

**EXPLORING A LAW FIRM BUSINESS MODEL TO IMPROVE ACCESS TO JUSTICE  
AND DECREASE LAWYER DISSATISFACTION**

by

Andrew Pilliar

B.Sc.(H.), Queen's University, 2002  
J.D., The University of Toronto, 2006

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF  
THE REQUIREMENTS FOR THE DEGREE OF  
MASTER OF LAWS

in

The Faculty of Graduate Studies

THE UNIVERSITY OF BRITISH COLUMBIA

(Vancouver)

October 2012

© Andrew Pilliar, 2012

## **ABSTRACT**

Access to justice, particularly access to civil legal services, is a well-recognized problem for the Canadian legal system, with a recent estimate suggesting that 44.6 per cent of Canadians over the age of 18 – approximately 11.6 million people – have experienced a civil legal problem over the last three years, but also that less than 10 per cent of those individuals obtained legal assistance for that problem. Another problem for the Canadian legal system is the high rate of dissatisfaction among young lawyers – particularly the high rate of attrition among women and minorities. This thesis suggests a corrective for both these problems: an innovative type of law firm that provides accessible civil legal services while also providing an attractive work environment for lawyers. Through a case study of Pivot Legal LLP, a small firm formerly located in Vancouver’s Downtown Eastside, this thesis examines whether it is possible to run a sustainable legal practice that includes providing legal services to low- and middle-income individuals. Based on this case study, there is reason to believe that an innovative law firm model that provides low cost legal services is possible and would be a useful contribution to other efforts to improve access to justice.

## **PREFACE**

The empirical research contained in this thesis was approved by the University of British Columbia's Behavioural Research Ethics Board ("BREB"), Certificate of Approval H12-00230.

## TABLE OF CONTENTS

Abstract .....	ii
Preface.....	iii
Table of Contents .....	iv
List of Tables .....	vii
Acknowledgments.....	viii
1 Introduction.....	1
1.1 A (Brief) Introduction to Pivot Legal LLP.....	3
1.2 Access to Justice and Access to Legal Services.....	5
2 A History of the Access to Justice Movement.....	13
2.1 England and the United States .....	13
2.1.1 First, America .....	14
2.1.2 Over to England.....	16
2.1.3 A “Red Scare” Drives Developments in the U.S.....	18
2.1.4 England Borrows .....	20
2.1.5 Cold Winds for Legal Aid – First the U.S., then the U.K. ....	22
2.2 Canada and British Columbia .....	24
2.2.1 Distinctly Canadian Trends? .....	27
3 Problem One: Unmet Legal Need.....	36
3.1 Defining and Studying Unmet Legal Need .....	37
3.2 Unmet Legal Need in Canada .....	40
3.2.1 Problem Incidence Rates .....	42
3.2.2 Responses to Justiciable Problems .....	44
3.3 Role of Lawyer Cost in Responses to Justiciable Problems .....	46
4 Problem Two: Lawyer Dissatisfaction.....	50
4.1 Understanding Career Dissatisfaction among Lawyers .....	51
4.1.1 Gender .....	54
4.1.2 Family Status .....	55
4.1.3 Work Demands .....	56

4.1.4	Extrinsic Rewards.....	57
4.1.5	Intrinsic Rewards.....	58
4.1.6	Ethnicity.....	58
4.1.7	Personal Characteristics and Psychological Make-up.....	59
4.1.8	Organization Type and Size .....	60
4.1.9	Mentorship.....	62
4.1.10	Conclusions on Career Satisfaction.....	62
4.2	Lawyer Attrition.....	64
4.3	Conclusions on Lawyer Discontent.....	66
5	How Pivot Legal LLP Worked .....	68
5.1	Goals.....	69
5.2	Revenue.....	71
5.3	Staffing.....	73
5.4	Overhead .....	75
6	Why Pivot Legal LLP Didn't Work.....	77
6.1	Not Enough Revenue .....	78
6.1.1	Busy, but Broke .....	78
6.1.2	Lawyer "Type" .....	80
6.1.3	Client Development Difficulties.....	85
6.2	Too Many Expenses .....	93
6.2.1	Death by Debt.....	93
6.2.2	Unheralded Overhead .....	95
6.2.3	Location, Location, Size.....	98
6.3	Other Problems.....	99
6.3.1	Lawyer Support – Insufficient Practice Overlap .....	100
6.3.2	Lawyer Support – Insufficient Support Staff .....	102
6.3.3	Decision-Making .....	103
6.4	Conclusions .....	104
7	Could Pivot Legal LLP Work? .....	108
7.1	Motivating Lawyers .....	111
8	A Toolbox for Legal Entrepreneurs .....	117

8.1 Focus .....	117
8.2 Recruiting.....	118
8.3 Establish A Steady Income Stream .....	119
8.4 Support Staff .....	120
8.5 Mentorship .....	120
8.6 Keep Overhead Low.....	122
8.7 Don't Reinvent the Wheel.....	123
8.8 Location.....	123
8.9 Branding.....	124
8.10 Decision-making Model.....	125
8.11 Sources of Business.....	125
8.11.1 Referrals.....	126
8.11.2 Avoid Contingency Cases .....	126
8.11.3 Profile Building .....	126
8.11.4 Contract Work for Experienced Lawyers .....	127
8.11.5 Work for Sympathetic Organizations .....	128
8.11.6 Identify Market Niches and Plan Accordingly .....	128
8.11.7 Survey Clients.....	129
9 Further Steps .....	130
10 Conclusion .....	133
Bibliography .....	135
Appendices.....	146
Appendix A – Methodology.....	146

**LIST OF TABLES**

Table 1: Explanations for business development problems for Pivot Legal LLP. .... 88  
Table 2: Pivot Legal LLP top five expenses, total expenses, and revenue for 2009 and 2010. ... 96

## **ACKNOWLEDGMENTS**

I owe a debt of gratitude to the former lawyers, staff, and advisors of Pivot Legal LLP who gave generously of their time to allow me to interview them. Their passion, commitment and imagination in creating Pivot Legal LLP are nothing short of inspirational.

Although I began thinking about this project while practicing law, the single greatest factor in my decision to pursue this degree at UBC was Professor Mary Liston. From the outset, her enthusiasm, wisdom, critical eye, and unfailing support have made this project better, though any errors or shortcomings are obviously mine, in spite of her best efforts.

I would also like to thank Professor Michael Trebilcock for taking the time amid a busy schedule to act as second reader for this thesis.

For early and very helpful discussions on methodological approaches, and for succeeding in the Herculean task of making a class in methodologies not just bearable but engaging, my sincere thanks go to Professor Emma Cunliffe. For helpful conversations about access to justice and academic work in law, thank you to Jennifer Spencer, Jamie Maclaren, Robin Sidsworth, Jerry McHale, Q.C., Aleha McCauley, Leonard T. Doust, Q.C., Professor Darlene Johnston, and Dean Lorne Sossin. For helpful comments on early drafts of parts of this thesis, my thanks to the LLM class of 2011/2012, Anna Lund, Will Damon, and Elliot Siemiatycki.

Finally, for more reasons than I can count, I am indebted to my wife, Megan Shaw, who somehow managed to stay supportive, even during the dark days of final editing.

## 1 INTRODUCTION

This is a story about a small group of lawyers and staff who tried to change the world by developing a new type of law firm. In a narrow sense, it is also a story about how that business foundered and failed. But in a broader sense, it is a call to lawyers and law students to recognize that there may be better ways to deliver legal services to the large segments of the Canadian public who currently, and too often, do without those services.

This thesis focuses on two problems that beset the legal profession. First, a significant percentage of the general public experiences a very real problem of access to civil legal services: a recent estimate suggests that 44.6 per cent of Canadians over the age of 18 – approximately 11.6 million people – have experienced a civil legal problem over the last three years, but also that less than 10 per cent of those individuals obtained legal assistance for that problem.<sup>1</sup> Second, lawyers exhibit levels of career dissatisfaction and attrition from the profession that should be cause for concern.

This thesis suggests a corrective for both these problems: a type of law firm that breaks from pervasive ideas of how law firms should be structured, and aims instead to provide accessible civil legal services while also providing an attractive work environment for lawyers. Through a case study of a small law office in Vancouver, I will examine whether it is possible to run a sustainable legal practice that includes providing legal services to low- and middle-income individuals.

---

<sup>1</sup> Canada, Department of Justice, *The Legal Problems of Everyday Life The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* by Ab Currie (Ottawa: Department of Justice, 2007) at 10, 60, online: < [http://www.justice.gc.ca/eng/pi/rs/rep-rap/2007/rr07\\_la1-rr07\\_aj1/rr07\\_la1.pdf](http://www.justice.gc.ca/eng/pi/rs/rep-rap/2007/rr07_la1-rr07_aj1/rr07_la1.pdf)>.

