THE BCCEAS ELDER LAW CLINIC:

NEEDS ASSESSMENT AND BUSINESS PLAN

BC CENTRE FOR ELDER ADVOCACY AND SUPPORT

AUGUST 15, 2008

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I. INTRODUCTION TO REPORT

In 2007 the BC Centre for Elder Advocacy and Support (BCCEAS) received funding from the Law Foundation of BC to open an elder law clinic (the "Clinic") for older adults. Prior to opening the Clinic, BCCEAS carried out extensive research to determine what service delivery model, service priorities, and best practices should be adopted.

- The report is divided into 3 sections as follows:
  Section A of this report describes the results of the needs assessment research.
- Section B contains a contextual analysis as well as a description of some of the practical decisions BCCEAS made during the Clinic set up phase.
- Section C contains a 3-year business plan that sets priorities and timelines for implementation of those priorities.

A. Background

In July 2008 BCCEAS opened the first legal clinic for older adults[1] in Western Canada. During the year leading up to the opening of the Clinic, extensive research was conducted in order to determine the optimum service delivery model, best practices, and service priorities for this clinic (the "Needs Assessment"). This report summarizes the results of the research and sets out a business plan for the Clinic based on the needs identified by this research.

The key research questions addressed are:

1. What are the priority needs of older adults that should be addressed by the new elder law Clinic?
2. What best practices, service delivery models, and protocols should be adopted by the new elder law Clinic?

This Needs Assessment research was conducted using a mixed methodology, and includes:

[1] Language and terminology are powerful and important issues, which the researchers of BCCEAS Needs Assessment respectfully acknowledge. In this Needs Assessment report, the authors have chosen to use the terms "older adults" and "seniors" interchangeably, to respect the variety of linguistic preferences to group terminology.

1. Quantitative and qualitative field research conducted in the Greater Vancouver area, including directed interviews and survey data
2. Literature review of elder law clinics and practice in Canada and the United States
3. Quantitative and qualitative research and recommendations from the Advocacy Centre for the Elderly ("ACE"), and
4. Quantitative and qualitative research and recommendations from Bob Rhudy, expert on legal aid clinics and funding issues for older adult clinic services in the United States.

In order to ensure consistency of voice between each of these research components, the results of are summarized within this Needs Assessment report.[2]

BCCEAS gratefully acknowledges the funding for this Clinic Needs Assessment Research Project provided by the Law Foundation of BC.

B. Project Contributors

BCCEAS would like to thank everyone who contributed to this report. BCCEAS would like to particularly thank Bob Rhudy who provided information about American legal aid clinics for older adults, Judith Wahl who shared her expertise gained in more than two decades of leading Canada's first legal aid clinic for older adults, and Laura Watts who provided expertise on elder law issues during the time she was partially seconded to BCCEAS for the duration of this project. Kamala Sproule, field researcher, exceeded our expectations in regard to the number of interviews and surveys that she was able to distribute. Her work was aided by the volunteer seniors in the ABC's of Fraud program who distributed hundreds of surveys to seniors under the direction of Mary Sharma, volunteer coordinator. Finally, we would like to thank Karen Slaughter, of our office, who carried out research for this project, and Kari Schroeder who coordinated the community forum where we gathered information from more than 100 community members, and the research assistants at the BC Law Institute, Chris Bettencourt, Zac Froese and Setareh Javadi.

[2] The report, *Field Research for the B.C. Centre for Elder Advocacy and Support* is available from BCCEAS upon request as is information about the other research components

C. Biographical Information

Joan Braun was appointed Executive Director / Supervising Lawyer for BCCEAS in September 2007. She received her LL.B. from the University of British Columbia in 2000 and her MSW in September, 2007. Ms. Braun has experience in law reform and with policy issues in the areas of family and elder law. She also has extensive experience and training in family mediation. She has carried out work as a mediator with a focus on civil and family matters. As a lawyer and consultant, she has engaged in legal research and has provided legal advice for non- profit organizations, including West Coast Domestic Workers' Association. Ms. Braun is currently co- authoring a chapter in a CLE publication on elder law issues.

Judith Wahl has served as the Executive Director of Toronto's Advocacy Centre for the Elderly, since its inception in 1984. She received her LL.B. from Osgoode Hall Law School, York University, in 1977 and was called to the Ontario Bar in 1979. She has been a sessional lecturer of Law and Aging at both the University of Toronto and McMaster University. In 2005, Ms. Wahl was appointed Distinguished Fellow of the Canadian Centre for Elder Law at the BC Law Institute. She has extensive experience in policy development related to aging and has been a consultant on numerous elder projects. Most recently Ms. Wahl has been a member of the Expert Roundtable on Elder Abuse Consultation held by Human Resources and Social Development Canada, as well as an organizer, presenter and facilitator at the Federal-Provincial-Territorial Working Group Consultation on Financial Abuse held in Ottawa in June 2008. She is currently Vice Chair of the National Initiative for the Care of the Elderly Network at the University of Toronto. Ms. Wahl is a frequent speaker at conferences and organizations including the National Victims Day Conference held by Justice Canada; the Canadian Bar Association; the Canadian Centre for Elder Law; the International Conference on Law and Mental Health, among others. She was the Recipient of the Osgoode Hall Law School Gold Key Award for Public Service in 2006.

Laura Watts is the National Director of the Canadian Centre for Elder Law (CCEL), the national organization that focuses on issues of law and aging. She is also a Staff Lawyer at the British Columbia Law Institute and a legislative drafter. Completing her law degree at the University of Victoria Law School in 1998, Laura was called to the Bar in British Columbia in 1999.

Laura is the Secretary of the National Canadian Bar Association Elder Law Section and active member of a variety of other CBA sections. She is a frequent contributor to Continuing Legal Education programs on elder law issues as well as an organizer, presenter and facilitator at the Federal-Provincial-Territorial Working Group Consultation on Financial Abuse held in Ottawa in June 2008. Laura serves as the co-editor-in-Chief of the Canadian Journal on Elder Law and the co-facilitator of the World Study Group on Elder Law. She has published a variety of research reports articles and is a co-editor of and contributing author to an upcoming CLE Practice Manual on elder law. Laura is the past-Chair of BCCEAS, an Executive Member of the BC Senior Services Society and serves on a number of advisory boards and Boards of Directors. In her role as National Director of the CCEL she frequently gives talks, workshops, lectures and media interviews to a wide variety of organizations and audiences, nationally and internationally. Annually, she organizes the Canadian Conference on Elder Law, which is an international conference advancing issues of elder law to both legal and interdisciplinary audiences. Laura is currently working towards expanding civil legal aid for seniors in Canada, creating a provincial strategy for adults with capability challenges and researching elder and guardianship mediation in Canada.

Robert J. Rhudy, J.D., an attorney, mediator, facilitator and consultant, is president of Senior Mediation and Decision-Making, Inc., a nonprofit organization that provides training, development, research, and consulting in the field of elder mediation around the United States. He is a member of the Maryland State Bar Association's Elder Law Section Council, a founding member of the National Elder Mediation Network, chair of Association of Conflict Resolution-Maryland's Senior, Family, and Health Care Mediation Section, and on the boards of the National Equal Justice Library, Homeless Persons Representation Project, and Friends Committee on National Legislation. Mr. Rhudy was formerly a chief attorney of Maryland's Legal Aid Bureau, executive director of the Coalition for Legal Services (Washington, D.C.), and executive director of Maryland Legal Services Corporation, and has taught law and aging at the University of Maryland and poverty law at University of Iowa.

Kamala Sproule is a community-based social researcher and program evaluator. She received her Master of Social Work degree from UBC in 2002. For the past 5 years, Kamala has conducted community-based research on issues pertaining to marginalized groups, in particular women and people of colour, immigrants and refugees, the lesbian, gay, transgender and bisexual community,

and sex trade workers. Her research process stresses capacity and relationship building by including the marginalized groups in the research process. The goals of her research have been to raise mainstream community awareness around issues of disenfranchisement, facilitate community development, and increase capacity within marginalized groups via a participatory research process.

David Morrison is the staff lawyer of BCCEAS' Elder Law Clinic. He received his LLB from the University of Victoria (UVic) in 1993 and was called to the Bar of British Columbia in 1994. Since then, he has acquired broad experience practicing law with an emphasis on litigation, legal aid and poverty law. He also has an interest in public legal education and has been published in print and on the internet. Currently a member of the Canadian Bar Association's (CBA's) poverty law section, he also serves as the section's legislative liaison.

Karen Slaughter was employed as a law student at BCCEAS for the summer of 2008. She is currently in her final year at the Faculty of Law at the University of British Columbia, with an expected completion date of May 2009. Karen has a strong interest in social justice issues and has volunteered for various non-profit organizations, including the Immigrant Services Society of BC and Vancouver Association for the Survivors of Torture.

Christopher Bettencourt is a Research Assistant with the British Columbia Law Institute and the Canadian Centre for Elder Law. He completed his LL.B. at the Faculty of Law at the University of British Columbia in May of 2008, and will commence his articles in early 2009.

Zachary Froese is a research assistant with the British Columbia Law Institute and the Canadian Centre for Elder Law. He attends law school at the University of Victoria, and anticipates graduating in May of 2009.

Setareh Javadi is currently completing her articles with the British Columbia Law Institute and the Canadian Centre for Elder Law. She received her LL.B. from the University of British Columbia in May 2008.

II. Executive Summary to This Report

In this project research was conducted to determine the legal needs of older adults. The results of the research were then applied at a practical level to inform the start up of a legal clinic for older adults in Vancouver, British Columbia. The research results also informed the development of a three year business plan for the clinic. This report describes the research, practical applications of the research, and the business plan.

During the research phase of the project a variety of methods were used to gather data regarding two key questions, which were: 1) Which service needs should be prioritized and 2) what service delivery model and best practices should be adopted by the clinic.

Several key service priority areas for legal representation were identified. These include the following:

- Abuse and safety issues
- Financial abuse issues
- Housing (tenancy and ownership) issues
- Long-term care issues
- Substitute decision-making abuse or misuse issues
  (power of attorney, representation agreement, guardianship issues)

There was a general consensus that the highest priority for legal services should be cases where the older adult is unsafe or is being abused.

The research also clearly indicated that the legal clinic should provide a range of legal services including representation. This model of service delivery was preferred over a model which consisted primarily of information and summary advice. Participants in the study strongly indicated that BCCEAS‘ existing services should also continue, including the Legal Advocacy program, which includes a toll free number and the staffing of a paralegal to support that telephone line, should be continued, and that BCCEAS’ Public Legal Education and Information (PLEI) and Outreach services should be expanded.

Another key finding of the research was that the initial staffing levels are inadequate. Broad consensus in the research indicates that the minimum staffing levels for the Clinic should include 7 FTEs. To meet this minimum standard, the Clinic should hire an additional 2.6 FTEs immediately. It was also agreed that staffing levels would need to expand to add another 1-3 FTEs within 6-24 months after Clinic opening.

These research conclusions are used as the foundation for a discussion on some of the challenges that BCCEAS faces in following through on the recommendations of the research. Some practical approaches towards implementing the research recommendations are discussed and a three year business plan is presented. This business plan has key strategic objectives and specific steps for implementing recommendations arising from the research. The business plan sets out a step by step implementation plan in seven key areas. These are: staffing, direct legal service, PLEI, outreach, accessibility, collaboration and accountability.

III. Section A: The Research

A. Description of the Research

The two key questions addressed in the Needs Assessment are:

1. What should the service priorities be for the BCCEAS Clinic?
2. What service delivery model and best practices should the BCCEAS Clinic adopt?

The research was conducted using mixed methodologies and included the use of surveys, interviews, a literature review and a consultation with experts in the elder law service provision field. Several researchers and consultants participated in the project and recommendations were developed for each independent component of the research:

- Literature review of Canadian and American sources;
- Field research conducted in the Greater Vancouver area;
- Consultation with Bob Rhudy, expert on US legal aid clinics for older adults; and
- Data gathering and consultation with the ACE in Ontario and with Judith Wahl, the Executive Director.

1. Summary of Research Findings

The research consistently identified the following areas of consensus:

- The number one service priority for the Clinic should be providing assistance to older adults who have experienced abuse or are vulnerable to abuse, especially where safety or health is at risk.
- The Clinic should prioritize services to older adults who are the most isolated, marginalized or who are at the greatest risk of safety or harm, and services should be provided to these older adults on a wide range of issues (because issues for older adults are often closely related or intertwined).
- Community outreach and PLEI are important components of legal services for older adults and should be carried out extensively, particularly in the early years of the Clinic.
- Staffing for the Clinic should be a minimum of seven full time staff when the Clinic opens, with staff added after the first year.

Community groups and individual seniors surveyed agreed that, in addition to abuse issues, older adults need legal assistance with the following issues:

- Financial abuse;
- Access to government benefits;
- Housing (tenancy and ownership);
- Housing (long-term care); and
- Power of attorney or representation agreement misuse.

2. Background and Context

In April 2007 BCCEAS received funding from the Law Foundation of BC to conduct a "Needs Assessment" to determine the specific needs of older adults in British Columbia in regard to legal services. This project began in July 2007. In November 2007, BCCEAS received funding from the Law Foundation for a three-year pilot project for a Law Clinic for Older Adults. The results of the Needs Assessment research have been used to determine service priorities, a service delivery model and best practices for the Clinic. The practical application of this research to Clinic service delivery is described in sections B and C of the paper.

The BCCEAS Clinic complements services for older adults in BC that already exist, operated by BCCEAS or other community agencies. However, a service gap has exists. This Clinic seeks to fill the gap that has been identified in numerous studies.

a) Background: Introduction to BCCEAS

The BC Centre for Elder Advocacy and Support (BCCEAS) is a non-profit and charitable organization that operates a variety of programs all focusing on raising awareness and protecting the rights of older adults. The Clinic is BCCEAS' latest program and it builds on previous work carried out by BCCEAS, formerly the BC Coalition to Eliminate Abuse of Seniors. BCCEAS has been actively serving the legal advocacy and information needs of BC's seniors for 15 years. Through legal educational and information services BCCEAS supports families, caregivers, lawyers, notaries, financial, medical, health and social work professionals, health authorities and other advocacy and support agencies (such as the BC Association of Community Response Networks, the Alzheimer's Society, BC Yukon Society of Transition Houses, BC Non-Profit Housing Association, etc).

BCCEAS has traditionally operated a much-used legal information telephone line that has assisted more than 1 500 seniors per year. Over the years, the organization has collected data regarding the type of issue prompting the call and the desired support or resolution. Over time, callers and supporters have become increasingly insistent that what is needed in BC is a framework for service delivery of specialized legal information and representation for BC's vulnerable seniors.

b). Previous Studies and Research on the Legal Needs of Seniors

BCCEAS' experience mirrors anecdotal needs expressed by seniors' groups (such as BC Seniors Support Services), professional and legal organizations (such as the CBA BC Branch Elder Law Section) and legal advocacy groups (such as the Law Students Legal Advice Program and Tenants Resource and Advisory Centre). *The Poverty Law Needs Assessment and Gap/Overlap Analysis*[3] documents the growing need for poverty law advocacy services, the need for lawyers to act as a resource for advocates, and the significant barriers to access to services when they are only available by telephone or on the internet. *Delivering Poverty Law Services: Lessons from BC and*

[3] Law Foundation of BC, 2005.

Abroad[4] concludes, "paid lawyers are an essential component of effective poverty law service delivery." *Poverty Law Advocacy Needs Assessment Project*[5] found that cuts to legal aid staff resulted in "…not having enough qualified individuals in the field to give clients legal advice, help them define a legal issue to pursue a remedy, or provide representation."

The report *Public Legal Education and Information (PLEI) in British Columbia*[6] documented the need for person-to-person contact, so that the PLEI materials that exist can be made accessible to the user. BCCEAS experience documents the need for public legal information, education and outreach services in order to ensure that our potential clients (particularly older immigrants, older persons with declining cognitive abilities or with low literacy skills, and older persons with disabilities) understand that legal remedies are available to address their issues and know how to access services. However, the availability of appropriate outreach and materials addressing the legal issues of seniors is not sufficient. As found in *Public Legal Education and Information (PLEI) in British Columbia*, "the increasing transfer of PLEI to electronic/web-based resources, while valuable to service providers and many clients, is not readily accessible to some groups such as isolated seniors, Aboriginal communities and those with mental health issues."[7] Respondents to the study found that seniors, immigrants, people with disabilities and people with low literacy skills (who are often seniors) require further PLEI services.[8]

Data collection and Needs Assessments in jurisdictions such as Ontario have also shown strong analogous evidence, which has led to the creation of seniors' PLEI, outreach, advocacy and representation services elsewhere.

Support for the need for legal services for older adults can also be found in the following related studies:

- Stage One Client Outcomes Survey for the Law Foundation of BC, October 19, 2005
- Annual client statistics of BCCEAS
- Aging Well (The Report of the Premier's Council on Aging and Seniors' Issues)

[4] Social Planning and Research Council BC, 2004 at 75.
[5] Community Legal Assistance Society, 2004 at 31.
[6] CS/RESORS Consulting for the Law Foundation of BC, 2005 at 4.
[7] *Ibid.*
[8] *Ibid.*

- New Westminster Survey of the Needs of Older Adults (in progress)
- Burnaby Survey of the Needs of Older Adults (in progress)
- Aging with Challenges, Canadian Centre for Elder Law

A resolution endorsing elder law clinics was unanimously passed by the plenary of the October 2006 Canadian Conference on Elder Law. Subsequently, support for this project was identified by the CBA BC Branch Elder Law section as the single most important issue facing elder law lawyers and older adults in BC today. Further, this issue was also considered at the National Judicial Institute training (of BC's federally appointed judges), November 2006.

This Needs Assessment further documents the need for legal services for older adults, as has been identified in earlier studies.

c). Demographics

It is no secret that the population is generally aging at the international, national, and provincial levels. In Canada, the aging of the population will significantly accelerate over the next three decades, as individuals born in the "baby boom" years of 1946 to 1965 begin turning 65 years old. With this shift, the number of seniors in Canada is projected to increase from 4.2 million to 9.8 million between 2005 and 2031, and older adult's share of the population is expected to almost double, increasing from 13.2% to 24.5%.[9] Seniors already outnumber Canadian children, and by 2041, 1 out of every 4 Canadians will be over the age of 65. In BC, however, the population is aging at a faster rate than the national average, and it is estimated that 1 out of every 4 British Columbians will be over the age of 65 by 2032.[10]

Within the current spectrum of Canadian seniors, there are significant demographic sub-groups, with distinct cohort characteristics. Between 1981 and 2005, the number of Canadians aged 65 to 74 increased from 1.5 million to 2.2 million, and their share of the total population increased from 6.0% to 6.9%. As individuals from the baby boom generation enter this age cohort, the number of 65 to 74 years olds is projected to increase to 4.8 million by 2031, accounting for 12.4% of the total

[9] Statistics Canada, *Population Projections for Canada, Provinces and Territories, 2005 to 2031* (Ottawa: Minster of Industry, 2005)
[10] Aging Well in British Columbia, online: British Columbia Government <http://www.cserv.gov.bc.ca/seniors/council/docs/Aging_Well_in_BC.pdf>.

population. The number of Canadians aged 85 or over will nearly double as well, rising from about 500,000 in 2006 to about 900,000 in2026. With "old age" now spanning a period of 20 years or more, the characteristics and experiences of seniors are increasingly varied and unexplored.

The need for these services will rise. As the number of seniors in the population increase, so will the number of seniors who will be subject to abuse. It is estimated that between 4-10% of Canadians over age 65 (at least 169 000 to 421 700 older persons) experience one or more forms of abuse or neglect in later life. Research indicates that one in every twelve older adults (8%) in British Columbia experience abuse. Abuse as defined by the *Adult Guardianship Act*[11] refers to the deliberate mistreatment of an adult that causes the adult (a) physical, mental or emotional harm, or (b) damage to or loss of assets, and includes intimidation, humiliation, physical assault, sexual assault, overmedication, withholding needed medication, censoring mail, invasion or denial of privacy, or denial of access to visitors. Vulnerable and abused older adults require specialized legal services in order to prevent, stop or recover from the impact of the abuse.

3. Description of the Research and Methodology

The Needs Assessment research was conducted with mixed methodology. Each component was designed to pursue the 2 key research questions from different data sources and perspectives. Research was conducted in 2007-2008 and was both qualitative and quantitative in nature. This report summarizes and synthesizes the results of each of these components.

The research components include:

1. Field research including surveys, interviews and a community forum (the "Community Forum"), (collectively, the "Field Research")
2. An extensive literature review on best practices and service delivery models in the US and Canada (the "Literature Review")
3. Data gathering and analysis of ACE, including a site visit to ACE and meetings with its staff ("ACE Research")
4. Data gathering and analysis of US Clinics, including consultant US site visits and meetings with leading US elder law clinic practitioners ("US Clinic Research")

[11] R.S.B.C. 1999, c. 6.

Recommendations emerged from each of these components. A summary of the results of each of these components, along with research outcomes, is provided below.[12]

a) Field Research

i) Interviews and Surveys

Field Research was carried out in the Greater Vancouver area in April and May of 2008. Data was gathered in interviews with individuals from diverse community organizations, health and government representatives, and academics in the field of gerontology. Surveys with seniors and lawyers were also conducted.

The participatory action approach was the methodology used for the Field Research. This method was chosen to ensure that the voice of the community and of seniors in particular was heard. In total, 27 key stakeholders were interviewed and 219 surveys from seniors and lawyers were submitted. The strong preponderance of the respondents was from the Lower Mainland. The interview questions and surveys were designed to provide answers to the following two key research questions: 1) What services should be prioritized by the new Clinic, and 2) What best practices, service models and protocols should be implemented at the new Clinic?

ii) The Community Forum

Overview

On May 21, 2008 BCCEAS held a Community Forum to provide input into the Needs Assessment for the Clinic. This Community Forum was very well attended, with more than 110 representatives from community groups, seniors groups and other BC legal clinics. A list of agencies that participated in either the interviews or the community forum is attached to this report as Appendix A.

Attendees participated in both plenary and small group sessions. Facilitators were given specific questions to discuss, each of which was designed to elicit more information about issues that had emerged as being significant during the interview and survey stage. Scribes were briefed ahead of

[12] *Supra*, note 2. For more information about the original memoranda provided to BCCEAS from the consultants and about methodology for the literature review please contact BCCEAS.

the focus group sessions by the research team, and were given specific instructions on how to consistently document the focus group discussions. The scribes were then each assigned to a focus group, where they gathered and documented the information.

Data Analysis

The research team then compared the three data sources to see if similar results were reached. This methodology is known as triangulation and is commonly used in social science research to test the reliability of data gathered. As such, the focus group data was analyzed against the data gathered from the interviews and surveys. The information gathered at the forum was similar to answers to questions on the surveys and in the interviews, which demonstrates strong reliability of the data gathered.

Background

Bob Rhudy, US consultant to the Needs Assessment, strongly recommended holding a Community Forum, bringing together key community stakeholders, seniors groups, members of the Bar, as well as other interested parties. He recommended that BCCEAS use this Community Forum as a specific component of the Needs Assessment research. This approach is commonly used in the US to gather community input when a new legal aid clinic for older adults is being established.

BCCEAS followed Bob Rhudy's recommendation and held a forum on May 21st, 2008 at Vancouver Community College. There were several goals for the day, which included:

- Gaining community input regarding service priorities for the Clinic ;
- Discussing possibilities for Collaboration with community groups and the legal community;
- Relationships with new community partners and to promote networking among the groups in attendance;
- Strengthening our relationship with existing partner organizations and to start to build; and
- Managing community expectations for the Clinic project

Attendees were divided into six different groups for the morning discussion. Each group consisted of 15 – 22 persons. The six groups were divided as follows:

1. Legal Community;
2. Multicultural Agencies;
3. Community Based Organizations – Management Representatives;
4. Community Based Organizations – Front Line Workers ;
5. Senior's Groups: and
6. Health Authorities, Government and Police.

At the Community Forum, morning discussions focused on issues related to setting service priorities and accessibility issues in delivering legal services for older adults. In the afternoon, attendees were divided into multidisciplinary groups. They discussed collaboration among service providers and long-term goals for developing legal services for seniors.

Evaluation

Community feedback on the forum was very positive. Attendees received a questionnaire at the end of the event which included questions on where/how the participants' agency currently refers clients with legal issues, and about community needs and collaboration possibilities. Numerous respondents provided comments about the forum itself. A sample of comments about the Community Forum is as follows:

- "We look forward to this Clinic as a future place to refer our clinic clients to, including possible persons in need of advocacy for poverty issues, power of attorney or abuse."
- "There is a huge potential for a symbiotic relationship between [our agency] and BCCEAS."
- "We need a strategy to help educate seniors on places they may seek legal aid."
- "We would like to share not only questions and answers but also documentation of some case studies."
- "This was a fantastic forum. I would like to be involved in this type of law clinic on a regular basis."

b) Literature Review

During this project BCCEAS conducted an extensive Literature Review of the following:

- Elder law clinic service delivery models in Canada;
- Elder law clinic service delivery models in the US;

- Other legal aid services in BC;
- Seniors' services available in BC, with a focus on the Lower Mainland;
- Accessibility issues for services for older adults;
- Best practices and priority issues for elder law clinics in Canada and the US;
- Referral systems; and
- Collaborative models and networking strategies for elder law clinics.

This extensive Literature Review was conducted through a review of academic journals, government resources, community program experts, and online searches. Both American and Canadian practices were reviewed, and contextual differences between the two jurisdictions were examined.

c) Information Gathering From Experts

In addition to the literature review and the local field research, two experts in legal aid clinics for older adults actively participated in this project. Bob Rhudy, an expert on U.S. Legal Aid Clinics gathered data in American jurisdictions and provided recommendations to BCCEAS. Judith Wahl, executive director of ACE gathered data from ACE and provided recommendations to BCCEAS.

