Living to Fight Another Day: The Story of Dalhousie Legal Aid

Joan M. Dawkins
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On Friday, January 31, 1986 at 4:00 p.m., The Nova Scotia Legal Aid Commission and the Provincial Department of Social Services issued a Press Release announcing the withdrawal of funding for Dalhousie Legal Aid Service, a teaching Clinic associated with Dalhousie University's Faculty of Law. The announcement was made without warning to the Executive Director of Dalhousie Legal Aid, the Chair of its Board of Trustees or the Dean of Dalhousie Law School. Although reasons for this unexpected move were advanced by the Government at the time, it is this author's view that the funding cut was a patently political action designed to silence a very effective reformist voice which has frequently set its sights on Nova Scotia Government legislation and policy. This paper attempts to provide the background to the decision, to explore the stated and the real reasons for it and to discuss the very serious implications such actions have for the continuation of non-government legal clinics in the Province of Nova Scotia and elsewhere.¹

INTRODUCTION

Before the nature and implications of the Legal Aid Commission's (NSLAC)² decision can be fully understood, one must know something about the history of Dalhousie Legal Aid Service (DLAS) and the nature of its programme. Dalhousie Legal Aid (often referred to as the "Clinic") is a teaching clinic for third year law students at Dalhousie

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¹ The opinions expressed in this paper are those of the author and do not purport to be those of Dalhousie Legal Aid Service or Dalhousie Law School. Much of the factual information used in the preparation of this paper came from the hundreds of administrative and financial files or from the author's personal experience and it has not always been possible to provide specific sources. Every effort has been made to ensure the accuracy of the information used.

² Nova Scotia Legal Aid Commission established pursuant to the Legal Aid Act, S.N.S. 1977, c. 11, as amended.
University. Opened in 1970 through the efforts of students, faculty members and the Nova Scotia Barristers' Society, it was the first legal aid office in the Province and the first client based clinical legal education programme in Canada. Its mandate, as set out in its Trust Indenture dated September 1, 1970, is:

(a) To provide legal aid services for persons who otherwise would not be able to obtain legal advice or assistance;

(b) To conduct research, provide information, make recommendations, and engage in programs relating to legal aid and law reform in the Province of Nova Scotia;

(c) To provide an educational experience in the solution of legal problems for students enrolled in the Faculty of Law at Dalhousie University who participate in the work of the Service.

Pursuant to the Trust Indenture and By-laws, DLAS has a Board of Trustees consisting of representatives of the community and of the legal profession. There are nineteen Board members: nine from the community, three from the Faculty, three students, two practising members of the Bar, the Executive Director of Nova Scotia Legal Aid and a representative of the Clinic staff. The Executive Director is a member of Faculty and is accountable both to the Board and to the Dean of the Law School for all matters related to the operation of the Clinic. This joint venture has been very successful over the years, ensuring a valuable educational experience for the students while providing quality services to the low income community.

Originally assisted by a demonstration grant from the National Department of Health and Welfare, Dalhousie Legal Aid now receives its funding from a number of different sources, by far the largest of which is Dalhousie University which contributes more than half the total annual budget. DLAS has also had consistent and generous support from the Law Foundation of Nova Scotia and has annually taken advantage of Federal Government summer student employment programmes. Between 1978 and 1986, the Clinic received an annual grant from the Nova Scotia Legal Aid Commission and an additional amount was made available by the Provincial Department of Social Services for a period of two years. A number of smaller contributors have been approached to provide the rest of the nearly $400,000.00 needed to operate the Clinic programme each year.

3 By-laws made pursuant to Paragraph 6 of Trust Indenture dated September 1, 1970; as amended September 13, 1977.

4 Every effort is made to encourage members of the low income communities in Halifax-Dartmouth, including present and former clients of the Service, to join the Board of Directors.
The office is located in the heart of Halifax's North End, one of the city's largest and most concentrated low income communities. The Service has a staff of eleven. The Executive Director and the Faculty Lawyer are full time members of the law school faculty and each has teaching and faculty responsibilities apart from clinical law. The Director takes primary responsibility for the financial and administrative needs of the office and, along with the Faculty Lawyer, is responsible for the design and delivery of the educational program. There are two staff lawyers whose primary responsibilities are the supervision of the students in their casework and assistance with seminars and simulations. They also bear a limited amount of internal administrative responsibility. The Clinic also has three staff members who work in what has come to be called the "community office". A Community Lawyer and two Community Legal Workers, their rather eclectic duties include casework in the administrative law field (and consequent supervision of students) as well as primary responsibility for the community development work of the office. They, too, participate in the educational programme and have some administrative duties. Working with these seven people are a full time receptionist, two full time secretaries and an office administrator.

