

# Clinical Business Law Programs at Robson Hall

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JOHN POZIOS<sup>1</sup>

## I. INTRODUCTION

I would like to start off by thanking everyone for being here. Today, I will talk about the L. Kerry Vickar Business Law Clinic (Vickar Clinic), its offerings and the experiential pedagogy connected to the Marcel A. Desautels Centre for Private Enterprise and the Law (Desautels Centre) at Robson Hall.

The history of the Vickar Clinic at the University of Manitoba actually began decades ago. A local practitioner named Reeh Taylor, founding partner at Taylor McCaffrey LLP, supervised business law matters that Robson Hall students managed and generously provided *pro bono* legal advice under his license as a member of the Law Society of Manitoba.<sup>2</sup>

The Vickar Clinic is only part of my overall mandate here at our law school. Under the umbrella of the Desautels Centre, we deliver experiential offerings connected to research priorities. When I was hired, I had the opportunity to work with the dean and to speak directly with the donors about the Desautels Centre's programs and objectives. These donors were Marcel A. Desautels, who donated 5 million dollars to establish the

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<sup>1</sup> John Pozios, JD, MBA, Director of both (i) the Marcel A. Desautels Centre for Private Enterprise and the Law, and (ii) the L. Kerry Vickar Business Law Clinic. Based on the transcript of a presentation that was delivered at the ACCLE conference on October 19, 2012 at Robson Hall, Faculty of Law, University of Manitoba.

<sup>2</sup> The Small Business Law Clinic, formally operating as Small Business Law Clinic (MB) Inc. under the aegis of the Faculty of Law, University of Manitoba.

Desautels Centre, and Kerry Vickar, who started off supporting the Vickar Clinic with \$25,000 per year and has now doubled that commitment to \$50,000 annually. This put a lot of gas in the tank to do what the donors ultimately wanted us to do, which was to tie the theoretical business law curriculum to a practical offering that gives students skills they can carry with them through their articling year and beyond.

Upon canvassing other clinical programs in North America, we decided that the Vickar Clinic would not actually offer legal advice. If we had a dedicated lawyer to supervise, the Law Society of Manitoba would likely allow the Vickar Clinic to give legal advice. Even though we don't offer legal advice, however, a supervisor (who is a licensed practitioner in Manitoba) is assigned to each file. So, a supervising lawyer does oversee the file with a student, and the student offers clients legal information.

I will speak about the Vickar Clinic in greater detail later on. But, initially, I want to discuss what we have done in terms of courses since I was first hired as the founding director of both the Desautels Centre and the Vickar Clinic in 2006. I'd like to introduce you to the curriculum we have developed around experiential pedagogy.

## II. THE DESAUTELS CENTRE

The Desautels Centre's mandate to address issues related to private enterprise and the law has two dimensions: research and teaching.

On the latter, Robson Hall had two courses that we offered for decades that were quite successful overall. One was called "Solicitors' Transactions", and the other one was called "Business Planning and Finance". Both courses were taught by sessional lecturers. Solicitors' Transactions, in particular, featured small groups of students attending classes in the boardrooms of local law firms. While the host practitioners were all well-intentioned, it was hit or miss as to whether or not the students had a good experience. Very little was controlled by the Faculty of Law, other than assigning the students to the law firms.

Practitioners were given a general mandate to teach the students about solicitors' work but there was no consistency in the curriculum. So, while you might learn a lot about, say, share and asset purchase transactions at one firm, at another firm you might spend a lot of time drafting wills. It was a great program for the years that it was offered, but I had the opportunity to sit down with the dean and the donors to consider retooling the curriculum from the ground-up.

As a result of these discussions, we combined the essence of those two courses and created one year-long course called "Business Transactions: the Art of the Deal" (Art of the Deal). I will talk about the content of this course in some detail in a minute.

Additionally, to the extent that moot competitions were offered as an experiential learning option for students to participate in, it was noted that there was nothing akin to the annual Corporate/Securities Law Moot offered by Davies<sup>3</sup>. So, for the last 4 years, the Desautels Centre has sponsored a Robson Hall team co-coached by Professor Darcy MacPherson and me.<sup>4</sup> Four students are chosen to represent our law school at the competition which takes place in Toronto the first week of March every year. The teams are divided into two pairs. This competition is unique because each pair argues once on behalf of the appellant and once on behalf of the respondent. It provides the students with an excellent window into appellate advocacy in a business law context.