B. Canadian Clinic Research (ACE)

The only legal aid clinic for older adults in Canada is ACE,[13] which is located in Toronto, Ontario.[14] Although there may be some programs for older adults within legal aid programs for a broader range of clients, ACE is the only legal aid clinic specifically for older adults in Canada. The Clinic

[13] Judith Wahl's involvement in this project was of significant assistance. She was retained as an expert to the Needs Assessment research team. She directly provided the following information, support and advice to the project:

1) Consulted with Joan Braun during Joan Braun's site visit to ACE in January 2008;
2) Participated in teleconference meetings with Joan Braun and members of the BCCEAS board to provide advice about Clinic policies and practices;
3) Provided advice to Joan Braun and the BCCEAS board during meetings in Vancouver on May 20 and 22, 2008;
4) Attended the Needs Assessment community forum on May 21, 2008; and,
5) Provided information about ACE's experiences over the past two decades of operations including providing statistics and information about types of cases, services provided and lessons learned.

[14] Although some information about ACE is available on the Internet, most of the information in this section was gathered during BCCEAS' Executive Director's site visit to ACE in 2008 and during a visit by Judith Wahl to BCCEAS in May 2008. As well Judith Wahl and the staff of ACE provided BCCEAS with statistical data and historical documents about ACE and made themselves available to respond to questions.

operated by BCCEAS will be the first clinic for older adults in all of western Canada and the second in the country.

This section provides an overview of the ACE model including historical information, an overview of the services provided and a description of the development of services over ACE's 24 year history.

1. Legislative Framework

ACE is a specialty clinic of the larger Legal Aid Ontario system (the Corporation). As a clinic, it is governed by the Ontario *Legal Aid Services Act*, specifically sections 13 and 33[15]:

13.(1) The Corporation shall provide legal aid services in the areas of criminal law, family law, Clinic law and mental health law.

(2) Subject to subsection (3), the Corporation may provide legal aid services in areas of civil law not referred to in subsection (1).

(3) The Corporation shall not provide legal aid services,

(a) in proceedings wholly or partly in respect of a defamation;

(b) in realtor actions;

(c) in proceedings for the recovery of a penalty where the proceedings may betaken by any person and the penalty in whole or in part may be payable to the person instituting the proceedings;

(d) in proceedings relating to any election; or

(e) in prescribed areas of civil law, for prescribed types of civil cases or for prescribed types of civil proceedings.

33(1) The Corporation may provide funding to a clinic to enable the clinic to provide legal aid services to low-income individuals or disadvantaged communities.

(2) In deciding whether to provide funding to a clinic, the Corporation shall consider any matter it considers relevant to the decision, including,

(a) the legal needs of the individuals or communities that the clinic will serve;

(b) the cost-effectiveness and efficiency of providing legal aid services through the clinic;

(c) the past performance of the clinic, if any, in meeting the legal needs of the individuals and communities that it served in a cost-effective and efficient manner.

The limited restrictions and the broad definition of Ontario legal aid clinic law, as set out by the legislation, are such that ACE has the ability to be flexible in terms of the provision of services.

[15] *Legal Aid Services Act*, 1998, S.O.1998, c. 26

Although the Clinic in BC will have many similarities to ACE in Ontario, the service delivery model in these two clinics will also have some significant operational and contextual differences. The existence of the strong legal aid system in Ontario and the extremely limited legal aid system in BC puts more service pressure on the new Clinic in BC. Further, ACE is operationally funded and supported by a larger organizational model. It can refer cases not directly under its purview to other appropriate clinics or to the private Bar pursuant to the Ontario legal aid certificate program. In BC, the Clinic will refer to the private bar, but for many older adults of low or middle income this will not be an option and BCCEAS will need to find new ways to work closely with the Bar.

2 History of ACE

ACE was established in 1984, after successfully applying to the Ontario Legal Aid Program for funding for a clinic to serve the lower income older population of Ontario, specifically Toronto. The impetus for this arose from people who were concerned with the lack of resources available to this specific segment of the population. The request was organized by members of the *Concerned Friends of Ontario Citizens in Long-Term Care Facilities*. ACE was the first community clinic in Canada that focused on elder law issues.

At its inception, the Board and staff of ACE conducted a Needs Assessment survey by engaging with seniors groups and community organizations. Through these efforts, ACE was able to develop case types and case selection guidelines that would best serve the population. In order to ensure that ACE is able to meet the changing needs of their clients, these outreach efforts continue.

3) An Overview of Legal Aid in Ontario:

ACE is a part of a broader legal aid system in Ontario. Within Ontario's legal aid program there are three types of service provision:

1. A certificate program that allows persons of low income to hire a lawyer. Individuals apply for legal assistance at a local legal aid office. If they are financially eligible and if the services they require are available, they are issued a certificate which enables them to hire a lawyer participating in the program. Lawyers performing legal aid services are paid by the Legal Aid Fund at an agreed rate.

2. Community legal aid clinics which are located throughout Ontario. Legal clinics provide general legal information to all persons, regardless of income. They also represent clients who meet financial eligibility guidelines. Representation is provided in matters related to landlord tenant, rent review, welfare, unemployment insurance, worker's compensation, human rights and immigration. Clinics also carry out legal education, community development, and law reform activities. They also refer clients to the private Bar for matters not covered by clinic services.

3. Specialty legal aid clinics that specialize in a particular area of law or focus on a particular client community. These include ARCH Disability Law Centre (provides legal services to the disability community) the Correctional Law Project (provides legal services in parole and penitentiary matters, and the Centre for Spanish-Speaking Peoples.

Day-to-day operations are the responsibility of the Executive Director, Judith Wahl. ACE is managed by a democratically elected volunteer board of directors. The board has the authority to establish both the coverage and financial eligibility criteria as long as they conform to the basic framework of the *Legal Aid Services Act*.[16]

As a specialty community clinic, ACE provides services to the older, low-income population. Summary advice can be provided without the client having to meet a financial eligibility requirement, but further services are provided only if the client fits within financial eligibility guidelines. Legal Aid Ontario sets an overall financial guideline for all community legal clinics however the Boards of individual clinics may place further restrictions or limitations on this guideline or allow for exceptions to the guidelines in appropriate circumstances in order to meet the legal needs of the community that the clinic serves.

As discussed, Ontario's legal aid system is governed by the *Legal Aid Services Act* and its accompanying Regulations. Pursuant to the Act, the governance and funding regimes for Ontario's legal aid plan are administered. In order to preserve clinic autonomy, while ensuring public accountability for funds, a series of checks and balances has been created. Legal Aid Ontario and the individual clinics enter into a Memorandum of Understanding and a Funding Agreement.

[16] *Supra*, note 15.

Legal Aid Ontario is responsible for administering the terms and conditions of the funding, while the board of a clinic is responsible for determining the legal needs of the individuals and communities served, or to be served, by the clinic. It is also responsible for ensuring that the clinic provides legal aid services in the area of clinic law, in accordance with those needs. The clinic board is also responsible for the clinic's operational policies, such as the determination of case priorities. Each clinic is set up as an independent community organization, structured as a corporation without share capital, and provides legal aid services to its target community on a basis other than "fee for service." As such, each clinic has a board of directors composed of democratically elected, volunteer members.

Legal Aid Ontario is responsible for setting an annual budget for all legal aid services based on a three-year cycle. This budget includes allocations for Community Legal Clinics. Each year clinic boards must submit an annual funding application to Legal Aid Ontario that includes a detailed annual budget as well as annual goals and objectives, along with a report on the previous year's goals and objectives. Clinic boards are held accountable for the funds they receive and must comply with specific guidelines. Financial and substantive activity reports must be provided to Legal Aid Ontario on a quarterly and annual basis.

4) Services Provided by ACE

The *Legal Aid Services Act* and the Memorandum of Understanding set out the potential scope of services that can be provided by a clinic, but does so in a fairly broad way. Under the Act and the Memorandum, clinics can provide the following services, all of which are provided by ACE:

1. Legal representation and advice, which includes summary advice and legal information within clinic areas of practice, and client representation before courts and administrative tribunals;
2. Community development and organizing;
3. Law reform;
4. PLEI; and
5. Referrals to social service and community organizations, as well as lawyers.

Client services provided by ACE meet the following objectives:

1. Providing access to justice for low-income seniors;
2. Assisting individual seniors and groups of seniors with legal problems that have a particular impact on the older population;
3. Assisting seniors with legal issues relating to mental incapacity and cognitive changes; and
4. Challenging legislation and policy from any source that has a negative impact on older persons.[17]

Service priority areas are set by the board of directors and are reviewed periodically. This flexible approach allows ACE to place emphasis on the important, yet often evolving or changing needs of seniors, rather than on a specific prescriptive list of issues.

ACE lawyers provide legal representation to clients of low income in areas of law, similar to services that might be provided by members of the private Bar if the client had the resources to hire a lawyer.

An example of a key area of service for ACE is litigation to recover stolen or misappropriated assets of the senior. While a member of the private Bar might represent a client in this type of matter, it is less likely to happen if the assets at stake are small. Yet losing life savings can be a tragic event for the client, even when the amount is relatively small. ACE is able to step in, represent the senior and attempt to recover the assets or pursue damages in lieu. As a result of this positive intervention and access to justice, which ACE can provide, many seniors are able to retain health, independence, well being, and to contribute positively to their community.

ACE is also able to provide specialized services that are not provided by the private bar, which directly support older adults' access to justice. One key example of exclusive specialized elder law services includes the work of a staff lawyer who is designated as an "institutional advocate". This institutional advocate is responsible for providing legal services on matters related to long-term care. Clients represented by the institutional advocate are often extremely vulnerable to abuse and neglect. These clients may be prevented from having visitors, be given the wrong medicine or may be placed in a care home where they are being abused and neglected. There are many different ways that these vulnerable clients can have their rights violated, yet there are very few lawyers working in

[17] ACE Community Legal Clinic Funding Application 2008/09, Legal Aid Ontario.

this area of law at all. These issues are further complicated by the fact that many clients are legally incapable by this stage of their life and the legal advocate often deals with the older adult's legal representative.

Some further examples of the types of issues that the lawyers at ACE provide assistance for are as follows:

- Denial of a government pension or benefit;
- Poor care in a nursing home, home for the aged, or other health care facility;
- Inappropriate use of the financial or health care Power of Attorney given to a relative or friend;
- A relative or friend looking after the seniors money and not keeping the senior informed;
- Denial of or problems with community based services;
- Client is being pressured to move out of his/her home into a nursing home, home for the aged, or retirement home;
- Problems with rent, care services, or eviction as a tenant of a retirement home;
- A retirement home refuses to allow client to return from hospital because they need too much care;
- Money or property has been taken by someone in a position of trust or authority without client's consent;
- Someone who lives in client's home is threatening or abusing them physically, emotionally, or financially;
- Client have been found incapable of making some type of decision and wants information about his/her rights or wish to challenge the finding; and
- Client is not being allowed to leave a psychiatric facility or other hospital.

Where possible, the ACE staff lawyers try to negotiate a resolution to the legal problem or find a creative solution rather than going to court. However, where going to court is necessary, they will do so.

When ACE receives a request for services from persons who need assistance on matters that do not fit within ACE's scope of services, then an appropriate referral is made to the private Bar or to

another legal clinic. Examples of areas of law where services are not provided include wills and estates, real estate transactions, estate administration, criminal, and family law matters.

In addition to providing individual and group client advice, legal representation and referrals, ACE provides PLEI and community development work. Through engagement in public legal activities such as public speaking, participation at conferences and preparation of written materials, ACE hopes to develop casework and to educate the community on seniors' legal issues. In 1985, ACE provided over 44 public legal information sessions[18] with that number growing to over 90 per year currently.[19] ACE is involved in various PLEI and Community Development projects, including participating as instructors for a training course at the Toronto Police College on the identification and response to elder abuse for Police and Crown Attorneys. ACE also provides training for the staff of the non-specialized community legal aid offices.

ACE also engages in law reform related to long-term care facility issues, health care consent and advance care planning in hospitals and local health integrated networks, care home legislation and life lease housing. In addition to these, ACE is, or has been involved with the Senate Committee on Aging, the National Seniors Council, the Ontario Human Rights Commission, the Civil Justice Reform Project, and has participated in consultations regarding the *Accessibility for Ontarians with Disabilities Act*.[20]

5. Present ACE Staff Structure

ACE currently employs eight staff members: five lawyers, one of whom is the Executive Director, two support workers that also are part of the intake services, and one office manager. Many legal aid offices in Ontario employ paralegals (or community law workers) but ACE does not do so at the present time.

All of the lawyers at ACE are responsible for carrying cases, although they carry different case loads depending on their other work responsibilities. The Executive Director is responsible for a broad range of duties including clinic administration, outreach, and training. Due to her other

[18] Advocacy Centre for the Elderly, Application for Funding – Fiscal Year 1986/87
[19] Advocacy Centre for the Elderly website, online: <http://www.advocacycentreelderly.org>.
[20] *Supra*, note 19.

responsibilities only 25% of her time is spent on case related work. The other four lawyers in the clinic spend varying degrees of time on case related work and on other duties such as outreach and education. One lawyer spends 95% of the time on case related work. The other three lawyers spend 80%, 75%, and 65% respectively.[21]

The clinic lawyers have responsibilities for different areas of practice, namely: i) intake, ii) litigation, iii) institutional advocacy, iv) research and v) the responsibilities of Executive Director. The names of the current lawyers are:

a. Judith Wahl – Executive Director;
b. Rita Chrolavicius – Intake staff lawyer;
c. Jane Meadus – Institutional advocate;
d. Graham Webb – Litigation lawyer; and
e. Lisa Romano – Research lawyer.

ACE now annually receives approximately 3000 contacts from new callers. Some of these who have issues not covered by ACE are referred to more appropriate services; some callers receive advice and information over the telephone; and some callers are represented by staff lawyers in problem resolution negotiations, in court matters, and before tribunals.[22]

6. Role of Board and Staff

ACE is structured as a non-profit charitable corporation without share capital. As such it has a democratically elected volunteer board of directors who play an important governance role. One aspect of this governance is to set service priorities for the clinic. Priorities were set when the clinic opened and are reviewed periodically by a board committee. However, the board is arms length from the day-to-day operations of the clinic. The lawyers in the clinic, under the direction of the Executive Director, are responsible for deciding which cases to take and which to refer. The staff use the service priorities set by the board to make this determination. In certain circumstances the Executive Director is able to make exceptions to eligibility criteria. The Executive Director keeps track of any of the instances where exceptions are made. The Executive Director reports to the

[21] *Ibid*.
[22] *Ibid*.

board and prepares financial and other reports for the board's review, as would be the case in any non-profit organization. Due to confidentiality and professional requirements of the Law Society, the clinic lawyers make all decisions about which specific clients will be seen and have full conduct of the files. The board is responsible for overall strategic and governance issues and does not have a mandate to oversee daily operations, or have access to the specifics of any case. For example, board members are informed of legal clinic services but not the specifics of any case. The Executive Director is responsible for speaking on ACE's behalf at conferences and to the media as she has a better awareness of the specific work the clinic is doing.

Members of the board are actively involved in governance issues through participation in ACE board committees.

7. Intake Process

Client inquiries to ACE are answered by two intake workers who document their conversations with callers on computer intake forms. Basic case information is entered into the computer regardless of whether or not the caller is referred to another service or is processed for intake. If the caller is willing to give his or her name, that information is entered into the computer. If not, an alphabetical code is used. There is a limitation on the advice and information that the ACE clinic staff can provide to the client that will not provide identification of their name. Specific legal advice cannot be provided unless a client does identify him or herself.

The intake workers are also trained to follow certain protocols. For example, since ACE restricts the provision of representation and summary advice to older adults and their legal representatives, if calls are received from family members and friends the caller is instructed to "have the senior call us." The policy of only providing representation to the older adult or the legal representative of the older adults helps to limit the problem of conflicts. Family members and health care providers may have adverse interests to the older adult if the dispute is about financial or health care. However, in some situations summary advice can be given to non-senior callers, but only in cases where there is no possibility of conflict.

If the caller is a third party caller, or if the case does not fit within ACE's scope of services, the intake workers will provide referral and legal information. In these situations the caller will be told,

"the lawyer will not call unless he or she has information to add." Any call that requires further steps beyond information provision is referred to the lawyers to provide summary advice or representation. How quickly the call is returned depends on how busy the lawyer is and whether or not the situation is an emergency. Most calls are returned within one working day.

All intake forms are reviewed by a lawyer even when the case is referred to someone outside the clinic or when only basic legal information was given. The intake lawyer will follow up with a call if, in his or her opinion, key information was not provided during the initial conversation with the intake worker. All of the lawyers in the clinic take turns processing the intake forms. These are placed in two different inboxes. Inquiries that are resolved by the intake worker are placed in a "closed" pile and the forms describing calls that have been forwarded to the lawyers for intake purposes are placed in an "intake" pile. The lawyer assigned to intake will review the case notes taken by the intake workers, call any non-referral cases where clarifying information needs to be provided, and return calls to clients who the intake workers have referred to lawyers in the clinic. Staff lawyers determine what type of service is needed, ranging from legal information to full representation.

8. ACE's Growth and Development

Demand for services and funding needs have increased significantly over the two decades that ACE has been in operation. The original staff structure when ACE opened its doors was two lawyers, one community legal worker (paralegal) and one support staff. The clinic grew rapidly. By 1998/1999 ACE clinic staff had grown to six full-time employees. At the present time, ACE employs five full-time lawyers and has three full-time support staff. Demand for services has also greatly increased. In 1985, ACE received 1582 intake calls.[23] This captures all calls, including client inquiries and calls about PLEI, law and policy reform and community development. In contrast, ACE now annually receives approximately 3000 contacts from new callers. Some callers have issues not covered by ACE and are referred to more appropriate services, some callers receive advice and information over the telephone, and some callers are represented by staff lawyers in

[23] Advocacy Centre for the Elderly, Application for Funding, Fiscal Year 1986/87.

problem resolution negotiations, in court matters, and before tribunals.[24] Some of these calls also relate to law and/or policy reform and community development issues.[25]

In 1985, between January 1 and December 31, there were 208 files opened, with 155 cases closed.[26] In the period January 1, 2007 to December 31, 2007, the clinic started the year with 265 files open, opened 205 new files in that year, and closed 257.[27] The 2008/09 application for funding documents statistical changes over the previous two years.

- Two trends are documented in the most recent funding application;
- More client work (representation and summary advice) involving health care issues, primarily in regard to and hospital discharge issues; and
- More brief service matters concerning housing issues and health care matters[28]

This application notes that, although the housing and health care matters are defined as "brief service," they often take well above three hours and involve "a substantial amount of fast work – with the matter taking a great deal of time over a short period of time and usually coming to completion in about 2 to 3 weeks."[29]

In 2007, the statistical breakdown by area of law in which client summary advice, brief services, and representation were given are as follows:

Client representation by Percentile (Files opened in 2007)

Housing	1.1
Income Maintenance (CPP, OAS, etc)	4.1
Health Care	72.1
Mental Health	4.4
Powers of Attorney	12.2
Guardianships	3.3

[24] Advocacy Centre for the Elderly, Statistical Report, Jan 1/07- Dec 31/07
[25] Some calls about Law Reform, community development and PLEI do not get recorded in the data system. Other calls of this nature do not get individually recorded in the data numbers as they are part of the ongoing work in a file and are recorded in that file. This accounts for discrepancies between data statistical reports and numbers of callers reported.
[26] Advocacy Centre for the Elderly, Application for Funding – Fiscal Year 1986/87.
[27] *Supra,* note 16 - please note that files are not opened on brief service matters and summary advice matters, only client representation, community development, law reform and PLEI.
[28] In the Ontario Legal Aid Clinic system service of less than 29 minutes is defined as summary advice, service for 30 minutes to two hours is brief service and anything more than two hours is representation.
[29] *Supra*, note 19.

Health Care Consent	8.9
OHIP Issues	3.3
Health Care Facility Issues (LTC and Hospitals)	38.9
Regulated Health Professions Complaints	1.1
Family	2.2
Estates (Includes financial abuse)	17.8
Elder Abuse	2.2
Sexual Assault	2.2
TOTAL	100%

Client Representation by Percentile (Files closed during period)

Housing	3.0
Income Maintenance (CPP, OAS, etc)	6.8
Health Care	66.9
Mental Health	3.0
Powers of Attorney	8.3
Guardianships	4.5
Health Care Consent	6.8
OHIP Issues	3.0
Health Facility Issues (LTC and Hospitals)	40.6
Regulated Health Professions Complaints	.8
Criminal Code	1.5
Consumer and Debt	6.0
Estates (includes financial abuse)	14.3
TOTAL	100%

Brief Services by Percentile (new during period)

Housing	10.1
Income Maintenance	5.5
General Administrative	.9
Health Care	54.8
Mental Health	1.3
Powers of Attorney	9.2
Guardianships	3.3
Health Care Consent	10.7
OHIP Issues	1.2
Health Care Facility Issues (LTC and Hospital)	25.4
Regulated Health Professions Complaints	1.4
Health Care Other	.05
Human Rights	.1
Criminal Code	1.4
Family	2.7
Consumer and Debt	7.0

Estates (Includes Financial Abuse Matters)	14.2
Elder Abuse	2.6
TOTAL	100%

Summary Advice by Percentile (new during period)

Housing	7.1
Income Maintenance	4.3
General Administrative	1.7
Immigration	.9
Employment	.1
Public Services (Utilities, Wheeltransport etc)	1.3
Healthcare	46.9
Mental health	1.4
Powers of Attorney	9.6
Guardianships	4.5
Health Care Consent	10.
OHIP Issues	.8
Health Facility Issues (LTC and Hospitals)	16.8
Regulated Health Professions Complaints	1.3
Health Care Other	.6
Criminal Code	1.9
Family	5.1
Environmental	.1
Consumer and Debt	6.3
Estates (Includes Financial Abuse Matters)	5.6
Other (Personal Injury, Other Torts, etc)	17.3
Elder Abuse	1.6
TOTAL	100%

As ACE is part of the large legal clinic system in Ontario with at least one local community clinic located in every county in the province. The majority of calls from seniors about standard landlord and tenant issues and income maintenance issues would not come to ACE but would go directly to one of 80 local community legal clinics. The seniors housing issues that ACE deals with are primarily in respect to retirement homes and supportive housing (the equivalent of assisted living housing in BC). This is why the housing statistics are so low although ACE is a poverty law clinic.

9. Capacity of ACE Clinic

In the early years at ACE, the lawyers and legal worker had to be generalists, dealing with any matters that came into the office. As a large number of cases and client calls were about legal issues

in health facilities, particularly in long-term care homes, in 1987 ACE created the institutional advocate position. As ACE's resources expanded, the lawyers were able to divide up the work in more efficient ways, with one lawyer becoming primarily responsible for litigation in 1995, one lawyer becoming primarily responsible for intake and short term matters, one lawyer primarily responsible for research and brief writing (1988) and the Supervising Lawyer / Executive Director becoming primarily responsible for management and the law reform and major PLEI work.

At present, the services ACE provides are divided into four main streams:

- Client advice and representation;
- PLEI and writing;
- Law reform; and
- Community Development.

Client advice and representation is the primary focus of the work of ACE and takes up about 65-70% of the clinic staff time.[30] This time estimate includes the related administrative time for data entry on intakes and for support of the client work.

It is difficult to estimate time per file or time per case type file as little of the work that ACE does lends itself to a standardized protocol of response. Many of the areas in which ACE provides assistance to clients do not have specific remedies, such as in criminal law or family law. Many of the matters require ACE staff to be creative in finding a remedy or finding a process to pursue a remedy. For example, in 1988, ACE was a retained by120 seniors living in a retirement home in Toronto regarding a rent review matter. The seniors had been given notice of a rental increase substantially larger than that permitted in the rent control system. Although it was clear that existing rent review legislation applied to tenancies, it was not clear whether rent control applied to retirement home accommodation. ACE made a request to the Ministry of Housing for the rent review office to initiate a "Minister's Own Motion," a rarely used type of application to determine

[30] The statistics here are "best guess" estimates by the ACE Executive Director as the present data management programme at ACE does not permit ACE staff to maintain records of time spent on all types of work and only allows for a specific entry of time on client files (as opposed to an automatic cumulative count). ACE must use the present data management programme known as Case Management Tool (CMT) as it is a requirement of Legal Aid Ontario (LAO) that this programme be used. LAO has made a commitment to the development of a new data management programme for community legal clinic s to enable clinics to engage in more effective and meaningful data collection and time management information.

whether retirement homes were exempt under the Rent Control legislation. The Ministry of Housing was persuaded to make this application. This then allowed ACE to use the ordinary process and remedies in the rent review system. The result of the Ministers Own Motion was a decision that retirement homes were exempt from rent review. ACE appealed that decision to the Rent Review Tribunal and was successful at that tribunal. They were also successful in establishing that the relationship was one of tenancy, and thus was subject to rent review, at the Divisional Court.

This landmark precedent-setting case continued on for over seven years. It required a substantial time commitment at various stages of the actions. In contrast, other retirement home matters might be quickly resolved through negotiations, or by just starting the action or engaging in a defense. It is not usually clear at the start of a file how long it will take to resolve. Two cases could have the same fact pattern, but due to personalities of the parties, complexity of facts discovered after the case is underway, and intervening factors, these two cases may have entirely different resolution time-lines.