The individual caseload handled by DLAS has evolved over time, both in numbers and content, as the needs of the community and available resources have changed. From a low of 900 files to a high of over 1800, the Clinic has been able to make a substantial contribution to legal aid in Nova Scotia every year. The average annual caseload is between 1400 and 1500. In general, representation has been provided in a combination of family, criminal (young offender) and administrative (social assistance, public housing, landlord/tenant, UIC, CPP) matters with a small number of cases in miscellaneous other categories.

Established as a priority in the Trust Indenture, law reform work has been an important part of DLAS's activities, primarily taking two forms. Test case litigation, recently enhanced by the arrival of the Charter, has been used to seek clarifications and changes in existing laws. Apart from judicial reform, DLAS also participates in the law-making process to influence the direction of new legislation. This would include appearances before legislative committees, the Public Utilities Board and written and oral representations to various Commissions of Inquiry.

Dalhousie Legal Aid has also played a consistent role in public legal education in Nova Scotia, sharing its expertise by speaking to groups,

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5 These figures were derived from statistical files and from available Annual Reports (from 1973 to 1985).

preparing pamphlets and handbooks and conducting Advocacy Workshops for other community service workers to help them better assess and address their clients' needs.

Apart from individual clients and the other activities set out above, DLAS is unique in its representation of groups and organizations in the low income community. The Clinic provides a variety of services to these groups. To qualify for services, the groups and its members must demonstrate a financial inability to obtain legal services elsewhere. Clinic staff will assist groups to organize and identify their goals, prepare documents for the formation of non-profit societies and provide legal advice concerning proposed activities or actions of the group.

Students enrolled in the Clinical Law course spend one term of their final year at DLAS and receive thirteen credits of the twenty-nine to thirty-one they require to complete the year. At most they are permitted to take one other course, freeing them to spend most of their time at the Clinic. The programme for them consists of two main components. They are involved in an intensive programme of seminars and simulations which deal with substantive legal issues, with procedural matters and, perhaps more importantly, with some of the social and philosophical issues associated with poverty and the practice of poverty law. They are encouraged through these seminars and through their observations to look critically at the systems their clients encounter and their role as lawyers. The community development and law reform work of the office is discussed to assist them to look beyond traditional legal approaches to find remedies for their clients and to recognize when none exist.

The second aspect of their work is their supervised representation of clients. The students are expected to do initial intake interviews and to act for their clients throughout the course of the term, under the supervision of the staff. They have at any given time a caseload of about twenty to twenty-five files in a range of substantive areas. To the extent of their ability, they assess the needs of their clients and follow through on whatever legal or other steps are necessary. By virtue of section 7A of the Nova Scotia Barristers and Solicitors Act, students at Dalhousie Legal Aid have the status of articled clerks and are permitted to appear before a number of Courts and tribunals. The caseload has been specifically tailored to permit maximum opportunity for such appearances while retaining a mix of substantive and procedural material not inconsistent with the Clinic's poverty law practice. More than 500 students have completed a term at DLAS since 1970 and most are very enthusiastic about the invaluable experience they received.

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7 R.S.N.S. 1967, c. 18, as amended.
A COMMUNITY LAW CLINIC

Dalhousie Legal Aid Service is a "community" or "neighborhood" law clinic. Because the premise of this paper is that the Nova Scotia government's removal of funding to DLAS resulted from its persistent and successful law reform efforts, some of which fall outside traditional activities engaged in by lawyers but within those associated with "neighbourhood" clinics, an analysis of the original development of such clinics might prove helpful.

The model came from the United States following the declaration in 1964 of the War on Poverty by then President Lyndon B. Johnson. President Johnson introduced the Economic Opportunity Act which created the Office of Economic Opportunity (OEO). That office was charged with the responsibility of engineering the war on poverty and giving effect to the Act. A part of the mandate of the OEO was to provide encouragement for the development of Community Action Projects (CAP) designed to assist communities, financially and otherwise, to help themselves through training and work projects, provision of financial benefits and many other possible strategies including the provision of legal services. The simplest and perhaps least controversial way to design CAPs would be to create locally administered "welfare" offices and provide the federal funds to needy individuals for the provision of food, shelter and other necessities along with such job related benefits as might be possible. Cahn and Cahn, in their article entitled "The War on Poverty: A Civilian Perspective", called this the "military" approach and summarized it as follows:

"A War—fought by professionals on behalf of the civilian population;  
An Offensive—launched by the establishment of multiple donor-donee relationships;  
Mobilization—achieved by the creation of monopoly power;  
Strategy—mapped out by the military to minimize casualties in the military."

Cahn and Cahn were very critical of this narrow approach on the basis that, rather than seeking to identify and cure the disease of poverty, such strategies served only to treat the surface symptoms. The poor would accordingly remain poor.

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9 42 U.S.C. Titles 2701 - 2981 (1964); 88th Congress, 24th Session.
11 Supra, note 8 at 1329.
12 Ibid. at 1331.
There are two major weaknesses in this approach, the first of which is that it presupposes that poverty is a purely economic phenomenon which can be addressed simply by the injection of an arbitrary amount of money. Clearly, poverty is a complex social and economic condition which transcends such a simplistic definition. The Canadian Council on Social Development describes poverty as having three dimensions: "economic, psycho-social and political-participation", with the achievement of "well-being" in all three being necessary to eliminate poverty and its effects.  