While there has recently been some renewed interest in innovative business models as a means to improve access to legal services, no one has explicitly focussed on the problems of access to legal services and career dissatisfaction in the legal profession.<sup>2</sup> In addition, there is a dearth of work in Canada on *how* to implement innovative business models which improve access.<sup>3</sup> This thesis pushes into both of these areas, by demonstrating how law firms which provide accessible legal services can also improve lawyer satisfaction, and by providing a “toolbox” of useful, tangible suggestions for lawyers interested in how to run a successful law firm according to this model.

This thesis proceeds in three parts: problems, case study, and solutions. In this introductory chapter, I will briefly introduce the subject of the case study, Pivot Legal LLP, and discuss the parameters of this project. Chapter 2 provides a historical overview of the problem of access to justice, focussing on the United Kingdom, the United States, and Canada. Chapter 3 elaborates on this problem by reviewing recent empirical research on the scope of unmet legal need.

---

<sup>2</sup> See e.g. Samreen Beg & Lorne Sossin, “Should Legal Services Be Unbundled?” in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 193; Paul A Vayda & Stephen B Ginsberg, “Legal Services Plans: Crucial-Time Access to Lawyers and the Case for a Public-Private Partnership” in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 246; The Law Society of British Columbia, Independence and Self-Governance Advisory Committee, *Alternative Business Structures in the Legal Profession: Preliminary Discussion and Recommendations* (Vancouver: The Law Society of British Columbia, 2011) online: <<http://www.lawsociety.bc.ca/docs/publications/reports/AlternativeBusinessStructures.pdf>>; Luz E Herrera, “Rethinking Private Attorney Involvement through a Low Bono Lens” (2009) 43 Loy LA L Rev 1.

<sup>3</sup> There are, however, some interesting examples of new business models, ostensibly driven by a desire to lower legal costs for consumers. There appears to be little study of these innovations at present. Much of this legal service innovation comes from the United States, Australia, and the United Kingdom. See e.g. Jonathan O’Connell, “New Washington law firm looks to break the billable-hour mold”, *The Washington Post* (8 May 2011), online: Washington Post <[http://www.washingtonpost.com/business/capitalbusiness/new-washington-law-firm-looks-to-break-the-billable-hour-mold/2011/05/05/AFY14sRG\\_story.html](http://www.washingtonpost.com/business/capitalbusiness/new-washington-law-firm-looks-to-break-the-billable-hour-mold/2011/05/05/AFY14sRG_story.html)> (describing Clearspire, a Washington DC start-up law firm); Stephanie Quine, “IMF not about ‘access to justice’”, *Lawyers Weekly [Australia]* (17 August 2012), online: Lawyers Weekly <<http://www.lawyersweekly.com.au/News/IMF-not-about-access-to-justice>> (discussing IMF, an Australian firm whose business model includes third-party funding of litigation); “Co-op to recruit 3,000 staff as it bids to dominate consumer legal market”, *Legal Futures [UK]* (24 May 2012), online: Legal Futures <<http://www.legalfutures.co.uk/latest-news/co-op-to-recruit-3000-staff-as-it-bids-to-dominate-consumer-legal-market>> (describing plans by The Co-operative Group, a bank which received an alternative business structure licence to offer legal services in the U.K., to create the largest consumer law business in the country).

Chapter 4 turns to the separate problem of lawyer discontent, exploring the related concepts of career satisfaction and attrition. In Chapter 5, I turn to the case study of Pivot Legal LLP by explaining how the law firm operated. Chapter 6 explores some of the problems that the law firm encountered, and seeks to explain why the firm did not survive. In Chapter 7, I assess whether the business model of Pivot Legal LLP was doomed to fail, or whether it could have been viable with some modifications. Chapter 8 presents a “toolbox” of ideas and techniques for firms interested in building on the Pivot Legal LLP model. Chapter 9 sets out some areas for further research suggested by this thesis, and Chapter 10 offers some concluding thoughts.

## **1.1 A (Brief) Introduction to Pivot Legal LLP**

Pivot Legal LLP was founded as a multi-service law firm in 2006, and was situated in Vancouver’s Downtown Eastside neighbourhood. This neighbourhood, one of the oldest in Vancouver, is sometimes referred to as “the poorest postal code in Canada”.<sup>4</sup> Over the years, it has frequently been the subject of intense media interest, often depicting tales of poverty and human despair – the Member of Parliament for the riding that includes the Downtown Eastside has commented that it “gets more attention than pretty well any other neighbourhood in Canada.”<sup>5</sup>

Pivot Legal LLP grew out of Pivot Legal Society, a non-profit legal advocacy society that has been active in the Downtown Eastside for over a decade. Pivot Legal Society focusses on issue advocacy and strategic litigation, and its past work has included high profile legal and media work on issues including policing, housing, sex work, violence against women and drug policy,

---

<sup>4</sup> Douglas Coupland, *City of Glass: Doug Coupland’s Vancouver*, (Vancouver: Douglas & McIntyre, 2003) at 87.

<sup>5</sup> Libby Davies, “Foreword”, in Brad Cran & Gillian Jerome, *Hope in Shadows: Stories and Photographs of Vancouver’s Downtown Eastside* (Vancouver: Arsenal Pulp Press, 2008) 9 at 9.

by using combinations of public advocacy and litigation to advance these causes.<sup>6</sup> Its lawyers have been to the Supreme Court of Canada to argue the landmark decision in *Canada (AG) v. PHS Community Services Society*, which resulted in the continuation of Insite, Vancouver's supervised injection site, and more recently to argue the issue of public interest standing in the context of decriminalization of prostitution in Canada.<sup>7</sup>

Pivot Legal LLP was set up to provide legal services for individuals and organizations with everyday legal needs, and also to provide a source of steady funding for Pivot Legal Society.<sup>8</sup> Pivot Legal LLP was also founded to show how a fresh, innovative law firm could both provide meaningful legal services in its community and break from conventional, hierarchical ways of running a law firm. It won an award as one of the most promising social enterprises in Vancouver, and had grown to 12 lawyers within two years.<sup>9</sup> But by the end of 2010, Pivot Legal LLP was no more.

Between March and June 2012, I conducted face-to-face interviews with nine individuals who were involved with Pivot Legal LLP. In addition, I was granted access to some of the business records of the firm, in order to understand how it operated and try to draw conclusions about why it ultimately closed down. A full explanation of this case study methodology is found at Appendix A to this thesis.

---

<sup>6</sup> John Richardson, "A History of Pivot Legal Society", in Brad Cran & Gillian Jerome, *Hope in Shadows: Stories and Photographs of Vancouver's Downtown Eastside* (Vancouver: Arsenal Pulp Press, 2008) 18 at 18-31.

<sup>7</sup> *Canada (AG) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 SCR 134; *Canada (AG) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45.

<sup>8</sup> In describing the legal needs dealt with by Pivot LLP as "everyday", I do not mean to deprecate their importance to those individuals. Rather, I attempt only to draw a line between legal problems that might be picked up as part of Pivot Legal Society's strategic litigation work – such as the two cases mentioned which went to the Supreme Court of Canada – and legal problems experienced on a daily basis by individuals – such as debt or credit matters, harassment claims, etc. – that would fit with the mandate of Pivot Legal LLP.

<sup>9</sup> "2010 Social Enterprise Dragons Winner", online: Social Enterprise Dragons <<http://www.socialenterprisedragons.com/s/LastYear.asp>>. [Social Enterprise Dragons]

The interview participants included former partners, former lawyers, administrative support staff, and external advisors. All references to the identities of these individuals or to identifiable characteristics have been redacted to preserve their anonymity.

The case study of Pivot Legal LLP illustrates some key lessons for any new, innovative legal services firm. As noted above on page 2, the goals of this thesis are not only to demonstrate that the dual factors of unmet legal need and lawyer discontent can drive innovation in legal service delivery, but also, using lessons from Pivot Legal LLP, to demonstrate *how* such innovation could work.

Before delving into research on the problems of access to justice and lawyer discontent, however, it is necessary to briefly discuss terms and parameters, and to situate this project within the wider discussion about access to justice.

## **1.2 Access to Justice and Access to Legal Services**

The primary focus of this thesis is on access to civil legal services in British Columbia, and the possibility of increasing access to those services via a new type of law firm. This focus will not include criminal law matters. This is not because access to criminal legal services is less important or less pressing than access to civil legal services. Indeed, the Final Report of the British Columbia Justice Reform Initiative has recently called for “systemic and wide-ranging change” to the criminal justice system in British Columbia.<sup>10</sup> Clearly, this field presents significant challenges for access to legal services.

---

<sup>10</sup> British Columbia, *A Criminal Justice System for the 21<sup>st</sup> Century: Final Report to the Minister of Justice and Attorney General Honourable Shirley Bond*, (Victoria: nd, 2012) (Chair: D Geoffrey Cowper) at 1[Cowper Report].

