

ASSOCIATION OF COMMUNITY LEGAL CLINICS

ACLCO
OF ONTARIO

*LINKING POVERTY LAW CLINICS AND THEIR COMMUNITIES
IN A COMMON VOICE THROUGHOUT ONTARIO*



ASSOCIATION OF COMMUNITY LEGAL CLINICS OF
ONTARIO

ANNUAL GENERAL MEETING

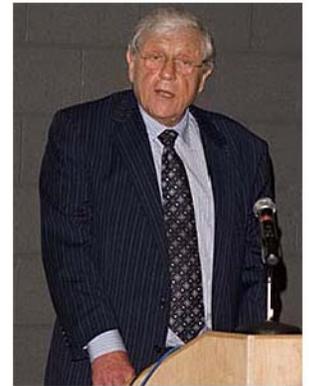
REMARKS BY

THE HONOURABLE R. ROY McMURTRY

CHIEF JUSTICE OF ONTARIO

May 11, 2007

I am very pleased to have been invited to address the annual general meeting of the association of community legal aid clinics. I have been privileged to have enjoyed a close working relationship with the clinic movement for over three decades and would like to again congratulate all of you for your continuing vital public service.



The Hon. R. Roy McMurtry

I am pleased to see my good friend Sid Linden here having worked with him on many public policy initiatives over the past thirty years. We are indeed fortunate that he agreed to take on the responsibilities of chairing legal aid Ontario at a very important time of change and renewal. We are all, of course, waiting with great interest his very important Ipperwash report.

I also am very pleased to see former dean John McCamus whose report 10 years ago provided a vital blue print for the future of legal aid at that time. I am pleased that he has been asked by Attorney General Bryant to do a follow-up report and I wish him well.



Roy McMurtry in conversation with Prof. John McCamus, ACLCO AGM, May 2007

I would also like to take this opportunity to congratulate Janet Leiper for her distinguished leadership of Legal Aid Ontario over the past three years.



Janet Leiper, LAO Board Chair

The people who work in legal aid clinics are committed to a great tradition of public service.

The basic purpose of legal aid is, of course, to serve the public - to serve the public by enabling each of its members to have access to the kind of legal assistance that is essential for the understanding and assertion of our individual rights, obligations and freedoms under the law.

There are many people who are more qualified than I to provide guidance for the future of legal aid clinics and I will therefore be reflecting to some degree on the history related to the evolution of clinics as this history should provide inspiration for the future.

Every great human endeavour that is worth perpetuating draws its strength from a set of basic principles. I therefore think that it is appropriate from time to time for institutions to reflect on the principles which brought them forth and the tenets which give them strength and sustain them in their task.

Indeed, I often reflect on the dramatic evolution of legal aid during my own almost 50 year career at the bar. As some of you may recall, legal aid relied entirely on the pro bono contributions of lawyers until 1967. I recall taking my first pro bono criminal cases as an articling law student in 1956 when legal aid in the Toronto area was the responsibility of the sheriff's office and was administered by the sheriff's secretary. Needless to say, many accused persons were unrepresented or inadequately represented.

As far as civil legal aid was concerned members of the bar volunteered their services at Monday evening clinics at old city hall as well as on an ad hoc basis in their daily practices. The administration of justice was therefore very well served by the introduction of the legal aid plan in 1967 although it did not then provide funding for legal aid clinics.

As the late and great Justice Arthur Martin stated shortly after the creation of the legal aid plan:

The Ontario legal aid plan was boldly and imaginatively conceived. While modifications may from time to time take place, it may be confidently asserted that it is capable of making a great contribution to the administration of justice and it may well be a landmark in man's never-ending search for justice.

Everyone who believes in this concept owes a great debt of gratitude to those who founded our legal aid plan and to those who over the years have nurtured its growth and guided its development.

The protection of individual rights and freedoms under law is one of the highest callings to which any man or woman can aspire. Each and every one of you here this afternoon stands in the noble succession of those who have struggled to win and to assert and to preserve our freedoms.