The second major flaw is that the obvious implication of this characterization of the "war" is the deliberate exclusion of the group most affected by it—the poor themselves. This is contrary to the original initiative. The Economic Opportunity Act, in its description of CAPs, clearly contemplates a significant role for the members of the affected communities. Built into the CAP design are community councils with meaningful input into the decision regarding the specific nature of the programs. The Act seeks to ensure "maximum feasible participation" for the affected individuals and communities. The input provided for will only have meaning if it provides opportunity for criticism and dissent. Cahn and Cahn suggest:

"There are at least two compelling reasons for fostering, and where appropriate, subsidizing institutions and vehicles of dissent in slum communities. First, free expression by the slum community is a concomitant of our faith in the dignity and worth of its individual members. .... Second, protest and criticism can be viewed as a form of dissent which should be promoted for the corrective insights and wisdom it may offer."

Stephen Wexler, in his article "Practising Law for Poor People", would carry the analysis a step further and suggest that organized participation by the poor is not only desirable but absolutely essential to the success of any movement or action designed to change the conditions of poverty.

14 Supra, note 9.
15 Ibid., s. 202 (3).
16 Supra, note 8 at 1330.
17 (1970) 79 Yale L.J. 1049 at 1053.
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It is from this kind of analysis that the model for "neighborhood law" clinics grew. Legal services were seen as an essential part of the development of CAPs and the encouragement of community members to participate in the processes that affect them. Assuming that the "military" model of the delivery of legal services is just as unsatisfactory as for any other service, a participatory model must be sought. One proposal, very like Dalhousie Legal Aid, was for a

"university based, neighborhood law firm—which could serve as a vehicle for the 'civilian perspective' by placing at the disposal of a community the services of professional advocates and by providing the opportunity, the orientation, and the training experience to stimulate leadership amongst the community's present inhabitants. Such an institution would include a staff of lawyers, research assistants, and investigators who would represent persons and interests in the community with an eye toward making public officials, private service agencies, and local business interests more responsible to the needs and grievances of the neighborhood." (emphasis added)

There are a number of clear advantages in this community law office model.

Firstly, the legal resources are placed right in the communities they serve. People in low income communities taking advantage of the service may never have seen a lawyer before and may, as Attorney General Robert F. Kennedy stated in his famous Law Day speech at the University of Chicago in 1964, see law and lawyers as the enemy. To gain the trust of the community and make lawyers and other professionals as available as possible, this local model seems ideal.

A second advantage is the ability of the law offices to share resources and information with other agencies in the low income communities to gain insight into the problems facing the residents. Recurrent trends are the food for law reform and community development activities and need not necessarily come only from within the four walls of the legal clinic itself.

A third and crucial advantage to this model is that is creates a resource different than the traditional legal aid office. It offers instead a broad range of services intended to alleviate not just symptoms but causes of poverty. In an article entitled "Neighborhood Law Offices: The New Wave in Legal Services for the Poor", Lowenstein and Waggoner suggest:

19 Supra, note 8 at 1334.
20 Supra, note 8, speech reproduced in part at footnote 27, pp. 1336 - 1337.
"The New Wave referred to in the title to this Note is more than just a quantitative increase in legal services to the poor, however. It is a realization that equal justice means equal access to the services of a lawyer in the broadest sense of an advocate who can advance one's interests by every available means, not only representation in the courts but also assistance in attempting to change the law in one's interest. ... Furthermore, the New Wave in legal services is the recognition that the overriding interest of the poor is the elimination of poverty, the interest which lawyers for the poor must represent as advocates."21 (emphasis added)

This model provides not just for the reactive, adversarial work of a law office, but for creative, proactive and preventative work. As authors Albert and Weiss put it, "The function was to avoid legal imbroglios rather than solely to extricate."22

Finally, this is a participatory model, designed to maximize the participation of the community members by seeking from them advice and counsel and assisting them in the assessment of their needs and the planning of strategies for bringing about change. As a University affiliated office, there would be the additional benefit of access to reasearch resources and the participation of law students and faculty in the running of the Clinic. In the short term, the community would gain from the added energy and expertise; in the long term, many new lawyers would be entering the practice of law with at least some insight into the problems of poverty and the practice of poverty law.

Nova Scotia has declared no War on Poverty and it would be an understatement to suggest that provincial social welfare and legal services are delivered on a very strict version of the military model. However, Dalhousie Legal Aid has adopted and continues to adopt the view that the neighbourhood or community law clinic is at least as appropriate in the Canadian context as it is in the United States. Dalhousie Legal Aid Service chose this model because of the clear advantages it has both for the community and for students. Not willing to accept the passive, non-critical role assumed by the Provincially funded Nova Scotia Legal Aid, DLAS continues to believe that its willingness to dissent and to speak critically about the operation of the law in relation to its clients is a fundamental service sorely needed in Nova Scotia.