But it is necessary to start somewhere, and my starting point is access to civil legal services in British Columbia. Criminal matters are conceptually distinct from civil matters, though there may be some overlap among them: each of these fields relies on different rules of court and different procedures, they are taught separately in law school, and each is often practiced by specialized members of the bar. My focus on civil legal matters will include contract disputes, tort matters, insolvency issues, employment matters, will and estate matters, and others. Other areas, such as family law, while not the exclusive focus of this thesis, may be drawn into the discussion. Indeed, family law is a crucial area in access to justice work. Research from Ontario has suggested that family law problems are the most common type of serious legal problem faced by individuals.<sup>11</sup> The scope of access is not limited to matters in court, but will extend to matters which could appear before tribunals, and also to matters that are not advocacy at all, but which involve structuring of legal affairs.

Turning to terminology, while my stated focus is on access to civil legal services, it is necessary to briefly compare that term to the more commonly-encountered term, “access to justice”, as well as to some others. As legal scholars Samreen Beg and Lorne Sossin elegantly explain:

Access to justice should not be confused with access to lawyers. There are a wide variety of mechanisms for delivering legal information, legal advice, and legal services that do not involve the conventional solicitor-client relationship (multilingual legal brochures, online public legal information, telephone summary advice, paralegals and community workers, duty counsel, etc.). That said, legal representation remains vital to the successful functioning of the civil justice system.<sup>12</sup>

---

<sup>11</sup> Nicholas Bala, “Reforming Family Dispute Resolution in Ontario: Systemic Changes and Cultural Shifts” in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 271 at 271.

<sup>12</sup> Beg & Sossin, *supra* note 2 at 193–194[footnotes omitted].

Recourse to the civil justice system may not always be the best way to resolve a problem that could be characterized as legal. This point is acknowledged by law and society researcher Ab Currie in the context of his study of unmet legal need:

A basic assumption underlying [many studies of unmet legal need] is that the legal option may not be the best one to resolve civil justice problems. Depending on their level of self-efficacy and the nature of the problem with which they are faced, some people might require only information or advice to enable effective self-help.<sup>13</sup>

Currie recognizes, however, that this acknowledgement does not diminish the importance of legal assistance for those who become engaged in the civil legal system, noting that “[a]lthough some people may not require the courts or other formal mechanisms to resolve their legal problems, others who would benefit from legal assistance and court decisions may not receive the help they need because of barriers that prevent them from accessing the justice system.”<sup>14</sup>

Access to courts is not the same as access to legal services. Access to legal services is broader than access to courts, since it denotes access to legal professionals (i.e. lawyers, paralegals), including those who do not practice before the courts. There is significant benefit in understanding legal services as broader than court-based advocacy in this way: while courts and tribunals often serve a curative role by allowing litigants to defend their rights, there is also value in the preventative and ordering functions played by lawyers and others well before a court or tribunal is needed. These preventative functions include explaining the law to allow individuals to govern themselves in a way that avoids the need for later dispute resolution efforts before courts or tribunals.<sup>15</sup>

---

<sup>13</sup> Currie, *supra* note 1 at 55.

<sup>14</sup> *Ibid.*

<sup>15</sup> See e.g. Vayda and Ginsberg, *supra* note 2 at 246.

In a society where law and the legal system have become ubiquitous access to legal services takes on more importance as individuals find it difficult to avoid complex legal structures.<sup>16</sup> In the words of law professor Richard Devlin:

There is little doubt that access to justice must mean more than access to a lawyer, but given the pervasiveness and complexity of both substantive and procedural law in contemporary Canadian society, it would seem that access to a lawyer is a necessary - though insufficient - element of access to justice. Lawyers, in other words, function as the gatekeepers of the justice system.<sup>17</sup>

Jurist and scholar Ronald Sackville traces the fundamental connection between access to justice and the state's recognition of fundamental human and political values:

The ideal embodied in the concept of access to justice embraces (though is not necessarily limited to) the proposition that each person should have effective means of protecting his or her rights or entitlements under the substantive law. This ideal is often seen as an element of the fundamental principle that all people should enjoy equality before the law. That principle in turn derives from the notion that the very foundations of justice rest on recognition by the state of the values of human dignity and political equality.<sup>18</sup>

In this thesis, I do not suggest that “justice”, “law” and “legal services” are co-extensive. Nevertheless, for purposes of readability I will sometimes use access to justice in place of access to civil legal services. As a working definition, “legal services” connotes services provided which serve an instrumental function in attempting to obtain justice within the British Columbia legal system. This could include, for example, a lawyer who represents a client in court, a paralegal who drafts a document for a client, or a lawyer who prepares a will.

---

<sup>16</sup> Currie, *supra* note 1 at 83.

<sup>17</sup> Richard Devlin, “Breach of Contract?: The New Economy, Access to Justice and the Ethical Responsibilities of the Legal Profession” (2002) 25 Dalhousie LJ 335 at 346.

<sup>18</sup> Ronald Sackville, “Some Thoughts on Access to Justice” (2004) 2 NZJPIL 85 at 86.

In suggesting that an innovative type of law firm can help improve access to civil justice, I do not mean to suggest that this is a panacea. Nor do I suggest that government should be excused from its obligations to improve access. Indeed, as noted below in section 6.1.3, the reduction in government funding for legal aid in British Columbia was cited as one of the challenges for Pivot Legal LLP. Rather, I incline to the view that access to justice must be improved through a continuum of programs and efforts.<sup>19</sup> At present, discussion of business model innovation is largely missing from that continuum.

Government funding for legal aid on a *per capita* basis has stagnated or declined in many provinces over the past decade.<sup>20</sup> This was particularly pronounced and dramatic in British Columbia, where the Liberal government of Gordon Campbell cut the budget of the province's Legal Services Society ("LSS") by nearly 40% in 2002.<sup>21</sup> In 2009 and 2010, LSS closed five regional offices and "LawLINE", a phone-advice system, due to "static government revenues and declining revenues from the Notary Foundation."<sup>22</sup> But as law professor Michael Trebilcock noted in his 2008 report on legal aid in Ontario, declining *per capita* funding for a means-tested legal aid system means that increasingly few members of the public will be eligible for that system over time.<sup>23</sup> The implications of this decline are described by Professors Trebilcock, Anthony Duggan, and Lorne Sossin in their recent collection of essays on middle income access to justice, who note that "significant improvements in the delivery of public services are unlikely without the support of those who principally fund them, and that to gain that support, the

---

<sup>19</sup> Currie, *supra* note 1 at 90.

<sup>20</sup> Devlin, *supra* note 17 at 349-350; Michael Trebilcock, *Report of the Legal Aid Review 2008* (Toronto: Ministry of the Attorney General, Ontario, 2008) at 74 [Trebilcock Report]; Melina Buckley, *Moving Forward on Legal Aid: Research on Needs and Innovative Approaches* (Ottawa: Canadian Bar Association, 2010) at 62. Buckley, at 62, notes declining eligibility in BC and Ontario, but also increasing eligibility in Alberta and Quebec.

<sup>21</sup> Leonard T Doust, *Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia* (Vancouver: The Public Commission on Legal Aid, 2011) at 40 [Doust Report].

<sup>22</sup> *Ibid* at 42.

<sup>23</sup> Trebilcock, *supra* note 20 at 75-76.

improvements must be pitched to a broader constituency than those who are most obviously in need.”<sup>24</sup>

Citing the Trebilcock Report, they note that this may help explain why government funding for legal aid has fallen, while funding for universal programs such as education and health care has increased.<sup>25</sup> While the Trebilcock Report pertained only to Ontario, the logic of this point seems equally or more applicable to British Columbia, given the extent of the cuts to legal aid over the last decade.

Recognizing the need for increased public support for legal aid funding, the Canadian Bar Association (the “CBA”) has engaged in extensive efforts over the past several decades to improve legal aid across Canada.<sup>26</sup> As Devlin has noted, however, these efforts have yielded few results:

Much of [the CBA’s work] is praiseworthy. But it has also produced little in the way of results, as the CBA itself acknowledges. Moreover, the CBA has identified some of the problems in arguing for better legal aid: the provinces manage the delivery of legal aid thereby making coordinated lobbying difficult; legal aid does not have a public profile; the public often misunderstands why people need legal aid; and people have misconceptions about why lawyers want improvements to the legal aid system.<sup>27</sup>

---

<sup>24</sup> Michael Trebilcock, Anthony Duggan & Lorne Sossin, “Introduction” in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 3 at 4.

<sup>25</sup> *Ibid.* See also Trebilcock, *supra* note 20 at 74.

<sup>26</sup> Buckley, *supra* note 20 at 116–121.

<sup>27</sup> Devlin, *supra* note 17 at 354.

