

# **The CLE Programme at HKU: Any room for an Inter-professional Approach?**

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I thought I'd spend some time today basically outlining what our clinic does. It seems after hearing some of you today, ours is actually relatively new. It was set up in 2010. I'm arguing whether going forward, our clinic should take a more inter-professional approach. But before we start, I thought I'd quickly talk about the legal training in Hong Kong, because we have people from different jurisdictions here today, and the path of training might differ.

The legal training module presently in Hong Kong mirrors that in the UK, so our UK delegates would be familiar with this path. It's similar to the UK where our students have to do an undergraduate degree in law. It should be a common law degree. They then take a PCLL course which is equivalent to the LPC course in the UK. And then for trainee solicitors, he or she will then undergo two years of training in a law firm and one year pupillage at the barristers chambers for barristers. So actually, before they go into practice, before they qualify, they actually have had undergone a one-year legal skills training course and they would have also had on-the-job training. So in Hong Kong, actually, the eagerness for students to actually take clinical elective is rather smaller than that in Australia, for example, where their legal training course is relatively shorter.

As far as pro bono legal services in Hong Kong is concerned, unlike our UK counterparts, we still have some form of legal aid. Although the extent is arguable, I mean I have met still a lot of people who are, in a sense, not "poor" enough for the legal aid, but yet again they cannot afford the legal services, which in everywhere now is getting more costly. So we are still seeing a large amount of Hong Kong citizens who may be able to meet the merits tests but not the means test, and yet they can't afford the expensive legal services in Hong Kong. In Hong Kong, we don't have the contingency fee either, so it's very difficult for clients to actually get any advice, to get their case going, because some lawyers may offer one-off free advice for like an hour, but the minute that finishes, they have to charge. So a lot of times,

many clients actually do not know the merits of the case, whether it's good or bad, even to proceed. In that respect, there are a lot of unmet legal needs in Hong Kong. Apart from legal aid, there's of course the duty lawyer service. But in relation to civil cases, that's a one-off advice service. The Bar (Hong Kong Bar Association) legal service also offers some free schemes, but usually they are ad hoc, and you have to apply to the Bar to see if there are merits for that case. For procedural matters, of course, the judiciary offers some guidance to litigants in person. But again, not too extensive.

So as I said, there are a lot of unmet needs, primarily a lot of, as I said, citizens who actually don't meet the means tests for the legal aid. And also in relation to a lot of the schemes, there is no formal legal representation, say for the entire proceeding. In Hong Kong, there are also proceedings in the Small Claims Tribunal and Labour Tribunal, where legal representation is not allowed. So there is scope I see, for some legal advice or pro bono help to be provided to litigants there. That led us to think about our clinic. Back in 2010, it was the first time we provided a live client clinic here in HKU. Actually, for those of you who are interested, the HKU clinic is now just underneath this building on the ground floor. If you take the MTR and exit from Exit C, you actually see our clinic premises now right opposite to our Cheng Yu Tung Tower on the ground floor. It's the first clinic in Hong Kong. We found the need there and, I don't think I need to go through the benefits of clinical education. Dr Pan has talked a lot about that and I'm sure all participants are very converse with that. It's clearly something which we wanted to do, and that's why it was done in 2010.

For the interest of time, I'm going to skip through the objectives. Just to talk about how our clinic works. Unfortunately, the problem with our clinic is, it's not a law firm. So in Hong Kong, the difficulty our clinic has is we still cannot take up the cases. In Hong Kong, The Law Society requires law firms to be set up for legal representation in the courts, so taking on full-blown legal cases is still what we can't do. We are operating under the auspices of the Free Legal Advice Scheme (FLAS), where our duty lawyers who are practitioners, will provide one off legal advice to clients. Usually the students will interview the client, the students will prepare a case summary and conduct some research. The duty lawyer will then take on the case. He will discuss the case with these students, talk about what plans they are thinking about. And then the duty lawyer will meet the client with the students, and provide that one off advice. The flexibility with our clinic is that we may not just finish with the one-off advice. We provide the flexibility where at times, when we feel the client clearly has reasons for the case to proceed, then we

may provide more assistance. A lot of times we have actually found, say for example, downtown law firms who are willing to take up the case pro bono, or willing to assist the client further. So in lot of the cases, although it's a one-off advice which we offer, in exceptional cases, we do actually go beyond the one-hour advice scenario.

