

Simulated clients: situated theory & practices

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1. The Simulated Client Initiative (SCI) – why, origins, current projects
2. Training SCs
3. The SCI in Canada – some examples
4. Future projects
5. Final thoughts

The Simulated Client Initiative (SCI) – why, origins, current projects, studies

In substantive courses, students often learn about legal problem solving in fragmented steps

Students seldom practise these steps in real time with real people to solve real problems.

Interviewing SCs introduces students to lawyer-client relationship dynamics and the fusion of practical information-gathering with legal analysis. SC scenarios range from 'personal plight' to commercial law and business transactions

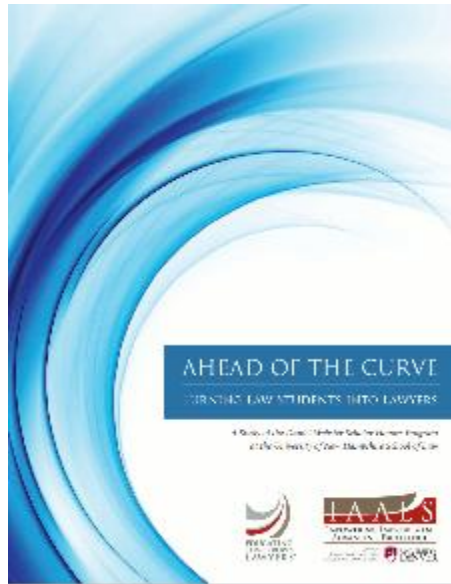
Above all, it enables students to find their voice, professionally, relationally and ethically.

- Strathclyde University, 2005, *pilot project* (partners Georgia State University College of Law, Dundee University Medical Faculty)
- Used *model from medical profession* of Simulated Patients (SPs), non-lawyers were trained to be Simulated Clients (SCs)
- Our study proved SCs *assessed important aspects of client interviewing with better validity and reliability than law tutors*
- SCs evaluate those aspects of the interview that can be *assessed by non-lawyers*
- Made *what client thinks important* the most salient for the student: the interview grade is given by the client
- This has *changed* how we enable students, trainees and lawyers to learn interviewing & client-facing ethical behaviour

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independent study of UNH Law School's Bar exemption course...



Gerkman, A., Harman, E., Bond, L., Sullivan, .M. (2015). [*Ahead of the Curve: Turning Law Students into Lawyers*](#). A Study of the Daniel Webster Honors Program. IAALS, Denver.

- In focus groups, members of the profession and alumni said they believe that students who graduate from the program are **a step ahead of new law school graduates**;
- When evaluated based on simulated client interviews, **students in the program outperformed lawyers** who had been admitted to practice within the last two years;
- The only significant predictor of simulated client interview performance was whether or not the interviewer participated in the Daniel Webster Scholar Honors Program. **Neither LSAT scores nor class rank was significantly predictive of interview performance.**

Training SCs

- introduction to the method; discussion of roles
- read scenario script as a group
- discuss roles, bias and unconscious bias
- discuss SCs' feelings, reactions; we amend the script
- clear up ambiguities re role of lawyer
- facilitator uses SC feedback to modify the scenario

SCs calibrate:

- Body language
- Tone of voice
- Attitudinal swings
- Dealing with the lawyer's open questions...
- Improvising on the lawyer's closed questions...
- Performance analysis on video review: 'What prompted you to say...?' 'How did you feel...?'

And to:

- Be aware of their orientation towards lawyer at first sight
- Respond congruently to the lawyer
- Consult their internal 'invigilator'...

SC training days 3 & 4: assessing lawyers/law students

- We discuss the marking system, and form a common understanding of it
- SCs view and mark videos, comparing to 'standard'
- SCs view each other's 'live' performances with lawyers & actors and assess lawyers & actors
- Process repeated until everyone has role-played at least once, ideally three times or more
- Rich, detailed comment on performance
- Marks are collated in the room & discussed
- SCs are also trained to give formative feedback

2. I felt the student lawyer listened to me.

This item is designed to assess the degree to which the lawyer can listen carefully to you. These criteria focus especially on the early part of the meeting when the client should be encouraged to tell their story and concerns in their own words. This entails *active* listening – where it is necessary for the interview structure or the lawyer’s understanding of your narrative. The lawyer will not interrupt, cut you off, talk over you or rush you in conversation. The lawyer reacts to your responses appropriately. The lawyer may take notes where appropriate, but if the lawyer does so, the lawyer should not lose much eye contact with you. To some extent in this item we are concerned with what the lawyer does *not* do that facilitates the interview.