21 Supra, note 18 at 805.

THE ANNOUNCEMENT

What remains is to examine the Nova Scotia Legal Aid Commission's decision to eliminate funding, to determine the reasons for it and the meaning and implications of it. DLAS views its work in the community and with the students as an integral part of legal aid and legal education in the Province. The decision to eliminate all direct Provincial support threatens the continued existence of the only community law clinic of its kind in Nova Scotia, not to mention the effect on the Law School programme. Why? Three sets of "reasons" which have been advanced in relation to the decision to eliminate support for the Clinic will be examined: The "Official Reason", the "Cabinet Reason" and the "Real Reason".

At the time of the January 31, 1986 announcement, DLAS was receiving $70,100.00 from the NSLAC and an additional $13,500.00 from the Department of Social Services. The NSLAC money came in the form of an annual grant and had been in place since 1978 when an Agreement was entered into between the Commission and DLAS, providing originally for $50,000.00. Small percentage increases were made in this grant in most of the years that followed, resulting in the aforementioned figure for 1985-86. The Department of Social Services provided an additional $13,500.00 in 1984 and 1985. This money was made available by the Minister through a cost sharing arrangement with the three municipalities served by DLAS. Dalhousie Legal Aid was entitled to claim a total of $18,000.00 from the Cities of Halifax and Dartmouth in proportions representing the numbers of clients using the Service from the three municipalities. The Department then reimbursed 75% of the expenditure. The total loss of funding, then, was $83,6000.00 or approximately 22% of the budget.

THE OFFICIAL REASON

The Nova Scotia Legal Aid Commission made the actual public announcement regarding the elimination of at least its share of the funding, although it was clear that the Department of Social Services was following suit. The Chairman of the Commission advised the Executive Director of DLAS at 2:30 p.m. the day of the 4:00 p.m. announcement, leaving her less than an hour and a half to locate and warn all the members of staff, the students and the Dean and Associate Dean of the Law School. The Press Release, issued that afternoon, announced the creation of a new "Metro Community Law Clinic" and stated, in part:

23 Agreement dated April 11, 1978; signed by DLAS, NSLAC and the Province by the Attorney General.
"The new Metro Community Law Clinic will result in the end of funding to Dalhousie Legal Aid Service. While it is recognized that Dalhousie Legal Aid Service has and does provide a valued service both to the community and Law School students, the responsibility of the Nova Scotia Legal Aid Commission is to provide service to the Nova Scotia community and the need to provide more service in the Metro area is recognized. It is the Commission's decision that the need can best be provided by an independent Metro Community Law Clinic funded by the Province and the Federal Government with the assistance of the Nova Scotia Legal Aid Commission." (Emphasis added)

Only three possible reasons come to mind with which the Legal Aid Commission might attempt to justify its decision: independence of the clinic, the quality of service or the quantity of service.

Dealing with quality first, there appears to be no such justification. Until 1978, DLAS provided the only formal legal aid services in the Province. The Service has acted for thousands of clients and was funded by the Legal Aid Commission (without complaint about quality) to do so for a period of eight years. In its own announcement, the Commission admits that "Dalhousie Legal Aid Service has and does provide a valued service..." Hence, at least one of the Commission's potential reasons appears to be untenable.

The Commission's recognition of the increased need for legal services in the Metro area is admirable. More admirable would have been a conclusion that completely unserviced rural areas would benefit even more; however, the Commission is not to faulted for any genuine effort to improve service, if that is what this was. It is, however, a rather difficult decision to explain on this basis. DLAS was, in the two years prior to the announcement, serving about 1,800 individual clients per year. It was projected that the new Metro Clinic would do the same. DLAS has accommodation in its Clinical Law programme for 16 senior law students. The new Metro Clinic promised the same in the event that DLAS was unable to continue. It is at this point that the NSLAC's reasoning breaks down. The cost of Dalhousie Legal aid to the Province was $83,000.00. The cost of the new Metro Clinic was projected to be $565,000.00. Yet, the spokesman for the Commission and the Attorney General suggested that the change was cost effective, much to the amazement of anyone capable of simple arithmetic. It was explained in this way: The cost of

24 Press Release from Media Relations Director, Legal Aid Commission, dated January 31, 1986, 4:00 p.m.

25 The monetary figures in this analysis were provided by the Attorney General to the Nova Scotia Legislative Assembly along with his Department's Budget estimates for 1986-87 (February, 1986).
the new Metro Clinic would be offset by Federal cost sharing which would provide $350,000.00 per year, leaving only $215,000.00 for the Province. This was compared to the total $380,000.00 budget of DLAS instead of the Provincial share of that amount. It might seem a little like comparing apples and oranges; perhaps grapes and watermelons make a better analogy. It seems clear, then that the increased service and cost efficiency rationales must also fail.

