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CLINICAL LEGAL EDUCATION AND LEGAL AID - THE CANADIAN EXPERIENCE by

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Last fall CLEPR sponsored the first workshop of Canadian law schools devoted exclusively to the subject of clinical law training in Canada. The seminar was co-hosted by the McGill University and Osgoode Hall Law Schools and CLEPR, and was held at the Law School of McGill in Montreal, on November 29th and 30th, 1973. The workshop was organized and co-chaired by Professor Frederick H. Zemans of Osgoode Hall Law School and Professor Lester Brickman of the University of Toledo Law School, who are responsible for this report of the proceedings. A list of those attending is included at the conclusion of this summary of the workshop discussions.

CLEPR's motivation in sponsoring the workshop was to determine whether any of the insights to be gained from the Canadian experience were transferable to clinical education in the U.S. Even though clinical education in Canada is of even younger vintage than it is in this country, certain characteristics of the newly emerging programs in Canada are of great interest - especially so in light of the Legal Services Corporation Act which is to replace OEO Legal Services and which finally appears headed for passage by both the legislative and executive branches. It is expected that the Corporation will be able to enter into contracts with law schools for the operation of community law offices concomitantly with the training of clinical law students. Despite their fledgling status, Canadian programs have begun to amass a wealth of data on the integration of publicly funded legal aid offices and law school clinical programs. This Newsletter canvasses the data in the course of selectively summarizing the workshop proceedings.

Perhaps the principal reason why major initiatives in clinical training did not come to Canada until the early 1970's, is the "articling" period which is still required by

the bars (law societies) of all ten provinces. Overall, the articling process, coupled with the concern of many legal academics that clinical studies might weaken the newly established university-law school academic model, tended to discourage Canadian law schools from experimenting with the clinical methodology. Articling is a one year program of internship between graduation from law school and admission to the bar. During this year, the prospective lawyer clerks or apprentices in the offices of practicing lawyers. So the argument has been routinely made: if students are required to work in a law office for a year under the supervision of a practicing lawyer, why should they be provided such practical training while yet in law school. The argument was responded to by the participants in several ways. Since the quality of the articling experience is not uniform, it is at best a hit and miss proposition and many students receive wholly unsatisfactory training. Moreover, many law offices utilize the students only for the most routine matters. It is not unusual for an articling student to spend his entire year writing memoranda or searching land titles. It is the economic motivation of the employer-lawyer which often takes precedence over the educational welfare of the student. The supervision element distinguishes the clinical program from even the best of articling experiences. No articling experience provides the time for reflection and systemic introspection that is the essence of a well run clinical program; nor are the yields in matters such as professional responsibility or sensitivity to the needs of the legally poor derived from case and client retrospection even remotely comparable.

Now, recognition of the need for clinical legal education is beginning to spread in Canada. As in this country, it was the initiation of federal poverty law programs and specifically legal services offices that eventually stimulated three Canadian law schools in 1971 to initiate clinical training programs. The Dalhousie, Osgoode Hall and Saskatchewan law schools received grants from the Federal Department of Health and Welfare to develop models of community legal services that utilized law students as the primary deliverers of the service. These grants initiated the first Canadian clinical programs and fostered the first full-time staffed community law offices in Nova Scotia, Ontario and Saskatchewan. Although legal aid in Canada falls within the powers of the provincial governments, which were strongly committed to a judicare model for legal aid, the Federal Department of Health and Welfare was interested in determining the relevance of the storefront legal services model for Canada.

The initiation of clinical training programs funded in some instances by sources interested primarily in public service has provided a continuing tension for clinicians who were serving in the dual capacity of clinical director and director of a community legal services office. [The conflict between service and educational goals is commented on in chapter 21 of Clinical Education for the Law Student: Legal Education in a Service Setting and at pages 35-45 of Clinical Education for the Law Student, CLEPR Conference Proceedings, Buck Hill Falls, June 1973.] This tension has allowed a unique Canadian model of clinical training to develop with a greater emphasis on and sensitivity to public service and new role models for lawyers than may be the case in this country.