I felt the student lawyer listened to me

1	2	3	4	5
Lawyer prevents you from talking by interrupting, cutting off, talking over, rushing you. Takes over the conversation prematurely as if the lawyer already knows all the answers.	Lawyer limits your opportunity to talk by interrupting, cutting you off, etc. You are allowed to answer specific questions but are not allowed to expand on topics.	Lawyer rarely interrupts or cuts off or rushes you. The lawyer reacts to your responses appropriately in order to allow you to tell your story. More interested in notes taken than in eye-contact with you.	The lawyer is clearly listening closely to you. If the lawyer interrupts, it is only to assist you in telling the story more effectively. Lawyer provides opportunities for you to lead the discussion where appropriate. Good eye contact and non-verbal clues.	The lawyer is an excellent listener and speaks only when it is clearly helpful to your telling your story. Lawyer uses silence and other non-verbal facilitators to give you an opportunity to expand. Excellent eye contact and non-verbal cues.

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- SCs role-play clients with students, real lawyers and other professionals
- SCs are given refresher training on the scenario
- If they are trained on a new scenario they will have the same pattern of training
- They should form a *community of practice* with two core members of staff – ideally admin + academic to:
 - improve practice
 - suggest ways they may be used inside or outside the law school
- Community to be as social and democratic as possible

The SCI in Canada – some examples

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a tale of two educators

- Osgoode Hall Law School
Toronto, Ontario
- Canadian Centre for
Professional Legal Education
(CPLED) Calgary, Alberta



- 300 first year students in law degree (1Ls) completed summative & formative in-person SC interview in Introduction to Legal Skills 2018/2019 and 2019/2020
- 1L SC interviews online in 2020-2024
- Formative interviews for lawyers in continuing legal education certificates, in Osgoode Professional Development:
 - Family Law Skills and Practice (40 lawyers)
 - In person 2019/2020
 - Online 2020/2021
 - Advanced Workplace Investigations (32 lawyers)
 - Online 2020/2021
- Further uses planned



- Key difference – participants are licensed lawyers, not law students, therefore less concern about knowing the law, but even more desire to improve their practice
- 9-day intensive skills programme, with 4 points of SC interaction:
 - Initial client Interview (same assessment criteria, but higher standards of performance expected)
 - ‘Challenging client’ meeting
 - ‘Pre-negotiation’ meeting
 - Case conference



- Participating provinces: BC, AB, SK, MB, NV, NS.
- Area: c.1.9M sq miles (by contrast, EU c.1.7...)
- Practising lawyers: c.30,000
- Law schools: 8 (by contrast, 9 law schools in Ontario)



- CPLED hosts the Practice Readiness Education Program (PREP)
- Bar admission course - c.800 students, mostly online
- Practical lawyering skills, including SC interviews
- Each student has formative practice interviews then final summative interview (Capstone)
- Practice interviews formative and summative
- Capstone is summative only
- Four-step design...



PREP schedule

Practice Readiness Education Program June 2021 Schedule



	Phase One	Phase Two	Phase Three	Phase Four																																																		
Procertas Legal Technology Assessment Earn qualified or expert certification in Word and at least one other program (Excel, PowerPoint or Adobe Acrobat) before gaining access to PREP materials in D2L. Upload the two Procertas badges to D2L to gain access to the PREP Orientation.	Foundation Modules Online self-directed study PREP materials, including the orientation will open on June 1, 2021 to approved registered students. Students will receive access to program materials after completing a two-hour online orientation and passing a multiple choice quiz.	Foundation Workshops 5-day workshops Students will be engaged in five full days of workshop activities. Students and firms should plan for students being away from the office. Prework opens August 27, 2021	Virtual Law Firm Online simulated rotations Students will work through simulated client files managing multiple aspects of the file throughout its lifecycle, while receiving feedback from Trained Assessors and coaching from their Practice Manager.	Capstone 4-day Capstone assessment Students will be engaged in four full days of activities and assessments. Students will have should plan for students being away from the office.																																																		
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Registration closes on Friday, June 25, 2021.

