

### Research Abstract

This conceptual working paper is seeking to investigate whether “clinical legal education”<sup>1</sup> could be used as a delivery method to form the basis of bespoke ‘ethics clinics’. Essentially, the purpose of such ‘clinics’ would be to educate professionals in ethical decision making. The use of ‘CLE’ is well documented in the legal world as a vocational educational method to enhance skills needed in professional practice (Thomas 2006). There has been very little academic debate on the use of this technique in training other professions and the author seeks to propose that CLE, in particular simulation clinics, could be used to provide professionals with enhanced skills in how to act and think ethically. Brayne, Duncan and Grimes (1998:1) distinguish CLE as an approach that allows students a degree of control over their education in a real life context: ‘CLE requires students to take an active part in the learning process and at the same time addresses practical, policy and ethical issues surrounding a given problem’. One of the most cited reasons for using CLE is that it is good for skills training (Grossman 1974) and one of skills included is ‘professional responsibility’ and ethical conduct (Grossman 1974:188).

This approach would give the opportunity for ethics to be given a contemporary skills approach through the use of a simulated clinic environment as they could enact the importance and consequence of not acting within ethical boundaries (Hinett, Paliwala and Varnava 2002). Handelsman (1986:371) makes a very significant observation that ‘important learning takes place when people are exposed to important events and ethical issues encountered during such events in business or in the personal life will remain salient’. It is not enough to rely on such events and ethics is about more than something that is tacked onto the end of other programmes or decision making: ‘it is necessary to treat ethical thinking as a skill’ (Handelsman 1986).

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<sup>1</sup> Will be known as CLE

5.04 'Innovative and Learning Stream

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Key words: Ethics Clinics for Professionals modelled on Clinical Education

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Ethics

Ethical choices are always an option. However, ethical choices 'baffle us' and leave us or others managing the consequences of such decision making (LaFollette 2007), yet we all learnt to deal with such scenarios. Stewart (2003:1) in providing a definition of the word 'ethical' likens it to 'a phenomena in which moral values and choices have to be made'. Debatably, ethics is both theoretical and practical as LaFollette (2007) articulates: 'Ethics or moral theorizing isn't just for intellectual purists; it has a wide application in everyday life'. As we cannot escape our dilemmas, against a background of what Bauman (1993, as cited in Webb 1998) argues is full of doubts and fears of moral decline, the importance of ethical decision is more than a philosophical debate. Arguably, we all engage in ethical activities whether "at work, in the environment or in setting standards [ideals] in public and professional life' (Webb 1998:134). Caring about how ones ethical decision making links into Aristotle's 'emphasis on right character as a personal virtue and needing to look at what motivates the individual' (Parker and Evans 2007:4). We can be members of several social and work groupings simultaneously which can lead to conflicts in decision making and carrying out ethical choices. This can be seen in the role of the professional. Abbott (1983) acknowledges that the professional can have several theoretical obligations of ethics which can be classified as 'corporate and individual' (pg, 856). Professionals are essentially defined as self selected communities that are governed by status, practice codes and client obligations within their individual cluster. With this grouping, depending on the profession, comes responsibility academically and professionally. This can cause, as Boon (2005, as cited in Nicholson and Webb 2005: 167), contends, a dissent owing to a 'complex, incoherent and inconsistent set of values'.

Irrespective of professional status, as La Follette (2007) challenges, all human beings are able to make decisions without always understanding their significance, and at times ignorant to the background of our moral decision making process( La Follette,

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2007). La Follette (2007) further contends that we need to be skilled and practiced at making decisions, right or wrong, and, furthermore, by understanding and accepting the consequences it will allow us better choices when faced with dilemmas.

The Corporate Manslaughter Act 2007<sup>2</sup> is an example of where a reform of the law, has ethical and jurisprudence implications for business as now the state can prosecute companies and other organisations where there has been a gross failing, throughout the organisation, in the management of health and safety with fatal consequences<sup>3</sup>. The premise of the criminal law is based on punishment for wrongdoing. This has crossed over into a commercial setting calling by questioning ethical choices and decision making. As Mytton (2007:1) contends 'such offences previously have not been regarded as true crimes and do not quarry the stigma of crimes developed from a moral sense of wrong doing'. Effectively, this has put more social and ethical responsibility onto business taking the decision making beyond statutory requirements. As Webb (1998:136) questions over professional accountability, 'are we teaching ethics for lawyers or, in a more conventional sense, ethics for citizens?' LaFollette (2007:8) contends that understanding ethics in an applied and systematic way will help sharpen our moral vision and better equip us: 'others will tend to discount our moral claims if our moral house isn't in order'. The most significant way of shaping moral behaviour is by what we do rather than what we say'. As Gawthorpe and Uhlemann (1992:38-39) comment the middle ground between the pure and applied approach has not been linked well. This piece of research will be based in the applied ethics approach as discussed by Parker and Evans (2007: 3-4) derived from 'professional conduct and social ethics' and how ethical decision making 'can be implemented in practice'. Gawthorpe and Uhlemann (1992:38) add that one of the issues that ethics education has to contend with is 'it

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<sup>2</sup> Received Royal Assent July 2007 comes in to force April 2008

<sup>3</sup> <http://www.justice.gov.uk/publications/corporatemanslaughter2007>

5.04 'Innovative and Learning Stream

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cannot be assumed that ethics education will generalise into ethical behaviour in practice' (1992:38-39).

