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CATCH YOUR DREAMS BEFORE THEY SLIP AWAY: THE PARKDALE DREAM REVISITED[©]

BY DOUG EWART*

Unusual as it is to revisit newspaper articles written a quarter century ago,¹ it is even less common to be invited to provide a contextual introduction for their republication. Such an invitation is not easily refused, and, as is obvious, has not been.

Of the two accompanying articles it is the second that has enjoyed some notoriety among those closely connected to Parkdale in its early days, and which merits some comment at this time.

The allegation that the dream of Parkdale Community Legal Services (PCLS) had died at the tender age of ten months was obviously controversial among those responsible for it at the time. They took strong objection to the assertion and to the underlying analysis. Has history proven them right? If the vision underlying PCLS died in 1972, how did we achieve the still significant and vibrant network of seventy publicly funded clinics, Parkdale among them, that we have today?

To respond to this, it is useful to consider the three interrelated signs of death described by the article. These were:

1) frustration of meaningful community participation in the running of what was, it must be noted, called Parkdale *Community Legal Services*;²

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¹ See the two preceding articles, both of which were written for *Obiter Dicta* from the perspective of an Osgoode student who had been hired in the spring of 1971 to help find a location for, and then establish, what became Parkdale Community Legal Services, who spent the fall term in 1971 as one of the first cohort of students at the clinic, and who had maintained a close involvement with it, and with the Parkdale community throughout the spring of 1972. The first article was written in the clinic's initial days; the second at the end of the spring 1972 term.

² On this first, and obviously central point, it is interesting to note that Professor Alan Grant of Osgoode Hall Law School published in 1974 a more formal review of the evolution of Parkdale's governance structure. In "Clinical Training Within Community Legal Services: A Phenomenon in Search of an Organizational Structure" (1974) 22 *Chitty's L.J.* 15 at 16, he noted:

Thus, it appears clear that, at least in theory, there was a stated intention [in the original application for funding for Parkdale] on behalf of the law school, to involve the

2) a rapid move away from attempts to transform the practice of law from a case-by-case band aid approach into one which dealt well with the broader systemic issues inherent in the interrelationship of law and poverty; and

3) the lack of challenges to Law Society of Upper Canada *Rules of Conduct*, which were an obvious barrier to reaching clients in the community.³

The indicia for each of these signs are set out in the article, and can be accepted or rejected by the reader. From the author's perspective, although the prose is perhaps a little urgent in places, the case, as it stood in June of 1972, still seems quite strong.

While it might be tempting to re-argue and reinforce that case, this note will respect the documentary and historical themes of this volume of the Law Journal by simply setting out, with limited additional commentary, the developments over the intervening years on the two major concerns raised in 1972, beginning with the issue of governance by the community.

As will be obvious to all who have followed the evolution of Ontario's community legal clinics, matters on this front have taken a dramatic turn away from the directions warned about in "A Dream That Died." It is now axiomatic that administration by outside professionals is anathema to not just the concept of community clinics, but as well to their ability to meet the needs of their clients.

It would be both pretentious and wrong to assert that "A Dream That Died" turned the tide on the issue. Much more important was the fact that other clinics growing up alongside Parkdale offered different, competing visions on this issue, and that many persons involved in the development of those clinics, and it should be noted, many involved in the continuing evolution of Parkdale itself,⁴ maintained the struggle for community control.

community at both the organizational and administrative levels in developing community legal services. That events moved somewhat more conservatively is evident . . . It is to be noted therefore, that [in 1972, Parkdale Community Legal Services] was, itself governed exclusively by professionals, with only informal community advice and guidance being put forward at office meetings.

³ In the balance of this note, the changes which have occurred to the *Rules of Conduct* [now *Rules of Professional Conduct*] will not be addressed further. For the modern *Rules*, see Law Society of Upper Canada, *Professional Conduct Handbook* (Toronto: LSUC, 1997). The most obvious is the dramatic change to the rules governing advertising which were such a barrier for clinics in 1972, but there have been numerous others as the Law Society slowly moved off the private practice/fee-for-service paradigm.

