



Community Legal
Assistance Society

Annual Report

2017-2018

Advancing Dignity,
Equality and Justice
since 1971

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MESSAGE FROM THE **PRESIDENT**

Dear friends and supporters,

On behalf of our Board of Directors, I am pleased to present the 47th Annual Report of the Community Legal Assistance Society (CLAS).

Since our inception in 1971, CLAS has provided legal assistance to marginalized people throughout British Columbia. CLAS operates a number of programs covering the areas of housing, income security, workers' rights, mental health, and human rights.

Our services include the provision of: referrals to other agencies; summary advice; assistance to self-represented litigants; full legal representation for both service and systemic cases, including Charter litigation; law reform initiatives; and support and training for community groups and lay advocates throughout BC. We also engage collaboratively with a large network of community groups, as we believe that it is through these co-operative relationships that legal issues can most successfully be addressed. The highlights of our work over the past year are set out in our Annual Report.

Our achievements would not be possible without the generous support of our major core funders: the Law Foundation of BC funds our Community Law Program, Community Advocate Support Line and the David Mossop, QC, Public Interest Articling Fellowship; the Ministry of the Attorney General of BC funds our BC Human Rights Clinic; and the Legal Services Society of BC funds our Mental Health Law Program. We also wish to thank the City of Vancouver, who provides us with a significant reduction to our office space costs, and many individual and corporate donors who have supported CLAS over the years. Our sincere appreciation goes to all of our funders and donors.



CLAS operates a number of programs covering the areas of housing, income security, workers' rights, mental health, and human rights

My sincere appreciation also goes to our staff, who have been responsible for our successes over the past year. The accomplishments of CLAS are a testament to their dedication and hard work and I thank each and every one of them.

I would like to personally thank our Board of Directors for the time they volunteer to CLAS. It is my privilege to serve as President of CLAS and I look forward to the upcoming year as we continue in our commitment to promote social justice for all people in BC.

Sincerely,

Edward Macaulay,
President

OVERVIEW OF CLAS

Our Vision

Dignity, Equality and Justice for All

Our Mission

CLAS respects the dignity of all in our community and works towards positive social change by providing legal assistance and advancing the law to address the critical needs of those who are disadvantaged or face discrimination.

Our Values

Compassion: We believe in fostering an environment that is respectful and understanding of our clients and co-workers.

Leadership: We strive to be leaders in housing, income security, workers' rights, mental health, and human rights.

Accessibility: We believe everyone should have access to, and benefit from, the justice system.

Service: We serve the community by working with other groups to promote and advance dignity, equality and justice for all.

Our Funders

Our work would not be possible without the generous support of our core funders:

The **Law Foundation of BC** funds our Community Law Program, Community Advocate Support Line, and Public Interest Articling Fellowship.

The **Legal Services Society** of BC funds our Mental Health Law Program.

The **Forensic Psychiatric Services Commission** contributes funding to the legal information component of our Mental Health Law Program.

The **BC Ministry of Attorney General** funds our Human Rights Clinic.

The **City of Vancouver** provides us with a significant subsidy for our office space under its Amenities Bonus Program.

We also receive continued support, financial and otherwise, from a large number of individuals and groups. We thank each and every one of them for their generous assistance!



Our Board of Directors

The goal-setting and planning for our activities is done by the CLAS Board of Directors. Our 14 member volunteer Board is made up of a unique mix of lawyers, community representatives and one law student. Our Board has six scheduled meetings per year and a retreat every three years.

OFFICERS

Edward Macaulay, President
 Maia Tsurumi, Vice-President
 Bill Black, Secretary/Treasurer

COMMUNITY REPRESENTATIVES

Gyda Chud
 Jane Dyson
 Jean Moore
 Adrienne Montani
 Sharon Mohamed
 Howard Tran
 Judy Willows

LAWYERS

Robin Elliot, Q.C.
 Carolyn Gulabsingh
 Gary Wilson

LAW STUDENT

Blake Scott

Our Staff

(as of March 31, 2018)

MANAGEMENT & ADMINISTRATION

Aleem Bharmal, Executive Director
 Rita Hatina, Director of Finance and Administration
 Rose Chin, Director of Human Resources (p/t)
 Corinne Marino (p/t)
 Svetlana Khakhleva (p/t)
 Neeti Tewari (p/t)

EDUCATION COMMUNICATIONS (BC HUMAN RIGHTS CLINIC)

Laura Track, BC Human Rights Clinic, Educator
 Svetlana Khakhleva (p/t)
 Neeti Tewari (p/t)

LAWYERS

Dante Abbey (MHLP)
 Aleem Bharmal (HRC)
 Jonathan Blair (CLP)
 Rose Chin (HRC)
 Laura Johnston (CLP)
 Kevin Love (CLP)
 Diane Nielsen (MHLP)
 Holly Popenia (CLP)
 Danielle Sabelli (CLP)
 Dan Soiseth (HRC)
 Laura Track (HRC)
 Amita Vulimiri (LOA)
 Alison Ward (CASL)
 Isaac Won (Articling Student)

LEGAL ADVOCATES & LEGAL INFORMATION COUNSELLOR

Carolyn Davies (MHLP)
 Barb Elliott (LOA)
 Lisa Ferguson (HRC)
 Judith Grimsrud (HRC)
 Brett Haughian (MHLP)
 Margaret House (MHLP)
 Coral Lyster (MHLP)
 Conor McKenna (HRC)
 David Mossop (MHLP)
 Tomas Reyes (MHLP)
 Joshua Tan (HRC)