Non-litigation matters may also have indeterminate time-lines. In particular, many of the health law matters do not result in litigation, but may be quite time consuming as it may involve talking to various players (government, administration at a facility, health professionals, front line staff, etc) as well as a lot of written arguments. Again, some matters are quickly resolved whereas other use up considerable time. Often these areas of law are quite "cutting edge" and there are no existing precedents.

File time spent on a matter may directly relate to the client's personal challenges. Because it is a community legal clinic, ACE has a higher proportion of clients that have challenges related to mobility, hearing, mental capacity, and mental health. What may be a fairly simple legal problem may take more time to resolve because of the need to spend additional time with the client to ensure that the lawyer has appropriate instructions. The legal staff may have to go to see the client rather than the client coming to the office for service. ACE staff members concur that it can be more effective and ultimately more efficient to see clients in their own homes rather than have them come to the ACE office. The site visit may be more comfortable for the client, particularly if they have challenges. This may assist the lawyer in communicating with the client and can support the client's

mental capacity. It may also allow the lawyer to gather information to help resolve the matter that would have taken more time to collect if the site visit had not taken place. In some cases going to the client is a necessity especially if they are resident in assisted living or in long-term care because of health needs.

Community development programs, law and policy reform activities, and PLEI and information initiatives are directly informed by client work. If the clinic has a high volume of similar calls on a particular legal issue regularly occurring in client intake, clinic staff may invest time in preparing public legal information materials or pursuing a law or policy reform initiative. They may also undertake organizing a project to work with seniors' groups on a community development initiative. These initiatives are pursued in an effort to effect systemic change and/or to find other ways of addressing the prevailing issue in a more effective manner than by a case-by-case approach.

Approximately 30-35% of the ACE services focus on public legal education and information, law and policy reform, and community development. The time spent on each of these activities varies from year-to-year, as it is dependent on client service demands, as well as opportunities.

For example, when the Ontario Ministry of Health and Long Term Care sent out press releases that the government intended to engage in significant law reform related to long term care homes, it was determined that time would be found to participate in that process. Over the three years that that Ministry undertook various consultations on this issue, ACE organized meetings with seniors' organizations to engage in discussions and mobilization around the legal issues related to long-term care. ACE staff was invited to consult directly with the Ministry as stakeholder members on various consultation committees. ACE staff wrote an extensive brief commenting on proposed legislative reforms. Additionally, ACE advanced hidden issues which had not been initially included in the Ministry proposals, but were based on the ACE experience with clients in long-term care. ACE also participated in a number of public legal education and information programs organized by other organizations and groups on the long-term care reform.

Although the client work is the first priority of the ACE clinic, ACE board and staff have made a commitment to the other clinic initiatives. A comprehensive approach to legal services is required to effect systemic change for the benefit of older adults in Ontario and beyond.

10 Canadian Expert Recommendations for BCCEAS (Judith Wahl)

As Executive Director, Judith Wahl was asked to provide some key recommendations based on the experience of ACE since it opened in 1984. Her recommendations are as follows:

1. Determine the eligibility criteria and be strategic to reach out to seniors with the greatest need within the service criteria through outreach, rather than depending on other service providers to determine who is eligible or to vet referrals. For example, in ACE's early years ACE did workshops in seniors' centres and other places to make the community aware of the service that was very successful in reaching out to individual seniors in need..

2. Keep the eligibility and scope of services policies broad and then narrow the scope of services internally. ACE uses a committee of the board to set service priorities and reviews them periodically.

3. Build relationships with the private Bar. ACE refers regularly to members of the private Bar of matters that do not fall within the case eligibility of ACE or that would require resources (time, research capability, and staff resources) beyond the scope of ACE. ACE has also used the private Bar effectively as co-counsel in "test cases" to address the resource issue. ACE has developed the capacity to take on larger cases in litigation as well as some of these test cases over time with support from the private Bar.

4. Keep expectations realistic. This may require actively managing these expectations. It is crucial to maintain and to develop credibility and expertise in seniors' legal issues, many of which have not had significant legal development. This will only be possible by developing a slow measured approach to the work of the Clinic. For example, BCCEAS will be able to speak out publically about certain reform issues if these issues reflect concerns expressed by clients in the Clinic.

5. Be very cautious of taking "positions" on issues as an organization. Situations can arise where legal advocacy for a particular client requires taking a "position" on their behalf.

However, if BCCEAS had already taken a previous official position on the issue and that position happened to be opposed to what is in the best interests of the client this can create difficulties.[31]

6. Limit the amount of litigation that the Clinic takes on until staffing levels increase. Litigation is time-consuming and requires support and resources. BCCEAS's present resources are too limited to realistically take on litigation cases. It may be possible to carry out some small claims litigation or to take cases in collaboration with other legal services. However, litigation in Supreme Court will not be possible with BCCEAS's current resource level. For example, a litigation file in which a lawyer goes to court to get an order for the return of stolen funds takes at least 100 hours with secretarial support. Based on these estimates it appears that BCCEAS could only provide representation in court for ten clients or less.

7. Staff lawyers need to oversee the intake process and review files. In situations where there is a broad range of cases being represented in the calls to a legal clinic for services only a lawyer can identify all the legal issues in any one case. ACE receives inquiries about a very broad range of issues. This is the situation at ACE, and lawyers always review the intake worker's notes to ensure that nothing was missed. If BCCEAS receives a similar broad range of referrals they BCCEAS should be cognizant of the limitations of non-legal staff when designing an intake system.

8. Develop an effective board that includes representation from the client community, the legal community and the financial community to ensure that the Clinic has management direction. This is to assist in supporting the older adult client community and others committed to the mission, vision, values, goals, and objectives of the Clinic. This is important for the credibility of the Clinic as well as for effective operations.

[31] ACE operates on certain basic principles (eg: seniors are not a homogeneous group; seniors are people and not all vulnerable; the senior, if capable, is the instructing party; it is fundamental to take direction from the senior client and not from their family members or from their health providers; seniors are entitled to the same protections of the law as any other adult and to fair process in the resolution of any issues etc.) These established core principles are distinguishable from position taking. In law and policy reform work, ACE's direction or mandate is derived from its clients' experience. ACE also consults with major seniors organizations and seniors groups on issues when engaging in law reform projects to have that work reflect the experience of the senior's community.

9. Develop an operational model that has day-to-day operations under the direction of the Clinic Executive Director and the overall Clinic governance issues under the purview of board of directors.

10. Ensure that time within the Clinic can be spent on legal research by staff engaging in the direct client services. This is necessary in any legal practice but even more so in an elder law clinic as much of this law is "cutting edge" and not well-entrenched in case law. It is important that the lawyers and legal staff challenge their own assumptions about what the law is or what approach to take.[32]

C. U.S. Clinic Research

1) The American System - Legislation

In the US, legal aid clinics for older adults are fairly well resourced and located across the country. This prevalence in the US is largely due to governing federal legislation, known as the *Older Americans Act*[33] (OAA), which directly influences and supports funding for the delivery of such services. Indeed the monetary appropriation (federal treasury budgeting) pursuant to the OAA is one of the main funding sources for low-income senior legal services across that country.[34]

Title II of the OAA established the Administration on Aging (AoA), a national agency whose mandate is to oversee the development of services and opportunities for older people in every community across the nation. The AoA provides funds, pursuant to the OAA, to State Agencies on Aging to carry out this mandate. In turn, most states designate Area Agencies on Aging (AAAs) to

[32] It is the ACE experience in Ontario that the law may be "good" but the practice or implementation of the law may be "bad", particularly in senior's legal issues. For example, when ACE pursued the case as to whether the retirement home was subject to rent control, the common assumption is that accommodation with care was exempt. At the conclusion of that case, it was clear that retirement homes (assisted living) were not only subject to rent control but were tenancies. ACE represents many seniors with issues in health law. ACE has successfully challenged assumptions about the authority of health facilities to charge seniors for health care services; the failure of health professionals to obtain appropriate consent to treatment when the patient is a senior, and; the eligibility and access of seniors to public health services. This was only possible by taking the time to do the basic research to then be able to have a credible case to challenge the bad practice.

[33] *Older Americans Act Amendment 2006* Pub. L. No. 109-365, 2006.

[34] Department of Health and Human Services, Administration on Aging, online: <http://www.aoa.gov/about/about.aspx>.

further this mandate within planning and service areas across the state. This infrastructure is well developed and established.

As originally enacted in 1965, the OAA did not specifically mention legal services as one of the services to be provided. It was not until regulations were developed for implementation of the 1973 Comprehensive Services Amendments that the definition of Title III social services included legal services.[35] The OAA at present requires state departments of aging to include staffing for a legal services coordinator and Area Agencies on Aging (AAAs) to allocate some funding for legal services.[36]

The AAAs work to assist communities in developing a range of services and opportunities through the following activities: planning, coordinating, interagency agreements, advocating, information sharing, monitoring, and evaluating. Their efforts are directed toward developing a comprehensive and coordinated community-based service delivery system. AAAs are also responsible for ensuring access to services.

The AAAs work with community leaders within their planning and service areas to designate one or more community focal points ("Focal Points") for service and delivery. Services funded through the OAA, as well as services funded through other public and private sources, are coordinated through these Focal Points. In communities across the country, senior centres, town halls, churches and other facilities have been established as Focal Points to provide information and access services for older persons. The OAA directs that special consideration be given to designating or developing multi-purpose senior centres as Focal Points, since such facilities house a variety of services provided by the center staff or other agency staff.

Title III of the OAA, "Grants for State and Community Programs on Aging," provides grants to state and AAAs to develop supportive and nutrition services, to act as advocates on behalf of programs for older persons, and to coordinate programs for the elderly. The program supports 57 state agencies and 670 AAAs. Funds are distributed on the basis of each state's population aged 60

[35] *Ibid*.
[36] *Ibid*.

or over as compared to other states.[37] Title III is intended to form a "network on aging" linking AoA, state, and AAAs, other public and private agencies, and social and nutritional services providers.

A key component of a states' legal services delivery system and of its elder rights advocacy is the state legal services developer, ("Legal Services Developer") a mandated position which originated in 1976 through the actions of the federal AoA, and which now exists in all 50 states.[38] The purpose of this position is to strengthen legal representation for older persons. The Legal Services Developer is responsible for developing and coordinating the state's legal services and elder rights programs and has specific duties that include:

- Providing technical assistance and training to legal assistance programs and hotlines ;
- Developing standards to ensure that legal providers reach their target audience and address priority issues; and
- Developing statewide reporting systems to determine the impact of legal assistance programs[39]

In 1978, amendments to the OAA further strengthened the priority for legal services by making it a priority service that must be funded by all AAAs.[40] Title IIIB of the Act, "Supportive Services and Senior Centers," provides funding to each area agency on four mandated services, including legal assistance.[41] AAA's typically enter into contracts and grants with local legal service providers to deliver legal services. In the majority of the US, these contracts and grants will go to the existing staffed, non-profit organizations that provide civil legal aid to low-income persons. These contracts and grants may also be awarded to separate non-profit organizations that have been created to provide legal services to seniors, private attorneys, law school clinics or other appropriate non-profit organizations.

2) Legal Aid Delivery Systems

[37] *Ibid*.
[38] *Ibid*.
[39] *Ibid*.
[40] *Ibid*.
[41] *Older Americans Act,* 42 U.S.C. § 3026(a)(2).

Within the US, legal services are provided to low-income populations through various methods, including the following:

- Private attorneys;
- Legal insurance and prepaid legal assistance;
- Staff attorneys in legal clinics;
- Public interest law reform;
- Legal advice, assistance, screening, and referral;
- Legal hotlines; and
- Law school clinics.

a) Private Attorneys

In private attorney and related para-professional delivery systems, older clients obtain legal services through payment by the client either as a specific fee for the service or on an hourly basis for the work performed. Services are charged based on fees determined by the state or Bar Association, taking into account such factors as the nature and complexity of the service and the dispute, experience of the attorney, and the ability of the party to pay. There is generally an expectation that a minimum of services will be available to lower-income persons in certain legal areas.

b) Legal Insurance and Prepaid Legal Assistance

People and businesses obtain private insurance policies that include coverage for legal representation. Clients are then able to use their insurance policies to fund their private lawyer fees.

c) Staff Attorneys in Law Clinics

Staffed legal services offices are the primary legal aid system for providing civil legal assistance to low-income persons in the United States. It can be a relatively flexible model that provides a comprehensive range of legal services. This model is seen as affording increased specialization with legal problems unique to low-income persons and distinct sub-groups, and being better suited for law reform activities.

d) Public Interest Law Reform

These are generally non-governmental legal advocacy organizations that play some role in helping to preserve, protect, promote and advance the legal rights and interests of various people, groups, or causes. They do not usually take on individual client cases.

e) Legal Advice, Assistance, Screening, and Referral

This model provides a large volume of information, education, advice and assistance to low and moderate-income persons with legal questions and problems but not client representation. This model may be implemented by court personnel, legal aid staff, law school clinics and non-profit pubic interest centres.[42]

f) Legal Hotlines[43]

Legal hotlines play a fairly significant role in the provision of legal information / advice to seniors in the US. There are presently 27 states that have a statewide senior legal hotline plus similar systems in the District of Columbia and Puerto Rico. Some of these were established by the American Association of Retired Persons (AARP) in the late 80s and early 90s. The remaining hotlines were established with AoA Title IV (rather than Title III) funds from the early 90s through to the present. All were established with start up grants and have had to continue operations with other types of funding. Only one state (West Virginia) dedicates its Title III funding solely to the operation of a statewide senior legal hotline. This is due to the relatively small amount of Title IIIB funds, about $80 000, that they receive.

Almost all of the senior hotlines are housed in either a statewide Title IIIB provider program, a local Title IIIB provider program, and/or an LSC funded program. As such, they are not "stand alone" enterprises, but rather a component of a larger clinic service delivery model. Only a very few hotlines are not embedded as a component of a full-service legal clinic program. When a statewide

[42] Robert J. Rhudy, "Expanding Access to Justice: Legal Aid Models for Latin America" in Christina Blebeshelmer & Francisco Mejia, eds., *Justice Beyond our Borders: Judicial Reforms for Latin America and the Caribbean* (Inter-American Development Bank), 53.
[43] Ellie Crosby Lanier & Shoshanna Ehrlich, "Older Americans Act Legal Assistance: An Overview of Different Models Employed in States" (Winter 2007) 44 Legal Hotline Quarterly 1.

senior legal hotline is in place, it can serve to integrate, coordinate, and streamline access and delivery of legal services to seniors. These hotlines provide telephone advice to senior callers statewide, as well as referral or intake to full service legal assistance, clinics, and *pro bono* projects.

Most of the senior hotlines provide brief services to a greater or lesser degree. With the exception of West Virginia, they generally do not operate with Title IIIB funds. Legal hotlines can also streamline intake to all legal resources in the state such as LSC programs, Volunteer Law Projects, Bar referral projects or other types of legal assistance in the state. The hotline also provides a lifeline for homebound and rural seniors to access legal services.

There is a division among legal services funders and providers as to the effectiveness of these hotlines. Bob Rhudy noted that:

> …other people I talked with did not believe they effectively reached many high-need older persons (low-income, disabled, rural, minority, non-English speaking, living in nursing homes or assisted living facilities, etc.), believed they detracted from the need or ability to provide more extensive services when needed, and did not contribute to public policy or law reform on behalf of seniors. There are concerns that the efficiencies of hotlines in providing legal information and brief assistance in high volumes to some older persons can diminish the allocation of limited resources for other needed legal assistance to hard-to-serve seniors.[44]

g) Law School Clinics[45]

Law school clinic serve two primary purposes: to train law students in practical skills, and to provide client services. There is a solid US law school elder law clinic program nationally.[46] Such law school elder law clinics utilize students, faculty, and institutional resources to provide various forms of legal assistance. Institutional resources such as space, phones, faculty expertise and an extensive law library are among the benefits of this model. It also has the added benefit of training

[44] Bob Rhudy, Memorandum prepared for BCCEAS, May 9, 2008.
[45] *Supra*, note 45 at 6.
[46] Search term utilized, "elder law school clinics united states" resulted in pages of clinics.

future legal providers to be knowledgeable about and sensitive to the needs of low income and vulnerable seniors.

Barriers associated with this model include service availability, as students are often only available to work during certain parts of the year and office spaces may not be open during exam or vacation times. Service provision can thus significantly suffer due to these interruptions. There are also often limits on the types of cases taken, as clinics often choose to focus on cases that can be handled in one semester so that a student can see the case through. Clinics may choose to focus on areas that law students can more easily manage with limited supervision such as legal advice or negotiation. Also, students may not be able to travel to outlying areas because insurance and travel costs can be a barrier. Finally, a law school elder law clinic exists primarily to provide the students with a positive learning experience. This goal may sometimes conflict with the needs of the client population and prevent more serious needs from being addressed through the program.

Regardless of the legal services delivery system chosen, factors such as leadership, governance structure, funding level and nature of the legal, governmental, economic, cultural, and institutional environment in which it operates will all have a significant impact on its performance.[47]

Based on the American experience with legal aid clinics for older adults, there are a number of criteria to consider when determining which model is the most appropriate for a particular situation.

h) Evaluating the Best Legal Aid Delivery System

In order to evaluate how effective a system a series of questions should be asked to determine whether the system can provide the full range of legal aid functions as identified to all appropriate clients, causes and matters? Indicators include the evaluation of functions performed by the system, the range of population served and subject matters addressed.

i) Effectiveness

[47] *Ibid*.

Can the system provide the full range of legal aid functions effectively and successfully fulfill its functions?

ii). Efficiency

Can the system render legal aid in a cost-effective manner? Indicators include cost of service per consultation or court representation unit.

iii). Equitable Cost-Sharing

Is the cost of operating the system equitably shared, in terms of benefits received among interested parties such as clients, the state, the legal profession and other interested parties?

iv) Affordability

Can the system be affordably implemented and maintained?

v). Credibility

Can the system be operated in a manner that consistently has the credibility and trust of intended clients, state institutions, the legal profession and other relevant parties?

vi) Accessibility

Can the services provided by the system be uniformly used by all intended parties regardless or geographic location, race, language, culture, disability or other potential barriers or circumstances?

vii) Adjustability

Can the system be adjusted and modified to respond to relevant changes in circumstances?

viii) Supportability

Can the system attract and maintain the necessary support from clients, the state, the courts, other funding sources, the legal profession, and other parties?[48]

i) Appropriate Service Delivery Model for BCCEAS

From the US qualitative and quantitative research, it became clear that there are two different service delivery approaches which BCCEAS could reasonably consider implementing in the BC context:

- Providing a high volume of brief services in a broad range of matters to a large number of persons, without providing significant representation or client follow-through or any significant systemic law and policy reform mandate.

- Identifying and providing more comprehensive legal representation through litigation, tribunals and policy advocacy to a smaller number of persons, often with the purpose of promoting law reform

In the first model, hotlines will be the primary source of assistance. In the second model, direct representation would be the primary source of help.

On the basis of the US research, it was determined that BCCEAS should strongly consider adopting the second model with more comprehensive legal representation.

3) Best Practices in US Elder Law Clinics

a) Description of Best Practices

Once a legal service delivery model has been decided upon, best practices as they relate to that system must be established and implemented. These include defining the services to be rendered, deciding the format in which these services will be provided, establishing priorities regarding types

[48] *Ibid*.

of clients and cases, and creating protocols to support accessibility. The resources available will often frame these considerations, influencing the way in which services will be provided, to whom and in which way the cases are chosen. The more limited the resources, the more effort it will take to ensure that they are being allocated in the most effective manner.

When considering the amount of resources needed to deliver services, it should be noted that direct representation is more resource intensive than running a hotline that provides only legal information or summary advice. Because of this, the full representation approach can only be adopted if priorities are established in order to determine which individuals and cases will be accepted. In terms of priority clients, those who are most vulnerable, need legal assistance yet are unable to obtain legal services due to such factors as residing in a long-term care facility, having limited income, being isolated, language barriers, abuse, or mental/physical disabilities are generally considered target populations and given the highest priority by American legal services providers.[49]

In the US, the OAA has a set of mandated priority areas that includes:

- Income;
- Health care;
- Long-term care;
- Nutrition;
- Housing and utilities;
- Defense of guardianship;
- Abuse, neglect and exploitation;
- Age discrimination; and
- Protective services.[50]

The highest priority US cases are related to safety, health and long-term care, shelter, income security, and protection from consumer and financial abuse.[51]

[49] Georgia Elderly Legal Assistance Program Standards, May 2008 at 15.
[50] *Ibid*.
[51] *Supra*, note 46.

b) Best Practices Regarding Accessibility

Best practices for a legal aid clinic for older adults, by necessity, must address accessibility issues. These range from practical issues involving the choice of furniture for a clinic to more complicated issues relating to the elder person's perception of what comprises a legal issue.

In terms of the practical issues, Stetson University Law School in Florida provides internationally renowned leadership on accessibility issues that face seniors. Stetson's Center for Excellence in Elder Law created the first "elder friendly" courtroom in the US. This courtroom serves as a model for other courts who are building or remodeling their own courtrooms. This elder-friendly courtroom serves as an example of how best to design a courtroom to provide maximum access to elders and people with disabilities. The following features make it unique:

- Double jury box and one-way glass for jury monitoring and research;
- Colours picked to enhance vision of elders;
- Flat panel touch screen televisions outside the courtroom with a layout of the courtroom; touching various parts of the courtroom will bring up information about individual court personnel and his or her role in court proceedings;
- Carpeting designed to give visual clues for those with visual impairments–a border along the edge in a color different from the carpet–with diamond insets marking each row to give a visual clue regarding seats;
- Rounded corners on all tables and desks;
- Sturdy chairs with locking wheels and firm arms;
- Witness box on the floor;
- Ramp to judge's bench inside judge's chambers, so judge in wheelchair can ascend bench without being observed;
- Podium that is electronically height-adjustable, with electronic side shelves or wings for those in a wheelchair
- Use of technology to enhance accessibility of participants–including flat panels in gallery, hearing amplification devices, software to convert conversations into typed words; and

- Non-glare, non-buzz lighting.[52]

Many of these elder-friendly courtroom features can be incorporated into elder-friendly legal clinic offices. Some of the built-environment features that can support older adults include:

- Avoiding pastel shades and monochromatic colours;
- Ensuring that seating for clients is facing away from the window to avoid glare;
- Creating signage which has dark backgrounds with large, contrasting, block lettering;
- Providing written material in larger font;
- Avoiding the use of cursive text; and
- Providing magnifying glasses or similar devices to allow clients to read smaller text.

If the Clinic has a website, the site should be designed to be read at a higher screen resolution and should avoid the use of colours in the blue-green range, as older adults have reduced colour sensitivity and have difficulty discerning between blue and green.[53]

There are further issues relating to accessibility that must also be considered. Many elderly people are either homebound or live in long-term care facilities and do not have the means to travel to a clinic. Some elderly people may feel constrained by their lack of finances. Lack of education, language barriers, and cultural differences may play a role in a senior's willingness to contact a lawyer. Others may not realize that they have a legal problem and therefore do not consider contacting a lawyer.

In a study conducted in the state of Georgia in 2006, only 3% of respondents indicated they required legal advice in the previous year; however, in the previous 10 years, 57% had to seek the assistance of a lawyer. Almost 37% had not even considered using a lawyer.[54] These statistics indicate that there is a need to help seniors recognize their own legal issues.

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[52] Stetson University College of Law website, online: < http://www.law.stetson.edu>.

[53] "Accessibility, décor key in offices of elder-law attorneys" *St. Louis Daily Record & St. Louis Fountain* (17 September, 2006).

[54] *Supra*, note 51 at 5.

In order to address various issues relating to accessibility of legal services to seniors, practices such as conducting mobile clinics or house visits, as well as providing public legal information sessions may be necessary. As with the service delivery models, these practices will be influenced by the amount of resources available to a clinic.

4) Examples of Programs in the U.S.[55]

Although there are many differences between the United States and Canada in regard to both legal aid systems and legislation, a brief summary of key American legal aid programs serves to demonstrate the broad range of possibilities for elder law clinic programming.

a) SeniorLAW Center of Philadelphia[56]

This centre operates as a mixed service delivery model, with the assistance of staff attorneys, legal assistants, and volunteers from the legal community. It was created in 1978 by members of the Philadelphia Bar Association to protect the legal rights and interests of the city's low-income elderly residents. Since its founding, it has provided legal assistance for over 32 000 seniors, with an emphasis on the most essential and recurring legal problems that face the elderly population, including housing, elder abuse, financial exploitation, and consumer problems.

This centre assists seniors by providing public legal information sessions to both seniors and professionals who work with the elderly in other fields in order to sensitize them to the legal issues facing the elderly. It also provides referrals to other agencies. This centre operates both telephone and walk-in intake for clients in the city centre office, as well as in community-based legal clinics in the surrounding area.

In 2000, SeniorLAW Center provided individual legal services and representation to more than 2100 seniors. This centre is supported in part by funds provided through the AoA, in accordance with the OAA.

b) Legal Aid Bureau of Maryland

[55] The following section provides a synthesis of materials provided by Bob Rhudy in regards to several legal service provider programs in the U.S.
[56] SeniorLAW Center website, online: <http://www.seniorlawcenter.org>.

