

Innovative Thinking and Clinical Education: The Experience of the Osgoode Mediation Intensive Program

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I. INTRODUCTION

The legal profession has changed drastically over the last two decades, along with the world around it.¹ Complexities exist today that were not contemplated in bygone days. Correspondingly, lawyers and law schools must respond by challenging the extent to which traditional means of practicing and teaching can address this complexity. Despite profound changes that have occurred in the legal and social world, the ways in which lawyers learn and think have been slow to change. The legal curriculum that law schools have clung to, with a virtually singular focus on analytical thinking, is outdated.² Innovation is required. Innovative thinking must be taught.

Innovation, applying novel thoughts and ideas in new ways to resolve problems, has garnered considerable attention in the academic and popular literature of late.³ Discussion of innovation in the context of business and

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¹ For a review of some of the significant changes that have occurred in the legal profession, see Julie Macfarlane, *The New Lawyer* (Vancouver: UBC Press, 2008).

² To be sure, there has been some significant thinking and efforts in legal education over the past 10-20 years, but changes have occurred minimally and slowly; see e.g. William M Sullivan et al, *Educating Lawyers: Preparing for the Profession of Law* (San Francisco: Josey Bass, 2007) [Carnegie Report].

³ David S Weiss & Claude P Legrand, *Innovative Intelligence: The Art and Practice of Leading*

technology is commonplace, however, such concepts have yet to permeate meaningfully into the legal realm. Where such discussion does occur, the focus is on the product of innovation rather than the process. The innovative thinking process, requiring both creativity and application, is indeed germane in the law school context because we are facing a different legal world than the past decades provided. We need innovation in what we teach and how we teach it and we must instill the capability to be innovative in our students. This capability will serve students well in the legal world they will enter.

A legal culture that understands and applies innovation is needed, as new ways of thinking and acting are constantly required. Lawyers will increasingly have to think innovatively and the capacity to do so must be supported in the law school curriculum. Clinical education programs, which are becoming critical to the new conception of legal education, offer the ideal environments to establish and encourage the use of innovative thinking. The new pedagogies achievable through clinical programs have the potential to address the current realities of the legal profession and allow for the development of different aptitudes and different ways of thinking like a lawyer.

In this paper, I explore why the needs of law students have changed and how the concept of innovation helps address this change. In addition, I introduce the concept of innovative intelligence as a mode of thinking required by lawyers and explain how analytical and emotional intelligences contribute to the development of innovative thinking. Following these sections, and by reference to the Osgoode Mediation Intensive Program (MIP), I propose curricular elements that can be used to foster innovative thinking in law students. As the program Director, I describe how, through group work, discovery learning and reflection, the Osgoode MIP encourages the growth of innovative intelligence in its students. This paper is anecdotal in nature and as the program matures and develops, empirical data may be more available to assess. Better preparing our law students for the profession they will enter is a goal shared by all law schools. The ideas presented herein are some examples of the considerations attended to in structuring the MIP and some suggestions as to implementation.⁴

Sustainable Innovation in your Organization (Mississauga: John Wiley and Sons, 2011).

⁴ Other law schools, both in the US and Canada, have certainly taken other approaches but a complete review of these is beyond the scope of this paper.

II. OSGOODE MEDIATION INTENSIVE PROGRAM

Before the theoretical discussion of innovation can take place, I would like to introduce Osgoode's MIP. Osgoode Hall Law School, located in Toronto, Ontario, has answered the plea of theorists, practitioners, and students to make legal education more meaningful and relevant by instituting a variety of clinical education programs.⁵ Some of these programs are new, and some have been long-standing pillars of the Osgoode experience for over 40 years. Indeed, clinical education is at the forefront of the Osgoode Juris Doctor (JD) curriculum. Currently, all JD students are required to complete a praxicum, or experiential learning program that includes both a reflective and theoretical component, in order to graduate. In this way, Osgoode supports the additional competencies that experiential education can offer. The MIP is one option for students to fulfill the praxicum requirement.

In the MIP, students are introduced to mediation, a dispute resolution mechanism using a neutral third party facilitator. Students participate in both simulated and actual mediations and conduct a significant amount of community engagement work. Students become immersed in a world of conflict outside the law school and are challenged to think through ways to resolve real issues. Beyond the subject matter of mediation, curricular elements engage the students in manners of thinking and learning that are not customary for legal education.

The MIP spans one academic year and involves both classroom and community work. Students receive the equivalent of one-third the required credits for the year through completion of the program. Each week, students participate in a seminar in which theoretical issues of mediation are discussed. Students come to the seminar equipped with knowledge from theoretical readings as well as experiences from field work. Students are given an opportunity to reflect on their experiences with reference to the preeminent mediation literature. In addition to discussing and reflecting upon the relevant academic literature, the seminars involve simulated exercises to build mediation skills.

