

TWENTY-FIVE YEARS OF DYNAMIC TENSION: THE PARKDALE COMMUNITY LEGAL SERVICES EXPERIENCE[©]

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Parkdale Community Legal Services has been the site of initiatives, challenges, and historic accomplishments in the areas of community-based poverty law, community organizing and law reform, and clinical legal education. In this article, the author takes the occasion of the clinic's twenty-fifth anniversary to consider some of the events and issues that shaped Parkdale's history. Drawing on a range of sources, including evaluations and reports, student writing, and scholarly publications, the author examines the issues and debates that PCLS has sparked at Osgoode Hall Law School, and some of the ground it has broken more generally in its work. The history of Parkdale Community Legal Services is analyzed in relation to four areas: a) the place of clinical education in a law school; b) the place of legal education in a community legal clinic; c) the reconceptualization of clinical legal education in a poverty-law-clinic context; and d) the contribution of PCLS to poverty law theory, practice, and law reform.

Parkdale Community Legal Services a été le théâtre d'initiatives, de défis et d'accomplissements historiques dans les domaines suivants: le droit de la pauvreté sur le plan communautaire, l'organisation et la réforme du droit au sein de la communauté ainsi que l'éducation relative au travail dans une clinique juridique. Dans cet article, l'auteur profite du vingt-cinquième anniversaire de la clinique pour souligner événements qui ont façonné l'histoire de Parkdale. À partir d'un large éventail de sources, dont des évaluations et des rapports, des travaux d'étudiants et des publications académiques, l'auteur passe en revue les questions et les débats que *Parkdale Community Legal Services* soulevés à *Osgoode Hall Law School* ainsi que les terrains inconnus qu'il a explorés. L'histoire de PCLS est analysée sous quatre angles : a) la place de l'éducation relative au travail dans une clinique juridique dans une faculté de droit ; b) la place de l'éducation juridique dans un clinique juridique communautaire; c) la reconceptualisation de l'éducation relative au travail dans une clinique juridique dans le contexte d'une clinique oeuvrant dans un milieu défavorisé ; et d) la contribution du PCLS à la théorie, la pratique et la réforme du droit de la pauvreté.

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I. INTRODUCTION

In the early 1970s, storefront legal clinics began to dot the legal landscape in Canada. The arrival of these legal clinics, which strove to serve new communities in new ways, heralded a number of firsts: new sites, new contexts, new forms of delivering legal services to low-income people. For the first time, low-income communities began to be consulted on their legal needs and priorities. For the first time, law schools began to be pressed by students who wanted something different, something thought to be more socially relevant, out of their legal education experience. For the first time, an alternative to private practice or government work appeared possible for lawyers.

The conjuncture of social forces that gave rise to this innovation has been examined elsewhere.¹ This radical alternative both within and without the law school was urged and welcomed by students who had come out of the new left, student, and women's movements of the late 1960s, and entered law school. They were not really prepared for the Canadian law school experience and law schools were not really prepared for them. Many of this cohort of law students leapt at the opportunity to be a clinic law student: as a volunteer, filing and answering phones in first year; moving up to intake, casework, and community education again as a volunteer in second year; and for a full

¹ See, for example, J. Abell, "Ideology and the Emergence of Legal Aid in Saskatchewan" (1993) 16 Dalhousie L.J. 125. See also R. Penner, *Evaluation of the Parkdale Community Legal Services Office, Toronto, Ontario* (Winnipeg, March 1976) [unpublished] at 4-5 [hereinafter *Penner Report*].

term as a student in the clinical law program in third year. Their summers were filled with clinic work, and by the time they graduated many credited their clinical program with enriching their legal education, giving them direction for their future work (and for some, for helping survive the law school experience). As one of that generation of (clinic) law students, I want to “situate” myself in relation to the literature on and practice of clinic programs, clinical education and poverty law.

I do not claim to be an impartial analyst of the history of legal clinics and the clinical programs with which many of the first clinics were affiliated.² Certainly, my long relationship with Parkdale Community Legal Services (PCLS) prevents me from asserting objectivity with respect to its history.³ Nonetheless, I thank the editors of the *Osgoode Hall Law Journal* for allowing me to reflect critically and appreciatively upon both the history of Parkdale Community Legal Services, the Parkdale Program at Osgoode, and my own experience as well.

Parkdale Community Legal Services has been the site of many different initiatives and debates, again both in the law school and without. Few who know the clinic are dispassionate about it. I take the occasion of the twenty-fifth anniversary of Parkdale Community Legal Services to consider some of the issues and debates that shaped the clinic’s history. In so doing I too want to acknowledge and celebrate the enormous contribution PCLS has made to access to justice, legal education, and the legal profession, and to social justice in twenty-five short years.

When I undertook to write this article, I had hoped to produce a concise yet comprehensive history of Parkdale Community Legal Services: its contribution to twenty-five years of poverty law, community activism, and legal education. As anyone even remotely familiar with Parkdale can attest, and as I myself ought to have known, this undertaking soon revealed itself to be rather larger than I had anticipated. Not unlike the “Naked City” of the 1950s, there are a million stories, and close to that many perspectives, that are part of PCLS’ history. I hope to do justice to some of them.

In particular, I examine the issues and debates PCLS has sparked at Osgoode Hall Law School, and some of the ground it has broken

² In 1971, three of the first legal clinics that opened in Canada were affiliated with law faculties: Dalhousie in Halifax, Saskatoon (with the College of Law, University of Saskatchewan), and Parkdale (with Osgoode Hall Law School).

³ In 1983-84, I supervised students enrolled in the program. I was academic director of the Parkdale program between 1986-89 and 1994-97.

more generally in its work. Parkdale has provided the spark, focus, and not infrequently the forum for so many debates and initiatives: What does it mean to do community law? What is the relationship between community organizing and law? How ought clinics to develop case selection criteria? What principles ought to govern clinic policies? How should legal aid be delivered? What role can law students play in community work in the community? What is the relationship between legal change and social change? What is meant by poverty law? The list may not be infinite, but it is long. In this paper, I analyze the history of Parkdale Community Legal Services in relation to four issues and discussions it has triggered for me: (i) the place of clinical education in a law school; (ii) the place of legal education in a community legal clinic; (iii) the reconceptualization of clinical legal education in a poverty law clinic context, including the place of socio-legal theory and skills education; (iv) and the contribution of PCLS to poverty law theory, practice, and law reform.

II. THE PLACE OF CLINICAL EDUCATION IN A LAW SCHOOL: PARKDALE IN OSGOODE

In 1970, the faculty council of Osgoode Hall Law School approved a proposal submitted by the clinical training committee (chaired then by law student Larry Taman) to establish “a clinical training centre in a community law office to be run by the law school.”⁴ Faculty council’s approval of the proposal was on a two-year basis, subject to securing the requisite funding. A new member of faculty, Professor Frederick Zemans, was appointed to be the first director. Following a summer of consulting with the community and planning,⁵ Parkdale Community Legal Services opened its doors to the Parkdale Community on 1 September 1971. Professor Zemans, sixteen Osgoode Hall law students, one articling student (Mary Jane Mossman), a social worker (Joan Williams), and two support staff persons (Maggie Melvin and Halina Ambrozy) comprised the staff set to meet and serve the community.⁶ They were supported by Professor Simon Fodden of

⁴ *Penner Report* *supra* note 1 at 5.

⁵ See the background paper prepared that summer by Mary Lou Goldfarb and Doug Ewart on the Parkdale community as a potential site for this project [unpublished; on file with the author].

⁶ See D. Ewart, “Parkdale Community Legal Services: Community Law Office, or Law Office in the Community?” *Obiter Dicta* (30 September 1971) 8-9, reprinted in this issue: (1997) 35 Osgoode Hall L.J. 475 [hereinafter “Community Law Office”]; and M.R. Melvin, “Cake Without

Osgoode and Brian Bellmore of the Osler, Hoskins law firm (as it then was), who volunteered to supervise students. Over the course of the first year, more legal practitioners volunteered to act as “downtown supervisors” for the students.⁷

During its first five months of operation, the clinic handled 804 cases.⁸ In January 1972, a second lawyer, Dick Gathercole joined the full-time staff as assistant director. During that term, the clinic was organized into three working groups: consumer and immigration, housing and development, and employment standards and unemployment insurance. The students were to be divided into the three groups, and each group was to have a lay advocate (two were hired in March 1972) and a lawyer (there were only two full time-lawyers on staff until David Cornfield joined the staff in March 1973). In March 1974, Mary Hogan and Larry Kearly joined the clinic as full-time staff lawyers, bringing the complement of lawyers up to three. From 1972, part-time supervisory lawyers had been hired as well to supervise students. Supervision of the students at PCLS (usually eighteen per term) fell to the director and the staff lawyer complement, which grew incrementally over the first two-and-a-half years. In this early period, the lay advocates (who were the forerunner of the community legal workers) had no formal responsibility for student supervision and evaluation.