Noted lawyer, legal aid researcher and advocate Melina Buckley has also acknowledged recently that despite the CBA's "vigorous and consistent advocacy", its efforts to renew legal aid have been largely unsuccessful.<sup>28</sup>

One aspect of the CBA's advocacy in recent years has been litigation to establish constitutional recognition of a right to civil legal aid. While Canadian courts have recognized a right to government-funded counsel in some non-criminal settings, those settings have been limited.<sup>29</sup> Moreover, in *British Columbia (AG) v. Christie*, a case involving the late lawyer and access to justice advocate Dugald Christie, the Supreme Court of Canada rejected a general right to legal services, while acknowledging that "[l]awyers are a vital conduit through which citizens access the courts, and the law".<sup>30</sup> Although the CBA remains involved in strategic access to justice litigation, absent a constitutional requirement for publicly-funded legal services it would seem that government funding for legal aid is a matter entirely within the discretion of elected legislators.<sup>31</sup>

Against this backdrop, there have been calls for increased innovation in how legal aid services are delivered to explore new ways to revitalize legal service delivery for those in need.<sup>32</sup> This thesis is a response to these calls, suggesting how lawyers might increase access to legal services by structuring their firms in novel ways.

---

<sup>28</sup> Buckley, *supra* note 20 at 121.

<sup>29</sup> *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46 at para 2, 216 NBR (2d) 25 (ruling that government-funded counsel is required when state custody of a parent's child or children is at issue).

<sup>30</sup> *British Columbia (AG) v. Christie*, 2007 SCC 21, [2007] 1 SCR 873 at paras 22-23[*Christie*].

<sup>31</sup> The recent B.C. case of *Vilardell v. Dunham*, 2012 BCSC 748, in which the B.C. Supreme Court found that court hearing fees were unconstitutional, seems an exception to the general trend of decisions upholding government taxes and charges on court services. The government has indicated that it intends to appeal this decision.

<sup>32</sup> Trebilcock, *supra* note 20 at 83-114; Buckley, *supra* note 20 at 77-107.

Having introduced the ambit of this thesis, I now turn to an examination of the two problems:  
access to civil legal services and lawyer discontentment.

## **2 A HISTORY OF THE ACCESS TO JUSTICE MOVEMENT**

Understanding the recent history of access to justice is important, since it provides context for the current state of access in Canada, and also because it provides a backdrop against which to evaluate the suggestion for a new law firm business model to improve access.

There are many events over the past century which should be included in a history of access to justice in the common law world. Because of my focus on access to civil legal services, this outline focusses largely, but not exclusively, on civil matters. Yet since many of the key aspects of the access to justice movement (e.g. legal aid) have applied to both civil and non-civil matters – such as criminal law – it is impossible and artificial to draw a clear line between these areas.

When I bring up criminal law matters, I will note this explicitly.

This history of access to justice in the common law world will explore the development of access to justice programs in England, the home of the common law system, and the United States before focussing on Canada and, more particularly, British Columbia. Both England and the United States have often given rise to developing trends in access to justice that were later copied or adapted in Canada.

### **2.1 England and the United States**

At the outset, it is important to note that the emergence of the modern common law system has been marked, in part, by the growing prominence of lawyers within that system. Indeed,

representation by counsel in criminal felony cases was only established in England in 1837.<sup>33</sup> Prior to that time, the presence of lawyers in criminal courts was the exception, not the rule.

### 2.1.1 First, America

Fast-forward to New York City, circa 1876. The German Society of the City of New York is often cited as the first organization dedicated to providing limited legal services for individuals of German descent who could not otherwise afford those services.<sup>34</sup> Other agencies and societies opened in different American cities over the coming years, notably the Protective Agency for Women and Children in Chicago in 1886, and the Bureau of Justice in Chicago in 1888.<sup>35</sup> The Bureau of Justice appears to have been the first organization in the United States which provided legal services to any member of the public who could not otherwise afford them.<sup>36</sup> In 1896, the German Society of New York changed its focus from people of German descent to people needing legal assistance generally, and changed its name to “The Legal Aid Society”.<sup>37</sup> Over the next decade, The Legal Aid Society opened several satellite offices, and similar societies were created in other cities such as Boston, Philadelphia and Cleveland.<sup>38</sup>

The first decades of the Twentieth Century marked the emergence of legal aid as a significant movement in the United States. Among the signal events of those early days, the first legal

---

<sup>33</sup> Theodore FT Plucknett, *A Concise History of the Common Law*, 5th ed (London: Butterworth & Co, 1956) at 435; Rhode, Deborah L. *Access to Justice* (Oxford, UK: Oxford University Press, 2004) at 50.

<sup>34</sup> See e.g. Herrera, *supra* note 2 at 9; Rhode, *supra* note 33 at 58; Carrie Menkel-Meadow, “Legal Aid in the United States: The Professionalization and Politicization of Legal Services in the 1980’s” (1984) 22:1 Osgoode Hall LJ 29 at 33; Arthur F Bigelow, “Epitome of Legal Aid History in the United States, 1876-1925” (1926) 124 *Annals of the American Academy of Political and Social Science* 20 at 20.

<sup>35</sup> Bigelow, *supra* note 34 at 20.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid* at 21.

<sup>38</sup> *Ibid* at 21-22.

program affiliated with a law school was founded in Denver in 1904.<sup>39</sup> By 1911, 15 law societies from around the eastern United States and Chicago came together to form the National Alliance of Legal Aid Societies.<sup>40</sup> In 1919, the Carnegie Foundation for the Advancement of Teaching published Reginald Heber Smith's seminal *Justice and the Poor*.<sup>41</sup>

Smith is a very important figure for two reasons. First, he was intimately involved in many of the developments in legal aid in the United States in the early part of the Twentieth Century. Secondly, and perhaps more intriguingly, he was also a key innovator of early law practice management, introducing and propagating in particular two concepts that remain a central feature of the practice of law: timekeeping and the billable hour.<sup>42</sup>

In 1914, Smith was hired to head Boston Legal Aid.<sup>43</sup> At the time, the agency was in dire financial straits, but within a few years under Smith's leadership, it was thriving, handling more than 4000 cases per year by 1920.<sup>44</sup> In 1921, Smith was named the first chairman of the newly-formed Standing Committee on Legal Aid, a committee of the American Bar Association (the "ABA").<sup>45</sup>

---

<sup>39</sup> Menkel-Meadow, *supra* note 34 at 33; *Ibid* at 22.

<sup>40</sup> Bigelow, *supra* note 34 at 23.

<sup>41</sup> Reginald Heber Smith, *Justice and the Poor* (Boston: Merrymount Press, 1919).

<sup>42</sup> Andy Updegrove, "Killing the Roach: The Incredibly Illogical, Fundamentally Odious – but Seemingly Ineradicable – Billable Hour" *The Standards Blog* (13 April 2009), online: ConsortiumInfo.org <<http://www.consortiuminfo.org/standardsblog/article.php?story=20090411131326749>>.

<sup>43</sup> Herrera, *supra* note 2 at 10.

<sup>44</sup> Ken MacIver & Allan Rodgers, "A Brief History of Legal Services in Massachusetts", online: MassLegal Services <[http://www.masslegalservices.org/system/files/Brief\\_History\\_of\\_Legal\\_Services\\_in\\_Massachusetts.pdf](http://www.masslegalservices.org/system/files/Brief_History_of_Legal_Services_in_Massachusetts.pdf)>.

<sup>45</sup> Herrera, *supra* note 2 at 10; Bigelow, *supra* note 34 at 24.

In 1923, the National Alliance of Legal Aid Societies was succeeded by the National Association of Legal Aid Organizations, an organization which included a much more geographically diverse membership, which held its first national conference in Cleveland.<sup>46</sup>

Efforts to address poverty issues and improve access to legal services were not restricted to the United States. I will briefly review developments in England, before returning to the story in America.

### 2.1.2 Over to England

Across the Atlantic, the pursuit of access for low income individuals took a similar, though distinct, form. In 1891, the first service of formalized pro bono legal advice was established through weekly “Poor Man’s Lawyer” meetings at the Mansfield Settlement House in London.<sup>47</sup> Within a decade, it was common for judges and magistrates to send poor individuals to this or other Poor Man’s Lawyer programs for legal advice (however, although these programs provided advice, it was exceedingly rare for them to provide representation).<sup>48</sup> Also, although they shared the characteristic of providing free legal advice, there was relatively little coordination or common practice between these programs.

In 1903, Parliament passed the *Poor Prisoners’ Defence Act*, which authorized judges to appoint compensated counsel in exceptional circumstances, such as against charges of murder or other serious crimes.<sup>49</sup> This built on the existing practice of judges appointing counsel (so-called

---

<sup>46</sup> See Bigelow, *supra* note 34 at 24; “History of NLADA”, online: National Legal Aid & Defender Association <[www.nlada.org/About/About\\_HistoryNLADA](http://www.nlada.org/About/About_HistoryNLADA)>.

<sup>47</sup> Ben Spencer, “The Poor Man’s Lawyer Service: A Precursor to Legal Aid”, *Legal Action* (May 2009) 6, online: LegalAction <[http://www.lag.org.uk/files/92932/FileName/MayLA\\_06\\_07.pdf](http://www.lag.org.uk/files/92932/FileName/MayLA_06_07.pdf)>.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Poor Prisoners’ Defence Act*, 1903 (UK), 3 Edw VII, c 38; Rhode, *supra* note 33 at 50.

