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"USELESS" (UOSLAS) v. THE BAR: THE STRUGGLE OF THE OTTAWA STUDENT CLINIC TO REPRESENT BATTERED WOMEN

Ruth Carey*

RÉSUMÉ
En 1990, la Société d'aide juridique de l'Université d'Ottawa a créé une section pour les femmes afin d'offrir des services aux femmes victimes de violence perpétrée par des hommes. Le projet de création de la section comportait une politique selon laquelle la cellule criminelle s'occuperait uniquement des cas où les agresseurs ne connaissaient pas leur victime auparavant. Le barreau local de la défense s'est plaint auprès du Barreau du Haut-Canada en lui demandant de vérifier si cette politique n'enfreind aucun des règlements relatifs au fonctionnement des sociétés estudiantines d'aide juridique ou au code de déontologie. L'auteur, étudiante membre de la SAJUO à l'époque où la controverse a commencé, considère que la réaction du barreau à l'égard de cette politique est le reflet d'un misogynisme certain et d'un manque de compréhension du rôle que jouent les cliniques au sein du réseau des cliniques juridiques de l'Ontario.

INTRODUCTION
In the summer of 1990, the University of Ottawa Student Legal Aid Society (UOSLAS) embarked on a new programme designed to deliver legal services to women who had experienced, or were experiencing, male violence in their lives. The new Women’s Division would begin by offering court accompaniment to victims of male violence, community legal education and community development.

Some members of the local bar reacted very negatively to the new Women’s Division, its stated goals and policy objectives. The controversy attracted media attention. Articles, editorials, and letters to the editor appeared in the
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local newspaper. It was reported in the *Toronto Star*, the *Law Times*, and the *Lawyers Weekly*. Eventually, it appeared in the *Globe and Mail*. UOSLAS students were barred from acting as assistant duty counsel in the Elgin Street courthouse and were threatened with the loss of future articling positions. One lawyer referred the matter to the Ontario Human Rights Commission and recommended the Commission investigate UOSLAS behaviour. The local defence bar organization registered a complaint with the Law Society of Upper Canada’s Professional Conduct and Legal Aid Committees.

It is my opinion that the reaction of some of the members of the local Ottawa defence bar was fuelled by a deep misogyny and a fearful anti-feminist political ideology. This was particularly true during the early stages of the debate. For example, on September 28, 1990, the *Citizen* recorded the reaction of one of the local members of the bar: Robert Wakefield “said the program [the student legal aid clinic] seems to be under the sway of women’s interest groups.” Wakefield was further quoted as saying: “Women’s groups take the position that when a woman accuses a man of an offence, he is guilty and does not deserve a defence.” In a *Toronto Star* article, Wakefield described the Women’s Division policy in the following way:

“They’re saying if a woman has been bopped by her husband they’d defend her, but if a man walked into the office charged with bopping his wife, they’d turn him away.” [Emphasis added.]

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6. Robert Illingworth, in a letter dated November 19, 1990 [unpublished]. He wrote: “It would appear that this policy is wide spread and that the legal aid clinics are discriminating against men because of their sex and marital status.” A copy of this letter was sent to the Law Society of Upper Canada and is on file with the author.
Besides the belittling effect of the word "bopped" to describe a vicious crime against a woman, the above quote characterizes a woman survivor as requiring a defence—a somewhat antagonistic attitude towards people who are not defendants or adversaries, but victims of crime and Crown witnesses.

I am not alone in my characterization of the defence bar reaction as misogynist. Peter Showier writes:

"The policy has triggered a spate of protest which has been universally critical, often one-sided, occasionally vituperative and, in its darker aspects, profoundly misogynist." 9

Despite the above, the stated arguments against the policy tended to be based on two broad grounds: that as a component of legal aid UOSLAS had no right to adopt the Women's Division policy; and that the students involved did not understand "a lawyer's role". It is the thesis of this paper that the arguments used by the bar are rooted in a misunderstanding of the function of clinics within the legal aid system of Ontario, that this misunderstanding has historical roots in the development of legal aid, and that the Ottawa defence bar was attempting to preserve anachronistic myths regarding the proper role and functions of a lawyer.

The first section of this article is an overview of the factual background of the dispute; the second traces the historical development of legal aid in Ontario and how that is related to the debate over the Women's Division Policy; and the third provides my analysis of how the defence bar's value judgments regarding a lawyer's role were misapplied to UOSLAS. 10

1. FACTUAL BACKGROUND OF THE DISPUTE
On July 6, 1990, the council of UOSLAS unanimously accepted a proposal for a new Women's Division. The proposal was the result of consultations with organizations within the women's community in Ottawa, and with two clinics in Toronto with similar goals: Parkdale Community Legal Services

9. Peter Showier, "Spousal assault: Clinic right in not defending accused" The Ottawa Citizen (20 November 1990) A11. See also: Robert Hooper, Legal Aid, the Criminal Justice System, Does Any of it Exist for Women who have been Victimized by Violence? (Faculty of Law, University of Ottawa, 1990) [unpublished].

10. At the time of the dispute over the Women's Division policy, I was a third year law student at the University of Ottawa and a member of UOSLAS. I have chosen to retain the personal pronoun in recounting the experiences of our clinic, but my observations and opinions are my own and not to be attributed to either UOSLAS or the Women's Division.
(PCLS) and Community Legal Aid Services Program (CLASP). The services to be provided initially were victim accompaniment and community outreach, which entailed legal education work and community development on both an individual and group basis. The proposal contained the following policy statement:

"In order to accomplish these goals, we feel that it is essential that our commitment is reflected in the general policy of the clinic. This will require a slight change in the clientele accepted by our criminal division. If this proposal is adopted, the criminal cell will only represent men accused of assaulting women where there is no relationship between the parties. We feel that this stance is necessary in order for the clinic to have an internally consistent policy and attain credibility in the women's community."\(^{11}\)

It was agreed among the council members that acceptance of the policy was contingent upon the agreement of our local Area Director of the Ontario Legal Aid Plan (OLAP), David Clancy, to issue certificates for legal aid services to anyone affected by the policy. It was felt that these numbers would be very small as UOSLAS only represents individuals in criminal matters for summary offences which are first offences, and which would not result in jail terms. Accordingly, UOSLAS Review Counsel, David Bennett, wrote to Mr. Clancy informing him of the policy in virtually identical terms to that quoted above.\(^{12}\)

After the policy was accepted, the subject arose as to its effect on our duties in remand court\(^{13}\) at the Elgin Street courthouse. Under the *Legal Aid Act*,\(^{14}\) the area director may: "arrange with a student legal aid society in his or her area for assistance to duty counsel".\(^{15}\) UOSLAS was the only student legal aid society in Ontario to act as assistant duty counsel (we also were the only society to perform the function of duty counsel in landlord and tenant court). It was agreed that because of the problem with perceived conflicts of interest, we would refer all men caught by the policy in remand court to the acting duty counsel. It was at this stage that the local defence bar became aware of what we were doing.