From the very beginning, PCLS had (at the very least) a double mandate: to serve the community and to educate law students. Out of the gate, this twin bill was rife with contradictions. The clinic’s existence was possible because it was housed in a new program of the law school that provided its director and students (the front line workers) and secured its funding. But as an office, it was also housed in the community. From the beginning, it seems that students were more drawn to the house in the community than by the house in the law school. Parkdale’s “dynamic tension” had been launched. In an article that both introduced the clinic and framed the issues to the Osgoode community, entitled “Parkdale: Community Law Office or Law Office in the Community?” one of the clinic’s first students wrote:

The Clinical Training Program of the law school, which operates the office, has two basic functions. First, to provide without charge, first rate legal services (defined in a new and specialized way) to citizens of a designated area. Second, to give second and third year law students exposure to, and training in, the practical side of the law. (My choice of

the Icing: True Story of Community Law Revealed” *Obiter Dicta*(9 December 1971) 3.

⁷ See *Penner Report* *supra* note 1 at 18.

⁸ *Ibid.* at 9. The *Penner Report*, *supra* note 1, noted that while the term “cases” was not defined explicitly, it did not encompass informal advice or referrals to other agencies.

priorities). Whether these two goals can coexist is a question receiving considerable debate at the moment. Hopefully, the ensuing months will provide the answer. ...

The question facing the Parkdale office is, of course, what direction to take? Will the office involve the community in the operation of the program, responding to the community's needs and desires? Or will it submit to pressure from the Law Society and elements within Osgoode itself and simply dispense services in the traditional manner? ... The office ... should stand as evidence that the law school has begun to take seriously its obligation to society to utilize its vast resources of time, talent and money to push for the radical social change needed by our country today.⁹

These questions and concerns were articulated when PCLS, clinical education at Osgoode, and community legal services more generally were all in their infancy, an infancy that was experienced simultaneously by diverse constituencies within and without Osgoode.

In 1971, clinic education was a new innovation in Canadian law schools, and it was called "clinical training." The Parkdale program was the clinical training program; this appellation was code for something much more meaningful for those involved in Parkdale. As Fred Zemans said in 1972, "I think we have to recognize that the students who come into the Clinical Training Programme at Osgoode must have some commitment to social change and to going beyond a case-by-case approach to the delivery of legal services."¹⁰

But labelled as it was "clinical training," it is small wonder that this kind of program had its sceptics within law faculties. Writing in 1970, Professor Harry Arthurs noted both the "dramatic appeal" of clinical programs and the "outlet and ... reinforcement for the creativity and idealism of law students" they provided:¹¹ "By working with the poor and the powerless, providing legal advice, personal counselling, and community organizing assistance, law students are helping to define a new clientele of conscience whose claims on the legal profession have been too seldom recognized in the past."¹²

As has been noted elsewhere,¹³ Professor Arthurs also expressed serious reservations at the unintended adverse implications of "clinical

⁹ "Community Law Office," *supra* note 6.

¹⁰ "Parkdale—Is It Creating Radical Lawyers? An Interview with Fred Zemans" *Obiter Dicta* (12 October 1975) 5, col. 2 [hereinafter "Radical Lawyers"].

¹¹ H.W. Arthurs, "The Study of the Legal Profession in the Law School" (1970) 8 *Osgoode Hall L.J.* 183 at 189.

¹² *Ibid.*

¹³ M. Lane Irvine, "Clinical Education: A Methodology in Learning" in F.H. Zemans, ed., *Community Legal Services in Perspective* (Toronto: Osgoode Hall Law School, 1974) 178 at 196 [hereinafter "Methodology in Learning"].

training”: students might be disillusioned by their experience, and the “role of intellectualism in legal education will be further diminished.”¹⁴

Thus, the Parkdale project was launched and carried by passion and anxiety, commitment and skepticism reposed in those most intimately involved. Time and again over the years within the Osgoode faculty, the place of Parkdale in the Osgoode curriculum would be mooted, such that in its *Clinical Education Report* in the spring of 1980, the Osgoode Hall clinical training committee invited readers weary of “the Parkdale debate” at the school to skip over that section of the *Report* and proceed directly to the committee’s recommendations.¹⁵ At the heart of the debate lay the question: “whether the educational values which inhere in the Parkdale Programme are valid and if valid are worth the full semester credit.”¹⁶

While the faculty may have expressed anxiety at the educational value of the program, Parkdale students have always been both its staunchest defenders and most engaged critics on this question as well.¹⁷ By June of 1971, Doug Ewart expressed bitter disappointment in the direction taken by the clinic in its first year: in his view PCLS had become “another first aid centre on the edge of the battlefield that characterizes the lives of the poor.”¹⁸ Clinical training had trumped community law: “the latter centralizes working towards the social change necessary to end the exploitation of the poor; the former seeks to use the victims of this exploitation to train lawyers for Bay Street.”¹⁹ Ewart argued that the trust of the people of the Parkdale community had been betrayed and the objective of working for social change and community

¹⁴ Arthurs, *supra* note 11 at 189. With respect to the former, Professor Arthurs worried that:

[A]ctual exposure to poor people and minority groups may be disillusioning and disheartening to law students who had viewed them uncritically, perhaps romantically, from a distance. Clients are, after all, clients—whatever their socio-economic status: they will number amongst them the rapacious, the fraudulent, the paranoid, and the foolish; human beings are seldom ennobled by privation. The result of this exposure for many will be increased maturity and understanding; for some it will produce cynicism and rejection.

¹⁵ Osgoode Hall Law School, Clinical Training Committee, *Clinical Education Report* (Toronto: Osgoode Hall Law School, 1980) at 24 [hereinafter *Clinical Education Report*].

¹⁶ *Ibid.*

¹⁷ See, for example, the excerpts from the Parkdale alumnae survey, *ibid* at 31-41; see also, M. Lane Irvine, *infra* note 27.

¹⁸ D. Ewart, “Parkdale Community Legal Services: A Dream That Died” *Obiter Dicta* (12 June 1972) 4-5, reprinted in this issue: (1997) 35 Osgoode Hall L.J. 485 [hereinafter “A Dream That Died”].

¹⁹ *Ibid.*

empowerment had been sacrificed by the law school in aid of the education of law students headed for careers in private practice.

One of Ewart's concerns was about to be addressed in a study of the management and governance issues undertaken by the clinical training committee, in 1972 chaired by Professor Alan Grant.²⁰ The clinical training committee's final recommendation was given to faculty council in June 1973; in January 1974, the governance proposal adopted by faculty council was put into effect, and at a community meeting community members were elected to a new clinic board of governors,²¹ but, as I will discuss below, the legitimacy of "Osgoode's goals" in the clinic would continue to be contested terrain.

But equally and simultaneously contested was the legitimacy of clinical education itself. In 1974, the faculty council of Osgoode Hall Law School established a "Long Range Academic Policy Study Group" whose principal purpose was to evaluate and report upon "the basic philosophy of legal education at Osgoode, the academic goals emanating for that philosophy, and suggested policies for their implementation."²² The *Hogg Report* articulated several goals of legal education, and the particular responsibility imposed on Osgoode "in opening up new fields of teaching and scholarship, in innovative methods of teaching and research and in public service."²³ Of particular relevance to my project here is the *Hogg Report's* identification of areas in need of Osgoode's leadership:

One contribution which the law school must make is to equip its graduates not only to accommodate to changes in the law and its institutions, but to actively participate in the process of making the law and the legal profession responsive to the needs of the society which it serves. As an example, the present legal profession is not well organized to provide legal services to the poor; the law school is under a duty to help remedy that defect by instilling in its graduates an understanding of the handicaps of poverty in securing access to legal services, a sense of public responsibility to all sections of society, and the skills and knowledge necessary to serve constituencies which are not now legally represented.²⁴

²⁰ See the *Penner Report* *supra* note 1 at 10; and A. Grant, "Clinical Training Within Community Legal Services: A Phenomenon in Search of an Organizational Structure" (1974) 22 *Chitty's L.J.* 15.

²¹ *Penner Report* *supra* note 1 at 11.

²² Osgoode Hall Law School, Long Range Academic Policy Committee, *Report of the Long Range Academic Policy Study Group* (Chairman: P.W. Hogg) (Toronto: Osgoode Hall Law School, 1974) at 1 [hereinafter *Hogg Report*].

²³ *Ibid.* at 23.