Legal Aid Bureau (LAB) of Maryland provides legal assistance in civil matters to low-income persons by staff attorneys and paralegals. While it is not solely a provider of assistance to elder persons, it does receive the most OAA Title IIIB funding of any program in Maryland providing civil legal aid for persons 60 and older. In addition to this funding, it also receives funds from other public and private resources. In the fiscal year 2007 it received $322 347 in Title IIIB grants in addition to other funding, with the exact amount not known. These funds helped provide for one managing attorney, 8.31 FTE staff attorneys and 4.97 FTE paralegals. In the same year, the program for adults over 60 closed 3 718 cases, with each lawyer or paralegal closing an average of 265 cases. Most of these cases involved rendering of information, advice, referral, or brief services as opposed to direct representation in matters that went before the courts or tribunals.[57]

c) Columbia Legal Services of Washington State

Columbia Legal Services receives funding from an OAA Title IIIB grant to provide legal services to seniors in eight offices in Seattle and the surrounding King County. The program specializes in providing legal services to vulnerable persons, with the provision of assistance to older adults being just a small part of their programming. Due to small staff size and limited resources, the program does not conduct direct representation on a regular basis. Direct representation only occurs in cases where access to essentials such as medical care or shelter, are being threatened and the person cannot obtain legal help elsewhere.

Instead of direct services, this program focuses its limited resources on the production of educational pamphlets that are meant to provide an introduction to selected topics for seniors, but are not meant as replacements for individual legal advice. The program also works closely with other agencies that serve vulnerable seniors to promote policy advocacy and law reform. Columbia Legal Services is a good example of a program whose services are greatly influenced by their limited resources. In order to maintain a level of effectiveness in the community, the program has decided against direct representation, which has the potential of over-extending the program's limited resources.[58]

[57] *Supra*, note 27.
[58] Columbia Legal Services website, online: <http://www.columbialegal.org>.

4. U.S. Expert Recommendations for BCCEAS (Bob Rhudy)[59]

As an expert in US elder law legal clinics, consultant Bob Rhudy was asked to provide some key recommendations based on his research and long-time experience. His recommendations are as follows:

1. The following minimum staff structure is required for an effective legal aid clinic for older adults,[60] based on information gathered from service providers in the United States
    - Executive Director;
    - Staff attorneys (2);
    - Legal assistants (2);
    - Volunteer coordinator;
    - Office manager (with information management/software expertise); and
    - Secretary/receptionist.

[59] *Supra*, note 46. Bob Rhudy provided a memo to BCCEAS at the conclusion of his research in May 2008. In that memo he summarized the information sources that he used to develop recommendations for BCCEAS. These sources are as follows:

- U.S. Administration on Aging (AoA), Washington, D.C.
- The Center for Social Gerontology (TCSG), Ann Arbor, Michigan, which has been a support center under grant from AoA since 1985 to support the development of senior citizen legal aid in the United States
- National Senior Citizens Law Center, Washington, D.C. and Los Angeles, California, which are also AoA resource centres, and do a substantial amount of federal and appellate litigation to preserve, protect, and advance the legal rights of older persons in the US
- Statewide senior citizen legal services programs in the states of Washington, Georgia, Maine, and Maryland
- Local programs in Los Angeles, California and Philadelphia, Pennsylvania

Mr. Rhudy also spent substantial time meeting with AoA's staff responsible for overseeing the national senior citizen legal aid program under the US OAA, and at TCSG. During these meetings, he was able to review and select substantial information from activities.

[60] Based on his observations while in Vancouver, and the fact that initial funding for the annual operations of the Clinic is $300,000 per year, Bob Rhudy made the following comments:
"I do not know salary and benefit levels for B.C., but suspect that staffing and overhead (rent, utilities, insurance, equipment maintenance, supplies, mileage, etc.) at this level would likely require approximately $550-600,000 annually. As previously stated, I believe that $300,000 annually is minimally adequate at best to begin operations, and recommend that you seek to raise at least an additional $100,000 annually by the time you begin operations in July 2008…I would likely begin with a minimal staffing structure of Executive Director (an attorney), two staff attorneys, a volunteer coordinator, and an office manager, adding legal assistants and secretary/receptionist (and eventually other attorneys) following initial experience and as funding permits."

2. In the initial stages of Clinic operation work should include substantial outreach, public legal education, and professional education on elder law issues for lawyers, health care providers, and other groups, as well as developing screening and referral mechanisms to identify clients needing legal assistance and representation in very high-priority legal areas (e.g. abuse, financial exploitation, etc.).

3. BCCEAS should seek to establish an informal collaborative relationship with senior citizen legal aid program leaders in the state of Washington to provide some guidance and assistance in the development of BCCEAS's Clinic.

4. BCCEAS needs to make important strategic choices regarding Clinic priorities and services given the limits of the current resources at the initiation of the Clinic program.

5. BCCEAS should consider adopting an approach to priority setting based on best practices used by legal service providers in the US, namely to establish and implement priorities regarding types of clients and types of cases or needs, as opposed to providing a high volume of brief services to a broad range of clients. Service priorities as set by US clinics typically include clients that are those most vulnerable, who need legal assistance, and who are unable to obtain other legal services by virtue of their income status, isolation, inability to communicate, mental or physical disabilities, or other factors. Types of cases or needs typically identified as of the highest priority for older persons include safety, health and long-term care (including publicly provided health care support), shelter, income security (frequently dependent upon public benefits like social security, nutrition assistance), and protection from consumer and financial abuse. These categories include, of course, abuse prevention, guardianship systems, nursing home care, and housing (including public housing, private rental housing, and maintenance of the owner-occupied family home).

6. BCCEAS should consider adopting recommendations which appear in a preeminent report on provision of legal services to older persons[61] which suggest that planning for effective

[61] "Provision of Legal Services to Older Persons in New Jersey: A Report to the State Division on Aging" (October 1990), which was prepared by John Tull and Esther Lardent under a contract between the New Jersey State Division on Aging and the American Bar Association in response to a joint proposal of the American Bar Association Commission on Legal Problems of the Elderly (now the ABA's Commission on Law and Aging), the National Senior Citizens Law

delivery of legal services to the older population must take into account the increasingly complex array of legal issues which seniors experience in such diverse areas as: housing, social security, consumer protection, health, pensions, competency and life planning, public entitlements, nursing and boarding homes, and family law. Because legal problems of older persons are frequently interwoven with social and personal problems, failure to address legal needs can frustrate successful intervention on behalf of a senior in need. All providers of legal services to seniors should offer a full range of representation and assistance to clients, where appropriate, including simple information, advice and brief service, high volume work in recurring simple legal matters, full representation in trial and appeals, and other complex advocacy. The service provider should have the capacity to recognize and respond to the full range of substantive legal issues, which older clients may encounter.

7. BCCEAS should work to develop agreements and strategies regarding what staff will do directly, as well as how the organization will work in partnership and coalition with others (law societies, private Bar, legal aid, law school clinics, public legal education, social service providers, etc.) to develop and provide elder law and other services in various areas.

D. Conclusions from Research on U.S. and Canadian Service Models

1. Differences Between the Canadian and U.S. Context

There are major differences between the American and the Canadian context for service delivery of elder law services. In the US, services are greatly influenced by the federal OAA legislation, whereas Canada has no comparative federal legislation.

Pursuant to the OAA, in the US AAAs are mandated to work with legal assistance providers in order to provide leadership in regards to aging issues. This involves planning, advocacy, coordination of services, interagency linkages, information sharing, evaluation and support to assure that the provision of legal services is consistent with agency identified goals. It is important to be

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Center, and the Center for Social Gerontology. Bob Rhudy noted that, "although the report is eighteen years old, it represents a unique evaluation of a state senior citizen legal aid program with findings, values, and recommendations that deserve consideration by BCCEAS."

aware however, that there are instances in the US where the federal government does not provide adequate funding for legal assistance, despite the presence of the legislation.[62] Within Canada, there is no legislation that specifically mandates the provision of legal services for seniors, nor is there any federal funding specifically for such services. This may provide an explanation as to why legal aid clinics for older adults are prevalent in the United States but not in Canada.

A search for elder law clinics associated with law schools in Canada produced no results; by contrast, a similar search in the US resulted in a large number of to elder law clinics at law schools. Likewise, an internet search for programs outside law school that specifically focus on older adults in Canada did not find any results. There are a few programs that appear to serve, or wish to serve, older adults along with other clientele, some of which are not well known at this time.

2. Recommended Practices Based on Literature and Experts

Several key conclusions can be drawn from the literature and from recommendations provided by experts. These are as follows:

a) The staffing levels for BCCEAS should be eight full-time persons at the point of opening the Clinic;
b) BCCEAS should consider giving priority for Clinic services to older adults who have been or are vulnerable to being abused or are in other ways the most vulnerable or needy;
c) The Clinic must grow slowly and the work must be based on research and the credibility that will come will solid casework;
d) Direct client work should go hand in hand with outreach and public legal education;
e) BCCEAS should offer a range of services including full representation and should not merely offer a hotline or telephone services;
f) BCCEAS should build relationships with the private Bar; and
g) BCCEAS should set clear priorities for services and avoid taking on cases, litigation or otherwise, that will overwhelm existing resources.

[62] Alan Ormsby & Jilenne Gunther, "Planning for the Legal Needs of Utah's Seniors" 2004 Utah Division of Aging and Adult Services, on file with the author: akormsby@utah.gov. This 2004 study of elder legal services in Utah posits that the level of federal funding is inadequate, and no state funding is provided.

E Field Research

1. Summary of the Results of the Field Research

The field research component of this research project was carried out in the Greater Vancouver area between March and June of 2008. The four key research findings are as follows:

1. Four main categories of need were consistently identified by participants in the study:
    a. Abuse/safety;
    b. Financial issues (government benefits, power of attorney, and pensions);
    c. Housing (in the community and in long-term care); and
    d. Financial abuse.

2. BCCEAS should continue with the Public Legal Education and Information workshops and should expand on these workshops both in terms of issues and geography.

3. The Clinic requires a minimum of seven full-time staff members, and it should add one or two staff members after a year of successful operation.

4. Accessibility was consistently identified as an important issue. If seniors cannot either locate the services or have access them, it minimizes their effectiveness.

There was only one notable difference between the responses of seniors surveyed and the responses of legal practitioners and community agencies. Seniors identified "wills and estates" as an area with which they would like legal assistance. In contrast, legal practitioners cautioned that the Clinic should not provide assistance with wills and estates because this would quickly use all the staff capacity without leaving room to provide service on other issues.

2. Description of the Methodology of the Field Research

As discussed above, mixed methodology was used to gather data for the field research. This included:

- Surveys;
- Interviews; and

- Focus groups at the Clinic Community Forum.

Interviews and surveys were carried out first. The questions asked of participants at the Community Forum were designed to gather data regarding key issues that were identified during surveys and interviews.

Examples of questions that were asked during the interviews are the following:

1. How does your legal clinic operate? Intake procedures? Protocols? Eligibility?
2. What are the 3 most important legal issues for seniors?
3. What is seniors' greatest need for legal services when their resources are limited?
4. What are the barriers for seniors accessing a legal clinic? (e.g. language, cultural differences, sexual orientation, dementia, feel intimidated, etc.)
5. What are seniors' greatest legal service needs in or assisted living residences?
6. What are the differences between seniors' needs in rural areas as compared to those in the city?
7. Based on the gaps you see for this client group what services and public legal education and information (PLEI) sessions, do you think a new legal clinic should offer? What should be the protocols/procedures/staffing structure?

Community organizations were chosen for interviews with the purpose of including a diversity of seniors. Interviews were conducted with representatives from various BC legal clinics and other advocates from the following communities: aboriginal, multi-cultural, lesbian/gay/transgender /bisexual (LGTB), women's groups, seniors, disabilities, housing, and mental health. Interviews were also conducted with representatives from Vancouver Coastal Health, Victim Services, and the School of Gerontology at Simon Fraser University.

Surveys were distributed at 21 seniors' activity centres located throughout the Lower Mainland. Both interviews and surveys captured the views of seniors living in the Lower Mainland communities of West Vancouver, North Vancouver, Vancouver, Burnaby, Coquitlam, Surrey, Delta, Richmond, New Westminster, White Rock, Langley, and the Sunshine Coast.

The Field Research utilized multiple triangulation - a methodology in which the researcher compiles data from diverse sources and via multiple methods in order to better construct comprehensive answers to the key questions. The interview and survey questions were developed based on the study objectives. The surveys and interview questions were 'focus tested' with experts in the field of research and seniors' issues, and with seniors themselves. The interview questionnaire and surveys were revised based on this feedback. The participatory process of the survey and questionnaire development enhanced the study's integrity and inclusiveness.

The data gathered was analyzed by identifying themes, commonalities and contrasts among the respondents' data. Questions for the community forum were designed to further examine key issues and emerging themes identified in the survey and interviews. Content analysis was used, as well as quantitative analysis.

3. Results from the Survey with Seniors

The majority of the respondents to the survey self-identified as female, between 60 and 77 years old, in good health, mobile, lower-middle to middle income, Canadian citizens, heterosexual, and spoke English as their first language.

a) Legal Services Needed

Survey results showed that the majority of respondents had needed legal services at one time, and the vast majority had received legal services that had met their needs. However, responders who identified as "immigrants" or "first generation Canadians" indicated that existing legal services did not meet their needs. Seniors surveyed indicated that their primary form of transportation was by car, but many other seniors indicated that they primarily used public transit or were pedestrians and/or self-mobile. Of the 212 respondents surveyed, 92% were Canadian citizens and 19% were immigrants. For 57% English was their first language. Of the remaining 43% the next largest linguistic groups were Cantonese and Punjabi, followed by Mandarin, French, Tagalog, and German, with the remaining individuals speaking Creole, Dutch, Italian, Spanish, Hungarian, Romanian, and Hindi. One hundred percent of those surveyed self-identified as heterosexual. Seniors surveyed lived throughout the Lower Mainland in Vancouver, Burnaby, Surrey, Richmond, White Rock, Delta, New Westminster, North and West Vancouver. Most respondents came from Vancouver, Surrey, and Burnaby.

Of the seniors surveyed, the top areas in which they would like legal advice and support are:

- Wills and Estates;
- Powers of Attorney;
- Pension and Benefits ; and
- Housing and Consumer Fraud.

b) Accessibility / Barriers to Services

For seniors surveyed barriers to legal services were the following:

- 20% said legal services were too expensive;
- 19% did not know the location of legal services for seniors;
- 13% were off put by the legal jargon; and
- 9% felt overwhelmed with the information provided.

Important aspects to effective elder law service delivery were indicated as follows:

- In-person meetings with the lawyer (in the client's place of choice);
- A lawyer well-informed about seniors and seniors' issues; and
- A lawyer able to patiently provide information in clear and simple terms

One participant captured the feelings of many participants by stating "I prefer to talk to a person who can explain it [the legal issue] in plain language so I can understand and answer the questions"

The survey enquired as to how seniors located legal services. South Asian and Chinese "first generation" seniors who speak English as a second language were not able to rely on family members or friends to aid them in receiving legal services. Instead they had to find services through their own research. Cultural knowledge/sensitivity was an important attribute of legal services for these seniors. These older adults also generally preferred a lawyer over 55 years old.

The survey's comments and responses showed that information given patiently, slowly, and clearly were most highly valued. Seniors indicated that they would like the lawyer to take immediate positive steps. Being left "to wait" in a line, waiting room, or on a phone was a significant

impediment. One surveyed senior pointed out that an excellent elder law lawyer is ”friendly and patient and understands that seniors take longer to understand legal issues and terminology and some [seniors] may have a bit of dementia.” Seniors also valued being referred to helpful resources, being supported in the necessary follow-through actions, and receiving follow-up communications.

Survey responses strongly suggest that access to legal services by seniors can be far more effective if the Clinic is “senior-focused.” Some examples of this are:

- Working with and through “intermediaries” who support seniors;
- Using “elder-friendly” clinic staff to support the older adult in their case management with any follow-up appointments or follow-up steps;
- Advertising and raising awareness about the Clinic in locations which serve seniors;
- Using “senior-friendly” marketing tools in order to explain how the Clinic might help with problems;
- Making various forms of communication “elder-friendly” (large font, clear messages, colour contrasts etc.);
- Ensuring that protocols and procedures match the client needs;
- Providing legal services in the location of the older client’s choice (senior centre, home, safe 3rd party location etc.); and
- Working collaboratively with other senior-serving agencies and developing relationships with agencies which should be, but are not currently, serving seniors.

Physically accessing the Clinic was of importance to the seniors who were surveyed. Of the responses:

- 36% would like the Clinic to be in a seniors’ centre;
- 20% indicated the importance of close and easy parking to the Clinic; and
- 23% would like the Clinic within “walking distance” (of their home or main source of transportation).

Seniors, who have accessed legal services in the past, reported the following:

- 63% received legal services by going to a lawyer’s office ;

- 19% accessed free legal service at a legal clinic in a senior's centre or community agency with a seniors' program; and
- 15% received legal information over the phone – of that group, 36% called TRAC and 51% called the Law line.

4. Results from Specific Sectors

Using mixed methodology, researchers gathered information from specific sector cohorts. The four sector groups are: 1) Poverty and elder law practitioners, Community agencies, 3) Senior serving organizations and 4) Health and Government authorities.

a) Poverty and Elder Law Practitioners

Participants in this group included the following:

- Legal aid clinics staff;
- Community agencies providing legal advocates; and
- Community agencies hosting access to justice / pro bono programs.

This group emphasized the importance of personalized, consistent, service. They noted that when clients are from more marginalized, multi-barriered, groups (i.e. ESL, First Nations or mental health issues, etc) "one-on-one attention" and consistency with a clinic staff representative throughout the case management was important.

For example, a clinic may have one staff person who does intake, then greets the client and acts as an intermediary if there are any problems between the lawyer and client, and does follow-up. This type of personalized, consistent, service seems to increase client comfort, trust and capability. One participant of this group described the importance of consistent staff contact in the following way:

> [this] "builds relationships with the clients and is the go-to person." [In particular when clients have] "… mental health issues there may be difficulty with communication/perception /understanding … she can act as a translator when the lawyer-client communication breaks down. All information goes through that staff member."

This group noted that many of the seniors they interacted with had anxiety about not understanding "legal jargon" or comprehending the information given. They also emphasized that seniors strongly preferred consistent "in-person" service.

Skilled clinic or program support staff are required to effectively run a legal clinic. The presence of skilled support staff enable the lawyer to effectively focus his or her skills on client work. In clinics, skilled and experienced intake workers require excellent communication and listening skills. This "sets the tone" and allows for effective information gathering.

Good intake procedures and protocols are also essential in running an effective law clinic. These assist in discerning whether or not the inquiry pertains to a legal issue. They can also help to identify if the case is urgent and/or related to personal safety.

This group noted that effective clinic practice includes support workers providing information about what to expect during the meeting. Good practice includes assisting the client regarding how best to prepare for this meeting. They emphasized that reminder calls made shortly before meetings, and follow-up calls after the meeting should be made by support staff, not the clinic lawyers. Particularly for multi-barriered clients, clinic support staff should try to personalize service in order to increase clients' comfort level, provide an opportunity to ask questions in a more relaxed environment, and to mediate when necessary in order to resolve any client-lawyer misunderstandings. This group particularly noted that adequate support staff was critical for the efficient running of a legal clinic in BC.

They noted that "navigating the systems" (such as government bureaucracy) with regards to benefit issues was an important area of need. Staff of the Clinic will need to be able to discern legal issues from non-legal ones. These two issues were noted as often being "tied together", and of overarching and consistent challenge both for seniors and those in the legal advocacy and clinic community. One group member succinctly summed up the situation:

> A lot of matters seniors come in for are not legal; its support issues in navigating systems in this day of technology. For example, they'll come in seeking assistance in dealing with bureaucratic red tape, which might just require a simple phone call to the correct department … I help them to organize their thoughts on their particular concern, help to

> clarify information they have been told by someone else and learn who they have been in touch with. Also I want to learn their outcome if there is a non-legal approach. A lot of times you'll have legal and non-legal issues tied in together.

Feedback from this key group was very positive. Members of this group consistently expressed desire for this clinic and were supportive of BCCEAS as an organization.

b) Community agencies

Members of this group included the following:

- Front-line workers at general community agencies (multi-service agencies – e.g. Family Services)
- Managers of general community agencies

Community agency representatives warned that issues affecting seniors often were very inter-connected. They emphasized the importance of not "artificially dividing and prioritizing issues" as issues are likely to connect and overlap. This group identified the most pressing legal issues for older adults as follows:

- Government benefits / power of attorney;
- Financial abuse;
- Housing; and
- Court legal representation.

Group participants noted that seniors that they inter-acted with were vulnerable to being financially abused. This group emphasized that the cuts in legal aid services have adversely impacted low, middle-low and even middle-income seniors who cannot afford to access a private lawyer. Due to other government funding cuts, many community-based service providers lost their legal staff, and can now only refer out to other organizations. They noted that now there were very few places where they could actually refer out to, which would be able to substantially assist seniors. Without legal assistance, including court representation, it is difficult to protect the rights of vulnerable seniors. Thus, a tremendous gap emerged around which the BCCEAS Clinic is being looked upon to begin filling.

This group observed that they are routinely asked certain legal questions by clients that are outside their area of expertise or knowledge base. Examples include the following:

- What happens when the person is not capable of making decisions around health care or finances?
- What happens to the estate of a low-income senior who does not have a will?
- When I turn 65 what benefits am I eligible for? Are there subsidies I can access? And how does that affect eligibility for other benefits?
- Now that I am getting CPP what happens to my medical coverage?
- How does spousal support work in conjunction with CPP, OAP and my work pension?

This group identified gender and domestic / intimate partner violence as an important issue. They noted that age can bring a different lens to a case, or alternatively can add particular vulnerabilities. One group member noted that older women who have experienced violence find it especially difficult to access resources. In the words of one participant, "They have been in 20 to 40 year marriages, are financially dependent on husbands [and it's] their children [who] encouraged their mothers to seek counseling."

Community agencies often interact with persons experiencing aspects of violence and discrimination; however, staff from these programs do not feel adequately knowledgeable to support their aging clients in their relationship with the law. Group members emphasized their concern about financial abuse, and in particular, about family members abusing seniors in order to gain access to assets. For example, one group participant noted that "if you are mentally capable of managing your affairs there's a lot of emotional coercion. They may legally sign over their property or give the POA to the person exercising power over them to their detriment … the senior might know it but [be] unsure how to extricate [them]self."

In the words of another service provider, "if a senior is incapable, the Adult Guardianship legislation can kick in and deal with it. But if [they are] capable and vulnerable that's where there's a huge gap in remedies."

Housing issues were also strongly identified as a being an area where seniors' rights are often, and increasingly, violated for a number of reasons:

- Cuts to funding for tenant advocacy supports;
- Rising rents, particularly in Vancouver;
- A lack of affordable seniors' housing; and
- Lack of supports for seniors in residential care facilities.

Some specific legal issues noted by this group included the following:

- Rental agreements signed by seniors who do not understand the contractual terms. Seniors are later told they have to leave or do certain things that actually are not written in the contract;
- Seniors who do not have family or supporters to advocate for them, but who have to leave a building when they require more care;
- Seniors in assisted living or residential care homes who have no recourse when they have concerns due to a fear of eviction if they complain or if they become "whistleblowers";
- Difficulty accessing or maintaining decent, safe, housing due to law or policy issues;
- Disputes with a neighbor or a housing manager;
- Senior females sexually harassed by persons in position of power, such as building manager or a neighbor; and
- Tribunal assistance.

This group was emphatic that court legal representation is needed for seniors. They noted that most *pro bono* or legal aid services available to seniors do not actually include litigation court accompaniment. Members noted that even if the case was somehow taken to court, the lengthy and exhausting process is a significant deterrent to a senior who may be in her/his 70's or 80's. One participant commented on "the amount of energy and persistence you have to have – one guy did it for 2 years – a senior is going to give up unless [he/she is] exceptional."

It was also observed by members of this group that the court cost associated with bringing legal issues forward for litigation is prohibitive - even if the senior can afford to pay those costs, he or she may not choose to spend his/her money on it. Participants commented that seniors wish for court assistance with issues such as: protection (restraining) orders, disability issues, financial/property issues, etc.

This group also emphasized that making the Clinic accessible to seniors is important. These service providers shared numerous ways in which accessing a legal clinic or legal advocacy supports can be challenging for seniors. This group identified the following barriers to accessibility:

- Language and culture;
- Responsibilities for the care of grandchildren;
- Household responsibilities;
- Eligibility and cost;
- Transportation and health;
- Insensitivity to lesbian gay trans-gendered and bisexual communities;
- Use of "legalese";
- Lack of awareness of their rights; and
- Knowledge of available clinics and what these clinics might offer.

c) Senior-serving organizations

Senior serving agencies are defined as:

- Agencies specifically for seniors, but who do not have a legal program; and
- Agencies which have an in-house program for seniors, but do not have a legal program

The most pressing issues identified by this group were as follows:

- Housing;
- Financial issues such as benefits and power of attorney/ financial planning;
- Financial abuse; and
- Other forms of abuse.

This group noted that housing issues are a common problem for seniors. A major senior-serving organization noted that it deals with about 200 calls per month, many of which are in regard to issues in supported, or assisted, living situations which are not covered by the *Residential Tenancy Act*. According to participants of this group, concerns often arise about a senior's property being transferred into his/her adult child's name, at which point the adult child takes over the house and pushes out the senior. According to these senior serving organization representatives, seniors need

personal assistance in a step-by-step manner, regardless of which what forum the complaint is being heard in.

A common legal concern with which these group members indicated is prevalent centres around admission and exit criteria or process for supported or assisted living. As one service provider explained:

> To be eligible for assisted living you have to have some care needs that the facility can provide for, but they can't be too great. In addition there are exclusionary criteria under the *(Community Care and Assisted Living) Act* regarding people who have dementia. It's around the degree of impairment, i.e. able to safely exit building in event of fire, or dress self in right order. Moving between assisted living and long term care facilities is supposed to be a seamless process but it has its hiccups. A power imbalance can develop in assisted living where there is a real threat of being required to move out (exit criteria) and all the uncertainty with that.