“dock briefs”) when they deemed it appropriate. Unlike dock briefs, however, which were uncompensated, the 1903 Act explicitly granted courts the power to ensure that those counsel were compensated for their work from the public purse. However, as access-to-justice scholar Deborah Rhode notes, courts were generally reticent to make such appointments, and even when appointments were made, the compensation for lawyers was very low.<sup>50</sup> Moreover, the 1903 Act applied only to defence against serious criminal charges; there remained little systematic recourse for individuals needing lawyers in civil matters. Poor Man’s Lawyer programs, as haphazard as they were, remained virtually the only sources for free legal advice in England. By 1939, there were 55 Poor Man’s Lawyer programs in the London area, and 70 other programs in other towns throughout England and Wales.<sup>51</sup>

By 1945, the issue of access to the courts was of sufficient importance to merit a review and report to the Lord High Chancellor by eminent members of the English bar. The *Report of the Committee on Legal Aid and Advice in England and Wales*, produced by the so-called Rushcliffe Committee (named after Lord Rushcliffe, its chair), proposed that legal aid be made available in all courts, that such aid be extended to include not only the “poor” but also those of “small or moderate means”, and that legal aid be funded by the state but administered by the Law Society of England and Wales.<sup>52</sup>

Many of the report’s recommendations were ultimately adopted. In 1949, Parliament passed the *Legal Aid and Advice Act*, creating the first system of government-funded legal aid in the United

---

<sup>50</sup> Rhode, *supra* note 33 at 51.

<sup>51</sup> Spencer, *supra* note 47.

<sup>52</sup> *Report of the Committee on Legal Aid and Advice in England and Wales* (London: His Majesty’s Stationery Office, 1945)(Chair: Lord Rushcliffe), cited in Roger Smith, “Clinics in a Cold Climate: Community Law Centres in England and Wales” (1997) 35 *Osgoode Hall L J* 895 at 899.

Kingdom.<sup>53</sup> This development followed shortly after the enactment of legislation creating the National Health Service and other key education, social security, and housing initiatives by the Labour government of Clement Attlee, and is often understood as part of the growth of the modern welfare state in post-World War II England.<sup>54</sup> In this, legal aid can be understood as a component of the growth of the redistributive social welfare state, implemented by social-democratic governments to centralize social services and bring them under government auspices.<sup>55</sup> Legal aid in the United Kingdom therefore shares its roots with the development of the National Health Service, though it is worth noting that unlike the NHS, legal aid has not tended to universalist entitlements but to provision of services on a means-tested basis.<sup>56</sup>

I will now return to developments on the other side of the Atlantic in the post-World War II period.

### **2.1.3 A “Red Scare” Drives Developments in the U.S.**

In the United States, the encroachment of the welfare state into legal services caused anxiety among some members of the bar. Indeed, the prospect of “government take-over” of legal services appears to have been a significant motivator for the ABA, which mobilized against this possibility in the early 1950s.<sup>57</sup> By the early 1960s, the ABA initiative had created “over 150

---

<sup>53</sup> *Legal Aid and Advice Act*, 1949 (UK), 12, 13 & 14 Geo VI, c 51.

<sup>54</sup> Judith M Dunlop, “Social Policy Devolution: A Historical Review of Canada, the United Kingdom, and the United States (1834–1999)” (2009) 24:3 *Social Work in Public Health* 191 at 200; Smith, *supra* note 52 at 900.

<sup>55</sup> Ian Robinson & Richard Simeon, “The Dynamics of Canadian Federalism” in James Bickerton & Alain-G Gagnon, eds, *Canadian Politics*, 3rd ed (Peterborough, ON: Broadview Press, 1999) 239 at 249.

<sup>56</sup> Smith, *supra* note 52 at 899–900.

<sup>57</sup> Herrera, *supra* note 2 at 10.

organizations in every major city in the United States with an aggregate budget of \$4.5 million and staff of 400 full-time lawyers” providing legal aid services.<sup>58</sup>

The 1960s witnessed significant developments in access to justice in the United States, both from the courts and from government. In 1963, the United States Supreme Court decision of *Gideon v. Wainwright* established a constitutional right to counsel for indigent criminal defendants in criminal cases, whether state or federal.<sup>59</sup> The following year, Congress passed the *Economic Opportunity Act*<sup>60</sup>, creating the Office of Economic Opportunity (the “OEO”). This was a significant component of President Johnson’s “War on Poverty”.

Under the OEO, the Johnson administration set up the first federally-funded legal aid scheme in the U.S., the Legal Services Program. This was supported by the ABA, which feared that it might lose its monopoly over delivery of legal services unless it complied with the government’s proposals.<sup>61</sup> The model adopted for this legal aid scheme was based on earlier projects run by the Ford Foundation which sought to provide “neighbourhood legal services”.<sup>62</sup> Under this model, the poor were required to be on the boards of local legal aid agencies, and those agencies were prohibited from taking for-fee cases.<sup>63</sup> The core tenets of the model were set out in the 1964 article, *The War on Poverty: A Civilian Perspective* by Jean and Edgar Cahn.<sup>64</sup> This article, and other work by the Cahns, would play an important role over the coming decade in the

---

<sup>58</sup> *Ibid.*

<sup>59</sup> 372 U.S. 335 (1963).

<sup>60</sup> *Economic Opportunity Act of 1964*, Pub L No 88-452, 78 Stat 508.

<sup>61</sup> Herrera, *supra* note 2 at 12.

<sup>62</sup> Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (Alphen aan den Rijn, The Netherlands: Sijthoff & Noordhoff, 1980) at 63.

<sup>63</sup> Herrera, *supra* note 2 at 14.

<sup>64</sup> Edgar S Cahn & Jean C Cahn, “The War on Poverty: A Civilian Perspective” (1964) 73:8 Yale LJ 1317.

development of the movement for neighbourhood legal services, not only in the United States, but also in the United Kingdom, and, somewhat later, in Canada.

The neighbourhood legal services model was criticized by some, at the time and since, for failing to build upon the legal aid system that had already developed in many cities and states. Instead, the OEO adopted programs developed and administered by “[a]cademics, foundation executives, and young attorneys”, many of whom had little experience with existing legal aid programs, but nevertheless criticized those programs as ineffective.<sup>65</sup>

#### **2.1.4 England Borrows**

In 1968 the Society of Labour Lawyers in England published *Justice for All*, a report which described the emergence of neighbourhood law firms in the United States as a potential model to improve access to justice in the United Kingdom.<sup>66</sup> That same year (indeed, within a month of the Labour Lawyers’ publication), the English Society of Conservative Lawyers published its own report, *Rough Justice*, which argued “for more planning of legal aid so that, for instance, private practitioners would be encouraged to set up in poor areas by special additional payments.”<sup>67</sup> Clearly, the issue of improving access to justice was one that had the attention of the legal community.

In January 1970, the Lord Chancellor’s Legal Aid Advisory Committee issued a report in response to the two reports of 1968. The report suggested a “new and flexible legal advice

---

<sup>65</sup> Herrera, *supra* note 2 at 11.

<sup>66</sup> Smith, *supra* note 52 at 901.

<sup>67</sup> *Ibid* at 901-902.

scheme”, largely controlled by the Law Society.<sup>68</sup> This proved to be one of the last reports issued under the Labour Lord Chancellor of Prime Minister Harold Wilson’s government, which was succeeded by the Conservative government of Edward Heath in June of that year.

Also that year, the first law centre opened in the North Kensington area of London.<sup>69</sup> Law centres were a form of neighbourhood law office, providing local residents with access to a lawyer, though unlike neighbourhood law offices in the U.S., there was no system-wide funding or system-wide policies for law centres in the U.K.<sup>70</sup> Law centres bore some resemblance to Citizens’ Advice Bureaux (“CABx”), which were set up throughout the United Kingdom beginning during the Second World War. While CABx helped citizens navigate the welfare state, they had no capacity to provide legal advice. Legal centres, by contrast, had lawyers on staff who could provide legal advice. As legal centres developed, they began to combine legal services with other social services.<sup>71</sup> In 1973, the first combined law centre/CAB opened in the Paddington district of London.<sup>72</sup>

In 1974, the official position of the U.K. law centres was described and consolidated in *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies*, by Mauro Cappelletti, James Gordley, and Earl Johnson Jr.<sup>73</sup> This was re-published in 1978, and is significant not only as a description of the law centres’ position, but also because it marks an early part of the involvement of Professor Cappelletti in access to justice matters in the common law world. In 1978, Cappelletti, with Bryant Garth, published a multi-volume review of access to justice

---

<sup>68</sup> *Ibid* at 902-903.

<sup>69</sup> *Ibid* at 898.

<sup>70</sup> *Ibid*.

<sup>71</sup> *Ibid* at 906.

<sup>72</sup> *Ibid*.

