

Neighbourhood Legal Services at Forty!

30 January 2014: Mary Jane Mossman

Congratulations!

This is a special and a historic occasion! For Neighbourhood Legal Services, for community legal clinics, and for access to justice. Congratulations!

Introduction

In this “Short History of Legal Aid in Ontario,” I am going to do three things.

First, I want to sketch the early years that led up to the enactment of Ontario’s first *Legal Aid Act* in 1966, and how the social and political context of the late 1960s resulted in the creation of the first community legal clinics – outside the framework of the Legal Aid Plan. (While I have consulted a good number of studies and reports to detail this early history, I also want to pay a special tribute here to Larry Taman, an Osgoode student whose work with CLASP and then in the creation of PCLS was so significant, and whose paper, “The Legal Services Controversy” presents the debate of the late 1960s in technicolour.)

Second, I want to explore the political and legal *rapprochement* that occurred in the 1970s and that resulted in the defining features of community legal clinics *within* the “big tent” of the Legal Aid Plan.

And finally, I want to briefly emphasize how the defining features of community legal clinics continue to matter in the context of access to justice goals in the 21st century.

So, first: the Early Years

Although often now forgotten, the genesis for legal aid in Ontario began during World War II, when the Ontario section of the Canadian Bar Association organized a roster of lawyers who volunteered their legal

services to members of the Canadian Armed Forces and their families. These volunteer efforts were then expanded after the War, so that “poor” persons in need of legal services could be referred to a lawyer in their communities. What was becoming clear by the early 1960s, however, was that these volunteer services were unable to respond to all the legal needs, and so, following the creation of a government-sponsored legal services plan in England, Ontario created its own Joint Committee which recommended the enactment of the 1966 *Legal Aid* Act. This is the story that is usually told about the creation of Ontario’s Legal Aid Plan, but it is, of course, the story of legal aid services told by lawyers.

There is, however, another story!

Some of you, like me, will actually remember the 60s: hippies with long hair and bell bottoms, the Beatles, birth control pills, student protests in universities – and most other places too - and, of course, the Vietnam War which brought American draft dodgers to Canada. Perhaps it was the Vietnam War that made the 60s not just a time of social protest but also one of political action. So, in the spirit of the 60s, here are a few of the broader political things that were happening in the 1960s that influenced developments in Ontario:

The big news in the United States in the 1960s was President Johnson’s War on Poverty, and there were a few “Memorable Moments”:

- Do you remember: Edgar and Jean Cahn’s article “The War on Poverty: A Civilian Perspective” published in the Yale LJ in 1964; the authors advocated for communities to organize “in their own interests” with lawyers assisting them; and then Stephen Wexler’s radical article, “Practising Law for Poor People,” which provided advice to lawyers who wanted to “help poor people to help themselves.”
- Do you remember: The US Economic Opportunity Act of 1964, and its Legal Services Branch, with a mandate to further “the cause of justice among persons living in poverty by mobilizing the

assistance of lawyers and legal institutions...”: significantly, this program was called the “Neighbourhood Legal Services Programme.” And, one of its main requirements was a Board of Directors, which had to include residents of the poor community, and which was to be responsible for “decisions of a ... policy nature.” And the goals of the NLS projects included assisting communities to organize in their own interests and to engage in outreach activities, as well conducting test case litigation in the courts to transform “the common law of the poor.”

- And do you remember: The Ford Foundation’s decision to fund university law schools to open legal aid clinics in their communities, using students to provide legal services to the poor under supervision. Significantly, it was a grant from the Ford Foundation that enabled Parkdale Community Legal Services to open in September 1971. Indeed, Dean LeDain’s concern about losing this grant resulted in his decision to open the clinic in Parkdale without Law Society approval; the story is that Dean LeDain believed in the old saying that “forgiveness will be quicker than permission.”

The Decade of the 1970s in Ontario

In the context of these American developments of the 1960s, I want to move now to explore the Canadian context in the 1970s, the decade in which community legal clinics were initially established in Ontario - outside the Legal Aid Plan - and then before the end of the same decade, welcomed into the “big tent” of the Legal Aid Plan. If Johnson’s War on Poverty defined the US developments in the 1960s, it was Prime Minister Trudeau’s “Just Society” that provided the catalyst for social and political innovations, and their legal counterparts, in Canada in the 1970s.

