

# THE DEMYSTIFICATION OF LEGAL DISCOURSE: RECONCEIVING THE ROLE OF THE POVERTY LAWYER AS AGENT OF THE POOR<sup>©</sup>

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By employing traditional methods of legal representation when acting on behalf of those living in poverty, lawyers act to perpetuate the disempowerment of poor people. While the systemic barriers confronting the poor must be addressed, so too must the power of the poor to help themselves through organization and resistance. The task of the poverty lawyer committed to facilitating the agency of the poor is made difficult by the exclusivity and formalism of legal discourse, the constraints of the *Rules of Professional Conduct* and by traditional understandings of the appropriate role of lawyers. However, a reconceptualization of the role of the poverty lawyer is essential if anti-poverty initiatives are to be successful in the long term.

En utilisant les méthodes traditionnelles de représentation juridique quand ils représentent des personnes vivant dans la pauvreté, les avocat(e)s agissent de façon à perpétuer la déshabilitation des personnes pauvres. Le problème des barrières systémiques auxquelles sont confrontés les gens pauvres doit être soulevé, de même que la question du pouvoir des pauvres de s'aider eux-mêmes par l'organisation et la résistance. L'exclusivité et le formalisme du discours juridique, les contraintes des *Rules of Professional Conduct* et la conception traditionnelle du rôle que doivent jouer les avocat(e)s rendent plus difficile la tâche de l'avocat(e) se destinant à représenter des gens défavorisés économiquement. Cependant, une reconceptualisation du rôle de l'avocat(e) qui représente des gens pauvres est nécessaire si nous voulons voir les initiatives anti-pauvreté être couronnées de succès.

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## I. INTRODUCTION

“Laws grind the poor and rich men rule the law.”<sup>1</sup>

Law presents itself as a neutral and exacting system of rules, a comprehensive and intricate synthesis of categories, which when applied to virtually any set of circumstances, no matter how complex or idiosyncratic, will provide a just result. Generally, lawyers present themselves as the expert technicians of this machine. My experience as a caseworker in the workers’ rights division of Parkdale Community Legal Services (PCLS) has reinforced my belief that this view of law is deeply flawed. Moreover, my time at PCLS crystallized the many misgivings that I have about the ability of law and of lawyers to redress unequal distributions of wealth. It is through my work at PCLS—through time spent with individuals living in dire material need, through my recognition that my legal training did not make me a better or stronger person than those whom I was representing, and through my frustration and sense of impotence at watching real people and their real-life problems slip through legal cracks—that I have come to fully appreciate that an alleviation of poverty and its attendant asperities will not be achieved by the formulaic wielding of case law and statutes.

Poverty lawyers employing traditional methods of lawyering when representing those living in poverty are, for all intents and purposes, applying band-aids. While individual clients may reap short-term benefits on occasion from this kind of lawyering, the roots of poverty are left unexplored, and the poor<sup>2</sup> themselves remain detached

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<sup>1</sup> Oliver Goldsmith as quoted in R. Cotterrell, *The Sociology of Law: An Introduction* (London: Butterworths, 1992) at 110.

<sup>2</sup> Although I will refer throughout this article to “the poor,” “poor clients,” “poor people” or derivatives thereof, I in no way wish to convey an image of those who live in poverty as a homogeneous, monolithic group with uniform and unanimous goals and desires. I agree with William Simon when he writes, “[p]oor people are not more likely than nonpoor people to have

from the problem of “poverty” as constructed by those advocating on their behalf. A reevaluation of the problem of poverty as construed in the legal context, and a reconceptualization of the role that poverty lawyers play in this framework are necessary before effective strategies can be devised. When one considers the current political situation in Ontario, the time to engage in such a pursuit should be sooner rather than later.

State protection of workers’ rights in Ontario under the Conservative government of Mike Harris is decreasing continually. Major changes have been made to the procedural provisions of the *Employment Standards Act*<sup>3</sup> and the substantive changes to this *Act* are pending. Next on the government’s agenda is the “reform” of the *Workers’ Compensation Act*. At the federal level, the situation is not much better. Bill C-12 effectively rewrote the *Unemployment Insurance*

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consensus about their interests”: W.H. Simon, “The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era” (Paper presented at The University of Toronto, Faculty of Law, 10 February 1995) at 9 [unpublished]. I am aware that by even using these terms I risk labelling and oversimplifying a diverse group of people, but I will submit that in order to use language as a means of human communication in any way, we are constantly forced to essentialize people and things. The dilemma of engaging in identity politics without essentializing the individuals within the groups on behalf of which we advocate has not been solved, and is part of the larger tension between the individual and the collective, the specific and the general. In the case of poor people, however, there is a persuasive argument to be made that generalizations are appropriate on some level.

As Shelley Gavigan has written:

Poverty law is poor people’s law. Form and content aside, this means that the pivotal defining criterion is *financial or economic* ... Whilst acknowledging that there are many different perspectives on the meaning of poverty and many measures thereof, it is my view ... that the economic indices, if probed and recast, reveal a coherence not often enough acknowledged.

See S. Gavigan, “Poverty Law and Poor People: The Place of Gender and Class in Clinic Practice” (1995) 11 J.L. & Social Pol’y 165 at 174. I would only add that, while I agree that class issues can be said to be material in some sense—for example, one either has capital or one does not—the intersection of class with various other possible traits of marginalization can and does produce a variety of amalgams, not all of which will benefit equally from a paradigmatic anti-capital approach.

<sup>3</sup> R.S.O. 1990, c. E.14. The *Employment Standards Act* is the statute in Ontario which guarantees minimum standards in the workplace such as maximum hours of work per day, minimum wage, overtime, vacation, and termination pay.

<sup>4</sup> R.S.O. 1990, c. W.11. The *Workers’ Compensation Act* provides compensation, health care benefits, and rehabilitation services to workers injured on the job, their survivors and dependants. In addition, it acts proactively to reduce the incidence of on-the-job injuries and occupational diseases, and to promote health and safety in working environments.

See the *Workers’ Compensation Reform Act, 1997*, R.S.O. 1997, c. 16, which will be brought into force on 1 January 1998. The statute replaces the original *Act*, by Schedule A, with the *Workplace Safety Insurance Act, 1997*. Among other things, the new *Act* reduces the benefits paid to workers from 90 per cent of pre-injury net average earnings to 85 per cent.

*Act.*<sup>5</sup> The *Employment Insurance Act* was passed on 20 June 1996 and embodies what the government refers to as “a comprehensive modernization of the system.”<sup>7</sup> The legislative changes at both the federal and provincial levels reflect a harder, sharper approach to the delivery of employment programs in particular, and social programs in general. In addition, the funding to the Ontario Legal Aid Plan has been drastically reduced. Central to the agendas of the government at both levels is a concern about deficit-reduction, global competitiveness, and national and provincial bureaucratic efficiency. Both governments have generated support for their cutbacks and economic restructuring initiatives by reviving and fortifying social myths about social service abusers, administrative “duplication,” and the need for individuals to help themselves and improve their personal situations without reliance on the government. The prime targets of this renewed survival of the fittest philosophy have been society’s most vulnerable: those most marginalized and in whose interests social support programs were developed in the first place.

