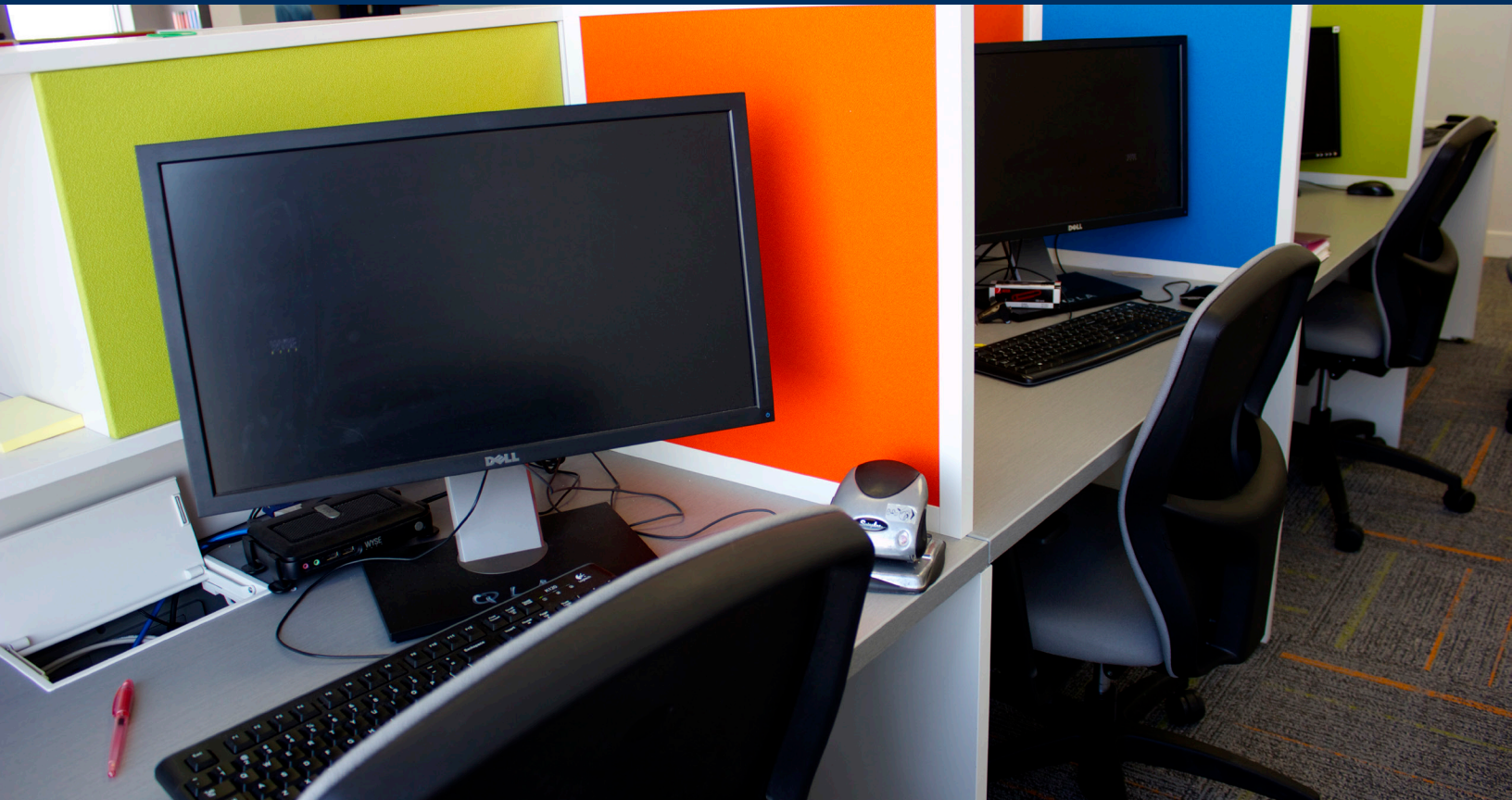


Queen's | LAW CLINICS NEWS

February 2018



Outstanding prison law student, then lawyer now heads Queen's clinic

Sixteen years ago, Kathy Ferreira, Law'01, won the course prize as the top student in Clinical Correctional Law at Queen's. After graduation, she clerked at the Superior Court Central West, developed prison law research materials at Ontario's Legal Aid Research Facility (now LAO Law), and then returned to Queen's Correctional Law Project as a staff lawyer in 2003. In November, Ferreira was appointed Director of the project, now known as the Queen's Prison Law Clinic.

