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Celebrating a Quarter Century of Community Legal Clinics in Ontario

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CELEBRATING A QUARTER CENTURY OF COMMUNITY LEGAL CLINICS IN ONTARIO®

BY THE HONOURABLE R. ROY MCMURTRY*

I am delighted to be here to help celebrate an outstanding achievement on the part of so many remarkable people. The last twenty-five years have shown how the power of an idea—when matched with energy, determination, and community support—can make a crucial and enduring difference.

Tonight, and over the next two days, friends of Parkdale and of the community clinics as a whole, are gathered to remember what has been accomplished, to recognize those who made it happen, and to reflect on how to best strengthen and support the clinics in the increasingly challenging years ahead. I hope that, as well, everyone will recommit to being an important part of that future.

Looking out over the room compels me to pay a personal tribute to all who have helped build this movement. There are people here tonight who were at Parkdale on its very first day, and others whose first day took place this fall. We have people who have spent large parts of their working or volunteer life in the clinic movement, and others who have carried its lessons into everything else that they have done.

Sadly, some of the key figures from Parkdale's early days are no longer with us. It is fitting that we think of them as we celebrate this achievement, in which they have played such an important part.

I am delighted that the Honourable Gerald Le Dain, a former distinguished member of the Supreme Court of Canada, is with us tonight. As the dean of Osgoode Hall Law School in the late 1960s and early 1970s, Gerald Le Dain exhorted all of his students to be "social engineers." He put his words into practice when he took a personal stand to support Parkdale's opening when the Law Society of the day was expressing strong opposition.

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* Chief Justice of Ontario. This is a slightly revised version of a speech given on 14 November 1996 at the twenty-fifth anniversary conference for Parkdale Community Legal Services.

Dean Le Dain's personal commitment typifies the contributions of thousands of individuals to the Parkdale project. Although their contributions have varied, all have grown personally from their involvement in building an institution which breathes life into the most cherished values of our legal system. The Parkdale community law clinic is surely one of Osgoode Hall Law School's proudest achievements and I am very pleased to be sharing its evening with Dean Marilyn Pilkington, whose commitment to the broader community is well known to us all.

I am also very pleased to see Ron Ellis here tonight. Ron, as we all remember, was the director of the Parkdale clinic during those critical months twenty years ago when Parkdale was on the brink of the abyss. His leadership was essential to the survival of the clinic movement.

Tonight, we recognize and thank those who have worked on the front lines, whether as community legal workers, support staff, board members, lawyers or volunteers. You have our admiration and respect for what your hard work and dedication has achieved. Over the years, my colleagues associated with Parkdale have always emphasized the role of the community.

When Osgoode students first entered Parkdale, they found community organizations and organizers already at work. Community residents and leaders were vital to the transformation of Osgoode's important initiative into a true community institution. Because it had the foresight and determination to assert the community's role, the Parkdale clinic has earned the community trust and support so essential to its growth and survival.

The crucial role of community support became clear to me in late 1975, when the few existing clinics found their funding from various sources running out. They turned for funding to the provincial government, of which I had recently become the attorney general.

The clinics were able to point to the innovative ideas on neighbourhood law offices contained in Mr. Justice John Osler's 1974 report on legal aid,¹ but these ideas were far from being accepted by the Law Society of the day. Without the strong foundations that the original clinics had built in their communities, it might have been impossible for me to persuade the Law Society and the government to make what was then a radical shift in the orientation of the Ontario Legal Aid Plan.

In what would now be considered an amazingly brief six-section regulatory framework, we provided only two broad conditions for

¹ See Ontario, Task Force on Legal Aid, *Report of the Task Force on Legal Aid: Part 1* (Toronto: Ministry of the Attorney General, 1974) (Chairman: Hon. J.H. Osler) c. 5 at 53-56.

funding—one was independence and the other was a community base.² Interestingly, we also specifically provided for the delivery of services by paralegals and for “preventive law programmes.”³ At the time, both of these innovative concepts were considered highly controversial.