The fieldwork in the MIP involves approximately nine hours of community work each week. Examples of such work include running conflict

⁵ For full description of Osgoode's experiential education program, including the MIP among many others, see Experience Osgoode, *Experiential Education at Osgoode*, online: Osgoode Hall Law School <<http://www.osgoode.yorku.ca/experience>>.

resolution workshops throughout the community and conducting mediations in small claims court and in our mediation clinic. In addition to these endeavours, students embark on a community engagement project that challenges them to seek opportunities to engage with the community in new and meaningful ways. Past projects have included initiating a restorative justice circle process in a local middle school, conducting a peace talk between neighborhood youth and police, and engaging the university community in a variety of conflict resolution seminars, to name a few. Options are limited only by the goals, interests, and aspirations of students.

The MIP is a departure from traditional law school classes as it asks students to become community conflict resolution experts and in so doing to consider the theoretical and practical challenges that are associated with this role. Students are graded on their mediation skills, their community engagement projects and their research and writing through a theoretical reflective paper. The melding of theory, practice and reflection permeates the program and allows students to develop in ways that are not possible in traditional legal education.

III. INNOVATIVE INTELLIGENCE – THE KEY TO ADDRESSING THE NEEDS OF NEW LAWYERS

As can be seen from the description above, the MIP differs from the traditional law school courses in which students enroll. In addition to other benefits of clinical legal education, a program such as the MIP has the unique potential to allow students to think innovatively regardless of the specific subject matter involved. Although many of the students registered in the program likely will not become practicing mediators, the ability to utilize innovative thinking will address the new needs that today's lawyers will face. Macfarlane suggests that the lawyer's role has changed due to myriad factors.⁶ We can hardly ascertain the exact ways legal practice will continue to change. Thus, the ability to apply novel thoughts in new ways, through innovation, will service students well, no matter what the future holds. Equipping students in this way requires changes to legal education, changes that the MIP attempts to address.

⁶ Macfarlane, *supra* note 1.

Why are these changes required? Changes in education, legal and otherwise, are particularly important today because of the changing economy and the world around it. Legal practice has been impacted profoundly by this shift, which has begun to force lawyers to reorient legal services.⁷ To address the economic transition, Hobbs notes that lawyers, "...will need skill sets that include strategic planning, leadership, and creative problem solving. At the heart of these skills will be a need to foster imagination and innovation in the manner in which we advise [clients]."⁸ Similarly, Janet Weinstein states, "[i]n an increasingly complex world, lawyers will need to expand their traditional approaches to problem solving if they are to be of real service to their clients."⁹ New methods of approaching the legal profession are required to service the current needs of clients. Law schools cannot continue to teach lawyers purely analytical means of resolving problems as innovation will be required to resolve the complex problems lawyers will face.

To enter today's legal profession effectively, students must have the capacity to think innovatively. Business literature and education readily employs theories of innovative thinking or, "the process of solving problems by discovering, combining, and arranging insights, ideas and methods in new ways."¹⁰ Legal discourse, however, has ignored the necessity of this aptitude. Innovative thinking is becoming increasingly critical in law practice, although to this point, legal education has had a predominant focus on analytical thinking. This focus was then coloured by the emergent movement of bringing emotional intelligence to the practice of law, an important progression. I propose that the evolution should continue to adopt innovative intelligence as yet another manner of thinking required in law and developed in law school. It is the combination of analytical acumen, emotional intelligence and innovative thinking that will define the leaders in tomorrow's legal world.

The concept of multiple intelligences has been used to articulate the skills, both innate and learned, that are required for a variety of disciplines. Theories of multiple intelligences aid in understanding the ability to exercise

⁷ Amanda M Spratley, "Connecting Law and Creativity: The Role of Lawyers in Supporting Creative and Innovative Economic Development" (2012) 8 *Hastings Bus LJ* 221 at 222.

⁸ Steven H Hobbs, "Entrepreneurship and Law: Accessing the Power of the Creative Impulse" (2009) 4:1 *Entrepreneurial Bus LJ* 1 at 14.

⁹ Janet Weinstein, "Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice" (1999) 74 *Wash L Rev* 319 at 319.