The question of independence seems to have received the greatest attention. Mostly in the form of innuendo on the part of the Commission, DLAS's "independence" was questioned. As previously indicated, the Clinic staff is accountable both to the Faculty and Dean of the Law School and to the Board of Trustees. It is difficult to conceive of a more legitimate checking system for programme, caseload and financial decisions in any organization. To question the Clinic's independence is to question the integrity of not only the people within the office but all of those in its two governing bodies. Perhaps one should question, instead, the "independence" of the Legal Aid Commission and the new Metro Clinic.

The Nova Scotia Legal Aid Commission is established pursuant to the provisions of the Legal Aid Act. Its membership, set out at section 3, is as follows: fifteen directors appointed by the Governor in Council on the recommendation of the Attorney General; two public servants appointed by the Attorney General; and seven directors chosen by the Attorney General from a list of nominees provided by the Council of the Nova Scotia Barristers Society. In the last category, the Barristers Society must provide a list of sufficient length to permit the Attorney General to make "appropriate" choices. It takes little imagination to guess how "independent" the decision regarding Dalhousie Legal Aid was. One need only ponder the likelihood that the Attorney General would have committed all that new money to the Commission if it had refused to cut the Clinic off.

The new Metro Clinic has not yet published its first annual report but there are some early indicators about its distance from the Commission and the Government. When it first opened in the latter part of 1986, it was housed in the Nova Scotia Legal Aid Commission offices, one floor down from the Nova Scotia Legal Aid offices in Halifax. Its first Chairman is none other that the Media Relations Director for the Legal

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26 Supra, note 2.
27 Ibid., s. 3(2)(a).
28 Ibid., s. 3(2)(a).
29 Ibid., s. 3(3).
30 Ibid., s. 3(4).
Aid Commission.\textsuperscript{31} When asked a question about the "Tory-ness" of his Board, he is quoted as having said that Board members for the new Metro Clinic would be chosen by the Buchanan Government and that most, if not all, would be Tories. "You pick the people you know,"\textsuperscript{32} he is quoted as saying.

It is not difficult to formulate an opinion as to which of these organizations has any real "independence" and how genuine the desire of the Attorney General and the Legal Aid Commission really was to inject new resources into legal aid.

THE CABINET REASON

While the Legal Aid Commission tried in vain to maintain that the decision was purely service oriented, the Minister of Social Services did not hesitate to reveal what he declared to be the real reason for the cut: that DLAS had become in his words an "NDP training school."\textsuperscript{33} The Attorney General (who is also the Cabinet member responsible for the Legal Aid Commission) and the Premier jumped quickly in to support the Minister's claim.\textsuperscript{34} If any doubt had existed about the manipulation of the Commission before, it was certainly gone after these public statements. No details of any alleged wrongdoing by DLAS were ever reported and no complaint had ever been made to the Director, the Board or the Dean. It is true to say that Dalhousie Legal Aid believes strongly in the right of its staff to participate in the political life of the Province and that three members of the DLAS staff had at one time or another run for the New Democrats. In fact, one of those people, a woman no less, placed a close second to the Minister of Social Services in the October, 1984 election, in his riding of Halifax-Needham, in which the Clinic is located. Only one of those three people was still on staff at DLAS on January 31, 1986.

To say that anyone was shocked at the Minister's accusations would be an overstatement. He had on two previous occasions made similar statements to the press, in 1982 and 1984.\textsuperscript{35} On the previous occasions, as in 1986, the Minister refused to detail his allegations in his comments to the press, preferring instead to leave a general impression of clandestine

\textsuperscript{31} Alan Story, \textit{The Toronto Star} (14 February 1986).
\textsuperscript{32} Ibid.
\textsuperscript{33} \textit{The [Halifax] Daily News} (1 February 1986); \textit{The [Halifax] Chronicle Herald} (1 February 1986).
\textsuperscript{34} \textit{The [Halifax] Daily News} (4 February 1986).
activity deep within the walls of the old school in the North end in which DLAS has its home. In 1984 and again in 1986, the Minister was invited by the Director and the Board to detail his accusations so they could be investigated and responded to. Nary a word was heard. On February 3, 1986, the Chair of the Board of Trustees of the Clinic wrote to the Premier and the two Ministers inviting them to a special meeting of the Board called to deal with the issue. They declined to attend at the time suggested or to set another agreeable time. In the result, it can only be concluded that there is, in fact, no substance to the accusations and that this amounts to nothing more than a smoke screen designed to divert public attention from the real reason for wishing to see an end to DLAS—its persistent criticism of the Government.

THE REAL REASON

To understand the very real possibility that the Tory government of Nova Scotia would eliminate funding in an effort to silence Dalhousie Legal Aid, it is necessary to set out in some detail the work that the Clinic does and the objections it raises.