We live in a highly sophisticated society with a highly developed sense of the need for positive intervention to protect the basic rights and freedoms of the disadvantaged, and to ensure continuing access to the rights and freedoms which we proclaim as fundamental to a civil, humane and just society.

It is a sad reality today that we have not only too much poverty in this province, but as well too little understanding of the desperate straits poverty creates for so many people. The hardening of attitudes about poverty in recent years is something that all of us with access to public opinion must struggle to counter.

In this context, the views expressed in a judgment of Madam Justice Joan Lax are most appropriate:

It is well recognized today that the economic condition of poverty is inextricably linked with despair and homelessness.

We who lead more privileged lives have great difficulty understanding how overwhelmingly disheartening and lonely [the struggle for daily living for the poor] can be.

We must remember that people don't choose to be poor and they don't want to be poor. Unwritten histories of neglect, abuse, malnutrition, early childhood disadvantage and discrimination underlie the circumstances of those whom many seem to want to exclude from the human community.

The overall impacts of the broad, and worsening, "social exclusion" faced by the poor, is of course why we wish to advance the role of the clinics in trying to ensure that at least the legal system in this province lives up to the ideals of dignity and equality for all.

I became the attorney general in 1975 and, one of my first priorities, was to insist on the development of a clinical funding mechanism. This provided the foundation for the clinic system which today is such a vital component of legal aid. However, in 1975 the clinic concept was not very popular within the profession and in some political circles. However, between 1976 and 1985 we were able to expand the clinic system from 6 clinics to 48 notwithstanding that it was during a period of government spending restraint. There are today 78 clinics throughout Ontario helping thousands of people.

There were some lawyers who viewed the development of clinic systems as potentially unfair competition. In the political arena there was no shortage of political opposition particularly on the government benches which often regarded clinics as guerrilla cells of political opposition to the government of the day. Adequate funding of legal aid was therefore always an exquisite political challenge for the attorney general.

The funding challenges and the development of the clinic system paralleled the passage of major family law reform legislation in Ontario which added to my challenges as attorney general. For example, I well recall an occasion in cabinet when the minister of agriculture was voicing concern about the alleged radicalism of the attorney general. He was particularly distressed by the fact that a farmer neighbour's wife had recently run off with the hired hand and was suing her husband for support and half the farm with the assistance of a legal aid clinic.

In any event, I was pleased to be invited to address the legal aid plan's 10th anniversary seminar in 1977 and I stated in part as follows:

Legal aid is perhaps the single most important mechanism we have to turn the dream of equal rights into a reality. Seaton Pollock, who has had a long intense involvement in legal aid in England, has stated very simply that:

It is the corporate responsibility of a community to see that none of its members is excluded from the rule of law.

I went on to say that:

It is indeed absolutely critical that the legal profession continue to assure the public that legal aid is and will remain one of the essential bastions of a democratic society, a guardian of our individual liberties. We must also continually remind the public that our freedoms are at best fragile and that they depend on the ability of every citizen to assert in a court or a tribunal their rights under law as well as receiving sound legal advice as to their obligations. Indeed, our laws and freedoms will only be as strong as the protection that they afford to the most vulnerable members of our community. In affording this protection, legal aid does make a deep and essential contribution to our social fabric and indeed to our very way of life.

I certainly believe that those words are as relevant today as they were in 1977. I also believe that clinics took hold in Ontario because of the demonstrated power of the idea behind them.

Stephen Wexler, whose writings inspired many of the leaders of the clinic movement in Canada, exposed the philosophy behind the clinics very simply when he said:

Poor people are not just like rich people without money. Poor people are always bumping into sharp legal things.

And, as we appreciate better now than we did perhaps then, the wounds from these "sharp legal things" are disproportionately felt. Because of the systemic discrimination found in most of our institutions, the wounds are particularly inflicted on racial and other minorities, women, aboriginal people, and those with literacy, learning or other disabilities.