¹⁰ Weiss & Legrand, *supra* note 3.

innovative thinking. Perhaps the most notable theorist to describe the multiple intelligences that humans possess is Howard Gardner who states that intelligences are “proclivities which are realized or not realized depending on the cultural context in which they are found.”¹¹ This definition suggests that intelligences indeed can be developed and honed through education and experience. Gardner and others have outlined several different intelligences that people may acquire.¹² Weiss and Legrand note the importance of analytical, emotional and innovative intelligences for leaders in organizations. Indeed, I believe that these intelligences are equally salient in a lawyer’s work and thus should be honed and developed in law school. The interplay between these intelligences is important. There are certainly some problems that require pure analytical intelligence to resolve, while others may require pure emotional intelligence. As issues become more complicated, however, a combination of the two may be required. Further, in the most complex cases, innovative intelligence must be used in concert with analytical and emotional intelligence to adequately resolve issues. Let us consider each to understand its contribution and the interplay between these proclivities.

A. Analytical Intelligence

Analytical intelligence, the ability to apply logic to problem solving, is the predominant thinking model utilized in law school. Academic institutions value analytical intelligence and, as Weiss and Legrand state, “[t]he more successful students are very analytical and logical or are good at memorizing and therefore are able to access the right answers.”¹³ Moreover, Kuratko and Hodgetts suggest, “[o]ur society and its educational institutions reward individuals who have been successful at developing their logical, analytical and rational left brain skills. Little emphasis, however, has been placed on practicing and using right-brain skills.”¹⁴ Based on these descriptions, it is not surprise that law school attracts individuals who have strong analytical intelligences. The admission requirements for law school indeed ensure this.

¹¹ Howard Gardner, *Multiple Intelligences: The Theory in Practice* (New York: Basic Books, 1993) at 221.

¹² See e.g. Robert Sternberg, “Giftedness According to the Theory of Successful Intelligence” in N Colangelo & G Davis, eds, *Handbook of Gifted Education* (Boston: Allyn and Bacon, 2003).

¹³ Weiss & Legrand, *supra* note 3 at 48.

¹⁴ Donald F Kuratko & Rickard M Hodgetts, *Entrepreneurship: A Contemporary Approach*, 5th ed (Nashville: South-Western Publishing Group, 2001).

First, students must have shown proficiency in post-secondary education. As noted, success in school demonstrates analytical intelligence because of the emphasis placed upon it in academic settings. Next, students must complete the commonly used standardized testing mechanism that helps determine law school admission, the LSAT. The LSAT determines prospective students' abilities to read, analyze and reason under time pressure – all tests of analytical intelligence. These are indeed important skills for lawyers to possess, but they are not enough.¹⁵ Merely assessing students on academic success and LSAT scores ensures a law school population of highly analytically intelligent students.

Thus, it can be presumed that students enter law school with a well-developed and deeply engrained analytical intelligence, a thinking approach they apply to virtually all problems.¹⁶ Law school strengthens this proclivity for analytical thinking by focusing on narrowing issues, thinking critically and solving problems from a purely legal framework. As stated by Alan Stone, law professors students "...have internalized a legal standard of perfection which requires that they anticipate every possible counterargument before they advance a positive thesis of any sort."¹⁷ This standard is transferred to the students, and hence, a narrow legal focus is promoted. As the *Carnegie Report* explains,

[s]tudents are led to analyze situations by looking for points of dispute of conflict and considering as 'facts' only those details that contribute to someone's staking a legal claim on the basis of precedent...By contrast, the task of connecting these conclusions with the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions, remains outside the method.¹⁸

The analytical approach does not take into account that clients are not merely pieces of paper or hypotheticals capable of being parsed or analyzed. Although a multitude of factors play into each legal issue, a strict analytical framework limits the facts to be considered. All too often this is the experience and training with which students enter the legal profession. The

¹⁵ Some authors have suggested that law school admission criteria should be expanded beyond such analytical abilities. See e.g. John Lande & Jean R Sternlight, "The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering" (2010) 25 Ohio St J Disp Resol 247.

¹⁶ See Weiss & Legrand, *supra* note 3 at 49.

¹⁷ Alan A Stone, "Legal Education on the Couch" (1971) 85 Harv L Rev 392 at 403.

¹⁸ *Carnegie Report*, *supra* note 2 at 187.

focus of law schools must adapt to include other teaching and learning mechanisms if students are to graduate with the ability to use alternate thinking methods.

B. Emotional Intelligence

Some law schools have begun to recognize the importance of developing law as an interpersonal and intrapersonal discipline. Where this is the case, law schools have added to the traditional analytical framework and have injected an understanding of the impact of emotions and people on the practice of law and have begun to consider the importance of emotional intelligence.¹⁹

The theory of emotional intelligence, developed by Salovey and Mayer,²⁰ leapt into the public consciousness with the publication of Daniel Goleman's well-known book on the subject in 1995.²¹ Since that time, emotional intelligence has become an increasingly popular topic in various fields, including psychology and business management.²² Emotional intelligence refers to the ability to identify, assess, and manage the emotions of oneself and of others.²³ It involves a range of interpersonal and intrapersonal skills that allow lawyers to understand themselves and others better.