Most of the ten Canadian provinces have implemented legal aid through a judicare system. The Ontario program is one such example, utilizing the private bar as the

sole deliverer of legal services. The Ontario plan is administered by a Provincial Director and Area Directors in each county. A citizen applies for legal aid to the Area Director's office where it is determined whether he or she is eligible for receipt of a legal aid certificate. The citizen must also undergo a financial interview to ascertain his financial eligibility and whether he is liable to contribute towards the cost of the legal services. If the applicant is able to surmount both the legal and financial eligibility hurdles, he is then able to take his certificate to a lawyer of his choice who is on the county legal aid panel. The Ontario plan has accentuated the client's freedom to choose his own lawyer, despite the evidence that most poor citizens do not know any lawyers and that the bulk of the legal aid panels are composed of junior members of the profession. If a lawyer accepts a certificate, (he is not obliged to do so) he will be paid 75% of the Legal Aid tariff plus disbursements. The 25% of the unpaid tariff is deemed to be the lawyer's contribution to the alleviation of the legal problems of indigents.

In the year ending March 1972 the Ontario Legal Aid Plan paid \$10,865,000 to lawyers on issued legal certificates. Of these, fully 80% of the certificates dealt with either criminal proceedings or divorce actions. The areas of law which affect the life of a low income citizen - unemployment insurance, welfare, consumer, and landlord and tenant problems are all discretionary and often deemed ineligible by the Area Director in view of the high cost of these services vis-a-vis the small financial amounts involved. Concerns with the high cost of legal aid and its lack of responsiveness and accessibility have prompted a review of the plan by a Task Force on Legal Aid.

Although method of delivery and the numbers covered vary between provinces, it is fair to say that the Ontario model has served as the prototype for most Canadian legal aid schemes. It is interesting to note that not only is the bar the sole provider of legal aid under the Ontario model, but that the legal profession through its governing body, the Law Society of Upper Canada, administers the scheme through its Legal Aid Committee without any public input. Unlike Legal Services in the U.S., with its "maximum feasible participation" heritage from OEO, there is no consumer participation in the administration of the Ontario program.

A more comprehensive legal services scheme was initiated by the Quebec government in 1973. Under this plan, a low-income person is given the option of being represented by a private practitioner or by one of the sixty-two neighborhood law offices staffed by nearly two hundred lawyers. It was recognized that considerable benefit would be reaped by both the Commission des Services Juridiques (the legal services plan) and its clients if cooperative efforts with Quebec's six law schools were undertaken. Accordingly, the Commission has been seeking to promote both clinical and poverty law training and, in furtherance of such intent, it has offered to set up a community law office to be used as a law school clinic. The Commission is offering to place a community law office at the disposal of each law school for clinical teaching and to pay the salaries of three staff lawyers, support staff and office expenses in return for the university law schools' paying the salary of the full-time professor-director. The legal services Commission stipulated that a

maximum of eight students work in the program each semester, that they receive 15 academic credits and that they not be required to take other courses at the law school during their clinical semester. The offer is under the active consideration of several Quebec law schools. The proposed Quebec model is a demonstration of the economic and pedagogical advantages of a partnership between provincial legal services schemes and law school clinical training programs. Moreover it holds unusual promise as a model for consideration by American law schools.

The University of Manitoba is also discussing a clinical training program which will utilize the facilities of their new provincial legal aid scheme, Legal Aid of Manitoba. The Manitoba scheme, a combination of judicare and community legal services, is in its third year and operates only two neighborhood clinics at present, the majority of legal aid being delivered by the private bar. Professor Roland Penner of the University of Manitoba is also the Chairman of the Board of Legal Aid Manitoba; he anticipates that the Legal Aid plan will open a number of new neighborhood law clinics which the university will use as a clinical setting. The proposed provincial plan contemplates the hiring of a full-time Education Research Director who will be responsible for maintaining liaison with the law school and for providing adequate supervision for the law students placed in the neighborhood projects. While the operation of the clinics would remain the responsibility of Legal Aid Manitoba, the university would be solely responsible for the educational component of the program. Indeed, recognition of the need for adequate student supervision is a crucial component of this proposal. Nonetheless, the proposal has met with reticence on the part of the law school.

