

nexus

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PICKING WINNERS

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UNIVERSITY OF TORONTO
FACULTY OF LAW

ANGEL ADVOCATES

Stepping in when the down-and-out had nowhere else to turn, law student volunteers in the activist '60s and '70s—and beyond—planted a radical seed from which Downtown Legal Services sprouted

By Sheldon Gordon / Photography by Jeff Kirk

In 2009, when Edyta Katarzynski, an HR assistant, encountered pushback from her husband of 21 years in finalizing the custody, visitation and child support terms of a separation agreement, she turned to Legal Aid Ontario (LAO), but didn't qualify for assistance. Unable to afford the cost of a lawyer, she searched online for options, and eventually phoned the University of Toronto's Downtown Legal Services. It was the beginning of a three-year narrative.

DLS, which has existed under a variety of names and marks its 40th anniversary this year, is a community legal clinic and clinical education program run by the Faculty of Law. Funded primarily by LAO, it serves clients who have low incomes yet don't qualify for legal aid. About 80 JD students volunteer at the clinic each year, receiving calls from some 3,000 would-be clients. It has the resources to help only about 1,000 of them, while providing referrals and summary advice to others.

Katarzynski passed the initial phone screening. Her case met the financial and category eligibility criteria. The clinic handles summary criminal cases, family cases except divorces, tenant rights cases, immigration and refugee cases, and student disputes with the U of T administration. (Criminal defendants account for about 50 percent of its clients.)

When Katarzynski showed up for her intake appointment a few weeks later, she hoped her case could be settled out of court. Instead, in April 2012, a two-day trial unfolded—the first family-law trial that DLS has ever conducted. (DLS is the only student legal clinic in Ontario that offers services in family law.)

"Whatever the ruling, I'll be at peace," said Katarzynski a few days later as she awaited the verdict, "because the people at DLS have done everything they could. They provided not only legal support but a human side; they were friendly and understanding."

For Jennifer Wall, JD 2012, who was the last and longest of Katarzynski's student caseworkers, the litigation was a valuable experience. Claire Hepburn, one of DLS's four staff lawyers, conducted the trial, but Wall played an important role in a cross-examination. She estimates she devoted hundreds of hours to DLS in three years. Above all, she says, it was an opportunity to "learn how to manage client expectations and how to communicate with clients in a way that gets the legal issues across."

Volunteering has also helped her grasp the procedural aspects of the law—everything from how to draft the myriad forms required in a family law case to where to stand in court and how to address the judge. "You learn how to practice law, instead of just how to think about law." Wall begins articling this August with the Ontario government's Family Responsibility Office, which enforces child and domestic support orders and collects support payments for families.

Though Wall is moving on, DLS won't lack replacements. Among first-year law students, about 160 apply for placements and 80 are selected. "It can be challenging in other community clinics to maintain your enthusiasm [in the face of] the endless demand," says Lisa Cirillo, acting executive director at DLS. "But the great thing about working here



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—Jennifer Wall, JD 2012



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—Justice Roger Timms, LLB 1970

is that, because of the turnover of students, there’s regularly an influx of fresh energy.”

DLS started out in 1972 as the Toronto Community Legal Assistance Service. (TCLAS was renamed Downtown Legal Services a decade later.) The impetus for TCLAS’s creation came not from the faculty but from the student legal-aid committee, headed during two critical years by Roger Timms, LLB 1970, who is now a judge on the Ontario Superior Court of Justice (Family Court Branch).

Following the province’s establishment of the Ontario Legal Aid Plan (OLAP, now Legal Aid Ontario) in 1967, students at several Ontario law schools pushed for student legal aid societies funded by OLAP. Timms and Robert Sharpe (a future dean of U of T Law and now a judge of the Court of Appeal for Ontario) held meetings with OLAP officials. “There was initially fierce opposition by some at Legal Aid,” said Timms, “but with the support of Andrew Lawson, the provincial director, we succeeded in getting OLAP approval and support.”

Timms didn’t feel like a trailblazer at the time; he views the initiative as part of the student activism of the late 1960s. “We considered we had a role to play in our education,” he said. “We weren’t happy with the conservative, stifling way things were run at the law school.” He had finished law school by the time TCLAS was born, but his role with the student legal-aid committee led him to Parkdale Community Legal Services, where he was associate director from 1974 to 1976 before leaving to open his own office.

By the mid-1970s, the program was placing students with several affiliated clinics such as Advocates for Injured Workers. John B. Laskin, LLB 1976, spent much of his volunteer time “slogging through case files” of injured workers, presenting their claims to the then-Workers Compensation Board “and thinking how impossible it would have been for most of them to adequately represent themselves.”

Now a senior trial and appellate counsel with Torys LLP (and president of the Faculty of Law Alumni Association), Laskin got his first taste of trial work while volunteering at the clinic. “My client was up on a criminal charge—leaving the scene of an accident. The trial judge saw the apparent flaw in the Crown’s case, and we got an acquittal. It was due more to the active engagement of the judge than to anything that I contributed, but it was satisfying nonetheless.”

The experience helped Laskin decide later “that if I was going to practice law [rather than teach it], I would practice as a litigator.” If TCLAS left its mark on him, he returned the favour. In his third year, he succeeded Robert Pritchard, LLB 1975, as president of TCLAS. “During my period, we pushed for, and got, the law school’s support to hire a full-time review counsel, Richard Gathercole,” he recalled.