This swing to the right of the political spectrum—in Ontario particularly—has created many new obstacles for those committed to fighting poverty. As the social safety net erodes, community organizers, social activists and progressive lawyers are having to reconfigure strategies to retain the protective mechanisms and legislation currently in place, and to develop new methods of tackling the problems of poverty. Many doing poverty law have found ourselves on the frontline dealing with one crisis after another. Perhaps it is not accidental that our best energies and creativity are being spent in simply *maintaining* our clients. It is consistent with the agenda of this government that its most astute critics and its most unruly dissidents be preoccupied with applying band-aids to society’s most needy. While crisis management is crucial, there has never been a more important time for those concerned with the unequal distribution of capital to collaborate, to collectively brainstorm, and to form coalitions against the undertakings of this Conservative government. This article will argue that, in order for this movement to be successful, it must have at its centre those directly affected by poverty. It is only with the avid and large-scale participation of the poor themselves that anti-poverty initiatives will be effective in the long-term. My argument draws on the extensive theoretical works of

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<sup>5</sup> R.S.C. 1985, c. U-1.

<sup>6</sup> S.C. 1996, c. 23.

<sup>7</sup> *Ibid.* at ix.

those who have written on this subject, but more essentially, it is shaped by my experience working as a caseworker at PCLS. The sooner that we, as poverty lawyers, recognize that our capacity to fight poverty is limited and that what power we may possess is maximized when used in conjunction with the efforts of those who make up the communities in which we work, the sooner we will truly be able to envision and work toward long-term, comprehensive, and effective strategies for change.

Central to any discussion about the increased participation of clients in their own legal affairs should be a rethinking of the role that poverty lawyers play in their interactions with clients. Traditionally, the lawyer has assumed—perhaps unintentionally in the case of poverty lawyers—the role of gatekeeper to state legislation. Typically, in the poverty law context, the humble and grateful client acquiesces to the all-knowing authority of the lawyer, and the latter directs the pace and form of the representation. However, by assuming unmitigated control over a client's situation, a poverty lawyer may actually be participating in the silencing of poor people. In his well-known article entitled "Practicing Law for Poor People," Stephen Wexler details various ways in which an individual's socio-economic position will colour the way that they interact with the law. He writes, "[u]nfortunately, the traditional model of legal practice for private clients is not what poor people need; in many ways, it is exactly what they do not need."<sup>8</sup> In this article, I will demonstrate various ways in which the law and lawyers act to perpetuate the lack of power possessed by poor people. I will look at ways in which this tendency plays itself out in the casework I have done at Parkdale. Specifically, I will look at various ways in which the agency of poor people is inhibited and in some cases even obstructed by the structure of the profession, of legislation, and of legal practice.

I will examine critically the popular tactic employed by the poverty lawyer of appealing to the government's collective guilty conscience when representing a client. Those who have been assessed social assistance overpayments, those who have been disentitled to Employment Insurance benefits, those who are about to be evicted or deported are often presented as helpless, powerless victims in dire circumstances. While this tactic has proven quite effective in that individuals cast as victims often win the sympathy of the decisionmaker and on this basis are granted what it is they are asking for, I will argue that the portrayal of poor people as victims can be, at best, counterproductive to the long-term fight against poverty. At worst, this promotes an image that can influence the client's self-perception in ways

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<sup>8</sup> S. Wexler, "Practicing Law for Poor People" (1970) 79 Yale L.J. 1049 at 1049.

that are self-defeating. While the structure and ideology of the legal profession makes it difficult to facilitate agency on the part of clients in the poverty law context, I will maintain that there are ways in which we as lawyers can focus on being resourceful for rather than instructive to our clients.

## II. THE PROBLEM WITH LAWYERS

One of the biggest impediments to facilitating increased participation of the poor in their own legal situations is the exclusivity and formalism of legal discourse. The image of law as a highly specialized body of knowledge, and of lawyers as “experts” in their field, contributes to feelings of intimidation on the part of the layperson. Roger Cotterrell describes this phenomenon succinctly:

To many people law seems separate from other aspects of life. It appears as an arcane world of professionalism centred on a body of esoteric knowledge which is intimidating to the uninitiated in its bulk and obscurity. Laymen usually seek to avoid it. Few actually want to be involved in litigation. Few people other than lawyers discover the mysteries contained in the thousands of volumes of law reports and legal treatises.<sup>9</sup>

These feelings of exclusion and intimidation felt by the non-legally trained are often accentuated amongst poor people. Most poor clients are distinctly different from paying clients of the private bar because they are generally engaging with the law over basic life necessities—their entitlements to them, their continued receipt of them, and how much of them they get. The average poor client is acutely aware of his or her powerlessness and of the state’s power to deny him or her these survival basics. In many instances, this self-perception of smallness in relation to the state results in the client’s adopted stance of passivity in relation to authority. Poor clients are often dependent on the state for subsistence, whereas non-poor clients are not. The resulting psychology of the poor client is often distinctly more self-effacing and humble than the non-poor client.

To compound these obstacles, convoluted and sometimes indecipherable legalese has become the hallmark of the profession’s authenticity, credibility, and prestige; in many ways it is the inaccessibility of the discourse which commands respect for the law and instils obedience in those not legally trained. Law presents itself as an exact science, as a highly specialized and expert discipline. It has a view of itself as neutral and incontestable. Gerald López writes of lawyers,

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<sup>9</sup> Cotterrell, *supra* note 1 at 16.

We accord them privileged education, status, considerable autonomy, skills, rewards, and at least some trust in their work. These privileges generate and draw support from the monopoly of competence that professionals enjoy in their respective fields. We need lawyers to know law to justify to ourselves both the power we regularly permit them to exercise and the other privileges we almost naturally afford them.<sup>10</sup>

As a result of the respectability which society bestows upon the legal profession, the high earning capacity of lawyers, and the privilege and social prestige which many in the profession enjoy (and, in most cases have enjoyed all their lives), many lawyers have an inflated sense of self-importance—a superiority complex, if you will. This attitude serves to make the law and lawyers all the more inaccessible to the non-legally trained generally, and to poor people specifically.