Probably because of the judicare pattern outside of Quebec it has been difficult to integrate provincial legal aid systems and clinical training programs. In Nova Scotia and Saskatchewan there were only rudimentary legal aid schemes that were heavily overburdened at the time that federal funding was obtained for neighborhood offices to be the setting for clinical training programs. Ontario, with its sophisticated judicare model, has remained entrenched in its opposition to neighborhood legal services and has to date been unprepared to fund law school clinical programs which involve academic credit, although the Ontario Legal Aid Plan has subsidized Student Legal Aid programs at all six Ontario law schools. (These volunteer student legal aid programs have involved little supervision and, of course, no classroom component.) For the most part, lacking the counterpart of the American legal aid office, Canadian law schools seeking to develop clinical programs have therefore been required to establish their own storefront law offices. In fact, this is what the law schools of Dalhousie University in Halifax, the University of Saskatchewan in Saskatoon, Saskatchewan, the University of Windsor in Windsor, Ontario, the University of Western Ontario in London, Ontario, and York University (Osgoode Hall) in Toronto, Ontario have done.

Financing the operation of a neighborhood law office is an expensive proposition, and so interested law schools have been forced to look initially to sources outside the university. To facilitate their search, the schools have broadened the scope of their programs to include a strong element of public service and community education.

Therefore, outside of Quebec, to date the federal government is the major funding source of clinical training programs utilizing storefront settings, although refunding of the programs which otherwise terminate in April 1974 is uncertain.

The Federal Department of Health and Welfare has assumed a funding role in Canadian clinical legal education for three essential reasons: first, an interest in determining the need for community legal services; second, the impact of legal services on low-income communities; and finally, the exploration of the interaction between the legal profession and the law school with communities and citizens they serve.

The Dalhousie program, called the Dalhousie Legal Assistance Service, was established in 1970 and was the first clinical training course for academic credit in Canada. The program accommodates about 33 students split into 3 sections over the academic year. For the work, they receive 6 credits out of the 15 required per term. While enrolled in the program, students must take three additional courses at the law school.

While ultimate responsibility for the activities of the Service rests with the Faculty of Law at Dalhousie University, the organization is administered by a Board of Directors made up of 3 faculty members, 2 barristers, 2 community representatives, and 3 students. The Service has a full-time staff of ten including the Executive Director, a full-time member of the law faculty whose sole academic responsibility is the teaching and administration load of the clinical program, 2 staff lawyers, an articling clerk, 2 paraprofessionals and 4 support staff. Reflecting its diverse funding base, the Service is heavily involved in a variety of legal education and community service projects including the training of paraprofessionals, major research into community problems, law reform, preventative legal education directed to the community at large, and the education of law students who are encouraged to become involved in all phases of office activity. All of these projects are carried on in the context of a community law office. The aims of service and education are regarded as wholly consonant.

The University of Saskatchewan's clinical training program is set in a community legal services office that is neither operated nor controlled by the University. The office is separately incorporated and is governed by a 24-member Board of Directors. The Board consists of 3 barristers and 21 members of the community. The office personnel consists of a full-time faculty member who is the director and 3 staff lawyers.

The clinical training program is open only to students in their third year of study and it runs for both terms. Students are expected to devote one full day each week to staffing the office. This year there are nine students enrolled in the course. The time spent by students in the clinic is divided into intake work under the supervision of the staff attorneys and community work which includes law reform action and community organizing. In addition to the fieldwork, students attend a weekly class meeting which is divided into a short session for discussion of students' cases and a longer period devoted to an on-going seminar which is the academic part of the

course. This seminar is a vehicle for training in interviewing, counselling, and negotiating techniques. It also focuses study on subjects such as poverty in Canada, community organization, professional ethics, and community legal services. Students are required to produce a major research paper as part of the academic program in one of these areas.

The Osgoode Hall program was begun in September, 1971 and is for students in their second or third year. The program is situated at Parkdale Community Legal Services, a storefront law office in a low income district of Toronto. As of February 1974, the office is governed by a Board of Governors consisting of 7 elected community members and 7 delegates of the law school. The office is staffed by a full-time member of the law school faculty who serves as director, 4 staff lawyers, 1 lawyer who is a part-time member of the faculty, an articling student, 4 paraprofessionals and 3 support staff.