INDIVIDUAL CASEWORK

Dalhousie Legal Aid has acted on approximately 25,000 cases in its history, about one half of which were handled before Nova Scotia Legal Aid even existed. The nature and size of the caseload have changed during that time as the needs of the community have changed. Demand has always far exceeded supply and difficult policy choices have been necessary in questions of case eligibility. It became more and more clear that resources which were being expended to accommodate Nova Scotia Legal Aid would be better spent in areas of more critical importance to the low income community (social assistance, public housing, family violence). This resulted in a predictable and desirable increase in the percentage of women being represented in recent years. This choice of priorities in caseload brought Clinic staff and students more and more frequently before Provincially constituted Boards and tribunals, where they would argue strenuously on behalf of their clients. However, even the Nova Scotia government could not suggest that this is not a legitimate role for legal aid.

What may seem objectionable to them is that the work does not stop at the level of individual casework. Concentrating energy and resources in

36 Until 1986, Dalhousie Legal Aid Service handled all summary conviction criminal matters in Halifax-Dartmouth as well as a significant number of family cases including many of Nova Scotia Legal Aid's conflicts.
the areas of most importance to the clients has not only pitted DLAS against government at all levels in individual cases but has provided cases representative of broader concerns which have led to the use of test case litigation and other strategies to effect change.

**TEST CASE AND CHARTER LITIGATION**

Test case and Charter litigation is common in all law practices and provides a necessary service for clients. DLAS has had a hand in some very significant litigation in Nova Scotia, much of which has involved criticism of Government policy and practice. Most notably perhaps, but not solely, in the area of Social Assistance, applications have been made to the Supreme Court of Nova Scotia to clarify the interpretation of legislation and to ensure fair treatment for clients. While most lawyers would agree that this fits squarely within the role of a competent lawyer acting in the interests of her client, some of these cases have created very bad feelings in the various Departments of the Government.

In 1978, a case before the Supreme Court ensured that tenants would receive all relevant financial information from their landlords before an extraordinary rent increase would be granted, effecting a very substantial change in the practices of the Rent Review Commission.\(^37\) In 1982, DLAS pressed the Halifax Housing Authority, which administers public housing for the City, to act fairly in its treatment of public housing tenants by litigating a test case through three levels of Courts.\(^38\)

These and many other cases brought DLAS head-to-head with either the Provincial or municipal governments but a recent one appears to have ruffled more than the usual number of feathers. The case involved a Charter challenge to section 5(4) of the Family Benefits Act.\(^39\) That section provided benefits for unmarried mothers with dependent children but not for unmarried fathers. A challenge was attempted by lawyers at DLAS before section 15 of the Charter came into force using section 28 as a basis but it failed.\(^40\) As soon as a section 15 case was available, the application was made again, this time successfully.\(^41\) The case was appealed\(^42\) and the Attorney General asked the Appeal Division to examine other potentially discriminatory sections of the Act (pursuant

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\(^38\) Doherty v. Halifax Housing Authority (1982), 64 N.S.R. (2d) 77 (C.A.).

\(^39\) S.N.S. 1977, c. 8, as amended.

\(^40\) Boudreau v. Family Benefits Appeal Board 66 N.S.R. (2d) 271 (C.A.).


to the *Constitutional Questions Act*). DLAS applied to be and was appointed to argue the other side. This time, the Court held that a number of sections were discriminatory, resulting in the inclusion of male headed single parent families in the eligibility categories.

Notwithstanding the displeasure of the government, there is little doubt that test case litigation is desirable and necessary in any effective community law clinic. It is impossible to tell with any certainty the extent to which such litigation influenced the funding decision. There are some facts, however, which might shed some light on that question. At the hearing of the *Reference* case in the Appeal Division, Counsel for the Attorney General argued:

"It's almost an outrage to allow someone to come and argue that the law is discriminatory when it merely gives money to those who have none."  

The Minister of Social Services suggested in the Legislature, following the Trial Division decision but before the Appeal Division ruled on the matter, that if female headed families were in any danger of losing benefits because of the declaration that certain sections were unconstitutional, it was the fault of those who initiated the challenge and not that of the government. This tendency to blame anyone but his own Department for problems arising from outrageously discriminatory legislation says much about the Minister's attitude toward opposition.

**INFLUENCING THE LAW-MAKERS**

This section is intended to encompass all activities which involve staff, or clients with the assistance of staff, having input in the legislative, regulatory and other processes which influence government policy and practice. Some examples may assist to illustrate the value of this work from the point of view of the community. DLAS has frequently appeared at the Law Amendments Committee and other committees of the legislature to challenge incoming legislation. A presentation was made, for example, in 1983 before the Law Amendments Committee to oppose an amendment (which subsequently passed anyway) to the *Family Benefits Act* eliminating support for teenage mothers with dependent children.

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43 R.S.N.S. 1967, c. 51, as amended.
47 S.N.S. 1983, c. 59.
It was following that appearance, in which the Minister of Social Services' opponent in the next election attended on behalf of the Social Policy Review Committee, that one of the many public attacks on DLAS was made. It is submitted that this is a legitimate and desirable kind of involvement for the Clinic to maintain.