While poverty lawyers are often sensitized to and reflective about issues such as the inaccessibility of legal practice, and as such tend usually not to fall into the same type of self-aggrandizement as the lawyers previously described, it has been noted that poverty lawyers fall into a different kind of trap. Perhaps in an attempt to prove that he or she is “not like a typical lawyer,” perhaps as a way of giving value to criminally undervalued work, or perhaps as an expression of basic human egotism, the poverty lawyer (and others advocating on behalf of society’s “have-nots”) slip into what Shelley Gavigan has described as the state of “heroic white knighthood.”<sup>11</sup> The problem with this tendency is that it does a disservice to the poor. Such a mentality is self-righteous and patronizing, and while the Superhero Poverty Lawyer is busy rushing in to save the day with the solutions that he or she deems appropriate for clients, the lawyer is neglecting to listen to what it is their clients are telling them they need and want.

It is very easy to fall into this trap. In an area of legal practice that is constantly under attack, undervalued, underfunded, and at times very frustrating, self-images of martyrdom can seem to be the only sustenance. It is essential that as poverty lawyers we resist perceiving ourselves as saviours of the downtrodden: attempts to “rescue” the poor only serve to entrench further the hierarchical structures of capitalism and to intensify the unequal power distribution between the poverty lawyer and the client living in poverty.

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<sup>10</sup> G.P. López, *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice* (Boulder, Colo.: Westview Press, 1992) c. 1 at 46.

<sup>11</sup> Gavigan, *supra* note 2 at 178.

### III. THE TRANSLATION OF POOR PEOPLE'S PROBLEMS INTO "LEGAL ISSUES"

Due to the exclusivity of legal discourse, due to the law's dependence on what one author calls "its own internal categories,"<sup>12</sup> and due to the excessive bureaucratization of legal procedures, a major part of the lawyer's job is translating legalese into lay persons' language, and conversely, translating the stories of clients into legally recognizable issues. One author goes so far as to argue that "[t]he lawyers' trade is a trade built entirely upon words ... . As though it were possible for the human mind to pull a specific result out of an abstract concept, like a rabbit out of a hat, without first, knowingly or unknowingly, putting the result into the concept, so it can later be found there."<sup>13</sup> In this way, lawyers have much power to define a client's situation. When representing poor people, the exercise of this power often results in the client's estrangement from his or her own legal matter. The ultimate justiciable issue bears little of the client's signature and in effect becomes a separate entity with a life all its own. Nils Christie argues that the legal issue—the conflict, if you will—actually becomes commodified, like a piece of property.<sup>14</sup> And, it is the lawyer who ultimately exercises ownership over it and makes a living from negotiating it. The result for the impoverished client is often a compounded sense of disempowerment, of disentitlement, and of oppression through silence.

A compelling and poignant example of this silencing in action is rendered through Lucie White's story of Mrs. G.<sup>15</sup> A welfare recipient, Mrs. G. is assessed with an overpayment and goes to see a poverty lawyer in her community. White's rendition of Mrs. G.'s interaction with

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<sup>12</sup> Cotterrell, *supra* note 1 at 17.

<sup>13</sup> F. Rodell as quoted in M. Cain, "The Symbol Traders" in M. Cain & C.B. Harrington, eds., *Lawyers in a Postmodern World: Translation and Transgression* (New York: New York University Press, 1994) 15 at 15.

<sup>14</sup> Nils Christie argues that this dynamic is exacerbated by the image of the lawyer as an "expert." For example, the author writes:

[s]pecialization in conflict solution is the major enemy; specialization that in due - or undue—time leads to professionalisation. That is when the specialists get sufficient power to claim that they have acquired special gifts, mostly through education, gifts so powerful that it is obvious that they can only be handled by the certified craftsman.

See N. Christie, "Conflicts as Property" in C.E. Reasons & R.M. Rich, eds., *The Sociology of Law: A Conflict Perspective* (Toronto: Butterworths, 1978) 295 at 306-07.

<sup>15</sup> See L.E. White, "Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G." in M.A. Fineman & N. Thomadsen, eds., *At the Boundaries of Law: Feminism and Legal Theory* (New York: Routledge, 1991) 40.

her lawyer exemplifies the inadequacies and artificiality of the law's insistence on neat, self-contained legal categories: when Mrs. G. meets with her lawyer, she is told that in order to be successful at a hearing dealing with a social assistance overpayment, she can tell one of two possible stories. Mrs. G's reasonable response after hearing the options was to suggest that they tell both stories. The lawyer arrived at the conclusion that there were only two viable options by studying the case law and drawing parallels between the facts of Mrs. G's story and the existing precedents.

The whole process of taking someone's real-life story and funnelling it through legal requirements and precedent results in a product which has been tailor-made to fit into existing legal paradigms. The nuances and subtleties of an individual's situation become lost as the facts are sheared into a legally recognizable entity. This process perpetuates the idea that people's lives can and should be made to fit into existing legal models, thereby leaving unproblematized the rigidity and normative bases of those legal categories. As Maureen Cain writes:

A discourse may form the objects of which it speaks, but equally systematically it excludes the objects of which it cannot speak. Court room ethnographies... have shown how what is relevant to many plaintiffs and defendants cannot be heard, cannot be made sense of, cannot be allowed to be spoken in legal discourse... The discourse of law does not correspond with everyday thought except in those areas of life, such as the stock exchange, where the legal form has constituted what is everyday.<sup>16</sup>

Because these legal paradigms are created by and reflect the lives of those with power, the poor and other marginalized groups are at a severe disadvantage when evaluated against them. In the process, the voices of those who are disadvantaged are lost in the cacophony of what is "legitimate" in legal discourse.

It is imperative for lawyers concerned with poverty and with the legal system's inaccessibility to poor people to recognize that it is the act of translating the client's issue into a legal issue which gives that problem meaning: an individual's situation is "constituted by communication rather than revealed by it."<sup>17</sup> In order for the crafting of the legal issues of poverty to be authentic, poor people must have license to make their mark on this translation.

Yet, the lawyer's awareness of the potentially silencing effect of traditional legal practice on poor clients, and of the dangers involved

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<sup>16</sup> Cain, *supra* note 13 at 40-41.

<sup>17</sup> *Ibid.* at 40, citing M. Foucault, *The Order of Things* (London: Tavistock, 1970).

when he or she acts as a “traders in legal symbols”<sup>18</sup> is not enough to discontinue the practice. Until the law itself, and adjudicators as administrators of the law, become more attuned to and accommodating of diversity and difference, the lawyer’s best efforts to facilitate participation on the part of her client will be inadequate. As the situation currently stands, the poverty lawyer concerned with encouraging the agency of clients is constantly juggling the competing concerns of (a) ensuring that his or her clients—individuals who have long been silenced by the system—are afforded the opportunity to participate in the crafting of their cases (and in the process challenging the elitist formalism of law); and (b) doing everything possible to speak in the official and authoritative legal language that he or she knows will influence adjudicators and will more likely get his or her client what it is they need and want. Legal “strategy” often overshadows the need to preserve the authenticity of the client’s story. There is a complicated tension here between the individual and the collective: opting for a strategy which may get your client what he or she wants, may actually prove to disadvantage larger groups of marginalized individuals when the decision becomes a precedent.<sup>19</sup> Conversely, electing a strategy which may have the potential to challenge existing laws and legal processes, may be one which results in your client losing.

