

# INTRODUCTION AND STUDENT GUIDELINES

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## II. PURPOSE OF THE MANUAL

The primary purpose of the Law Students' Legal Advice Manual is to help law students give advice to clients at clinics operated by the Greater Vancouver Law Students' Legal Advice Society. While the Manual is as complete and accurate as possible, it is not the final word on those areas of law that it covers. It is a good starting point, a place from which the student or legal advisor can begin to understand the legal issues surrounding a client's problem. This will enable the advisor to provide initial or summary advice, and will assist in planning further research.

## III. THE LAW STUDENTS' LEGAL ADVICE PROGRAM

The Law Students' Legal Advice Program was established over 40 years ago, when students from the UBC Faculty of Law operated a summer legal advice clinic under Vancouver Inner-City Services. This clinic eventually expanded to include a small number of clinics operating on a weekly basis during the school year. In 1978, the program was incorporated as the Greater Vancouver Law Students' Legal Advice Society, a non-profit society, to provide free legal advice and representation for those who cannot afford it.

Since 1967, LSLAP has grown into a large organization of dedicated volunteer student clinicians staffing 20 legal clinics across the Greater Vancouver Regional District on a year-round basis. Approximately 200 law students and 60 volunteer lawyers will operate clinics during 2009-2010, assisting approximately 4,000 clients, thus making LSLAP the second-largest provider of free legal services in British Columbia.

### A. *Philosophy of the Society*

LSLAP's primary goals are to provide direct assistance to the client, as well as enable our students to educate the layperson in the use of the legal system. Herein lies our two-pronged approach: assistance and education.

This philosophy of both assisting and educating has very real application in our program. For example, students may assist clients in writing letters, negotiating with other parties, or preparing to appear on their behalf in court. In other cases a student may fully represent clients in each step of working through the legal issue. In every case, emphasis always remains on assisting the client to solve his or her own legal problems. This differs from a more traditional solicitor-client relationship in which the lawyer takes complete responsibility for management of the client's legal problems.

The LSLAP approach to the relationship between clinicians and clients enables students to take more time to explain the legal alternatives and the legal processes which are available to the client, thereby not only offering legal services to people who could not otherwise afford them, but also helping to demystify the law. In this way, it is hoped, the LSLAP client comes away from the program more aware and more comfortable in exercising their legal rights.

### B. *Community Legal Assistance Society*

The Greater Vancouver Law Students' Legal Advice Society is an autonomous organization operating in conjunction with the Community Legal Assistance Society (CLAS). CLAS provides the overall legal supervision for LSLAP by providing a Supervising Lawyer and Administrator. The Supervising Lawyer checks waiver forms, approves letters and documents, and acts as the major legal resource for LSLAP students. In addition, CLAS holds emergency clinics when LSLAP is closed for exams at the Faculty of Law.

One important function of CLAS is establishing the "test case". With continual innovations in the law, it is essential to establish good precedents in the interpretation of new statutes. CLAS represents clients who could not normally afford to be represented in order to establish favourable judicial interpretations or reform existing laws. Students presented with cases involving important legal issues, as yet unresolved in the courts, are advised to discuss them with the LSLAP Supervising Lawyers.

**C. *Organization of the Greater Vancouver Law Students' Legal Advice Society (GVLSLAS)***

GVLSLAS and its programs are unique because they are organised and independently administered by law students. Hence, the primary responsibility for the effectiveness of the Society rests with the students themselves.

The ongoing operations of the Program are co-ordinated by an Executive Committee: the Executive Director, the Director of Publications, the Director of Operations, the Director of Finance, and the Director of Public Relations. The Executive Director takes overall responsibility for the operation of the program. Members of the Executive are law students elected by the GVLSLAS membership at a general meeting, which is held in November of each year.

The Executive and the clinic heads hold regular council meetings to discuss issues and policies of the program. A Constitution and bylaws govern the Society; copies may be obtained from the Director of Operations.

## **IV. STUDENT GUIDELINES**

These guidelines reflect some of the ethical and legal problems which may arise in the program.

**A. *Assisting Clients***

Students will encounter people from all walks of life, and witness a wide and sometimes alarming range of emotions in the interview room. Clients may be mentally or physically disabled, or unable to speak English. They may simply want to tell the student their life stories. It is important to remain sensitive to the client's circumstances. Many clients have few or no financial resources and what may appear to be a small problem to the student may be a terrible crisis for the client. LSLAP's clients are the reason the program continues to benefit law students, and clients should always be treated with the utmost respect. It is only by encountering a wide range of clients that students can expand their understanding of society and its relationship with the legal system. LSLAP is an excellent opportunity for students to develop a method of dealing with clients that will serve them throughout their law careers.