Two popular construct models have been used to describe emotional intelligence: (a) an ability model, which views emotional intelligence as an

¹⁹ For a comprehensive discussion of emotional intelligence in legal education and practice see, Mark Neal Aaronson, "Problem Solving in Clinical Education: Thinking Like a Fox: Four Overlapping Domains of Good Lawyering" (2002) 9 Clinical L Rev 1; Angela Burton, "Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Intelligences Paradigm into the Clinical Setting" (2004) 11 Clinical L Rev 15; Kirsten A Dauphinais, "Valuing and Nurturing Multiple Intelligences in Legal Education: A Paradigm Shift" (2005) 11 Wash & Lee Race & Ethnic Ancestry LJ 1; Ian Weinstein, "Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exam" (2001) 8 Clinical L Rev 247.

²⁰ P Salovey & JD Mayer, "Emotional Intelligence" (1990) 9:3 Imagination, Cognition & Personality 185.

²¹ Daniel Goleman, *Emotional Intelligence: Why it Can Matter More than IQ* (New York: Bantam Books, 1995).

²² See e.g. KS Law, CS Wong & LJ Song, "The construct and criterion validity of emotional intelligence and its potential utility for management studies" (2004) 89 J Applied Psychology 483; JD Mayer, RD Roberts & SG Barsade, "Human Abilities: Emotional Intelligence" (2008) 59 Annual Rev Psychology 507.

²³ Goleman, *supra* note 21.

aptitude, and (b) a mixed ability and trait model, which views emotional intelligence as a mix of different measures of intellect, personality and affect.²⁴ The latter has been heavily criticized in the literature and some have concluded that only ability models of emotional intelligence are worthy of study.²⁵ A full consideration of each of these is beyond the scope of this paper, but, since this paper is looking at the ability to develop one's emotional intelligence, it is the first, ability-based definition that will be adopted. Ability models define emotional intelligence as "the ability to carry out accurate reasoning about emotions and the ability to use emotions and emotional knowledge to enhance thought."²⁶ Emotional intelligence, when so defined as an intelligence or aptitude, is not fixed and can be developed.²⁷ Although some may have a more astute natural ability for emotional intelligence, education can indeed impart the thinking skills required to use this competency.

Emotional intelligence is often suppressed in the traditional analytical law school curriculum. As stated by David Culp, in law school, "[p]ersonal values and feelings are brought into rational discourse rather than acknowledged."²⁸ Rationality must sometimes give way to emotionality. Law students must reflect on themselves and others and exercise emotional intelligence. Feelings are important but, as Culp states, "...the law school experience teaches students to ignore and obscure the feeling side of life, to divorce emotion from logic, as if they were incapable of peaceful coexistence."²⁹

Consideration of issues of emotional intelligence must increase. Increasing the focus on emotional intelligence will open the door for students

²⁴ JD Mayer, P Salovey & DR Caruso, "Models of Emotional Intelligence" in RJ Sternberg, ed, *Handbook of Intelligence* (Cambridge: Cambridge University Press, 2000).

²⁵ See, CS Daus & NM Ashkenazy, "The Case for an Ability-Based Model of Emotional Intelligence in Organizational Behavior" (2008) 26 J Organizational Behavior 453. Ability models have also been criticized for being theoretically sound but suffering non-generalizable criterion validity and showing substantial sex and race-based subgroup differences, issues in need of further research; DL Joseph & DA Newman, "Emotional Intelligence: An Integrative Meta-Analysis and Cascading Model" (2010) 95(1) J Applied Psychology 54.

²⁶ Mayer, Roberts & Barsade, *supra* note 22 at 511.

²⁷ See Marjorie A Silver, "The Professional Responsibility of Lawyers: Emotional Competence, Multiculturalism and Ethics" (2006) 13 J L & Medicine 431.

²⁸ David Culp, "Law School: A Mortuary for Poets and Moral Reason" (1994) 16 Campbell L Rev 61 at 78.

²⁹ *Ibid* at 79.

to think innovatively. Rarely is a problem purely analytical or purely emotional. It is at the intersection of the two that innovation is required.

C. Innovative Intelligence

Once analytical and emotional intelligences are developed, law students can hone their innovative intelligences in order to prepare for the new law practice, as outlined in the previous section. Innovative intelligence can be defined as the ease with which innovative thinking is accessed, or “the human cognitive ability to look at problems or opportunities in new ways and to discover new implementable solutions.”³⁰ This definition suggests that innovative intelligence has components in which each of analytical and emotional intelligences are required. It is the combination of the right brain analysis and left brain creativity and emotion that have the power to harness innovation.