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11. S. Beavers, N. Girard, and C. McCulloch, Proposal for the Creation of a Women's Division of the U. of O. Student Legal Aid Society, (Faculty of Law, University of Ottawa, 1990) [unpublished].
12. David Bennett (Faculty of Law, University of Ottawa, 1990) [unpublished].
13. In Ottawa, the court of first appearance where trial dates are set is commonly referred to as "remand court".
15. *Legal Aid Regulations*, O. Reg. 59/86, s. 76 (1) (a).
What followed was a long saga of meetings, complaints, and unfavourable press. Students who attempted to work in remand court were repeatedly challenged on the policy by defence lawyers, until eventually we were barred from the courthouse. On October 3, 1990, Michael Neville, a local lawyer with the law firm of Neville, Hall & Selkirk, wrote a letter complaining to Thomas Bastedo and Mark Somerville, then the respective chairs of the Legal Aid and Professional Conduct Committees of the Law Society of Upper Canada (LSUC). Negotiations at that point had resulted in a temporary cease fire: the policy would be suspended until the matter was settled by the Law Society.

The defence bar was inflamed anew by a document produced by the Women's Division which the bar nicknamed "The October Manifesto". It attempted to explain the policy in terms of maintaining credibility with our women clientele and agencies who make referrals to us, and in conflict of interest terms. It also acknowledged that the position would be seen as a political statement, but that UOSLAS had made similar decisions in the past: such as refusing to represent poor landlords because of our commitment to tenants' rights. The portion of the document that most enraged the defence community was set out in paragraph six:

"The kind of work the Women's Division does is at odds with defending men accused of violence against women. There would be a general conflict of interest because our clinic, in recognizing the seriousness of violence against women, is committed to working towards more prosecutions and stiffer penalties. By contrast, the essence of a good defence is always to seek a lesser penalty, if any at all. We cannot be consistent in attempting to pursue both objectives. The types of defences, and even the arguments used when speaking to sentence, are part of the social myths about violence against women that we are working to eradicate." [Emphasis added.]

The sentiment expressed in this paragraph was not a new idea for the local bar. Just before the controversy over the Women's Division had erupted, two local female Crown attorneys had expressed similar complaints regarding sexual assault offences and a substantial article had appeared in the Citizen.

16. UOSLAS Women's Division, Domestic Violence Policy from Women's Division (Faculty of Law, University of Ottawa, 1990) [unpublished].

17. Ibid.

On October 12, 1990, Convocation of the Law Society passed a resolution, which read in part:

"That the matter be investigated and the Committee report back to Convocation after consultation with the Professional Conduct and Legal Aid Committees and that the Treasurer have authority to make decisions regarding the work and procedures of the Committee in consultation with the members of the Committee should the need arise."\(^{19}\)

The Committee was made up of Thomas Bastedo, Mark Somerville, and Fran Kiteley, then the Chair of the Women in the Legal Profession Committee of the Law Society.

On November 1, 1990, the County of Carleton Law Association passed a resolution recommending to the Law Society and the Government of Ontario that all UOSLAS funding be immediately discontinued until the policy denying access to men charged with the assault of women partners was revoked.

UOSLAS Review Counsel, under the instruction of the Dean of the Common Law Faculty, sent a memo to all UOSLAS members indicating that the so-called "October Manifesto" was not UOSLAS policy and that no students were to make any policy statements or public announcements. In effect, Dean McRae assumed the negotiations with the bar and the Law Society Committee. Admittedly, he had the authority to do so. Under the Regulations of the Legal Aid Act,\(^{20}\) the "dean shall have control and supervision of the student legal aid society ... of which the dean is chief administrator".\(^{21}\) Nevertheless, it was clear from the point of view of the students that the Dean had a very different set of priorities. He supported the programme and its goals, but was anxious to have the matter resolved and was concerned about the effect the dispute with the bar would have on the school.

Throughout the fall of 1990, various individuals and groups came forward and expressed support for the policy and the clinic. Rosemary Tait, the Chair of the Board of Directors at Metro Tenants Legal Services in Toronto, Mary Jane Mossman, Professor of Law at York University's Osgoode Hall Law School, and Robert J. Sharpe, Dean of the Faculty of Law at the University of Toronto, all wrote to the Special Committee expressing support for the policy.

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21. Legal Aid Regulations, O. Reg. 59/86, s. 75. The regulation also reads "the dean may in the dean's sole discretion ... restrict the functions of the society and its members ...." [Emphasis added].
The policy was rewritten in the following manner:

"It is recognized that the possibility of conflict of interest may arise where UOSLAS is asked to act on behalf of both parties in a domestic dispute. UOSLAS reserves the right to resolve this conflict in favour of women. Any person who is refused representation due to a conflict of interest will be assisted in obtaining the services of a private lawyer. If that person is unable to obtain representation, for any reason, then he or she may return to UOSLAS and he or she will be assisted to the degree that UOSLAS is capable."

It is easy to construe this statement as the equivalent of the rules regarding conflict of interest which would operate in a private law office—a case by case examination of individual clients, and a refusal of service only when an actual conflict arises. The use of the phrase "domestic dispute" not only tends to trivialize the violence, but it de-sexualizes what is actually happening. This statement attempts to be gender neutral, which in the context of private violence, contributes to the denial of women’s reality as the victims of what is overwhelmingly male violence.

Despite this almost complete capitulation to the defence bar’s demands, UOSLAS students were not allowed to return to remand duty. The position was taken by certain members of the defence bar that students did not, and never had, fulfilled a useful function in remand court. UOSLAS took the position that this refusal regarding the resumption of our duties in remand court was the equivalent of refusing the negotiated settlement. Once again the policy was rewritten and it was reaffirmed that men accused of violence

22. A copy of this policy was mailed to the Committee investigating the matter by Dean McRae on January 21, 1991. Attached with it was a letter of apology from UOSLAS to the Defence Counsel Association of Ottawa. Both of these documents were part of an attempt to reach a settlement with the defence bar. The letter of apology read: "In the course of seeking to explain the policy in the past, statements were made which members of the defence bar found offensive and insulting. The Student Legal Aid Society regrets this offence and insult and recognizes the vital and positive role played by defence lawyers in Ottawa. The Society recognizes too that lawyers in Ottawa provide support to and representation for women victims of domestic violence.

The Student Legal Aid Society wishes to ensure that all of its members understand and accept the important traditions of the practising bar ...
"
The wording of this letter of apology later became a stumbling block to the negotiated settlement, as certain members of the defence bar felt it was not strong enough.