LEGAL ADMINISTRATIVE ASSISTANTS & RECEPTION STAFF

Chelsea Baird (MHLP)
 Debbie Breidt (MHLP)
 Emily Chant (HRC/CLP/MLHP)
 Julie Craig (HRC)
 Katherine Delany (Reception)
 Desiree Deza (LOA)
 Jasmine Maxwell (MHLP)
 Samrah Mian (CLP)
 Sarah Peterson (MHLP)
 Naomi Phillips (CLP)
 Roja Seddiq (CLP/HRC)
 Erika Szulc (HRC)
 Trudy Taylor Smith (HRC/CLP)
 Neeti Tewari (HRC)

OUR WORK

CLAS was incorporated as a non-profit legal aid society in 1971. We were the first community law office in BC and our structure reflects a 45+ year partnership between the private bar and community groups to provide legal aid to disadvantaged people.

Since our inception, we have become a nationally recognized non-profit law firm, specializing in housing, income security, workers' rights, mental health and human rights law.

CLAS has a proven track record for managing and operating an "umbrella" organization consisting of a number of programs and projects. We have assisted thousands of people through our service case work and have conducted hundreds of test and systemic cases at all levels of court, including the Supreme Court of Canada. We have been counsel on hundreds of reported decisions in the areas of law in which we practice.

Our clientele comes from all over the province. Demographically, our clientele comprises a wide range of British Columbians, and we are committed to assisting all marginalized people regardless of their race, religion, disability, age, gender and sexual orientation.

The activities of CLAS are carried out through information and referrals, summary advice, direct representation for service cases, test case litigation, systemic advocacy, law reform, legal supervision services to advocacy organizations, public legal education and training, and legal support to community groups.

CLAS is also a resource to advocates, service providers and lawyers throughout the province. CLAS currently has a 40 member staff and a total annual operating budget of over \$3.5 million.

THE WORK OF CLAS IS CARRIED OUT BY FOUR PROGRAMS:



A more detailed description of each program and highlights of the past year are set out in this report.

DONATE TO CLAS BY VISITING WWW.CLASBC.NET/DONATE

COMMUNITY LAW PROGRAM

The Community Law Program (“CLP”) has been a program of CLAS since 1971 and is funded by the Law Foundation of BC. CLP focuses on five areas of law: Housing Security, Human Rights, Income Security, Mental Health, and Workers’ Rights.

Our CLP staff, comprised of 5 lawyers and 1.6 legal administrative assistants and 1 intake coordinator carry out the following work:

Direct legal services to low-income individuals, legal advocates, and community groups

These services include full representation for clients in superior court or in complex proceedings before administrative tribunals. Services also include helping self-represented litigants prepare for their court appearances, giving summary advice to clients and advocates, and providing information and/or referrals to other agencies.

Systemic Work

The lawyers address systemic injustice and inequality using a range of strategic legal approaches that change or advance the law to promote a more just and equal society.

Public Legal Education and Advocate Training

The lawyers deliver workshops and presentations to community groups, advocates, law students, and the private bar.

Legal Supervision for Advocates

The lawyers supervise advocates at four advocacy organizations funded by the Law Foundation of BC.

On-Line Self-Help Publications

The lawyers regularly update existing self-help material and develop new material, which are available free of charge on the CLAS website or through Clicklaw.



17

Systemic Public Interest Cases were moved forward by CLP



637

People received information, advice or legal representation from CLP

COMMUNITY LAW PROGRAM **HIGHLIGHTS**

ALL WORKERS HAVE THE RIGHT TO BE FREE OF HARASSMENT

CLAS intervened at the Supreme Court of Canada in *Schrenk v. British Columbia Human Rights Tribunal*, a human rights case that determined whether the BC Human Rights Tribunal can deal with complaints of workplace harassment involving coworkers, customers, contractors and other non-supervisory personnel in the workplace.

The case was appealed after the British Columbia Court of Appeal decided that a worker can only complain about discriminatory harassment in their workplaces if the person harassing them is in a position of authority (for example, a supervisor or manager) or if their employer fails to adequately address the harassment. CLAS, with the generous help of lawyers at Moore Edgar Lyster, intervened to ensure that the Human Rights Tribunal has the power to consider complaints from all workers who experience discriminatory harassment – regardless of whether it is from a supervisor or a co-worker, customer, contractor, or another person in the work environment.

The SCC agreed, stating that the *Code* prohibits discrimination against employees whenever that discrimination has a sufficient nexus with the employment context, whether that be between coworkers, or even co-workers who have different employers.

EVERYONE HAS THE RIGHT TO CONTROL THEIR OWN HEALTH CARE

In British Columbia, people with involuntary status under the *Mental Health Act* have no right to control what psychiatric treatment they receive, or even have friends or family support them with these decisions. People are ‘deemed’ to consent to all psychiatric treatment the hospital chooses to give them, including psychotropic medications and electro-convulsive shock therapy.



CLAS is fighting to ensure that people can control their own health care

In September 2016, CLAS launched a *Charter* challenge on behalf of two individuals who have undergone forced psychiatric treatment and the Council of Canadians with Disabilities. CLAS is fighting to ensure that people can control their own health care and have their loved ones involved in making decisions when needed.

British Columbia is the only province in Canada that gives doctors the absolute and unchecked power to force psychiatric treatment on all involuntary patients without consent. CLAS is pushing for BC to recognize the health care consent rights that the rest of Canada recognized many years ago.