In some instances, the client may be abusive, rude, and demanding. It may be very difficult to keep control of the situation. The student should not endure unduly unpleasant situations, and the individual student must decide what he or she can and cannot tolerate. On some occasions, it may be appropriate to end the interview in a calm and sensible manner. Difficulties with clients should be reported to the Supervising Lawyer or a member of the Executive Committee.

**B. *Areas Where LSLAP May Provide Assistance***

LSLAP assists low-income earners with various legal issues, including:

- Criminal Law;
- Family Law;
- Small Claims;
- Employment Standards;
- Residential Tenancy;
- WCB;
- Consumer Protection;
- Employment Insurance;
- Income Assistance;
- Auto Insurance (ICBC);

- Wills and Estates;
- Incorporation of Non-Profit Societies; and
- Civil Liberties.

In addition, we can offer representation on a case-by-case basis in such hearings as:

- Small Claims Court;
- Criminal Court;
- Child and custody matters in Provincial Court;
- Income Assistance Appeals;
- Residential Tenancy Branch Arbitrations; and
- Academic Disciplinary Hearings.

We can also draft certain types of legal documents, including:

- Demand Letters;
- Wills;
- Power of Attorneys;
- Representation Agreements and Living Wills; and
- Notice of Claims and Replies.

Our current policy is to do our best to provide summary legal advice to all clients. Depending on the circumstances of each client and issue, LSLAP may be able to offer more substantive assistance.

### ***C. Areas Where LSLAP is Unable to Provide Assistance***

There are areas that LSLAP **cannot** assist clients with, including, but not limited to:

- Business and Commercial Law;
- Land transactions (including wills and estates);
- Personal injury law suits;
- Union issues;
- Immigration Law;
- Probate or administrative matters over \$15,000;
- Impaired driving charges or traffic offences;
- Complaints against lawyers;
- Complaints against doctors;
- Indictable criminal offences, or criminal charges where the Crown has chosen to proceed by way of indictment;
- Summary conviction charges where a jail sentence is likely;
- Criminal offences where the accused has a prior record;
- Matters requiring appearance in, or application to, a superior level court (including civil matters over \$25,000 and defamation); and
- Any file where the Supervising Lawyer determines that a law student cannot properly assist the client under the circumstances.

Students presented with these legal issues should provide general summary advice only.

### ***D. Conflicts***

The GVLSLAS can act only for **one** party in a dispute. A conflict situation may arise in a number of ways. For example where:

1. The client seeks a clinician's advice and the student subsequently discovers that the client's adversary has already consulted LSLAP. If the clinician discovers this before advising the client on a course of action, the clinician should refer the client to the Legal Services Society. If the client can afford a lawyer, the clinician should refer the client to Lawyer Referral Service.
2. A clinician discovers that two or more people on different sides of a legal issue have sought and received the advice of LSLAP. When the discovery comes to light, all parties must be referred to the Legal Services Society, which has agreed to try to find lawyers for these people. The Supervising Lawyer and Executive Committee must be notified immediately upon discovery of such a situation.

There are a few exceptions to the rule that a lawyer cannot act for two people with contrary interests, particularly in some property and corporate matters. However, a student should **never** agree to act for two people with contrary interests, even if the parties appear to agree on a solution. If the parties appear to agree, the clinician should agree to act for one of them to put their joint agreement into effect, carefully advising the other in writing that "I act for client X, and in the event of a conflict, my responsibility is to protect the interests of X". The other party should also be informed that he or she should seek independent legal advice.

In the event that a student, despite this admonition, agrees to act for two people in one matter, and a problem arises between the two, the student must immediately:

1. Advise both parties, in writing and in identical terms, that the student can no longer act for them;
2. Advise both parties, in writing and in identical terms, of the availability of the Lawyer Referral Service, Legal Aid, the U.B.C. Legal Clinic, and/or other appropriate legal assistance; and
3. Report the matter immediately to the Supervising Lawyer and seek such further advice as is necessary.