23. It is important to note here that neither the defence bar association, duty counsel, nor the area director of OLAP had complained prior to the controversy that students were not useful in remand court. Furthermore, UOSLAS provided a bilingual service, something that the full time duty counsel at the courthouse could not do.
against women with whom they have or had a relationship would be referred to OLAP for certificates which would then be accepted by a private member of the bar.24

The Committee appointed by Convocation to look into the matter was informed of these developments and the new wording of the policy by letter dated March 15, 1991. The Committee produced a written report for Convocation regarding the controversy, which is dated November 6, 1991.25 The report was due to be submitted to Convocation on November 22, 1991. On November 26, 1991, I received a letter from Andrew Brockett, the Secretary to the Special Committee, informing me that additional information came to the Committee’s attention on November 21 and therefore the report had not been submitted to Convocation as planned. This first report reads in part:

“It is the Committee’s view and Report to Convocation, that the specific matter about which Mr. Neville first laid his complaints to the Law Society have been resolved. That is to say, a policy has been adopted within the Student Legal Aid Society which is acceptable to the Defence Bar in Ottawa, and which is acceptable to the students and to the University. It may be noted in passing that the policy adopted parallels closely the policy which has been in effect for some time at Parkdale Community Legal Services.”26

The additional information referred to by Mr. Brockett was that Mr. Neville, the original complainant to the Law Society, had not received correspondence

24. The rewording of the last version of the policy was however, not as forceful as I have expressed it:
   “To ensure better access to justice for women the clinic will not represent men where there are allegations of violence against women, and there has been a previous relationship between the parties. This is to provide a safe and secure atmosphere for women and avoid potential conflicts of interest. This affirmative action policy is in the spirit of the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code. The clinic recognizes the importance of anyone charged with a criminal offence receiving legal representation. We also recognize that the Courts are, with increasing frequency, imposing jail sentences in cases of domestic violence. Accordingly all people accused of criminal offences involving domestic violence against women will be assisted in obtaining the services of a private lawyer. If that person is unable to receive representation, then University of Ottawa Student Legal Aid Society will assist that person to the extent we are capable.” [Emphasis added.]

25. M. Somerville, F. Kitely, and T. Bastedo, Report to Convocation with respect to matters raised by the defence counsel association of Ottawa in relation to the University of Ottawa Student Legal Aid Society by the Special Committee appointed by the Treasurer in Convocation on October 12, 1990 (Law Society of Upper Canada, Toronto, 1991) [unpublished], [hereinafter Report to Convocation]

from Mr. Bastedo proposing to end the matter. Mr. Neville wrote requesting that the Committee decide once and for all whether the original policy of the Women's Division was acceptable or not, and that the issue of the apology to the bar was central to any settlement.

The Committee subsequently rewrote the report, each member drafting his or her own comments.27 This second report was on the agenda for Convocation for June 26, 1992, but had to be deferred due to lack of time. The second report was finally tabled and debated in Convocation on July 10, 1992, which I attended. Mr. Bastedo offered the Second Report to Convocation on behalf of the Special Committee, and reiterated his view that the issue of the policy was moot as it had been changed. He was also of the opinion that the issue of the apology was not part of the original complaint and therefore did not need to be addressed.

For the Second Report, both Ms. Kiteley and Mr. Somerville wrote Supplementary Reports. Ms. Kiteley took the position that:

"A legal clinic program which accepts as clients a class of person perceived to be disadvantaged and declines to accept as clients those who do not suffer that particular disadvantage, could be said to be a program fully in accordance with subsection 15(2) of the Charter, the document which now forms the cornerstone of the administration of justice."28

Ms. Kiteley was of the view that the Women's Division Policy was within the mandate of the Legal Aid Plan, and that the Rules of Professional Conduct should be analyzed and rewritten given the issues arising from deliberate client selection.29

Mr. Somerville's Supplementary Report espouses the position that the policy was discrimination against men, and that it was particularly inappropriate given the publicly funded nature of UOSLAS, in addition to its being part of the university community.30


28. Ibid., Appendix A at 2.

29. Ibid., Appendix A at 3.

30. Ibid., Appendix B.
Mr. Bastedo, in his comments at the beginning of the Second Report, wrote that he was "generally supportive of the broad position put forward by Ms. Kiteley ...".31

During the debate in Convocation on July 10, 1992, an Ottawa Bencher, Ms. Peters, moved for approval by Convocation of Mr. Somerville's comments in his Supplementary Report. Her motion was never put to a vote, however. Instead, the Treasurer, Alan Rock, suggested that the Second Report and its Supplements be accepted by Convocation, forwarded to the interested parties, and the issues referred to the Professional Conduct Committee for further study, without the context of the University of Ottawa debate. Thus, the UOSLAS situation is ended for the Law Society, but the issues in their broader context continue on.

It is important to point out that the events described above had a profound impact on students, faculty and the administration of the Faculty of Common Law at the University of Ottawa. The students who were involved in UOSLAS and the formation of the policy were uniformly forced to defend themselves against a very powerful group of lawyers who have the ability to affect our future prospects and careers.32 Various faculty members used their classrooms as an opportunity to tell students how the policy was wrong and misguided. The constant barrage of criticism and bad media coverage was extremely discouraging for the students.

Worst of all, the reality of women's experience of male violence was somehow relegated to unimportance and irrelevance and replaced with legal arguments regarding a lawyer's proper role.

2. THE HISTORY OF LEGAL AID IN ONTARIO
The history of legal aid in Ontario is relevant to understanding the backlash against the Women's Division policy in three contexts: the purpose or objectives of delivering legal services to the poor; the range of functions performed by the service providers; and the traditional resistance and antipathy of the organized bar to the concept of community legal aid clinics.

31. Ibid. at 3.

32. This threat was made to a number of students on a variety of occasions. The possibility that these threats might be grounds for a complaint under the Ontario Human Rights Code did not seem to occur to the lawyers uttering them. It should also be pointed out that the threat was extended to any student who had courses such as "Women and the Law" or "Feminist Legal Theory" on their transcripts.
Prior to 1951, there was no statutorily-based free legal services delivery system in Ontario. That is not to say that before 1951 no one in Ontario obtained free legal assistance. It was, however, a less than sure thing and predicated entirely on charitable impulses. Approximately 60% of those accused of serious criminal offences were incapable of paying for a defence. Of that number, approximately one in six had counsel provided for them by the Attorney General’s office, which would pay a slim amount on a per diem basis. “Dock briefs”, the appointment of counsel by the bench, seems to have been a very rare practice. In forma pauperis proceedings, where court fees were waived for indigents, were possible in Canada as a result of our inheriting the general law of England. Gradually in forma pauperis proceedings fell into disuse and were ignored, replaced by fee structures in the various provincial codes of civil procedure. In 1923, the Criminal Code was amended to allow for the appointment of counsel for indigents in limited circumstances.

