

Research-like activities to support advocacy, when supervised by a practicing lawyer, are standard professional practice

The Faculty of Law includes legal clinics and co-curricular programs that provide *pro bono* services that further access to justice for low-income, or otherwise vulnerable or marginalized people or groups, and provide experiential learning opportunities for law students.

The legal clinics include the David Asper Centre for Constitutional Rights, Downtown Legal Services, and the International Human Rights Program. Each of these clinics employs practicing lawyers who supervise all clinical work. The co-curricular programs include Pro Bono Students Canada, and Law in Action in Schools.

The clinics and co-curricular programs sometimes engage in research-like activities for the purpose of advancing the interests of a particular individual, community, or organization, and which may include preparation of human rights investigation reports, briefs, opinions, or policy proposals, (“research-like advocacy”).

1. **Assertion:** Research-like advocacy, when conducted or supervised by a practising lawyer for the purpose of advancing the interests of a particular individual, community, or organization, is not research. Research-like advocacy is not intended to extend knowledge through a disciplined inquiry or systematic investigation but rather advance the advocacy goals of the particular individual, community or organization. As such, research-like advocacy is standard professional practice for lawyers licensed to practice law. Therefore, research-like advocacy activities do not require Research Ethics Review (RER).
2. **Overview of research-like advocacy activities:** The legal clinics and co-curricular programs at the Faculty of Law regularly provide individuals, communities, and organizations with legal expertise to assist them with their advocacy aims. While this may take the form of legal advice to an individual client, it may involve preparation of reports, briefs, opinions, or policy proposals that require practising lawyers to interview witnesses and experts to provide a legal opinion. Consistent with the Faculty of Law’s experiential learning model and professional ethical codes, when law students are involved in these tasks, they work under the direct supervision of a practising lawyer.

The legal expertise provided by Faculty of Law clinics and co-curricular programs is relied upon by the individual, community or group in future advocacy, for example, through release of a public report, media engagement, submissions to judicial and quasi-judicial bodies, lobbying for policy change, and/or litigation. The follow-up advocacy may or may not involve the Faculty clinic or co-curricular program that provided the initial legal expertise.

These research-like advocacy activities sometimes involve the provision of legal advice since they involve the application of specialized legal knowledge to a specific factual

situation and are then relied upon by the individual, community or organization in future advocacy. As such, the Faculty requires all such work be supervised by a lawyer who is licensed to practise law in Canada.

- 3. Exemption Rationale:** Research-like advocacy activities are exempt because they are part of acceptable standard professional practice. Lawyers in private practice are routinely retained to provide these research-like advocacy services to individuals, communities, and organizations.

Professional ethical codes cover these activities and are binding on lawyers, including the lawyers who supervise the research-like advocacy engaged in by the Faculty of Law's clinics and programs. These codes require lawyers to obtain informed consent before speaking with potential witnesses, and to exercise sensitivity when dealing with vulnerable witnesses.

Moreover, there are specialized professional codes that contain more rigorous obligations in relation to treatment of vulnerable witnesses or victims of human rights abuses. For example, the International Bar Association's International Human Rights Fact-Finding Guidelines advise lawyers to take into account the safety and security of the interviewees; ensure their free, prior, and informed consent; conduct interviews in a culturally-appropriate manner; be especially sensitive to vulnerable witnesses; and monitor the safety of interviewees on an ongoing basis.

- 4. Implementation at Faculty of Law:** The clinics and co-curricular programs at the Faculty of Law are led by professional staff accountable to the Dean's Office and professional regulatory bodies. Clinic and co-curricular program directors are expected to apply for RER for any research activities that do not fall within the scope of this exemption, i.e. research that involves human subjects and that is not for the purpose of advancing the interests of an individual, community, or organization. Moreover, clinics and programs must apply for RER of all research or research-like activities involving human subjects where such research is funded by Canada's federal research agencies or other funding agencies that require RER.