Lawyers concerned about the law’s insistence on neat, self-contained categories and about its reliance on normative standards based on the lives of those with power, must strive to make law’s categories more flexible and dynamic. Only then will those without

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<sup>18</sup> Cain, *supra* note 13 at 25-26.

<sup>19</sup> I would argue that an example of an individualized approach which backfired is the feminist “victory” in *R. v. Lavallee*, [1990] 1 S.C.R. 852. The appellant was charged with murdering her abusive common-law spouse. At trial, the defence introduced expert evidence outlining the components of what it referred to as “Battered Woman’s Syndrome” in its attempt to prove that the appellant reasonably apprehended death or grievous bodily harm from the deceased’s violence on the night of the murder. The defence was successful in legitimating the syndrome and in securing Lavallee’s acquittal on that basis. While Lavallee benefited from the application of the syndrome to her situation, a very strong argument can be made that the syndrome actually served to perpetuate the view of women as victims, and moreover, it created a paradigm of “the reasonable battered woman” against whom the actions of all women in abusive relationships are measured currently. While Lavallee’s defence lawyer was undoubtedly concerned solely with successfully defending his client, the case illustrates the degree to which legal strategies aimed at addressing social problems deemed to be “individual” can set complicated and unpredictable precedents for larger collectives of people similarly situated. A major challenge for lawyers committed to using the courts to address social inequities continues to be how to facilitate the decisionmaker’s recognition of victimization and human hardship caused by social disadvantage without reducing one’s client to a stereotype.

power, without capital, feel comfortable engaging with law actively; only then will the formulation of legal issues bear the client's signature.

When lawyers engage in the act of administering the law for poor people uncritically, we facilitate and fortify the silencing effect that law has on the marginalized. In this way, lawyers become dupes of the state's pro-capital, status quo agenda. Many have observed and documented the seemingly inherent role that law plays in oppressing the powerless and in acting as a mechanism of social control. For example, Cotterrell writes:

Law has now come to be recognised as an agency of power; an instrument of government. Insofar as government is centralised in the state, law appears exclusively as the law of the state. In the lawyer's view and in the wider public view it has come to be seen as separate from the society it regulates. It has become possible to talk about law *acting upon* society, rather than law as an aspect of society. Thus law has come to be seen as an independent agency of social control and social direction. It appears autonomous within society. A modern legal system is understood as a distinct set of mechanisms of government employing rationally developed doctrine created, interpreted and applied by specialised state agencies.<sup>20</sup>

The observation has been made that lawyers, as espousers of and adherents to law, are participants in its oppressive nature, in its discriminatory regulation, and in its inequities; lawyers in effect are "greasing the wheels" for the law as a tool of social oppression, and are perpetuating the legitimacy and facilitating the operation of an unjust system. Marxist analyses have attempted to explain

how law operates as an instrument of repression promoting the interests of certain classes at the expense of those of others in contemporary Western societies while, at the same time, contributing to shape a climate of thought in these societies that makes possible a reduction of direct repression through law to a minimum.<sup>21</sup>

Yet, if all poverty lawyers in Toronto simultaneously withdrew their services, the result would most certainly be increased suffering for the poor. While a reconceptualization of the work that poverty lawyers do is essential, I would argue that it must take place while we continue to represent the poor. We cannot put our work on hold until we devise the perfect way to help poor people. Besides, there will never be unanimous agreement amongst leftist activist lawyers on what the best strategies for self-reform are. Furthermore, I am not of the mind that there is nothing redemptive about law as a mechanism for bringing about positive social change. Of dominant ideologies in society, law is a discourse which at least pays lip-service to the ideals of justice. As such, it continues to be a

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<sup>20</sup> Cotterrell, *supra* note 1 at 44-45.

<sup>21</sup> *Ibid.* at 106-07.

site where power relations can be debated, challenged and reconstituted. E.P. Thompson's words are inspiring in this regard:

It is true that in history the law can be seen to mediate and to legitimize existent class relations. Its forms and procedures may crystallize those relations and mask ulterior injustice. But this mediation, through the forms of law, is something quite distinct from the exercise of unmediated force. The forms and rhetoric of law acquire a distinct identity which may, on occasion, inhibit power and afford some protection to the powerless.<sup>22</sup>

Besides, poor people do not have the luxury of choosing whether or not they will engage with law. As Wexler writes, "poor people must go to government officials for many of the things which not-poor people get privately ... . Poverty creates an abrasive interface with society; poor people are always bumping into sharp legal things."<sup>23</sup> Consequently, as lawyers, we have to continue to try to renegotiate with legal discourse while simultaneously challenging its inadequacies.

#### IV. THE DANGER AND INACCURACY OF CASTING THE POOR UNEQUIVOCALLY AS VICTIMS

When the poor come before decisionmakers in courts or administrative bodies, they often do so as individuals who are weak, down on their luck, even helpless and vulnerable. This posture is adopted by the poor for several reasons. By enlisting the services of a lawyer, by relinquishing control to a lawyer—someone reputed to be smart, familiar with the system, and combative—the client is able to withdraw and become a passive player in the outcome of his or her situation. Playing the role of victim often allows the client to "relieve a burdensome sense of responsibility or self-blame. Victim status can support a sense of solidarity with others who have suffered in similar ways."<sup>24</sup> Furthermore, decisionmakers have shown themselves to be

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<sup>22</sup> Quoted in Gavigan, *supra* note 2 at 177.

<sup>23</sup> Wexler, *supra* note 8 at 1050.

<sup>24</sup> M. Minow, "Surviving Victim Talk" (1993) 40 UCLA L. Rev. 1411 at 1413-14, citing S. Wendell, "Oppression & Victimization: Choice and Responsibility" in D. Shogan, ed., *A Reader in Feminist Ethics* (Toronto: Canadian Scholars Press, 1993) 277 at 287. This is not to say, however, that poor people always seek to relinquish responsibility for their situations. It is acknowledged that in many instances, those living in poverty blame themselves for their circumstances and are entirely encouraged to do so by the dominant ideology of the liberal democratic capitalist state which overemphasizes the agency that individuals have to affect the outcome of their lives. It is my assertion, however, that the poor are neither entirely responsible nor completely blameless for their situations. While recognizing the magnitude of systemic inequities, I would still maintain that

quite receptive to the helpless, the enfeebled, the victimized. The paternalist and protectionist premise upon which law functions gives victimhood its power. It fulfils a cathartic outlet for society's collective sense of guilt when adjudicators are provided with the opportunity to make magnanimous gestures of charity which cost them very little and require no long-term commitment.