For the past 15 years, "Kathy set a standard of excellence in her work instructing and supervising students and representing clients in parole hearings and in disciplinary court," says Karla McGrath, LLM'13, Executive Director of the Queen's Law Clinics. "The Prison Law Clinic, its students and clients will all be well-served under Kathy's leadership."

The clinic that Ferreira now oversees is unique to Queen's, enabling students to assist prisoners in one of six institutions with numerous legal issues for academic credit or in a paid summer position.

One month into her new role, Kathy Ferreira talked to *Queen's Law Reports* about what drives her passion for working in the prison law field, how prison law and the clinic have evolved, and her plans for the clinic's future.

QLR: When and how did you develop your interest in prison law?

Ferreira: I first developed an interest in prison law as a student in the Correctional Law Project. I took the Clinical Correctional Law course in 2000-01 to gain practical legal experience, including development of advocacy skills and an understanding of the solicitor-client relationship. Although it was demanding, I very much enjoyed working with the vulnerable client group and advocating for their rights against the Correctional Service and to the Parole Board of Canada. It was my best law school memory, and I have heard that same thought many times since from students who have been involved in the clinic.

QLR: What do you enjoy most about working in the Queen's Prison Law Clinic (QPLC)?

Ferreira: The clients. There is no other area of law I would prefer to do or can even imagine practising. Helping them succeed in small and significant ways is incredibly satisfying. They value the clinic, and our students especially, and I want to ensure we always strive to justify that confidence.

QLR: What are the biggest changes in prison law and the QPLC since you started as a staff lawyer in 2003?

Ferreira: Significant changes in prison law include a very negative anti-prisoner conservative wave of legislative changes that included removal of early parole opportunities for non-violent first-time federal offenders, and a more recent positive liberal swing that has included more



Kathy Ferreira, Law'01, Director of the Queen's Prison Law Clinic

progressive Parole Board of Canada decisions favouring release in appropriate cases. Segregation remains a concern and although the government has recently committed to reducing segregation, this is an area where prisoners' advocates must remain vigilant. The Correctional Service always prioritizes administrative concerns over prisoner rights. Significant changes in the clinic include funding for an articling student, inclusion and focus on litigation, and an overall expansion of the range of services we provide. We remain committed to a valuable student learning experience.

QLR: What are you doing in your role as QPLC Director?

Ferreira: In my teaching role, I instruct the Prison Law Clinic course and look forward to developing a detailed syllabus for the 2018-19 year. I meet regularly with student caseworkers and supervise their work, as well as work by Pro Bono students assisting the clinic. Also, I oversee the development and implementation of our litigation strategy. For clients, I provide timely summary advice over the telephone and attend the institutions to speak to prisoners at the request of the Correctional Service or other inmate groups. I value the opportunity to talk with prisoners directly about their prison concerns and address parole questions, and do this as a regular guest speaker for John Howard Society Pre-Release groups. In my administrative capacity, I manage the QPLC's employees, serve as the point person for all clinic inquiries, and report to the law school, our funder Legal Aid Ontario and our corporation board. I also explore making connections with and providing assistance to other groups doing related work, for example, groups assisting families of incarcerated persons.

QLR: What are your plans for the clinic?

Ferreira: We have a really solid group with our incredibly capable administrative assistant, our lawyers and students. We continue to work closely with our co-located Queen's Law Clinics. I look forward to continuing our core mandate of assistance at prison Disciplinary Court, Parole Board of Canada hearings and grievances/human rights complaints against the Correctional Service to help ensure prisoner rights and procedural fairness. Clients expect assistance in these areas (Legal Aid Certificates are rarely issued for Disciplinary Court so the QPLC's assistance fills an essential service area) and they are essential to experiential learning, permitting student advocacy opportunities and development of the solicitor-client relationship. The clinic is expanding services at consent and capacity hearings for prisoners with mental health issues. The QPLC has been very successful establishing positive legal precedents for our clients and we are working on a test-case litigation strategy together with Legal Aid Ontario.

Queen's Law clinic ensures prisoners' rights are upheld at national level

Since Paul Quick, Law'09, began working as a staff lawyer with the Queen's Prison Law Clinic last October, he's been helping students gain more complex litigation experience. Those efforts in representing inmates are now paying off. The QPLC has a near perfect success rate in getting the Federal Court of Canada to quash decisions made by correctional decision-makers and adjudicators.

"To achieve and maintain this track record, the clinic must be strategic in choosing the cases it pursues," says Quick, who has submitted applications and appeared in court to present arguments along with previous QPLC director Sean Ellacott, Law'01.