The late registration deadline is Thursday, July 15, 2021, and the Change in registration deadline is Monday, August 23, 2021.

Proof of a Canadian common law degree or Certificate of Qualification and tuition fees are due before gaining access to PREP materials.

*Schedule is subject to change. Enrollment into desired schedule is subject to availability.

Canadian Centre for Professional Legal Education (CCPLE)

Suite 700, 355 11 Ave SW
Calgary, AB T2P 1B8
1.800.568.1371
www.cpld.ca

PREP Program Schedule June 2021

PREP: the four-step design

2. Students practise interviewing with each other – feedback given by students & tutors
3. Students practise interviewing with SCs - feedback given by SC
4. Students summatively assessed by SCs – no feedback given unless a fail

1. Online multimedia modules, linked to Foundation workshops

Practice Readiness Education Program June 2021 Schedule

PREP
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PREP Program Schedule June 2021

Future projects...

- Use of AI to prepare students for interviews: both skills & knowledge
- Use of video annotation software for reflective learning
- Further work with regulators on the development of academic/professional education

- Small, agile, empirical projects
- Online library of digital resources – annotated videos & textual resources.
- Publication of a SC book edited by Macleod, Maharg & Yenssen, 2026/27, *Emerging Legal Education* series, Routledge, drawing on work of the past two decades & based on similar book by Nestel & Bearman on SPs



- London, Gray's Inn, 2016
- Canberra, ANU College of Law, 2017
- Toronto, Osgoode Hall Law School, 2022
- Amsterdam, Amsterdam Law School,
20 July 2024
- Manchester, Manchester Law School, 2026?
- Elsewhere? Open to suggestions...



Final thoughts...

Feasible...?

- Very: lots of experience out there in at least 17 centres. Initial and refresher training needed for SCs, but no high-maintenance.

Cost...?

- Training of SC trainer + SCs; payment of SCs.
- SC documentation is freely available under Creative Commons

Impact...?

- Big: on students, on ethical performance, practice of skills within professional value contexts; formative and high-stakes assessment.
- Also on regulatory bodies, eg Law Society of Scotland, SRA, CPLED.

SCs: people as co-producers, co-designers

The SC approach challenges:

1. Curriculum methods
2. Ethics of the client encounter
3. The cognitive poverty of conventional law school assessment
4. Law school as a self-regarding, monolithic construct
5. Law school categories of employment
6. The curricular isolation of clinic within law schools
7. Hollowed-out skills rhetoric
8. Conventional forms of regulation by regulatory bodies
9. The role of regulator, as encourager of innovation & radical reform...?
10. Disciplinary boundaries – how could a SC Unit become interdisciplinary?
11. Local vs global in jurisdictional practices: how might such a project work *globally*?

1. Barton, K., Cunningham, C.D., Jones, G.T., Maharg, P. (2006). Valuing what clients think: standardized clients and the assessment of communicative competence. *Clinical Law Review*, 13, 1, 1-65.
2. Barton, K., Garvey, J.B., Maharg (2013). 'You are here': learning law, practice and professionalism in the academy. In Bankowski, Z., Maharg, P. del Mar, M., editors, *The Arts and the Legal Academy. Beyond Text in Legal Education*, vol 1. Routledge.
3. Gerkman, A., Harman, E., Bond, L., Sullivan, W.M. (2015). *Ahead of the Curve: Turning Law Students into Lawyers. A Study of the Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law*. IAALS, University of Denver, <http://bit.ly/2PVcNSS> .
4. Maharg, P, Yenssen, A. (2022). Transitioning simulated client interviews from face-to-face to online: Still an entrustable professional activity? *European Journal of Law and Technology*, 13, 3. Available at: <https://ejlt.org/index.php/ejlt/article/view/899>.
5. Workshop. (2022). Simulated clients: Interdisciplinary learning and teaching in legal education. Osgoode Hall Law School. Slides, papers, documents available at <https://simclient.osgoode.yorku.ca/> .



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