The lawyer in the story of Mrs. G. finds herself having to contend with the temptation to portray her clients as victims quite frequently. She reflects:

As I thought about the choices, I felt myself in a bind. The estoppel story would feel good in the telling, but at the likely cost of losing the hearing, and provoking the country's ire. The hearing officer—though charged to be neutral—would surely identify with the county in this challenge to the government's power to evade the costs of its own mistakes. The necessities story would force Mrs. G. to grovel, but it would give both county and state what they wanted to hear—another “yes sir” welfare recipient ... . This bind was familiar to me as a poverty lawyer. I felt it most strongly in disability hearings, when I would counsel clients to describe themselves as totally helpless in order to convince the court that they met the statutory definition of disability. But I had faced it in AFDC work as well, when I taught women to present themselves as abandoned, depleted of resources, and encumbered by children, to qualify for relief. I taught them to say yes to the degrading terms of “income security”, as it was called—invasions of sexual privacy, disruption of kin-ties, the forced choice of one sibling's welfare over another's.<sup>25</sup>

The temptation to present clients as victims occurs often in the workers' rights division at PCLS. A client assessed with an Employment Insurance overpayment and/or penalty will often be more successful in convincing the Commission to reconsider the decision if they present themselves as destitute, weak, and pathetic. Similarly, employees who file human rights complaints on the basis of discrimination will generate more sympathy and get better results if they adopt the posture of victims.

Joseph Amato cites Gandhi as one of the main historical figures who recognized the power in victimhood:

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relationships between individuals and the state are negotiable and interactive, albeit to varying degrees. It is imperative to be critical of the discourses which shape the poor as either completely blameless or entirely responsible for their situations. The view which one has of the power of individuals directly correlates to the power one attributes to the state. For example, from an orthodox Marxist, or instrumentalist perspective, individuals are acted upon by economic relationships mediated through the State. From a liberal point of view, individuals have nearly unlimited power to determine their situations. I am of the view that both of these perspectives are reductive and fail to describe adequately the complexity and inconstancy of power, and the negotiations which take place daily between individuals and those institutions commonly identified as “The State.”

My point in this part is twofold: first, images of victimhood in the courtroom and other legal fora are powerful and as a result alluring; second, the power and allure of victimhood need to be problematized because what may be a “successful” litigation strategy for an individual in the short-term may have undesirable consequences for the larger collective in the long-term.

<sup>25</sup> White, *supra* note 15 at 43.

[Gandhi] made willingness to suffer and be a victim a means to power, which became in the course of the century an increasingly common means for the weak to deny moral legitimacy to the established order. ... [V]ictim status gives powerful moral leverage. It is a means of controlling much of society's diffuse guilt.<sup>26</sup>

However, in many important ways it is counterproductive to the empowerment of the poor to encourage the presentation of oneself as a victim. To begin with, some people will refrain from invoking their rights when they realize that in order to be successful in a legal forum, they will have to assume the posture of one who is helpless and victimized. Many feel that this image is humiliating, reductive, and fails to convey an image of themselves that they can recognize. As Kristin Bumiller writes, “[t]his transforms a social conflict into a psychological contest to reconcile a positive self-image with the image of the victim as powerless and defeated. Deciding whether or not to make a public claim of discrimination thus becomes intertwined with the process of reconciling these self-images.”<sup>27</sup> The individual in question is reduced to a stereotype and all that is unique about that person is obscured. Moreover, once one accepts the label of victim, any act of agency or empowerment is regarded as inconsistent and therefore contradictory behaviour, as an indication that the person in question is disingenuous, untrustworthy and incredible. If one is going to present oneself as a victim, then one has to adopt the role completely. In the case of battered women, for instance, if a woman’s decision not to leave her abusive partner is explained by the fact that she was a victim, then it may be difficult for her to prove that her helplessness does not prevent her from being able to care for her children when it comes time for the courts to make a decision as to her fitness as a mother.

The overemphasis on victimhood can also lead to self-fulfilling prophecies amongst those adopting that role. Those individuals assuming the role of the disempowered may actually come to see themselves as such. Wendy Kaminer writes, “[t]he cult of victimhood reflects a collective sense of resignation. It responds to widespread feelings of helplessness in the face of poverty, crime, disease, pollution, bureaucracy, taxes, deficit spending, technology, terrorism, and whatever else composes the crises of post-modernity.”<sup>28</sup> In effect, victimhood impedes the potential of the poor to organize, to galvanize the strength that they do possess and to use it collectively.

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<sup>26</sup> Minow, *supra* note 24 at 1413, n. 5, n. 6.

<sup>27</sup> K. Bumiller, “Victims in the Shadow of the Law” (1987) 12 Signs 421 at 433.

<sup>28</sup> Minow, *supra* note 24 at 1430, n. 85.

Besides, the portrayal of our clients as a group of individuals encumbered by unmitigated victimization is inauthentic. We know that our clients as a group engage in acts of agency every day. For example, many of our clients have lived on the streets, without the security of food or shelter; they have worked in low-paying sweatshop jobs putting in more hours in a week than most people work in two weeks; they have survived the psychiatric system; they have emerged from abusive relationships; they have mustered the ingenuity and creativity necessary to support themselves and their children on seemingly unliveable amounts of money; they have come to a new country, they have mastered living in an urban city-centre, taught themselves a new language, sponsored their loved ones, and much more. To paint these people unreservedly as helpless victims is at the very least inaccurate and at worst actually serves to perpetuate stereotypes which can potentially be counterproductive and harmful.

While capitalism and the ideology of liberal democracy can be blamed for many of the obstacles in the way of those living in poverty, I think it is also important to recognize that in some situations, some individuals who live in poverty do contribute negatively, by the decisions that they make, to their circumstances and their situations. To deny this is to romanticize the poor, to treat them as morally superior simply because they live in poverty and experience its accompanying hardships. Also, to deny the power that the poor have to make their situations worse is to also deny that they have any power to make their situations better. Even within capitalism, individuals can be said to have a sphere of agentic power. It is helpful to imagine that sphere as a small circle within the larger confines of state constriction. While our choices within that circle will clearly be influenced by the traits of and goings on within the larger circumference, the image is illustrative and effective because it helps to demonstrate the power and mobility which we all possess, albeit to varying degrees. Otherwise, how would we explain the fact—as evidenced in our casework at the clinic—that individuals similarly situated often make choices and decisions which vary widely. As Sarah Lucia Hoagland writes, “[t]he oppressed still go on under oppression and make choices even when coerced and exploited.”<sup>29</sup> How also could we explain the behaviour of those who resisted the agenda of the Third Reich, or other political dictatorships? History has shown time and again that an individual—departing from the accepted social mores of his or her day—can make an enormous impact on the outcome of a

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<sup>29</sup> S.L. Hoagland, *Lesbian Ethics: Toward New Values* (Palo Alto: Institute of Lesbian Studies, 1992) c. 5 at 212.

particular set of circumstances. While descriptions of systemic discrimination and trends of marginalization are useful and necessary for public education and for strategies of community activism, we must always emphasize that the law and the state can be sites of struggle and resistance.