We mainly teach the course through apprenticeship. We have about 18 to 20 students per semester, they are paired up. And for each case, which will be allocated to a duty lawyer, they will follow or be led by the duty lawyer in the case. So say for example, my expertise is in commercial dispute resolution, although I actually do a lot of medical negligence cases in practice, so at our clinic, I actually take up personal injury cases and medical negligence cases. And at any time when a medical negligence case comes up, the clinic will refer it to me as a duty lawyer. I will supervise the two students who come and see me. In my practice, I usually see the client more than once. With medical negligence, there're a lot of difficult expert issues which often I need to explain to the client, and oftentimes I would probably have to go beyond that one-hour advice session. Apart from working on any case, on a case-by-case basis, every week there will be weekly seminars and group discussions, where the course coordinators will pick up some interesting cases, whether it's because of the subject matter of the case or because of the procedural issues of the case, where the students will discuss in a seminar, sort of tutorial format. It is also through these weekly workshops, where we will teach skills like interviewing, research writing, and how to take a memo, and things like that. So that is predominantly how the course is taught. I realized when I was looking through this slide this morning, I actually did not tell you how our students will be assessed. One of the things I would like to put forward for our clinic, as far as assessment is concerned, is making it actually more formal. At the moment, the course is assessed on a pass/fail basis. So basically on how the students perform with the duty lawyers and at the seminars. The reason why we don't put in anymore formal assessment regime is because really of the lack of resources. We actually have 3 full-time course coordinators who are extremely busy handling the cases already. I always wanted to introduce more formal assessments. I think having visited many clinics and going to many conferences, one of ideas which I have, which my colleagues have not agreed with me yet, is for there to be an introduction of reflective journals in the assessment regime. I am somebody who agrees a lot with reflective practices and I feel without that reflective journal, the students' learning process may not be as wholesome. I think if I want to have that done, maybe I have to mark and supervise them all. That's not happening yet, but that's something which I would like to see going forward. And indeed I think if we

are thinking about expanding our clinic, and hoping more students to come to join the clinic, that would be something which we will need to think about. At the moment, because it's a pass/fail course, the popularity among students is not too great, because a lot of them actually require a high GPA to enter our legal practice skills programme, the PCLL. So a course with no marks which does not go into their GPA is not attractive to them. The good side of that, however, is students who actually join our course are very good students. They know they don't need the credit for clinical legal course to make up that GPA. So a lot of students who come through are actually quite good students in our university.

The types of cases we cover at the moment. We are operating more like a general practice clinic, so predominant number of our cases are criminal appeal cases. Mr Eric Cheung, one of the course coordinators, is very renowned now within a lot of prisons in Hong Kong, because every time there's a criminal case and the inmates think that they want an appeal, they would write to Eric, asking him to review the case. So a large amount of our resources is spent on these criminal cases. As I said, I usually do PI/medical negligence cases, we also have a whole range of family, contract, tort cases. As to the work which we do, in my practice, I can give an example. A lot of times actually when the client comes and sees me, they have actually been through many consultations downtown, and they've been told "I'm afraid your case doesn't have merits." When they come to me, usually I tell them the similar news but I usually spend much more time with them to explain the reason why. I think maybe because I'm a teacher and I'm used to teaching my students how to give advice to lay clients and I actually have much more time spent to explain to them, a lot of the times they understand and they would say "OK fine." The problem they have downtown is not that our practitioners are not competent, it's just that because there's no contingency fee, and the practitioners are often very busy, they don't find too much time to explain to lay clients why there is no case. So luckily, I actually do a lot of that. For me, it's a good done to our society, because it just makes it less litigious. But large amount of my work actually though, is reviewing cases. And where I think the client actually meets the means tests, but somehow may not actually meet the merits test. When I review the papers, I find actually there may be some merits in the case, and a lot of times we would write to legal aid to say actually we see the case differently, and persuade the legal aid to grant legal aid to the applicants. So one of the cases which I've done, as a quick example, in my expertise in medical negligence, the case actually concerned informed consent, and we all know informed consent is actually a factual matter. However, the legal aid had received several expert reports, saying that actually the doctors were not negligent. My advice however was, it really

doesn't matter what the experts say, because whether the patient had given informed consent or not was a factual issue, which has to be determined at trial. So at the end of the day, I persuaded legal aid to actually take up that case for the client on this point. So that's some of the work we do as well, and at the moment, I can say we actually have a good relationship with the legal aid department where they will sometimes listen to our opinion, and we try and work out something for our clients. So that's part of what we do as well, apart from a lot of times, offering advice about disputes on contract, tenancy agreements, water leakage and things like that. As far as caseload is concerned, I'm glad that we actually maintain a caseload where we have sufficient cases for our students to work on. And just catching on to Dr Pan's comment that actually the students only work on the case for a semester. For our clinic, we provide some continuity where we employ a lot of student research assistants in the clinic, so they can actually provide the continuity in the clinic in case the students finish their semester of work.