The first clinic funding committee consisted of two representatives from the Law Society and one from my ministry. All three are now my judicial colleagues—Justices Lee Ferrier, Jim Chadwick, and Archie Campbell. All were tremendous supporters of the clinics who devoted countless hours to building the system and to maintaining the delicate balance between community control and public accountability.

However, the role of the clinic remained somewhat controversial, and in 1978 I appointed the Honourable Sam Grange to inquire into the role of the clinics in Ontario’s Legal Aid Plan. In his report, Sam Grange established a more elaborate and enduring framework for the clinic system than we had been able to devise in those few hectic weeks early in 1976.⁴ In this, he was ably assisted as counsel by my current colleague on the Court of Appeal, the Honourable John Laskin. The framework they developed has lasted almost unchanged to this day.⁵

Included in that framework were a continued requirement that clinics be independent community organizations, a continued role for community legal workers, and a continued recognition of the need for clinics to go beyond individual casework to “promote the legal welfare” of each clinic’s community.⁶

On these foundations has been built something truly remarkable. From eight clinics in 1976, the number grew to thirty-one in 1978, and to forty-eight when I left office in 1985. This growth continued during the tenure of Ian Scott as attorney general. Even though the sixty-seven clinics in place when he left office in 1990 have only been modestly increased, Ontario rightly stands as a leader today in this field.

It is worth recalling that this expansion was not easily achieved, given the opposition of many in the legal profession. But the movement prevailed. Wise and strong treasurers, and many benchers, took strong

² See O. Reg. 160/76, s. 147.

³ *Ibid.* s. 148.

⁴ See Ontario, Commission on Clinical Funding, *Report of the Commission on Clinical Funding* (Toronto: The Commission, 1978) (Commissioner: Hon. S.G.M Grange) at 61-66.

⁵ See *Legal Aid Act*, R.S.O. 1990, c. L.9; and R.R.O. 1990, Reg. 710, as am.

⁶ See R.R.O. 1970, Reg. 557, as am. by O. Reg. 391/79, s. 146.

positions of leadership in the face of often less-than-thoughtful opposition. I was able to rally sufficient support from my ministerial colleagues despite the pressures from some of the more conservative members within political party ranks, who often viewed clinics as agents of the opposition. The support that I received across the aisle from members of the legislature such as Jim Renwick and Pat Lawlor may have fuelled that perception, although I personally welcomed it.

Some will also recall that this was during the period of major family law reform,⁷ so the ministry was viewed by some of my colleagues as a hotbed of radicalism. However, as I said a moment ago, we prevailed and much of that credit should go to Doug Ewart, who was then one of my senior policy advisers. Legal aid in general and the clinic movement in particular did not have then or now a more effective and totally committed ally.

Rights and freedoms are empty and meaningless without the means to enforce them in the courts. I am as proud to have been associated with the struggle to save and expand the community legal aid clinics in Ontario as I am to have been associated with the birth of the *Canadian Charter of Rights and Freedoms*.⁸

Why did Ontario succeed when no other jurisdiction on this continent has been able to build a structure dedicated exclusively to the particular legal needs of the most disadvantaged? I have already noted the importance of the community to the early funding and growth of the clinics, and the vital partnership between the government and the Law Society. Fundamental, of course, to the leadership of Parkdale has been the critical role of the Osgoode Hall Law School partnership with the Parkdale community. In the final analysis however, clinics have taken hold in Ontario because of the demonstrated power of the idea behind them.

Stephen Wexler, whose writings inspired many of the leaders of the clinic movement in Canada, exposed the philosophy behind the clinics very simply when he said: "Poor people are not just like rich people without money ...; poor people are always bumping into sharp legal things."⁹

And, as we appreciate better now than we did perhaps then, the wounds from these "sharp legal things" are disproportionately felt.