By portraying poor people as unqualified victims of racism, sexism, capitalism, and other forms of systemic oppression, we negate the idea that individuals living in poverty possess the potential to actively work toward ending their societal disadvantage—through organizing, subversion, and resistance. To deny that individuals living in disadvantaged situations have this agency is to ignore historical examples of insurgency. What is needed is a refusal to pigeonhole the poor as *either* victims *or* agents. At some points in their lives, our clients have been victimized. At others they have exercised the powers of self-determination and resistance. An individual's relationship with the state and social structures is not static; it is fluid and ever-changing. What is needed is an exploration of "the interrelationship between, and simultaneity of, oppression and resistance."<sup>30</sup>

So, while it is essential to work from a starting point which acknowledges the systemic nature of oppression and the fact that those without money are among its prime targets, we need to explore the ways in which the poor do possess power and agency. This is crucial because as Wexler writes,

Poverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. And poor people can stop poverty only if they work at it together. The lawyer who wants to serve poor people must put his skills to the task of helping poor people organize themselves ... . Specifically, the lawyer must seek to strengthen existing organizations of poor people, and to help poor people start organizations where none exist.<sup>31</sup>

Once the movement against poverty is engineered by those living in indigence, the non-poor will be better able to play a resourceful and supportive role rather than a controlling and instructive one.

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<sup>30</sup> E. Schneider, "Feminism and the False Dichotomy of Victimization and Agency" (1993) 38 N.Y.L. Sch. L. Rev. 387 at 397.

<sup>31</sup> Wexler, *supra* note 8 at 1053-54.

## V. WHAT CAN WE DO AT THE CLINIC? PRACTICAL APPLICATION

The changes implemented to employment legislation under the provincial and federal governments have made it much more difficult for lawyers to handle the employment problems of the poor. In Ontario, the Harris government made large-scale changes to the *Employment Standards Act*. The limitation period to file a claim with the Ministry of Labour has been reduced to six months from two years. The maximum amount of money to which an employee can be entitled under the Employee Wage Protection Fund has been capped at \$2,000. The extensive staff cuts at the Ministry of Labour have dramatically slowed down the processing of claims. From the time a claim is made, it has been taking between six to eight months for a fact-finding meeting to be scheduled. If the claimant wins the fact-finding, it can take over a year for the employment standards officer to issue an order to pay. And then, if the employer chooses not to abide by the order to pay, there have been no consequences because orders are not being enforced. And those are only the procedural changes—the substantive changes are yet to come. The *Workers' Compensation Acts* next in line for “reform.” At the federal level, the Liberal government effectively rewrote the *Unemployment Insurance Act*. The *Employment Insurance Act*<sup>32</sup> makes it more difficult for unemployed workers to get benefits and it decreases the time that individuals are entitled to benefits.

All of these changes make it much more difficult to invoke the employment rights of the poor. There is less that we can actually do materially for our clients in the way of engagement with the law, and due to the high rate of unemployment greater numbers of people require government assistance. So, what can we do? More importantly, what can poor people do? In this part, I will set out some practical strategies which I believe have the potential to facilitate the increased cooperation of individuals living in poverty.

While those without money must be at the centre of any movement to eradicate (or at least lessen the effects of) poverty, there is a role to play for poverty lawyers, community organizers and others not necessarily living in poverty, but concerned with its effects. Most importantly, I think that non-poor poverty activists must reconceptualize their positions. Instead of acting as the spokespeople of the poor, we must maximize our abilities as resource people. In this regard, Wexler's

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<sup>32</sup> *Supra* note 3.

words are instructive: “[t]he lawyer must offer information so that people can structure their own alternatives and make their own choices among them. The lawyer may know what the law can do; the people know what needs to be done, and what can be done.”<sup>33</sup> As poverty lawyers, we need to focus on what it is we can do to better connect those living in poverty. Underlying these efforts should still be the goal of bringing to the public’s attention the themes and trends of poverty, its systemic nature, and its social effects.

Assuming the role of information-giver rather than agent will be difficult for lawyers because of the structure of the profession. In some ways, the structure and protocol of the profession will prevent lawyers from relinquishing their role as agent completely. All lawyers practising law in Ontario must adhere to the principles set out in *The Rules of Professional Conduct*. These *Rules* are a code of ethics designed to govern a lawyer’s conduct in such a manner so as to maintain “public confidence in the administration of justice and in the legal profession.”<sup>34</sup> For all intents and purposes, the *Rules* are binding in that the Law Society of Upper Canada has the power to terminate the professional livelihood of bar members through disbarment. It is seemingly inevitable, however, that a progressive lawyer will find it difficult to reconcile and negotiate his or her commitment to challenging the legal system, specific laws in particular, and capitalism more generally with his or her obligations to the Law Society.

Implicit in the *Rules* is an unquestioning respect, at times almost a reverence, for the sanctity and wisdom of the values contained therein. The *Rules* are fashioned to address potential problems and conflicts occurring within the private bar, although they apply equally to lawyers doing clinic and legal aid work. They facilitate the smooth operation of existing laws and legal practices in the civil, criminal, and administrative contexts, and as a result, fail to provide an adequate internal mechanism whereby lawyers committed to legal reform can safely challenge normative legal values and legislation in their casework.<sup>35</sup> Michelle

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<sup>33</sup> *Supra* note 8 at 1064.

<sup>34</sup> See Law Society of Upper Canada, *Professional Conduct Handbook* (Toronto: LSUC, 1997) [hereinafter *Rules*].

<sup>35</sup> A possible exception to this observation is found in the Commentary to Rule 21 which deals with “Lawyers in their Public Appearances and Public Statements.” After itemizing extensively the parameters within which a lawyer can engage with media, public educational bodies, and public communication systems more generally, Note 4 of the Commentary states, at 66, “The lawyer is often involved as advocate for special interest groups whose objective it is to bring about changes in legislation, governmental policy, or even a heightened public awareness about certain issues. This is also an important role that a lawyer can be called upon to play.” This commentary, however, raises

Jacobs, writing in the American context, discusses the obligation of a lawyer to represent clients “zealously” while still adhering to the rules of professional ethics. She speaks of the “edge” of one’s ethical obligations and states that subversive lawyering may require one to go to that edge, it may even necessitate that one step on that edge, but it should never require one to cross over it.<sup>36</sup> However, the number of inquiring calls to the Law Society on a daily basis indicate that to many lawyers, both experienced and inexperienced, the contours of that “edge” are not immediately recognizable. This uncertainty becomes especially problematic in the poverty law context where an overload of cases, a dire shortage of time, energy, resources, and bodies necessitate increased creativity in dealing with clients.