According to these service providers, many seniors do not know their rights in regard to housing. Increased public legal education and information materials need to be developed or expanded about the intersection of seniors' housing and the law.

This group noted that the intersection of finance and the law is a source of concern for seniors. Seniors often want to ensure that estate planning, asset distribution and personal wishes are clear and in writing. Service providers suggested that if this is taken care of properly this could stem potential financial abuse by family members, friends or caregivers, or even a partner.

According to this group that other forms of abuse are also a priority. Although these service providers noted that violence and abuse are often connected to financial abuse, this is not always the case. Participants in this group noted that women could be particularly vulnerable to abuse, in the way that they are in society as a whole. Some women may have been in long-term abusive relationships. Such women are unlikely to have access to the family's financial information and/or no access to any money. One participant noted that, "older women are very vulnerable to spousal violence … they are not believed - granny and grandpa wouldn't hit each other. The police in my community didn't believe a woman I know of."

This group also identified accessibility and overcoming isolation as key challenges. In particular, language and culture were the two main accessibility issues identified.

Other accessibility issues mentioned were:

- Transportation;
- Personal health challenges;
- The senior's own attitudes and personality;
- Lack of awareness or knowledge of rights;
- Lack of awareness of knowledge of available clinics;
- Lack of knowledge around how to access information and navigate systems (i.e. for benefits, healthcare issues/supports and entitlements, etc); and
- Literacy, particularly amongst women, immigrants and older seniors.

Service providers of senior's organizations spoke in greater detail about senior's attitudes towards accessing legal assistance and issues of abuse, trust, and isolation.

Barriers due to illiteracy can be a challenge. Females who immigrated 50 years ago, and are now in their 70's and 80's, have low literacy levels. One study participant noted that senior serving organizations "tend to put a lot of things out in print materials." However, "materials have to be culturally sensitive and presented in a way that seniors can understand, whether that be in plain language, in their own language, or in a way that doesn't require literacy."

Isolation is a problem that many seniors face. This is due to a number of reasons, which include personal attitude or temperament and a desire for privacy. In the words of one service provider:""[seniors] hate giving out information about themselves. They want the legal help but don't want to give out the information to get it…we scare them a little bit by telling them of all the bad things and what they need to protect themselves."

These service providers noted that many seniors have significant personal fears about "the system" (i.e. legal, health or residential tenancy). As one service provider noted,

> Seniors are living in an age where there in a lot of information so it is intimidating, overwhelming and even a bit scary to fathom beginning delving into it. In terms of the criminal justice system, i.e. women that may be considering taking abusive husbands to court, there is also the fear of legal cost, time, and of 'what will happen to me? What will happen next? … victim services hasn't been available for them [seniors] for a long time.' Given that only over 80% of post-war seniors have prose literacy skills considered below the desired threshold for coping well in a complex knowledge society, with 40% testing as illiterate, seniors' fear is understandable.

d) Health Authorities and Government Agencies

Members of this group were:
:

- Office of the Public Guardian and Trustee;
- Health authorities; and
- Government ministries.

This group identified the most pressing issues as:

- Violence and safety;
- Legal representation;
- Financial issues;
- Financial abuse ; and
- Housing.

Overall, members of this group thought that safety from violence was the highest priority. Legal representation is required to ensure safety. In particular, legal representation is needed for (mentally) capable seniors who are vulnerable and for seniors who are incapable. It was noted that there are limits to the amount of assistance that can be provided by the office of the Public Guardianship and Trustee ("PGT"). Although the PGT has the legislative ability to temporarily halt the flow of a senior's account, and thus attempt to reduce the damage of financial exploitation, the PGT does not have a strong ability to recover lost funds.

This group believed that legal representation for incapable adults is a human rights issue. Health care workers commented that they see situations in which legal representation should be provided to vulnerable or incapable older adults, but there is no one to provide it. In this absence, they are not sure how to proceed.

Health care workers noted that as staff of a Designated Agency, pursuant to Part 3 of BC's *Adult Guardianship Act*[63], they have prescribed roles and a governing mandate regarding situations of abuse. In the words of one employee of a health authority:

> Dementia means [the individual] doesn't even know they are being abused or exploited and the health system only has certain tools, i.e. only way to protect her is to put her into a facility even if the senior doesn't want to go, so we may use other jurisdictions to get her in all in the name of protecting her. No one represents her legal rights, i.e. right to where she can live, or engaging civil litigation to get property back from person who stole it from her … there is the whole whose responsibility is it to get her legal advice? Who can take direction from her [because she is deemed incapable]? Usually the Public Trustee will become involved but once no money to manage they aren't involved anymore (The PGT administration fee is 5%). In the hospital, we use The Adult Guardianship legislation to protect her but it's not up to doctors and nurses to hunt down the guy [who abused her] and sue him … elderly people with dementia who are being abused are falling through the cracks. It's not health staff's expertise to provide legal representation or to find a legal advocate."

Health Authority employees explained that the Adult Guardianship legislation provides a limited tool to protect some persons who cannot protect themselves. However, this group indicated that seniors with real or suspected cognitive impairment could be caught in a "catch-22" situation. Practically-speaking, once an adult is found to be "mentally incapable" by health care professionals, can be nearly impossible to retain legal counsel due to being presumed to be unable to give instructions to counsel. Few lawyers feel able to take these cases and even fewer are willing to risk possible citation by the Law Society or personal costs being assessed against them for taking instructions from a (presumed) incapable older adult.

To further illustrate this point, when the Health Authority responds to a concern about the safety of an adult who is incapable or is otherwise unable to take care of him or herself, they will take measures to protect the safety of the vulnerable adult. However some health care workers noted that the protocols that are followed can be seen as paternalistic and may breach an individual's human rights. However, those working for the health authorities must follow these protocols and, as a result, the senior with cognitive impairment remains at the mercy of hands other than her/his own. It was noted that this situation would benefit from the involvement of a legal advocate or lawyer

[63] *Supra*, note 11

because seniors with cognitive impairment frequently need patient advocates and legal representation. One participant commented that:

> no one represents her legal rights, i.e. right to where she wants to live, civil litigation to get property back from the person who stole it from her. And because she doesn't realize she's now homeless and destitute, just "get me a taxi dear so I can go home" - there is the whole whose responsibility is it to get her legal advice? … It's not health staff's expertise to provide legal representation or to find a legal advocate. [But] who can take direction from her because she is not competent enough to provide it … It's basic human rights. I don't know of any other legislation where [you] can incarcerate someone against their will.

This group also observed that when financial issues are left unresolved at an earlier stage, by the time someone is becomes incapable he or she will no longer have control over the resolution of these issues. It was strongly suggested that people should be able to seek legal advice and make their wishes known before this situation arises.

Participants from this group noted also noted that many seniors do not know their legal options around housing issues. Access to this information is a pressing legal and advocacy issue.

Participants from this group identified the following as the major challenges for seniors in accessing legal services as the following:

- Mobility challenges;
- Lack of awareness and knowledge about legal rights, housing options or how to navigate the social service and legal system;
- Lack of grassroots level support systems;
- Dementia and the absence of hospital advocates;
- Reluctance to use lawyers; and
- Limited financial resources to access services.

5. Consultation on Clinic Operations

a) Clinic Operations

Staff members from legal clinics or agencies that offer legal services and other key stakeholders (the "Interviewees") were interviewed about clinic staff structure, protocols, and procedures. There was significant consensus about how operations for the Clinic should be conducted.

b) Clinic Staffing

Interviewees agreed that phone-in for general enquiries, information, and subsequent resource referral or appointment set-up would be generally heavy in the new Clinic. This builds on the experience of other legal aid providers such as legal services clinics or *pro bono* clinics. On this basis several recommendations were made:

i. Skilled intake workers must be able to elicit and distinguish caller's needs and must be able to respond appropriately, which may include referrals and information.

ii. Paralegal(s) should deal with cases requiring more specialized expertise than can be provided by an intake worker.

iii. Minimal staffing is only possible for the first six months to one year. After this, a more appropriate staffing level is required for the Clinic to function.

iv. Because of the type of work the Clinic will likely be doing (i.e. abuse/family, mental health advocacy) and the type of clients with whom they will be working (i.e. high needs clients, seniors with possible mental health issues, lower education, ESL/multicultural, etc) and who need their services, the staff needs to double in order to rotate and prevent exhaustion and burn out.

The following initial start-up clinic staffing structure and roles/responsibilities were suggested by the Interviewees, with the proviso that more staff to be added six to twelve months down the road:

- 1 Executive Director, who is also a lawyer;
- 1 Staff Lawyer;
- 2-3 Paralegals;
- 1 -2 Intake Workers;

- 1 Administrative Support Worker; and
- 1 Outreach / Community Development Worker.

Volunteers can also assist in supplementing the staff structure. However, volunteers also require supervision, which increases staff pressures and responsibilities.

The majority of respondents believed it is vitally important to involve older people with the organization. They also offered detailed suggestions and opinions of the roles, responsibilities and qualities for the various clinic staff.

i. Executive Director

The Executive Director is responsible for the overall management of the Clinic, its staff and operations. The Executive Director should have skills in the areas of service provision of the organization, strategic development, human resources, management, governance issues and day-to-day management of operations. The Executive Director should also have skills in media relations and be expert in issues of law and aging. Interviewees particularly acknowledged the enormous weight of responsibility of this position, and they emphasized allotting the Executive Director a reasonable workload. One Interviewee noted frankly, that this position will "take a tremendous amount of work."

ii. Clinic Lawyers

Lawyers who work at the Clinic should be engaged in elder law issues and sensitive to the needs of older adults and the broader senior's community. Interviewees noted that it would be helpful if a Clinic lawyer's skill set included some community development and social service training. Personal qualities and knowledge were noted to be of importance. Staff lawyers should be able to communicate legal issues in a plain-language fashion. They should be careful not to be overly "technical and to lose the audience… when doing information sessions they need to think of all the 'what if's' and be down to earth, practical and simple as they might be dealing with seniors who might have cognitive impairments and limited education."

Those interviewed believed the Clinic lawyers should posses the following qualities, abilities and knowledge:

- Patience, resilience, understanding, empathy, an understanding of gender issues, cultural sensitivity, an awareness of language and literacy barriers, and queer knowledgeable / sensitivity;
- Ability to keep calm and manage a crisis or difficult behavior, particularly with mental health clients ;
- Ability to balance focus on legal issues despite the emotional nature of the issues; and
- Knowledgeable on law and legislation particularly relevant to older adults.

iii. Clinic Paralegals

Paralegals are instrumental in providing input into case management, program development, and lawyer support. They are able to undertake some legal research and document preparation. Key skills for the Clinic paralegals would mirror that of the Clinic Lawyers.

iv Intake workers

The intake worker was considered a key role and one in which the individual(s) should have legal administration training and/or experience. Interviewees likened the intake worker to the 'glue' of the organization. Intake workers should be able to make connections, build relationships, and support the paralegals and the Clinic lawyers. Intake workers can also support clients in a variety of ways, including providing some basic information or following up with clients about appointments. "People do not always re-contact if they need further information or follow the lawyer's advice because they may have run into some stumbling block and given up. Nor do individuals usually voluntarily call back to inform of the outcome." A structured follow-up conducted by the intake worker would also reinforce the personalized, community-based, welcoming approach, and Clinic tone.

v. Administrative Support Worker

Many of the same personal and professional qualities listed above were also deemed important for the administrative support worker. They should be able to communicate well with seniors, be reliable in their duties and interact well with both clients and staff. Administrative tasks will need

to be completed diligently, particularly with regards to Clinic filing matters and routine accounting tasks.

vi. Outreach / Community Development Worker

A key task, particularly in the start-up phase, will be communicating and liaising with community members and individual seniors, in order to better inform others about what the Clinic can provide. Interviewees noted that this position will be critical in reaching out to isolated and/or particularly vulnerable seniors. Skills for this position should include the ability to communicate well, an understanding of community networking and program development. Although not directly stated, given the emphasis that Interviewees placed on PLEI, it is implicit this worker would have a role in PLEI as well.

vii Volunteers

Currently BCCEAS has a pool of PLEI volunteers, some of whom are from different ethno-linguistic backgrounds. Interviewees noted that volunteer programs could be expanded, particularly in providing services to different geographic areas.

viii Other Important Staff Qualities

Interviewees noted that the type of lawyer, or advocate, giving over-the-phone information for seniors is crucial and demands a mix of qualities and talents. To convey warmth and caring over the phone is a challenge that takes unique skill and demands a lot of energy, as storytelling is very important to seniors. Seniors often give information through stories.

> "People are very desperate when they call. They're in pain; they've been abused by relatives, children, etc … it's very stressful. The most difficult part is interviewing people on the phone. It's very difficult to keep them on track. They talk about irrelevant issues, and talk about their whole life history. In some situations they really need to go to a counselor before coming to a paralegal. They often start to cry before they talk."

In situations of abuse it takes a lot of time to build trust which "… might mean several phone calls until the whole story comes out." Non-native born Canadians may be even more reluctant to open up. "Native-born Canadians are quite open about being abused. The problem is with the

multicultural communities because they keep their problems quite private. It takes more time, particularly if the person doesn't speak English"

The interviewees noted that the Clinic lawyers need to have some knowledge of services available in rural communities as well as in the Lower Mainland. They must be aware of multi-cultural supports for those who do not speak English. Clinic lawyers will likely have to follow-up with their senior clients about available resources. Interviewees also indicated that it was important that the Clinic staff be "culturally competent". Staff will need to understand the potential implications of legal actions, why seniors may be culturally reticent to engage with the justice system. This is particularly true for immigrant and sponsored clients. One interviewee noted that:

> Language, culture, sexual orientation (safety) … all of these barriers pile on top of each other … sponsorship breaks down where an elderly man can't do his expected duties, and is at risk for abuse, and/or likely he'll be deported … I got a call from an elderly woman who speaks a different language, is diabetic, and needs services. Her role in the family is to look after the kids and do the cleaning; they withhold food until gets it all done. She's diabetic; it could kill her. We looked into it and see she's experiencing a lot of abuse but she'll be deported if says anything because the family is her sponsor. And she's too competent to live in a long-term facility. If she lived on her own she would need financial support but she doesn't qualify [for it] because she's not a Citizen or permanent resident.

Overall, interviewees were able to provide important and strategic input regarding Clinic set-up and operations. The comments from the interviews had a high degree of reliability, as such similar themes and components provided highly consistent responses during this research component.

6. Public Legal Education and Information (PLEI)

Interviewees warned that "it is easier to add services than to take them away." They suggested that managing expectations would be both very important and highly challenging.

a) Recommendations regarding PLEI

i. Continue and expand on current PLEI work

Interviewees were adamant that BCCEAS continue the PLEI work it is currently doing; indeed, they wanted these services broadened and expanded. They expressed particular interest in PLEI topics

around abuse issues, and they also indicated a desire for information relating to consumer protection, including scams and frauds.

A concern was expressed that seniors often lack awareness of what constitutes fraud or financial abuse. Suggestions were made about other specific topics that could be offered in PLEI sessions for seniors, frontline service providers, and community members interacting with seniors. Suggested topics are as follows:

1. Information and assistance in navigating the social service and legal system;
2. Education about the legal services available in their community.
3. Awareness raising about what constitutes financial abuse and fraud around the province.
4. Workshops on:
    - Wills ;
    - Pension division;
    - Spousal support;
    - Property division;
    - Housing issues;
    - Representation agreements;
    - Powers of attorney;
    - Sponsorship and immigration;
    - Benefits available upon turning 65 years old; and
    - Rights of seniors regarding matters such as sexual harassment of elder females by landlords and managers.
5. Public education for immigrant seniors both already in Canada and for those planning to immigrate (primarily via the provision of pamphlets)
6. Expansion of consumer fraud workshops throughout British Columbia.

Generally, it was suggested that the Clinic should act as a 'hub' where seniors can go to access information and get referrals. Future expansion could take place by providing workshops on new topics and by providing PLEI sessions and legal services around the province.

b) Accessibility and PLEI

Interviewees made specific suggestions on how to promote accessibility for its PLEI work:

1. Work through intermediaries (i.e. PICS, MOSAIC, Diversity, The Generations Project, etc) to reach out to multi-cultural and LGBT communities.
2. Employ diverse staff, which will encourage outreach and understanding into those communities.
3. Use TV and radio stations that serve immigrant communities in their native language to promote PLEI. Such multi-cultural cable TV shows and radio shows are very effective ways to reach many immigrant seniors from an array of ethno-cultural communities. One interviewee noted that "radio stations are the best way to provide information to the South Asian community. There is also an open line where they can ask questions. You can reach thousands of people with one talk show."
4. For English-speaking seniors, promote PLEI through radio stations such as: CBC, oldies, and CKNW, and local English-speaking cable TV channels. Many interviewees noted the effectiveness of community programming, with a particular emphasis on the usefulness of repeat shows.
5. Spread legal information on PLEI session times and dates using the website.
6. Have roving PLEI sessions in and through non-traditional intermediaries (geriatric centres in hospitals, nurses, Adult Education seniors programs, multicultural organizations, faith groups, assisted living residences, etc).
7. Develop some FAQs on some common issues, written in simple, clear, language in large fonts. Make them available in hardcopies and also on a website, being cognizant that many seniors do not have access to the web, but service providers, family, and caretakers often do.
8. Be accessible along a bus and/or Skytrain route, with parking easily available.
9. Be consistently open Monday to Friday from 8:30am to 4:30pm.
10. Translate written materials into other languages, especially Punjabi, Chinese, Spanish, Vietnamese, and Korean.
11. Build relationships with local lawyers and provide materials for their office waiting rooms.
12. Provide child-minding services as immigrant seniors as approximately 85% look after their grandchildren during the day. Alternatively, have services in locations that already offer child minding.

There was a strong consensus among participants in this study, and in particular amongst those interviewed that BCCEAS should continue its existing services in terms of advocacy and PLEI regarding abuse and consumer protection issues, but wanted these PLEI efforts to be expanded it in four primary areas:

1. Financial issues (including wills and estates, powers of attorney, pension, and benefit entitlements);
2. Housing (including assisted living and residential care situations);
3. Court representation; and
4. Advocating for elder rights (including law and policy reform, gap analysis, service provision, committee work, and consultations)

Participants strongly stated that they wanted the Clinic to remain accessible to the community and to remain connected to its roots in the "seniors' community."

7. Collaboration

Interviewees noted that there are "numerous opportunities to work with multi-cultural and LGBT service providers as well as many others in order to enhance services and make them more inclusive." They suggested that the Clinic could work with the multi-cultural and the LGTB communities to further enhance access and expand resources.

One approach that was suggested was to work with large multicultural organizations that have offices throughout the Lower Mainland, in order to reach various immigrant groups. These organizations could provide volunteer translators, similar to what SUCCESS does with ACCESS Justice. These volunteer translators could be trained by a Clinic lawyer to provide PLEI workshops and other outreach activities. These volunteers can go out into the community or be called upon for translation services. In turn, interviewees noted that BCCEAS could assist multi-cultural organizations in developing culturally appropriate elder law PLEI material. The multi-cultural organizations could then take these PLEI materials and disseminate them throughout their cultural groups or communities.

Interviewees suggested that BCCEAS might also train frontline workers working with seniors to help recognize signs of abuse and to provide training on some basic legal information related to

abuse. In turn, these frontline workers from key organizations could support BCCEAS staff development by sharing their own expertise and experiences, which could include some peer-to-peer staff training. Interviewees also suggested that BC collaborate with the lesbian, gay, transgendered and bisexual community to increase sensitivity of staff towards LGTB seniors. This increased sensitivity would serve to inform and enrich organizational activities, including PLEI services.

8. Conclusions to Field Research

Accessibility, in its myriad of forms, was an important and consistent theme in the Field Research. There was strong consensus around areas of needed service provision, which included financial issues, abuse / safety issues, and housing issues. Key differences or additional issues presented generally reflected respondents' specialty areas based on their mandated role. All respondents were passionate that BCCEAS continue, but expand its existing work.

Consensus was also reached on the minimum staffing requirements for BCCEAS as an organization and for the Clinic in particular, the types of services which should be offered, the role of BCCEAS and its staff in the community, the job descriptions of the staff positions, the roles of volunteers and the skills and qualities best suited to working in this Clinic.

It should be noted that many different suggestions and insights were provided by participants in this study. Hopes for this Clinic are high. BCCEAS cannot realistically meet the identified desires at this point in its organizational development, but this input is vital in producing future strategic and operating plans. Participants in the study strongly suggested that BCCEAS draw attention to the existing organizational needs with its present and future funders. The "pent-up" demand for services for seniors is caused by existing service gaps and the impending growth in the seniors' population. BCCEAS can help to meet this need and the Clinic can work towards relieving some of this demand, but it is recognized that these components are small pieces in a much larger strategic puzzle.

The Field Research indicated that collaborating with diverse organizations to share information and training may be an effective way to expand resources and services at this time. This research also strongly suggested that BCCEAS and its Clinic should act as a 'resource and referral hub.' This

'hub' vision for BCCEAS resonates strongly with key stakeholders and would assist not only seniors but also service providers, lawyers, and other community members throughout British Columbia.

F. Key Conclusions from the Research (Section A) of this Report

Mixed methodology was used in this study to examine two research questions:

1. What are the priority needs of older adults that should be addressed by the new elder law Clinic?
2. What best practices, service delivery models, and protocols should be adopted by the new elder law Clinic?

This mixed methodology included a literature review, field research, consultations, and information gathering from experts. The key objective for this Needs Assessment research project was to identify priority areas for legal service for seniors.

1 Priority Needs Addressed by Clinic

The results strongly support BCCEAS setting internal service priorities for the Clinic to avoid being overwhelmed by service demands The results of the Needs Assessment research support providing service first to older adults who have experienced abuse or are vulnerable to abuse, particularly when immediate safety is at risk. This priority was also supported by expert consultation.

The US expert consultant advised BCCEAS to create service priorities based on a type of client population rather than restricting services to specific areas of law. In the US, many elder law clinics have chosen to take this approach rather than creating a prescriptive list of legal issues that will or will not be provided. The Canadian experts consulted, including ACE, also supported this general approach to service provision.

As noted throughout the Needs Assessment research, older adults often have interconnected legal problems making it difficult to attend to one issue in isolation. By making safety issues the highest

priority, Clinic lawyers will be able to assist with several issues for clients whose safety and health is at risk.

Participants in the Field Research stated that there is a wide range of legal problems that are commonly experienced by older adults. These include the following:

- Problems in a housing situation in the community;
- Problems with a housing situation in assisted living or long-term care;
- Difficulty accessing government benefits; and
- Financial fraud, including abuse, scams, and misappropriation of funds.

These problems are also issues that are dealt with by elder law clinics in the US and at ACE in Canada.

2. Best Practices, Service Delivery Models, and Protocols for the Clinic

a) Staffing: 7-8 FTE Required

Substantial consensus was highly indicated regarding the required staff structure for the Clinic. Participants in the Field Research recommend a minimum staff level of 7 full time staff at Clinic opening. US expert consultant Bob Rhudy recommends a similar staff size for the Clinic based on his experience in clinics in the United States. His recommendation is for 8 full time staff. Canadian experts also concurred with these minimal staffing levels.

b) PLEI and Outreach: Continue and Expand Programs and Services

There was consensus that the Clinic should adopt a model that provides services complementary to direct client work. This model has been proven successful in other comparator jurisdictions. In particular, the Needs Assessment research strongly indicated that PLEI and Outreach activities were key services that the Clinic and BCCEAS should provide. The research also indicated that the Clinic and BCCEAS should work collaboratively with other organizations, clinics and members of the Bar.

c) Accessibility: A Key Priority

Both the Field Research and the literature review strongly support making the Clinic as accessible as possible for older adults. Both sources offered suggestions on how this might be done.

d) Accountability

The Needs Assessment research indicated that the Clinic must be accountable to BCCEAS as an organization. This would necessitate an accountability to the board and funders of BCCEAS, as well as to the larger "seniors' community." Accountability to the larger seniors' community can be affected through PLEI, Outreach, and community liaison.

In Section C of this report, Clinic accountability to the community will be discussed along with the following issues that were identified by this research:

- Service priorities;
- Staff levels and structure;
- PLEI;
- Outreach;
- Collaboration; and
- Accessibility.

IV Section B: A Contextual Analysis and Practical Implementation of the Results

This next section provides an analysis of the context in which legal services can be delivered to older adults in Canada as well as information about information gathered through this research was applied at a practical level in regard to the Clinic Service Delivery model.

A. The Rights of Older Adults in B.C.

1. Current Context and Importance of Elder Law Development

In Canada, demographics are significantly changing as the population ages. With the demographic shift, more public policy emphasis, media attention and overall focus is being given to issues of aging and those of seniors. As such, it is a strategic time to move forward in addressing the issue of the mistreatment of older adults and to focus our efforts on protecting and expanding these civil and

human rights. Key considerations when addressing the issue of the mistreatment of older adults include the current state of justice, the overall political landscapes, the unique characteristics of older people and their experiences with ageism.

The Right Honourable Beverly McLachlin, P.C. in her remarks to the 3rd Annual Canadian Conference on Elder Law in November, 2007 addressed the challenges and importance of advancing seniors' rights. She noted that:

> As people age, their dignity, security and autonomy, taken for granted in youth, may be threatened. Their dignity may be increasingly threatened by discrimination. Their security may be threatened by abuse; and their autonomy may be undermined by difficulty in accessing basic care and services. The three values of dignity, security and autonomy thus find their counterparts in three needs: the need to be protected from discrimination; the need to be protected from abuse; and the need to receive appropriate care and services.[64]

2. Specific Challenges

One challenge in advocating for the rights, safety and security of older Canadians is that as a group, seniors are not homogenous. As such, serving this demographic group requires a diversity of skills, understanding and a continuous search to understand key needs.

