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POVERTY LAW AND COMMUNITY LEGAL CLINICS: A VIEW FROM PARKDALE COMMUNITY LEGAL SERVICES®

I. INTRODUCTION

One of our premises is that poverty is not simply that part of our financial eligibility criteria that enables us to represent a client. The systemic and multi-faceted nature of poverty requires that poverty law advocates be able to address both the immediate legal problems that are presented by clients as well as the community and law reform issues that inevitably are raised. The history of community legal clinics is one that is inextricably linked with the social commitment to eliminate poverty, the “war on poverty.” The social, political and economic climate has changed since the early days of the clinic movement. The stated goals and objectives of governments have changed. The vision and goals of the clinic movement cannot afford to change. As others have observed, the war on poverty has become the war on the poor. We do not want our clients to be casualties; nor do we subscribe to the view that the poor are responsible for the current economic crisis.

Our second premise is that poor people are entitled to as full a spectrum of legal services as the clients of large corporate law firms have come to expect. In our view, a case can be made that the poor are entitled to a wider spectrum of services, and that community legal clinics are uniquely situated to do this. Our clients and the communities we serve do not have the arsenal of media, law firms, and think-tanks available to the wealthy to advance their positions. In order to advance, defend, and vindicate the needs and aspirations of the most vulnerable and socially disenfranchised, community legal clinics must continue to play an active and proactive role in promoting the legal welfare of our clients and the communities we serve.

II. THE PRINCIPLES

Principle 1. Community Governance is the Proper Foundation of Community Legal Clinics.

The clinics, located in, and run by local communities, can reach out to advise people of their rights. They take the law to the people ...¹

I am open to suggestions that the role of the clinics be increased and enhanced. Clinics take the law directly to the people. They involve the community in setting service priorities.²

The principle of community governance of clinics through community boards of directors is one of the principle aspects of community practice that distinguishes our method of delivery of legal services from that dispensed in staff delivery models. Just as communities are not static and homogeneous, neither is the area of poverty law a fixed and finite one. Community governance provides the mechanism to ensure that the community is both consulted and actively involved in the areas of law and community organizing and education, and law reform undertaken by a clinic. The fact that some community boards may not be as active or as representative as they might be does not mean that the principle of community governance should be abandoned. A democratic and community-driven approach to poverty law is the best way to avoid professional domination and determination of clinics, as well as to ensure that the needs of the community are being addressed and served.

Principle 2. Clinics Practise Poverty Law.

[T]he clinics are in a position to take the law to those who need it most. It is almost trite to point out that a great many poor people have never been made aware of the right they enjoy under our laws ...³

¹ The Honourable R. Roy McMurtry, Attorney General for Ontario (as he then was), "Notes for a Statement to the Ontario Legislature Standing Committee on the Administration of Justice," 1 December 1982, at 30-31 [unpublished], quoted in M.J. Mossman, "Community Legal Clinics in Ontario" (1983) 3 Windsor Y.B. Access Just. 375 at 376 [hereinafter "Community Legal Clinics"].

² The Honourable Ian Scott, Attorney General for Ontario, "Legal Aid Statement" (17 August 1985) [unpublished] at 11-12.

³ McMurtry, in "Community Legal Clinics," *supra* note 1 at 376.

Clinics take the law directly to the people. ... They ensure that problems are handled by persons with expertise in the subject matter...⁴

Poverty law practised in community legal clinics needs to be understood as related to but not collapsible under the heading of legal aid. In the province of Ontario, an understanding of and commitment to poverty law has been developed and shaped by community legal clinics in consultation and collaboration with the communities we serve. At community legal clinics in Ontario, poverty law means social assistance, unemployment insurance, income security and disability issues, landlord and tenant law and mental health. In Toronto clinics, it has long meant immigration and refugee law. Clinic work also encompasses the rights and issues of injured, unorganized and unemployed workers, the homeless and children, youth, and the elderly. It has come to mean Aids/HIV advocacy,⁵ and environmental law, and clinics for specific communities (e.g., African Canadian Legal Services, Aboriginal Legal Services, and Chinese and South-East Asian Legal Services for Metropolitan Toronto).