**Follow CLAS on
social media**



@clasbc



@clasbc



The Tribunal awarded our client \$35,000 for injury to dignity...the highest award for injury to dignity in tenancy discrimination

TENANTS IN ALLEGED “SUPPORTIVE HOUSING” GET THE PROTECTIONS OF THE RESIDENTIAL TENANCY ACT

Certain forms of housing are exempt from the provisions of the *Residential Tenancy Act*, which means the landlords and tenants of those buildings are neither subject to the obligations nor afforded the protections of the *Act*. Housing based health facilities that provide hospitality support services and personal health care are one of those exempt forms of housing.

Our clients lived in a building that was acquired by the government for the purposes of housing individuals who were displaced from an encampment. The landlord alleged that they were exempt from the *Act* because they were a housing based health facility that provides hospitality support services and personal health care and were, therefore, outside the jurisdiction of the Residential Tenancy Branch (“RTB”).

Our clients filed an application with the RTB alleging that the building’s guest policy unreasonably restricted their guests. The RTB determined that the landlord was not a housing based health facility that provides hospitality support services and personal health care and, therefore, was subject to the *Act*. Subsequent to this finding, the RTB also found that the guest policy was an unreasonable restriction of the tenant’s guests and held that the guest policy was unenforceable.

Unsatisfied with this decision, the landlord filed a petition for judicial review of the RTB decision in the BC Supreme Court. We represented the tenants at the BCSC and were successful in upholding the RTB decision.

HIGHEST INJURY TO DIGNITY AWARD IN TENANCY DISCRIMINATION

CLAS represented a woman suffering from ALS who is confined to a wheelchair in a complaint against her landlords at the BC Human Rights Tribunal.

The landlords refused to install a wheelchair ramp or lift to accommodate our client, arguing that a wheelchair ramp and/or lift is not physically or legally feasible for that type of building. The landlords also argued that our client should have moved to an accessible building when she learned she would need a wheelchair.

We argued, and the Tribunal agreed, that if moving was an accommodation under the *BC Human Rights Code*, it would render the tenancy protections under the Code moot. The Tribunal ordered the landlords to build a ramp.

The Tribunal also awarded our client \$35,000 for injury to her dignity, which is the highest award for injury to dignity in tenancy discrimination ever issued by the Tribunal. In doing so, the Tribunal recognized that human rights in tenancy are as fundamental as those in employment, the area in which, historically, the highest injury to dignity amounts have been awarded.

FIGHTING BACK AGAINST “RENOVICTIONS”

The *Residential Tenancy Act* restricts the amount a landlord can raise rent during a tenancy each year; however, there are no restrictions on raising the rent between tenancies. Landlords seeking to raise rent above the maximum yearly allowable amount sometimes attempt to get higher paying tenants into the units through “renovictions” – the practice of giving the current tenant a notice to end tenancy for the landlord’s use of property, on the basis that vacant possession is required to do renovations and repairs to the unit, and then renting the unit to a higher paying tenant without doing renovations that required vacant possession. CLAS represented a tenant whose landlord was attempting to “renovict” her, who unsuccessfully disputed the notice at the Residential Tenancy Branch (“RTB”).

On judicial review at the BC Supreme Court, we argued that the RTB arbitrator’s decision was patently unreasonable because the arbitrator failed to consider relevant evidence presented by the tenant, reversed the burden of proof for the requirement of good faith onto the tenant, allowed the eviction to stand despite acknowledging that the landlord did not have all the necessary permits as required by the *Act*, and failed to consider whether the renovations required vacant possession. The Court allowed our petition and set aside the RTB decision, finding that the RTB had improperly concluded that the statutory requirements to “renovict” our client were met. The landlord has now appealed to the BC Court of Appeal, raising systemic issues around when landlords can “renovict” tenants.

We will continue to represent our client in the Court of Appeal.

DAVID MOSSOP, Q.C. PUBLIC INTEREST ARTICLING FELLOWSHIP

In addition to the CLP Core funding, the Law Foundation of BC provides funding to CLAS for the David Mossop, Q.C. Public Interest Articling Fellowship. The funding enables CLAS to hire an articling student each year.

CLAS is able to provide the student with an extensive and well-rounded articling experience through a rotational training program in all of CLAS’ programs. The student is assigned files that they handle on their own, under the supervision of a lawyer, and also assists lawyers with their files through research, client support, and document preparation.

We are committed to ensuring that this experience will equip the student with valuable skills, expertise and experience in various specialized areas of public interest law.

Help us continue to
provide legal services
to British Columbians.
To donate, visit
www.clasbc.net/donate
or call 604-685-3425



OPERATING IN DARKNESS

In depth research on BC's *Mental Health Act* was made possible by a large project grant provided by the Law Foundation of British Columbia. Through the project a CLAS lawyer interviewed experts, submitted Freedom of Information requests, conducted legal research, and synthesized the findings in a report.

Operating in Darkness: BC's *Mental Health Act* Detention System is a comprehensive report that

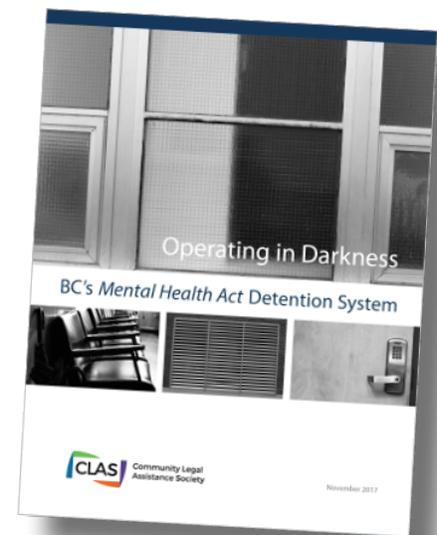
documents the research on BC's system for mental health detention and involuntary psychiatric treatment and makes recommendations for change to legislation, regulation, policy, and practice.