<sup>73</sup> Mauro Cappelletti, James Gordley & Earl Johnson Jr, *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies* (Dobbs Ferry, NY: Oceana, 1975).

around the world, which has proven influential for framing the concepts of the access to justice movement.<sup>74</sup>

### **2.1.5 Cold Winds for Legal Aid – First the U.S., then the U.K.**

By the late 1970s, however, political and judicial winds were beginning to shift against state-funded access to justice initiatives. Indeed, the Nixon government in the United States had, in 1974, re-worked the legal aid system in the United States by establishing the Legal Services Corporation in place of the legal aid arm of the OEO.<sup>75</sup>

In 1981, the United States Supreme Court held, in *Lassiter v. Department of Social Services of Durham County, North Carolina*, that appointment of counsel in civil cases was only required if otherwise the proceeding would be fundamentally unfair.<sup>76</sup> This test has been applied restrictively, meaning that there is essentially no right to civil counsel in the U.S.<sup>77</sup>

Shortly after the election of Ronald Reagan in 1980, federal funds for the Legal Services Corporation were significantly cut.<sup>78</sup> Some have suggested that Reagan's personal animus against government-funded legal services stemmed from his experiences as governor of California, and particularly his ongoing battles with the California Rural Legal Assistance organization, one of the beneficiaries of federal funding from the OEO.<sup>79</sup>

---

<sup>74</sup> Mauro Cappelletti & Bryant Garth, eds, *Access to Justice* (Alphen aan den Rijn, The Netherlands: Sijthoff & Noordhoff, 1978).

<sup>75</sup> Menkel-Meadow, *supra* note 34 at 47.

<sup>76</sup> 452 US 18 (1981).

<sup>77</sup> Rhode, *supra* note 33 at 9.

<sup>78</sup> Herrera, *supra* note 2 at 12.

<sup>79</sup> *Ibid.*

In the United Kingdom, legal aid was also soon under attack. In 1979, the Report of the Royal Commission on Legal Services (the “Benson Report”) suggested that although the Law Society should continue to administer the legal aid system, eligibility for legal aid should be raised.<sup>80</sup> However, the new, Conservative government of Margaret Thatcher was elected before any of the Benson Report’s recommendations could be implemented.<sup>81</sup> As a result, many recommendations from the Benson Report were never realized. Those that were implemented were done belatedly: legislative reform only occurred in 1990.<sup>82</sup>

In 1986, the Thatcher government began a series of deep cuts to the civil legal aid system.<sup>83</sup> In 1988, the Lord Chancellor’s department published its *Civil Justice Review*, responding to demands to “reduce delay, cost and complexity” of the civil justice system in England and Wales.<sup>84</sup> The *Review* called for steps to direct greater distribution of cases among different levels of court, and increased judicial management of pre-trial proceedings.<sup>85</sup> Also that year, the *Legal Aid Act 1988* was passed, which created a Legal Aid Board to control administration of legal aid in England and Wales.<sup>86</sup> In 1989, control of legal aid was taken from the Law Society and given to the newly-established Legal Aid Board.<sup>87</sup>

In 1996, Lord Woolf published his influential review, *Access to Justice*, which led to a significant remodelling of the civil justice system in England and Wales in an effort to reduce

---

<sup>80</sup> United Kingdom, Royal Commission on Legal Services. *Final Report* (London: Her Majesty’s Stationery Office, 1979)(Chair: Henry Benson).

<sup>81</sup> Smith, *supra* note 52 at 906.

<sup>82</sup> Rhode, *supra* note 33 at 56.

<sup>83</sup> Smith, *supra* note 52 at 898.

<sup>84</sup> United Kingdom. *Civil Justice Review: Report of the Review Body on Civil Justice* (London: Her Majesty’s Stationery Office, 1988) (Chair: Maurice Hodgson) at 1.

<sup>85</sup> *Ibid* at 14–15.

<sup>86</sup> *Legal Aid Act 1988* (UK), 1988, c 34.

<sup>87</sup> Spencer, *supra* note 47.

unnecessary complexity in the legal system and improve access to justice.<sup>88</sup> The central recommendation of the Woolf Report was to move the locus of case control away from litigants and their legal advisors and towards the courts, suggesting significant increases in judicial case management, particularly at the pre-trial stage.<sup>89</sup> In 1999, the Blair government passed the *Access to Justice Act*, which created two schemes for legal aid services: the Criminal Defence Service and the Community Legal Service. The Act also capped spending on civil legal aid, and broadened the eligibility of “no-win no-fee” conditional fee agreements.<sup>90</sup>

Since the mid-1990s, researchers with an interest in access to justice have increasingly turned to empirical studies of how individuals experience legal problems, seeking to better understand and catalogue the scope of unmet legal need. This trend is explained and discussed in greater detail in the following chapter.

Using this broad sweep of trans-Atlantic developments over the past century as a backdrop, I now turn to developments over that same time period in Canada and, more specifically, in British Columbia.

## **2.2 Canada and British Columbia**

Unlike some areas of legal development, where Canada has led or departed from trends evident in the U.K. or the U.S., the pattern in access to justice seems to be of Canadian developments reflecting but trailing developments in the U.K. and the U.S. through much of the last century.

---

<sup>88</sup> *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (London: Her Majesty’s Stationery Office, 1996) (Chair: The Right Honourable the Lord Woolf).

<sup>89</sup> *Ibid.*

<sup>90</sup> *Access to Justice Act 1999* (UK), 1999, c 22.

In 1915, the Canadian Bar Association (“CBA”) was formed<sup>91</sup>, some 37 years after the founding of the American Bar Association. Legal assistance in Canada seems, however, not to have been as much a concern for the CBA in its early years as it was for the ABA. Indeed, until the 1960s, access to justice in Canada was largely a matter dealt with by individual lawyers through voluntary *pro bono* assistance or, to some extent, through regional bar associations and provincial law societies.<sup>92</sup> In Ontario, for example, the Progressive Conservative government of Leslie Frost passed legislation in 1951 which provided disbursements for individuals who qualified for legal assistance, though that plan was supported on an entirely voluntary basis by the Law Society of Upper Canada.<sup>93</sup>

The introduction of the Canada Assistance Plan by the federal government in 1965, however, laid a foundation for federal funds to flow to the provinces, specifically ear-marked for legal assistance and other social assistance programs.<sup>94</sup>

Ontario was the first province to take advantage of the possibilities of this new revenue-sharing model. In 1965, the Ontario Progressive Conservative government of John Robarts received the *Report of the Joint Committee on Legal Aid*, which called for a provincial legal aid scheme to be paid for by the provincial government, and administered by the Law Society of Upper Canada.<sup>95</sup>

The Joint Committee, which contained representatives from the Ontario government and the Law

---

<sup>91</sup> W Wesley Pue, “Becoming ‘Ethical’: Lawyers’ Professional Ethics in Early Twentieth Century Canada” (1991) 20 Man LJ 227 at 235.

<sup>92</sup> Larsen, Norman. “Seven Years with Legal Aid (1972-79): A Personal View of Some Events and Background Literature” (1981) 11:3 Man LJ 237 at 250.

<sup>93</sup> Ontario Law Reform Commission. *Report on Administration of Ontario Courts* (Toronto: Ministry of the Attorney General, Ontario, 1973) (Chair: H Allan Leal) part 3, at 127-128.

<sup>94</sup> Larsen, *supra* note 92 at 251.

<sup>95</sup> Ontario. *Report of the Joint Committee on Legal Aid* (Toronto: Queen’s Printer, 1965) (Chair: William B Common).

Society of Upper Canada, was comprised entirely of lawyers.<sup>96</sup> The following year, Ontario introduced the first-in-Canada “modern” legal aid program by passing *The Legal Aid Act, 1966*, largely based on the previous year’s report.<sup>97</sup> In creating this legal aid program, Ontario looked not to the United States, but to England, and the legislation was “expressly modelled on legislation enacted in the United Kingdom in 1949”.<sup>98</sup>

Over the next 15 years, most other provinces and territories implemented government-funded legal aid systems: Saskatchewan in 1967 for criminal matters; Newfoundland in 1968; Alberta and British Columbia in 1970; Manitoba, Quebec, New Brunswick and Nova Scotia in 1972; and Yukon and the Northwest Territories by the early 1970s.<sup>99</sup> Thus by the time that the U.S. and the U.K. were beginning to cut their legal aid systems, Canada finally had a system in place in most of the country.

In 1973, the Ontario Law Reform Commission published its *Report on Administration of Ontario Courts*, which indicated the significant impact of the then-seven-year-old legal aid system on Ontario courts.<sup>100</sup> The following year, the Task Force on Legal Aid in Ontario issued a report (the “Osler Report”) which advocated removing control over legal aid from the Law Society of Upper Canada and giving it to a new non-profit corporation, Legal Aid Ontario, which was to be composed of a twenty-person board.<sup>101</sup> This recommendation was not acted on at the time, but

---

<sup>96</sup> Attorney General for Ontario, Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services (np: nd, 1997) (Chair: John D McCamus) at 10 [McCamus Report].