In addition, there were a number of attempts by local associations of lawyers to set up volunteer advice bureaus. The only nationwide attempt at organized free legal services seems to have been during the Second World War, when Margaret Hyndman “persuaded the Canadian Bar Association to provide free legal services to military personnel and their spouses”.

34. Ibid.
37. Ibid. at 592.
38. Statutes of Canada, 1923, c.41, s.59.
39. See Nelligan, supra, note 37 at 598; and for a comprehensive account, Mary P. Reilly, “The Origins and Development of Legal Aid in Ontario” (1988) 8 Windsor Yearbook of Access to Justice 81.
Mary P. Reilly sums up the factors influencing the decision to institute a more formalized legal aid system and concludes:

"[T]he legal profession realized by the late 1940s that if they did not provide this service government would intervene and impose this system upon them. Control over the provision of legal aid was a major motivation behind the Law Society of Upper Canada's policy to establish the Legal Aid Plan in 1951."\textsuperscript{41}

In addition, there was external pressure from other jurisdictions. The Rushcliffe Report in Great Britain advocating change in the legal aid system was released in the late 1940s.\textsuperscript{42} There were several influential works written in this period by Americans.\textsuperscript{43} In response, the Law Society chose to institutionalize volunteer legal aid, forgoing government backing in exchange for control over the plan.\textsuperscript{44} The 1951 plan was heavily imbued with moral judgments regarding claimants. In criminal matters, no summary offences or provincial offences were covered; nor could anyone who had a previous conviction obtain legal aid.\textsuperscript{45} On the civil side, there were a number of exclusions: defamation; breach of promise for marriage; loss of the services of a woman or girl in consequence of her rape or seduction; and alienation of affections.\textsuperscript{46} In practice, as Cormier points out, lawyers were reluctant to provide legal aid in matrimonial causes: "[l]awyers considered divorce to be a luxury".\textsuperscript{47} In 1954, the director for Essex County requested the right to exclude any further applicants accused of prostitution-related offences, and Convocation approved.\textsuperscript{48}

Problems with the 1951 plan appeared from the beginning. Volunteers quickly became scarce which resulted in attempts to co-opt the younger members of the bar—selling it to recent graduates as a way to obtain

\begin{itemize}
  \item \textsuperscript{41} Reilly, \textit{supra}, note 35 at 103.
  \item \textsuperscript{42} Cormier, \textit{supra}, note 35 at 112.
  \item \textsuperscript{43} The American debate about legal services and the poor had been explored by the Canadian Bar Association as early as 1931: James Edmund Jones, "Legal Aid for the Poor" (1931) 4 Can. Bar Review 271 at 276.
  \item \textsuperscript{44} \textit{Law Society Amendment Act (1951)}, R.S.O. 1960, c.207, s.52.
  \item \textsuperscript{45} Cormier, \textit{supra}, note 35 at 114.
  \item \textsuperscript{46} \textit{Ibid.} This list is not exhaustive.
  \item \textsuperscript{47} \textit{Ibid.} at 115.
  \item \textsuperscript{48} \textit{Ibid.} at 116.
  \item \textsuperscript{49} Taman & Macdougall assert that this led to some bitterness among the older members of the bar and accusations that recent graduates were stealing business; \textit{supra}, note 35 at 102.
\end{itemize}
In 1955, the Hamilton lawyers involved in the plan suspended operation, insisting that there was a need for an investigation into plan abuses. No doubt these abuses were related to the extremely stringent financial criteria applied to applicants: less than $900 a year in income and assets was required for a single applicant with the exclusion of the clothes on his back. The Canadian Bar Association Legal Aid Committee Chairman advocated publicly for strong lawyer support for the programme to prevent government interference and protect the independence of the bar. As a result, the Law Society and provincial government struck a Joint Committee in 1963 to investigate. Lawyers appeared in front of the Joint Committee arguing that legal aid was a privilege not a right, and that the plan would work fine the way it was if the financial requirements were simply more strict. Meanwhile, pressure was being exerted from outside the legal profession. In 1962, the Ontario New Democratic Party fall convention made support for a public defender system part of its party platform. In 1964, while the Joint Committee was deliberating, the U.S. president granted funds to provide legal aid for those appearing in federal courts, Quebec announced the establishment of a funded legal aid plan, and the McRuer Commission stated its

50. Ibid. at 217-218. The idea that the purpose of legal aid is to provide experience to young lawyers is especially relevant to the student legal aid clinics of today. Many students take the position that this is one of the prime purposes of student legal aid. When the dispute over the Women's Division policy resulted in students being barred from remand court as assistant to duty counsel, this belief was used as an argument against the policy.

51. Taman & Macdougall, supra, note 35 at 102.

52. Ibid. I believe this phenomenon occurs today and is relevant to the arguments made by the defence bar. Although anyone on social assistance will probably qualify for a legal aid certificate (depending on their assets which may be subject to a lien), there is a large class of people who apply for legal aid but are rejected because of the financial criteria. Further, common wisdom among the clinics is that if we were all open twenty-four hours a day we could not service the need that exists. The defence bar arguments regarding public funds and legal aid were based on the presumption that there is enough time, money and services available to go round and therefore there is no excuse for targeting clientele. This is simply not in keeping with reality. The clinics have always restricted clientele on a number of grounds, one of which is that limited resources require choices as to where the most effect can be gained for the community being served as a whole.

53. Ibid. at 103.

54. Ibid. at 109.

55. Ibid. at 111.

56. Ibid. at 108.
intention to study the public defender model and the role an ombudsman could play.\textsuperscript{57} Finally, the case of \textit{Gideon v. Wainwright},\textsuperscript{58} decided in 1962 by the U.S. Supreme Court, declared the right to counsel for criminal offences to be guaranteed by the American Constitution.

The Joint Committee reported in 1965 and stated that the primary faults with the 1951 plan were its charitable intent and reliance on voluntary labour.\textsuperscript{59} Cormier writes:

\begin{quote}
"One problem not mentioned in the Joint Committee report but evident from the discussions about divorce and repeat offenders was an unwillingness of the bar to provide certain types of service or to serve some "types" of applicants."\textsuperscript{60}
\end{quote}

The Joint Committee Report resulted in the passage of the \textit{Legal Aid Act, (1966)}.\textsuperscript{61} In 1968, the Law Society of Upper Canada made its first annual report to the Attorney General on the workings of the plan:

\begin{quote}
"Ontario has now taken a giant stride to ensure that no one shall be denied the services or advice of a lawyer because of lack of money."\textsuperscript{62}
\end{quote}

Clearly the Law Society was using the language of a right to assistance instead of a privilege, but the new plan was still based, at least in part, on a charity component. Lawyers working under the plan would receive 75\% of the tariff, the missing 25\% being a presumed charitable "donation" to the poor on the part of the lawyer.\textsuperscript{63}