Edward de Bono discusses lateral thinking, a concept largely synonymous with innovative thinking.³¹ His theorizing is applicable to the subject of innovation in law students and helps to illustrate the issue. De Bono notes that lateral thinking, which involves solving problems through an indirect and creative approach, does not result from a step-by-step logical analysis.³² Law students have not typically come from environments in which lateral or innovative thinking is encouraged. Traditional education is not based on lateral thinking, but instead is focused on vertical thinking that is selective rather than generative.³³ Similarly, the way law students are taught to parse cases to identify the salient legal points is a selective process. Innovative thinking requires generation of ideas and broadening of thought rather than narrowing.

Encouraging law students to utilize innovative intelligence, however, may be more difficult than would appear at first glance. Innovative thinking does not come naturally to many and, in fact, some of the best analytical thinkers have difficulty accessing their innovative intelligence.³⁴ Weiss and Legrand refer to this predicament as the “analytical intelligence paradox” and state,

³⁰ Weiss & Legrand, *supra* note 3 at 31.

³¹ Edward de Bono, *Lateral Thinking: Be More Creative and Productive* (London: Penguin Books, 1990).

³² *Ibid.*

³³ *Ibid.*

³⁴ Weiss & Legrand, *supra* note 3 at 51.

“the more that individuals have a dominant and successful analytical intelligence, the less likely they will have easy access to their innovative intelligence”.³⁵ Herein lies the problem for law students. The greater success law students have found in the traditional analytical paradigm, the more “stuck” they are and the less likely they are to access their innovative intelligence. After all, it was the analytical intelligence of these students that afforded them great academic success and got them into law school in the first place. Hence, the analytical process is so engrained that creativity required for innovation is stifled. In order to develop innovative intelligence, law students must be capable of subduing, to some degree, their analytical thinking. Analytical intelligence certainly has a role in resolving legal problems, but access to innovative intelligence is restricted by an over-eager analytical intelligence. The time to encourage innovative intelligence in lawyers is in law school. The question is how best to accomplish this task.

IV. WHAT LAW SCHOOLS CAN DO TO PROMOTE INNOVATIVE INTELLIGENCE – THE EXPERIENCE OF OSGOOD’S MEDIATION INTENSIVE PROGRAM

Rather than reinforcing the analytical approach, law schools should promote an alternative system that encourages and validates the law student’s access to all three intelligences. Law schools often fail to accomplish this goal. As stated by Weinstein and Morton, “[l]aw professors tend to cling to the analogical reasoning we were taught and with which we feel most comfortable, ignoring important alternative thinking processes.”³⁶ Clinical programs, such as the MIP, have the potential to change this tradition.³⁷ Some distinct curricular elements that clinical programs can implement to accomplish this endeavour are: (1) promoting group work and interdisciplinarity, (2) shifting from purely critical teaching to discovery learning, and (3) encouraging frequent reflection. These are integral elements of the MIP. In the section that follows, I explain the contribution of each of

³⁵ *Ibid.*

³⁶ Janet Weinstein & Linda Morton, “Stuck in a Rut: The Role of Creative Thinking in Problem Solving and Legal Education” (2002) 9 *Clinical L Rev* 835 at 836.

³⁷ This article does not suggest that the MIP is the only answer to challenge a purely analogical reasoning approach. Many law schools have adopted different pedagogies to arrive at this goal – these are simply some suggestions.

these elements to heightening the innovative intelligence of students. I then describe the specific ways that the MIP has implemented them.

A. Promoting Group Work and Interdisciplinarity

Law school, like the legal profession, has traditionally been a location of predominantly independent, solitary learning. This pedagogy differs from other academic programs, such as MBA programs, in which group work is more often the norm. Such solitude is not conducive to innovation. Innovative thinking benefits from the ability work in groups. As stated by Weiss and Legrand, “[a] team is always more effective than an individual in [innovative thinking] because the sum of a team’s collective knowledge is greater than the knowledge of any one individual.”³⁸ Also touting the importance of team work, Hobbs states:

...the power of the creative impulse is multiplied exponentially when expressed in collaboration with others...Many minds acting together can solve a problem, improve the efficiency of a service or product, or make a service or product available to more people, cheaply, and with added value.³⁹

Team members bring different knowledge and different backgrounds to the problem and therefore can craft different, more innovative, solutions.

Despite the importance of teamwork in generating innovative ideas, working in groups is not a skill typically fostered in law school. Nor does working in groups come naturally to lawyers.⁴⁰ Teamwork is complex as it requires an awareness of dynamics and personalities at play as well as an understanding of group process. As stated by Innami, “[g]roup process is a central determinant of the quality of group decisions.”⁴¹ Law students do not necessarily enter law school with either an interpersonal awareness or an understanding of group process. Compounding the lack of group work is the pervasive distrust that the competitive law school environment creates. Group work requires reliance, trust and understanding, a very different paradigm than studying for bell-curved exams. We must encourage our students to

³⁸ Weiss & Legrand, *supra* note 3 at 74.

