

If you build it, will they come? Innovation and Sustainability in Clinical Legal Education

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First of all, I'd like to thank the Law Faculty at the University of Hong Kong for giving me the opportunity to speak with you on a subject that I hope you will find interesting. And my apologies for not being in Hong Kong in person. I shall remedy that with a visit in the near future. The question for this presentation relates to whether if you build it, will they come. I'm thinking in particular of students and whether they will engage in clinical legal education, I'm also thinking of clients. Will they take the opportunity to obtain legal assistance? I'm also thinking of academics and whether they will take the opportunity to be involved in experiential education. This is the range of challenges that are involved.

In my experience, based on the experience here at Monash, if you build it, they will come in droves. And one of the key things involved is to keep adding to our suite of clinics and design in ways that are intended to integrate the clinical academics with the rest of the Faculty. So, I am interested in how my Faculty can effectively plan for the effective introduction of enhanced opportunities for students to engage in experiential learning.

The Monash Law Clinical Guarantee

Monash now offers a Clinical Guarantee to all commencing LLB and JD students, giving them a guaranteed opportunity to participate in the Clinical Program.

Parameters of the Guarantee

As far as the parameters of that type of an opportunity, we now have two key elective units that are the focus of the Guarantee. The first involves what I characterise as very intense activity with students engaging in work across a teaching period with direct client contact under close supervision at one of the clinical sites operated by the Monash Law Faculty. It's been a great tradition here at Monash and the great challenge, of course, is to honour that tradition while we build the program. Expanding it while retaining the key qualities of that type of learning rather than diluting the experience in the face of the imperative

to increase numbers. I'm confident that we haven't diluted that experience for the students as we are focused very closely on what we see as the key components for this type of experience for students. Firstly, it's an experience for which they receive academic credit. Secondly, it's intense in terms of being regular and sustained for a considerable duration. Students in some of our programs, engage over a 14-week period while others engage over a 17-week period. And so that really provides the opportunity for students to constructively engage in their work.

It's also about close systematic supervision of students. Skillful supervision is the activity that brings the learning experience to the highest level for our students if they are closely, systematically and effectively supervised. I also think it is extremely important to provide opportunities for students to take responsibility for clients in terms of engaging in being accountable to their clients, and to effectively serve their clients in an ethical manner. That's also very important. We're also focused on reflective practice being taught to students, practiced by the student and assessed as part of the program arrangements. And finally, it is important to have an effective classroom component which is integrated with the practice-based experience. We're not mandating that every student needs to participate. Rather, every student can choose to participate if they wish. I hope you are finding this interesting. It's very hard for me to tell and I really hope you find it useful.

Development of the Clinical Guarantee

The idea of the offering of a Clinical Guarantee was first proposed in 2016 by a visitor to our law school who is part of this conference, Professor Peter Joy from Washington University in Saint Louis. Peter was here at Monash as a visitor and he provided a report to my Dean in relation to the prospects for enhancing the Monash clinical education program. And he suggested that it would be worthwhile Monash considering offering that type of guarantee. This was subsequently supported by another visitor to our faculty, Professor Jay Pottenger from Yale University. It really struck a chord with both my Dean and the then Faculty Manager. And in lots of ways the guarantee has become their project. I'm the custodian, but in many ways it's fair to say that it's their project. So, I need to deliver.

Getting the Green Light

As far as getting the opportunity to deliver, I think it's worth reflecting on the type of process used. You need to avoid startling the horses, not providing those who are skeptical about the value of experiential

education with opportunities to do derail this type of major initiative. The Law Faculty took a very methodical approach, engaging a group of external consultants to prepare a business case for the introduction of such a project. And the clinical team worked closely with the consultants to develop their understanding of the context that we were talking about. There was then a series of sequenced approvals. The Dean and the Faculty Manager first needed to be comfortable, followed by the Faculty Executive, followed by the broader Leadership Group. And finally, there was approval obtained for the move to implement this arrangement by a full staff meeting of the Faculty.