For our purposes, the most important aspect of the Joint Committee Report is its rejection of what was termed the "public defender" model of legal services utilized by the Americans. Public defender offices are run by the state with staff attorneys, very much as Canadian Crown attorney offices are.

\begin{footnotes}
\item[57.] \textit{Ibid.} at 112.
\item[58.] 372 U.S. Reports 335 (1962).
\item[59.] Cormier, \textit{supra}, note 35 at 119.
\item[60.] \textit{Ibid.} This criticism was one of the arguments that the bar used against the Women's Division policy, and is discussed later in this paper.
\item[61.] S.O. 1966, c.80.
\item[63.] \textit{Ibid.} at 7. It is important to observe that the charitable aspect of the judicature component of our present system still exists. On July 10, 1992, one of the issues decided in Convocation was that the statutory levy should be increased from 5\% to 10\%. See also: Cormier, \textit{supra}, note 35 at 131.
\end{footnotes}
The Committee did not consider the clinical concept in terms of civil matters and seems to have been unaware of the developments along those lines in the U.S. One of the phenomena regarding the Canadian debate about legal services to the poor is that the argument for a certificate system (judicature model) as opposed to a clinical model is almost exclusively played out in the context of criminal matters. The Joint Committee’s criticisms rejecting the public defender model were that it took away the right to counsel of one’s choice, and that having both defender and prosecutor being paid employees of the state would create a perception of bias.

The value of the 1966 plan was that it established that legal aid was a right and that the public purse should carry most of the burden. As Cormier points out, this left open the question of the extent to which it should be funded. The 1966 plan came under attack for not providing services in special areas of the law which were of critical relevance to the poor: welfare and social assistance legislation; landlord and tenant matters; and worker’s compensation. The Law Society responded by appointing a committee which subsequently produced a report. By the time the report was published in 1972, the first four community clinics based on the American “storefront” model were in operation thanks to funding from the federal departments of Health and Welfare, and Justice, in addition to funding from charitable foundations such as the American Ford Foundation and the Donner and Atkinson Foundations.


I anticipate that this shall shortly change with the recent announcement by Ontario’s Attorney General that the province intends to pursue pilot projects in family, refugee, and young offenders’ law, utilizing the staff law office model.

Cormier, supra, note 35 at 122.

Ibid. at 123.

Ibid. at 123-124.


The Law Society report of 1972 was quite scathing in its assessment of the value of the clinical model. Clinics were criticized as being ineffective,\(^\text{70}\) idealistic and naive,\(^\text{71}\) and susceptible to "local influence" and manipulation through community boards.\(^\text{72}\) The problem of the lack of expertise in matters important to the poor was addressed as follows:

"There was for a time considerable speculation in the press concerning the advantages of full time "poverty" lawyers specializing in the peculiar problems of the poor. The defect in speculation of this kind is that the legal problems of the poor are for the most part not at all peculiar ... [I]f the Private Bar had been remunerated for work in this area, it would soon enough have developed the necessary expertise ... [I]t would be a retrograde step to embark upon institutionalizing assisted legal services to the poor in order to develop expertise in a small area of the spectrum of legal problems with which they are confronted."\(^\text{73}\)

They distinguished the Canadian situation from the American one by claiming that: "[L]aw reform in Ontario is treated largely as a legislative function with planning assistance frequently provided by law reform commissions."\(^\text{74}\) In the U.S. on the other hand, reform oriented litigation was perceived as possible.\(^\text{75}\)

The ideology of the organized bar of the time regarding legal services is best revealed by the following paragraph:

"Decisions as to servicing "priorities" chiefly involve choices between various forms of "group action" designed to produce "reform" or at least, public notoriety as to causes on the one hand and on the other, the servicing of individual legal needs. The prevalence of partisan community boards and the abiding interest of salaried attorneys in "group action" matters can readily produce a form of local tyranny in legal service and an unparalleled lack of accountability in the uniform servicing of individual legal needs."\(^\text{76}\) [Emphasis in the original.]

This paragraph clearly reflects the belief that being a good lawyer means dealing with an individual's legal needs, and that concerns about group needs are somehow political or "partisan" and therefore, not law. It also assumes

\(^{70}\) LSUC, supra, note 68 at 85.
\(^{71}\) Ibid. at 86.
\(^{72}\) Ibid. at 90.
\(^{73}\) Ibid. at 93.
\(^{74}\) Ibid. at 86.
\(^{75}\) Ibid.
\(^{76}\) Ibid. at 91.
that these forms of service are in conflict. This philosophical bias of individualism has lead to an oft expressed opinion that clinical lawyers are somehow not quite acceptable as lawyers. As then Justice Peter Cory expressed it:

"There has always been, I think, some feeling that full time, salaried lawyers are not quite as professional as the private Bar."77

The efforts of the law society to reject clinics were in vain however, as the Ontario provincial government responded to the criticisms of the legal aid plan with the creation, in 1973, of a task force under the direction of a Justice of the Supreme Court of Ontario, John H. Osler. The Osler Report78 was tabled in the legislature in 1975 and to the horror of the law society, recommended that the administration of legal aid be handed over to a non-profit statutory corporation.79 The Osler Report approved of the notion of community clinics and recommended a mixed system of service delivery:

"[W]e see the private office, the staffed neighbourhood legal aid clinic ... as complementary models, all of which are designed to remedy the chronic under-utilization of the profession and the law by the poor. ... Clinics, it seems to us, may be appropriate where the presence of Legal Aid in a forthright and obvious way is desirable in the interests of the poor of the community and where the patterns of private law practice have created a sense of psychological and physical inaccessibility."80

The Law Society described this endorsement as “an ambivalent position with regard to the clinic method of giving legal aid”,81 and noted: “the Law Society would be concerned if clinics staffed by salaried lawyers became the universal or even preponderant method of delivering legal aid services”.82 More importantly, the Osler Report recognized that clinics were intended to address the community’s needs as a group and would of necessity have to target and restrict their clientele by matter:


80. Ibid. at 25.

81. Ibid. at 6.

82. Ibid.
"[A]ny neighbourhood legal aid clinic may be given special priorities in its community ... Such priorities might require restrictions on the kind of work for which the clinic will be available."\textsuperscript{83}

Most of the Osler Reports' recommendations were ignored by the government, but a group representing the clinics presented a brief in support of its recommendations.\textsuperscript{84} As Mary Jane Mossman indicates, the brief was important as it pointed out the funding dilemma then being faced by the clinics and resulted in the passage of a regulation\textsuperscript{85} under the \textit{Legal Aid Act, 1966} which extended funding to the clinics from the existing plan structure.\textsuperscript{86} The regulation described the clinics as "independent" and "community-based" and immediate conflicts arose between the clinics and the Clinical Funding Committee of the Plan as to exactly how much independence this meant.\textsuperscript{87} In response, in June of 1978 the Attorney General appointed Mr. Justice Grange to review the operation of the clinical funding regulation.\textsuperscript{88} He concluded that the clinics had to be independent in terms of both policy setting and administration, "subject only to the accountability for the public funds advanced and for the legal competence of the services rendered."\textsuperscript{89} The resulting funding regulation\textsuperscript{90} is the present day statutory basis for the community clinic structure. As Mossman concludes, the intransigence of the organized bar towards the philosophical and ideological basis of the clinic system, meant that the early clinics developed independent of their control, until it was too late.\textsuperscript{91}