³⁹ Hobbs, *supra* note 8 at 15-16.

⁴⁰ Weinstein, *supra* note 9 at 335.

⁴¹ Ichiro Innami, “The Quality of Group Decisions, Group Verbal Processes, Behavior and Intervention” (1994) 60 *Organizational Behavior & Human Decision Processes* 409 at 425.

cooperate and learn from each other if they are to learn to value collaborative work.

Although difficult, some law schools are beginning to embrace the need for collaborative group work. Osgoode utilizes a team approach in its introductory course, compulsory for first-year students, entitled *Ethical Lawyering in a Global Context*, where students work in small groups as “law firms” to tackle simulated client issues. Stanford Law School has also recognized the importance of teamwork with their use of the “3D” approach to the JD, combining a multi-disciplinary and team-oriented problem solving approach to law school.⁴² Stanford recognizes that “[t]o serve clients capably or address major social and political issues, lawyers now must work in cross-disciplinary/cross-professional teams, particularly given that they work in increasingly sophisticated industries and fields.”⁴³ As this statement suggests, in addition to working in groups within the confines of a particular class or department, students should be encouraged to work interdisciplinarily.

Innovation necessitates diversity and students who have a diverse exposure to perspectives will more readily develop their innovative intelligence. Dyer et al. state, “[i]nnovative ideas flourish at the intersection of diverse experience...”⁴⁴ and further, “[i]nnovators gain radically different perspective when they devote time and energy to finding and testing ideas through a network of diverse individuals.”⁴⁵ Not only does the law school curriculum tend to operate solitarily it also provides for little diversity, thus stifling the ability for innovative ideas to flourish. By diversity, in this context, I am referring primarily to educational and professional background, although other cultural differences are also important in developing innovative intelligence. Traditionally, law students work with law students or they work alone. A multidisciplinary approach is rarely taken.

Environments in which connections among people with different experiences and from different disciplines are valued, encourage innovative thinking. Examples of such groups abound. Freud brought doctors, philosophers and scientists together in Vienna to discuss psychoanalysis; the

⁴² Stanford Law School, “A 3D JD: Stanford Announces New Model for Legal Education”, online: <<http://www.law.stanford.edu/node/249456>>.

⁴³ *Ibid.*

⁴⁴ Jeff Dyer, Hal Gregersen & Clayton M Christensen, *The Innovator's DNA: Mastering the Five Skills of Disruptive Innovators* (Boston: Harvard University Press, 2011) at 45.

⁴⁵ *Ibid* at 113.

1920s were a time of idea sharing in cafes where scholars, poets, artists and architects would meet, creating the “cultural innovation” of that era.⁴⁶ Law schools can learn from such experience and create multi-disciplinary environments for students to learn from a vast array of perspectives. It is in this way that innovative intelligence can be fostered.

The MIP, drawing from and applying the above research, invites students to work collaboratively and multidisciplinarily in a variety of contexts. The first setting in which students work in teams in the MIP is in the use of a co-mediation model. In a co-mediation model, the third party neutral facilitator role is filled by a team of mediators, rather than by an individual. Both in simulated and actual mediations, students are paired and work alongside each other to mediate disputes. The unique skills that each of the students brings to the mediation provides the disputing parties with an enhanced mediation experience and provides the students with an enhanced educational experience. Students prepare together and work together to bring the parties to resolution. Understanding of both group dynamics as well as interpersonal skills is critical in executing successful co-mediation. With support from coaches, students improve in these areas throughout the program.

In addition to the co-mediation model, students utilize a group-work model in conducting their community engagement projects and conflict resolution workshops. The experience of being graded in a group is not common, as few classes demand that students work collaboratively for graded assignments, thus students have anxiety about this grading model. Within self-selected groups, students are charged with choosing a mutually agreed upon project and completing it together. This is no easy task for students accustomed to working alone. Importantly, team members are encouraged not to attempt to appease each other and achieve soft consensus, but rather, each team member is encouraged to accept the different points of view available and allow different perspectives to colour the issue and possible solutions to any conflicts. Hence the process of group work, coupled with the appreciation of others is encouraged through these projects.

Multidisciplinary is more difficult to hone in law school, although no less important for the development of innovative intelligence. The MIP selects student participants partially based on ensuring a diverse array of backgrounds. Students range in age, ethnicity, academic history etc. and are

⁴⁶ Steven Johnson, *Where Good Ideas Come From: The Natural History of Innovation* (New York: Riverhead Books, 2010).

encouraged to use these experiences in their reflection and practice of mediation. In addition, non-lawyers are often selected as guest speakers, coaches and course assistants in order to inject a non-lawyer perspective throughout theoretical and practical discussion. The influence of a multidisciplinary teaching team has brought new light to the students who naturally resort to a legal lens but are encouraged to be more innovative and reflective.