²⁴ *Ibid.*

Not unmindful of the position of a professional school, the Hogg Report restated Osgoode's position: "Osgoode does *not* view its role as the furnishing of 'individual practitioners who will fit easily into the mould of the profession as it has been defined, historically and at present, by those who are members of the profession.'"²⁵ As part of its work, the committee commissioned a research paper on clinical legal education.²⁶ In Marion Lane's background paper, we saw a new way of thinking about clinical programs, one which emphasized "education" over "training," and an insistence to see this form of education as providing the opportunity for students to learn by means of "interpreted experience."²⁷ Lane also seemed determined to rescue clinical teaching from its marginalized location in poverty law. Thus, her recommendations included:

- (1) That clinical education be recognized not as "skills training" or "poverty law", but as a methodology of instruction which can be equally effective in any substantive context.
- (2) That the clinical methodology be defined as analytic reflection of the knowledge gain and tensions produced by performance of a professional role (broadly defined to include any role a modern lawyer may assume); that 'interpreted experience' be seen as the hallmark of the method.²⁸

Lane's research was influential to the *Hogg Report* which, when released in 1974 offered the following definition of "clinical education:" "Any experience with the following two features: (1) the performance by the students of a legal task; and (2) the use of the student's experience as the basis for organized analysis and study."²⁹

Thus, the *Hogg Report* vindicated the legitimacy of a clinical program within the legal academy by characterizing it as a form of educational methodology that could be deployed, and probably should be deployed, across a range of courses. This vindication was not without its contradictions. No longer to be burdened by the label "skills training," nor confined to the context of poverty law, clinical legal

²⁵ *Ibid.* at 25, citing Osgoode Hall Law School, *Osgoode Curriculum Report* 1968 at 2 [emphasis in original].

²⁶ "Methodology in Learning," *supra* note 13.

²⁷ In this, she explicitly drew from and built upon her experience in the Parkdale Program which she characterized as one of the most significant in her life: see M. Lane Irvine, "Raise High the Roof Beams, Carpenter" or *An Academic Reassessment of the Osgoode Clinical Training Program* [unpublished manuscript, June 1973; on file with author], especially at 9-12 [hereinafter *Raise High the Roof Beam*].

²⁸ "Methodology in Learning," *supra* note 13 at 201.

²⁹ *Hogg Report* *supra* note 22 at 45.

education was to be formally drawn into the fold, into the mainstream. And so the clinic(al) program became abstracted and dispersed by the very commitment to pluralism that likely facilitated its initial introduction at Osgoode. For those for whom the “clinic” had always been more important than “clinical,” this victory was partial as well as contradictory.

Needless to say, the *Hogg Report* was not to be the last evaluation of the Parkdale program’s place in the Osgoode curriculum; over the next ten years, Parkdale was the subject of no less than three formal reviews.³⁰ Even before the *Hogg Report* was released, Professor Roland Penner of the Faculty of Law, University of Manitoba, had undertaken an evaluation of Parkdale as a setting for clinical legal education at Osgoode.³¹

Professor Penner’s review was thorough and generous but not uncritical in the evaluation of the Parkdale program. Penner noted with interest that Osgoode’s initial funding application to the federal government had not identified clinical legal education as an objective of the project,³² although it was apparently part of the proposal that was submitted to the Council on Legal Education for Professional Responsibility (CLEPR).³³ It may be inferred that the “non integration” of educational objectives derived in part from the fact that different funders were approached for different purposes; it may also have been that the identification and elaboration of clear educational objectives were still being divined. These were early days.

Professor Penner engaged seriously with the “service versus education” issue (as I will illustrate in the next section), but for my purpose here it is his consideration of the nature of the educational enterprise that merits explication; in other words, what were the educational objectives of the Parkdale project? Gleaned in part from the director’s first report³⁴ and from the 1975 submission to the Law

³⁰ See the *Penner Report* *supra* note 1; *Clinical Education Report* *supra* note 15; and J.C. Hathaway, *A Structured Approach to Clinical Legal Education* (Toronto: Osgoode Hall Law School, 1985) [hereinafter *Hathaway Report*]. A revised version of Professor Hathaway’s *Report* was published subsequently: “Clinical Legal Education” (1987) 25 Osgoode Hall L.J. 239 [hereinafter “Education”].

³¹ *Penner Report* *supra* note 1.

³² *Ibid.* at 5-6.

³³ *Ibid.* at 13.

³⁴ Penner quoted at length from Professor Zemans’ report in the summer of 1972 to CLEPR at 14, part of which is reproduced below:

The Clinical Training Program at Osgoode Hall is an integrated experience in legal

Foundation of Ontario,³⁵ Penner concluded that “it was never intended that this particular clinical program be developed purely as a pedagogical method for teaching conventional substantive law.”³⁶ He found what he characterized as:

strong and valuable educational features in almost all aspects of the students’ involvement with the clinic From student selection through orientation, supervision and evaluation, the learning experience, the ‘teaching of the whole person’ takes place. It is with the educational effect of case supervision however that I am most impressed;³⁷

The *Penner Report* was less fulsome in relation to the seminar components of the program and also expressed concerns about the caseload levels of both the students and clinic staff.³⁸ Penner also hinted

education. Students, staff lawyers and professors are together both in the classroom and at the community law office for an entire semester. The demands of the office are analysed and evaluated within the seminars while the skills and the knowledge acquired in the seminars are utilized in the student’s daily work experience. The program is a total educational experience in which the law student, law professor, staff lawyers, and community all participate in a collective learning process.

³⁵ In January 1975, Ron Ellis, the newly appointed director of PCLS outlined the following objectives with respect to the clinic’s education function:

To educate and train law students both in general terms and more particularly, in respect of poverty law and the delivery of legal services. The office endeavours in the context of clinical training to create a more meaningful educational experience for the law students by juxtaposing the pragmatics of the daily practice of the law with the intellectual perception of the law normally associated with the law school. The process takes place through the use of seminars and focuses on both procedural and substantive legal issues as well as particularly on matters of professional responsibility. ...

To research methods of making legal advice and assistance readily accessible and of delivering viable, legal services with a view to developing effective and economic methods, including the creative use of paralegal personnel, that adequately and sensitively reflect the special needs of a community law office clientele.

To contribute to the development and organization of a dynamic and sophisticated body of poverty law encompassing the statutes, case law, legal principles and precepts of special relevance to persons with low income and their communities, through an active litigation program and through encouragement of academic enterprises and legal writing on the part of the office’s students and staff lawyers based again on the experience, information and insight acquired through the office’s day-to-day operation as a community law office.

To contribute to the development of a poverty law bar of lawyers with specialized knowledge of poverty law, and experience in providing advice and assistance and delivering legal services in respect of all areas of law to people with low incomes.

See S.R. Ellis, “The Ellis Archives—1972 to 1981: An Early View From the Parkdale Trenches” (1997) 35 *Osgoode Hall L.J.* 535 at 539-40.

³⁶ *Penner Report* supra note 1 at 15

³⁷ *Ibid.* at 38.

³⁸ With respect to the student caseload, Penner indicated that opinion was divided on the question of whether it was too high. Noting that both the incumbent and former director were satisfied with caseload levels, he nonetheless recommended a caseload level of fifteen files per student: *ibid.* at 40.

that the unique quality of the clinic program ought not to be lost in the Osgoode curriculum. Alluding to the *Hogg Report's* recognition of the value of clinical/simulation programs, he urged Osgoode not to lose sight of the “value of the in-house clinic as the core program, as the place from which experiment and innovation can be developed, and as the training ground for clinical law teachers and law reformers.”³⁹

Professor Penner's concerns with the “academic” component of the Parkdale program seem not to have been taken up. In 1977, the “clinical legal training” component of the Parkdale program was described by the then director in the following terms:

During the academic year, the students spend 5 hours a week in clinical legal training seminars—2 hours Tuesday evenings and 3 hours Thursday mornings. *Preparation time for these seminars is minimal. A proportion of these seminar hours is used for training of direct value to the students' caseload work, and the balance for more academically-oriented concerns.*⁴⁰

It is probably fair to say that this description of the clinic seminars encapsulates a legal academic's worst fears that clinical education has an anti-intellectual inclination⁴¹ which results in clinical programs becoming “mired in the transmission of technical skills.”⁴²

The Parkdale program faced yet another crisis in 1984, when the dean of the law school advised the governing board of Parkdale Community Legal Services that, because no faculty member was prepared to assume the co-directorship of the clinic, “the law school was obliged to give notice of its intention to withdraw from the partnership at the end of the 1984-85 year.”⁴³ A stay of execution was negotiated, and Professor James Hathaway, newly appointed to the Osgoode faculty as the director of clinical education, initiated a study “to identify the conditions under which continued participation by the law school in the Parkdale program might be possible.”⁴⁴ In his report on Parkdale in 1985, Hathaway took a clear and firm position: legal education and legal

³⁹ *Ibid.* at 41-42.

⁴⁰ Submission by Parkdale Community Legal Services to Commission on Clinical Funding (1978), Appendix “B” (3), The PCLS Information Return to the Ontario Legal Aid Plan, dated March 9, 1977, at 4 [emphasis added].

⁴¹ Which even its defenders acknowledge: see P. Goldfarb, “A Theory-Practice Spiral: The Ethics of Feminism and Clinical Legal Education” (1991) 75 *Minn. L. Rev.* 1599 at 1675, n. 325; Goldfarb quotes David Barnhizer, who urges clinical law teachers to “release the shackles of their latent anti-intellectualism.”

⁴² *Ibid.* at 1675.

⁴³ *Hathaway Report*, *supra* note 30 at 1-2.

