary, since the establishment of its organisational strategy for the period of 2018 to 2022 and the launch of its website (www.sulawclinic.co.za (<http://www.sulawclinic.co.za/>)). The relaunch was followed by news of the shortlisting of SULC as specialist law firm of the year at the 2018 African Legal Awards where it was awarded the Corporate Counsel Association of South Africa's Achievement Award. Participants at the conference engaged in discussion on a variety of relevant and contentious issues, including the positioning of clinical legal education within the LLB curriculum, monitoring and evaluation and transformation and decolonisation.

Law clinics place in the LLB curriculum

The first session set the tone for the conference, focusing on the law clinic and clinical legal education's (CLE) place in the faculty and LLB curriculum. The speakers on this panel critically considered the extent to which law clinics and CLEs added value to institutions of tertiary education. A constant theme was the reality that law clinics faced in competing with other programmes for limited resources, which restricts the integration of CLE into the LLB curriculum. The importance of CLE, as viewed from a pedagogical, institutional and access to justice perspective, was emphasised in light of the proven benefits to



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members each had different opinions on which level and year the CLE module should be started. Not surprising, the panellists and other attendees were, however, unanimous in their view of the pivotal role that law clinics and CLEs have to play in shaping the professionally skilled, socially conscious legal practitioners of the future.

Data capturing

The second session focused on data capturing at law clinics. The speakers in this session described the context within which law clinics needed to consider data, what useful data consisted of, and how data could be used to align with the strategic focus of the organisation. The composition of the panel in this discussion was unique, in that it not only consisted of clinicians or other legal professionals but included measurement and evaluation practitioners. The panel agreed that emphasis must be placed on accuracy in data collection, to avoid the obvious perils of relying on inaccurate data. While the panel members had different approaches to the task of data capturing, they agreed that the underlying goal of all data capturing was to advance the objectives of the organisation. The emphasis was, therefore, on the benefits of proper data collection, in that stakeholders, funders, governance and organisations could rely on the data to make informed decisions about revamping strategic processes and eliminating non-crucial activities. Attendees were impressed by the different data capturing methods discussed by the panel, and some indicated that it would be a tool they would look to integrate in their own organisations.

Relationships between attorneys and candidate attorneys

The next session focused on the *sui generis* nature of the attorney/candidate attorney (CA) relationship at law clinics. Speakers on the panel viewed the relationship from both perspectives and considered the obligations and responsibilities of these parties in terms of the Legal Practice Act 28 of 2014 (LPA). Speaking from the perspective of a CA, one panellist described the challenges they faced when it came to their contract of employment. Especially concerning was the 'grey area' with regard to the evaluation period, which many CAs were subjected to as new employees. During the first three months of a CA's articles, they are still under probation as new employees and can, at least in theory, be dismissed quite easily during this period. The panel considered the differences between CAs in law clinics and those in private practice, agreeing that law clinic CAs generally have more responsibilities, because of the quantity and quality of cases assigned to them.



Session four focused on the role of law clinics in driving impact, in a wider sense, and impact specifically litigation. Speakers referred to several examples of the work of law clinics in this regard. The panellists were divided in their opinions of whether all law clinics should be involved in impact litigation. However, the majority of attendees agreed that the activities of law clinics in the past have been a driving force in making a positive impact in their communities. Impact litigation does not only affect immediate change, but creates awareness through advocacy to influence policy, which results in a positive impact on indigent and vulnerable people on a wider scale. Despite having limited resources at their disposal, law clinics should be sensitive to issues where they can still employ strategies to achieve law reform. An international perspective from Coventry Law School addressed the use of innovative technology in law clinics and CLE as a tool to push the boundaries and create pedagogical impact. The panel concluded that law clinics play a pivotal role in their communities, because they often change lives, and sometimes even change the law.

Sustainability of law clinics

The difficult question about the sustainability of law clinics was under discussion in session five. Panellists emphasised the value of law clinics in facilitating CLE, as well as the need to understand the contemporary challenges that accompany it. Clinical Legal Education is now regarded as a global phenomenon, with students being central thereto. Law clinics should not only rely on the effects of practising law as a means to obtain funding, but should also seek academic assistance from their respective institutions. Law clinics were originally a student initiative, and students are still invested in the training offered by law clinics. When universities recognise the impact that clinical training has on students, they will be more willing to assist, as law clinics are ideally placed to support transformative legal education. The value of law clinics is shown through the real impact and effect on individuals, often those most vulnerable. In order to sustain a law clinic, one must consider innovative and creative new avenues of financial support and cut unnecessary costs to manage law clinic expenditure.

Transforming law clinics

The speakers in session six, which was dedicated to the topic of transforming and/or decolonising law clinics, debated the notion of whether law clinics can be considered decolonised spaces. Issues discussed included how they needed to consider, when teaching law to law students, not just the curriculum, but also how lecturers teach and



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the first exposure LLB students have to legal practice, a student's mindset can be transformed due to the influence of the law clinic's social justice agenda. The demographics and backgrounds of the students involved in the law clinic need to matter, as does the need to develop a professional relationship, encapsulating a human element, between students and law clinic mentors. Speakers also suggested that enforcing a policy, which recognised English as the official language of legal practice in the courts is prejudicial, as English is not the mother tongue of most people in the country. In regions with a dominant indigenous language, that language should be acknowledged and confirmed. Ultimately, panellists and attendees accepted that the legal fraternity faces a new reality and that it should serve its communities in the spirit of *ubuntu*.

Education versus access to justice

The penultimate session focussed on the important 'education versus access to justice debate in law clinics', and the speakers on this panel grappled with the fundamental question of whether clinics should exist primarily to serve indigent clients or to teach enrolled students. Due to the limited resources available to expend on these dual functions, clinicians have to divide their time between professional attorney's work, in other words assisting clients with their cases and court appearances, and their teaching responsibilities. Panellists were divided on where the primary focus should rest, some opining that because university clinics historically had their birth in the provision of access to justice, this should remain as the overriding mission. In this view, student education should support and facilitate client services, and care should be taken that clients are not treated as training 'instruments'. Others argued that clinical legal education should not be seen as secondary to access to justice. Proponents of this perspective argued that when the focus was on proper mentorship and supervision of students, the necessary result was increased and improved access to justice. Attendees agreed that both of these goals should and could be achieved, albeit to varying degrees. Ultimately, the challenge is to manage this tension effectively and to structure clinical activities in such a way that education mobilises access to justice and clinical legal education remains an effective expression of social justice.

Time management

The speakers on the panel of the closing session considered the life of a clinician, namely: Prioritising and time management. They discussed the options to manage a clinician's time effectively, so as to avoid compromising the quality of their work due to their many



the law faculty. Each of these tasks come with its own responsibilities, and it was suggested that clinicians are required to be masters of various skills. Panellists were sceptical about any clinician's ability to attend to all of these tasks, and to do so in a successful manner. One solution might be to identify certain persons in the law clinic who should specialise in more particular tasks, such as research. In this regard, it was suggested that law clinics, such as the Stellenbosch Law Clinic and the Witwatersrand Law Clinic have presented the movement with successful models to emulate. One speaker emphasised the importance of prioritising tasks, suggesting that tasks that could not be eliminated, delegated or automated, should be done immediately.

Closing remarks

The conference laid the platform for continued constructive discussion and debate. It has also undoubtedly assisted in entrenching collaboration between South African university law clinics.

- More information about the conference can be found on the SULC website at www.sulawclinic.co.za (<http://www.sulawclinic.co.za/>).

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