A second challenge is the prevalence of ageism in society. The term "ageism" refers to two concepts: a) a socially constructed way of thinking about older persons based on negative attitudes and stereotypes about aging, and b) a tendency to structure society based on an assumption that everyone is young, thereby failing to respond appropriately to the real needs of older persons. When working in this area, active individual and systemic levels of discrimination must be addressed both in individual client service delivery issues, but also on a macro or systemic level as well.

A third challenge is lack of access to the justice system. Seniors often 'fall through the cracks' of the justice system and are unable to access the services of a lawyer, either through private practice or through legal aid. Poverty amongst seniors is high, particularly in demographic subgroups, such

[64] Beverly McLachlin, P.C., "Elder Law: An Emerging Practice" delivered to the 3rd Annual Canadian Conference on Elder Law, Vancouver, British Columbia, November 10, 2007, online: Canadian Centre for Elder Law Studies <http://www.ccels.ca/conferences/2007_CCEL_CJC_Keynote_Address.pdf>.

as women, immigrant seniors and disabled seniors. Cases that particularly affect older adults do not often have adequate funds associated with them to allow for private practitioners to take them. Further, the way in which courts calculate damages disproportionally negatives impacts older adults – their income earning years are often long past.

Even if an individual senior's very limited income may put him/her in an acceptable bracket to receive aid, asset holding, such as the family home is counted towards income, even if those assets are inaccessible. Many seniors fall into the category of "asset-rich, cash-poor" which has the effect of denying them access to legal services on the basis that their home, often the only asset, disqualifies them for service.

The Legal Services Society (LSS), which provides legal aid to lower income residents of B.C., has specific guidelines that must be met in order for a person to qualify for their services. These include both financial guidelines, as well as the type of legal matters that they will provide services for. Covered services are very limited. The Legal Services Society will pay for a lawyer to represent an individual if: 1) the legal problem is covered by legal aid rules; 2) the individual meets financial guidelines; and 3) the individual has no other way of getting legal help.

Legal problems that may be covered by legal aid include the following:

- Criminal charges;
- Mental health and prison issues;
- Serious family problems ;
- Child protection matters; and
- Immigration problems.

Legal aid lawyers can only represent someone if household income and assets are at or below the LSS's financial guidelines. A person's assets are usually considered as disposable (able to be sold) with some exceptions. Additionally, most of the identified areas of need for older adults do not fall within the qualifying criteria for BC legal aid. However, the consequences of not receiving adequate access to justice can often have a disproportionately negative effect on seniors. Impacts can include homelessness, illness, and even death.

BCCEAS and its legal Clinic is a much needed entity in the area of elder law service provision and access to justice issues in BC.

3. Protection of the Rights of Older Adults as a Social Movement:

Society's awareness of elder abuse and the need to protect the rights of seniors has been growing. For example, over the past few years there has been increased awareness of the need for improvements in social services for seniors. Concerns such as housing, employment, community development and health care are issues which the BC and federal governments are increasingly mentioning.

For instance, in 2005 the BC provincial government recognized the challenges associated with meeting the needs of a growing seniors' population, and committed to establishing a new Premier's Council on Aging and Senior's Issues. The 18 member Council was implemented in October 2005. They were asked to examine two key issues:

1) How to support seniors' ability to continue as contributing members of society; and
2) How to support seniors' independence and health

The council produced the report, "Aging Well in British Columbia" in December, 2006, which outlined a framework for action to support older people in B.C. over the coming decades, with recommendations across a broad range of areas.[65] It is notable that, although society may be becoming more aware of the needs of older adults, this does not necessarily translate into awareness of legal issues and access to justice matters. For example, the "Aging Well in British Columbia" document did not significantly address seniors' legal concerns.

Despite increased mention and focus on seniors' issues, the government has withdrawn services to seniors over the past term, and has not provided a budget or purview for a ministry responsible for seniors. As such, seniors are increasingly concerned and confused about whom to turn to for service and support.

[65] *Supra*, note 10.

A key role for BCCEAS over the next few years will be to highlight these access to justice and seniors' rights issues to the public, and to provide service and support wherever possible.

The current lack of legal services for low or middle income British Columbians has a disproportionately negative effect on seniors as a group. This is an equality issue. Section 15 of the *Charter of Rights and Freedoms* (the *Charter*) states that "Every individual is equal before and under the law and has the right to the equal protection of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability."

Numerous Supreme Count of Canada cases have rejected the view that equality is achieved by treating everyone equally – known as "formal" equality. Rather, equality often requires treating people differently to prevent some groups from being adversely impacted by particular legislation or by the implementation of a government program or service – known as "substantive" equality.

In the leading Supreme Court of Canada case *Andrews v. Law Society of British Columbia*[66], the court rejected the "similarly situated test" which had previously been used to determine whether discrimination had occurred. This test allowed for treating like people alike, and failed to recognize that because individuals are themselves different, so too are their needs and capacities. In *Andrews*, the Court outlined an approach recognizing that different treatment is sometimes required in order for equality to be achieved.

In the case of older adults, if programs are designed with younger adults in mind and with no consideration of how the specific needs of older adults might be accommodated, the effect can be discriminatory. Unfortunately, age discrimination is often not taken as seriously as other forms of discrimination. The Right Honorable Beverley McLachlin PC in a keynote address on elder law pointed out that "[t]here is often a marked lack of interest in advancing the rights of the elderly, due to the stereotypes of aging."[67] Ageism, like other forms of discrimination, can have serious economic, social and psychological impacts. In order to combat the discrimination of ageism, it is

[66] *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.
[67] *Supra*, note 12.

necessary to raise public awareness about its existence and to dispel common stereotypes and misperceptions about aging and the aging process.

The current lack of elder law services in BC has a disproportionately negative effect on seniors as a group. As older adults are not a homogenous group, they often have unique needs as they age. For example, many seniors have difficulty with mobility or have visual impairment. Legal services for older adults may need to be provided in particularly accessible ways, otherwise many older adults will be blocked from access to the justice system.

The reduction of legal aid in British Columbia leaves many low to middle income British Columbians to represent themselves in legal disputes as they may not be able to afford to hire a lawyer. There are many self-help resources to assist self-representing litigants, but these are often not suitable for seniors. For example, many seniors may be unable to travel to the Supreme Court Self Help Center or may have difficulty accessing online web resources to guide them due to mobility issues, lack of familiarity with mechanical or computer-based systems or other barriers.

In order for many older adults to access the justice system they need to be able secure legal representation or legal advice. Legal services must be provided in ways that make the services accessible to older adults. For example, the Clinic will offer legal appointments on a mobile basis and will keep adaptive devices handy in the offices to support seniors with sensory or balance impairments. Without such measures, many older adults will be without recourse when their rights have been violated.

The new Clinic will also play an important role in raising awareness about ageism and about the inequality that results when services and programs are not designed to specifically include or address the unique needs of older adults. The establishment of the new BCCEAS Clinic is one step towards enabling older adults to access the justice system and towards removing barriers that prevent access to justice.[68]

B Role of BCCEAS:

[68] Other key accessibility strategies that are included in the BCCEAS service delivery model are: location (near transit routes and in a senior's centre), the availability of adaptive aids for clients and mobile service provision.

BCCEAS has successfully provided public legal education and legal advocacy for nearly 15 years through the efforts of its volunteers and nominal staff. As BC's population rapidly ages, it is important to build increased organizational capacity and to develop new strategies to meet this need. BCCEAS has been at the forefront of a movement to advance elder rights and to ensure the safety and dignity of older adults for many years.

However, as awareness of a particular issue grows, so does the need to formalize the social movement. This strategic development often occurs once society begins to become aware of abuses and/or discriminatory action directed at a particular group. Arising from this increased awareness comes the desire to ensure that the discriminated group's rights are increasingly protected.

The implementation of the Clinic, along with increased societal awareness of the plight of many older adults, coincides with BCCEAS' transformation from a "grass roots coalition" to an organization that can effectively promote the rights of older adults in a broader range of venues. This includes representing older adults in the justice system, taking on law and policy reform initiatives, leading education in this field and promoting institutional change to bodies which provide services to older adults.

The natural growth of BCCEAS from a small coalition of concerned citizens to an organization leading the social movement for elder rights finds parallels in the formalization of other rights movements in earlier decades. For example, the "women's / feminist movement" started as a small grassroots movement but, as public awareness grew of the unequal treatment women suffered, a more formalized force for social change developed so that those advocating for women's rights could bring effective change to the justice system and to other areas of society. In BC, the development of West Coast LEAF was a hallmark of that social movement development and formalization of this cause. West Coast LEAF has been a leader in advancing the legal rights of woman through legal advocacy, law and policy reform and educational development issues.

Likewise, "environmentalism" began as a grassroots movement of people concerned with issues such as pollution, and climate change. Over time these concerns developed and matured, and with that maturity again came more formalized environmental organizations. In BC, the Sierra Legal Defense Fund – now known as Eco-justice – helped to solidify the environmental social movement

into an organization capable of bringing legal and other challenges to harmful environmental practices.

BCCEAS stands at the forefront of BC and Canada's social movement for elder rights. The development of a legal Clinic to advance the rights of older adults is a natural "legal advocacy" outgrowth of the elder rights social movement. Due to the support of the Law Foundation of British Columbia, BCCEAS will now be able to take a leading role in raising public awareness of ageism while protecting and promoting the rights, safety, and security of older adults.

The expected increase in the senior population in BC over the next 25 years means that elder law is an area that will be of paramount importance.[69] Small, minimally funded grassroots organizations will not have the capacity or expertise to address the mounting legal concerns of seniors. BCCEAS is poised to play a pivotal leadership role on legal issues affecting seniors' rights. With the implementation of the Clinic, BCCEAS will be in the position to provide legal services to seniors, as well as to act as a support and much needed legal advocacy resource for the various entities that already serve the senior population.

C Best Practices, Service Delivery Model and Service Priorities for the Clinic

1. Key Objective for Services

Given the BCCEAS goal of assuming a leadership role in raising awareness about elder abuse and in protecting the rights of older adults, it was imperative for BCCEAS to lay a solid foundation for its strategic development. Key objectives and strategies were carefully considered during the "start up" phase of the Clinic.

A key objective of BCCEAS in designing the Clinic service delivery model and eligibility criteria is to retain flexibility so that services can be adapted as laws change and as new needs emerge. This is embedded in the Clinic design. The following section of this report explains how BCCEAS utilized

[69] *Supra*, note 16.
The report notes that the proportion of older adults in British Columbia is growing rapidly; only 35 years ago, fewer than one in ten British Columbians was over 65, today nearly one in seven is over 65, and 25 years from now, it will be nearly one in four. In less than ten years, there will be significantly more people in B.C. who are over 65 than under 15. In addition, life expectancy in British Columbia rose from 62 years in 1921 to over 81 in 2005, and most British Columbians now experience many years of healthy and active living after the age of 65.

input from the community and advice from other legal service providers to develop a "made in BC model" for the Clinic. This model allows BCCEAS to take a leading role in protecting and advancing the rights of older adults, and, in particular the rights of older adults who have been abused or are vulnerable to abuse.

2. Challenges

BCCEAS was faced with two key challenges in setting up the Clinic:

- Supporting current BCCEAS programs which are currently significantly under-resourced; and
- Restructuring the organization so that services can be delivered in a manner that is consistent with professional conduct rules for lawyers, while maintaining and delivering current BCCEAS programs.

This necessitated creating and implementing an entirely new system for processing inquiries to the office and referrals to the Clinic.

a) Staffing

The first key challenge was to determine what staffing structure should be implemented given a shortage of financial resources. BCCEAS has a long and successful history of delivering education and support services aimed at reducing and preventing abuse of seniors. However, BCCEAS has always relied on short-term project funding to do so. As such, BCCEAS' financial situation has always been precarious.

The diagram in Appendix B depicts funding for staff prior to the Clinic's existence. At that point in time BCCEAS had only 3 ongoing staff positions – 1 full time and 2 part time staff members. Although additional staff was temporarily added from time to time when there was adequate project funding, often BCCEAS did its work with 2.4 full time equivalent staff positions.

BCCEAS' staff levels increased somewhat with the Clinic funding. However, the current organization is still under-resourced. This is due to the fact that there were minimal resources for staff prior to adding the Clinic program and that funding for the Clinic was less than anticipated

This has created a situation where BCCEAS now only has funding for about 60% of the staff that are actually needed for the programs and services that BCCEAS is committed to provide. The original grant application for the Clinic was $500 000 per annum for operating expenses. If BCCEAS had received this amount of money it would have been possible to afford the equivalent of 6 full time equivalent positions. However, BCCEAS was provided with $300 000 as an operating budget. As depicted in the diagram in Appendix C, the Clinic funding and Legal Advocacy funding combined provides the equivalent of only 4.2 full time equivalent staff positions.

As a result, BCCEAS was forced to make difficult decisions regarding which staff positions from the original program design will be filled and which will not. The Clinic funding and the Legal Advocacy program funding provides for 3 full time positions: an Executive Director, a staff lawyer and a legal advocate (paralegal). In addition to these positions, the Clinic's operating budget allows for 2 part time positions. This is to be contrasted with the original funding proposal which would have allowed for 1 additional lawyer (full time), 1 full time office manager, 1 part time administrative assistant and 1 part time outreach worker.

Revised and reduced staffing levels were based on the advice of consultants and on the Needs Assessment research. At a bare minimum, a 0.6 FTE office manager and a 0.6 FTE intake worker were identified as critical for the Clinic alone. Staffing for the general BCCEAS office and support for its programs was so vital that BCCEAS made a decision to hire a 1 FTE office manager and 1 FTE intake worker and to find project funding to pay for the 0.4 FTE balance of the salary for these two positions.

One of the staff positions in the original Clinic program design that did not get filled was an outreach / public legal education worker position. Therefore, when the Clinic opened BCCEAS did not have a staff member specifically assigned to provide or support outreach and public legal education.

The actual staff structure upon Clinic opening was as follows:

- Executive Director (1);
- Staff Lawyer (1);

- Legal Advocate – paralegal (1);
- Intake Worker (1); and
- Office Manager (1).

b) Implementing new structures and procedures to meet professional standards

Prior to the Clinic opening BCCEAS had had one phone line, which was both a business line and a legal information and referral line. BCCEAS' legal advocate answered the phone line, and provided information and referrals. When the call was in regards to an agency business matter the call was transferred to the administrative assistant. The legal advocate provided representation to some clients under the supervision of a lawyer in private practice.

Two changes occurred upon opening of the Clinic:

1. Supervision of the legal advocate transferred to the Executive Director who is a practicing lawyer; and
2. A business line was installed so that business inquiries and legal information and referral calls would be kept separate.

The implications of these changes were significant. As the Executive Director of BCCEAS is now supervising the legal advocate as well as supervising the staff of the Clinic, it is necessary to implement procedures to ensure that there are no conflicts between staff in the two programs.

Prior to the Clinic operations, the legal advocate had provided information and telephone advice to all callers to the toll free line and, since the legal advocate was the only staff member seeing clients about legal matters, conflicts were not a concern. The legal advocate provided information to third party callers as well as to older adults. The legal advocate was also able to provide some basic information to callers who wished to remain anonymous, although such information was gathered prior to providing advice or representation.

The addition of a legal Clinic, which will only provide services to older adults and to the legal representatives of older adults, requires more stringent guidelines regarding to whom BCCEAS can provide legal information and advice. If all callers are provided with legal information and advice

then this creates a significant likelihood of legal conflicts as third party callers to the toll free line might be calling about family members or friends who are clients of the Clinic.

Additionally, as several staff members of BCCEAS would be providing legal advice, there was now a possibility of internal conflicts; callers to BCCEAS, the "agency," might mistakenly assume that a staff member in one of the other programs was speaking on behalf of the legal Clinic. One must ensure that there is clarity both in internal processes as well as in external perception.

As a result of these key issues, a complete change in intake procedures was undertaken. These issues were discussed with Judith Wahl, Executive Director of ACE, with a practice advisor at the Law Society and also with the project management/advisory committee. Subsequently, the following procedures were implemented:

1. BCCEAS installed a business phone line and maintained its popular toll free line. The toll free information and referral line will remain a point of entry into the legal advocacy program, and will also be a point of entry into the Clinic (the "Legal Programs").

2. All calls to the toll free line will be pre-screened for eligibility before callers are transferred to the legal programs. Specific screening criteria will be developed.

3. BCCEAS purchased "Time Matters," a case management software program and laptops for Legal Advocacy / Clinic staff. This will make it possible to carry out a conflicts check prior to providing legal advice or representation even if staff are off site.

4. If a caller is referred to the legal Clinic, a conflicts check will be done immediately. The legal advocate and / or lawyer will inform callers that BCCEAS provides legal advice and information to older adults (55+) and that, although information may be gathered from a third party, the lawyer or legal advocate will need to be put in contact with the older adult and that the older adult is "the client."

5. An intake worker position was created. This person will be trained to answer the toll free information and referral line, and to refer callers within eligibility guidelines to the Clinic, the legal advocacy programs, the lawyer, or to the legal advocate. Callers who do not fit

eligibility criteria or who are not calling about a legal problem will be referred to another BCCEAS program or an outside service.

6. The intake worker will inform all callers that they are not speaking to someone from the legal Clinic and that legal advice will not be given. The intake worker will provide information about services and resources but will not provide legal information except for very basic information within very strict guidelines.

7. A 'Chinese Wall' between the BCCEAS Legal Advocacy and BCCEAS' other programs will be strictly adhered to. Information about clients in the Legal Programs will not be shared with staff in other programs. Information about individual clients of any BCCEAS non-legal support and information programs will not be shared with staff in the Legal Programs.[70]

8. A two-stage intake model for the legal programs will be used. Stage 1 intake will be for all BCCEAS programs. At stage 1 the intake worker will determine if the caller is eligible for BCCEAS Legal Programs and if the inquiry is legal in nature. If so, the caller will be transferred to the legal advocate who will do a second level of intake (Stage 2 intake), that entails intake to the Legal Programs and which will include a conflicts check.

A diagram depicting this 2-stage model is attached to this report as Appendix D.

3. Other Aspects of Service Delivery Model

a) Referrals

Referrals to the clinic can be made in one of two ways: 1) Contacting the toll free line, as described above. The call will be directed to the legal advocate who will determine whether he or she can deal with the legal issue. If so, the inquiry will be dealt with at that level, and, if not, the call will be referred to the lawyer. 2) Contacting the lawyer. However, a limited number of agencies will be preapproved to make referrals directly to the lawyer.

[70] At present BCCEAS does not have any non-legal programs in which individual clients receive support from staff members other than those in the legal Clinic. However, as BCCEAS grows such programs may be developed.

In the case of referrals made directly to the lawyer, referrals will only be received if the agency makes the call. Agencies will be asked not to give the phone number to clients. The agencies receiving these priority services will be chosen for one of two reasons: 1) The agency provides legal advocacy or legal services and will be able to determine whether the case is one which more naturally fits into BCCEAS' mandate, or 2) The agency's mandate increases the likelihood that it will come into regular contact with older adults who are being abused or are vulnerable to abuse.

When a Clinic lawyer receives direct referrals from an agency he/she will determine whether the case is suitable and, if so whether he should deal with the case or pass it on to the legal advocate.

b) Eligibility

Based on recommendations by other legal practitioners and on policies of other legal aid clinics an Eligibility Policy was developed and passed by the BCCEAS board of directors. Key eligibility criteria for clients of the Clinic are: age 55 or older, or the legal representative of someone over 55; and inability to access justice due to low income, abuse, or vulnerability to abuse

A copy of the *Eligibility Policy* is attached as Appendix E.

c) Scope of Services

Based on recommendations by other legal practitioners and on policies of other legal aid Clinics a *Scope of Services Policy* was developed and passed by BCCEAS' board of directors. This policy stipulates that the Clinic will provide the following direct client services:

1. Legal information;
2. Legal advice;
3. Limited representation, as defined as representing a client on a discrete task(s) short of providing full representation on an entire matter; and
4. Full representation.

In addition the Clinic will carry out the following activities:

1. Law and policy reform;
2. Public legal education and information; and

3. Outreach.

In regard to client representation the focus of the work of the Clinic will be in areas of law that:

1. Have a greater or a significant impact on older persons; or
2. Affect older persons by reason of the fact that older persons are the primary users of a type of service or primary recipients of particular benefits.

The *Scope of Services* policy stipulates how service priorities will be established for the Clinic. These priorities will be developed based on the results of the Needs Assessment research and will be reviewed regularly. These priorities will be used to determine who should be prioritized for services if the demand for service exceeds the capacity of the Clinic. The priorities to be used during the first year of Clinic operations will be passed by the board in the September board meeting.

The *Scope of Services* policy is attached as Appendix F.

e) Clinic Policies

Other Clinic policies are being developed and will be considered / passed at the September board meeting. These include a *Human Resources Policy*, a *Disbursement Policy*, a *Conflict of Interest Policy*, a *Confidentiality Policy* and several other policies.

f) Supervision

All non-lawyer staff members in BCCEAS Legal Programs will be supervised by the Executive Director and by the senior staff Clinic lawyer. The senior staff Clinic lawyer will make him or herself available to provide ongoing support information and advice to paralegals, students and articled students regarding issues arising in client files. The Executive Director will provide supervision at a management level, including oversight of case flow, case allocation and the direction of direct legal services. The Executive Director will also ensure that Law Foundation and other funder standards of supervision are met, and carry out a periodic review of files carried by non-lawyer staff. Use of the "Time Matters" case management software will facilitate the

Executive Director and senior staff lawyer review of paralegal and articled student files or, other files as required.

g) Board Governance

In March 2008 the Board of Directors of BCCEAS passed motions which confirmed the board model to be that of a Governance / Policy Board. The board of directors also established a Strategy Committee at this meeting. It gave the Strategy Committee a mandate to oversee the set up of the Clinic, the development of Clinic policies, and the creation of the service delivery model and service priorities for the Clinic. This committee will remain active until December 2008.

h) Strategic Advisory Group of Experts (SAGE)

At the March board meeting the Board of Directors also approved the creation of a SAGE committee. This committee will be made up of senior members of the Bar and experts in other relevant and related fields. This advisory committee will meet bi-annually and will provide advice on issues such as potential test case issues. The SAGE committee will be activated in Fall (Q3) 2008.

IV Section C: BCCEAS Business and Operations Plan (2008-2011)

A. Introduction

Given the limited resources of the Clinic in its initial stages, it is highly unlikely that the capacity of the Clinic will be sufficient to meet the expected demand. As such, strategizing about how to grow capacity over time is very important. Following is BCCEAS' 3-year strategy for Clinic operations and growth.

B. Background

BCCEAS is a community-based organization that currently provides a toll-free information and referral hotline, public legal education and community outreach. In fiscal 2008, BCCEAS expanded its range of services to include a legal Clinic program for older adults, which includes legal advice and limited representation to be provided by a staff lawyer.

BCCEAS works collaboratively with community organizations, government agencies and strategic friends to effectively reach its client base and to operationalize its mission and mandate.

Funding sources primarily include the following:

Program / Grant	Source	Amount	Duration	Guaranteed?	Comments
Elder Law Clinic	The Law Foundation of BC (TLFBC)	$300,000 per year (PY)	3 years	Yes	Only multi-year guaranteed funding source currently
Legal Advocacy Project	TLFBC	$118,000 PY	1 year	No	Must apply and be approved each year
BC Gaming	BC Lotto / Government	$30,000	1 year	No	Must apply and be approved each year
Vanguard	TLFBC	$10,000 PY	Ends Dec 08	N/A	Project ends
Infrastructure	TLFBC	$22,500	Ends Nov 08	N/A	One-time grant
PLEI	TLFBC	$65,000	Ends Nov 08	N/A	One-time grant

Best estimate of program funding for July 2008-June 2009 is $452,166.

BCCEAS currently has no operational funding and must rely on combined program funding.

C. Key Objectives for the Clinic

1. Regarding Staffing

a) Current level:

i. Executive Director

Joan Braun LLB, MSW is a practicing lawyer, social worker and mediator called to the BC Bar in 2001. Her position is currently funded on a 1FTE basis, through funding from the Legal Advocacy Program (1.5 days per week – "DPW") and through the Clinic (3.5 DPW).

ii. Staff Lawyer

David Morrison, LLB is a practicing lawyer called to the BC Bar in 1994. His position is currently funded as 1 FTE through the Clinic.

iii Legal Advocate / Paralegal

Nasser Amiri, PhD is a legal advocate / paralegal currently funded as 1 FTE through the Legal Advocacy Funding.

iv. Office Manager/ Administrative Assistant

BCCEAS will be hiring an office manager in September 2008, and this position will be a full time position. The position currently has funding for 4 days a week (.8 PTE), 3 DPW through the Clinic and 1 DPW through the Legal Advocacy Program. The other 1 DPW will be supported through project funding.

v. Intake Worker

A new intake worker will be hired in August 2008. The intake worker will process all inquiries made to BCCEAS' toll free number and screens inquiries, provides basic legal information and external referral, routes appropriate cases to either the Clinic or to other community BCCEAS programs and services. This is a 1 FTE (.6 funded by Clinic funding and .4 funded by other project funding).

vi. Total Staffing

By September 2008 BCCEAS will employ 5 FTEs. However, funding is only guaranteed for 4.4 FTEs.

b). Recommended Levels

Recommendations on staffing levels were made by Bob Rhudy, expert clinic consultant. He based his recommendations on the long-time experience of US elder law clinics and consultations with other experts in the field. Mr. Rhudy recommends **8 FTEs** for the BCCEAS Clinic, with the caveat

that this staffing level would still require external supports by other resources and seniors organizations.