From there, I began looking at the offerings of the Vickar Clinic itself: essentially a volunteer clinic for no course credit. After completing a review of North American law schools, I found a number of interesting models for business law clinical internships in the United States which I will return to in a moment.

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<sup>3</sup> Annual Corporate/Securities Law Moot Court Competition hosted by Davies Ward Phillips & Vineberg LLP in Toronto.

<sup>4</sup> Moot competitions that are approved by Faculty Council at Robson Hall entitle student participants to 3 course credits.

From that research, I created two courses for three credit hours each: (i) the Business Law Clinical Internship, and (ii) the Corporate Counsel Clinical Internship. The latter is possibly the first of its kind in Canada (although I am prepared to be corrected).<sup>5</sup>

### **A. Art of the Deal**

The Art of the Deal is a full-year capstone course offered exclusively to third year law students; it is a faculty-led course where, in 26 weeks, I deliver 19 lectures on legal issues related to various transactions, organize three negotiation exercises, and spend four classes on non-law, yet relevant, business subjects such as financial accounting, valuation, corporate finance, and succession planning. The point is to demonstrate the interdisciplinary nature of corporate commercial practise, and to talk to the students about delivering value as an advisor when you get out into the field. One must understand that you don't practice law in a vacuum and you have to appreciate the context within which professional services are provided.

The three negotiation exercises are hosted at local law firms and supervised by experienced counsel. The exercises are usually based on a fact scenario dealing with a shareholder agreement, a share or an asset agreement purchase agreement, and a venture capital term sheet negotiation. The VC term sheet scenario is a somewhat quasi-legal negotiation that gives the students a taste of what a venture capital financing might look like.

Additionally, I have created a simulated clinical offering operated in conjunction with the Stu Clark Centre for Entrepreneurship here at the University of Manitoba's Asper School of Business (Asper School). Art of the Deal students act as "counsel" to students enrolled in the New Venture Analysis and

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<sup>5</sup> These courses are more properly called externships since the students are placed outside the law school environment at private firms or legal departments within an enterprise. According to my discussions with the Canadian Corporate Counsel Association, I do not believe any other faculty of law in Canada assigns students to "in-house" placements in connection with a course offering at the time of writing.

Business Venture Analysis courses at the Asper School. The Asper School students, acting in groups of four or more, are usually working on a business plan for a start-up. They are generally trying to commercialize some new technology that they sometimes get from the technology transfer office here at the University of Manitoba, or their own business ideas.

I should note that often these teams go on to compete and win large prizes, including one \$20,000 top prize that I remember was won recently.<sup>6</sup> Often, what I try to do (and what the business school has allowed me to do), is work with their students so they realize that, if these were real businesses, they would have to think about the rules that they were running their business by, and that they would generally need some form of business organization governed by the type of rules found in a partnership or shareholder agreement.

What we have done in the past, as part of the assignment in both faculties, is to have the business students work with the law students to draft a partnership agreement for their competition team. Students from the Art of the Deal act as “counsel” to their business student “clients” and, while not giving legal advice (this is for educational purposes only), often speak glowingly about this simulated exercise. In their end-of-year journals, this exercise is often identified as one of the most interesting things that the students get to do. They register for the course not knowing what to expect; often the business students think they are just going through the paces. But, this attitude changes once the students get down to interviewing and drafting. The students begin to figure out what the rules could be: on what terms would we accept a new team member, how are we going to terminate a relationship with a current team member, etc.? Then, they start thinking about what happens when someone isn’t carrying the ball. Then, they try to image what might happen if the project turned into a real business: what are we going to do about it? Some of these projects

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<sup>6</sup> The team of Asper School students won a venture capital investment competition hosted by the Tepper School of Business at Carnegie Mellon University.

do in fact turn into real businesses, and you can give them the option to go seek legal advice in order to enter into a formal legal agreement once they have graduated.

The future goal is to host an international venture capital term sheet negotiation competition funded by the Desautels Centre and delivered through the Vickar Clinic that would work in conjunction with a business planning competition. Ideally, I'd like to work more closely with the business school; they currently host a very well-respected business planning competition, and I would like to run the term sheet competition in parallel so that when business students show up from Texas, Berkeley, Northwestern and others (normally, there are 24 teams), law students from those institutions could accompany them. The idea is that after the judges have been pitched on a particular business, the visiting law students would represent their "clients" in a negotiation with Art of the Deal students who would be representing a venture capitalist fund. The ensuing negotiation would be over the details of a potential venture capital investment to go into the term sheet. The assumption is that all teams in the business planning competition would have been "green lit" for a potential investment. The venture capital term sheet negotiation would expose the students to the finer points of the potential transaction that follows the initial success of finding an interested investor.