⁴⁴ *Ibid.* at 2.

skills development were not compatible goals. Lawyering skills might be a “technique” used to achieve an educational goal, but should not, could not be a goal in itself:

Because the acquisition of lawyering skills does not enter into the programme’s objective, as proposed, it is suggested that this dimension be eliminated from the reflective phase of the semester. Instead, a mandatory one-week intensive lawyering skills program should be offered during the week preceding the commencement of the fall term for all students enrolled in the Parkdale Program during the upcoming academic year ...⁴⁵

Reminiscent of Lane and the *Hogg Report* a decade earlier, Hathaway argued that clinical education “can and should be a means of providing students with an enhanced understanding of mainstream conceptual learning goals.”⁴⁶ Echoing Penner, Hathaway called for close supervision of students by clinic staff, use of a counselling approach of reflective one-on-one supervision, and strict limits on student caseload. Like the *Hogg Report*, Hathaway advocated a contextually neutral definition of clinical education.

Two features of the *Hathaway Report* had a dramatic effect on the Parkdale program. Despite his insistence that clinical education ought to be “simply an educational vehicle,”⁴⁷ he nonetheless articulated a concise set of goals for a poverty law program. In so doing, he broke a logjam that had burdened PCLS from the beginning: students should be involved not simply in carrying a caseload,⁴⁸ it was imperative that they be involved (and formally required by the program to be involved) in those aspects of the clinic’s work that addressed systemic and community initiatives, whether it be with community-or client-based groups. Second, Hathaway banished any form of “skills training” from the list of program goals.⁴⁹ As I will illustrate in the following sections, Hathaway’s model of a poverty law intensive program, in my view, breathed new life into PCLS, and in many ways brought it back to its roots in community /poverty law. On the other hand, I will also argue that in

⁴⁵ *Ibid.* at 29.

⁴⁶ “Education,” *supra* note 30 at 240.

⁴⁷ *Ibid.* at 245.

⁴⁸ As I will discuss in Part III, below, this has always been the rhetoric of the Parkdale Program: “Radical Lawyers,” *supra* note 10. However, given that 804 cases were handled by eighteen students and one lawyer/director (and a few volunteer supervisors) in the first six months after the clinic was opened, it was a virtual certainty that a caseload crisis would be endemic without the clearly articulated specific goals for both the clinic and the program.

⁴⁹ See *Hathaway Report* *supra* note 30 at 17-18. In so doing, he distances himself from the approach taken in the 1980 *Clinical Education Report* *supra* note 15, which had enumerated a long list of goals, many of which had lawyering skills components.

his banishment of “skills,” Hathaway replicated the conventional legal academic caricature of clinical education and he missed the opportunity to consider how skills education in a poverty law clinic context itself might afford students the ability to learn from (poverty) lawyering and not simply be a form of learning to lawyer.⁵⁰ In other words, the opportunity to theorize legal practice while developing certain forms of legal skills, and to contextualize these skills, still remained unaddressed in Hathaway’s model.

Following the *Hathaway Report* a memorandum of understanding between Osgoode and the Parkdale board of directors was renegotiated. As a result, the program was recast in the form of an Intensive Programme in Poverty Law. Set out below is what has appeared in the Osgoode calendar and in the information package that students receive about the program:

The Parkdale Program offers students an opportunity for broad-based professional role development within the poverty law context of a community legal services clinic in the Parkdale community in downtown Toronto. Specifically, the goals of the Program include:

- a) the development of an understanding of the social phenomenon of poverty, and of its causes and effects;
- b) the critical analysis of the legal system’s and lawyers’ responses to poverty, including questions about substantive and procedural law, the legal delivery system and issues of professional ethics; and,
- c) the examination and evaluation of alternative strategies for intervention to alleviate poverty by the legal system and lawyers.⁵¹

Since 1971 PCLS has provided legal services to the low-income residents of Parkdale in a wide variety of subject areas, including social assistance, workers’ rights, tenants’ rights, immigration and refugee claims, mental health law, and family law matters, especially as they affect women clients who have experienced domestic violence.

Law students are an integral part of the clinic and as much as possible are involved in the full spectrum of the work of a poverty lawyer. Students at the clinic are primarily responsible for interviewing clients and doing the casework on the clients’ files.

This casework will on occasion involve the student in appearances before courts, boards or other tribunals. The bulk of it entails counselling clients and negotiating with government bureaucracies, landlords, and employers. As well, students are introduced to the principles of community organization and law reform. There is an expectation that in groups where there are community legal workers students will become involved in community development projects, ranging from public education to work with client

⁵⁰ I am indebted to Goldfarb, *supra* note 41.

⁵¹ These three goals come from the *Hathaway Report* *supra* note 30 at 19.

self-help groups. In all this, students receive structured supervision from a staff lawyer, a community legal worker, and the academic director of the clinic.

Thus it is, in the Parkdale program, that skills education *per se* has been confined to a one week intensive pre-term period, and is not integrated into the body of the program itself.⁵²

I will discuss the results and implications of the *Hathaway Report* at more length later in this article. Suffice to say, that when I arrived at Osgoode in 1986 I had been assured by the director of clinical legal education that all was now well on the Parkdale front: the legitimacy and educational integrity of the Parkdale intensive program had been re-established and recognized by the Osgoode faculty. Nonetheless, my first encounter in that fateful summer of 1986 with a now valued colleague went something like this: “Hi. Welcome to Osgoode. Are you teaching anything this term or just doing the clinic?”

III. THE PLACE OF A LAW SCHOOL IN A COMMUNITY LEGAL CLINIC: OSGOODE IN PARKDALE

A related but distinct constellation of issues has been part of the clinic’s history: what is the role of the law school in the community? More precisely, what is the role of the law school in a community law office? What are the implications of the law school’s responsibility in respect of the education of law students for the quality and quantity of legal services delivered? Put most baldly, the unspeakable question has been: are law students at Parkdale learning on the backs of the poor? Put more politely, the question was framed not infrequently as one of “service vs. education.”⁵³ A less inflammatory, but no less serious, set of questions has centred on the nature of community involvement in the governance and management structure of the clinic as well as who should determine policy and law reform directions.

I propose to address the structural questions first, before proceeding to my own engagement with the “service versus education” issue. As I have noted in the previous section, ten months after the clinic opened, faculty council directed the clinical training committee to

⁵² Students enrolled in the fall and winter terms are required to attend the skills training week. In the early 1990s, this week came to be nicknamed “Intro week” (and invariably confusing staff and students alike with its relation to the three-day, in-house Orientation period at the beginning of each new term). During my most recent tenure as academic director, I “re-skilled” the week’s curriculum and renamed it “Clinic-based Skills Week.”

⁵³ See, for example, the *Penner Reports* *supra* note 1 at 2, 35-40.

consult broadly with the interested parties “for the purpose of discussing their respective roles in the future administration and direction of Parkdale Community Legal Services.”⁵⁴ The committee tabled an interim report in early fall 1973, in which the committee indicated that the issues involved were sufficiently complex to warrant further study and consultation. It appears that over the next year many hours were spent in meetings and community consultations.⁵⁵ On the overarching issue of governance, the committee noted that different models placed different emphases on the locus of control (*e.g.*, one stressed the importance of the lawyer as independent professional; another stressed community control, to which a lawyer would be subordinate). The difficulty with both models for PCLS was, and continues to be, the unique nature of the clinic, as a teaching clinic. Yet again, the dynamic tension announced itself. The clinical training committee proposed a model of governance not of community control but of community participation through partnership with the law school: a board of governors with equal representation from the community and the law school.⁵⁶

This model was approved in principle in late September 1973, at a meeting of “Parkdale residents, Osgoode students, clinic personnel and faculty representatives [including then Dean Harry Arthurs].”⁵⁷ Although the clinical training committee proposal had included two student representatives on the board, the students agreed to forego one of their spots in favour of one for the non-professional clinic personnel. Thus, the community was to have seven members, and the professional side of the board was to have seven members (composed of two Osgoode faculty, two members of the legal profession, one law student associated with the clinical training program, the director (*ex officio*) and one staff representative).⁵⁸

⁵⁴ See Grant, *supra* note 20 at 16; and “CTC Proposal, Community Control of Parkdale” *Obiter Dicta*(18 October 1973) at 12.

⁵⁵ See Grant, *supra* note 20 at 16. Office meetings were held every two weeks on Thursday evenings. These meetings, attended by staff, students, and members of the community, addressed and made decisions regarding staff hiring, determination of office priorities, and allocation of the budget.

⁵⁶ *Ibid.* at 18.

⁵⁷ “Parity approved for Parkdale” *Obiter Dicta*(4 October 1973) 1, 5 The article noted that a proposal for community control of the Clinic was withdrawn “in light of faculty opposition, and the reservations of some community members.” The article attributed to Dean Arthurs remarks that expressed the concern that “community control would unnecessarily generate professional hostility” as well as the view that the distinction between Osgoode’s interests and the community’s interests was “not a valid one”: *ibid.* at 13, col. 1,2.

⁵⁸ *Ibid.* col. 4. See also Grant, *supra* note 20 at 22.