⁴ See, for example, Grant, *supra* note 2 at 20-21.

As a result of those efforts, and perhaps in part because of its own consideration of the thinking behind the community clinic model in both Canada and the United States, the Ontario Ministry of the Attorney General leaned towards the “community governance” vision when it first became involved formally in the clinic system. This occurred in 1975-76 when the ministry intervened in the midst of a financial crisis to begin funding the several clinics then existing in Ontario. At that time, the attorney general proposed, and the government enacted, a regulation under the *Legal Aid Act* to provide the authority to begin funding Ontario’s clinics. That regulation provided in part that “[t]he Clinical Funding Committee shall make recommendations to the Director regarding the Funding, and the terms and conditions of funding, of *independent community based clinical delivery systems*.”⁵

Two years later, the government appointed a commission to examine in a more considered way the issues involved in the provision of a formal funding structure for the clinics. In his report, the commissioner, the Hon. S.G.M. Grange, provided a strong underpinning for community governance in these words: “The principle of community control dictates that, generally speaking, control must be with the community board which must know best what are the community needs and how those needs can best be met.”⁶

In response to the report, the Ontario government enacted a much more comprehensive regulation to govern clinics. It provided in part:

“clinic” means an *independent community organization* providing legal services

(3) The terms and conditions of funding ... in respect of any clinic may include but are not limited to, the following:

⁵ O. Reg. 160/76, s. 1, adding s. 147 to reg. 557 under the *Legal Aid Act*, R.S.O. 1970, c. 239 [emphasis added].

⁶ Ontario, Commission on Clinical Funding, *Report of the Commission on Clinical Funding* (Toronto: The Commission, 1978) (Commissioner: Hon. S.G.M. Grange) at 31 [hereinafter *Grange Commission*]. See *ibid.* at 21-22. The paragraph quoted above went on to state that community control cannot be absolute. In so stating, the *Grange Commission* did not attempt to carve out a role for professionals to direct the clinics, but only to assert the need for the funder to be able to impose standards relating to accountability for the expenditure of public funds. The commissioner had earlier acknowledged, at 13, that in some circumstances, such as geography or the nature of the clientele (the example cited was inmates), community control might not be possible, saying “A community base and community control may be the ideal ... but I doubt if that goal will always be attainable”

1. The clinic shall be under the direction of a community board of directors ...⁷

In the succeeding years, the principle of community governance has been a key strength of the clinic movement, as is evident from the endorsement it received in the most recent independent review of legal aid in Ontario:

Community-elected boards have historically been important in ensuring independence from both the Plan and the provincial government; in assisting the clinic in identifying and prioritizing community needs; in ensuring accountability to their communities for the nature and quality of the services provided, and through their board members in providing vital linkages to other community services. ... [W]e are satisfied that community boards do and should continue to discharge these functions.⁸

The second key issue identified in "A Dream" was the scope of services to be provided. The article argued that the provision of legal services to the poor required that services be designed in light of an appreciation of the relationship between law and poverty—that they must respond effectively to the highly intrusive manner in which laws regulate and invade the day to day lives of poor people in ways wholly unlike that experienced by anyone else.

A modest beginning in this regard was again made in the 1976 clinical funding regulation, which provided in part that "'Clinical delivery system' means any method for the delivery of legal or para-legal services to the public other than by way of fee for service, and *includes preventive law programs ...*"⁹

After conducting a careful review of the situation, the *Grange Commission* endorsed and expanded on this broader view, stating:

The private Bar and its clients know that it is sometimes not sufficient merely to resolve the immediate problem. Often the client's welfare dictates much more. He [*sic*] must know the dangers in order to avoid them in the future and if they cannot be avoided, he may have to combine with others to attack the root of the problem which perhaps can only be done in the councils or legislatures of the land. Services such as these are well within the field of the private Bar and if the aim of legal aid as often stated is the

⁷ See O.Reg. 59/86, s. 6 (now R.R.O 1990, Reg. 710), s. 5, s. 7(3). It is noteworthy that the 1978 regulation is stronger than its predecessor, since it requires that clinics be a "community organization," instead of a community-based delivery system [emphasis added].