Quick, Ellacott and new QPLC Director Kathy Ferreira, Law'01, have initially chosen to focus on applications for judicial review to Federal Court, where a record of evidence is already fully established and cases can be heard by the court within a few months. In pursuit of the clinic's goal to advance prisoners' rights test-case litigation, Quick says the judicial review process was a natural starting point for building its capacity and expertise.

The QPLC's litigation to date has focused on judicial reviews of Parole Board of Canada (PBC) national policy and Institutional Disciplinary Court decision-making – both core to front-line services the clinic has always provided.

Of the eight applications for reviews of Institutional Disciplinary Court decisions initiated by the QPLC, five matters were resolved successfully in the prisoner's favour (with costs ordered to the clinic) without a hearing. The other three matters were heard by the Federal Court; two of these resulted in successful judgments and the third is now under appeal.

However, the QPLC's most significant litigation achievement over the past few months has been against the PBC in *Dorsey v. Attorney General of Canada*, a case challenging the lawfulness of the PBC's national policy to stop conducting biennial parole reviews for persons serving indeterminate sentences. After receiving the clinic's written arguments to the court, the PBC advised it did not intend to defend its policy in court, had changed its policy as sought by the clinic, and would start conducting such reviews in accordance with the law.

"Our win in this case is significant, not only because parole is the only opportunity these prisoners have to regain their liberty," notes Quick, "but also because the approach of a parole hearing is often the sole impetus for the Correctional Service to take steps to provide such prisoners with recommended programs and interventions."

In the process leading up to the judicial review, QPLC students gain valuable experience conducting the initial hearing before the tribunal. This means students take part in setting the record eventually considered by the court and can see how their early strategic decisions, questions to witnesses, and arguments can end up playing an important role in the court's assessment of the decision on review. During the judicial review process itself, students not only contribute by providing research support but also have the opportunity to observe the hearing in



Paul Quick, Law'09, Staff Lawyer with the Queen's Prison Law Clinic

person (two of these Federal Court hearings have taken place at the law school).

"This opportunity to observe and participate in the full tip-to-tail experience of administrative law practice gives students a deeper and more impactful understanding of advocacy strategies and administrative law principles," says Quick.

They're going to be getting even more experience as the QPLC's litigation practice continues to gain momentum. Next year the clinic plans to take on a wider variety of prisoners' rights issues and to place a greater emphasis on human rights and constitutional issues and remedies. Additionally, the clinic aims to increase its collaboration with Queen's faculty members who have expertise in prison law and public/administrative law matters.

"It is our goal this year to be in a position to apply to intervene as a friend of the court in appellate-level and Supreme Court-level prisoners' rights cases on relatively short notice," says Quick.

Clinic students will be helping to lay the groundwork for these projects through research into key substantive and procedural issues and development of precedent materials. To get started, all current QPLC students have been assigned "initiative files" related to potential litigation to be pursued throughout the winter term under the supervision of Ferreira and Quick.

"We recognize that successful litigation for prisoners' rights in the long-term requires a front-loading of effort to strategically develop strong evidentiary records at the earliest stage," Quick says. "Such carefully structured evidentiary records are required to create real opportunities for bringing precedent-setting judicial review and *Charter* applications to address systemic injustices in the prison system.

"Many injustices in Canada's prison system are seen as intractable, and few prisoners have the resources to effectively hold correctional authorities accountable," Quick adds. "In expanding the front-line work of the Prison Law Clinic into strategic test-case litigation, we plan to address such systemic problems head-on, and to give students the opportunity to make real change while upholding the rights of some of our society's most vulnerable members."

— ASCHILLE CLARKE-MENDES

Queen's Law Clinics leader an inspirational mentor to women



BERNARD CLARK

Karla McGrath, LLM'13, Executive Director of the Queen's Law Clinics, is 2017's Ban Righ Foundation Mentorship Award recipient. Established by the Queen's Ban Righ Centre, which provides a support network for women, the award recognizes her for inspiring and supporting women in achieving their goals.

McGrath, who also teaches children's law and is the founding director of the Queen's Family Law Clinic, was nominated by current and former students who described how her mentorship, advice and support helped them build their confidence and to thrive both professionally and personally.

"I am energized every day by these close working relationships and so I try to put a lot of myself and my experiences into the time I spend with students," says McGrath. "I am moved to receive this acknowledgment that students value the relationship in return."

While McGrath continues to have the benefit of some excellent mentors herself, she notes that most of her significant ones have been men. "I have encountered obstacles – some big, some small – that I believe are particular to my experience as a professional woman," she says. "Many of those obstacles still exist for young woman getting their start in the legal profession and I hope that my experience with overcoming those obstacles, often through trial and error, can prove to be of value to them."