It is important to note at this point that the student legal aid clinics are not covered by the same regulation as the community-based clinics are.\textsuperscript{92} As Mossman notes however:

\begin{itemize}
\item \textsuperscript{83} Osler, \textit{supra}, note 78 at 54.
\item \textsuperscript{84} Mossman, \textit{supra}, note 69 at 382.
\item \textsuperscript{85} \textit{Legal Aid Regulations}, O.Reg. 160/76.
\item \textsuperscript{86} Mossman, \textit{supra}, note 69 at 382-383.
\item \textsuperscript{87} \textit{Ibid.} at 383.
\item \textsuperscript{88} \textit{Ibid.}.
\item \textsuperscript{89} \textit{Ibid.}.
\item \textsuperscript{90} R.R.O. 1980, O.Reg. 578.
\item \textsuperscript{91} Mossman, \textit{supra}, note 69 at 384.
\item \textsuperscript{92} See Mossman's analysis of the regulation: Mary Jane Mossman, \textit{University Clinics and Student Legal Aid Societies: A Review} (Toronto: Law Society of Upper Canada, 1981).
\end{itemize}
"[T]he separate identities and purposes of the two Regulations were almost completely obscured in the context of students delivering legal aid services. For example the SLAS [Student Legal Aid Society] at the University of Ottawa originally received funding pursuant to the SLAS Regulations; however, for the period 77/78 to 80/81, the Preventive Law Program (a project of SLAS) received funding pursuant to the clinic funding Regulation."

The community clinic regulation is also much more specific about the clinics' goals and how they may be achieved: "to promote the local welfare of the community" where community includes "persons who have a community of interest". Student legal aid societies on the other hand are merely described as: "for law students in the law course". As Mossman has pointed out, under the regulations, student legal aid societies are not politically accountable for their discretionary decisions. One of the responses of the student body towards the controversy over the Women's Division Policy has been to call for a reorganizing of the clinic along the lines of the community-based clinics with particular emphasis on a community controlled board.

3. THE ROLE OF LAWYERS IN THE CLINICAL SETTING

"All too often, people think that clinics and fee-for-service lawyers differ only in the types of cases they handle or the way they are funded. While these differences, of course, exist, the fundamental difference is the scope of service they are intended to provide. The Regulations give to clinics, and not to fee-for-service lawyers, the mandate to promote "the legal welfare of a community". If clinics do not fulfil this mandate, no one else will." [Emphasis in original.]

In order to understand the role of the lawyer in the clinical setting and the defence bar's objections to the Women's Division, it is necessary to understand at the outset what the local members of the bar considered a lawyer's proper role. They

93. Ibid. at 6.
94. Legal Aid Regulations, O.Reg. 59/86 as amended by ORegs. 126/86 and 726/86, s.4(2).
95. Ibid., s.4(1)(d).
96. Legal Aid Regulations, O.Reg. 59/86 as amended by O.Reg. 699/87, s.72.
97. Mossman, supra, note 92 at 113.
98. Mary Jane Mossman, "Legal Services and Community Development: Competing or Compatible Activities", from Poverty Law Casebook (Ottawa: University of Ottawa, Faculty of Law In-House Casebook, 1989) 385 at 390.
stated that, "the policy violates the most sacred principles on which our justice system is based" and "It's crystal clear to me that they don't understand their role as defence counsel". Clearly, UOSLAS fundamentally disagreed with this assessment. The question is: how did these completely different conceptualizations of what was proper behaviour for the clinic arise?

The legal profession is governed by the Law Society of Upper Canada which publishes a set of guidelines for lawyers' behaviour known as the Rules of Professional Conduct. Arthurs, Weisman and Zemans observe:

"The right to define the scope of practice is no less valuable a prerogative in protecting the professional monopoly than is the regulation of entry."

The right to interpret the rules and have one's interpretation accepted as the "right" one, is often representative of a very important power struggle within the profession. The Rules are extremely vague and open to multiple interpretations, so they are accompanied by commentaries which attempt to explain them. More importantly, the Rules contain enormous gaps. Several commentators have observed that the Rules were created in a particular context, that of traditional practice, and are therefore of little relevance in the clinical setting.

We were accused of breaching several of the rules: Rule 12, Commentary 5—"the lawyer should not exercise the right [to decline employment] merely because a person seeking legal services ... is unpopular or notorious ... or because of the lawyer's private opinion about the guilt of the accused";
Rule 1, Commentary 2—"Dishonourable or questionable conduct"\textsuperscript{105}; and Rule 10—"the lawyer ... must represent the client resolutely and honourably ...".\textsuperscript{106} In addition, we were charged with sex discrimination towards the clientele. The only non-discrimination clause included in the Rules is Rule 13, Commentary 5 added as an amendment in February of 1988 in an attempt to make the rules conform to the \textit{Ontario Human Rights Code} and the \textit{Canadian Bill of Rights}.\textsuperscript{107} The wording of the rule however, makes it clear that the non-discrimination clause does not apply to clients but rather to other lawyers, employees and articling students.\textsuperscript{108} UOSLAS did agree that if the policy constituted sex discrimination, it would be contrary to the \textit{Code}\textsuperscript{109} and could not be maintained.

In addition, there were arguments of the bar against the Women's Division along "fundamental justice" terms which seemed to be presented as based in the \textit{Rules}: we had violated the principle of the right to legal counsel and the presumption of innocence. We responded to these arguments by pointing out that no one was going unrepresented, the men were receiving OLAP certificates, and that we were actually extending the right to counsel by offering new legal services to women.\textsuperscript{110} This was one of the areas in the dispute where it became obvious that the opponents of the policy actually knew very little about legal aid. As should be clear from the above historical survey, Ontario has always, historically and presently, limited legal aid to a list of prescribed matters. Our response to the presumption of innocence argument was simply to agree with its importance and question what relevance it had to the workings of the Women's Division. The defence bar position was that we had taken on the role of the prosecution:

\textsuperscript{105} \textit{Ibid.} at 1.
\textsuperscript{106} \textit{Ibid.} at 24.
\textsuperscript{107} \textit{Ibid.} at 37.
\textsuperscript{108} \textit{Ibid.}
\textsuperscript{110} In response to this point, the bar argued that there was no need for these services, or that they were being provided by the Victim Witness Assistance Program at the courthouse. Clearly the need existed or it would not have been identified by the community consultations as necessary. Equally clearly, the argument that the Victim Witness Assistance Program's services were being duplicated displayed a total misunderstanding of the content of both programs and the extent of the problem being addressed.
"We must be vigilant to ensure that the presumption of innocence is not undermined by the adjunct of legal aid and that a social program directed to the assistance of the accused not be transformed into a prosecution agency." 111

It has been observed that:

"Despite the fact that many private practitioners derive virtually all their income from judicare, the organized profession barely tolerates the salaried legal aid lawyer." 112

In addition:

"The Canadian legal profession clings strongly to the notion that all its members engage in a common activity, share common attitudes, pursue common interests, and participate equally in the common enterprise of delivering legal services to the public." 113

It is these attitudes about what it means to be a professional, serving individual needs as a private practitioner and united in a common ideology, that the Women's Division ran strongly up against. What the defence bar lacked was an understanding of why and how clinic practice differs from what these professional myths may represent.