B. Shifting from Direct Teaching To Discovery Learning

The traditional law school pedagogical choice, direct teaching, where a professor imparts knowledge, leaves little room for self-direction. Innovation is not inspired in such classes, as students learn to use innovative intelligence when they are active participants in their education, rather than passive observers. Edgar Dale, theorizes that purposeful learning experiences are more effective than passive ones.⁴⁷ This concept is not new, as one need only look back to the famous quote by Benjamin Franklin, which states, “[t]ell me and I forget, teach me and I may remember, involve me and I learn.”⁴⁸ Discovery learning provides an effective forum for active learning and clinical programs are the ideal setting to offer inquiry-based education. Discovery learning involves student-driven, interest-based activities, exploring and problem solving to create, integrate and generalize knowledge and encourage the integration of new knowledge into the existing knowledge base.

Discovery learning is active – it requires students to be involved in activities appropriate to the subject matter. There is, of course, a place for theoretical consideration. Indeed, such conceptual grounding must be possessed before the active learning can take place.⁴⁹ But theory is the starting point and not the end-point.

Discovery learning, also known as inquiry-based learning, sees an instructor asking more questions and giving less answers. In the inquiry-based approach, students’ learning processes involve seeking answers to their own questions, rather than memorizing facts and processes imparted by an

⁴⁷ Edgar Dale, *Audio-Visual Methods in Teaching*, 3d ed (Hinsdale, IL: Dryden Press, 1969) at 108. Interestingly, Dale found that the least effective methods of instruction include reading text and listening to lectures, the most common teaching methods in law school.

⁴⁸ This quote is often attributed to Benjamin Franklin, 1750.

⁴⁹ Karen Barton, Patricia McKellar & Paul Maherg, “Authentic Fictions: Simulations, Professionalism and Legal Learning” (2007-2008) 14 *Clinical L Rev* 143 at 164.

instructor.⁵⁰ Law students both welcome and fear this form of teaching. They welcome the opportunity to think for themselves but fear the inevitable ambiguity independent thinking elicits. Long ago, Fuller wrote about this incongruity,

The good student really wants contradictory things from his legal education. He wants the thrill of exploring a wilderness and he wants to know where he stands every step of the way. He wants a subject matter sufficiently malleable so that he can feel that he himself may help to shape it, so that he can have a sense of creative participation in defining and formulating it. At the same time he wants that subject so staked off and nailed down that he will feel no uneasiness in its presence and experience no fear that it may suddenly assume unfamiliar forms before his eyes.⁵¹

This quote holds true today. Law students are expectedly uncomfortable with inquiry-based classes but likely learn the most from them. Moreover, innovative thinking is required and strengthened in classes where teachers are not “sages on stage” but are instead coordinators and co-learners, responsible for determining the container of learning and infusing theory with meaning.⁵² The science of learning recognizes the importance of helping people to take control of their own learning.⁵³ Learners, particularly adult learners, bring with them considerable knowledge, skills, attitudes and experience. The teaching process which respects, acknowledges and leverages these learners sets students up for the development of innovative thinking.

The MIP, by beginning with an 18-hour block of intensive training in facilitative mediation, takes students outside of their comfort zone of narrowing and answering. Instead of answering questions, facilitative mediation requires students to ask questions. Instead of generating solutions, students must elicit solutions from parties. Needless to say, many students are not inherently comfortable with this approach. Most students want to analyze the problems of disputants and provide them with advice. Instead, we ask them to hear the parties. They must hear the legal issues but also recognize

⁵⁰ JD Bransford, AL Brown & RR Cocking, *How People Learn: Brain, Mind, Experience and School* (Washington, DC: National Academy Press, 2002).

⁵¹ Lon L Fuller, “On Teaching Law” (1950) 3 *Stanford L Rev* 35 at 42-43.

⁵² Michelle Lebaron & Mario Patera, “Reflective Practice in the New Millennium” in Christopher Honeyman, James Coben & Giuseppe De Palo, eds, *Rethinking Negotiation Teaching: Innovations for Context and Culture* (Saint Paul, MN: DRI Press, Hamline University School of Law, 2009).

⁵³ National Research Council, *How People Learn: Brain, Mind, Experience and School* (Washington DC: National Academy Press, 2002).

the interpersonal and emotional issues. They must ask broad, open-ended questions rather than direct, closed questions. It is in this way that the divergent thinking is encouraged and that broad, rather than narrow, solutions can be generated.