All new cases are discussed with the director or one of the staff lawyers within 24 hours of the initial interview. Students work in groups of five to six and are supervised by one of the staff attorneys. Each group concentrates on an area of law such as landlord and tenant law, consumer or welfare law. These groups meet with their staff lawyer weekly to discuss cases. In addition, each student has a volunteer supervisor who is a private practitioner of some experience with whom the student meets for two hours every week. Students receive 15 credits for their work and do not take any other courses during their clinical semester. At the end of the program they are evaluated on a pass/fail basis and a written evaluation is attached to their transcripts.

The program accommodates 16-20 students each semester. The students do all intake interviews, represent clients before various tribunals and in matters of civil and criminal litigation and handle a number of matters involving negotiations, particularly in family law cases. In addition to their casework, each student participates in two seminars given by the clinical professor. The Lawyering Process seminar is designed to assist the student in developing his legal skills particularly interviewing, negotiating and trial advocacy. In addition, the seminar utilizes the case presentation method to discuss the tensions encountered by the students in assuming the various lawyering roles. The second seminar is issue oriented and is designed to encourage students to critically examine substantive areas of law which they have encountered during the clinical semester. The students are required to lead a seminar session and prepare a major written paper researching such areas as child welfare, housing problems or immigration.

The analysis of the Dalhousie, Saskatchewan and Osgoode Hall projects demonstrates the impact of funding source upon program organization. The emphasis of the Federal Department of Health and Welfare on community input into the programs and the interaction between the legal profession and law schools with the communities they serve were put forth at the conference as major determinants of the perspectives adopted by these Canadian clinical programs.

The newest of Ontario's clinical programs is a product of reflection on their perspectives.

In January 1974, the University of Windsor opened a storefront clinic as part of a full semester program accommodating 15 students per semester. With the experience of prior storefront clinical programs before it, and especially the service-education tension, Windsor has striven to accentuate the academic component by integrating into the daily operation of its law office, the following:

- 1) A case presentation seminar in which cases handled by students are presented to the rest of the office to explain and illustrate the method and reasoning for handling a particular case in a particular way. The case thereby becomes the focus for an investigation of the many-faceted roles of the lawyer.
- 2) A second seminar which is directed toward training in such legal skills as interviewing, counselling and negotiations. Videotapes, role playing, and role analysis serve as educational vehicles for this aspect of the program.
- 3) A third seminar entitled "The Lawyer, the Legal Profession, Legal Responsibility and Ethics" which provides students with a broad perspective of the legal profession. Students are required to produce a major paper for this seminar.
- 4) In addition to the three seminars, students spend some time each week observing the daily rounds of a practicing lawyer, a judge, or an administrative agency. Each student is asked to keep a journal of his activities, observations, and comments for the period of his placement.

The impact of the source of funding for combined clinical training-community legal services offices continues to pose difficulties for Canadian clinical education. While in Quebec the proposed resolution appears ideal, in the Anglo-Saxon jurisdictions to the east and west of Quebec, there is reluctance on the parts of both the provincial governments and the law schools to become involved in the service aspects inherent in combined clinical-community law office programs. Many at the conference were encouraged to hear that the Dalhousie Law School is taking a broader view of its role and responsibility to the community in which its clinic is situated and is making funds available beyond its usual allocation for the clinical professor.

Another difficulty emanating from the government-as-a-funding-source occurs on the management level. Because the community law offices are designated to provide a service to the community as well as provide an educational milieu, all of the storefront offices are encouraged to have a substantial community input to their Boards of Directors. Thus, as pointed out, in the office used as the setting for the University of Saskatchewan clinical program, 21 out of 24 members of the governing board were chosen from outside the legal profession. Similarly, at the Osgoode Hall Law School project, 50% of the Board members are elected from the community. While these law schools maintain that the administration and government of this type of legal service is an integral part of the total educational experience of the student clinician, they are understandably hesitant to surrender to others control of any

aspects of the legal educational experience afforded the students. One of the proposals advanced at the workshop as a preferred model would entail a division of control mechanisms according to the particular function of the administrative task. Thus the law faculty, and specifically the clinical director, would take responsibility for the students' clinical experience; the director and staff lawyers would handle caseload and office administration; and a community advisory board (or a body with community input) would determine the broad service policies and priorities of the community office. Whether these often diverse interests can achieve a successful fusion will become clearer when sufficient experience is generated by the Saskatchewan and Osgoode Hall programs.