The community clinics are modelled after the "storefront" law offices which were developed in the United States as a response to President Johnson's so-called "war on poverty". 114 They are premised on the belief that the needs of the poor are not the same as the needs of those who can pay for legal services. 115 The Grange Commission Report recognized that the problems of the poor are structural in nature and systemic in our society. 116 The strategy to be utilized is not the individualized case work of the private lawyer, but rather a combination of activities designed to attack the systemic and struc-

111. A quote from Brian Greenspan, president of the Criminal Lawyers' Association of Ontario, in: Sean Upton, "Ottawa Defence Bar in Uproar Over Law Students' Refusal to Defend Men" Law Times (21 October 1990) 11. It is obvious from this quote that several defence counsel had difficulty understanding that the sole purpose of legal aid did not lie entirely within the criminal law arena.

112. Arthurs, Weisman & Zemans, supra, note 102 at 163.

113. Ibid. at 151.

114. R.J. Gathercole, supra, note 103.


116. Ibid. at 27.
tural natures of the problem, as it is assumed that the problems are caused by membership in the group.\textsuperscript{117} The regulation describes these strategies and activities as follows:

"... legal services or paralegal services, or both, including activities designed to encourage access to such services or to further such services designed solely to promote the local welfare of a community.\textsuperscript{118}"

This reasoning regarding the nature of the problem addressed and the strategies to be utilized is equally applicable to the creation of the Women's Division. The problem of violence against women should be seen as a systemic one with roots in our sexist culture, hierarchial intellectual tradition, and misogynist political and social ordering. The difference with the Women's Division's extension of this reasoning to women, was that the women students involved clearly recognized their membership in the group from which the clientele is drawn. The insight of the 1960s that the poor were differently situated in our society due to their poverty can be paralleled to the feminist insight that women are differently situated in our society by reason of their gender.\textsuperscript{119}

One of the criticisms of the Women's Division was that the work being done was not legal work at all, but rather "hand holding" more appropriate to a social services agency:

"Helping battered women understand the legal system a little better and holding their hands while they make their way through impersonal and complex court proceedings are laudable initiatives, but it is not the place of legal aid clinics to serve the needs of victims. There are other organizations and institutions in society to do just that. Legal aid clinics should not be picking up the slack when governments and individuals fail to provide adequate funding to agencies providing services for women."\textsuperscript{120}

The defence bar clearly did not understand that clinics are designed and mandated by the regulations to do precisely this kind of community devel-

\textsuperscript{117} Ibid. at 28.

\textsuperscript{118} Legal Aid Regulations, O.Reg 59/86 as amended, s.4(2).

\textsuperscript{119} This is not to say that groups are not differently situated for other reasons. Obviously race, sexual orientation, age, religion, creed, and disability are all elements which yield a "community of interest" for the purposes of clinical legal aid services. This reasoning forms the justification for the UOSLAS HIV/AIDS project, operated in conjunction with the AIDS Committee of Ottawa.

\textsuperscript{120} Anonymous Editorial, "Law Students' Policy Misguided" Law Times 1(34) (15-21 October 1990) 6.
opment work, and must be allowed to do this work in order to achieve their purposes.

Mossman and Lightman observe that the creation of clinics meant that:

"There would be a need for "poor peoples' lawyers" who are identified with poor clients and are immune to "conflict of interest" allegations which could result where the same lawyers act for poor clients and against them, depending on the case."121

It was in this context that the Women's Division saw the conflict of interest between their work and representing accused charged with violence against the women in their lives. It is also important to acknowledge that the students were attempting to operate in accordance with the Rule of Professional Conduct against conflicts of interest, Rule 5:

"The lawyer must not advise or represent both sides of a dispute and ... should not act or continue to act in a matter when there is or there is likely to be a conflicting interest."122

Initially, the defence bar appeared to have difficulty understanding our conflict concerns because traditional legal practice involves services to individuals, and conflicts arise only on an individual basis. The clinic by addressing a group need, developed a group conflict of interest policy. The bar reacted because of the designated group—men. Gathercole writes in the poverty law context:

"Lawyers cannot accept the fact that the problems of the poor can only be solved through a fundamental restructuring of traditional institutions, not by suing someone in a court of law."123

What the feminist law students in the Women's Division were confronted with was the defence bar's resistance to fundamental change which would better the conditions of women.

There were primarily seven criticisms levelled against the policy by the local bar, students and professors who opposed the policy. Two of these arguments were particular to the student opposition and had to do with the structure of student legal aid and its perceived function vis a vis the student body.124 The

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122. Supra, note 101 at 9.
123. Gathercole, supra, note 103.
124. There were two of these: that we had passed the policy during the summer months when the general membership was not available and therefore did not have the right
remaining five appeared in several newspaper articles and the correspon-
dence with the Law Society Committee appointed to investigate the matter.

First and foremost, the defence bar vehemently believed that the policy was
sex discrimination: "‘It’s straight sexual discrimination’."\textsuperscript{125} "[T]his policy
constitutes a denial of equal access to legal assistance for male accused and
constitutes discrimination on the basis of sex."\textsuperscript{126} Closely associated with
this argument was that by targeting our clientele we were misusing public
funds: "The publicly-funded Legal Aid program was designed to give legal
assistance to all on the sole basis of financial need."\textsuperscript{127} [Emphasis in origi-
nal.] This demonstrates the lack of understanding that targeting clientele was
exactly what the clinics were designed to do. Characterizing sex discrimina-
tion in this fashion reveals an ignorance of discrimination law under the
various human rights acts, and of the judicial interpretation of the equality
provision of the \textit{Charter of Rights and Freedoms},\textsuperscript{128} section 15. A mere
distinction between groups does not constitute inequality. Rather, discrimi-
nation is measured by adverse or negative effects on a traditionally
marginalized and insular minority. By extending services to women which
they were not receiving before, the policy in effect was profoundly anti-dis-

under the UOSLAS constitution; and that the policy was preventing students from
working in remand court thereby depriving students of a valuable experience, tradi-
tionally one of the prime purposes of participating in UOSLAS.