### ***E. Communicating with the Opposite Party***

Where the other party is represented by a lawyer, a clinician must never communicate directly with the opposite party. All correspondence should be directed to counsel. It is permissible to communicate with a witness, but special caution is needed when communicating with a witness for the opposite party. Contact the Supervising Lawyer for more information.

Where the other party is unrepresented, the clinician must be sure to keep that party aware that the clinician is not acting for him or her. Confirm this in writing and advise the other party to get separate legal counsel.

### ***F. Confidential Information***

All information a student receives from a client must be kept in strict confidence. This confidence lasts forever and can only be waived by the client. If there is a reason for acquiring the client's consent to disclose information, the client should give consent in writing.

### ***G. Complaints Against Lawyers***

Frequently, people who seek advice from LSLAP have complaints against members of the Bar. When a clinician is presented with such a complaint, he or she should:

1. Advise the client to write a letter to the lawyer, requesting that the lawyer report to the client by return mail on the progress of the client's file. The client should put specific questions to the lawyer to elicit those explanations. If the client receives an unsatisfactory reply or no reply at all, he or she should write to the Law Society (8th floor, 845 Cambie Street, Vancouver, B.C. V6B 4Z9) to request

its intervention. The client should retain copies of all correspondence. It is inappropriate to threaten the lawyer with Law Society action.

The alternative is to recommend that the client retain another lawyer. To effect a smooth transition from one lawyer to another, it is necessary to request from the first lawyer an account for services to date. A lawyer will rarely release a client's file without having been paid for the outstanding account. Once the amount is paid, the lawyer can be dismissed, and the file can be picked up and given to the newly retained solicitor.

2. If the client is unable to pay the outstanding account (for example, if the fee is on a contingency), the client should be advised to approach the prospective lawyer and suggest that the second lawyer execute a promise to pay the first lawyer the share of any judgment to release the file (subject to the first lawyer's agreement).
3. Whenever there are complaints received regarding a lawyer's fees, the only advice to give a client is to go to the Registrar of the Supreme Court and request taxation (review) of the lawyer's bill. The client must fill out a form in triplicate, one copy of which is kept by the Registry and two of which are kept by the client. This form is the "Appointment to Tax" a lawyer's bill, on which there is notice given to the lawyer and client to appear before the Registrar on a specified date to scrutinize and, if necessary, alter, the bill. The client must serve the lawyer personally with one of the copies.

## ***H. Instructions***

Clinicians must ensure they have proper instructions before acting for a client. If possible, these instructions should be in writing. Only in rare circumstances can a student act for a client on the instructions of a friend, relative, or other intermediary.

If the student thinks a client should not give evidence, the student will have to properly advise the client. In this situation, the student should consult the Supervising Lawyer for further instructions.

## ***I. Communicate With Client***

The majority of complaints to the Law Society are about lawyers who fail to communicate with their client or another lawyer. Be sure to contact the client and keep him or her apprised of the progress of the case. Return all phone calls promptly. Students should strive to return all calls within one working day. The student should also be quick to return correspondence and phone calls from other lawyers. A simple practice is to send a copy of all documents to the client and other lawyers to keep them apprised of developments.

## ***J. Limitation Periods***

Limitation periods are very important and are often the cause of negligence actions brought against lawyers. Students should read the Limitations Act, R.S.B.C. 1996, c. 266, paying particular attention to s. 3 (see NOTE, below). For convenience, a list of common limitation periods is printed inside the waiver form. The first issue that students should discuss with the Supervising Lawyer is the limitation periods of all their files.

**NOTE:** Section 3(2)(a) establishes a two-year limitation period for all actions for damages in respect of injury to persons or property. This means that a plaintiff in a motor vehicle accident, a person suing a doctor for negligence, or a person suing for battery, etc., all have two years in which to commence an action. However, the Limitation Act only applies to a cause of action, and there are still procedural limitations to be aware of. For example, when suing a municipality or the City of Vancouver, notice in writing must be given to the Municipal Clerk or the City Clerk within two months (Vancouver Charter, s. 294(2); Municipal Act s. 286(1)).

The limitation periods for appeals of decisions by administrative tribunals are usually extremely short. The student should take extra care not to lose sight of these.

When dealing with a motor vehicle accident and/or insurance, the student should consult the Acts dealing with ICBC and auto insurance, as they contain shorter limitations in some areas (see **Chapter 12: Automobile Insurance**).

