

Interview Assignment¹

Stone Soup Assignment

This is a project conceived by faculty members at the University of Missouri School of Law's Center for the Study of Dispute Resolution. This is part of a large-scale research project to improve our understanding of clients' experiences of dispute resolution processes. It has been adapted, here, by Professor Gemma Smyth, to deepen our understanding of clients' experiences of the law and its processes from an access to justice perspective.

This assignment is the "capstone" for the Access to Justice course. In it, you will apply all the principles we have learned throughout the course to a single case of your choosing. Further information is available in the "Instructions".

What is "Stone Soup"?

"Stone Soup" is a fable adapted in many cultural traditions and languages. The characters change to fit the circumstances, but the basic facts remain similar.

Travelers arrive at a village with only an empty cooking pot and they find that the villagers won't share any food. The travelers fill the pot with water, drop in a large stone, and place it over a fire. One by one, villagers ask what is happening and are told that the travelers are making "stone soup," which tastes wonderful but needs a little of this or that to improve the flavor. Different villagers contribute various ingredients until the soup truly becomes a delicious meal, which is shared with all the villagers.

The aim of this assignment is to arrive at a more fulsome and holistic understanding of lived experiences of access to justice through each student adding their own "ingredients".

Why "Stone Soup"?

The need for practical education in law schools is reflected in sociolegal scholarship about pervasive "gaps" between the "law on the books" and the "law in action." The theory taught in law school and other professional disciplines often isn't the way things work in practice.

Students who conduct interviews practice effective questioning, listening, documenting interviews, and assessing the veracity of the information received, which all are critical skills for lawyers. Students develop rapport with their subjects, elicit sensitive information, and protect

¹ Instructions adapted by Professor Gemma Smyth from *Stone Soup Dispute Resolution Knowledge Project hosted by the University of Missouri School of Law, Center for the Study of Dispute Resolution, 2017.*

confidentiality. They write up the interviews in a coherent analysis and consider possible alternative explanations, noting possible other perspectives, limitations of subjects' memory, subjects' desire to present themselves favorably, etc. These are important skills for lawyers in virtually every area of practice.

This assignment should also respond to the critiques in the access to justice movement that there is inadequate attention to clients' lived experiences (see course readings). This assignment should deepen your understanding of access to justice impacts on people's lives.

Overview

All students will interview one person who has experienced a "significant" legal problem (defined below) in order to gain insight into their experiences and better understand one or more aspects of access to justice. It is preferable the problem was experienced within the last one to two years in order to ensure accurate memories. However, exceptions can be made if the student is confident the Interview Subject will retain enough detail for the purposes of the interview.

The Interview Subject must have experienced a problem that can be defined as legal. This could mean a problem they engaged with voluntarily or involuntarily. It could be a problem in any area of law *except corporate commercial* including but not limited to: family law, child protection, immigration, refugee, residential tenancies, personal injury, human rights, or a combination of these. They must have pursued the problem in some way. They need not have reached a final conclusion to the problem.

The interview should take about an hour. You will write a report summarizing the answers to the questions described below and describing insights you gained from the interview.

The goals of the assignment are to provide you with the opportunity to: (1) learn from someone's experience in an actual legal problem; (2) practice interviewing skills including developing rapport and protecting confidentiality; and (3) reflect on how concepts we discuss in class may apply in actual legal situations.

The report is due **Friday, December 8, 2017 by 12:00 Noon**. The report should be submitted electronically to Ms. Genevive Domingo at genevive.domingo@uwindsor.ca. Late submissions will be subject to a 5% per day penalty deducted from the assignment grade, including weekends. The professor will consult with students as the assignment is prepared but will not read drafts.

The report should be between 7 to 10 double-spaced typed pages, with one inch margins on each side, in Times New Roman 12 Font or similar.

About the Interview

The person you interview must have been a party to a “significant” legal dispute. A “significant” dispute is one that took a substantial amount of time. The student will ask the Interview Subject to describe their most recent, impactful legal dispute. The dispute may or may not have resulted in an agreement.

Ethical Considerations

There is a small risk that you could be subpoenaed to testify about what you learn in an interview about an entire case. This situation seems unlikely to arise for several reasons. First, the interview would have to involve a situation that would end up in litigation in the future. Second, it will be unlikely that other parties would know about the interviews and, even if they did, you probably wouldn’t learn significant relevant information and it wouldn’t be worth the expense to pursue this.

You will contact the person you want to interview and arrange to conduct the interview in person, by phone, or by video. If you need help identifying someone to interview, contact the professor.

Any interaction with a human subject for research purposes is generally subject to Research Ethics Board review at the University of Windsor, consistent with the *Tri-Council Policy Statement: Ethical Conduct of Research Involving Humans, 2nd edition (TCPS 2)*. The professor has consulted with the REB and established that this assignment is part of a course-related assignment rather than “research” for the purposes of publication. This means that students should not use this piece of writing for other purposes (ie publication, submission for Clerkship applications, etc.).

Protocol

You **MUST** send a document (preferably an email) to the subject in advance of the meeting to describe the interview. You may send it to request the interview or, if you arrange the interview in person or by phone, to confirm the interview.

At the outset of the interview, you **MUST** remind the subject that you will not disclose his or her name or anyone mentioned in the interview. To further protect confidentiality, you **MUST** tell the subject not to mention anyone else’s name and, instead, use generic descriptions such as the person's client or lawyer, the other lawyer, a manufacturing business, etc. You **MUST** tell the subject not to provide any information that might be relevant in future litigation.