### III. CLINICAL INTERNSHIPS

Let me move on to the clinical internships. When I did my research on what to do with the Vickar Clinic, I was less concerned with giving legal advice than I was about our relationship with the local practising bar. Because of Robson Hall's relatively unique situation as the only law school in the jurisdiction, we have a de facto local monopoly. Now, this has many benefits in the sense that we get excellent attention from the practising bar, and we have great attention from the bench.

However, interestingly, because it is a small jurisdiction, there are challenges that arise here that are not encountered by other clinics in larger jurisdictions. In looking at other examples of

clinics, I really liked some of the programming that Stanford has. For example, Jay Mitchell runs the Organizations and Transactions clinic there. Additionally, Thomas Kelley III at UNC Chapel Hill has developed some excellent internships and externships supporting their clinical program. What I found really interesting about the program at Stanford is that the students actually work on real deals (e.g. real estate transactions, etc.) in the Organizations and Transactions clinic, in addition to giving general legal advice.

One example of transactional work in a not-for-profit environment might be a charity renting a house and delivering front-line community-based services from there. Imagine that they receive a one-time donation of a million dollars to purchase the house they've been renting for the last two decades. They would represent the charity and complete the house deal.

According to Jay Mitchell, when they were originally looking to service the marketplace near Silicon Valley, the first question was: "Why wouldn't a business law clinic be working with start-ups?" The answer invariably came back as: "you have no idea how many lawyers are sniffing around town here, looking to do free work for the next Google or Facebook" just to get a shot at being their exclusive counsel. Given the heavy competition to assist start-ups, he decided to go after the not-for-profit sector because they could do something to benefit the community and still teach the law students relevant lessons that could be taken into private practise.

That was lesson number one. I took that idea back and spoke to the roster of supervisors that I work with in the Vickar Clinic. I received an interesting set of responses when I told them that we would be potentially working for not-for-profits, if we could convince the Law Society that it was okay for us to give legal advice and set ourselves up to do that. From a practical point of view, there was some concern that the Vickar Clinic might be competing for market share, inasmuch as there was a real or perceived threat that we would be taking business away from the local bar. And it dawned upon me that we didn't have as robust an economy as San Francisco or the Bay Area. Perhaps some of

these lawyers were relying on some of the work that they do for not-for-profits as billable hours.

So, I thought, I really like what's going on at Stanford. But, let us take a look at some other models to see if there are other best practices that we can follow. So, we decided to do something similar to what UNC Chapel Hill is doing. The Vickar Clinic manages the placement of student interns at law firms. Generally speaking, interns are assigned to participating law firms, or, as of now, in-house legal departments. And, students are registered with the Law Society of Manitoba as working under the supervision of a mentor. This entire program is funded by the Vickar Clinic.

The purpose was to allow us to create a faculty led, clinical experience tied to the pedagogical goals of both business and legal education. I would like to promote positive citizenship, and give students a sense of supporting local organizations. But, I would also like them to think like solicitors and think prospectively.

One challenge was that our law school only has two academic terms per year - fall and winter, with one summer term where no students take courses. Therefore, there is a lack of students to staff the Vickar Clinic when there are no classes scheduled. Consequently, we have decided to run the internship as a course during the fall and the winter terms, and, subject to funding, provide some paid student positions in the summer to fill the gap.

### **A. Business Law Clinical Internship & Corporate Counsel Clinical Internship**

The Business Law Clinical Internship is the course offering where I speak with local practitioners and explain to them: "we will give you an intern, we will give you a student who must apply to this program and has been vetted by me, but they cannot work on any files that you are billing on - this has to be work that you are doing for a not-for-profit or charity that is provided on a *pro bono* basis."

So, the file could be an existing client where there is a *pro bono* project in the works and the lawyer doesn't want to tax the firm's resources by assigning it to an articling student or associate. I



provide an intern who might be interested in putting together annual general meeting materials, perhaps doing asset searches, drafting governance policies, etc. The firms and organizations have to give our students six hours of work a week at their placement location, with the students participating in a further two hours a week in either feedback sessions or skills-based workshops. An example of a workshop that I gave recently concerned doing *PPSA*<sup>7</sup> and *Bank Act* searches.<sup>8</sup>

I try to tie the workshops back to the type of experience they are having. What's interesting about this is that, while we have had a terrific response from the not-for-profit community, it's hard to find lawyers who are willing to take on *pro bono* matters because everyone is busy.