A somewhat different strategy was employed in 1983 when the question of the collection practices of the Nova Scotia Power Corporation came before the Nova Scotia Public Utilities Board. A formal presentation was prepared and made by Clinic staff; however, the most compelling evidence seemed to be the individual stories of the clients themselves. Because of the intimidating nature of such a formal hearing, a video tape called "Disconnection" was made to permit clients to tell the Board on tape about the effect of Power Corporation disconnections on their own families. Notwithstanding a submission by opposing Counsel that it was completely unorthodox and inappropriate, the Board viewed the video-tape and as a result of those hearings, significant changes were made in the applicable policies of the Power Corporation. More than that, the clients had a rare opportunity to really be heard.

Poverty law practitioners would be impotent to bring about change without access to the law-makers. Writing about state and federal "rule-making" in the United States, Allan Ashman suggests:

"Implied in any federal and state rulemaking authority is the requirement that all relevant interests and viewpoints be considered prior to the formulation of any rule. .... Rulemaking frequently affects the poor, but the poor usually are unable, individually or as a class, to apprise themselves of the numerous actual or proposed rules affecting their interests. The poor may also be at a disadvantage because they frequently cannot communicate their views effectively to the appropriate agency..."

Ashman goes on in his article to discuss ways in which lawyers may help provide opportunities for the views of the poor community to be heard, directly or indirectly. It would be preferable to see access to the law makers expanded than to see it curtailed by the paranoia of a government afraid of effective criticism.

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49 A. Ashman, "Representation for the Poor in Judicial Rulemaking" (1970) 24 Vanderbilt L. Rev. 1 at 4-5.
COMMUNITY DEVELOPMENT

Some of the Clinic's lesser opponents might accept all of the work described to this point but depart when it enters the mysterious realm of community development. Community development work takes as many forms as there are groups or "categories" (for want of a more human word) of people in the community. A general description was provided in the introduction but once again a couple of examples may illustrate the breadth of services falling into this category. DLAS is sometimes approached by a group of individuals with a specific issue on their minds to seek help in organizing themselves. Assistance will be given to the group to set up and run their early meetings, to incorporate if that appears appropriate, and to identify the first steps they wish to take. Once the group identifies its leaders, the object is for them to be as self-sufficient as their composition allows, with DLAS continuing only to provide advice from time to time. A good example is the Metro Area Tenants Union, formed in 1981-82, which required assistance but soon took on a life of its own and became a very effective voice for its members.

Some groups are not as clear on their goals or the issues they are addressing. In the Spring of 1985, a small group of tenants approached DLAS to see if anything could be done about their landlord. Every family with children in the building had received a 3-month (perfectly legal) Notice to Quit. They were advised of their rights under the tenancies legislation and the Charter but little from a "legal" point of view seemed available. One tenant asked if they could picket— the location was to be the landlord's retail store downtown as the building was off the beaten track and little would be gained by picketing there. After providing advice, DLAS helped the tenants organize the picket. Flyers were handed to passersby asking them to write to or call the Department of Consumer Affairs seeking a change to the Residential Tenancies Act which would prevent such abuses. The landlord made an unsuccessful injunction application and then gave in and let the people stay. Not only that but the Department was swamped with calls and agreed to meet with Clinic staff to discuss changes to the Act. DLAS's role in this action was severely criticized by the Minister responsible for the Act.

The third and most controversial example is the situation where there is clearly an issue of general concern which does not lend itself to solution by any other method but where no group has formed spontaneously. Dalhousie Legal Aid believes that it is within its mandate to go and seek out people with an interest in these issues and to give them the opportunity to meet with others in similar circumstances. Recently, in fact, Secretary of State funding was obtained to conduct a pilot project in two rural Nova Scotia communities designed to bring social assistance

50 S.N.S. 1970, c. 13 as amended.
recipients together in groups. The project, called the "People's Law School" has met with tremendous success. The women involved have been given the opportunity to see that they do not exist in a vacuum and that they can both contribute to and gain from the interaction in the group. Additional funding will be sought to permit this programme to continue and/or expand.

In discussing appropriate roles for lawyers in poverty law, Stephen Wexler cautions against a too traditional practice.

"Traditional practice hurts poor people by isolating them from each other, and fails to meet their need for a lawyer by completely misunderstanding that need. Poor people have few individual legal problems in the traditional sense; their problems are the product of poverty and are common to all poor people. .... Specifically, the lawyer must seek to strengthen existing organizations of poor people, and to help poor people start organizations where none exist. There are several techniques for doing this, but all of them run contrary to very deeply rooted notions in law school training, professionalism and middle class humanism."  

Dalhousie Legal Aid accepts Wexler's view, asserting that creative non-traditional strategies are essential if real change is ever going to take place.