<sup>97</sup> *The Legal Aid Act, 1966*, SO 1966, c 80.

<sup>98</sup> Mary Jane Mossman, Karen Schucher & Claudia Schmeing, “Comparing and Understanding Legal Aid Priorities: a Paper Prepared for Legal Aid Ontario” (2010) 29 Windsor Rev Legal Soc Issues 149 at 177.

<sup>99</sup> Buckley, *supra* note 20 at 31.

<sup>100</sup> Ontario Law Reform Commission, *supra* note 93 at 125-180.

<sup>101</sup> Ontario, Attorney General, *Report of the Task Force on Legal Aid* (Toronto: Ministry of the Attorney General, 1974) (Chair: The Honourable John H Osler)[Osler Report].

was essentially adopted following the McCamus Report in the late-1990s.<sup>102</sup> The Osler Report was also important for advocating for the development of staffed neighbourhood legal aid clinics.<sup>103</sup> This was to prove a key suggestion in the development of legal aid in Ontario.

### **2.2.1 Distinctly Canadian Trends?**

If governments in Canada often lagged behind the U.S. and the U.K. in creating legal aid systems, there were some Canadian developments that went against this current of influence. For example, in 1969, the Law Foundation of British Columbia was formed, “partially as a measure to increase the funding available for legal aid.”<sup>104</sup> The Law Foundation of British Columbia was the first law foundation in North America, and was modelled on a law foundation created in 1967 in New South Wales, Australia. Not long after the law foundation model established a beachhead in British Columbia, it spread to a number of provinces and many American states.<sup>105</sup>

Also, by 1972 several legal clinics affiliated with law schools had opened across Canada. These early university-linked clinics were located in Vancouver (affiliated with the UBC Faculty of Law), Edmonton (formed by students from the University of Alberta Faculty of Law), Saskatoon (affiliated with the University of Saskatchewan’s College of Law), Toronto’s Parkdale neighbourhood (affiliated with York University’s Osgoode Hall Law School), Windsor, Ontario (the Windsor Law Student Legal Aid Society), London, Ontario (affiliated with the University of Western Ontario Faculty of Law), Kingston, Ontario (affiliated with the Queen’s University

---

<sup>102</sup> McCamus Report, *supra* note 96.

<sup>103</sup> Osler Report, *supra* note 101.

<sup>104</sup> Doust, *supra* note 21 at 40.

<sup>105</sup> “History of the Law Foundation”, online: The Law Foundation of British Columbia <<http://www.lawfoundationbc.org/about-us/history/>>.

Faculty of Law), Ottawa, Montreal (affiliated both with McGill University and with the Universite de Montreal), and Halifax (affiliated with Dalhousie Law School).<sup>106</sup> In 1971, the federal government made “demonstration grants” to four of these clinics – those in Halifax, Saskatoon, Montreal, and Toronto – which permitted those clinics to significantly expand their operations. In many cases, this expansion included active social change and law reform efforts, in addition to legal advocacy for clients on a case-by-case basis.<sup>107</sup>

The founding of Windsor Law School, which took in its first students in 1968, is a particularly interesting development in the access to justice movement in Canada. Windsor Law played an important role in subsequent national developments of legal aid: its first dean, Mark MacGuigan, was appointed in 1967 but left the law school when elected to Parliament in 1968. He was a member, and later chair, of the Standing Committee on Justice and Legal Affairs, and later Minister of Justice.<sup>108</sup> Given the strong role that the federal government played in promoting legal aid measures during the 1970s and into the 1980s, this is a noteworthy connection.<sup>109</sup>

Another interesting connection is that one of Windsor’s first law professors, Thomas G. Zuber, went on to write the influential Report of the Ontario Courts Inquiry in 1987, after having been appointed to the bench. From the outset, the Faculty of Law at the University of Windsor sought

---

<sup>106</sup> Garth, *supra* note 62 at 86; Shelley AM Gavigan, “Twenty-Five Years of Dynamic Tension: The Parkdale Community Legal Services Experience” (1997) 35 Osgoode Hall L J 443 at 445; “History of Student Legal Services of Edmonton”, online: Student Legal Services of Edmonton < <http://www.slsedmonton.com/about/student-legal-services-history/>>; Annette Demers, *A History of the University of Windsor Faculty of Law 1968-2008* (Windsor, ON: University of Windsor, 2010) online: University of Windsor <<http://www.uwindsor.ca/law/system/files/law40thBook.pdf>> at 20, 21.

<sup>107</sup> Garth, *supra* note 62 at 87.

<sup>108</sup> Demers, *supra* note 106; “Parliament of Canada – The Hon. Mark R. MacGuigan”, online: Parliament of Canada < <http://www.parl.gc.ca/Parlinfo/Files/Parliamentarian.aspx?Item=4b34370d-5e62-4479-a0b0-7bd3a601fef1&Language=E&Section=Publications>>.

<sup>109</sup> See e.g. Leslie Shepherd, “Gov’t., five provinces sign legal aid funding pact”, *The Ottawa Citizen* (4 May 1984) 3.

to teach “people’s law, not lawyers [sic] law”.<sup>110</sup> Windsor is remarkable because of its close proximity to the United States, its innovative approach to admissions and pedagogy, but most for how access to justice was – and is – a central animating feature of the law school.<sup>111</sup> Legal scholar Roderick Macdonald was a co-director of the Community Law Program at Windsor – one of its signature innovations, which engaged the community in learning about the law – from 1975 through 1978.<sup>112</sup> Professor Macdonald has since been a prominent and persistent advocate for improving access to justice in Canada, chairing a task force on access to justice in Quebec in the early 1990s, and acting as President of the Law Commission of Canada from 1997 to 2000.<sup>113</sup> Interestingly, the Faculty of Law also seems to have served as a key catalyst for the establishment of the CAW Legal Services Plan, the most prominent and popular prepaid legal services plans in Canada.<sup>114</sup>

In October 1971, the National Conference on Law and Poverty was held in Ottawa. At this conference, a wide array of speakers from Canada and the United States, including Jean and Edgar Cahn, discussed recent advances in delivery of poverty law to underserved communities, and particularly the neighbourhood law centre approach.<sup>115</sup> Some in the Canadian access to justice movement – particularly those enamoured with the neighbourhood law model - regard this conference as a watershed moment, galvanizing national action to firmly put the issue of community access to justice onto the political agenda.<sup>116</sup> Unlike the development of legal aid under the OEO in the U.S. during the 1960s, legal aid in Canada tended to be more open to

---

<sup>110</sup> Demers, *supra* note 106 at 9.

<sup>111</sup> *Ibid* at 19.

<sup>112</sup> *Ibid* at 48.

<sup>113</sup> See e.g. Roderick A Macdonald, “Access to Justice and Law Reform #2” (2001) 19 Windsor YB Access Just 317.

<sup>114</sup> Demers, *supra* note 106 at 58–59. For more on the CAW Legal Services Plan, and prepaid legal service plans generally, see e.g. Vayda & Ginsberg, *supra* note 2.

<sup>115</sup> For a first-hand account of the conference, see Larsen, *supra* note 92 at 251-252.

<sup>116</sup> *Ibid* at 258.

building upon existing structures. For example, the Osler Report suggested that legal aid in Ontario pursue a two-track approach, both by continuing to fund legal aid delivered through private lawyers (the so-called “judicare” model, discussed in the next paragraph), and also by creating a network of neighbourhood legal clinics, roughly in the model of the Parkdale clinic.<sup>117</sup>

A significant trend evident in the brief history above is the competition and co-evolution, particularly during the 1960s and 1970s, between the judicare model of legal aid and the neighbourhood legal centre model. Under a judicare model, individuals who qualify for government assistance are given certificates, which can then be redeemed with private lawyers, provided those lawyers are willing to work at the tariff set by the government or its surrogate.<sup>118</sup> Neighbourhood legal centres, in contrast, often have staff lawyers who focus on legal issues of particular interest to community members. These clinics are often directed by community boards, while receiving government funding.<sup>119</sup>

If 1971 marked a galvanizing moment for legal aid in Canada, it was short-lived. In 1975, a national conference on legal aid took place in Victoria, British Columbia. At least one commentator who described the 1971 conference as the apogee of the access to justice movement in Canada remembers the Victoria meeting as the beginning of the end of the golden days, explaining that enthusiasm for citizen participation in access to justice had waned, and that “the movement, if indeed that was what it was, had lost its steam.”<sup>120</sup>

---

<sup>117</sup> Osler Report, *supra* note 101.

<sup>118</sup> Lenny Abramowicz, “The Critical Characteristics of Community Legal Aid Clinics in Ontario” (2004) 19 J L & Soc Pol’y 70 at 71.

<sup>119</sup> *Ibid* at 73-74.

<sup>120</sup> Larsen, *supra* note 92 at 258.