QBLC thanks dedicated volunteer Robert Milnes, Law'69



BERNARD CLARK

Robert Milnes, Law'69 (2nd right), with former QLBC directors Christian Hurley, Peter Kissick, Law'88; LLM'98, and current director Morgan Jarvis, Law'10.

Instrumental to the success of the Queen's Business Law Clinic are volunteer review counsel like Robert (Bob) Milnes, Law'69. With the clinic being in such high demand from students and clients, and only one full-time lawyer/director, these volunteers have not only been critical to the growth of the clinic, but are at its core. "Bob has served as a foundation for the clinic through its formative years," says Morgan Jarvis, Law'10, QBLC Director. "Three directors and 100 students have all relied heavily on him for support and guidance. He hasn't just been volunteer review counsel, but a real mentor for all of us. Thank you, Bob!"

"I feel privileged to have assumed this position at the end of a 45-year career practising corporate/commercial law on Bay Street," says Milnes, a retired partner from Gowling WLG. "Without exception the students have been a pleasure to work with, and we have provided essential legal services to local small businesses, charities and startups that could not afford legal fees to deal with their legal issues. It has been a wonderful way to give back to a profession that has given me so much personal satisfaction."

The QBLC is expanding, and the occasional commitment of additional volunteer review counsel will be critical to its growth. Already with a strong base in general corporate/commercial work and intellectual property advice, the clinic is particularly looking to expand into sports and entertainment, in response to immediate student demand. However, the scope of the clinic, and the experience offered to students, can be as broad as the review counsel talent available.

Any Queen's Law graduates who are practising corporate/commercial – or have an inclination towards charities and not-for-profits, IP, sports and entertainment, or even regulatory, tax or commercial leasing – and might be interested in helping out, are encouraged to contact [QBLC Director Morgan Jarvis](#).

Clinic Briefs

Business Law Clinic

With "social enterprise" now a goal for many budding entrepreneurs in 2017–2018, QBLC students have been advising clients more than ever on the pros and cons of setting up business as a socially minded for-profit, or the more traditional not-for-profit route. Through these great clients, QBLC students are not just learning corporate structure basics, but the satisfaction of working for a cause that could make a real difference. With such inspirational clients needing help, the QBLC is prouder than ever of its support for the local start-up community.

Elder Law Clinic

Student caseworkers are managing more client files than ever before, and continued demand from the community for clinic services has resulted in an ongoing waitlist. The ambitious QELC students successfully closed almost 30 files from September to December. They are assisting with a wider variety of elder issues this year, such as power of attorney misuse or abuse, and helping clients with third parties to facilitate estate administration. The QELC also welcomed its second volunteer for the year: Michelle Kang joins veteran volunteer and Law'19 classmate Calvin Zhang, and the clinic's cadre of for-credit caseworkers.

Family Law Clinic

In addition to its credit student program, the QFLC runs a volunteer program in partnership with the Pro Bono Students Canada Family Law Project. At the QFLC and at Family Court, the volunteers perform client intakes, assist credit students with their cases, and carry their own Simple Divorce file that allows them to establish a longer-term relationship with clients and meet one-on-one with review counsel about their file. This program both increases the number of clients the QFLC serves and introduces students to the clinics as early as their first year.

The Queen's Law Clinics gratefully acknowledge the support of Legal Aid Ontario, the Law Foundation of Ontario, Pro Bono Students Canada, the Class of Law'81, the United Way of KFL&A, and alumni and industry sponsors



Prison Law Clinic

The QPLC has recently filed a Notice of Appeal in the Federal Court of Appeal. The case deals with an Institutional Disciplinary Court decision in which an injured and physically disabled inmate was convicted of assaulting an officer, even though he did not apply force to the officer, but was merely found to have "invited" force by disobeying an order. QPLC students participated throughout: conducting the initial Disciplinary Court hearing, helping prepare the judicial review, observing the Federal Court hearing, and now assisting with the appeal.

Queen's Legal Aid

Partnering with Queen's School of Nursing, QLA acts as preceptor to third year nursing students completing a community setting mental health placement. Students in both disciplines collaborate on files and meet with clients to gain a better understanding of the intersection between physical and mental health challenges, including chronic pain, depression and anxiety. Student feedback has been overwhelmingly positive.

In addition, fourth year nursing students recently developed a user-friendly 'toolkit' to help caseworkers recognize signs of mental stress/illness, and practical ways to alleviate symptoms in order to more effectively communicate.



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