Here are some of our Canadian “Memorable Moments”:

- Do you remember: The Senate’s Committee on Poverty, which heard submissions throughout the country, and its report and recommendations in 1970;

- Do you remember: The annual reports of the Advisory Committee on Legal Aid in Ontario, which both monitored and recommended developments to make legal aid certificates more effective. In particular, the 1970 report of the Advisory Committee recommended that the Law Society consider, as part of the Legal Aid Plan, “the use of a community law programme which will ... carry the law to the poor.” In response, the Area Director in Ottawa (James Chadwick) opened a decentralized intake centre on the Lower East Side, with compelling results.
- Do you remember: In the late 1960s and early 1970s, the first Student Legal Aid Societies were being established by enthusiastic students and faculty at all Ontario law schools, creating the first contingent of young lawyers with some expertise in poverty law and with a great interest in “making a difference” in their careers in law practice. And with federal government grants available for innovative and useful community projects (recall Opportunities for Youth (OFY) and Local Initiative Program (LIP)), law students and others began to experiment with the provision of legal service programs. As the Advisory Committee’s report noted in 1971, several student legal aid groups had obtained OFY funding to support their own legal aid outreach projects – a variety of different kinds of legal services in different kinds of communities (based on ethnicity and language, for example, or niche legal services, such as welfare and workers compensation rights) – and the Advisory Committee report concluded that these community legal services were becoming quite valuable. Significantly, the report also suggested a need to foster connections with the Legal Aid Plan.
- Do you remember: The Poor People’s Conference in Toronto in January 1971; and then a National Poverty Law Conference, under the auspices of the federal government in October 1971, at which Stephen Wexler was a featured speaker.
- And do you remember: Less obviously but significantly, the McRuer Royal Commission toiling away during the 1960s with respect to the reform of legal issues relating to administrative decision making, and how its recommendations were later enacted in the 1971 *Statutory Powers*

Procedures Act – legislation that created process rights in relation to statutory tribunals. These reforms greatly enhanced the potential success of challenges relating to administrators’ decisions about welfare, workers compensation, unemployment insurance, residential tenancies, etc. And, it was probably no coincidence that it was around this time that Injured Workers Consultants was established to assist claimants with workers compensation claims. As well, in the context of the Just Society, the environmental movement became linked to legal services early in the 1970s when the Canadian Environmental Law Association was established.

It was in this context of political and social activism, and legal reforms, that Neighbourhood Legal Services was established forty years ago in 1974. Indeed, on March 26th 1974, Neighbourhood Legal Services submitted a written brief and appeared before the Osler Commission on Legal Aid. According to the Osler Report, it was Allan McChesney and David Reville who presented the NLS brief, and since David’s talent as a community organizer was not just evident at NLS but later at Toronto City Council and in the Provincial Legislature, it is likely that the NLS brief reflected his well-known commitment to community decision-making.

By the time of the Osler Commission in 1974, there were Student Legal Aid Societies at all the Ontario universities, and they presented briefs and appeared in person, along with a few early community legal clinics: Bloor-Bathurst Information Centre, CELA, Neighbourhood Information Centre, People and Law, and Parkdale. And Neighbourhood Legal Services too!

Justice Osler’s Commission conducted oral hearings all over Ontario, and received more than 200 written submissions. As is now old history, an important part of the Osler Report was its recommendation that the Legal Aid Plan fund “neighbourhood legal aid clinics,” a recognition of the need for diversity in the delivery of legal aid services beyond those available pursuant to legal aid certificates. Moreover, by this

time, some provincial governments, including Nova Scotia, Manitoba and Quebec, had established legal aid services based on the neighbourhood or community model.

Critically, however, for most of the clinics in existence in Ontario, new funding was desperately needed by 1974-75. For example, Parkdale's grant from the Department of Health and Welfare in 1971 had been granted as just seed funding - and it was running out. In fact, the story goes that the letters to clients announcing the closing of the clinic had been written, and were on the verge of being put in the mail by the PCLS students, when the Director received a call from the Legal Aid Plan's financial officer who said, it is reported, that he had a cheque for \$250,000 for Parkdale and where would the Director like it to be deposited.

Thus, it was only in the nick of time, that the 1976 Regulation was passed to permit funds to flow to existing clinics under the existing Legal Aid Plan, with oversight by the Law Society. The 1976 Regulation created the Clinical Funding Committee, chaired by James Chadwick and with members Archie Campbell and Lee Ferrier. And in the context of "memorable moments," we need to acknowledge that Roy McMurtry had been elected to the Ontario Legislature and then appointed Attorney General in 1975. Timing is everything! Indeed, the Attorney General, with his clinic-oriented assistants – Archie Campbell and Doug Ewart – was very open to lobbying efforts by Action on Legal Aid – a forerunner of the ACLCO. Indeed, Action on Legal Aid found itself, in effect, pushing against an open door.

In this context, the enthusiasm of the first Clinical Funding Committee resulted not only in the funding of existing community legal clinics, but also the establishment of new ones, particularly in other parts of Ontario. And, at the same time, the Legal Aid Plan began the process of consultation and negotiation with community legal clinics to establish the "rules" for the Legal Aid Plan's funding. For example, since most of the community legal clinics had Boards of Directors, and many of them included potential clients as members, the issue of decision making authority needed to be clarified: at issue was how should the Legal

Aid Plan and the clinics' Boards of Directors create a working arrangement that respected their mutual goals for clinic services, while also promoting clinic autonomy with respect to decisions about priorities in many different kinds of communities?