There were people who were concerned in relation to how this work and that it could become an unjustified drain on the resources of the Faculty. Also, there are people who just don't get it. It was very interesting for me that one of those people who would admit that he doesn't get it, in a conversation said, "look, to run and implement something like this, everybody needs to be rowing in the same direction. We all need to be in the same boat and rowing in the same direction. I'm not going to row in that direction but I will take my oar out of the water. For some colleagues, that's as much of an endorsement as we're likely to get until they see the way in which there's great potential for multiple benefits from these sorts of activities. In particular, there's great potential for benefits in relation to the practice of law and in the advancement of legal education.

Support to Build a Sustainable Program

Resources are also going to be really important. And this was a project which was the recipient of support from the Law Faculty's Strategic Investment Fund. And it was also the beneficiary of generous capital commitment from Monash University and that's really because this type of experiential education, with a focus on preparing students to be professionals of the future, both within the legal profession and in other functional fields, is seen by Monash has having real benefit and is a priority. But of course Monash is fortunate enough to have the scale, both as a law school and as a university to achieve those sorts of ambitions. So that's been very important.

Getting Moving

One of the keys to this type of project is to socialize the ideas to gain the input of colleagues. In my experience, good ideas can come from unexpected places so listening more than talking is really important in relation to advancing these sorts of around. The clinical team here at Monash made a lot of approaches

to colleagues from the school and from across the university and partner organizations to participate in discussions. I produced a white paper setting out what I saw, based on my lengthy experience at Griffith Law School, as being the most important issues that we needed to tackle in advancing what is really a quite complex and multifaceted issue. It's a lot of balls that are being juggled at the same time. I did say to a colleague recently that I felt like I was juggling with knives. You've really got to be precise when it comes to how you go about engaging with the issues.

I met regularly with colleagues and sought to encourage their engagement with the project. With this sort of initiative, there's a honeymoon period where people seem to think to themselves, 'Okay. Well, let's give them the chance to see whether they can deliver on the things that they promised. And we made a lot of good use, I would like to think, of that honeymoon period. And I now have, fortunately, a really great team of people who I can work with. There were people here already who were very effective. That's been supplemented by some key hires to take this project further. I think that there needs to be a balance between looking in and building on your existing knowledge and tradition, as well as looking around and bringing in new people with fresh ideas, bringing those people together. My role has been to provide leadership to have those talented people work as collaboratively as possible. I'm not saying it's all been easy but it's been a great challenge in lots of ways. The rest of the presentation I'm hoping will suggest to you that we're having considerable success in that regard. And I'm hoping to offer some ideas as to how you might consider implementing such an initiative if that is of interest to you, your colleagues, and your law school.

Key people who have been appointed include a great project manager with whom I work very closely and who really has taken on this project as a mission to pursue. We also recruited from elsewhere in Australia, a practice manager as well as a Clinic Director for Monash Law Clinics. . We also have received very valuable advice from Professor Leah Wortham from the Catholic University of America in relation to how we ought to go about taking this project further.

The capital expenditure was able to see us double the size of our key clinic site here at the Clayton Campus of Monash University. We also opened a new clinic in the central business district of Melbourne. Several of your colleagues from Hong Kong University attended the International Journal of Clinical Education Conference that Monash hosted in November of last year. Your colleague Julianne Jen could tell attendees about the way the Monash City Clinic operates.

We've also expanded a wide range of clinical placement opportunities for students to be involved in group-based work under close supervision in an array of specialist areas of clinical practice that are listed on the slide. We are very actively involved in the work related to the abolition of the death penalty and are doing international economic law work with the Geneva-based group, TradeLab. We have a special partnership with the Australian Law Reform Commission. One of my colleagues here in the Law Faculty, Professor Jean Allain, our Associate Dean for Research, is an authority in the area of modern slavery. He has developed a clinical placement in the particular area. My colleague, Professor Adrian Evans has developed a climate defence clinic, which has just run for the first time. And my colleague, Associate Professor Rachel Spencer has been responsible for the development of an innovations and start-ups clinic with other elements of Monash University.