### Clinical Education Simulation Clinics

The quest for CLE originally came from America where advocates of the realist movement, such as Jerome Frank endorsed the establishment of such clinics as they: 'afford opportunities to reflect on professional ethics amongst other skills, and to employ the insights of other professions' (Grossman 1974:169). Although the emphasis is fundamentally vocational and skills led, the academic debate can be stimulated through this 'learning in action' method (Burrige, Hinett, Paliwala, and Varnava 2002). Moliterno (1996) supports the view that by 2010 in the legal world: 'professional ethics will be taught with less of a doctrinal focus but with more a basis in experimental learning' (pg: 86). In the legal world vocational training of lawyers in professional responsibility is seen by Moliterno (1996:86) as an: 'integration mission between CLE and ethics teaching [which] has become so strong that any reference to one automatically includes the other'. Arguably, training in 'management' ethics can be met by the use of such a delivery mechanism with the aim of enforcing/encouraging ethical professional standards and thought processes that will militate against unethical practice cultures and sheer ethical indifference (Rushby 2005) that might exist.

The author seeks to argue that by using the CLE<sup>4</sup> method as the educational foundation in devising ethics clinics it would enable 'ethical decision/choices' to have more relevance in professionals' practice. As Brayne, Duncan and Grimes (1998) promote such methods that expose students/professionals to real life scenarios either in policy or practice allow ethical issues to be addressed. Importantly they point out that CLE is not an end in itself but more about how a subject or a process can be

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<sup>4</sup> Three types of clinics (1) in-house real-clinics (b) out-house real c-client ('real world') (c) simulation clinics, as suggested by Brayne, Duncan and Grimes (1998)

5.04 'Innovative and Learning Stream

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understood (Brayne, Duncan and Grimes 1998). CLE has an extended remit bypassing passive learning as the reality of CLE is that it is not content or assessment driven. It gives experience in a real or simulated setting through experimental learning in a controlled environment: 'allowing students to be exposed to the skill/subject and to the analysis, management and process of the problems arising (Brayne, Duncan and Grimes 1998:12). This type of learning could have a crucial role in the HRD community by providing professionals with current information regarding the fundamental nexus between ethics and professionalism. Utilising these technique skills could be regularly updated, not unlike the training lawyers/medics undertake, to make managers see the importance making ethical decisions in relation to corporate, professional and social responsibility.

There are generic types of clinics but for the purpose of this conceptual paper the CLE simulation clinic is the proposed model to be investigated in the setting of 'ethics clinics', as recognised by Grimes and Brayne ( 2004) in their study for the *UK Centre for Legal Education*. This type of method self selects elements of professional practice, where there is no live client but the 'hands on experience is simulated through role play' (Grimes and Brayne 2004). A case study can be selected and the participants can enact the case over a period of weeks, depending on the problem, and are designated roles that they will follow through from start to end. As Moliterno (1996) highlights, such simulations take place in a controlled environment with ethics staff facilitating the process. There is the scope for CLE ethics forums to be developed, along with the use of customised e-learning packages.

There is criticism regarding simulation clinics not having a, 'real feel 'or' 'cutting edge', due to not being live (Brayne, Duncan and Grimes 1998). There are many advantages in not being real as there are no worries over client confidentiality, or the risk of offending a live client or having to deal with an unpredictable or uncontrollable live clients (Brayne, Duncan and Grimes, 1998), yet at the same time

5.04 'Innovative and Learning Stream

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allowing extensive work to take place in exploring ethical decision making in a controlled environment. These clinics can be portable and may be set up "on site" across various professions and disciplines to enhance their ethical decision making. Ethics for managers is more than just relying on the quality of qualifications and assessments; it is both socially desirable and a professional skill.

### Research Questions

The author proposes that such clinics could be developed based on the educational stance of CLE in order to be responsive to the needs of the individual and the business. There may also be a CPD role, as required by professional bodies, as well as protecting professional credibility. By using simulation clinics there is a potential for 'ethics clinics', irrelevant of profession, to regularly enhance ethical decision making integrated into 'ethical conduct skills' training as part of CPD <sup>5</sup> requirements which could be instigated by professional bodies.

### Future Research Design and Direction

The research strategy envisaged will be using the qualitative method of focus groups to run alongside side the 'pilot clinics' at two statutory authorities. Exploratory research is seen as appropriate for this study as it allows: 'finding out what is happening; to seek new insights; to ask questions and to assess phenomena in a new light' (Robson as cited in Thornhill, Lewis and Saunders 2003:96). Focus groups have been chosen as they are a way get creative, free flowing discussion in an informal setting (Malhotra and Birks 2003). Such groups also allow innovative activities to take place and 'group members have time to reflect on the activities and discussion and in addition a range of stimuli may be presented to them' (Malhotra and Birks 2003) The component will comprise the setting up of two clinics based on the principles of the CLE simulation model and will be held over a period of several

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<sup>5</sup> Continuing professional development

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weeks at the participants' place of work. The sample participants are designed to be 10 in each case study, who will all be professional line managers. The sample number is within the: 'optimal level for a homogenous sample within each occupational group' (Irizarry and Gallant 2006:45. The sample will be chosen in accordance with a desire to secure a representative sample with respect to class, gender, and status. It is hoped to commence the field work during the summer of 2008 followed up with a research report based on the findings and or/ further field study.

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