This commitment to partnership, and the precise nature of the partnership, would come to haunt both sides in 1978, when the law school and the PCLS board of governors would stare each other down on the question of the appointment of a new clinic director.⁵⁹ The faculty council of the law school unanimously supported one candidate; the PCLS board unequivocally supported another candidate. Following the decision of faculty council, the clinic staff called a meeting in the community (attended by sixty people). Writing for the *Obiter Dicta* Michael Barrack (relying on a transcript of the meeting) reported that the chair of the Parkdale board stated: "Osgoode has a right to make a decision based on the information it received but Osgoode is taking on the role of senior partner, imposing their decision on a junior partner. Perhaps that partnership should be dissolved."⁶⁰ Osgoode too considered the option of withdrawal from the relationship.⁶¹ A compromise was reached and the relationship (if not harmonious relations) between Osgoode and the Parkdale board was salvaged, following a faculty council motion that authorized the restructuring of the director's position into two positions: a clinic director (appointed by the board, and responsible to it) and a co-director (appointed by Osgoode, to be responsible for the educational quality of the program).⁶² Of the relationship between the two directors, the dean had earlier noted to his colleagues that a simple split in responsibilities would not be desirable from the point of view of the law school:

It would not be realistic, however, to simply divide the jobs of Director and Co-Director between the administration/service aspect of the office and the educational aspect of the office. The office simply does not run in that easy bifurcated fashion. ... Hence we wish to make it clear that the Director and the Co-Director would be expected to work together

⁵⁹ See M. Barrack, "Crisis at Parkdale" *Obiter Dicta*(23 October 1978) 1. Barrack quoted the relevant excerpt from the clinic's constitution: "That appointments of future Directors be jointly made by the Dean of Osgoode Hall Law School and the Board of Governors of Parkdale Community Legal Services."

⁶⁰ *Ibid.* col 3.

⁶¹ See Memorandum from Dean S.M. Beck to all Members of Faculty Council (13 November 1978) [unpublished; on file with the author] [hereinafter "Beck Memorandum"]. In his memorandum, Dean Beck noted that the law school had but two viable options in this situation: the first, "to withdraw from PCLS over a reasonable period of time and leave it as a community legal office to function on its own" (at 1); the second option involved an attempt at "restructuring of the operations and governance of PCLS to accommodate the felt needs of the Parkdale community and the educational objectives of the law school" (at 2).

⁶² Minutes of Meeting of the Faculty Council of Osgoode Hall Law School, (14 November 1978).

and cooperate in the totality of the clinic's functions while preserving their primary areas of responsibility.⁶³

In the end, the candidate who had been supported by the clinic's board was appointed clinic director; the candidate who had been supported by the faculty council was appointed to the position of co-director. The former, Mary L. Hogan, remained clinic director of Parkdale Community Legal Services, until 1986. Hogan, an early Parkdale student, articling student, and long time staff lawyer, brought the totality of that experience to her position of clinic director.⁶⁴ The latter, Jack Johnson, resigned from the faculty after one year.⁶⁵ The dynamic tension endemic to PCLS had taken its toll. It would be six years, following yet another mooted withdrawal by Osgoode and the *Hathaway Report* which forestalled it, before a new academic director would join the faculty to direct the Parkdale program in 1986.

At the heart of much of these difficult confrontations lay both the unique nature of PCLS as a community legal clinic and a teaching clinic. It is also important to remember that in the early period of PCLS's history, responsibility for the clinic was reposed in the law school. As the *Hogg Report* noted in 1974,

[T]he running of a community law office is a tremendous responsibility for a law school to undertake. It becomes an important part of the life of the community, generating expectations and assuming responsibilities to the community. The duty of service should not impair the educational experience of the students, but it surely poses problems for the law school.⁶⁶

The unique challenge deriving from the fact that the office was actually situated in the community, delivering a range of legal services to the low income residents of Parkdale posed serious, seemingly intractable, problems for the law school. And herein lies the services versus education debate.

For many Parkdale students this was a non-issue: they were confident that their education was enhanced by the work ("service") they engaged in at the clinic. This was, for many, self evident.⁶⁷ The clinical

⁶³ "Beck Memorandum," *supra* note 61 at 2. See also *Clinical Education Report*, *supra* note 15 at 16.

⁶⁴ A position she held until shortly before her appointment to the Provincial Court bench.

⁶⁵ See *Clinical Education Report*, *supra* note 15 at 1-2.

⁶⁶ *Supra* note 22 at 51.

⁶⁷ See, for example, *Clinical Education Report* *supra* note 15 at 31-41. The committee reproduced a number of testimonials (and a few critiques) from past students, *e.g.*, fall 1972:

I ... would clearly state, without any reservation, that the opportunity (of participating in

training committee referred to the experience of past directors, all, save one, who shared a view attributed to Professor Mary Jane Mossman (who had stepped in as director during the difficult 1978 period) that the environment at Parkdale was “the most dynamic and valuable learning environment for students” she had ever seen.⁶⁸

Students themselves have been engaged participants in this debate over the years.⁶⁹ But for students it would appear that the organizing question was less “service versus education” but rather “community law versus law in the community.”⁷⁰ They expressed different views on the kind of education they were seeking, and the kind of service in which they were engaged. As Joe Bovard expressed it in 1976, “[t]he crucial issue for law students becomes, should I be here learning how to be a traditional lawyer or a lawyer trained in serving a low income community with all that entails, for example, law reform, community education and organising?”⁷¹ Bovard answered the question for himself:

I suggest service on a case by case basis and reform of the legal system should not be considered mutually exclusive. Parkdale should be doing both things. When Parkdale originated, it posited both these goals. ...

Parkdale started with the principal goals of clinical legal training, social reform and community education, to name probably the most important ones. How could students go through not only the selection process to get into Parkdale, but also a whole semester and not understand that Parkdale is not just a training ground for law students? The only place the blame can lie is with those in charge of the office. Obviously, no one took the time to articulate clearly and publicly Parkdale’s goals to those who are and will be involved there.⁷²

the PCLS program) was the finest education experience I have ever had in any post-secondary education situation in which I have ever engaged. I would ... publicly state in the strongest of terms that clinical education, at least of the quality and the type that I had the pleasure to experience, is the finest preparation a person could have for the private practice, corporate practice, or any other form of legal work I have encountered to date.

[This ... from an “A” student].

⁶⁸ *Ibid.* at 29.

⁶⁹ The Osgoode student newspaper, *Obiter Dicta* has been the site of many of these interventions: see, “Community Law Office,” *supra* note 6; “A Dream That Died,” *supra* note 18; B. Tough, “Parkdale: Legal Education and Community Service” *Obiter Dicta* (1 October 1974) 8-9; J. Bovard, “Community Law Office, or Law Office in a Community” *Obiter Dicta* (12 January 1976), 4-5; J. Wilson, “Opinion ... Parkdale: I Didn’t See it That Way ...” *Obiter Dicta* (19 January 1976) 3; D. Sherman, “Parkdale” *Obiter Dicta* (16 January 1978) 5; and C. Pawluch, “Parkdale: Law in the Fast Lane” *Obiter Dicta* (20 October 1980) 6-8.

⁷⁰ See, for example, Bovard, *supra* note 69.

⁷¹ *Ibid.* at 4, col. 1-2.

⁷² *Ibid.* at 4 cols. 1-3.

Clearly, Parkdale students themselves had different understandings of the “work”/service involved: “It seems everyone is working at cross purposes. It killed me to find out that some students were working just to get clinical training and I was here also to try and help the community and become skilled in serving a low-income community.”⁷³

Thus, there have been two aspects to the “service versus education” front: (1) the quantum of “service;” and (2) the nature of the service. Quantum in the context of the Parkdale program has had an inevitable reference to caseload levels carried by students. As noted earlier, in the first six months of the clinic’s operation, 804 cases were opened. Clearly, the presence of the clinic in the community generated considerable interest, and even more work for the clinic. By the time Professor Penner undertook his evaluation of Parkdale, he found that generally no student was “actively engaged in more than 15 cases at any one time, each student may have meaningful contact with as many as 30-40 cases during the term, and it is this particular aspect of the caseload problem which has given rise to some concern.”⁷⁴ Penner concluded that PCLS had managed to maintain a high level of service in the face of increasing demands through the use of case selection criteria and group strategies, community education and effective use of lay advocates and a large professional staff sufficiently large to supervise the number of students. Again, the context and nature of the work, he stressed, was not unique to PCLS:

The caseload problem in its general configuration relates to an inability to guarantee quality legal service to the masses of people who require them with the scarce resources available; and at a more fundamental level, relates to the proportion that the legal problems of the poor, like poverty itself is systemic and a case-by-case approach ultimately runs counter to an effective strategy for winning the war on poverty.⁷⁵

Penner concluded that “the present caseload [as at his writing] of a maximum of 15 active files does not impair either the educational or the

⁷³ *Ibid.* Diana Hunt, quoted by Bovard at 4, col. 4. Hunt was a Parkdale student who later returned to PCLS as a staff lawyer for ten years in the landlord and tenant group.

⁷⁴ *Penner Reportsupra* note 1 at 37. Penner noted that Professors Zemans and Ellis “both felt that the academic program had not suffered by rising case load” and the students were similarly disposed:

On the whole however students, while recognizing the pressures involved were not strong advocates for any substantial reduction in caseload. Graduates from the program interviewed by [Penner] at a time when they were still articulated with private firms spoke of the “maturing effect” on a student who comes in and finds that up to 40 files are primarily his responsibility... .