Rule 2, which aims to cover “Competence and Quality of Service” exemplifies the *Rules*’ reliance on unproblematized conceptions of what it means to be a good lawyer. For example, Rule 2(b) states: “[t]he lawyer should serve the client in a conscientious, diligent and efficient manner, and should provide a quality of service at least equal to that which lawyers generally would expect of *a competent lawyer in a like situation* and should avoid unsatisfactory professional practice.”<sup>37</sup> The concept of professional “competence” within the legal profession is not a stable signifier. In other words, while there are certainly behaviours within the profession which most lawyers would unanimously describe as competent or incompetent—for example, most would agree that regular communication, punctuality, and attentiveness are traits which mark the competent lawyer—there is a variance of opinion amongst members of the legal community on the subject of what is best for the client.

A lawyer is supposed to take instructions from his or her client, but very often we know that the client feels instructed, even bullied, by the lawyer. Notions of competence on Bay Street, or Wall Street, may be less contentious than notions of competence amongst non-traditional lawyers. Within the realm of progressive lawyering, there is great divergence on the subject of what constitutes good lawyering, or “competence” if you will. In a chapter entitled “The Rebellious Idea of Lawyering Against Subordination,” López elucidates quite poignantly the breadth of practice in which individuals committed to social reform

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more questions than it answers in that the competing obligations of “special interest” lawyers are acknowledged, but no practical suggestions are made as to solutions.

<sup>36</sup> M.S. Jacobs, “Legal Professionalism: Do Ethical Rules Require Zealous Representation for Poor People?” (1995) 8 St. Thomas L. Rev. 97 at 97.

<sup>37</sup> *Rules*, *supra* note 34 at 3 [emphasis added].

participate.<sup>38</sup> He describes the habits and professional styles of five different lawyers committed to left activist lawyering. Among this small sample alone, what constitutes competence is heavily contested. Is it competence to act on behalf of your client if by doing so you are actually depriving that individual of the agency to act for themselves? On the other hand, is it incompetence to facilitate the client's involvement in community activism and organizing if the result is that the lawyer appears to be shuffling off onto the client things that a "lawyer in a like situation" would undertake themselves? Does a victory for your individual client outweigh the lawyer's responsibility to the collective, whether that collective be poor people, women, people of colour, gays and lesbians, the elderly, the disabled? Does the fact that the *Rules* focus exclusively on the individual client justify acting in ways which would damage the social position of the larger collective?

By encouraging self-help strategies for clients living in poverty, lawyers run the risk of violating both Rules 11 and 16. Rule 11 states that "[t]he lawyer should encourage public respect for and try to improve the administration of justice."<sup>39</sup> It is foreseeable that a lawyer who attempts to challenge accepted legal practices could be deemed by the Law Society to be in contravention of this Rule. Note 1 of the Commentary for Rule 11 states, "[t]he lawyer must not subvert the law by counselling or assisting in activities which are in defiance of it."<sup>40</sup> What constitutes "defiance" is open to debate, particularly when the approach taken by the client on the lawyer's advice results in claims taking a longer time to be processed, or when the volume of claims increases so dramatically that administrative bodies are overwhelmed.

Peter Gabel and Paul Harris cite specific examples of solicitor behaviour in the American context geared toward challenging the authority and sanctity of accepted legal forms.<sup>41</sup> In particular, they refer to attempts made by lawyers to alter the symbolic authority of the courtroom set-up so as to make clients and juries feel less alienated and daunted. As such behaviour could substantially alter the flow of courtroom proceedings, protract the time spent in court, and unfairly disadvantage the other side, it could conceivably be deemed "defiant" and as such could potentially come into conflict with Rule 11. In some

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<sup>38</sup> *Supra* note 10, c. 2.

<sup>39</sup> *Ibid.* at 39.

<sup>40</sup> *Ibid.*

<sup>41</sup> P. Gabel & P. Harris, "Building Power and Breaking Images: Critical Legal Theory and the Practice of Law" (1982-83) 11 N.Y.U. Rev. L. & Soc. Change 369 at 399-403.

instances, the difference between creative challenges to unjust and/or stagnant legal forms on the one hand, and defiance of the administration of justice on the other, is all in the interpretation of the decisionmaker or the Law Society.

Similarly, some self-help strategies involve the delegation of tasks normally considered the responsibility of lawyers to non-legal persons or to the clients themselves. Delegation in the legal profession in Ontario is regulated by Rule 16. While the Rule seems to contemplate the use of law clerks, and other such non-legal persons, it is conceivable that in attempting to establish self-help clinics, and other community-directed strategies of alternative legal practice, a lawyer could run the risk of overstepping the boundaries of what is permissible under this Rule. Furthermore, the Rule makes it abundantly clear that the Law Society perceives the lawyer to have a high degree of specialization and expertise, qualifications which the average non-lawyer, let alone the *poor* non-lawyer is deemed not to possess. Rule 16(2) states: “the question of what the lawyer may delegate to a non-lawyer turns upon the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer which in the public interest must be exercised by the lawyer whenever it is required.”<sup>42</sup> The image of the highly specialized licensed professional is at the heart of the legal profession’s exclusivity and elitism—only a relatively few specially trained individuals in society are “qualified” to administer justice.<sup>43</sup>

Conceivably, Rule 17, which regulates “Outside Interests and the Practice of Law” also poses an obstacle for activist lawyers in the poverty law context. Rule 17 states: “The lawyer who engages in another profession, business or occupation concurrently with the practice of law must not allow such outside interest to jeopardize the lawyer’s

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<sup>42</sup> *Rules, supra* note 34 at 53.

<sup>43</sup> Rule 16(3) states:

The burden rests upon the lawyer who uses a non-lawyer to educate the latter with respect to the duties that may be assigned to the non-lawyer, and then to supervise the manner in which such duties are carried out. The lawyer should review the non-lawyer’s work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion.

While this guideline does seem to allow—at least on a theoretical level—for the cooperation of lawyers and non-lawyers in the poverty law setting, its practical application is more problematic. To begin with, it relies on and perpetuates the image of the lawyer as the one with true wisdom and ability, and it gives further credence to the authority and omniscience accorded to legal discourse. It indicates a lack of confidence in the non-legally trained, and it obstructs the lawyer’s efforts to encourage greater independence on the part of clients, and to demystify what it is lawyers do.

professional integrity, independence or competence.”<sup>44</sup> The term “outside interest” is meant in the broadest possible sense and would seem to include such things as community organizing and social activism. The lawyer who attempts to participate in both lawyering (as defined by the Law Society) and community work simultaneously, and who attempts to integrate the two, runs the risk of jeopardizing what the Law Society calls “the lawyer’s independent judgment on behalf of clients.”<sup>45</sup> Again, what is best for the client is open to debate when the interests of the individual client are at odds with the interests of the collective of which the client may be a part. In addition, it is unclear in certain instances what type of conduct the Law Society refers to when it advises against lawyers engaging in behaviour which “might bring the lawyer or the profession into disrepute, or impair the lawyer’s competence.”<sup>46</sup> Some forms of legal practice which have law reform as their objectives could be said to “bring the profession into disrepute” if one considers that what many would consider harmful to the reputation of the profession would derive from dominant ideas about what lawyers do and should do, and about what roles the client should or should not play in legal proceedings.