The BC *Mental Health Act* does not just need a few amendments or tweaks, it needs to be overhauled to address unfairness and *Charter* rights deprivations for individuals with mental disabilities.

We have allowed BC's mental health system to stagnate and operate in darkness.

IT'S TIME TO TURN ON A LIGHT.

Read the report at: clasbc.net



COMMUNITY **ADVOCATE** **SUPPORT** LINE

The Community Advocate Support Line (“CASL”) started in April 2006 and has been located at CLAS since April 2010. CASL is funded by the Law Foundation of BC.

CASL is primarily a dedicated telephone and on-line service for community advocates.

It is staffed by one lawyer, who provides legal advice and support for community advocates throughout BC across a broad range of poverty law legal topics, including income security, housing, debt, consumer law, workers’ rights and immigration, as well as some family law. CASL is intended to improve community advocate access to legal support where it is not practical to rely on supervising lawyers. Simply put, the CASL lawyer helps advocates with their casework on behalf of clients across BC

CASL also participates in advocate training and outreach, helping capacitate advocates with legal knowledge and skills. CASL also improves the legal expertise of community advocates by providing direct support to advocates and by participation in email discussion forums, such as PovNet.

The CASL lawyer also participates in committees and advisory groups, prepares training materials, sits on the Board of Directors of PovNet, prepares and/or edits publications relating to a wide range of legal issues, and supervises poverty law advocacy services for MOSAIC in Vancouver.



399

Number of legal issues the CASL lawyer helped BC advocates with



**The CASL lawyer helps
advocates with their casework
on behalf of clients across BC**

BC HUMAN RIGHTS CLINIC

The BC Human Rights Clinic (the “Clinic”) is operated by the Community Legal Assistance Society and funded by the BC Ministry of Attorney General (the “Ministry”). From 2003 to 2014, the Clinic was operated jointly by CLAS and the BC Human Rights Coalition (the “Coalition”).

In April 2015, the Coalition joined with CLAS to become one integrated Clinic under the management of CLAS. The Clinic staff is currently comprised of education and communications personnel, lawyers, legal advocates, and legal administrative assistants.

PUBLIC LEGAL INFORMATION AND EDUCATION

We provide accessible public education and information to promote an understanding of the *BC Human Rights Code*. The Clinic also operates a weekly Drop-In Clinic in Vancouver, where an advocate provides human rights information, assists with assessing whether a person has grounds for a complaint, and helps with the basics of filing a complaint.

COMPLAINANT SERVICES

We provide information, advice, advocacy, and legal representation services to eligible complainants, with an emphasis on resolution at the early stages of a human rights complaint. This work is primarily done by our Clinic advocates. If complaints are not resolved at the early resolution phase, they may be transferred to our Clinic lawyers, who provide further legal advice and representation to eligible complainants.

RENATE SHEARER AWARD

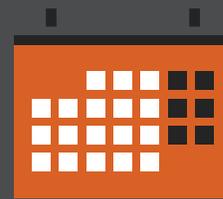
Each December, the Clinic, together with the United Nations Association, Vancouver Branch, hosts an International Human Rights Day event. The event is marked by the presentation of the Renate Shearer Award to an individual or organization in recognition of their contribution to the advancement of human rights. This award is a memorial to the life and work of the late Renate Shearer, a well-known social activist in British Columbia.

The 2017-2018 recipient of this award is ***Migrant Workers’ Centre*** (formerly West Coast Domestic Workers’ Association) for its outstanding contribution and commitment to the rights of past and present migrant workers and its tireless advocacy against labour trafficking.



4990

People received information about the human rights process through our telephone enquiry line



833

Members of the public received workshops / trainings from our education staff



367

Complainants received advocacy and/or legal representation services

BC HUMAN RIGHTS CLINIC **HIGHLIGHTS**

PUBLIC EDUCATION ON HUMAN RIGHTS

The Clinic continues to offer a variety of training, workshops and presentations to help people understand their rights and responsibilities under BC's *Human Rights Code*.

This year we significantly revamped our day-long Human Rights in the Workplace training. We also created new, shorter modules dealing with topics such as sexual harassment, employers' duty to accommodate employees with disabilities, and the impacts of marijuana legalization on the workplace. These sessions have proved popular, and we are working to make them widely available to employers, human resources professionals, and others seeking to better understand their responsibilities under the *Code*.

We continue to field numerous requests for workshops and presentations on human rights from universities, non-profits, and community groups. This year we've provided human rights education to several groups including the Immigrant Services Society, Cerebral Palsy Association of BC, and the Canadian National Institute for the Blind, among many others.

We've also provided advice and support to other advocates and service providers doing human rights work, delivering workshops and providing one-on-one advice to a wide range of advocates and groups.

Recently, we've created a new blog called Human Rights Matters, which you can find on our website. We're sharing legal information, news on important cases, and analysis of issues that matter to our communities.

We're also writing a regular column in the Landlord BC magazine *The Key*, where we discuss human rights issues relevant to housing providers. And be sure to follow us on **Twitter @BCHRC** for the latest human rights news!