One of the things which I was quickly going to talk about as I'm quickly running out of time, is to advocate a multidisciplinary approach to our clinic. I came across this very good quote, "human service professions are facing problems so complex that no one discipline can possibly respond to them effectively." So going forward, I think our students face issues which not just one general practice clinic can offer.

In relation to jargon, if you read the literature, there are many debates as to whether it should be inter-professional, multi-professional. I don't have time to go through each and every one. The reason why I choose inter-professional is because "multi" denotes just more than one. I think in choosing inter-professional, I can showcase how the professions work together. And I choose professional because my argument is, for different professions to work together, rather than just a discipline. For a discipline, we can meet different disciplines in law working together. But I'm really advocating inter-professionals. In the research I've done, the best example of a multi-disciplinary clinic is Monash, where they have law, finance and social work students working together. My understanding of that clinic is it usually concerns things like debt recovery, and where clients find themselves needing to restructure their debt or, having to face demand letters and things like that; Georgia State University College of Law, they have medical and law students working together, under a health-law partnership; Portsmouth, they have nursing and law students working together; Utah Valley State College, they have business and law students working together; and in Nigeria, it's more law students working with other professionals. The advantages I see

with sort of that approach is it actually brings reality to the actual problems faced by clients nowadays. It's not one-off. The benefit of course is also students learning from each other. I've read from literature, different students have actually different character strengths in studying. For example, when I read about this in the research, nursing students are found to be better at giving bad news, by treating the client like a person and better empathy. I actually teach social work students law, and I also feel my social work students have much more empathy and much more interest in justice, more than my law students. Law students, of course, they have their own benefits too. They are critical thinkers, their writing skills are good. In Hong Kong their English is very good. It also helps students at a young age to enhance teamwork communication. In my area of practice, medical negligence, my law students have very much difficulty understanding medical literature. So at all of the times, I have to explain a case to them – not just the law but also the medical aspects. Last month, I was writing a proof of evidence for my client, and it took them three rounds because they actually didn't understand the case. I would benefit a lot if they were working with medical students for that case. For me, in teaching a lot of professionals law, I find a common sort of topic with professionals: discipline, ethics, client confidentiality, and things like that, are common topics which all professionals are interested in. If we have an inter-professional course, it would actually streamline teaching of all those disciplinary issues.

At the HKU clinic, I'm thinking the easiest partner we can work with is social work students, because I actually teach law at the Social Work Department. I also feel because of the amount of PI medical negligence cases, I'm getting medical and dental profession. I also see startups. Nowadays people are encouraged to do business, I'm thinking transactional, you can also do that. I also give a lot of advice to teachers. In Hong Kong, there're so much litigation or disputes concerning schools on negligence or tort issues, so that would work too. Possible challenges we have is the differences in student learning. In some research, I read that actually law students, like to prepare in advance, whereas medical students, they just prepare on the spot. That's the literature I read. Resources is obviously a big problem. How are we going to get all the teachers to supervise, etc. One big problem also is aligning of the learning activities and outcomes. I'm sure different professional courses will have different credits, different course times, different learning objectives and learning outcomes, whether we share a common interest remains to be explored. The most difficult thing I'm thinking about is to find suitable collaboration partners, but I think with HKU, with many faculties, I am more optimistic on that. The main problem is the sourcing of the caseload. In a lot of literature which I read, these multi-disciplinary clinics are

actually able to get off ground, because they actually partner with say a social work NGO where they offer a caseload, or they work with some clinics to help. In Hong Kong, I'm thinking maybe of setting up outreach programmes or working with NGOs partnering, but that may not still guarantee the amount of caseload which we need for a course. Insurance obviously is an issue and I'm sure the university should be able to cover insurance on that. So I'm afraid I basically spent the time and I very quickly went through my thoughts and proposals. So that's my talk, thank you.

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