⁷ See, for example, *The Succession Law Reform Act, 1977*, S.O. 1977, c. 40; *The Children's Law Reform Act, 1977*, S.O. 1977, c. 41; and *The Family Law Reform Act, 1978*, S.O. 1978, c. 2.

⁸ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

⁹ S. Wexler, "Practicing Law for Poor People" (1970) 79 *Yale L.J.* 1049 at 1049-50.

Because of the systemic discrimination found in most of our institutions, the wounds are particularly inflicted on racial and other minorities, women, Aboriginal people, and those with literacy, learning, or other disabilities.

What distinguishes the clinics from other access-to-justice initiatives is their ability to respond in a community-specific manner to these needs. In my first address to the clinic movement, almost exactly twenty years ago today, on 13 November 1976, I referred to some of those distinguishing features as follows:

They are ideally suited ... [t]o engage in the kind of outreach programmes which are essential if legal services are to be brought to the people who need them the most. They also have the ability to mount effective preventive law campaigns ... [And they] also possess the unique ability to allow clients to assist in the solution of their problems.¹⁰

Until Parkdale Community Legal Services, these ideas had not been implemented in this province. Much hard work, and hard thought, was required to make it happen. Because of the critical role of the community in shaping the model, we know that only community clinics can address in a comprehensive fashion the legal needs of poor people.

I would like to conclude my reflections with a few words about some of the challenges which the clinics may have to continue to address when their future role is debated.

There are some who, for example, will continue to argue that anything beyond the case-by-case representation of individuals is inappropriate. To them, I would suggest that they look at the services provided by law firms to institutional clients. There you will see a major emphasis on influencing the shape and interpretation of the law, on developing preventive strategies, and on finding allies and alliances for the client's goals. Do the poor require or deserve anything less?

There are some who assert that the clinics must be curbed in their challenges to laws enacted by the legislature.

It has been my experience that no minister of the Crown or senior administrator, however experienced or well advised, can predict how the bare bones of a law will be applied, particularly to the most disadvantaged.

It is only when laws are tested, whether in the courts of justice or the court of public opinion, in the light of real experiences, that those making the laws can see the true impact on the neediest who are affected in unique ways by our legal system. And it is only through the

¹⁰ R.R. McMurtry, Speech to the Community Law Conference, Sponsored by Action on Legal Aid, in cooperation with the Ontario Institute on Studies in Education (13 November 1976) [unpublished].

development of facts and arguments in open and independent courts that the public can be satisfied that our fundamental constitutional tenets are being respected.

Testing laws and procedures for their impact on the most disadvantaged is not a challenge to the civil authority, but a bulwark of the rule of law.

Finally, there are those who say that the bar at large can be relied upon to develop these cases. The fact is, however, that courts need the expertise that can be found only in clinic lawyers, and that is why their advocacy is requested as friends of the court when difficult points are in issue.

The clinics also have a unique ability to assess the priorities of their communities in developing strategies for the long haul.

And if I may be permitted to refer once again to my remarks to the Action on Legal Aid conference twenty years ago:

Legal aid, and, in particular, community law, is perhaps the single most important mechanism we have to make the equal rights dream a reality. Seaton Pollock, who has had a long and intense involvement in legal aid in England, has stated that:

It is the corporate responsibility of a community to see that none of its members is excluded from the rule of law.¹¹

I continued:

For too long, those persons involved in community law have been shouldering this corporate responsibility with little encouragement and insufficient assistance from the government and the legal profession. As a citizen, I am well aware of the pressing social problems which remain unsolved. As a lawyer, I am excited and challenged by the opportunities which exist within the law to provide innovative and effective solutions to many of those problems. As attorney general, I am determined not to leave this office without establishing a firm basis for community law in Ontario.¹²

While much has been accomplished as a society, we still have a long way to go. Again, I would like to congratulate all of you here tonight who have helped to bring us this far and to wish you every success and fulfilment in the difficult challenges that lie ahead.

¹¹ *Ibid.*

¹² *Ibid.*