Let me give you an example of one of the files. Winnipeg Harvest is the largest food bank in Winnipeg. They asked for some legal advice on a new initiative. I managed to get one of the local law firms, Pitblado LLP, to take on Winnipeg Harvest as a client. Pitblado generously staffed the file with a partner and an associate to supervise my students. Winnipeg Harvest had agreed to fund a community-based newspaper for their constituents ~ people who use the food bank.

The client wanted to set up a corporation, and because it was a newspaper, and there were all kinds of editorial board best practices, policies, and structures that had to be researched and explained to the nascent editorial board. The experience for my students is that they had to conduct research on what goes into incorporating and setting up a newspaper. They were supervised by one of the top firms in town. And, they actually got to work on the incorporation, interact with the founders on the articles, the bylaws, and talk to them about the editorial policies - a terrific experience.

The law firm has actually come back to me and asked me: "Do you have any more interesting files like this, because we think it's

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<sup>7</sup> *The Personal Property Security Act*, SM 1993, c 14, CCSM c P35.

<sup>8</sup> *Bank Act*, SC 1991, c 46.

great for us as well" (in terms of their profile and their community involvement).

Since we launched this program last year, I have managed to get the Corporate Counsel Clinical Internship approved as well. Obviously, not everyone who graduates in law will remain in private practise – quite a few people go in-house. I wanted to create a course that reflects that reality. I started talking to large local organizations, such as the local teachers' retirement fund (TRAF) and the local telecom company (MTS). To date, MTS has taken two of my students, and the TRAF has taken one of my students, and the legal department at the City of Winnipeg has taken four students. Additionally, Cargill has expressed interest in taking a student and there are some other large enterprises out there that have in-house groups willing to take students.

I have explained to these entities that I'd really like to restrict the work the students are assigned to corporate governance matters. I really don't want them to be working on transactions, or anything too sensitive. Examples of the type of work that is getting assigned are as follows: (i) proxies and voting, (ii) a document retention policy, and (iii) a number of other research projects that may be presented to a board of directors by the end of the term. I think these are really interesting projects because the students have to do the type of research that any in-house counsel would conduct: privacy, limitation periods, evidence, and the like. And, all of those skills have to be transferrable to private practice (I believe they are) – all of the students in the Corporate Counsel Clinical Internship and the Business Law Clinical Internship participate in identical feedback sessions and skill-based workshops.

These programs require six hours per week on location, and another two hours per week at the university. Those two hours give me a chance to shepherd the learning. In terms of the workshop, the type of subject-matter we consider is fairly basic: minute book reviews, various searches, filings, and the preparation of transactional materials.

Circling back to the beginning of my presentation, I talked about the fact that we used to give legal advice. We no longer give

legal advice at the Vickar Clinic and we have limited the menu of services because it is more manageable for a volunteer service.

Generally, the process at the Vickar Clinic is (a) an initial client meeting, (b) students go back to do some research, (c) students prepare a legal information letter that is vetted by a practicing lawyer, and (d) they have a second meeting where they deliver and explain the information letter to the client.

There is no course credit for the work done in the Vickar Clinic. The Vickar Clinic is run on a volunteer basis and has been reasonably successful. That said, I think we could spend a little more time enhancing the services. I would like it to provide legal advice one day. But, I have to be sensitive to the people who are supervising and mentoring our students over the long term. Thus far, it has exclusively served an urban market. Since we are the only law school in the jurisdiction, we do have a responsibility for more than just the City of Winnipeg. Consequently, I would like to move this service into a rural context – there is a huge agri-business economy in Manitoba and there is a lot going on. Ultimately, once we have mastered working outside the city limits, I think it would be tremendous if we can expand to Northern Manitoba, into Thompson for example, which is an urban centre far north of here. Furthermore, there are a number of smaller communities that could benefit from interactions with our law students. I think it would be terrific for some of the law students to open their eyes and realize that there are things going on outside the city limits.