Ibid. at 38.

⁷⁵ *Ibid.* at 35.

service function;” he strongly recommended a caseload limit of fifteen files per student, and a lower limit if supervisory resources or personnel were reduced.⁷⁶

By 1980, however, Parkdale students were reported to be carrying thirty to fifty active files during a term.⁷⁷ In addition, students were required to be involved in the clinic’s law reform and community education activities, and to participate in office committees.⁷⁸ By 1985, Hathaway estimated that work on individualized casework accounted for between 40-60 per cent of a student’s time at Parkdale, with initial intake accounting for a further 30 per cent of the student’s time.⁷⁹ Leaving aside Hathaway’s view that this was unacceptable from an educational perspective, it is clear that the nature of the service being provided to the community by the clinic’s students was narrow. The range of strategies to identify and select cases, the educational work in the community, and the law reform work seem to have been smothered by casework. Hathaway was unequivocal in his prescription: articulate clear goals, set strict caseload limits, require the students to spend as much time on community work as on casework, and ensure that student supervision be done in such a way as to encourage student reflection and learning. Some of this had been said before; but, in his enunciation of clear goals for the educational program, Hathaway made an important contribution not just to the law school’s program but to the clinic in the community. He supported the elevation of the non-traditional and systemic work of the clinic,⁸⁰ and although he did this in the name of the law school, he also restated conventional poverty law wisdom, *i.e.*, service in the community had to go beyond casework.

In my view, the service versus education debate long misidentified the issue. Although much heat was expended on the number of files each student carried, from a professional responsibility perspective, the “more is better, or not so bad,” surely had serious implications for the lawyers who were supervising the students who were carrying so many files. But equally important, the complex issues of how to do poverty law in a community and how to identify and attend to the

⁷⁶ *Ibid.* at 40.

⁷⁷ *Clinical Education Report*, *supra* note 15 at 19.

⁷⁸ *Ibid.*

⁷⁹ *Hathaway Report*, *supra* note 30 at 22-23.

⁸⁰ See his acknowledgement of the importance of the clinic’s initiatives in this regard: *ibid.* at 36: “It is auspicious that the Parkdale clinic has recently committed itself to an increasing emphasis on the collective dimensions of poverty law practice, including community education and development, client self-help and law reform.”

range of systemic inequalities within the legal system and society more generally were trumped consistently by the crush of individual cases that the students were carrying. And so while some may hold the view that the presence of the law school in the clinic gave rise to the tension with respect to caseload levels, I share the view that the better way to serve the Parkdale community was always through fewer cases, driven by the community organizing that needed to be done and by the law reform and social justice work that would advance the perspectives and positions of the poor.

IV. THE RECONCEPTUALIZATION OF CLINICAL LEGAL EDUCATION: FROM CLINICAL TO INTENSIVE

There is a defining and axiomatic lament to which those who teach in the clinic programs are prone.⁸¹ It is one that resonates of angst and irritation at our devalued and marginalized place in the legal academy. Phyllis Goldfarb has observed that “the status of clinical education in law schools is not unlike the status of women in society.”⁸² Support for our programs frequently feels fragile and often feels at risk; in the Parkdale program we have the great challenge of keeping two funders with different priorities and vastly different levels of financial commitment satisfied.

Some clinical legal teachers meet this challenge by insisting that clinical programs are only educational processes; that clinical legal education is just a methodology, a methodology that is consistent with “providing students with an enhanced understanding of mainstream conceptual learning goals.”⁸³ Other clinical law teachers, notably but

⁸¹ See, for example, B. Balos, “Learning to Teach Gender, Race, Class and Heterosexism: Challenge in the Classroom and Clinic” (1992) 3 *Hastings Women’s L.J.* 161 at 167. Balos argues that “clinic teaching is devalued and marginalized in a variety of ways”—from “the resources devoted to it, to its method of funding, to the status of those who teach in the clinical programs.” Nonetheless, Balos urges that “clinical teaching that attempts to integrate theory and practice provides an important opportunity to transform the content as well as the method, of legal education”: *ibid.* See also, A. Juergens, “Teach Your Students Well: Valuing Clients in the Law School Clinic” (1993) 2 *Cornell J.L. & Pub. Pol.* 339 at 340-41.

⁸² Goldfarb, *supra* note 41 at 1618. This may be more than a metaphor. I am struck by the numbers of feminists in poverty law clinical programs, many of whom are cited in this article. Based on my experience in the Parkdale program, I estimate that twice as many women students as men students apply to the program. The *Clinical Education Report*, *supra* note 15 at 33, also noted that the number of women students at PCLS between 1971-79 was disproportionate to their numbers in the law school.

⁸³ “Education,” *supra* note 30 at 239-45.

not exclusively feminists, emphasize the connections with social movements, social justice, and transformation of both law and legal education.⁸⁴ Again, I find myself situated somewhat uncomfortably in this literature: it seems to me that we occupy a contradictory place in law schools.

As a feminist legal academic, I welcome the opportunity offered me at PCLS to make the links between gender, class and race relations. For example, Parkdale students are urged to think through the relational nature of the inequalities they encounter in the client and community work: the majority of the clinic's clients are women. In the workers' rights group, for instance, students meet women who are domestic workers, undocumented workers, workers who have been subjected to sexual harassment, and whose only access to employment rights is via the mechanisms of employment standards legislation.⁸⁵ At PCLS, one is able to articulate that women's rights are workers' rights. Class is telling for women; students at Parkdale are given the opportunity to engage critically with feminist theorists who argue that women "acquire" their class from men.

Similarly, Parkdale students are able to interrogate and challenge the implications of "feminization of poverty" theories to the extent that they suggest that women are poor because of unpaid child or spousal support, a perspective that has found resonance and captured the imagination of public and social policy makers. Our students meet violence against women in an unmediated way. They meet battered women. They learn to identify and analyze the particular vulnerability of the battered immigrant woman whose husband threatens to withdraw his sponsorship if she complains or leaves. They meet women who are undocumented, who are underground, women who are assaulted by an employer, parent, or boyfriend—and risk apprehension themselves if they call the police. The feminist goal of empowering women in this context seems daunting and elusive, and my greatest fear as a poverty law clinic educator is that the limited legal options apparently available to many such poor women leaves students despairing at the possibility of meaningful change. And, that of course is a prescription for abstention and cynicism, both of which are soul dispiriting at best.

⁸⁴ See for example, Balos, *supra* note 81; and Goldfarb, *supra* note 41.

⁸⁵ Judy Fudge's important research and writing in this area has been inspired, she writes, by the work of the workers' rights group at PCLS. Her work has been of great assistance to the students and staff of the clinic: see, for example, J.A. Fudge, "Reconceiving Employment Standards Legislation: Labour Law's Little Sister and the Feminization of Labour" (1991) 7 J.L. & Soc. Pol'y 73.

Within the Parkdale program I attempted to rethink and recast the notion of “skills.” I also argued for the importance of theorizing practice as well as the importance of theory always probed and tested by and in practice. As I have argued elsewhere, the questions for me have been not “theory versus practice” or “skills versus education” but rather “what theory, what practice, what praxis?”⁸⁶

Ten years ago, fresh from graduate school and a teaching appointment in another discipline at another university, I faced what I found (and still find) to be a daunting task: the organization of skills training week: the only skills education and preparation students in either term would receive. Interviewing exercises were drawn from fact situations in the clinic’s work, but the “advocacy” exercises were based on, as I recall, a criminal trial involving a sexual assault charge and a complex civil action (I think it involved fatal accident litigation.)

Nothing in that version of the “skills training week” during the first year of my tenure as academic director really prepared the students to understand and cope with the unique context of a diverse community served by a poverty law clinic.

As I attempted to work with Professor Hathaway’s model for the Parkdale program, it seemed to me that there had to be a way to incorporate a skills education as a component without compromising the other goals. To deliver formal skills education only during the last week of summer prior to the fall term invariably left everyone, students staff and academic director, less than satisfied (and none more so than the students who had to retain the material until the winter term). In the late 1980s, we began to revise the curriculum of the skills training week to make it more reflective of the actual context of the clinic: in particular we emphasized interviewing, informal advocacy and formal advocacy skills relevant to the clinic’s practice. On the contrary, one of the most remarkable aspects of the Parkdale program is that students learn that they can learn about law, legal relationships, and power relationships from people who are not possessed of graduate degrees in law—and that includes their clients, their fellow students, and the community legal workers at the clinic.

We still were too narrowly legal in our approach; we did not incorporate community education, organizing, or development skills into the week. We did tailor the interviewing and advocacy exercises to the areas in which the students would be working: *e.g.*, landlord and tenant, social assistance, and refugee claims. We began to do sessions in the

⁸⁶ S.A.M. Gavigan, “Poverty Law and Poor People: The Place of Gender and Class in Clinic Practice” (1996) 11 J.L. & Soc. Pol’y 165.

week on the importance of cultural sensitivity and interviewing a client with a cultural interpreter.