Whatever the breadth of "poverty law" and the elasticity of its scope, we want to hold onto a conceptual distinction between poverty law and the judicare face of legal aid. Poverty law is poor people's law.

Principle 3. Access to Justice Includes but Means More than Access to Lawyers.

"[A]ccess to justice" [is] a phrase that can stand for freedom from exploitation, powerlessness and poverty, or only for the right to have a lawyer tell you that the law doesn't recognize your right to be free from those things.⁶

No one who has witnessed the legal aid funding crisis in Ontario this fall can doubt that the judicare side of the Ontario Legal Aid Plan is under serious attack.⁷ Even when judicare appeared to receive a

⁴ Scott, *supra* note 2 at 11-12.

⁵ See D. Herman, "Fighting AIDS: A Role for Community Legal Clinics" (Intensive Programme in Poverty Law, Parkdale Community Legal Services, Winter Term 1988) [unpublished]; and P. Shime, "AIDS and Poverty Law: Inaction, Indifference, and Ignorance" (1994) 10 J.L. & Soc. Pol'y 155.

⁶ M. Blazer, "The Community Legal Clinic Movement in Ontario: Practice and Theory, Means and Ends" (1991) 7 J.L. & Soc. Pol'y 49 at 53.

⁷ See, for example, C. Schmitz, "Veteran criminal lawyer disbands firm; accuses Ontario government of 'fraud'" *The Lawyers' Weekly* (22 September 1995) 1; and J. Furlong & C. Schmitz, "Lawyers fear legal aid crisis could wipe them out" *The Lawyers' Weekly* (22 September 1995) 2.

relieve, few people in the clinics were disposed to the fantasy that the worst was behind us.

It has long been a theme of both the clinic movement as well as the academic "law and poverty" literature that access to justice must mean more than access to lawyers and courts.⁸ And yet, "legal aid" and "poverty law" are often blended together or used interchangeably. To a great many lawyers and legal aid administrators, legal services for the poor means criminal defence work, criminal legal aid. The fact that everyone who requires criminal legal aid is poor does not mean that criminal legal aid is required by most poor people. Indeed, as the National Council of Welfare has argued recently, legal aid plans which emphasize criminal legal aid do not address the legal needs of most poor people,⁹ and not incidentally, poor women.¹⁰

Why is this so? Because *judicare* legal aid emphasizes access to private lawyers and the courts. In the Canadian context, legal aid, especially criminal legal aid, has tended to be driven by either the legal profession's vision of how legal services are to be delivered (*i.e.*, on a fee for service basis by private lawyers) or cost-effective notions (*i.e.*, salaried lawyers in staff delivery models, such as duty counsel).

⁸ See, for example, S. Wexler, "Practicing Law for Poor People" (1970) 79 *Yale L.J.* 1049; R.J. Gathercole, "Legal Services and the Poor" in R.G. Evans & M.J. Trebilcock, eds., *Lawyers and the Consumer Interest: Regulating the Market for Legal Services* (Toronto: Butterworths, 1982) 407; and R.L. Abel, "Socializing the Legal Profession: Can Redistributing Lawyers' Services Achieve Social Justice?" (1979) 1 *Law & Pol'y* Q. 5.

⁹ National Council of Welfare, *Legal Aid and the Poor: A Report by the National Council of Welfare* (Ottawa: Minister of Supply & Services, 1995) at 9-10 [hereinafter *Legal Aid and the Poor*]:

While criminal legal aid services are essential to provide a bare minimum of equal treatment, these services are of no use whatsoever to the vast majority of the poor. ... Most poor people have never been, and probably never will be, in trouble with the law. What they need are good civil law services.

