

# WESTERN CANADA SOCIETY TO ACCESS JUSTICE

*A Non-Profit Charitable Society (Reg. # 87068 4123 RR0001)*

Clinic Assistant's Guide

## **Tips on Dealing with Clients**

### **1. Confidentiality**

It is essential all documents and statements made by a client, whether in or outside a clinic, remain completely confidential. If the opposing party (and most of our clients are fighting cases against an opposing party) obtains some of the confidential information given by a client, both the lawyer and ourselves could be sued and/or disciplined by the Law Society. It is absolutely essential that all client documents be kept completely confidential! Therefore, please clean up the Pro Bono room after your clinics. If there are used Pro Bono briefs or other documents left behind by the lawyer and client please pick it up and take it home with you. Contact the Volunteer coordinator and she'll come to your next clinic and pick those documents up.

### **2. Proactive Listening**

The role of the Clinic Assistant is to assist the client and the lawyer at the *pro bono* clinic. One major problem that clients have when they visit our clinics is that they are nervous and unprepared. Some clients will need reassuring that they will be listened to and dealt with respectfully by the lawyer (some are in quite an anxiety state when they come). It is therefore useful to have a Clinic Assistant that can "settle the client down".

We ask the Clinic Assistants to avoid getting into a two-way discussion with the client concerning the client's problems. Instead we encourage the CA to practice "proactive listening" techniques. Everyone wants to feel heard and an effective and well-accepted method of creating rapport and "settling clients down" is to listen attentively to what they have to say and then to repeat it back using your own words. For example, a client may come in with a landlord problem; the landlord is threatened to evict the client, keep the deposit and generally make life difficult. It is surprising that if you repeat back the same message- that the client has a problem with the landlord, with the deposit and a possible eviction – the client will feel that somebody is interested in his/her problem and will be reassured. There are other ways of reassuring the client, for example – assuring the client that the lawyer will not be angry if the client is inadequately prepared or unclear as to what the problem is.

### **3. If the Clinic Assistant gives advice (particularly legal advice) there will probably be the following problems:**

- a. You may not be right! It may seem very straightforward but the client has come for the lawyer's advice and that advice should be given by the lawyer and not you. ie. an illegal person who has been assaulted and is in fear of the assailant may not be well advised to go to the police. There may be other more appropriate sources of relief.
- b. Neither you nor we have insurance to cover erroneous advice (or lack of advice) from you.

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- c. There are all kinds of hazards in giving legal advice and lawyers are trained to avoid mistakes (e.g. someone may have a potential claim against a municipality and if a chaperone without thinking advises the client that there is no hurry and the client can come back later on – the client may be too late to make a claim and have missed the limitation date.) There are a host of limitation rules and other very strict rules for making claims.
- d. Lack of advice: if you give any advice at all it may oblige you to give other advice. Simply being silent on vital issues when you have given advice on others may be the basis of a negligence claim against you, the Society or the lawyer.
- e. If you give any advice you will also be obligated to make sure that you will not in the future (or have not in the past) advised the client's adversary. If you advise both adversaries you will have a "conflict" and that could give rise to legal action.
- f. Finally the client may be dying to obtain some advice from you and may not want to wait the few minutes required to see the lawyer. If you give advice it may be in conflict with that of the lawyer and undermine the lawyer's influence.

For all these reasons, we encourage you not to give advice of a legal nature to the client. Even advising the client as to where to go or what materials to see may constitute legal advice. Hence if the client wants to obtain a divorce you should not suggest some self-help book for preparing the divorce papers. We are strong advocates of the value of a face-to-face meeting with a lawyer as soon as possible. We have taken strong and unpopular positions with the Law Society and elsewhere that persons of low income deserve the very best legal assistance and the standards of legal advice should be the same as those used by practicing lawyers for clients who pay fees. A law firm that permits its receptionist or other unsupervised non-lawyers to provide any legal advice is subject to discipline by the Law Society. These standards are important to us! We believe they are a part of the reason for our great success. We want to abide by them!

#### **4. Preparation**

By the time the client sees you it may be too late for the client to prepare a written statement for the *pro bono* lawyer. However, there may be time and it is very useful if the client can prepare a one or at most two page statement clearly outlining the facts, preferably in chronological order, and also the question(s) that the client wants answered.

#### **5. Criminal Cases**

Clients who have been charged with an offence of some kind should, if possible, obtain the "Particulars" from the court that issued the charge. Usually the lawyer finds it difficult if not impossible to advise the client without those particulars.

#### **6. Problems of the lawyer**

Sometimes lawyers will let you know that they are having difficulties. For example:

- a. Clients may not show and the lawyer is left with nothing to do for half an hour or more. You can suggest to the lawyer that next time he/she bring some work or reading material so that such time is not wasted. You might also explain that a certain percentage of clients do not show up and we try to resolve that problem sometimes by overbooking

the clinic. It is difficult to reach a balance between keeping the lawyer busy and overcrowding the lawyer with clients.

b. The lawyer may complain that the client problems have little or nothing to do with the law. Our new recruits are more likely to have such complaints. The answer is sometimes that a lawyer is the best person to resolve the client's problem. Frequently it is a question of logical thinking, common sense and being able to impress on the client a perspective that the client respects. Clients often look up to lawyers and may receive their advice more readily than a social worker or counselor even if there is no point of law directly involved. There are also situations where the lawyer thinks there is no legal point but seen correctly there is. For example, our surveys show that many clients are not aware that they can sue in the small claims court. Litigants there usually do not have, and need not have, lawyers. That vital information may be obvious to the lawyer but not to the client

c. Our surveys also show that lawyers though satisfied on the whole with out clinics, sometimes wonder how much the clients get out of it. The survey for the same clinic shows that clients, on the other hand, have a high degree of satisfaction from the advice they receive. We therefore have good evidence that lawyer's fears in this regard are not supported by the evidence. *Pro bono* clinics do work and clients usually are satisfied.

Do remember that the lawyer is also a "Commissioner of the Supreme Court", an officer of the court! It is therefore your duty and we like to think your privilege to "stick up for" the court system and judges if the client is disgruntled. That does not mean to say that you have to argue with the client. It is perfectly in order to repeat back to the client the client's concerns but in a proactive manner.

We hope these comments will assist you. If you have any further suggestions we would welcome them by email to [help@accessjustice.ca](mailto:help@accessjustice.ca)

GOOD LUCK!