## V. CLINIC PROCEDURES

### A. *Services Provided*

LSLAP is designed to provide access to the legal system for low-income people, and to help those persons exercise their legal rights. The clinician must first determine the client's legal issue. If the client's issue is one that LSLAP can cover, the student can give the client summary advice and/or research the problem and provide advice at a later time. If the client's issue is not within the mandate of the program, the student should refer to the client to an appropriate organization.

### B. *Waiver Form*

Before asking the client to outline his or her situation, the student should be sure that the client has read, understood, and signed the waiver clause on the front of the interview sheet. The student must orally explain the nature of the waiver and its legal ramifications. The student should then sign the interview sheet in the space marked "witness" and obtain all required information for the inserted statistics sheet.

The statistics sheet information is crucial to both the client and to the program. Quite often, it will have considerable bearing on the advice given, particularly if the client is referred to another agency. It also helps us to plan future changes in the program, and it is a component of funding applications each year.

**NOTE:** The waiver form is essential for protecting the program from potential lawsuits, the student, and the Supervising Lawyer. The waiver, therefore, **must always** be thoroughly explained to the client, and the client must read the conditions before signing.

### C. *Defining the Problem*

Since the client has come to LSLAP for help with a problem, there is usually very little prompting required before the client will reveal his or her story. However, getting to the relevant facts of the problem can be difficult. The student must sort the legally relevant facts from the irrelevant facts. Once the student has the basic facts from the client, the student can then better direct the remainder of the interview with specific questions.

### D. *Giving Advice: Check With the Lawyer First*

The basic rule for students is this: If you do not know the correct answer, do **not** provide any advice. The attending Supervising Lawyer at the clinic may be able to advise the student of appropriate summary advice. Otherwise, the student should advise the client that research and/or consultation with the LSLAP Supervising Lawyer will be necessary before an answer can be given. **It is better to give no advice than to give incorrect advice.**

### E. *Filling out the Interview Sheet*

The interviewer should fill in the spaces marked "Nature of the Problem" and "Advice Given" on the interview sheet. Since the Supervising Lawyer reviews all files for quality of advice, the student should give as much relevant detail as possible. If additional papers or documents are part of the file, copies must be included in the waiver form when the file is closed.

### *F. Follow-up Work*

If the file requires more than summary advice, then the student can consult with the LSLAP Supervising Lawyer or Credit Program students. Students should remain conscious of their course load and other commitments, and not take on more than they can effectively handle. If a clinician has any doubt about his or her ability to properly handle a file, it is best to transfer that file to another clinician with more time, commitment, or expertise.

Clinicians should check with their clinic head, Supervising Lawyer, and/or Executive Committee if they are in doubt as to whether LSLAP can or should handle any given case.

Clinicians must remember that once they take on a case, they have an obligation to their clients to follow it through thoroughly and to the best of their ability. **If a student wants to transfer a file, it is his or her responsibility to find a student who will accept the transfer.**

## **VI. REFERRALS**

Unless the student plans to perform follow-up work, he or she should provide the client with an appropriate referral.

Effective referral is an indispensable skill for the lawyer. The lawyer must learn to differentiate between areas where he or she is able to help, and those areas where some other person can more effectively and competently assist the client. Because of the confidence placed in lawyers, a clinician may be able to make a referral where others will try and fail to do so. Lists of agencies to which a referral may be made are set out in **Chapter 23: Referrals** and in individual manual chapters. Clinicians should familiarise themselves with the list and should not be afraid to make use of it. It is the clinician's goal to see that the client obtains the assistance he or she needs.

### *A. How to Refer a Client*

1. Give details of the referral to the client. This may involve describing the facilities that the referral will offer the client, or mentioning instances where the clinician or a client found the agency helpful.
2. Mention the possibility of a referral early in his or her dealings with the client if it appears that a referral may be advisable.
3. If the client expresses uncertainty about the type of referral, the student should try to resolve any problems that the client anticipates concerning the referral.
4. Attempt to motivate the client to
  - (a) accept the referral;
  - (b) anticipate it with optimistic expectations; and
  - (c) regard it as a helpful solution that the client and clinician have come to jointly, rather than as a device imposed by the clinician to send the client elsewhere.
5. As a final step, if the client would like the student's assistance, the student should contact the proposed agency and arrange an appointment. This will ensure that the agency is interested in the client's problem, and it may also prevent unnecessary waiting by the client when he or she goes to the proposed agency.