#### IV. CONCLUSION

I want to finish with one last point: it takes a village. It's not just me who does all these things in a vacuum – it is impossible for me to do any of this without an advisory board, without administrative assistants, and without donors, obviously. There are also faculty members who have helped us all along the way. In addition, there are also a number of guest lecturers to thank – practitioners who provide precedents and other documents for my Art of the Deal course and supervise student in the Vickar Clinic. The Manitoba Law Students' Association has been extremely

helpful in working with us as well as our hosts at all the law firms. The law firms have to host six negotiations two to three times a year - that's 12-18 events that are graciously hosted at downtown locations. We have judges for the corporate securities moot - practice judges. We must lean heavily on the bar and the bench to test out our arguments in "real world" scenarios. We have corporate sponsors who have also contributed to funding a number of these projects. Of course, the Stu Clark Centre for Entrepreneurship at the business school - it requires their participation and their partnership - has been there for us year after year. And, the supervisors themselves who are managing the files are invaluable. It takes those key partners to take these services to market, to use a business vernacular. These programs are large endeavours and none of it would be possible without all of their help, dedication, selflessness, and hard work.

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## A Judge of Valour: Chief Justice Samuel Freedman – In His Own Words

**Edited and with notations by Robert G. Clarke**

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E-mail: lawjournal@umanitoba.ca

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Editors-in-Chief

Manitoba Law Journal

466 Robson Hall, Faculty of Law

University of Manitoba

Winnipeg, Manitoba R3T 2N2

Phone: 204.474.6136

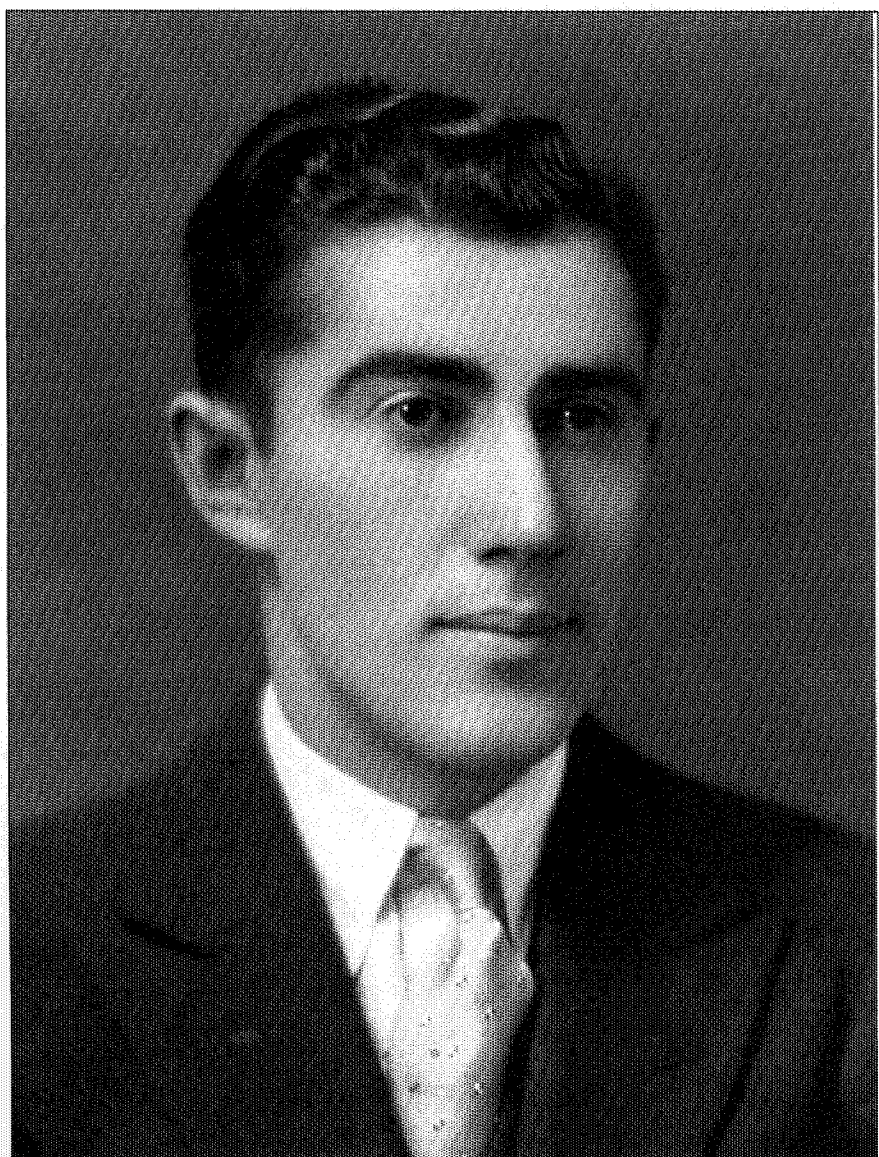
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E-mail: [lawjournal@umanitoba.ca](mailto:lawjournal@umanitoba.ca)

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SAMUEL FREEDMAN

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