Recommendations on staffing levels were also made by Kamala Sproule, local field research consultant, and are based on information gathered from a wide-range of interviews with BC community organizations and legal Clinic service providers. Consensus amongst participants in the study is that BCCEAS requires a minimum of **7 FTEs in the first year of service** delivery, which must then **increase by 2 FTEs in years 2-3**, in order to deliver effective Clinic services in BC.

c). Variance:

Based on the experience of Canadian and international experts, US elder law clinicians, local BC law clinicians and BC community agencies, staffing for the Clinic should open with an additional minimum 2.6- 3.6 FTE's, increasing in 2009 to another additional 2 FTEs.

This is an immediate (2008-2009) variance of 2.6-3.6 FTEs with a longer-term variance (2009-2011) of 2 FTEs.

This is the most significant negative variance from the recommendations in the Needs Assessment and has the strongest implications for the success of the Clinic project and the organization as a whole.

d). Implications:

Based on the Needs Assessment research, the Clinic is notably understaffed at current levels.

The staffing shortages are exacerbated by the shortage of general legal aid and direct services for seniors in BC. In comparator jurisdictions, such as Ontario or the US, it was noted that stronger social infrastructure in terms of general legal aid provision and services for seniors was present. In BC, by contrast, radically reduced general legal aid provision and increasingly diminished services for seniors is a sharp reality.

This landscape difference suggests that there will be significant strain on staffing through pent-up demands for services and information / referral in the province.

e) .Operational Plan:

The Executive Director will actively seek funding to hire 2.6-3.6 FTEs on an urgent and immediate basis in response to the strong consensus for increased staffing in the Needs Assessment report.

BCCEAS Executive Director, with input from staff and board, will:

- Create a job description for 1 FTE position for a "Manager of Outreach, PLEI and Community Programs", which can be filled subject to new funding;
- Create a job description for 1 FTE position for an additional lawyer who will primarily focus on Institutional Care issues, which can be filled subject to new funding;
- Create a job description for a 0.5 FTE position for an additional "Administrative assistant / Receptionist";
- Create a job description for an additional 0.5 paralegal position;
- Draft a current (4.4FTE) staff and reporting structural model; and
- Draft a projected (8 FTE) staff and reporting structural model.

f) Short-Term Strategy –July 2008 / June 2009

Q2 (July-Sept) – Executive Director will hire a temporary "Manager of Outreach, PLEI and Community Program" ("MOPC") on a 4-month contract on a part-time basis, funded through modest existing project funding. BCCEAS staff will actively seek funding to continue this position and fund the other two indicated staff positions.

Q3 (Oct – Dec) – The temporary MOPC position funding ends Dec 2008 and therefore BCCEAS will actively seek funding to continue this needed position and fund the other two indicated staff positions.

Q4 (Jan – Mar) – BCCEAS will evaluate the effectiveness of the staff structure, based on program needs, client requirements and community response. Additionally, staff will develop a program

which uses volunteer lawyers, law and other students, paralegals and interns to deliver services, under the supervision of the Staff Lawyer and Executive Director (the "Clinic Volunteer Program").

g). Medium Term Strategy – July 2009 / June 2010

Continue to search for appropriate funding sources. Continue to evaluate staff and service levels. Get community input and consult with other legal clinics. Staff will continue to develop and support the Clinic Volunteer Program.

h). Long-Term Strategy – July 2010 / June 2011

Continue to search for appropriate funding sources. Continue to evaluate staff and service levels. Get community input and consult with other legal Clinics. Staff will continue to develop and support the Clinic Volunteer Program.

2. Regarding Direct Client Legal Service Provision

a) Current level

In order to test and evaluate current referral systems, BCCEAS has instituted a casework pilot cohort. This cohort will consist of client cases referred both internally, from the paralegal hotline, and from selected external community referring agencies (e.g. BC Senior Services Society). This pilot cohort will have intake in 2 phases. Phase 1 will analyze intake calls, develop service priorities, transferring appropriate calls to the paralegal for review, and appropriate cases will be referred to the staff lawyer. Phase 2 will expand this intake to welcome referral from agencies around the province, and calls will be triaged according to established service priorities.

b) Recommended level

The research strongly indicated a consistent desire for this Clinic to provide a wide range of legal services, including:

- General civil litigation;
- Institutional care (nursing home) disputes;
- Welfare, Labour and employment hearings;
- Consumer protection contract disputes;
- Assisted living / supportive housing disputes;

- Housing rights advocacy;
- Predatory lending and scams;
- Secured transactions;
- Criminal prosecution;
- Private care-giving contracts;
- Human rights tribunals;
- Solicitor's work including wills, estates and personal planning; and
- Loans and guarantees.

Research participants indicated that there was a significant 'pent up' need both for services to seniors and for access to justice. Referring agencies, in particular, had very high expectations that the Clinic would be able to provide legal representation for many people who they are currently unable to serve.

Those that participated in the Needs Assessment were agreed that legal service provision should be well supported by adequate staffing of intake workers, paralegals, and lawyers.

In summary, the Needs Assessment indicated a strong desire for services to be provided on a large range of issues, to a broad range of clients, in multiple settings, and with a robust staffing structure in place.

c) Variance:

In regard to the provision of direct legal services, the variance level is significantly below levels recommended by the Needs Assessment research. Despite key messages from BCCEAS and community partners about the limited purview, venues and staffing that will be initially possible with current funding, research participants maintained a high level of expectation from the Clinic. Research participants had consensus about the need for a lawyer with a practice restricted to the myriad of institutional care issues.

Research participants also stressed the pressing need for a lawyer to specifically address broader housing issues.

Both staff lawyers would scope such issues as: personal safety, consumer protection claims, homelessness, capacity issues, tribunals, litigation, contracts for care-giving, access to benefits, elder abuse and neglect, power of attorney abuse, sexual abuse and fraud.

d) Implications:

Based on the Needs Assessment research, there should be three practicing lawyers at the Clinic:

- Executive Director to do general legal counsel work;
- Seniors' housing lawyer; and,
- Institutional care lawyer

Additionally, the research indicates that these lawyers must be adequately supported with appropriate paralegal and administrative support.

Without more funding BCCEAS is not able to pay for two Clinic lawyers and it will not be possible for one Clinic lawyer to address all these issues. This creates a risk of service demands overwhelming staff and inefficiencies being created due to high workload and high expectations by the rest of the community.

e). Operational Plan:

In order to best prioritize legal service provision, BCCEAS will create a triage intake system on the underlying basis of access to justice needs and challenges.

Individual senior's safety was indentified by all participants to be the highest priority for the Clinic. As such, the Executive Director and the BCCEAS team will develop a strategy to ensure that "hard to reach" seniors who are not safe, are able to access Clinic services. In consultation with strategic partners, such as the Adult Abuse and Neglect Prevention Collaborative, BCCEAS staff will develop key indicators of social vulnerability, Barriers to access to justice and imminent need. These indicators, in conjunction with established service priorities established by the Board, will be used to prioritize client applications for representation.

f) Short-Term Strategy – July 2008 / June 2009

Q2 – Board establishes service priorities. Team creates indicators. Intake forms and procedures are established and piloted.

Q3 – BCCEAS targets "hard to reach" seniors by connecting with key service agencies such as Meals on Wheels (distribute pamphlets of Clinic services with meals).

Q4 – Evaluate communications and referral strategies. Expand on successes. Develop relationships with umbrella organizations such as the United Way, and community homemaker programs etc. Target outreach activities to advertise Clinic services in locations where seniors gather, such as community lunches, seniors' centers and peer-to-peer programs.

g) Medium Term Strategy – July 2009 / June 2010

Develop innovative methods to expand service until sufficient staffing is available to support the required range of services. Develop "senior lawyers helping seniors" volunteer programs and other lawyer pro bono referrals. Build upon strategic relationships with other legal aid clinics and service providers (e.g. LSLAP).

h) Long-Term Strategy – July 2010 / June 2011

Develop a SWOT analysis (strengths, weaknesses, opportunity, threats) around legal service provision. Create a long-term sustainable funding basis for legal service provision based on experiences of the Clinic.

3. Regarding Public Legal Education and Information ("PLEI")

a) Current level:

BCCEAS provides 4 levels of PLEI:

1. Staff provide workshops about elder abuse and mistreatment and on key legal issues for seniors at community events, conferences, forums etc.

2. BCCEAS volunteers, who have undergone rigorous training, provide senior peer-to-peer workshops on financial abuse issues. These senior volunteers are trained by BCCEAS staff and present written materials, which are both legally accurate and audience appropriate.

3. BCCEAS posts PLEI materials on its website, including past project work in free downloadable formats. Many of materials are currently available only in English but will soon be available in a variety of other languages (fact sheets, brochures, hand-outs etc.).

4. BCCEAS offers a range of publications on PLEI topics to communities and organizations throughout the province.

b) Recommendations

The clear community vision for BCCEAS was for it to become a recognized "Resource and Referral Hub" for elder advocacy and support issues with a mandate to provide PLEI.

Recommendations from the BC Field Research overwhelmingly indicate that BCCEAS PLEI work should be significantly broadened and expanded to meet the strongly identified need in this province for information about elder mistreatment and seniors rights.

Participants in the study expressed fear that direct client services provided by the Clinic would divert resources away from this currently very limited, but essential, community work.

Field Research noted that the range of information provided by BCCEAS should be topically, geographically and quantitatively expanded. It was also recommended that new topics for PLEI delivery be developed and new audiences cultivated.

It was specifically suggested in the research that new workshops should be delivered to service providers, financial industry members, community services, landlords, non-profit organizations, professionals and inter-generational community members.

The research also noted the ongoing need for BCCEAS materials to be provided to and suitable for *all* diverse groups, but with focus on gender-based groups and to immigrant populations.

Research underscored that the manner in which PLEI is delivered to seniors is of key importance. PLEI must be presented in a "senior-friendly" way, using story telling, mixed media, and a variety of educational and discussion-based methodology.

In short, recommendations regarding BCCEAS PLEI are that there should be more topics, more locations, a broader audience, more availability, be audience-appropriate and be better funded.

c) Variance:

Currently, BCCEAS has limited staff, all of who are significantly stretched with internal operations. The bulk of the funding for senior peer-to-peer workshops was funded primarily though the Scotia Bank's ABC's of Fraud. This funding was eliminated across the country by Scotia Bank in 2006. Since that funding elimination, these workshops have been supported through project funding, which is both slight and precarious. Funding from these sources cannot be maintained on a long-term basis.

d) Implications:

i. workshops:

There may be no funding for most of these excellent and needed workshops by December 2008. These senior-delivered financial abuse prevention workshops are particularly important as they respond to a strongly stated community need for education and training which is "senior-friendly" and which have received strong commendations from participants. Without new funding sources, BCCEAS' ability to provide even the current level of workshops is threatened. This is a significantly negative variance from the stated Needs Assessment recommendations.

ii. PLEI Web-based Materials:

BCCEAS has new funding from The Law Foundation of British Columbia, which ends in November 2008, to upgrade the website and to translate many of our PLEI materials for posting through the PLEI Portal. This is a positive variance, which coincides with the strong

recommendations in the Needs Assessment in making BCCEAS PLEI materials generally more available and accessible.

iii Print Publications and Written Materials:

BCCEAS currently has a limited stock of print publications and written materials. The organization remains able to distribute this existing printed stock. However, the organization has limited resources to replenish existing stock or to develop new materials. The impending national "elder abuse awareness campaign" funded by the federal government for 2008/2009, including TV / radio / print media, is likely to generate new demands for this existing stock as well as for new materials to be developed. This is a moderately negative variance from the recommendations in the Needs Assessment.

e) Operational Plan:

BCCEAS will immediately hire a temporary MOPC on a 4-month contract, funded through modest existing project funding. BCCEAS staff will actively seek funding to continue this position and fund the other two indicated staff positions.

The MOPC will be responsible for assisting with the search for more funding, and for analyzing existing PLEI for legal correctness, accessibility, cultural appropriateness, language, and educational methodology. The MOPC will also develop a strategy for operationalizing an expanded BCCEAS PLEI program. This strategy will also include recommendations for potential sources of funding, growth and sustainability.

BCCEAS will hire a temporary Volunteer Coordinator on a modest four-month contract from existing project funding. The Volunteer Coordinator will be responsible for evaluating current and past workshops, liaising with community groups and others requesting workshops, matching volunteers with PLEI opportunities, scheduling PLEI presentations, and developing linkages with Needs Assessment identified groups. Responsibilities will also include working closely with the MOPC to operationalize expanded BCCEAS volunteer activities. The temporary Volunteer Coordinator will create recommendations for potential sources of funding, growth and sustainability for this position.

Funding for both the MOPC and the Volunteer Coordinator cannot currently be sustained past December 2008. To that end, BCCEAS applied for funding from 'New Horizons for Seniors' which will allow BCCEAS to develop new PLEI materials and will also fund these positions[71]. .

f). Short-Term Strategy – July 2008 / June 2009

Q2 – Hire MOCP and Volunteer coordinator for the four-month term positions. Increase volunteer availability by training board members of BCCEAS to provide PLEI materials.

Q3 – Temporary MOCP and Volunteer coordinator positions end. BCCEAS Executive Director seeks funding to continue positions and to develop new PLEI materials. Board members and other volunteers provide PLEI workshops in the community. Clinic staff responds to requests for PLEI workshops from professional groups and at conferences and forums.

Q4 – Temporary MOCP and Volunteer positions continue, funding permitting. BCCEAS continues to deliver PLEI workshops. Executive Director seeks funding that will allow BCCEAS to develop new PLEI workshops and print materials.

g) Medium Term Strategy – July 2009 / June 2010

Consult with seniors, community agencies and other key stakeholders about public legal education needs and course content. Develop new workshops and print materials, in accordance with the priorities identified in the Needs Assessment, subject to funding. Continue to apply for funding to meet these PLEI community needs. Evaluate PLEI work by BCCEAS.

h) Long-Term Strategy – July 2010 / June 2011

Continue to consult, create new PLEI opportunities and materials, and apply for funding to sustain this work.

[71] As this report was nearing completion BCCEAS received word that the New Horizons funding application was successful, subject to reworking the budget and a few othr aspects of the proposal. This funding is still pending as the required work has not yet been undertaken

Review past evaluation and appropriately respond. Build gradually and logically towards expansion and sustainability.

4. Regarding Outreach

a) Current level

Community outreach is currently delivered through a variety of staff, volunteer and board activities. Some of these outreach activities include: producing "A Shared Concern" newsletter, attending community activities, engaging in networking opportunities and participating on various committees and projects.

BCCEAS primarily does outreach with organizations and seniors' service delivery agencies. The limited staffing levels at BCCEAS severely restrict its ability to perform direct individual, geographically diverse, senior-specific outreach activities.

b) Recommended level

The Needs Assessment recommended that BCCEAS do extensive outreach in the first three years of the Clinic, with specific targeting to meeting with seniors.

c) Variance

Staffing levels and travel budget currently prevent BCCEAS from doing outreach activities at the recommended levels. This is a negative variance from the recommendations.

d) Implications

Many seniors, especially those who are hard to reach or difficult to access for a variety of reasons, will be unable to obtain the assistance of a lawyer or legal information, even in cases where those seniors may be very unsafe. The Clinic will prioritize a triage basis for client intake, with priority to those clients who are most vulnerable and with the most pressing need. However, without appropriate outreach, the Clinic may not be able to inform these seniors about the availability of services.

Outreach activities also play an important role in profile development and fundraising, which can significantly help to support sustainability. Without the opportunity to sufficiently network and liaise, BCCEAS may miss out on valuable project work, grant collaborations and other funding opportunities.

e) Operational Plan

In order to operationalize the Needs Assessment recommendations for outreach, subject to funding and staffing, BCCEAS will expand outreach activities in the following ways:

- Establishing strong contacts with Seniors Centres;
- Engaging in key liaisons with locations and activities frequented by seniors;
- Attending at events which support seniors around the province and nationally
- Linking BCCEAS services directly with Victim's Services;
- Actively collaborating with the BC Association of Community Response Networks;
- Liaising with the Public Guardian and Trustee and Designated Agencies; and
- Increasing media profile, with specific focus on media most familiar and accessible to seniors.

f) Short-Term Strategy – July 2008 / June 2009

Q2 – In the very short-term, BCCEAS will concentrate efforts to operationalize the first three identified outreach priorities: senior's centres, targeted seniors activities / locations, and link directly with Victim's Services.

The MOPC will actively contact seniors centres, organize outreach and PLEI events at those centres, ensure materials describing BCCEAS' services are widely available. The MOPC will also develop a strategy to target locations and activities frequented by seniors, first in the Lower Mainland, and then throughout the province. The Executive Director will present information regarding BCCEAS and its services to a variety of conferences and forums, as funding permits.

Q3 – Funding permitting, the MOPC will continue to do outreach as described above. In the absence of funding, BCCEAS staff, volunteers and Board Members will continue these efforts to the best of their abilities. The Executive Director and staff will continue to present information

regarding BCCEAS and its services to a variety of forums, conferences and other expanded events, as appropriate.

Executive Director will renew funding proposals to Victim's Services if appropriate, and target ways and means in which BCCEAS and Victim's Services can actively liaise and collaborate.

Q4 – Activities described above will continue. The Executive Director and staff will evaluate the effectiveness of the targeted outreach activities performed in Q2 and Q3.

g). Medium Term Strategy – July 2009 / June 2010

If BCCEAS is successful in funding the MOPC, then that staff member will build upon the experiences of 2008 Q2-Q4 to target the next priorities for outreach work. Review and evaluate relationship and outreach outcomes with Seniors Centre, Victim's Services and other key outreach liaisons.

h) Long-Term Strategy – July 2010 / June 2011

The most important long-term strategy for outreach activities is to ensure that the MOPC staff position is securely funded and resourced. If appropriate, expand outreach activities to other volunteers, Board Members and students. Collaboration with universities such as UBC, UVic and SFU may create opportunities for research associated with seniors' outreach activities.

5. Regarding Accessibility

a) Current level

BCCEAS is actively committed to being as accessible as possible. There are many barriers to older adults receiving legal services, public legal education and information and other outreach activities. BCCEAS' vision specifically includes the goal of overcoming the following barriers:

- Physical;
- Linguistic;
- Cultural;
- Gender;

- Sensory;
- Financial;
- Cognitive;
- Mobility-based;
- Knowledge-based;
- Literacy; and
- Communication.

To that end, BCCEAS has offices in a centrally located building, which is one of the largest seniors' centres in the province. The offices of the legal Clinic have been modified to better support mobility aids, such as having wider doorframes. Currently the office is researching accessibility devices, such as "Listening Ears", to better support older adults with sensory impairment.

The goal of the Clinic is to provide services to the most vulnerable seniors, which will include low-income seniors who are experiencing a variety of Barriers that prevents them from accessing justice. BCCEAS is currently translating a variety of its written PLEI materials into different languages, for posting on the website and for print materials. Additionally, the organization's website is being redesigned to specifically address and support greater accessibility for older users, including larger font, design cuing and plain language phrasings. This website will meet or exceed government accessibility guidelines.

BCCEAS is a strongly committed to diversity within its organization, and specifically seeks to support older members of visible minority groups, women, Aboriginal or indigenous persons, persons with disabilities, members of sexual minority groups, and others who experience discrimination. As an organization, BCCEAS works proactively with strategic partners to ensure inclusivity and diversity in its service delivery and publications.

However, BCCEAS does not have the resources to provide ongoing interpretation, consistent mobile service provision, or to provide staffing to the toll-free information and referral line during full business hours, or on evenings and weekends.

b) Recommended level

The Needs Assessment research indicated that the community is satisfied with the organization's current level of commitment to accessibility. However, services could be further enhanced by addressing a fuller range of accessibility-focused services. In particular, the Needs Assessment strongly supported increasing greater public legal education and information initiatives as well as outreach activities to enable seniors to better identify legal issues and access justice.

It was also strongly indicated that legal service delivery should be "mobile", which would include lawyers meeting with older clients in their own homes and care facilities. As well, the research clearly stated that the geographical purview of legal services, public legal education and information and outreach activities should be broader.

c) Variance

At an intentional level, there is no variance between BCCEAS' current practices and the results of the Needs Assessment. However, current resources do not allow BCCEAS to implement some of the broader recommendations of the Needs Assessment. This is a negative variance.

d) . Implications

While many seniors will feel supported, welcomed and included in BCCEAS' current approach, other seniors will not have the opportunity to participate in BCCEAS' services due to geographic constraints, transportation challenges, linguistic barriers etc.

e) Operational Plan

BCCEAS will continue to entrench its commitment to accessibility and diversity as a core value of the organization. New staff and volunteers will receive training in order to better operationalize these values in their daily work and practice. Accessibility values and commitments will be on the organization's website and printed materials as appropriate. In all organizational evaluation, indicators of accessibility will be measured, including a review of methodology and success, by key stakeholder, including seniors.

f). Short-Term Strategy – July 2008 / June 2009

Q2 – provide training to new staff and volunteers on accessibility priorities. Ensure forms and written materials are inclusive and, where possible, available in a variety of languages. Purchase accessibility and mobility devices.

Q3 – develop new content for the website, promoting accessibility. Design pilot "Home-based legal services" program.

Q4 – pilot test the "Home-Based Legal Services" program. Evaluate accessibility processes and programs. Develop "drop-in legal services" at key stakeholder organizations (together, the "Pilot Projects").

g) Medium Term Strategy – July 2009 / June 2010

Based on feedback from seniors and stakeholders, BCCEAS will modify and enhance the pilot projects, and will continue to research ways and means to create greater accessibility. BCCEAS will foster key partnerships with referral organizations focused on issues of diversity and accessibility to better support seniors, as well as applying for grants to assist in providing greater legal services, public legal education and information and outreach activities as indicated in the Needs Assessment. The organization's success in supporting accessibility will be evaluated on an ongoing basis.

h). Long-Term Strategy – July 2010 / June 2011

As above.

6. Regarding Collaboration

a) Current levels:

BCCEAS actively works in collaboration with a broad range of organizations and stakeholders. The organization operationalizes this collaborative approach including, but not limited to, the following activities:

- Participation on advisory committees;

- Organization of and/or participation at community forums;
- Joint research projects on issues of law and aging;
- Community-based research, as directed by seniors;
- Joint presentations;
- Delivering programs in partnership with other key stakeholder organizations;
- Developing a community of experts to mutually support work on seniors issues; and
- Reciprocal linkages and web-resources.

b) Recommended level

The Needs Assessment research strongly indicated support for BCCEAS' proactive historical approach to collaboration and was adamant that BCCEAS retain this core value. Participants in the research expressed concern that this key element of BCCEAS' approach may not be able to continue or expand due to pressures on the organization due to the demand of delivering highly needed legal services.

c) Variance

There is no variance between the recommended levels and current practice. There is concern by community partners that this level may not be able to be maintained due to organizational demands placed on BCCEAS due to the demands of operating the legal Clinic.

d) Implications

The implication of this congruence is that BCCEAS' collaborative approach matches the recommendations by research participants and key partners.

e). Operational Plan:

BCCEAS will continue to entrench its collaborative approach in its operations and activities. Staff will continue to work on the above-listed activities. Focus will be given to proactively monitor the ability of staff to continue to work on the activities once the Clinic is fully active with a roster of client cases.

f) Short-Term Strategy – July 2008 / June 2009

Q2 – Continue to participate in ongoing collaborative activities.

Q3 – Continue to participate in ongoing collaborative activities. Design evaluation processes to assess the impact of operating a legal Clinic on the collaborative methodology. (e.g. – may need to modify approach to collaboration in terms of specific activities to avoid certain conflict situations).

Q4 –Evaluate impact of Clinic as above. Strategize and develop innovative ways to positively collaborate with key partners.

g) Medium Term Strategy – July 2009 / June 2010

Expand key collaborations geographically, to better support a greater number of older British Columbians. Enrich existing collaborations with developing public legal education and information and outreach activities. Develop strategic collaborations that will enhance BCCEAS' ability to reach out to particularly vulnerable seniors.

h) Long-Term Strategy – July 2010 / June 2011

BCCEAS will use collaboration to leverage and increase service provision. By using strategic collaborations, the organization will be able to more effectively accomplish its strategic mission.

7. Regarding Accountability

a) Current Levels

BCCEAS is currently very senior-focused and senior-centred, as positively reflected in its mission, vision, and values. Staff are dedicated to performing their activities within this framework. The organization currently tracks outputs and outcomes, and where appropriate, uses a logic model of evaluation for program review. BCCEAS staff currently meets or exceeds their professional standards and ethical responsibilities.

i. Senior focused

BCCEAS is an organization that is and will remain, firmly committed to "serving the senior". As such, the voice of older adults will be a key influence, inspiring and informing the mission, vision and values of the organization.

ii Outcomes and Evaluation

BCCEAS values outcomes and evaluation. It is committed to ensuring that data is appropriately tracked, reviewed and considered. BCCEAS will remain committed to these values. The methodology of data collection will include general program review, qualitative interviews or discussions with strategic partners, quantitative analyses of service provision and gap analyses. All programs will be measured in an appropriate fashion, which may include a logic model analysis, which reviews both outputs and outcomes. The recent purchase of "Time Matters" case management software and database now makes it possible for BCCEAS to track all calls to the office and to evaluate whether calls were appropriately and effectively dealt with by staff.

iii. Professional Standards

BCCEAS employees are expected to deliver services in keeping with the standards and ethics of their professions. This commitment will continue and all staff will continue to conduct themselves within the standards of their profession. Legal Clinic services will be supervised by BCCEAS legal staff and all operations will be delivered in a manner keeping with or exceeding the standards of the Law Society of BC.

iv Personal Activity Development Plans

Personal activity and development (PAD) plans will be created for each staff member. PAD plans form an important tool to provide regular feedback and learning for staff and provide a consistent assessment and evaluation process for the Executive Director and the Board.

b) Recommended level

Recommended levels are met.

c) Variance

With increased service provision there will be new areas of output and evaluation, including client tracking, legal service delivery tracking and expanded professional purview (social work, mediation etc.). There is no variance at this point; however, this is an area of new and increased responsibility. PAD plans will form a new review process, but replace current staff management procedures.

d) Implications

This area will need to be carefully entrenched and monitored in all aspects of operations.

e) Operational Plan

BCCEAS will continue to implement an effective computerized tracking system to collect and generate data on client service needs, service provision, gap analyses, and program effectiveness.

f) Short-Term Strategy – July 2008 / June 2009

Q2 – Train staff on "Time Matters" legal case management software. Train staff on use of new tracking systems for activities and clients. Establish new procedures and protocols for intake and tracking systems. Continue to monitor Law Society professional responsibility and ethical protocols. The Executive Director will consider the appropriate format and timing of the PAD plans and reviews.