In addition to the impact of federal funding in Canada on the objectives and forms of clinical education, other influences on legal services delivery systems and consequently on legal education were discussed. It was pointed out that the Federal Department of Justice has recently provided small grants to groups across Canada experimenting with the development of legal services delivery systems with emphasis on delivery to the poor and to native peoples. For example, the University of Saskatchewan has received one of the larger grants for their Northern Native Peoples Program.

Federal as well as foundation assistance has been provided for the promotion and training of legal paraprofessionals. As in this country, the introduction of paraprofessionals into the Canadian law office is a new and still experimental step in the development of cost effective delivery systems. The lawyer working in the public sector in neighborhood law offices has found several compelling reasons for employing laymen aside from the obvious rationale of easing a high caseload. Paraprofessionals who are hired from the recipient community can provide valuable input to the formation of office policy while serving as a liaison between the middle class lawyers and poor clients.

The awareness of the potential importance of paraprofessionals in both the private and public law sectors is a new phenomenon in Canada and the educational institutions have not yet had time to adequately respond to the need for training programs. In the last two years seven community colleges in Ontario have become the first educational institutions in the country to offer courses of study for legal paraprofessionals. There is a wide disparity in course content between the different colleges but there is a heavy emphasis on business subjects and the social sciences, in addition to a survey of basic legal subjects. The thrust of the programs is to train laymen to work in the private legal sector. [For an analysis of paraprofessional developments in the U.S., see "CLEPR Hosts Paraprofessional Conferences," in CLEPR Newsletter Volume IV, No. 10, March 1972.]

The focal point for experimentation in the utilization and employment of paraprofessionals in the public sector has been the neighborhood law offices themselves. The programs at Dalhousie Legal Aid Service and Parkdale Community Legal Services best typify the range of that experimentation.

The Dalhousie Legal Aid Service carried out one of the first structured training

programs for paralegals during the summer of 1972. The 26 graduates of the course received six weeks of intensive classroom training in divorce and family law. Eight were involved in a full-time training program while the remaining 18 students were in a less intensive program to train part-time volunteers to work with community groups in the family law area. The course was designed and taught by eight second and third year law students working under the supervision of the Director of the Dalhousie office. After the course, four of the graduates were employed full-time in the Dalhousie office where they received additional on-the-job training in a wider range of areas. The program's goal was to train legal assistants to provide counselling in family law problems so that staff lawyers could get more actively involved in community programs of preventative law and law reform. Since that initial training course, Dalhousie has conducted four additional training programs in a variety of poverty law areas lasting three to seven weeks in duration.

The response to the training of paraprofessionals has been less structured at Parkdale Community Legal Services. Paralegals are trained on-the-job in specific areas of law and are expected to work as lay advocates as well as counsellors. Over the last two years the office has trained and employed on a full-time basis seven lay advocates from within the Parkdale community who have worked in the fields of consumer law, welfare rights, income maintenance advocacy, landlord and tenant law, and community education.

Although Osgoode Hall was the recipient of the grant from the Federal Department of Justice to initiate the training program for Parkdale's lay advocates, no formal relationship has yet been explored between the training of the clinical students and of the paraprofessionals. [A workshop devoted entirely to such considerations was sponsored by CLEPR at the University of Minnesota Law School and took place in early May 1974.]

While a number of other matters received attention at the conference, perhaps of overriding concern was the question of funding. As demonstration grants expire, Canadian law schools are having to face the hard questions of the educational merit of clinical programs, particularly in light of the relatively small enrollments characteristic of experimental ventures. If the U.S. experience is any predictor, then the enrollments may be expected to increase and thereby justify the large sums per student presently being expended. The unique features of the Canadian experience were cited by the participants as lending strong motivation for the law schools' continuing to look to community sources for physical facilities and financial assistance. Thus Canadian law schools which accept the validity of the community legal services clinic as the appropriate setting for their clinical programs were urged to lobby for public assistance, patterning their argument after that advanced by university medical faculties who have successfully argued in both countries for public support of medical training and teaching hospitals.

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