¹⁰ *Ibid.* at 12. See also, *Equal Justice for Women & Children: A Report by the Family Law Tariff Sub-Committee to the Legal Aid Committee of the Law Society of Upper Canada* (Toronto: Law Society of Upper Canada, 1992). This subcommittee found, at 3, a "marked gender difference in the populations served by the two existing tariffs" [for family and criminal legal aid certificates in the 1991-92 fiscal year]: 80 per cent of certificates issued in criminal legal aid matters were issued to men; 70 per cent of certificates issued in family legal aid matters were issued to women. Criminal legal aid certificates accounted for just 51.2 per cent of all certificates issued; family law certificates accounted for 24.3 per cent (the remaining certificates in 1991-92 were issued for immigration/refugee certificates (15.1 per cent) and other civil matters (9.4 per cent)). See also M.J. Mossman, "Gender Equality and Legal Aid Services: A Research Agenda for Institutional Change" (1993) 15 *Sydney L. Rev.* 30.

Principle 4. Community Organizing, Education, and Law Reform are Essential to and Must Be Integral Components of the Work of Clinics.

"[L]egal and para-legal services" 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. The matter of vital importance is to retain flexibility in this expanding field ...¹¹

I think there are a number of lessons which can be learned from the community legal aid clinics. ... They promote self-help, and they work actively in public legal education.¹²

The mandate of community clinics has long included the promotion of the legal welfare of the community. One of the significant distinguishing features of community clinics has been the focus on community development, community education, and law reform related to issues in the areas of law in which the clinics work. The importance of this distinguishing feature of Ontario clinics cannot be over-stated. In its recent report on legal aid in Canada, the National Council of Welfare characterized law reform activities as "*one of the hallmarks of Ontario's community clinic network*" and cited research in the United States which found that "neighbourhood legal aid offices which were engaged in substantial law reform efforts were the ones that provided the highest-quality legal services."¹³ Casework, community development, and law reform are not discrete spheres of activity. They can and must inform each other. The most effective and successful community legal clinics recognize and promote the dynamic inter-relationship of the three.

Rather than simply address issues related to the legal welfare of the communities we serve in a reactive and case by case way, clinic staff (most significantly but not exclusively community legal workers) also work in the community, educating and organizing, and facilitating self help. In this way, clinics are able to engage in "preventative" work as well as comprehensive community-based approaches. In a way, we are able to "divert" people from lengthy and costly court processes, while simultaneously encouraging collective and community-based solutions. Community development work is also important to the furtherance of the principle of community governance, as it is an important way of

¹¹ Ontario, Commission on Clinical Funding, *Report of the Commission on Clinical Funding* (Toronto: The Commission, 1978) (Commissioner: Hon. S.G.M. Grange) at 14.

¹² Scott, *supra* note 2 at 11-12.

¹³ *Legal Aid and the Poor*, *supra* note 9 at 47 [emphasis added].

involving the community in the work of the clinic, and ultimately on the board of directors.

Principle 5. Teaching Clinics Have an Important Place in the Clinic System

I am almost constantly reminded of Parkdale—by the news of latest cuts to social services, by the faces on the King streetcar each morning, and by the new confidence with which I approach whatever the task at hand. I was reminded in a very concrete way of what I had learned at Parkdale by the back and forth with the editors of the journal last year. They repeatedly asked me to justify the position I took in the paper I could only substantiate it with the experience of my clients at Parkdale. ... The research I relied on most heavily was done by the legal clinic steering committee. If it's going to be done, it's going to be done by the staff and students of legal clinics like Parkdale.¹⁴

Teaching clinics introduce law students to poverty law, the social and human dimensions of poverty, and the significance of anti-poverty lawyering in a community clinic context. The experience of many lawyers in Ontario who have been educated in and through the small number of teaching clinics attests to their value.¹⁵ For many law students, the opportunity to learn poverty law and work in a community clinic, and for a few to articulate, has laid the groundwork for their subsequent career as clinic lawyers. Many of our graduates have gone on to articulate in clinics or to work in community legal clinics, and a few are themselves teaching in student clinics. The commitment to educating clinic lawyers who are schooled in poverty law continues to be fundamental to the vitality and revitalizing of clinics in Ontario. Our students have produced law reform briefs and papers, the best of which have been published, and which are thus available to poverty lawyers and academics.