In the 1995-96 academic year, we continued to identify very different skills than were being taught ten years earlier by moving “skills week” into client-based and community-work issues and skills: *e.g.*, interviewing clients with psychiatric histories; women who have experienced violence; people who have experienced torture; homeless and street people; introducing the importance of cultural interpreters in a legal interview with a client whose first language is not English; a range of community work skills; and simple advocacy exercises.

We attempted, with less success than I had hoped, to introduce students to the significance of racism and anti-racism in clinic work, with an emphasis on the *skills* needed in order to:

- (i) identify our own biases/racism/ethnocentrism in order not to inflict them upon our clients and each other;
- (ii) identify the nature and significance of racism experienced by our clients;
- (iii) deal with racism/ethnocentrism expressed by our clients; and
- (iv) deal with racism encountered in course of a hearing.

I want to be clear that in calling for a reconceptualization of the nature and place of skills in the Parkdale program, I share Goldfarb’s position that in so doing our goal is to teach students to learn from lawyering rather than learning to lawyer.⁸⁷ Legal skills are not neutral techniques to be deployed in any legal context. I want to distance myself from the idea that there exists a core set of legal and analytic skills that are readily transportable to and from any legal context. I am however disposed to the conceit that the skills education received by Parkdale students will stand them in good stead in any legal environment. But the converse does not hold.

Finally, it seems to me that the Parkdale program continues to be almost the only place in the law school curriculum where issues of law’s relation to, regulation of, and response to poverty, *are central*⁸⁸ This program (and sister programs in other universities) houses the “access to justice” issues in the curriculum. And, experience at Parkdale, experiences captured by the concepts “gender,” “race,” “class,” and the “state” [to cite only the most obvious] take a dramatic

⁸⁷ See Goldfarb’s discussion, *supra* note 41 at 1653. She indicates an intellectual debt to Gary Bellow’s pioneering work on clinical legal education.

⁸⁸ See also Balos, *supra* note 81 at 168, who makes a similar observation in the American context.

leap from the realm of the text into the realm of an intake room.⁸⁹ As Susan Bryant and Maria Arias have argued in respect of their battered women's rights clinic at CUNY:

In a clinical setting, students begin to develop an understanding of how race, gender, ethnicity, and class can influence lawyering. As a result, students are able to define appropriate roles for lawyers. ... In the clinical setting, however, the real world makes context more apparent and forces students to apply their lawyering skills to problems with real world complications.⁹⁰

In other words, intensive poverty-law programs address significant gaps in conventional law school curricula. In addition to introducing students to areas of labour law of concern to injured, unorganized, and unemployed workers (such as workers' compensation, employment standards, unemployment insurance, human rights) and family law of concern to low income women (such the definitions of spouse in welfare and family benefits legislation)—to cite but two areas—PCLS introduces students to access to justice issues, including but not limited to access to lawyers, to the issues confronting lawyers who practice in alternative contexts, and very importantly, alternative roles for lawyers and alternative routes to (social) justice. It is also incumbent upon us to engage critically with the implications of introducing lawyers, even progressive and conscious lawyers, into the lives of the clients and communities served by the clinic. This is, to say the least, a challenge for teaching this generation of *Charter*-saturated law students, for whom Stephen Wexler's clarion call—that the poor need organization over litigation—is once again new.⁹¹

Theories of inequality are tested, perspectives on the relationship between law and social change are tested, conventional legal wisdom on the efficacy of litigation as a vehicle for social change is tested, the meaning and implications of the *Rules of Professional Conduct* are tested. Every unexamined assumption to which a law student, or indeed clinic law teacher, subscribes is opened up for discussion. These "experiences" require at least two responses: one is to examine the nature of the inequality that is being expressed or encountered; the

⁸⁹ *Ibid.* at 167. Balos characterizes it in this way: "because the clinical learning experience by its nature challenges ... abstraction and distance, clinical course have the potential to open to students the multiplicity of viewpoints of the oppressed."

⁹⁰ S. Bryant & M. Arias, "Case Study A Battered Women's Rights Clinic: Designing a Clinic Program Which Encourages a Problem—Solving Vision of Lawyering that Empowers Clients and Community" (1992) 42 Wash. U. J. Urb. & Contemp. L. 207 at 210.

⁹¹ See S. Wexler, "Practicing Law for Poor People" (1970) 79 Yale L.J. 1049.

second is the “skills” necessary to identify and respond to different forms of racism and ethnocentrism.

In all of this, the thorny issue of “experience” never disappears. Parkdale students “experience” the responsibilities of poverty law practice; they learn of their clients’ “experiences” and they have their “experiences” of their clients’ experiences. While some clinical educators are confident that “theory forged in experience is likely to be thick and rich,”⁹² it is important that the nature of experience itself be theorized. The challenge is to ensure that the result is not a tyranny of competing experiences—that we produce experientially informed, as opposed to experientially driven, discussions and analyses.

V. THE CONTRIBUTION OF PCLS TO POVERTY LAW, THEORY, PRACTICE, AND LAW REFORM: AN APPRECIATION

It is impossible to capture Parkdale’s essence or to do justice to its contribution to the life of the law and the lives in and out of law it has touched. The pages of this issue of the Osgoode Hall Law Journal are filled with details and reminiscences of the clinic’s monumental contribution to the lives and work of many people. For me, the opportunity to be involved in the clinic’s work has always yielded rewards, forged not infrequently through struggle and more meetings than I care to remember, but rewards nonetheless. It is an environment in which I have experienced challenge, inspiration, and humility.

I recall one morning during my last year at the clinic. It was early. When I arrived, Dorothy Leatch asked me if I could speak to a woman who was clearly in a high state of distress. There was no one else around. To be honest, I was reluctant. Talking to a client is not something this academic director at Parkdale does very often. But, I am seldom able to say no to Dorothy, and so I asked the woman if I could speak with her. In the intake room, I took pains to explain to her that I was not a lawyer and could not give her any legal advice. Not unsurprisingly, she was curious as to just what it was I did do, and I told her I was a law teacher, responsible for the students at the clinic. Fine. I offered her a glass of water and we spoke. She was a young woman, who looked older than her years. She told me her name: it was the name of a movie star from the 1950s. I knew I was in over my head. We talked a bit more. She told me she had had a role in the movie, “Independence

⁹² Goldfarb, *supra* note 41 at 1615.

Day.” Had I seen it? Well as a matter of fact, we had rented the video over the weekend. Did I see her? Well, I hadn’t watched the entire movie. She graciously told me that her hair was different in the movie, so that might explain why I didn’t recognize her. She had a sheaf of papers that chronicled part of her difficult life, including much experience with mental health professionals. She had lost a child, possibly two, possibly as a teenaged single mother. Very little was clear to me. Mercifully for her, the staff lawyer and student who knew her soon arrived to take over. She thanked me for the water and for talking to her. I left her in the able hands of the student and staff lawyer. And, once again I was struck by the complexity and challenges that students in the Parkdale program face when they meet their clients. I was reminded of the equally complex legal and social issues revealed and addressed in the work. And I allowed myself to be proud of the energy, dedication and compassion I have seen students bring each term to the clinic.

If I may be permitted one further remembrance, that of that first overwhelming term in the Fall 1986 when I had the unenviable task of following David Draper in the role of academic director. Who can forget the pace of the place, the energy of the students, the vision of the staff. In September, PCLS submitted a brief to the Anand task force on trespass to property⁹³ in which the clinic illustrated the impact trespass legislation had on impoverished and disabled members of the community, including discharged psychiatric patients, visible minority youth, and the homeless:

Any review of the [*Trespass to Property Act*] must examine who is being charged and why they come into conflict with the legislation. In our experience, the legislation disproportionately affects disadvantaged members of society. This may not be true in rural Ontario, but it certainly appears to be the case in downtown Toronto. In our submission, therefore, it must be recognized that there is a profound social dimension to the issue of trespass to property. This social dimension demands attention beyond legislative changes to the TPA.⁹⁴

In October of that term, PCLS submitted a brief to the Ontario Court Inquiry, emphasizing the need for access, community education, and provision in the family courts, for increased duty counsel and the need to address the emergency situations faced by abused women.⁹⁵ In

⁹³ Parkdale Community Legal Services, *Submissions to the Task Force on the Law Concerning Trespass to Publicly Used Property as it Affects Youth and Minorities* (September 1986) [unpublished], reprinted in this issue: (1997) 35 Osgoode Hall L.J. 819.

⁹⁴ *Ibid.* at 821.

⁹⁵ Parkdale Community Legal Services, *Submissions to the Ontario Court Inquiry* (October 1986) [unpublished; on file with the author].

November, the clinic provided the then recently appointed Social Assistance Review Committee with a set of proposed principles to guide their work:

The Social Assistance Review Committee should develop a vision of the role that social assistance should play in our society and should not limit itself to what may or may not be politically expedient at this moment.

The Social Assistance Review Committee should look at social assistance as more than the provision of necessities—should consider how social assistance can be structured to redress poverty in a meaningful way.