Obviously, this choice meant risking everything. It appears that all the work engaged in by Dalhousie Legal Aid on behalf of its clients has at one time or another raised concerns, particularly among members of the existing government. If disapproval had been sufficient to stop that work, the Service would long since have closed its doors. It is not denied that much of the work of a community law clinic established on this model will be political, small "p" political. It is difficult to conceive of an action which has as its aim the criticism of government actions or policies which would not be so classified. However, the thesis upon which this paper is based is that the work of DLAS, the only service of its kind in Nova Scotia, is not only defensible but absolutely essential for all the reasons set out above. Assuming that to be the case, the withdrawal of DLAS funding was without legitimate reason and represents the worst kind of political intimidation with the ultimate victims being the low income communities of Nova Scotia.

Should the above analysis not be sufficiently convincing, a word from the "horse's mouth" makes the true reason for defunding clear. Following the funding decision, there was considerable public reaction, the vast majority of which was positive. Dalhousie Legal Aid approached groups and individuals in the community and elsewhere for support,

52 Supra, note 16 at 1053 - 4.
Living to Fight Another Day

financial and otherwise. In part because of a veiled allegation that clients were ill served by Clinic policy and in part because of a sense that this was a matter that should be of concern to the practising Bar, DLAS approached the Council of the Nova Scotia Barristers' Society to take some action. The Society struck a sub-committee to discuss the matter with the Attorney General. The Committee reported to the Society as follows:

"Having been designated a committee of one, Mr. Heustis had discussions with the Attorney General, and was advised that the new Metro Legal Aid Clinic was separate from Nova Scotia Legal Aid and was therefore able to serve conflict cases. He pointed out the long standing need for this kind of service, particularly in Halifax, and he indicated that the Legal Aid Commission had voted unanimously in favour of the new clinic. The Attorney General also indicated that the main reason for the cutback in funding related to Dalhousie Legal Aid's public criticism of social legislation. (emphasis added)

The Attorney General sums it up in just one sentence.

THE IMPLICATIONS

Apart from the implications which flow from the potential elimination of Dalhousie Legal Aid Service as a legal resource for low income Nova Scotians, the decision of the government raises two broader concerns. Firstly, the independence of clinic lawyers to advise their clients and act energetically on their behalf is called seriously into question. For that reason the poor will not be afforded the same quality of service as those individuals with the financial ability to retain private counsel. Mary Jane Mossman discusses the dilemma of the publicly funded clinic in her article entitled "Community Legal Clinics in Ontario". She points out the special needs of low income users of legal services and the differences that exist between that group and fee-paying clients. She then describes the provision that has been made, after much consideration by lawyers, clinics, legal aid officials and the government, for an independent decision-maker regarding questions of funding for Ontario clinics. Clear from her analysis is the fundamental importance of financial autonomy from government decision makers, something it is obvious Nova Scotia is sadly lacking.


The second area of concern relates to the callous disregard with which the law school and its faculty were treated in relation to this decision. Although accusations were made concerning everything from quality of service to partisan manipulation of Clinic clients, at no time prior to the funding cut was anyone at Dalhousie Law School warned or consulted. The implications for the planning of the academic programmes and for academic freedom in University based legal aid clinics cannot be underestimated. The way in which the Nova Scotia government conducted itself questions the very essence of the exercise of academic discretion which so obviously belongs in the purview of the Law School and its Faculty. No attempt will be made here to conduct an indepth analysis of this issue. However, it is worthy of some note. Elizabeth Schneider, writing about American law school clinics, identified four potential areas of interference: Institutional Academic Freedom, Individual Academic Freedom, Professional Responsibility and the Constitutional Right to Free Speech. Quite clearly, all four of those considerations were completely ignored by the Nova Scotia government when its decision was made. Members of the academic community at Dalhousie were outraged at the apparent lack of concern for the potential destruction of a carefully conceived and executed academic programme which had been a model for others of its kind across the country.

CONCLUSION

It is, however, possible to conclude on a note of optimism. Dalhousie Legal Aid Service, through the courageous efforts of its staff and clients, and the continued support of the entire university community, survived this blatantly political attempt to bring about its silence. It was necessary, in the months that followed the elimination of nearly one quarter of its budget, to reduce the number of active cases and to work with a smaller staff. In the early stages in particular, the pressure on everyone associated with the Clinic was enormous. However, the clear support, both financially and otherwise, which came from the community, from the Law School and the rest of the University and from the Clinic's various non-government funding sources, was overwhelming. Over a year and a half after that fateful winter day, the resolve to continue to fight for individuals and groups in the low income communities in Nova Scotia remains as strong as ever. Perhaps someday, even the government of Nova Scotia will emerge from the legal dark ages and recognize the existence of the Charter, the value of effective legal representation for the poor and the need for a new and more creative approach to the delivery of social programmes. But this is unlikely to occur in the near future. At the very least, it is gratifying to know that Dalhousie Legal Aid will indeed live to fight another day.