For those law students whose career paths take them in another direction, their clinic experience stays with them, informs their work. They remain friends of the clinic in which they learned the basics of poverty lawyering. Teaching clinics do much to reduce the

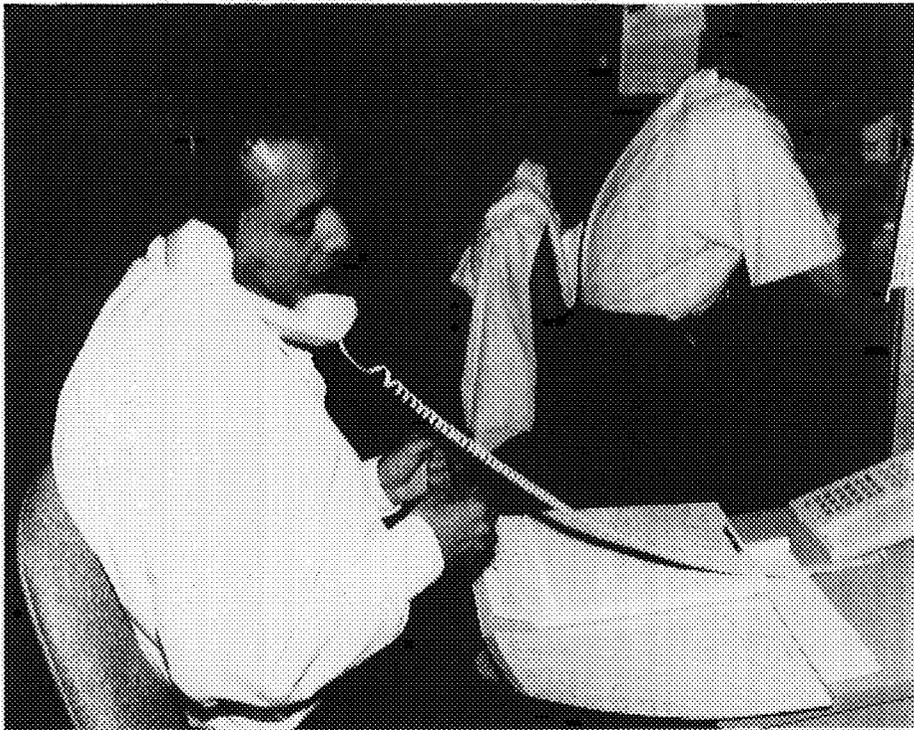
¹⁴ Letter of E. MacFarlane, student at Parkdale Community Legal Services, fall 1994, to Professor Shelley Gavigan (2 October 1995) [unpublished]. The "paper" to which the author refers was her own: "No Lock on the Door: Privacy and Social Assistance Recipients" (1995) 1 Rev. Curr. L. & L. Rev. 1.

¹⁵ The importance of clinical legal education to the legal profession has been recognized by the Benchers of the Law Society of Upper Canada as recently as April 1995. See Law Society of Upper Canada, *Report to Convocation by the Bar Admission Course Review Subcommittee* (Toronto: 28 April 1995) (Chair: P. Epstein) at 13, stressing that "it is important that law schools continue to offer skills and clinical courses."

marginalization of clinics and poverty law in the legal profession more generally. Our connections to the legal community are stronger as a result. Their centrality in the Ontario clinic system contributes to the rejuvenation and regeneration of clinics more generally.



Cindy Wan, student, Workers' Rights, 1997



Mohan Sharma, student, Landlord and Tenant division, 1997