To resolve this and some related issues, the Attorney General created another Commission in 1978, this time under Justice Grange, to reassess and define the respective roles for clinics and the Legal Aid Plan. Like the Osler Commission, the Grange Commission also conducted oral hearings and received written submissions, and the Commission's report identified a need to balance decision making between the Legal Aid Plan and community legal clinics. It is worth repeating the Commission's analysis:

If there are to be effective services to the poor, the traditional distrust felt by the poor towards lawyers, the legal profession and even towards the law itself, must be reduced.... [T]o the extent that the poor have now placed their confidence in the clinics, much of the credit must go to the strong role played in their development and operation by the boards of directors. If the movement is to develop and progress with the continuing confidence of the clients, that role must not be eroded. The boards must continue to govern the affairs of the clinics, both as to policy and administration, subject only to accountability for the public funds advanced and for the legal competence of the services rendered.

The Grange Commission's report resulted in a new Clinic Funding Regulation in 1979, a slightly larger Clinic Funding Committee and a small clinic funding staff. The CFC and its staff worked on behalf of community clinics, while the much larger Legal Aid Committee and legal aid staff administered other aspects of the Legal Aid Plan and its services. Yet, while they constituted a smaller part of the Legal Aid Plan, the CFC members ensured that clinics were very much "at the table" in terms of day to day management and Law Society oversight. The CFC (notably with two out of five members required to be "persons with clinic experience") regularly convened meetings with clinics on policy issues. And proposed policies about clinics and clinic funding arrangements were circulated to clinic Boards for

comments and suggestions before being adopted by the CFC. Moreover, clinic funding staff met face to face with each clinic Board of Directors annually to review clinic progress reports - and to discuss in person the changing needs of the communities and to assess the clinics' Boards' plans to meet these changing needs.

It is worth noting that these arrangements remained substantially in place for almost twenty years, from 1979 to the McCamus Report in the late 1990s, and that the McCamus report (and legal aid services elsewhere) have lauded the work of Ontario's community clinics.

Moreover, even in the middle of the brutal recession of the early 1980s, Attorney General Roy McMurtry identified why community clinics remained critical to legal aid services in Ontario:

The clinics are in a position to take the law to those who need it most. It is almost trite to point out that a great many poor people have never been made aware of the rights they enjoy under our laws.... The clinics, located in, and run by, local communities, can reach out to advise people of their rights. They take the law to the people.... In doing all of this, *the clinics help convince the poor that they have a stake in this society....* (emphasis added)

Why the History of Community Legal Clinics still Matters

Finally, in closing, I want to make just a few brief comments about why this history is important. As you will know, while the new *Legal Services Act* recognizes both clinics and clinic law services, and also their Boards of Directors, their roles seem to be much altered in practice. One senses that while LAO Board and staff may be aware of the history of community clinics, they place little value on the rationale for their structural arrangements or their links to communities – and these bases for their successes - particularly in the context of competing forces of centralization, homogeneity, and new technologies.

For example, the original designated position of VP for community legal clinics at LAO was abandoned without discussion or consultation, and although the *Legal Services Act* requires “at least one clinic person” to be a member of the LAO Board of Directors, neither the Board nor the staff seem to have expressed any concern that this appointment has been vacant for some time, and even as new policies about community clinics were being approved by the LAO Board.

More fundamentally, historical links between the war on poverty and the just society on one hand and the role of clinics in reflecting and advocating for low income and disadvantaged communities on the other appear buried in obscurity in recent LAO policy papers. What is at issue in the current political and social context, in my view, is a difference of opinion about the “quality” of legal aid services available to the most vulnerable people in Ontario:

- a difference between services that reflect needs identified centrally and needs that reflect local concerns,
- a difference between services that provide information, and services that change the quality of lives, and
- a difference between services that are accountable to LAO, and services that are equally accountable to the needs of individual communities.

The fundamental difference is about the need to implement goals of “justice,” and not merely “access.”

As the words of Roy McMurtry that I quoted above suggest, access to justice is linked to democracy and our sense of “having a stake in our communities,” and that our views matter. If, as it seems, economic inequality in Canada and Ontario is not only growing but perhaps at an all-time high, we need to re-commit to the goals of a renewed Just Society. In my view, if LAO and its Board of Directors want to be judged by history as having contributed, even in a small way, to these social, political – and legal – aspirations, there is a need to recognize that community-based legal clinics are not just helpful tools to achieve such goals – they are fundamental.