The MIP leaves much room for student self-determination. Anecdotally, it is this aspect of the program that students have reported feeling the most anxious about but learning the most from. Students are given a syllabus at the outset of the program, which lists weekly topics and readings but these are only guidelines and the focus and time spent on issues is left to their self-determination. Students must also conceive of and conduct community engagement with little direct guidance. Support staff are certainly available to assist and coach students as they require, but the discovery is theirs to be had. They are at the forefront and staff in the background. Students must decide what project they will tackle, negotiate to gain access to the organization or populations in which the project is situated and then execute the project. Any failures, successes and challenges are part of the learning process. Learning to navigate each experience forces students to utilize the innovative intelligence.

C. Frequent Reflection

A focus on a reflective practice model has arisen both in the literature and in practice. Reflection helps to bring clarity to the learning that is being accomplished by individual students. Reflection is an integral component of Kolb's theory of experiential learning whereby "knowledge is created through the transformation of experience."⁵⁴ Kolb's theory asserts that the cycle of learning, experiencing and reflecting together create a complete and retainable experiential education. In addition to being an effective mechanism to ensure learning and retention of learned knowledge, the ability to reflect heightens the ongoing ability of law students to think innovatively. Reflection allows students to engage with their experiences and address emotions that have arisen from those experiences. Palmer notes that "intellect works in concert with feelings, so if I hope to open my students' minds, I must open their emotions as well."⁵⁵ Reflection helps achieve this goal.

⁵⁴ DA Kolb, *Experiential Learning: Experience as the Source of Learning* (Englewood: Prentice Hall, 1984) at 41.

⁵⁵ P Palmer, *The Courage to Teach: Exploring the Inner Landscape of a Teacher's Life* (San Francisco: Jossey Bass, 1998).

Emotional intelligence is heightened through reflection, thus paving the way for the development of innovative intelligence.

Innovation, as well as reflection, requires a certain amount of meta cognition, being able to think about how you think. Reflection allows students to practice this skill. Much like other components of learning, however, reflection cannot happen in an orthodox way. Some students will reflect more meaningfully in writing, while others will do so orally. Some students prefer to reflect instantaneously while others prefer to take more time. Flexibility must be provided to allow for meaningful reflection.

The MIP has taken reflection into the virtual world, by setting up a wikispace on which students can reflect on a variety of topics and experiences. Each week, a prompt is posted as a stimulus to provoke reflection. Students are asked to reflect upon the post and then to respond to one of his or her colleague's posts. Reflecting on others' reflections takes the skill even further. In addition to reflection elicited orally in class or following a mediation experience, students also have an opportunity to reflect in writing, in a location of their choice and whenever convenient. The authenticity of reflection thus has a greater impact in fostering innovative intelligence. Kolb's cycle is reinforced as students' cycles of experiential learning intersect. Thus, it is not only through one's own research, experience and reflection that authentic learning occurs, but through the sharing of these experiences.

V. CONCLUSION

Lawyers today need the ability to use innovative thinking. Encouraging and teaching law students to utilize innovative thinking will go a long way toward better preparing them for the realities of law practice. The vehicle to ensure that law students are prepared is clinical legal education.

Clinical legal programs, such as Osgoode's MIP, allow students the opportunity to think in different ways than traditional legal education allows. The reality facing today's emerging lawyers is that they will indeed need to think in different ways than was once required. Changes must take place in legal education to address the need for innovative intelligence. Articles written four decades ago called for change that has yet to be implemented.⁵⁶

⁵⁶ See e.g. Duncan Kennedy, "How the Law School Fails: A Polemic" (1970) 1 *Yale Rev L & Soc Action* 71; Paul N Savoy, "To a New Politics of Legal Education" (1970) 79 *Yale LJ* 444; John O Sonsteng, "Legal Education Renaissance: A Practical Approach for the

Innovation must be fostered in and of itself, and must pervade all areas of legal education and practice. Harvard Law School offers a course in innovative thinking and Michigan State University has launched ReInvent Law, a law laboratory devoted to innovation in legal services⁵⁷ – others should and likely will follow suit.

This paper has begun the conversation of why and how this evolution must take place. It has described the ways in which one program, the MIP at Osgoode Hall Law School, has addressed the need to encourage innovative intelligence in its students. In particular, the need for more group work, discovery learning and frequent reflection has been outlined. The legal profession is in the thralls of a new coming of age, which will be marked by innovation and collaboration. Law students must be enabled to take on this challenge and apply innovation in the career path they follow.

Twenty First Century” (2007) 34:1 William Mitchell L Rev 303.

⁵⁷ See ReInvent Law Laboratory, online: <<http://www.reinventlaw.com>>.