In this context, clinic workers are the unsung heroes of poverty law, and today, more than at any time, their future as advocates charged with seeing to the legal welfare of the poor, I believe to be more secure than ever. Clinics have statutory recognition in the legal aid services act and, of course, the unwavering support of legal aid Ontario.

Clinics have been on the frontlines ensuring that our legal system lives up to the ideals of dignity and equality. Most people here have dedicated their professional lives to this work, helping the most vulnerable people in our society.

What distinguishes the clinics from other access to justice initiatives is their ability to respond in a community-specific manner to these needs.

They are ideally suited...to engage in the kind of outreach programmes which are essential if legal services are to be brought to the people who need them the most. They also have the ability to mount effective preventive law campaigns...[and they] also possess the unique ability to allow clients to assist in the solution of their problems.

Because of the critical role of the community in shaping the model, we know that only community clinics can address in a comprehensive fashion the legal needs of poor people.

The clinics also have a unique ability to assess the priorities of their communities in developing strategies for the long haul.

These strategies will include the testing of laws in the courts of justice and the court of public opinion, in the light of real experience, that those making them can see the true impact on the neediest, who are affected in unique ways by our legal system.

And it is only through the development of facts and arguments in open and independent courts that the public can be satisfied that our fundamental constitutional tenets are being respected.

Testing laws and procedures for their impact on the most disadvantaged is not a challenge to the civil authority, but a bulwark of the rule of law.

Several years ago in the united kingdom a lord chancellor's paper noted:

The government believes that the ability to challenge the acts or omissions of public authorities is a necessary check on the use of the power of the state, and a positive encouragement to maintain high public standards in public administration or by public bodies. It believes it right to ensure that the poor are also able to exercise this right of challenge.

In the Canadian context, many of these reviews of state authority will of necessity be framed in terms of the rights guaranteed to all individuals by the charter of rights and freedoms. This is a complex area, and one which strains the limited resources you are all trying to apply to meet a need for day-to-day assistance which outstrips your current capacity. The cancelling of the federally-funded court challenge program was, of course, a major disappointment to us all.

Nonetheless, you legal aid clinic lawyers remain the only body of advocates charged with seeing to the legal welfare of the poor on an ongoing basis. As a client constituency, they have the same right to seek to develop the charter as anyone. This can be done if cases are brought to the courts which demonstrate the harsh realities which our laws open create for them.

As I have stated in the past, it is also my view that the continuing success of the clinic system will relate to the extent to which the appropriate balance can be struck between the role of the private

bar including pro bono and the role of staff lawyers. The correct balance may be difficult to achieve on occasion but it is, of course, essential that there be a high level of mutual respect between all of those involved in the delivery of legal aid assistance.

As the chair of the advisory board of pro bono law Ontario, I am, of course, deeply interested in the creative and collaborative relationship that is being developed between the legal aid clinic system and pro bono law Ontario. However, at the same time, I am aware of the potential for tension and misunderstanding if it is ever perceived that pro bono initiatives could be a substitute for a properly funded legal aid clinic system.

The reality is that the needs of society related to access to justice can never be met by any legal aid plan alone given the fierce competition within government for taxpayers dollars.

As you know, most of the pro bono initiatives to date relate to the provision of additional volunteer legal resources and additional services to clinics that are under tremendous pressures related to the demands that are made upon them. In my view, this collaboration and this partnership must be continually expanded.

As I stated a few minutes ago, the impact of the worsening "social exclusion" faced by the poor is at the heart of the legal aid clinic movement.

While the poor and friendless may often be out of political fashion they are never without human needs. We also know that the poor and vulnerable may live in a free country but that it is often difficult for them to feel free. It follows that none are free until all are able to assert the legal rights and remedies which are open to them.

I should like to wish everyone associated with our legal aid clinics every continuing success and fulfillment in your vital and indispensable public service.



The Honourable R. Roy McMurtry receives the Stephen Little Memorial award for outstanding contribution to the Community Legal Clinic System in Ontario from representatives of the ACLCO

(L to R.: Steve Webster, John McKinnon, Lenny Abramowicz and the Hon. R. Roy McMurtry)