The Social Assistance Review Committee should keep its focus on those in need and not be drawn into a “systems analysis” approach to the problem.⁹⁶

During that fall term, students drawn from all the three of the clinic’s working groups (then family and welfare, landlord and tenant, and immigration and workers’ rights) in conjunction with the clinic staff lawyers and CLWS undertook research into papers that would find their way into the large submission PCLS would ultimately make to SARC. At the same time, other students began to do research into homelessness in preparation for the International Year of Shelter for the Homeless (1987) and the contribution PCLS would make to the Canadian conference the following September: a slide presentation of the images and experiences of homelessness in the Parkdale community (photographed by a former Parkdale student), and a major paper that would eventually be published.⁹⁷ Yet another student undertook research into a paper that would find its way into the clinic’s *Submissions to the Canadian Task Force on Mental Health Issues Affecting Immigrants and Refugees*⁹⁸

As I have said above, this is the work I encountered and was privileged to be a part of in my first term. Daunting? Yes. Exhilarating? Yes. Difficult? Yes.

Over the next several years, Parkdale students and staff would make enormous contributions to poverty law scholarship: pioneering work on workfare (a decade before it became official government policy)⁹⁹ on the implications of continued criminalization of street

⁹⁶ Parkdale Community Legal Services, *Submissions to the Social Assistance Review Committee* (November 1986) [unpublished].

⁹⁷ Parkdale Community Legal Services, “Homelessness and the Right to Shelter: A View from Parkdale Community Legal Services” (1988) 4 J.L. & Soc. Pol’y 35.

⁹⁸ (July 1987) [unpublished; on file with the author].

⁹⁹ P. Rochman, “Working for Welfare: A Response to the Social Assistance Review Committee” (1989) 5 J.L. & Soc. Pol’y 198.

prostitution and its relevance for clients and practitioners working in the area of poverty law (as opposed to criminal law and criminology),¹⁰⁰ and the implications of the practices of tax rebate discounters for low-income people (and a call for abolition of the practice).¹⁰¹ Parkdale students were among the first to identify and analyze the gendered nature of welfare law and policy, and proposed law reform.¹⁰² Beyond the realm of social assistance, PCLS gave rise to very early interventions on the narrow definition of family and spouse, including its implications for same-sex couples,¹⁰³ and an important and influential contribution on migrant women's claims to refugee status and other forms of legal relief under immigration law.¹⁰⁴ This latter paper was both theoretically informed and practical in its sweep: it drew on feminist and state theory, empirical work on wife assault, and illustrated how the *Immigration Act* and policies ought to be interpreted so as to be accessible to battered immigrant and refugee women.

Parkdale has always responded to changes in the community, in the law, and in the state. Access to health care for low- (and no-) income immigrants and temporary residents was restricted in 1994; Steve Sansom took on OHIP and the equality guarantees of the *Charter*.¹⁰⁵ When social assistance took an even more invasive turn in Ontario with the provincial government's new policy of "Enhanced Verification and Case File Investigation," Elizabeth MacFarlane drew upon Simone de Beauvoir and Virginia Woolf to illustrate the implications of "the systemic and chronic invasions of privacy" of social assistance recipients.¹⁰⁶

¹⁰⁰ S. O'Connell, "The Impact of Bill C-49 on Street Prostitution: What's Law Got to Do with It?" (1988) 4 J.L. & Soc. Pol'y 109.

¹⁰¹ M. Milczynski, "Tax Rebate Discounting in Canada: The Case for Abolition" (1987) 2 J.L. & Soc. Pol'y 73.

¹⁰² See, for example, F. Stairs, "Sole Support Mothers and Opportunity Planning in the Thompson Report" (1989) 5 J.L. & Soc. Pol'y 165; M.D. Wright, "Women, Work and Welfare: The Thompson Report and Beyond" (1989) 5 J.L. & Soc. Pol'y 227; and S. Smart, "A Step Toward Workfare: The Supports to Employment Program and Sole Support Mothers" (1990) 6 J.L. & Soc. Pol'y 226.

¹⁰³ D. McIntosh, "Defining 'Family'—A Comment on the Family Reunification Provisions in the Immigration Act" (1988) 3 J.L. & Soc. Pol'y 104.

¹⁰⁴ F. Stairs & L. Pope, "No Place Like Home: Assaulted Migrant Women's Claims to Refugee Status and Landings on Humanitarian and Compassionate Grounds" (1990) 6 J.L. & Soc. Pol'y 148.

¹⁰⁵ F. Sansom, "Refugee Claimants, OHIP Eligibility, and Equality" (1997) 12 J.L. & Soc. Pol'y 202.

¹⁰⁶ E. MacFarlane, "No Lock on the Door: Privacy and Social Assistance" (1995) 1 Appeal 1.

[I]nvasive measures such as these will only inhibit recipients' ability to recover from the "financial and emotional crisis" that accompanies poverty, and promote their continued financial dependence on the state. Only greater guarantees of privacy for recipients would, in the long run, satisfy both the seemingly competing goals of equality and economy.¹⁰⁷

VI. CONCLUSION

It is not too much to say that in its history, Parkdale Community Legal Services has defined poverty law and transformed the meaning of legal services and how they are delivered. The development and expansion of community legal clinics in Ontario, and their form, shape, and poverty law mandate has been part of Parkdale's sustained work, whether in its early and influential submission to Mr. Justice Samuel Grange in 1978¹⁰⁸ to its more recent submission to the McCamus Review on legal aid in Ontario.¹⁰⁹ Parkdale Community Legal Services has advanced, defended, and vindicated the cause of access to justice, broadly defined, for low income people.

The clinic has never skirted controversy, nor shied away from its implications. It has redefined the way legal services are delivered and in so doing it has tested the limits and implications of the *Rules of Professional Conduct* in a community legal-clinic setting. No less than through its historic and acclaimed advocacy on behalf of tenants and landlord and tenant law reform, the clinic early on adopted a policy that it would not represent landlords in landlord-tenant matters.¹¹⁰ In 1982, the clinic's board adopted a "spousal assault policy" in support of its ongoing law reform and community education on the issue of wife assault.¹¹¹ These and other policies have not been adopted lightly, never without careful discussion, and are revisited on a regular basis.

Illustrative of the clinic's recognition of the need to move in response to changes in its community as well as its leadership in poverty

¹⁰⁷ *Ibid.* at 8.

¹⁰⁸ Parkdale Community Legal Services, *Submission to Commission on Clinical Funding* (1978) [unpublished].

¹⁰⁹ Parkdale Community Legal Services, *Submission to Ontario Legal Aid Review Committee* (April 1997) [unpublished].

¹¹⁰ Parkdale Community Legal Services, *PCLS Clinic Manual* (Toronto: PCLS, 1996) s. 6.18.3; reprinted in this issue of the Journal: "PCLS Clinic Manual 6.18—Policy on Landlords" (1997) 35 Osgoode Hall L.J. 681.

¹¹¹ Parkdale Community Legal Services, *PCLS Clinic Manual* (Toronto: PCLS, 1983) s. 5.5; reprinted in this issue of the Journal: "PCLS Clinic Manual 6.17—Policy on Spousal Assault" (1997) 35 Osgoode Hall L.J. 777.

law was the formation of a distinct workers' rights group in January 1988. Employment issues had been part of the clinic's work from the earliest days, but in 1988, the clinic broke new ground by establishing the rights of unorganized, low-income workers as part of its focus. The workers' rights group forged this area of law as legitimately a part of the work of a poverty law clinic, and through its work has integrated the class, race, and gender dimensions of employment standards legislation. Here too, litigation which has tested the meaning of "employee" in the legislation has been accompanied by some of the most creative community organizing in the clinic's history.¹¹² Analyzing the precarious position of employees whose employers declare bankruptcy has been part of this work as well.¹¹³

In singling out but a fraction of the clinic's contribution to poverty law and law reform, I risk rendering invisible the hundreds of papers and submissions, the thousands of community meetings and clients served. This I do not intend. I have cited but a fraction of the enormous contribution that PCLS has made in its twenty-five short years. When I think of Parkdale I think of the students I have known, the clinic staff who have been my colleagues, my faculty colleagues, and the members of the community and the profession who have volunteered countless hours on the clinic's board of directors. I remember the occasional client who has had to deal with this academic director. I remember the enormous generosity and grace of every single Parkdale alumnae to whom I have turned for assistance or advice, and the fact that no one ever says no. And, when I do, inevitably the dynamic tension that is so much a part of the place and its history, gives way to an enormous sense of pride at what so many have given and accomplished.

¹¹² See, for example, J. Borowy, "Superfitness, Superscam: Home-Based Telemarketers Fight Back" (1996) 15 *Our Times* 19; and R. Ferguson, "Calls to hotline on 'bad bosses' give labour group ammunition" *The [Toronto] Globe and Mail* (10 September 1996) A12.

¹¹³ See, for example, M. Rahman, "The Rights and Remedies of Employees Against Insolvent Employers" (1995) 11 *J.L. & Soc. Pol'y* 191.