\textbf{As} pointed out above, the dean is responsible for setting UOSLAS policy under the
\textit{Legal Aid Act} Regulations. In practice, that power is delegated to the UOSLAS
executive and council through the constitution and there is nothing in the constitu-
tion requiring referendums of the general membership. One of the effects of the con-
troversy has been that the Dean has taken a much more active role in the policy
setting, and in my opinion in at least one incidence, has completely by-passed the
student body.

In response to the "valuable experience" argument, I wrote elsewhere:
"that the Student Legal Aid society does not exist for our benefit. We exist to serve
the needs of the community we serve ... Our primary responsibility is to our clients,
just as is the case for private members of the bar." [Emphasis in original.]

See: "Controversy surrounding student Legal Aid", \textit{Caveat} (December 1990) 6.

\textbf{125.} A quote from Robert Wakefield, reported in the \textit{Toronto Star} (10 October 1990)
A12.

\textbf{126.} Michael Neville, letter to T. Bastedo (LSUC) (3 October 1990) 2 [unpublished].

\textbf{127.} Debora Scholey & Peter Mantas, "Legal aid policy called unfair to men", letter to
the editor in \textit{The Fulcrum} (15 November 1990) 14. This letter was written by law
students.

(U.K.),} 1982, c.11 [hereinafter \textit{Charter}].
criminatory and in keeping with the affirmative action provision of the
*Charter*, section 15(2).\(^{129}\)

The sex discrimination argument was the initial reaction of opponents to the
policy. The bar correctly perceived that the policy represented an attempt to
practice “feminist law” and was therefore not only contrary to their vested
interests as anti-feminists, but as men.\(^{130}\)

Secondly, we were accused of being “political” as if that were an inappropriate
thing for lawyers to be. As Menkel-Meadow writes: “Going to court is a
political act . . . All of these [legal] acts are assertions or expressions of power
or of a right to something.”\(^{131}\) The struggle to redefine the law as innately
political has been ongoing in the law school for some time. The debate among
students over the policy significantly added to the winning of this struggle,
and therefore contributed to the continuing transformation of legal education.

We were attacked on the ground that the policy was adopted in order to
prevent us from having to defend unpopular accused, a problem that the Joint
Committee had encountered in 1965. An editorial in the *Law Times* inter-
preted the policy as meaning:

“[L]egal aid [now] means singling out those whose offenses are seen to be
most abhorrent and refusing to represent them in court.”\(^{132}\)

A letter from Brian Greenspan to Thomas Bastedo and Marc Somerville
claimed:

“The criminal defence counsel has a fundamental obligation in the adversar-
ial process to act on behalf of even the most objectionable accused charged
with the most heinous crimes. Criminal lawyers don’t defend crimes, hatred,
lies or even causes; criminal lawyers defend clients.”\(^{133}\)

What is missing from this line of argument is the fact that UOSLAS is not a firm
of criminal lawyers in training. Criminal cases are only a small portion of our

\(^{129}\) *Ibid.*

\(^{130}\) Although not all the defence lawyers in opposition were male, the vast majority
were.

\(^{131}\) Carrie Menkel-Meadow, “Legal Aid in the United States: The Professionalization
and Politicization of Legal Services in the 1980’s” (1984) 22 Osgoode Hall L. J.
1:29 at 66.

\(^{132}\) Anonymous Editorial, “Law Students’ Policy Misguided” *Law Times I (34)* (15-24
October 1990) 6.

\(^{133}\) Brian Greenspan, (Law Society of Upper Canada, 1990) [unpublished].
total case load. If the argument means that an individual who is training to become a criminal lawyer should be insulated from other legitimate avenues of advocacy, the response must surely be that students have a right to learn as many different areas of the law as possible, and that lawyers have a right to define their own areas of practice. If UOSLAS services were solely confined to criminal matters then the argument might have merit, but then we would not have a Women's Division as it cannot be classified as a "criminal" matter.

There were two additional arguments made by students. It was speculated that the policy would lead to abuses of process as women might "spuriously" ask the clinic for assistance by lying about being assaulted in order to forestall a small claims suit being pursued by a man with the clinic's assistance.\(^\text{134}\) The argument is premised on the belief that women are collectively prone to lying, particularly in respect to the violence perpetrated against them by men. It was hardly surprising that the controversy produced comments based on negative and false stereotypes of women, but it was disheartening to hear these remarks from one's classmates.

The second student-produced unique slant on the affair, was published by the Ottawa Citizen.\(^\text{135}\) Kevin Murphy wrote:

"The impact of feminist perspectives on law reform has been visible and dramatic in the last decade, especially in the criminal justice system. ... The cause of women has also been taken to the highest court in the land. ... This is proof that the feminist perspective is well represented in the Canadian justice system."\(^\text{136}\)

This argument, that there is enough feminism in the world, reflects the fact that the school was undergoing an enormous amount of change over a very short period of time and that many students resented feminist legal education being added to the curriculum. The Faculty of Law at the University of Ottawa has made extensive efforts to incorporate alternative perspectives in the curriculum and teaching materials, but there was and is substantial student resistance to feminism within the school. The above argument assumes that feminism is perhaps acceptable as an "add on" to legal education, but reflects

\(^\text{134}\) See Scholey & Mantas, supra, note 127 at 14.


\(^\text{136}\) Ibid.
a lack of understanding that the feminist legal project is to entirely transform legal thought and practice.

CONCLUSION

The reaction of some of the members of the local defence bar was described by Dean McRae in a letter to the editor of the *Ottawa Citizen*:

"It is difficult to understand the vehement and at times almost hysterical attack made on this policy."

One lawyer wrote, "... it is difficult for me to express in civil tones my outrage at the recent decision of the University of Ottawa Student Legal Aid Society". It is my opinion that their continued threats regarding students’ future articling prospects was itself a breach of the Rules of Professional Conduct and grounds for a complaint under the *Ontario Human Rights Code*. As a result of their actions, many students felt personally and professionally humiliated.

Nevertheless, their remarks deserve to be rebutted. They attempted to assert their political ideology by using their legal tools to create arguments concerning the purpose of legal aid and the proper role of a lawyer. None of the students disagreed with the principles of fundamental justice that the defence bar continuously repeated. What was at stake in the debate over the Women’s Division was our ability to attempt to put into practice our feminist values and education, and more importantly, our ability to search for "legal remedies to prevent the continuing brutalization of women in our society". These were the real issues involved, and the bar did not address them at all.

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140. Peter Showler, "Spousal assault" *The [Ottawa] Citizen* (20 November 1990) A11. Peter Showler, who teaches immigration law part-time at the University, was the only one of our professors to be publicly recorded as in support of the policy. As a student, I was deeply grateful for his efforts.