Our human rights education work includes educating government officials and other decision-makers on human rights issues. In our submissions to the government on the reinstatement of BC's Human Rights Commission, we advocated for a substantial reinvestment in the human rights system in BC, as well as reforms to the *Code* to better protect marginalized groups.

We also co-hosted a federal government consultation on international human rights law and Canada's response to a UN review of its human rights record, providing feedback to officials on areas where Canada is falling short.

**Follow the
Clinic on Twitter**



@bchrc

**To learn more about
our education
work or to book
a workshop, visit
[www.bchrc.net/
education](http://www.bchrc.net/education)**

SYSTEMIC GOVERNMENT CASES

This past year, our Clinic was involved in a number of human rights cases that had broader systemic implications, including those against the provincial government regarding services to the public.

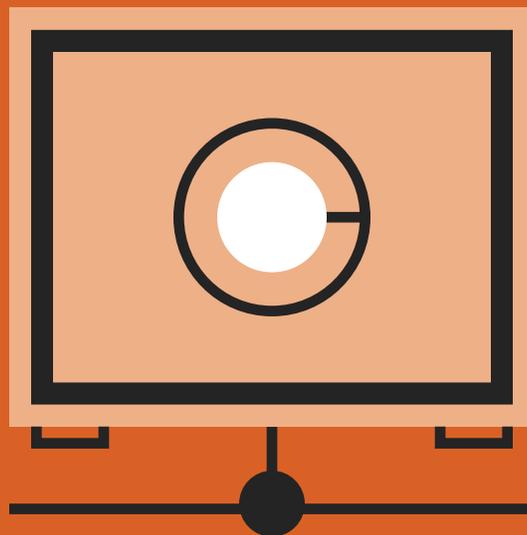
In one case, two young boys, Nelson and Elliot Roy, filed a human rights complaint in early 2015 because the girls in their Grade 6 class received HPV vaccine free as part of a school-based immunization program, but the boys were not eligible for the same free immunization.

In September 2017, the Ministry of Health began expanding the publicly funded HPV vaccines throughout BC through a school-based program that included Grade 6 boys and entered into a settlement with Nelson and Elliot. The Ministry of Health issued a public statement about the matter that included important information about the expanded HPV program.

In another case, Mr. Eric Jeppesen had an ongoing human rights complaint against the Ministry of Transportation based on its prohibition, under the *Motor Vehicle Act* (MVA), against him using a "SegSaddle", a modified Segway that allows the rider to sit. Mr. Jeppesen needed the SegSaddle to get around due to his mobility problems stemming from his serious progressive illness.

Earlier this year, the Ministry settled with Mr. Jeppesen and committed to a review of the MVA, with a view to amending the legislation within 18 months to provide for a regulatory framework that allows for assistive mobility devices to be safely used on public roads and sidewalks, while recognizing new and emerging technologies that can result in advancements for persons with disabilities. Mr. Jeppesen was invited to participate in the working group to assist in developing these recommended legislative changes.

HUMAN RIGHTS MATTERS BLOG



The Clinic Blog covers legal information, news, and important human rights cases.

Read the blog at
www.bchrc.net/rights_matters

JIN V. GLOBAL CHINES PRESS, 2018 BCHRT 159

The BC Human Rights Clinic is representing Raymond Jin, a former editor of a Burnaby based Chinese-language newspaper. Mr. Jin has made a complaint to the BC Human Rights Tribunal alleging that he was fired for expressing his political beliefs.

Mr. Jin was employed at the newspaper for over 10 years. As its editor, Mr. Jin determined what news stories would be published and wrote stories of his own.

In July 2017, he wrote an article about the death of Liu Xiaobo, a noted Chinese human rights activist and Nobel laureate. Liu Xiaobo was a highly political figure and was considered an enemy of the state by the Chinese government. His death was significant international news covered widely by various media outlets, including a cover story in the Economist.

Before the newspaper went to print, Mr. Jin's boss pulled the story. She got angry with Mr. Jin and told him he needed her permission to publish such stories. A week later, she terminated Mr. Jin's employment.

Mr. Jin provided evidence that his boss is sympathetic to the Chinese Communist Party. A year before these events, Mr. Jin was forced to fire a colleague, Gao Bingchen, who wrote articles critical of the Chinese government.

The influence of the Chinese government on Chinese-language media in Canada is an issue that has come to some prominence in recent years. Mr. Jin and Gao Bingchen are not the only people who believe they have been fired by Chinese-language Canadian news outlets for their stance against the Communist Party.

The Respondents applied to dismiss Mr. Jin's human rights complaint. They argued that his termination was due to insubordination and poor performance and not his political beliefs. Mr. Jin disputed that he under-performed on the job, and claimed he never received a negative performance evaluation.

The Respondents' application to dismiss the complaint was denied. In its decision, the Tribunal noted that Mr. Jin's belief involves public discourse on matters of public issue directed at, or aimed to exert pressure on, a government entity, and warrants protection under the *Code*.

KIM V. OCEAN CERAMICS LTD., 2018 BCHRT 101

The Complainant in this case had been an employee of the Respondent for over 11 years. In the final year of his employment, the Complainant developed a medical condition, as a result of which he experienced significant pain when performing his job duties, and the Complainant filed a Worker's Compensation Board (WCB) claim.

Shortly after the Respondent found out about the WCB claim the Complainant was terminated. The Respondent cited performance issues, as well as breaches of company policy, as the reasons for his termination.