Previously, TCLAS relied on part-time review counsel who gave increments of their time. The full-time counsel “helped professionalize the services that we were able to provide,” said Laskin. Another significant advance on his watch was the creation of a course at the law school which enabled the student volunteers to learn more about the



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—Mark Sandler, LLB 1978

law they were practicing—and to gain academic credit for it.

For Kathy Laird, LLB 1977, volunteering at TCLAS had a major impact on her career trajectory. It inspired her to work for four community clinics for a total of 15 years, from Cabbagetown to James Bay, Ontario.

The pivotal moment for her at TCLAS came in her third year, when she acted for a mature worker who had injured his back and had been denied full Workers’ Compensation benefits. “I realized the depth of his loss in income and community status. I could see that the way I was able to help him [by winning on appeal] made a really big difference in his life.”

At TCLAS, too, Laird first saw the connection between litigation, law reform and public interest advocacy, including the use of the media. She acted for a caregiver, seeking wages owed. “The nanny was involved with an advocacy group campaigning for better employment standards protection for domestic workers. The case helped illustrate the problem with the lack of protection at that time,” recalled Laird, “so I spoke to the media about the case.”

(Laird’s client won, and the employer had to pay the wages owed. The Employment Standards Act was amended 10 years later to cover domestic workers.)

The TCLAS experience also informed Laird’s later work as an adjudicator of disputes involving lower-income parties at the Ontario Human Rights Tribunal and the Pay Equity Hearings Tribunal. Since 2008, she has been executive director of the Human Rights Legal

Support Centre, which last summer began training DLS volunteers on how to handle human rights referrals from the centre’s lawyers. So Laird finds herself back in the DLS orbit.

Mark Sandler, LLB 1978, of Cooper, Sandler, Kaufman and Shime LLP had a criminal law practice in mind even before he joined the clinic. “My volunteer work provided confirmation for me that criminal law was what I wanted to do,” he said. “I grabbed every criminal law case that I could.” One of those cases taught him the dangers of “asking one question too many” at trial.

Sandler’s client was charged with obstructing police—he allegedly pushed on a door to hold it shut as the police struggled to enter and apprehend a suspect. The officer who tried to force the door open testified that, when he finally succeeded, both the suspect and the defendant had fled. “If they had both fled,” Sandler cross-examined, “how do you know it was my client who had held the door shut?” “Because it was a glass door,” replied the police officer.

“It was gracious of the judge not to laugh too loudly,” recalled Sandler. (The defendant was convicted.)

Not all judges, or even all law professors, liked the idea of a student legal aid program. Some judges felt it was risky for students to act as agents for defendants in their court, while some professors felt the clinic distracted students from their studies. When a professor advised his first-year students not to get involved, the law school held a special assembly in the moot court to air the issue.



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—Jeananne Kathol Kirwin, LLB 1983

Paul Calarco, LLB 1982, recalls that one of the clinic’s then-review counsel, John Moore, rebutted the criticisms and “spoke about how his grades had actually improved when he was a student volunteer at TCLAS. “Not only was volunteering a good way to help people,” says Calarco, “but it involved real practical applications of theory that we learned in class.”

Had he been a summer student at a downtown law firm, said Calarco, “I’d have been running around doing errands for lawyers.” At the newly named Downtown Legal Services, however, “it was possible, albeit at a low level, to actually handle cases and appear before a court or a tribunal.”

Now a sole practitioner focused on criminal law, Calarco’s interest in it developed when he articulated with the Department of Justice, but the DLS experience “assisted us in our articles as we were able to build on those basics. We got some inkling of how a courtroom works by volunteering at DLS.”

The whole experience was “an eye-opener for us middle class kids,” said Jeananne Kathol Kirwin, LLB 1983. When she volunteered, the clinic was located near the former Clarke Institute of Psychiatry (today’s Centre for Addiction and Mental Health), and many of its patients showed up at DLS. “Some had highly imaginative legal concerns,” she said, “and transgendered individuals came to us to get legal name changes because that was part of their process.”

Kirwin now specializes in intellectual property law at Kirwin LLP in

Edmonton, but she also volunteers her legal skills at the Edmonton Community Legal Centre, among other agencies. She cited the biblical injunction: “From those to whom much is given, much is required.” Like the other DLS alumni interviewed for this article, she became infused with a life-long commitment to pro bono law by volunteering at the clinic.

While that pro bono ethos will remain one of DLS’s hallmarks, the clinic is evolving. Since its clients often suffer more than one crisis at a time, “We’ve long hoped to offer other social support services on-site,” said Cirillo. She is currently in talks with U of T’s Factor-Inwentash Faculty of Social Work to have some of their master’s students do placements with DLS. There are also plans to expand the number of legal workshops that DLS volunteers do offsite for the staff of community agencies.

“I hear people say that we’re training the next generation of Legal Aid lawyers,” said Cirillo. “But that view is too narrow. They’re not all going to work for Legal Aid. They couldn’t if they wanted to. But I think there are lots of ways that their time here at the clinic can stay with them. I hope that what we’re giving all the students who come through here is a broader understanding of the complexity of the issues and of the barriers for low-income people trying to access the legal system.”

People like Edyta Katarzynski, who in May 2012 received the family-court ruling she was waiting for—sole custody and the level of child support she had requested. ↩



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—Paul Calarco, LLB 1982