⁸ Ontario, *Legal Aid Review, Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services* (Toronto: Ministry of the Attorney General, 1997) (Chair: J.D. McCamus), vol. 1 at 193-94 [hereinafter *McCamus Report*].

⁹ *Supra* note 5, s. 1, adding s. 148 to reg. 557 made under the *Legal Aid Act* [emphasis added].

rendering to the poor of the same legal benefits as those available to their more fortunate brothers some method needs to be found to provide them.¹⁰

The commissioner went on to recommend that the “legal and para-legal” services authorized by the regulation governing clinics “should include any activities reasonably designed to encourage access to such services or to further such services and should include also services that are designed solely to promote the legal welfare of the public at large.”¹¹

And, more specifically, the commissioner went on to say the following:

I cannot leave this subject without some discussion of law reform. As I have stated earlier, the field is not unknown to the private Bar in its services to its clients and it is perhaps even more the proper concern of lawyers who serve the poor because the poor are less articulate and their concerns less often heard by the legislators. While there may once have been doubt of the propriety, it does not exist now.¹²

The new clinic funding regulation, enacted in response to the *Grange Commission*, dealt with this issue in these terms:

“[F]unding” refers to the payment of funds to a clinic to enable the clinic to provide legal services or paralegal services, or both, including activities reasonably designed to encourage access to such services or to further such services and services designed solely to promote the legal welfare of a community ...¹³

Turning again to the most recent word on the subject, the *McCamus Report* provides, in the following terms, yet another endorsement of this approach:

[T]he legal aid system should be statutorily mandated to provide ‘poverty law’ services. The current Clinic Funding Regulation is sufficiently flexible to permit the recognition of diverse and changing ‘poverty law’ needs. Subject to limited fine-tuning, the Regulation’s language would appear to be an appropriate basis for a statutory ‘poverty law’ mandate.¹⁴

It seems appropriate to give the last word on this subject to the chief justice of Ontario, whose longstanding appreciation of the importance of clinics to the fabric of civility in this province has played a

¹⁰ *Grange Commission*, *supra* note 6 at 2-3. The quoted comments were made in the course of an outline of the gaps in services in the Ontario Legal Aid Plan as it existed before clinics. The report goes on to say, at 3: “It was to plug these gaps that the clinical movement was born.”

¹¹ *Ibid.* at 14.

¹² *Ibid.* at 15.

¹³ *Supra* note 7, s. 5.

¹⁴ *Supra* note 8, vol. 1 at 193.

major role in their evolution to a widely recognized status as a fundamental part of an effective legal aid system. At the celebration of Parkdale's twenty-fifth anniversary, the chief justice of Ontario, the Hon. R. Roy McMurtry made the following comments on the role of the community:

Community residents and leaders were vital to the transformation of Osgoode's important initiative into a true community institution. ... 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.¹⁵

On the scope of activity appropriate for clinics, the chief justice stressed the need for a broad range of preventive and alliance-building services. He then went on to outline the particular importance of the clinics' role in questioning laws which adversely affect their communities, stating:

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 effects on the neediest who are affected in unique ways by our legal system. ... 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.¹⁶

To return to the questions posed at the start of this note, has history demonstrated that the conclusion of death drawn in 1972 was premature? I would assert not, and would maintain that a vision, or dream if you like, was on the evidence in 1972, in the specific context of PCLS, indeed dead. The article warned that to bring back that vision, to create a Parkdale community clinic which approximated its original goals, would require fundamental, indeed re-vivifying, change.

That change has taken place, and has been endorsed by independent commissions and by governments, but most importantly by the clients of the community clinics. Those clients have come to value and support, and some would argue as a result sustain their clinics to an extent that simply would not have been possible had the clinics not woven themselves into the fabric of their communities and fought the battles necessary to ensure that they would be able to hear, embrace, and advance those communities' priorities.

¹⁵ Hon. R.R. McMurtry, "Celebrating A Quarter Century of Community Legal Clinics in Ontario" (1997) 35 Osgoode Hall L.J. 425 at 426, 429.

¹⁶ *Ibid.* at 429-30.