The Complainant filed a complaint against the Respondent with the Human Rights Tribunal (the "Tribunal") on the ground of physical disability. In that complaint, the Complainant stated that the basis for his complaint was that the Respondent had fired him because he made a WCB claim. The Respondent filed an application to dismiss. In the Response to the application to dismiss, a legal advocate from the Human Rights Clinic clarified that the basis of the alleged discrimination was the fact that the Complainant had developed a disability, had applied to WCB, the Respondent did not like that, and found a reason to terminate the Complainant. As a result, it was submitted, the Complainant's disability was a factor in the termination. The Respondent took issue with what they alleged was a late change in the nature of the allegation.

In denying the application to dismiss, the Tribunal member addressed the relationship between WCB claims and the *Code*. In addressing the Respondent's argument regarding the change in the nature of the complaint, the Tribunal member reiterated that initial complaints are not pleadings and cannot be viewed in an overly narrow and technical way, particularly when done by a self-represented individual. She further found that the Respondent was too focused on the alleged motive for the termination, rather than the impact of the alleged discrimination, which is the proper focus of the analysis. More importantly, the member held that the basis for the Complainant's WCB claim was his disability and, therefore, whether the Complainant showed that he was fired because he made a WCB claim or because the Respondent wanted to get rid of a disabled employee, the Complainant would have established a prima facie case.

In other words, terminating an employee for making a WCB claim is not limited to a claim of discrimination under the *Workers Compensation Act*; it is also discrimination under the *Code* on the basis of a disability. This may provide a helpful shortcut to demonstrating discrimination in cases where the evidence primarily relates to WCB claims.

MENTAL HEALTH LAW PROGRAM

The Mental Health Law Program (“MHLP”) is funded by the Legal Services Society of BC (“LSS”). In addition, we have a contract with the Forensic Psychiatric Services Commission for the provision of legal information counselling services at the Forensic Psychiatric Hospital.

The MHLP staff is comprised of lawyers, advocates, a legal information counsellor, and legal administrative assistants.

The services of MHLP include three main legal components:

1. Representation for persons at BC Review Board hearings in the BC Lower Mainland under the *Mental Disorder Provisions* of the *Criminal Code*.
2. Representation for persons at BC Mental Health Review Board hearings in British Columbia detained under the *Mental Health Act*, and
3. Independent legal information counselling services under the *Mental Health Act* at the Forensic Psychiatric Hospital.

A particular highlight of this past year is that in January 2017 additional annual funding of \$238,000 was allocated by the LSS and the BC Ministry of Attorney General (“AG”) to legal representation for persons involuntarily detained under the *Mental Health Act* in or through psychiatric facilities throughout the province.

The additional funding has allowed for increased MHLP staff and ad hoc contracts with lawyers who provide legal representation to people in various regions throughout the province. The vast majority of persons who request representation at their hearings at the Mental Health Review Board are now receiving legal representation, and we are working closely with the LSS to find innovative ways of ensuring that any remaining gaps in services are addressed. We sincerely thank the LSS and the AG for the increased funding for this marginalized group of people.

We would also like to thank the Access Pro Bono Society (“APB”), who worked in partnership with us in providing representation to people at Mental Health Review Board hearings and advancing important patient rights initiatives prior to the increased funding to MHLP in January 2017. Since January 2017, APB has continued to fill an important need by providing information to people who have general questions relating to mental health detention issues, as well as telephone assistance to people who are preparing to represent themselves at Mental Health Review Board hearings.

In the course of their MHLP work, our lawyers and legal advocates may identify legal systemic issues that adversely affect our MHLP clientele. These issues are referred to our Community Law Program staff, who may be able to address them within their systemic advocacy mandate.

316

Files had representation from MHLP staff for hearings under the *Mental Disorder Provisions* of the *Criminal Code*

965

Files had representation from MHLP staff for hearings under the *Mental Health Act*

425

People detained under the *Mental Health Act* at the Forensic Psychiatric Hospital received independent rights advice from MHLP staff upon their initial or renewed certifications, or through direct enquiries to our staff

MENTAL HEALTH LAW PROGRAM HIGHLIGHTS

HELPING VULNERABLE POPULATIONS

The *Mental Health Act* (“MHA”) gives hospitals and psychiatric staff an extraordinary grant of state power to control the decisions and liberties of ordinary citizens. Our colleague, Laura Johnston, of the Community Law Program’s comprehensive report *Operating in Darkness*, describes in great detail the many challenges that our clients face when they are subjected to the exercise of state power granted by the MHA.

When making the decision to certify a person under the MHA, doctors are required to conduct an examination of the person. Such an examination can include review of medical documentation, or the collection of collateral information from family members or others who have observed the person. Unfortunately, this may mean that language barriers, communication difficulties, and misunderstandings can paint a very different picture for a doctor than what has occurred in reality. This can result in an unwarranted certification.

A legal advocate may well be one of the first people not affiliated with a treatment team to visit a patient, actively listen, and share information regarding their admission. A recent case highlights the difference that can be made when the client is given an opportunity to be heard.

The client was not English speaking, and on admission to hospital was certified on concerns

that she was alleged to have suicidal ideation and allegedly carrying a knife. The detaining facility was of the view the client did not have the insight to present for mental health care in the future and would not take psychiatric treatment voluntarily.

The legal advocate met the client with an interpreter, and learned that she had strong family support. She reviewed what had been alleged in the medical records with the client, and prepared the family member as a witness.