Policies and Consistency

One of the things to focus on in implementation of this sort of program is the need for policy consistency. When you expand, you have a whole range of things that have been done in an informal way for a long time. Then, all of a sudden, the program is rapidly expanding and there are questions asked, in regards to 'well, how does that compare with this?', 'What do you do with that in our new arrangements?', 'Why do you do it that way? I've always done it this way.' We've sought to ensure equality of opportunity and workload for the students and for academics, making sure that we can come up with comparable arrangements. There are challenges in regards to balancing faculty and clinic priorities. There are some faculty colleagues who we would really like to have supervising in our clinical program but my colleague, Professor Marilyn Pittard, the Associate Dean for Academic Resourcing needs them to teach in classroom-based units. I've commissioned a Parity Project to look at making effective arrangements which ensure parity across the participating students, and across the participating faculty members.

Clinical Program Growth – Student Places

Here is a slide to boast about. At least that's the way I look at it. This slide indicates the growth of the program. If you look at the number of students who participated two years ago, in 2017, 206 students participated in the clinical program. We will have 419 students participate in 2019. You'll see that there has been growth in relation to each of the key parts of the program. The very intensive Professional Practice unit, practicing community law or family law, in the range of in-house clinical placements and in

external placements. There's been growth right across the board and that's a credit to the Faculty and to the team I work with.

New Clinics, New Collaborations

This slide gives you a sense of some of the new clinics. I have referred to several of these already but you'll see there are other ones, which involve new opportunities in areas related to advocacy and the development of a virtual clinic by my colleague Jackie Weinberg. We are developing an additional human rights clinic with colleagues here in the Law Faculty from the Castan Centre for Human Rights, as well as the freedom of information and in the area of Street Law.

I've been working with Lindsay Ernst from The University of Hong Kong in relation to the operation of Street Law programs, and Monash has introduced this new program, which I see as part of the process of preparing students for an intense clinical experience in one of our law clinics.

Enhancing Quality

In the process of developing the program, we need to ensure that we're not just maintaining quality but enhancing quality. So there have been a range of initiatives to improve supervision practices, and also improve how we prepare students for their clinical experience. Street Law plays a role in that but I would like to think we are also much more systematic in the induction process that we now use. And we've also revised the classroom component of the seminar program. We've also changed the assessment arrangements with a view to building on good practices elsewhere to enhance what we were doing in that regard.

Blueprint for Program Expansion

So I offer this slide as a blueprint for those of you who might be considering expanding your program. It really helps to build on your existing areas of strength and networks. You shouldn't be a hostage to those areas but it really helps to have experience on which you can choose to build. It's also been very useful for us to be offer a diversity of practice opportunities to students. Many of them are interested in engaging in particular areas, ones that have struck a chord with them. And so those are the things that I would emphasise, as well as the matters referred to earlier in this talk, in terms of developing the depth and

intensity of experience, building the classroom component, emphasising reflective practice and making sure that you effectively serve your communities.

Key Insights

I think, from our experience, that it's very important to be clear in relation to who's responsible for leading these programs and what it is you want to achieve. Build the structures, consult early and do more listening than talking. It seems to me that's one of the key insights here. Be mindful of the fact that there will be turf sensitivities and people will want to have their experience and knowledge respected. You should pay respect and encourage ownership of these new initiatives on the part of those people. A lot of my time has been taken up with trying to persuade colleagues to proceed with initiatives. They're very good 'pothole spotters'. They can be classic lawyers, going immediately to what could go wrong instead of thinking about what potential opportunities. So, accepting the uncertainty and thinking creatively about how you can make change and build on your strengths is really important. And I've also said on many occasions, don't let the perfect become an enemy of the good. In many situations, it's important to get things up and running in order to then be able to be effective in reviewing them, and then improve them from there.

We are interested to share our experience

And so thanks for listening. I hope this has been useful, I would be very happy to talk with any of you in relation to the Monash experience. I would encourage you to think in terms of expanding your programs. Our target for next year is to have 500 students involved. It really is a significant program and I'm proud to be part of it. So, thanks very much, I hope you have a great conference.