Q3 – Refresh and enrich staff training in "Time Matters" and other tracking software programs and protocols. Make system modifications as needed. Continue to monitor Law Society professional responsibility and ethical protocols. The Executive Director will ask staff to create their own PAD plans. The Executive Director will create protocols for her PAD plan to be reviewed appropriately.

Q4 –Review and evaluate both the systems for data collection as well as the data that has been collected. Generate report from data. Continue to monitor Law Society professional responsibility and ethical protocols. All staff and the Executive Director will have had a PAD review(s) by the end of this quarter.

g) Medium Term Strategy – July 2009 / June 2010

Continue to operationalize and modify as appropriate.

h) Long-Term Strategy – July 2010 / June 2011

Continue to operationalize and modify as appropriate.

VI. Conclusion to Report

The Needs Assessment research was broad, diverse and inclusive. Use of mixed methodology permitted data to be gathered from a wide-range of collection sources. The research consisted of:

- Surveys;
- Literature Reviews;
- Interviews;
- Community Forum focus groups; and
- Expert consultations.

There was a high degree of interest and excitement about the prospect of the new Clinic, provincially and nationally. Research participants agreed that this Clinic was a much-needed resource in BC and would only become an increasingly needed resource as the population rapidly ages. The challenge of managing these high community expectations, in face of significant pent-up demand, was a strong theme in the research.

The research overwhelmingly indicated that direct legal service provision, which included taking on client cases and full-legal representation, was the model best suited to BC needs. The current Legal Advocacy program, which includes a toll free number and the staffing of a paralegal to support that telephone line, should be continued. This direct legal service provision will also need to be supported by other BCCEAS programs and activities, which includes expanding PLEI and Outreach services.

Staffing levels are currently inadequate. Broad consensus in the research indicates that the minimum staffing levels for the Clinic should include 7 FTEs. To meet this minimum standard, the Clinic should hire an additional 2.6 FTEs immediately. It was also agreed that staffing levels would need to expand to add another 1-3 FTEs within 6-24 months after Clinic opening.

Key priority areas for legal service provision include:

- Abuse and safety issues;
- Financial abuse issues;
- Housing (tenancy and ownership) issues;
- Long-term care issues; and
- Substitute decision-making abuse or misuse issues; (power of attorney, representation agreement, guardianship issues).

Eligibility should be based on the following key criteria:

- Age 55 or older, or the legal representative of someone over the age of 55, and
- Unable to access justice due to low income, abuse or vulnerability to abuse.

Supporting seniors' safety and access to justice was consistently ranked as the most important purpose of the Clinic.

Appendices

A. List of Agencies that participated in the May 21 Community Forum or in Interviews
B. Diagram of staff structure prior to opening of Clinic
C. Diagram of staff structure upon Clinic opening
D. Diagram of intake stages
E. Eligibility Policy
F. Scope of Services Policy

APPENDIX A[72]

411 Senior Centre
Aaron Gordon & Daykin
Abbeyfield Senior Housing Society
Abbotsford Community Services Society
Advocacy Centre for the Elderly
All Saints Anglican Church Burnaby BC
Alzheimer Society
Association of Neighborhood Houses of Greater Van
Battered Women Support Services
BC Care Providers Association
BC Coalition of People with Disabilities
BC Iranian Senior's Society
BC Law Institute
BC Parapalegic Association
BC Public Interest Advocacy Centre
BC Retirement Communities Association
BC Senior Services Society
BC Seniors Living Association
BC Yukon Society of Transition Houses
Berge Hart Cassels
Beth Tikvah Community Centre Seniors Group
Boughton Law Corporation
Canadian Association of Retired Persons
Canadian Centre for Elder Law
Canadian National Institute for the Blind CNIB
Centre for Healthy Aging at Providence
Centre for Research on Personhood in Dementia
Centre of the Aging - University of Victoria
Century House Seniors Activity Centre
ChangeWorks Consulting
Chown Adult Day Care Centre
City Hall - Social Planning Department
City of Burnaby
CLAS
Clay & Company
College of LPNs of BC
Community & Residential Care
Community and Legal Assistance Society CLAS
Community Response Network (various locations)
Cornerstone Care Society
Council of Senior Citizen COSCO

[72] This list is comprised of agency names provided by attendees at the forum and participants in the interviews. This list does not include individuals who attended the forum who did not identify which agency/ group they were from. It is possible that a few people registered for the forum but did not attend or that there were some attendees who did not preregister, and therefore are not listed. We apologize for any minor inaccuracies in this list.

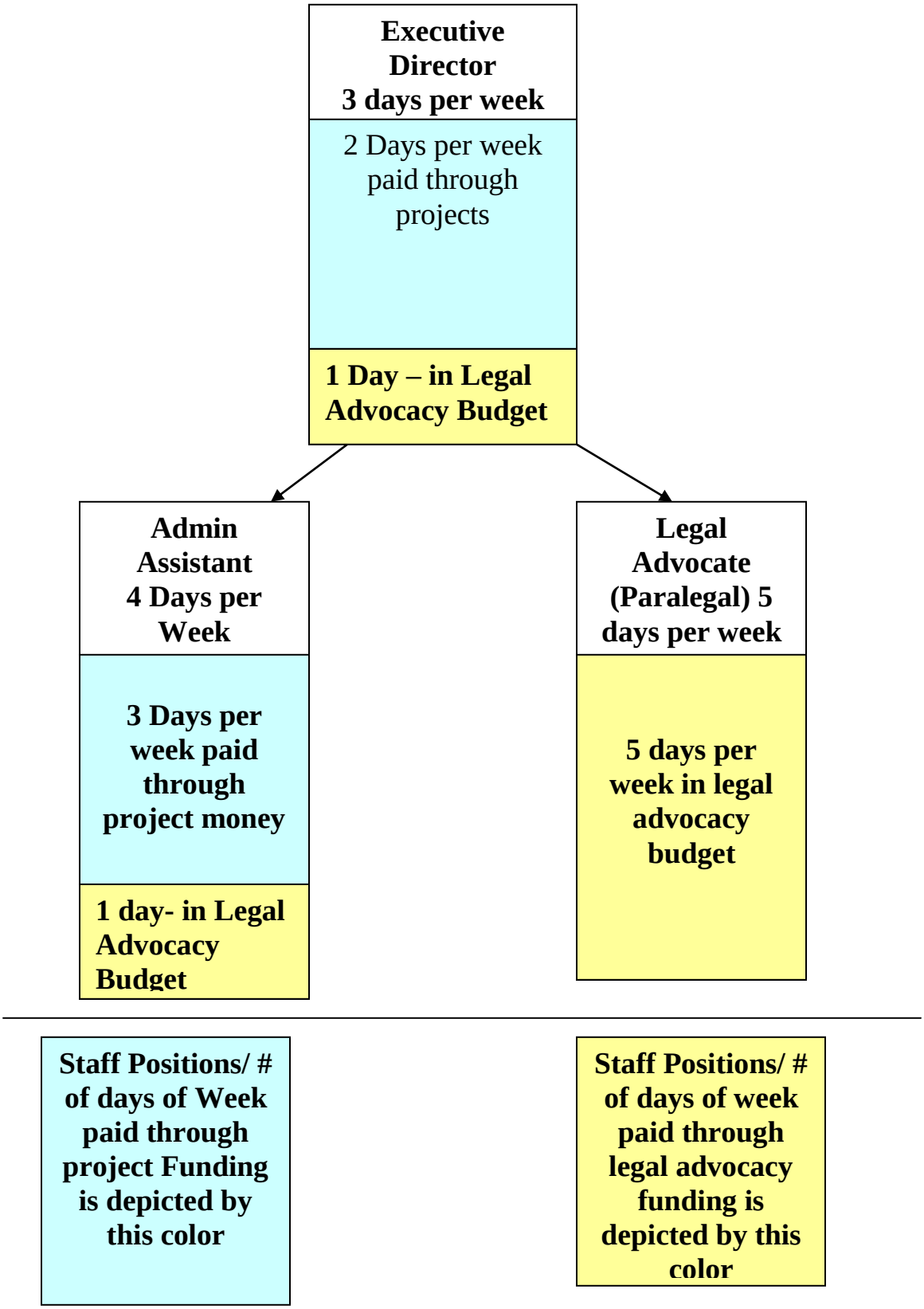
DiverseCity Community Resources Society
Division of Emergency Medicine - UBC
Douglas College
Downtown Eastside Resident Association
Edward F. Macaulay Law Corp.
Faculty of Law, University of British Columbia
Faculty of Law, University of Victoria
Faculty of Medicine - UBC
Family Services of Greater Vancouver
Family Violence Resource Centre
Filipino Seniors Club
First Nations Legal Clinic UBC
Fraser Health Authority
Geriatric Day Hospital - St. Paul's Hospital, 9B
Grand Total
Grandparents Raising Grandchildren Legal Advisory
Hambrook & Company
Horne Coupar
Hospital Employees Union
Hunter Litigation Chambers
Jawl & Bundon
Jewish Family Services
Jewish Seniors Alliance of Greater Vancouver
Justice Institute of British Columbia
Justice Services Brach, Ministry of the Attorney General
Kamloops Snr Info, Referral + Resource Society
Kehila Society
Kettle Friendship Society
Kitsilano Neighborhood House
KLA-HOW-EYA Aboriginal Centre
KMK Law Corporation
Langley Seniors Resource Society
Law Students Legal Advice Program - UBC SLAP
Legal Services Society of BC
Lions Den Adult Daycare and Recreation Centre
McLellan Herbert
Ministry of Attorney General - Strategic Planning and Legislation Office
Ministry of Health
Ministry of Health, BC Government
Minoru Place Seniors Activity Centre
MOSAIC
Multicultural. Family Support Services Society
Murphy Battista Lawyers
Musqueam Band
Native Info. Center/Family Violence Resource Centre
Newton Advocacy Group Society
North Shore Community Resources Society
North Shore Seniors Legal Advice + Referral Clinic

North Shore Volunteers for Seniors
Ombudsman of BC
Pacific Association of First Nations Women
Pacific Spirit Community Health Centre
Parent Support Services of BC
Peace Arch Community Services
Peace Arch Hospital
Peter Grant & Associates
PICS - Progressive Intercultural Community Services Society
PIVOT Legal Society
Port Coquitlam Parks and Recreation
PovNet
Pro Bono Law of BC
Progressive Intercultural Services Society
Providence Health Care
Public Guardian and Trustee Office of BC
Public Information and Community Liaison Legal Service Society
Ramsay Lampman Rhodes
Ray-Cam Cooperative Centre
RBC Dominion Securities Inc.
Renfrew Park Community Centre
Representation Agreement Resource Centre
Residential Tenancy Office
Royal Canadian Legion
S.U.C.C.E.S.S. Seniors Council
Salvation Army, BC Pro Bono Program
Semiahmoo Planning Group
Senior Services Society
Seniors Advocate Network
Seniors Well Aware Program SWAP
SFU Gerontology Research Centre
Silver Harbor Centre
Social Planning and Research Council SPARC
South Fraser Women's Services Society
South Granville Seniors Centre
South Surrey/White Rock Women's Place
South Vancouver Neighborhood House
Spry Hawkins Micner
Stikeman Elliott LLP
Sto:lo Nation
Sunset Seniors
Surrey RCMP
Surrey/Delta Indo-Canadian Senior Society
Surrey/South Fraser Women's Services Society
The Generations Project out of The Centre
Western Canada Society to Access Justice
TRAC Tenant Resource and Advisory Centre
UBC First Nations Legal Clinic

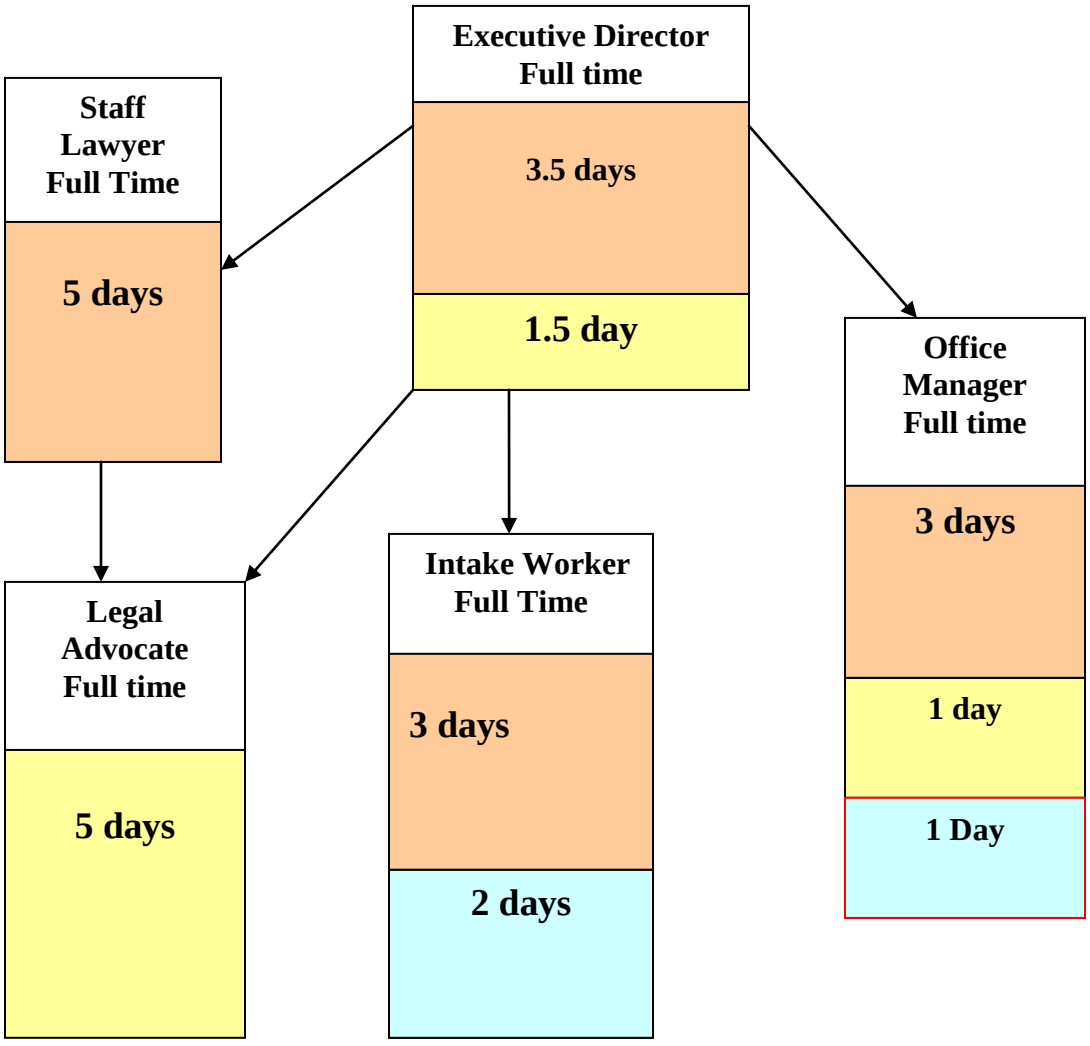
Union Gospel Mission
Unitarian Church of Vancouver
United Way
Vancouver Aboriginal Friendship Centre Society
Vancouver Coastal Health
Vancouver Cross Cultural Seniors Network
Vancouver General Hospital
Vancouver Native Housing Society
Vancouver Police Force - Elder Abuse Unit (DVACH)
Vertlieb Dosanjh
Victim Link
Victim Services and Crime Prevention Division
White Rock Come Share Centre
Women Against Violence Against Women
Women Elders in Action WE-ACT
Worldview Strategies

APPENDIX B

Staffing Prior to Legal Clinic Funding

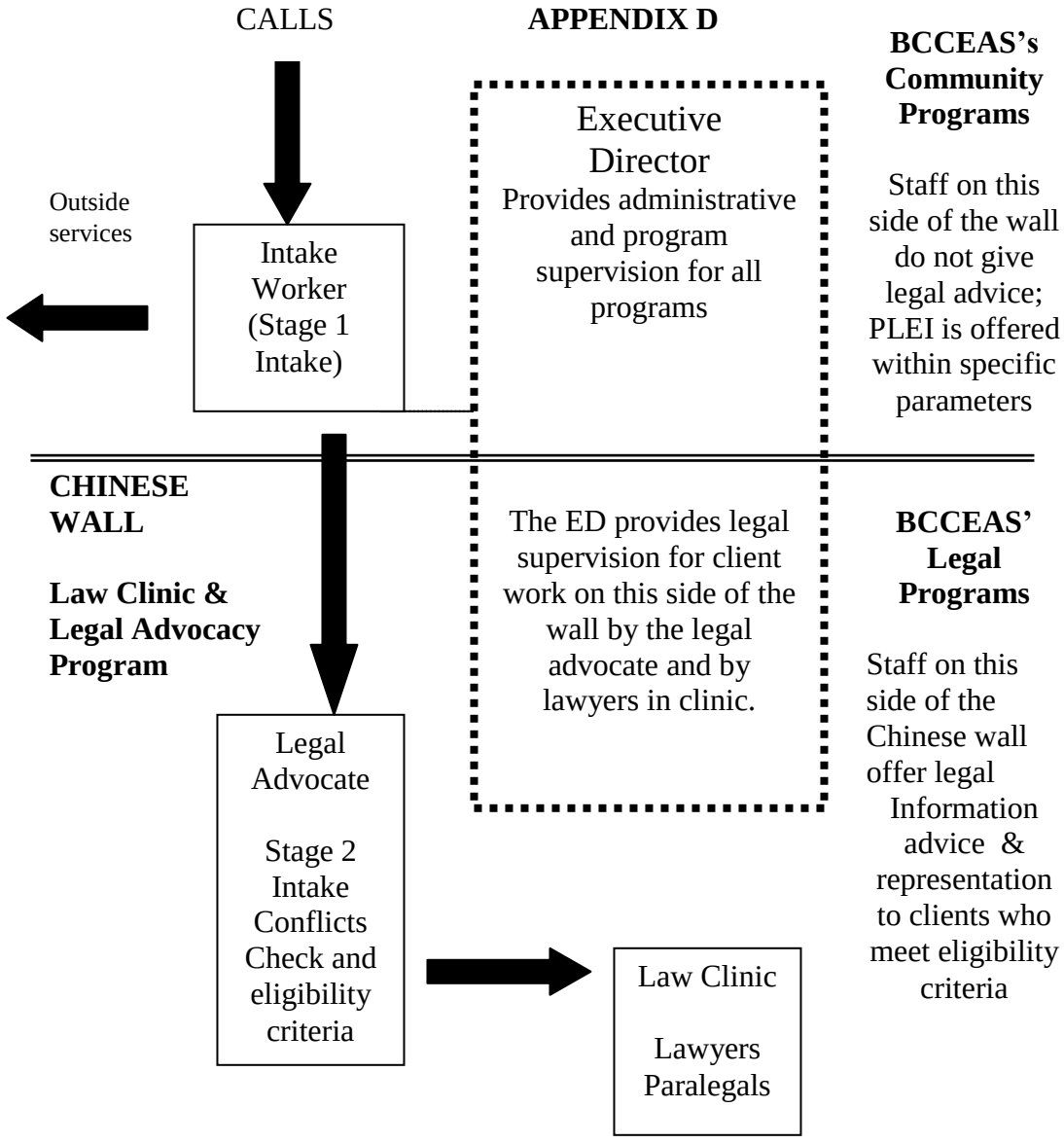


APPENDIX C
Staff structure and Funding upon Opening



Funding Sources for Staff Positions	# of days of the Week Funded through Law clinic	# of days of week funded through Legal Advocacy	# of Days Funded Through Project Funding Not Guaranteed

APPENDIX D


CALLS
Outside services
Intake Worker (Stage 1 Intake)
Executive Director
Provides administrative and program supervision for all programs
BCCEAS's Community Programs
Staff on this side of the wall do not give legal advice; PLEI is offered within specific parameters
CHINESE WALL
Law Clinic & Legal Advocacy Program
The ED provides legal supervision for client work on this side of the wall by the legal advocate and by lawyers in clinic.
BCCEAS' Legal Programs
Staff on this side of the Chinese wall offer legal Information advice & representation to clients who meet eligibility criteria
Legal Advocate
Stage 2 Intake Conflicts Check and eligibility criteria
Law Clinic
Lawyers
Paralegals

APPENDIX E

Eligibility For Services

1) The legal advocacy program and the Law Clinic shall provide legal representation to adults above the age of 55 or to the legal representative of a person over this age acting on behalf of the older person.

2) Before providing limited or full representation the lawyer or legal advocate must seek confirmation that any person claiming to be the legal representative of the older adult is, in fact, the legal representative.

3) Clients will be considered eligible to receive full or limited representation if the client would not be able to adequately access justice without this representation due to:

a) Being a victim of abuse or neglect or at risk of abuse and neglect and not being able to adequately provide instruction to a lawyer who does not have training or knowledge of the impact of abuse; or
b) Financial or other circumstances that prohibit the client from being able to retain counsel to represent the client on a matter necessary to maintain healthy well being or to protect the legal rights of the older adult.

4) Summary information and summary advice may be provided, over the telephone or in person, without applying the eligibility criteria set out in paragraphs 1 through 3.

5) The executive director has the authority to make an exception to the eligibility criteria set out in paragraph 1 in cases where the applicant for services has significant barriers to accessing justice, such as extreme poverty, disability or similar factors. The executive director will keep a record of any exceptions made in accordance with this paragraph.

6) An income ceiling for certain types or cases or representation may be instituted if the demand for services exceeds clinic resources. An income ceiling must be approved by the board or by a committee of the board before being instituted.

7) The executive director can set operational policies within the above guidelines. Any such operational policies are subject to the review of the board or of a committee duly appointed by the board.

APPENDIX F

Scope of Services

1) The Law Clinic will provide the following client services:

a) Legal information
b) Legal Advice
c) Limited Representation, as defined as representing a client on a discrete task(s) short of providing full representation on an entire matter.
d) Full representation

2) Direct client services as described in 1(a) – 1(c) shall be provided over the phone, in person or by other means of communication.

3) Full representation will usually only be provided to clients who can meet with clinic staff in person, but the executive director has the discretion to make an exception in special circumstances. The executive director will keep a record of any exceptions made in accordance with this paragraph

4) The Law Clinic will provide client services as described in paragraph 1. In addition the Law Clinic will engage in the following activities:

a) Law Reform
b) Public Legal Education and Information

5) The Law Clinic will work in close collaboration with the Legal Advocacy program in delivering the above services. The executive director will provide legal supervision for direct client representation provided by both programs.

6) Mediation or other alternative dispute resolution services may be provided by the legal clinic in addition to the services listed in paragraph 1, if appropriate and at the discretion of the executive director

7) Legal Services shall be delivered by the Law Clinic in areas of law that:

a) Have a greater or a significant impact on older persons, or
b) Affect older persons by reason of the fact that older persons are the primary users of a type of service or primary recipients of particular benefits.

8) The board will set service priorities for the Law Clinic and Legal Advocacy program by September 15, 2008. Between Sept 15, 2008 and June 2011 a committee appointed by the board will review the service priorities for the Law Clinic at least once per year and more often if needed. The executive director will provide a written report with recommendations to the committee for consideration during these reviews.

9) When demand for service exceeds Law Clinic resources then clients who request representation will be approved in accordance with the service priorities as established by the board as per

paragraph 8. Service priorities may be set in regard to areas of law, type of clients and type of case within the parameters of this "Scope of Services" policy.

10) The executive director of BCCEAS will be responsible to ensure that services provided by the law clinic and legal advocacy program fall within the guidelines set in paragraphs 7 and 8.

11) In order to ensure that service demands do not exceed staff resources the law clinic and legal advocacy program staff will follow the following guidelines in regard to scope of representation to be provided to clients.

a) Lawyers, paralegals and law students in any internship or articling position at the Law Clinic may represent clients at tribunals,
b) Lawyers and law students in any internship or articling position at the Law Clinic may represent clients in Provincial Court
c) Lawyers may represent clients in Supreme Court in cases where the application is necessary to protect the client from abuse and where a suitable remedy can be obtained through a chambers application.
d) Lawyers may only represent clients in Supreme Court other than 11(c) if the case is pre-approved by the Executive Director. The executive director will consider current demand on clinic services and the priorities set by the board, as described in paragraph 8, when making this decision.

12) The executive director can set operational policies within the above guidelines. Any such operational policies are subject to the review of the board or of a committee duly appointed by the board.