After a six-hour hearing, and assisted by an interpreter, the client was decertified on all criteria. The Mental Health Review Board accepted the client’s evidence that she was not suicidal, and that there was insufficient evidence that she had been carrying a knife. The panel accepted the evidence of both the patient and the family member that she was not opposed to a mental health diagnosis, but that she had legitimate concerns about medication side effect, and that, with family support, she would return to seek medical care on a voluntary basis if symptoms returned.

The patient and the family member were both grateful for the legal advocate’s help, and left her a thank-you message the next day expressing they felt she was “making a difference in the community”.



A legal advocate may well be one of the first people not affiliated with a treatment team to visit a patient, actively listen, and share information regarding their admission



People using mental health services should expect to receive care and treatment...They do not expect to be charged under the *Criminal Code* when they are already in a treatment facility.

DEFINING SUBSTANTIAL DETERIORATION

The legal criteria for certification has not been the subject of a court proceeding in many years, and there are very few governing authorities in British Columbia. The Mental Health Review Board is also not bound by its own decisions.

As a result, we have been looking for ways to introduce reliable authorities from other sources to assist in the interpretation of the *Mental Health Act* ("MHA") in support of our clients' positions.

One of the four criteria for certification under the MHA is that the person requires care, supervision, and control to prevent substantial mental or physical deterioration, or to prevent harm to the person or others.

One of our legal advocates argued in a recent case that a decision of the Ontario Consent & Capacity Board should guide the Mental Health Review Board in the statutory interpretation of the term 'substantial deterioration' in our MHA. Our advocate argued that, pursuant to well-accepted principles of statutory interpretation, the similar language and purpose of Ontario mental health legislation should result in similar provisions being applied in a similar manner. More specifically, that a 'substantial deterioration' required a comparison between the client's current condition and the expected condition if decertified, and that the degree of deterioration needed to be significant.

In this case, the client's presentation under certification was not that different from her presentation when left to her own devices. The advocate assisted the client in presenting her testimony in explaining other differences; for example, explaining that a behaviour perceived to be bizarre was, in fact, a wilful but non-violent protest of her detention in hospital.

The Mental Health Review Board accepted the argument and found that any deterioration that might occur in this case was not so substantial as to qualify under this criterion. The client was, therefore, decertified.

We hope to continue making use of this and other authorities in appropriate cases.

MONITORING THE USE OF THE FORENSIC SYSTEM

The Mental Health Law Program also represents people found unfit to stand trial and not criminally responsible by reason of mental disorder under the *Criminal Code*.

While in most cases these court findings arise out of offenses that occur in the community, we have noticed a trend in recent years of patients being charged with relatively minor offenses that occurred while they were already in a psychiatric treatment facility.

In many of these cases, we see psychiatrists and other care workers writing to police and Crown counsel recommending that the patient would be best served by a stay in the forensic psychiatric system.

In our view, this is problematic. People using mental health services should expect to receive care and treatment. They expect mental health services to anticipate and respond to their needs, especially when they experience the most acute symptoms. They do not expect to be charged under the *Criminal Code* when they are already in a treatment facility, whether or not they are there voluntarily.

The consequences to such an accused are very significant. Some may choose to plead guilty to avoid a prolonged stay in the forensic system, and thereby acquire a criminal record. Unlike the civil mental health system, they cannot be discharged by a doctor alone. The Review Board which supervises their liberties is only required to meet once a year, as opposed to the more frequent opportunities for review available under the civil system.

We do not know why we are seeing this trend. While this is speculation, it may be that civil mental health facilities do not have the confidence in their resources or capabilities to treat some patients, and may perceive that the forensic system is better equipped.

Mental illness is not a crime. Treatment of even difficult cases should not result in the intervention of the criminal justice system.

Kustner & Associates

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AUDITORS' REPORT

To the members,
Community Legal Assistance Society,
Vancouver, BC

We have audited the combined statement of financial position of Community Legal Assistance Society as at March 31, 2018 and the combined statements of changes in net assets, operations and cash flows for the year then ended. These combined financial statements are the responsibility of the Society's management. Our responsibility is to express an opinion on these combined financial statements based on our audit.

Management's Responsibility for the Combined Financial Statements

Management is responsible for the preparation and fair presentation of these combined financial statements in accordance with Canadian accounting standards for not-for-profit organizations, and for such internal control as management determines is necessary to enable the preparation of combined financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these combined financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards for not-for-profit organizations. Those standards require that we comply with ethical requirements and plan and perform an audit to obtain reasonable assurance whether the combined financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the combined financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the combined financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of the combined financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the presentation of the combined financial statements.

We believe the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Kustner & Associates

Chartered Professional Accountants

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AUDITORS' REPORT (*Continued*)

Basis for Qualified Opinion

In common with many not-for profit organizations, Community Legal Assistance Society derives revenue from donations activities the completeness of which is not susceptible to satisfactory audit verification. Accordingly, verification of these revenues was limited to the amounts recorded in the records of Community Legal Assistance Society. Therefore, we were not able to determine whether any adjustments might be necessary to donations revenue, excess of revenues over expenditures, and cash flows from operations for the year ended March 31, 2018, current assets and net assets as at March 31, 2018.

During the year, the Community Legal Assistance Society purchased equipment totaling \$ 11,243 (2017 - \$ 1,991). This equipment was expensed during the year, as explained in Note 1 (iii). Canadian accounting standards for not-for-profit organizations require that equipment be capitalized at cost and amortization be taken over the estimated life of the equipment.