In general, you should adopt the mindset of a tactful investigator to get as thorough and accurate understanding of a case and the process as possible, especially an understanding of the sequence of significant events. Instead of simply accepting statements at face value, you should ask questions probing for other possible explanations of the events.

You are free to conduct the interview however it would be most effective, within ethical and professional boundaries. Ask follow-up questions that seem important to you, especially to clarify things that you don't understand. Often, it is a good idea to wait to ask follow-up questions until after you finish learning the chronology because the follow-up questions may distract from the chronology and cause you to miss important events. Pay particular attention to anything that seems unusual or surprising and ask follow-up questions. Whenever appropriate, ask the subject about others' perceptions of particular issues. For example, you might ask how the other side viewed an issue.

In any case, your report must include information about the questions listed below, **particularly about the chronology of events** and your insights from the interview.

After you finish asking about the chronology of the case, review the following list of questions and ask any that the subject did not previously address. You do not need to ask these questions if you know the answers from responses to earlier questions.

Questions to Be Addressed

[Note: You should adapt the list of questions to fit your instructional goals]. You will be asked to submit a draft of your questions to the professor (via her administrative support person) on or before Tuesday, October 10, 2017 at 12:00 Noon. Failure to submit these questions will result in the student being deemed not to have completed the course. There will be no grade assigned to the questions, but feedback will be provided.

The subject

- [If you don't know] From our correspondence (knowledge) I understand you are willing to talk about a situation that arose about X. Is this right?
- [If you don't know] What was your role in this case?
- Was this something you were involved with once or more than once?

The subject matter of the case

- Would you describe the people or institutions involved, without identifying them by name?
- Were you brought voluntarily into this dispute or were you forced into it?
- What type of issue was involved (e.g., personal injury, family, etc.)?
- What conflict or event prompted the dispute?

The parties and the context of the case

- Did the parties have a relationship before the matter began?
- At the outset of the matter, did the parties expect to have a continuing relationship after the case was over?
- [If applicable] Did the lawyers have a relationship before the case began?
- What do you think was most important to each party in this case?
- Did lawyers represent any or all of the parties during the matter?
- Did the parties try to resolve the case on their own before it went further?
- [If applicable] What stages of litigation did you go through during the life of this dispute?

The negotiation process

- What, if anything, did you do to prepare for the case?
- Who initiated the dispute?
- How did the case begin?
- **What was the sequence of events after that?**
- [If relevant] How much, if at all, did people talk about legal issues or what would happen if they went to court?
- How much, if at all, did people talk about their real goals underlying their positions (as opposed to the justifications of their positions)?
- Did the parties reach an agreement?
- Why do you think that they [reached / did not reach] an agreement?

Assessment of the case

- What do you think were the critical factors causing the case to turn out as it did?
- How satisfied were you with the outcome? Why?
- How satisfied were you with the process? Why?

Access to Justice

- What challenges did you experience throughout the process?
- Could you comment on accessibility of information about your dispute?
- {if relevant} Could you comment on how easy it was to find a lawyer or legal representative?
- {if relevant} Could you comment on how affordable the process was?
- {if relevant} How would you describe the courtroom?
- How did you feel throughout the process?
Did you experience particular barriers (ie accessibility, language, physical, cognitive, etc.) throughout the process?

Writing Your Paper

You have limited space to summarize the interview, so carefully decide what is most important to include. In general, the purpose of this assignment is for you to learn about the reality of a case in some detail, including the subject's assessment of it, and how it speaks to access to justice in Canada. In describing this part of the assignment, **be objectively descriptive, use plain English (not "legalese")**, and generally avoid expressing your judgment about the parties, actions, decisions, etc.

Your narrative should begin with a brief description of the interview subject including information that would help readers assess the report (such as the subject's past experience with similar cases, if any). Your report should include brief descriptions of the key people and entities in the process, but they **MUST NOT include any details that could reasonably identify the subject or any parties. The report MUST use pseudonyms referring to the people and entities in the case. The pseudonyms MUST be sufficiently different from the real names that it would be impossible to identify them.** In keeping with the serious nature of this assignment, the report must use plausible names, not silly ones.

The report MUST NOT include specific dates. The chronology should begin with the first relevant event and refer to subsequent events in relation to other events in the chronology. For example, a narrative might identify the timing and sequence by saying "two months later."

The report MUST avoid using specific dollar amounts and should instead use general descriptions. For example, reports might use language such as "more than \$10,000" or "in the low six figures." When there is an exchange of offers, the reports should include information indicating how the figures compare with each other without using specific figures. For example, a report might state that a plaintiff demands \$X and the defendant offered \$X - \$100,000. Or a defendant offered \$Y and plaintiff demanded \$5Y (i.e., five times Y).

Your paper **MUST** prominently include the following legend at the top: "Note: Details of this case, including the names of individuals, have been omitted or changed to protect the confidentiality of the data."

Following the narrative, under a separate heading, your report must address possible alternative explanations of the events. For example, you might describe limitations of the accounts due to getting only one person's perspective, limitations of the subject's memory, subject's role in the dispute, the subject's desire to present a positive image.

After the discussion of possible alternative explanations, under a separate heading, discuss your insights about what you learned from the interview and how the case was similar and/or different from concepts discussed in this course. In this part of the paper, you may terminology related to access to justice and refer to course readings, simulations, and class discussions.

This final section should also describe how this case impacts your thinking about access to justice. Of course, you won't encounter the exact same situation in the future, considering differences in parties, lawyers, facts, issues, etc., so any lessons for the future necessarily should be qualified.