The question for poverty lawyers then, is how can we recognize agency on the part of the poor while still abiding by *The Rules of Professional Conduct*? In order to practise law in Ontario, one must abide by the *Rules*, however, the *Rules* should never be accepted as neutral or universally recognizable guidelines. As Steven Bachmann has argued, “[t]he progressive lawyer must be familiar with professional rules of ethics as they have conscientiously been used by elite groups to crush progressive movements.”<sup>47</sup> As progressive lawyers, we will likely spend our entire careers balancing these competing interests.

In addition, as we attempt to move within the confines of the *Rules*, we must also ask ourselves if gambling on the uncertain outcome of our anti-poverty initiatives justifies putting clients in possible jeopardy in the short term. We must consider whether it is appropriate to be minimizing our services in the poverty law context at a time when it would seem that issues of poverty require all the representation and attention they can get. Poor people, so long deprived of access to legal

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<sup>44</sup> *Rules supra* note 34 at 57.

<sup>45</sup> *Ibid.* at 57.

<sup>46</sup> *Ibid.*

<sup>47</sup> S. Bachmann, “Lawyers, Law and Social Change” (1984-85) 13 N.Y.U. Rev. L. & Soc. Change 1 at 26.

representation, deserve the same service and counsel as those hiring lawyers from the private bar. It seems especially risky and unwise to withdraw these services when we know that, in the legal context, poor people will continue to be opposed by individuals who can afford to hire adversarial members of the private bar.<sup>48</sup>

Empowerment of the poor will not come from a withdrawal of legal services. If we, as advocates of the poor, simultaneously withdrew the provision of our services, the current system would not bow down in penitent acquiescence under the weight of our moral uprightness, but rather, the system would greedily digest its unprotected prey and the fit that continued to survive would simply become relatively more fit. In the meantime, we need to work in collaboration *with* not *for* the poor. Poverty will only be eradicated through the coordinated efforts and actions of various different sectors of society committed to ending the oppression of the poor. We must work to create alliances aimed at taking the poor out of isolation. As López writes:

Lawyers must know how to work with (not just on behalf of) women, low-income people, people of color, gays and lesbians, the disabled, and the elderly. They must know how to collaborate with other professional and lay allies rather than ignoring the help that these other problem-solvers may provide in a given situation. They must understand how to educate those with whom they work, particularly about law and professional lawyering, and, at the same time, they must open themselves up to being educated by all those with whom they come in contact, particularly about the traditions and experiences of life on the bottom and at the margins.<sup>49</sup>

One viable self-help strategy in the workers' rights division at PCLS would be to organize clinics that specifically dealt with employment standards claims. The clinic could train community members to be familiar with the claim forms, and they, in turn, could assist and teach members of the community how to file a claim against employers for unpaid wages, vacation, holiday, overtime, and termination pay. The clinic could employ what López calls "imaginative case processing"<sup>50</sup> to avoid the duplication and repetition of work, to equip clients with the know-how to solve employment problems on their own, and ultimately, to facilitate the service and submission of a higher volume of claims.

In addition, the clinic could help to break down statutory jargon by producing self-help kits and manuals, whereby workers could access legal remedies on their own without the aid of lawyers. PCLS already has

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<sup>48</sup> Gavigan, *supra* note 2 at 176.

<sup>49</sup> López, *supra* note 10 at 37.

<sup>50</sup> *Ibid.* at 32.

“The Workers’ Real Self-Help Kit”<sup>51</sup> to deal with employment standards claims. In addition to ensuring that this kit is more widely circulated, we could create a similar kit for human rights complaints, Employment Insurance benefits, and workers’ compensation entitlement. Self-help kits and manuals written in simple language help to demystify the law for the non-legally trained. The clinic could train members of the community to be especially familiar with one area of employment legislation and they in turn could help others to be familiar with and to invoke their rights in that area. By breaking down legalese and by facilitating the access of the poor to rights, lawyers concerned with fighting poverty are challenging, on a practical level, what López has described as the “regnant” idea of lawyering,<sup>52</sup> while simultaneously adapting the traditional dynamics of the solicitor-client relationship to meet the distinct needs of those living in poverty.

In addition, the ESWG<sup>53</sup> has devised what it calls “The Bad Boss Hotline.” The hotline is a number that anyone can call to relay stories of bad bosses. The ESWG has used these stories to identify which employers are violating the employment standards protected in this province. The ESWG has used the information relayed by workers to conduct “community audits” of bad bosses. At the clinic, we could take the creative lead of the ESWG and recruit members of the community to initiate community audits. As individuals familiar with laws surrounding civil disobedience, we could train community members to engage in peaceful and legal acts of resistance to the violations of employment laws by employers. This could mean sit-ins at restaurants and cafes known to treat their workers unfairly. This could mean publicized boycotts of clothing manufacturers and retail outlets that pay their workers less than minimum wage. Along the same lines, members of the community could picket the establishments of bad bosses, thereby letting the community know which employers are committing violations and sending out a message to other employers that there are consequences to be paid for not obeying employment laws.

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<sup>51</sup> This kit is a package put together by PCLS, the Workers’ Information and Action Centre of Toronto (WIACT), and the Employment Standards Work Group (ESWG). The kit provides step-by-step instructions on how to redress employment standards violations, from the stage of writing demand letters to employers, to filing employment-standards claims with the Ontario Ministry of Labour.

<sup>52</sup> Lopez, *supra* note 10 at 23, n. 10.

<sup>53</sup> The Employment Standards Work Group is a network of approximately thirty-five community organizations, legal clinics, and unions who work with, represent, and advocate for low-income, unorganized workers in Toronto. Its primary objective is to improve the *Employment Standards Act*, *supra* note 3.

## VI. CONCLUSION

The main objective of non-poor poverty activists should be to facilitate the involvement—not through instruction, but through resourcefulness—of the poor in fighting against the shackles of poverty. While poverty affects the poor in ways different than it does the non-poor—and as such, the poor will often have experiences and perspectives which the non-poor will not—those not living directly in poverty experience its repercussions as well. A movement in the realm of progressive lawyering to recognize the agency of the poor should be premised on the understanding that to not recognize this agency is to perpetuate and sustain unequal power relations in society in the long term. Poverty lawyers and community legal workers in the clinic system are in strategic positions to facilitate the agency of those who require legal representation. A successful movement to eradicate poverty will feature the efforts of these individuals as a supplement to the efforts of those living in poverty. While the harshest and most direct consequences of poverty are unquestionably felt only by those without money, its more subtle effects are borne by society at large. Our capacity for growth and development as a nation will be maximized only when individuals cease to live in material need while others are surrounded by plenitude.