Qualified Opinion

In our opinion, except for the effects and possible effects of the matters described in the Basis for Qualified Opinion paragraph, these combined financial statements present fairly, in all material respects, the financial position of the Society as at March 31, 2018 and the results of its operations and cash flows for the year then ended in accordance with Canadian accounting standards for not-for-profit organizations.

Other Matter

As required by the Societies Act of British Columbia, we report that, in our opinion, the accounting principles have been applied on a basis consistent with that of the preceding year.



Burnaby, BC
June 18, 2018

Chartered Professional Accountants

COMMUNITY LEGAL ASSISTANCE SOCIETY
COMBINED STATEMENT OF FINANCIAL POSITION
MARCH 31, 2018

\$

	Operating Fund	Reserve Fund	2018	2017
ASSETS				
CURRENT ASSETS				
Cash	31,844	53,997	85,841	137,377
Accounts and funding receivable	45,941	-	45,941	54,438
Prepaid expenses	30,815	-	30,815	37,001
Funds due from operating fund	-	68,087	68,087	90,042
	<u>108,600</u>	<u>122,084</u>	<u>230,684</u>	<u>318,858</u>
LIABILITIES AND NET ASSETS				
CURRENT LIABILITIES				
Accounts, payable and accrued	26,370	-	26,370	39,125
Unexpensed transition costs Advanced / unexpensed funds	-	-	-	8,820
Articling Student	6,845	-	6,845	20,860
CLAS unallocated donations	-	53,997	53,997	61,192
DAC Conference unexpensed funds	-	-	-	620
Government remittances payable	1,662	-	1,662	2,995
Funds due to reserve fund	68,087	-	68,087	90,042
SJ unexpensed funds	5,636	-	5,636	5,162
	<u>108,600</u>	<u>53,997</u>	<u>162,597</u>	<u>228,816</u>
NET ASSETS	<u>-</u>	<u>68,087</u>	<u>68,087</u>	<u>90,042</u>
	<u>108,600</u>	<u>122,084</u>	<u>230,684</u>	<u>318,858</u>

ON BEHALF OF THE BOARD

Maia Lourenco William W. Black **Director**

Director

COMMUNITY LEGAL ASSISTANCE SOCIETY
COMBINED STATEMENT OF OPERATIONS
YEAR ENDED MARCH 31, 2018

\$

	<u>2018</u>	<u>2017</u>
REVENUE		
Grants		
Forensic Psychiatric Services Commission	32,633	32,633
Law Foundation – major project	11,250	18,750
Law Foundation – transition grant	-	16,000
Law Foundation – CASL	130,000	130,000
Law Foundation – core services	740,000	740,000
Law Foundation – articling fellowship	60,000	60,000
Legal Services Society	984,000	936,515
JAG – HRC (government transfer)	<u>1,348,000</u>	<u>1,348,000</u>
	3,305,883	3,281,898
Ad hoc civil costs recovered	169,742	38,549
Community Group Funding – Legal Supervision	18,696	19,125
Donations and cost awards	15,976	7,785
Education costs recovered	3,046	5,887
Interest income	504	481
Memberships	20	21
Miscellaneous	<u>10,018</u>	<u>-</u>
	<u>3,523,885</u>	<u>3,353,746</u>
EXPENDITURES		
Ad hoc civil costs recoverable	169,742	38,549
Audit and accounting	37,306	36,728
Bank charges	330	282
Board expenses	5,390	8,571
Client disbursements	41,891	43,177
Education costs	5,275	2,810
Equipment purchase	11,243	1,991
Equipment rental and maintenance	66,652	72,635
GST paid (net)	10,624	11,820
Insurance	4,077	4,097
Library	8,787	7,031
Office	91,839	87,629
Professional development	10,232	9,243
Professional dues and insurance	52,725	51,772
Rent	110,804	112,614
Salaries, employee benefits and contractors	2,866,091	2,780,381
Telephone	11,134	20,051
Transition grant	-	16,000
Travel	<u>36,553</u>	<u>45,224</u>
	<u>3,540,695</u>	<u>3,350,605</u>
(DEFICIENCY) EXCESS OF REVENUE OVER EXPENDITURES	<u>(16,810)</u>	<u>3,141</u>

Kustner & Associates, Chartered Professional Accountants



Advancing Dignity,
Equality and Justice
Since 1971

**COMMUNITY LEGAL
ASSISTANCE SOCIETY**

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Vancouver, BC V6E 4G1

**Community Law Program
Mental Health Law Program
Community Advocate Support Line**

Phone: 604-685-3425
Toll Free: 1-888-685-6222
Fax: 604-685-7611
Website: www.clasbc.net



@clasbc



@clasbc

BC Human Rights Clinic

Phone: 604-622-1100
Toll Free: 1-855-685-6222
Fax: 604-685-7611
Website: www.bchrc.net

Email General Enquiries
infobchrc@clasbc.net

Email Requests for Representation
Intakebchrc@clasbc.net



@bchrc

CLAS is located on unceded Coast Salish territory, including the lands belonging to the x^wməθk^wəyəm (Musqueam), Skwxwú7mesh (Squamish) and səílłwətaʔt / Selilwitulh (Tseil-Waututh) Nations.

The work of the community legal assistance society in 2017/2018 fiscal year was made possible through generous contributions from the following funders.



**Legal
Services
Society**



**BC MENTAL HEALTH
& SUBSTANCE USE SERVICES**

An agency of the Provincial Health Services Authority