If 1975 marked a decline in energy behind the legal aid movement, it certainly did not herald any reduction in government or public sector reports on the state of legal aid and access to justice. 1975 also saw the publication of *Access to the Law* by the Law Reform Commission of Canada, which focussed on access to legal information and noted that Canadians seek information about law from a wide array of sources, but relatively rarely from lawyers.<sup>121</sup> In 1978, the Ontario government received the *Report of the Commission on Clinical Funding* (the “Grange Report”).<sup>122</sup> This report affirmed the importance of legal clinics as part of a “mixed-model” of legal aid delivery in Ontario. In 1984, British Columbia’s Task Force on Public Legal Services came out with its report, which recommended changes to expand eligibility and the scope of matters dealt with under legal aid.<sup>123</sup> In 1987, the *Report of the Ontario Courts Inquiry* (the “Zuber Report”) called for reorganization of courts in Ontario to address, in part, access to justice concerns.<sup>124</sup> In 1988, the Justice Reform Committee in British Columbia issued its report, *Access to Justice*.<sup>125</sup> This report called for increased use of plain language in the justice system, improved access to legal information and education about legal matters, and made a wide range of recommendations with respect to family law, criminal law, and civil law case management reform.<sup>126</sup> 1992 marked the release of the Review of Legal Aid Services in British Columbia which confirmed the importance of the clinic model in delivery of poverty law services.<sup>127</sup> In

---

<sup>121</sup> ML Friedland, Peter ES Jewett & Linda J Jewett, *Access to the Law* (Toronto: Carswell/Methuen, 1975) at 2-3, 7.

<sup>122</sup> Ministry of the Attorney General of Ontario, *Report of the Commission on Clinical Funding* (Toronto: Ministry of the Attorney General, 1978), cited in the McCamus Report, *supra* note 96, at 15.

<sup>123</sup> Report to the Attorney General by the Task Force on Public Legal Services in British Columbia, (Victoria: Queen’s Printer, 1984) (Chair: The Honourable EN Hughes) at 42-62.

<sup>124</sup> *Report of the Ontario Courts Inquiry* by The Honourable TG Zuber (Toronto: Ministry of the Attorney General, 1987).

<sup>125</sup> British Columbia. *Access to Justice: The Report of the Justice Reform Committee, 1988*, (Victoria: Ministry of the Attorney General, 1988) (Chair: The Honourable EN Hughes).

<sup>126</sup> *Ibid* at 231-255.

<sup>127</sup> Attorney General. *Review of Legal Aid Services in British Columbia* by Timothy D Agg (Victoria: Queen’s Printer, 1992) at 143-151.

1997, the McCamus Report in Ontario<sup>128</sup> set out a course for the re-design of legal aid in that province, many of which were adopted in the Ontario *Legal Aid Services Act, 1998*<sup>129</sup>, which established Legal Aid Ontario as the management and oversight authority for legal aid in Ontario. In 2008, the Ontario government received the *Report of the Legal Aid Review 2008* (the “Trebilcock Report”)<sup>130</sup>, which followed up on the 1997 McCamus Report and tried to set out a future for legal aid in Ontario. In British Columbia, the Civil Justice Reform Working Group issued a report on the civil justice system in 2006, advocating for creation of information centres for members of the public and for revision of the Supreme Court Rules.<sup>131</sup> New rules of court were duly implemented in 2010.<sup>132</sup> In 2011, the report of the B.C. Public Commission on Legal Aid (the “Doust Report”) recommended that, among other things, the government declare legal aid to be an essential service and restore its funding.<sup>133</sup> And in early September 2012, the B.C. Attorney General made public two reports on the justice system: the BC Justice Reform Initiative final report, and the Legal Services Society of British Columbia’s report on improving access to legal services in British Columbia.<sup>134</sup> The BC Justice Reform Initiative report focussed primarily on reform of the criminal justice system in British Columbia, though its terms of reference acknowledge that the criminal justice system is embedded in, and affects, the justice system more broadly.<sup>135</sup> The Legal Services Society report addressed access to justice in criminal,

---

<sup>128</sup> McCamus Report, *supra* note 96.

<sup>129</sup> *Legal Aid Services Act, 1998*, SO 1998, c 26.

<sup>130</sup> Trebilcock Report, *supra* note 20.

<sup>131</sup> British Columbia, *Effective and Affordable Civil Justice: Report of the Civil Justice Reform Working Group to the Justice Review Task Force*, (np: nd, 2006) (Co-Chairs: Donald Brenner & Allan Seckel). See also Donald Brenner & Allan Seckel, “Making Justice Affordable” (2007) 40 UBC L Rev 745.

<sup>132</sup> “Civil Justice Reform Working Group”, online: BC Justice Review Task Force <[http://www.bcjusticereview.org/working\\_groups/civil\\_justice/civil\\_justice.asp](http://www.bcjusticereview.org/working_groups/civil_justice/civil_justice.asp)>.

<sup>133</sup> Doust Report, *supra* note 21 at 45-46, 58.

<sup>134</sup> Cowper Report, *supra* note 10; Legal Services Society. *Making Justice Work: Improving Access and Outcomes for British Columbians – Report to the Minister of Justice and Attorney General The Honourable Shirley Bond* (Vancouver: Legal Services Society, 2012) [LSS Report].

<sup>135</sup> “BC Justice Reform Initiative Terms of Reference”, online: BC Justice Reform Initiative <<http://bcjusticereform.ca/the-review/terms-of-reference/>>.

family, and civil contexts, and called for increased use of preventative and non-lawyer approaches to civil legal problems.<sup>136</sup>

Amid all these reports, governments in Canada were moving to limit legal aid in ways similar to previous moves in the U.S. and the U.K. In 1994, faced with a significant recession and looking to trim the provincial budget, the New Democratic government of Bob Rae in Ontario imposed limits on funding for legal aid for the first time.<sup>137</sup> In 1995, the federal government discontinued the Canada Assistance Plan (the “CAP”), initiating the Canada Health and Social Transfer (the “CHST”) in its stead.<sup>138</sup> While the CAP had earmarked a portion of federal transfer payments to provinces for legal aid programs, the CHST removed those fiscal tethers. In many provinces over the coming years, this meant that funds which had previously gone to legal aid programs were instead spent on other programs.<sup>139</sup> In 2002, British Columbia cut the budget of the Legal Services Society by almost 40% over a three year period.<sup>140</sup>

Over the last five years, while the Canadian judiciary has increasingly sounded the alarm in public comments over inadequate access to the courts, inside the courts, rulings have consistently gone against those looking to establish some constitutional requirement for improved state funding for legal aid.<sup>141</sup> In 2007, the Supreme Court of Canada declined to find a blanket right to

---

<sup>136</sup> LSS Report, *supra* note 134 at 4, 34-36.

<sup>137</sup> Trebilcock Report, *supra* note 20 at 5.

<sup>138</sup> Robinson & Simeon, *supra* note 55 at 257.

<sup>139</sup> Melina Buckley, *The Legal Aid Crisis: A Time for Action* (Ottawa: Canadian Bar Association, 2000) at 3, 33, online: Canadian Bar Association <<http://www.cba.org/CBA/Advocacy/pdf/Paper.pdf>>.

<sup>140</sup> Doust Report, *supra* note 21 at 40.

<sup>141</sup> See e.g. Jim Middlemiss, “More pro bono work needed: Chief Justice; Cost of accessing legal system too high: Winkler”, *National Post* (8 June 2007) A8; The Honourable Lance Finch, “Access to Justice: The Elephant in the Room” (Address delivered at the Canadian Bar Association – British Columbia Branch meeting in Scottsdale, AZ, 20 November 2010), [unpublished]; The Right Honourable Beverley McLachlin, “The Challenges We Face” (Address delivered at the Empire Club of Canada, Toronto, 8 March 2007), online: Supreme Court of Canada <<http://www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm07-03-08-eng.asp>>; Ian Bailey, “Public faces barriers in accessing Canadian courts, chief justice says”, *The Globe and Mail* (11 August 2012) online: The Globe and Mail

civil legal aid in *British Columbia (A.G.) v. Christie*.<sup>142</sup> In 2008, the British Columbia Court of Appeal rejected a challenge to the insufficiently-funded legal aid system by the CBA.<sup>143</sup> In that case, the CBA had applied for an order that underfunding of the legal aid system in British Columbia was unconstitutional. The B.C. Supreme Court dismissed the CBA's application at a preliminary stage, ruling that the CBA did not have standing to bring its case, and that even if it did, there was no possibility of success.<sup>144</sup> The Court of Appeal upheld that ruling.

In Canada, the “main elements” of access to justice work have been described by Ab Currie as including the following: legal aid, court workers, and public legal education and information (“PLEI”, meaning information about the law and about how the justice system works, designed for lay person, but excluding legal advice).<sup>145</sup> Currie notes that these three are the main “programmatically responses” to access to justice in Canada, and further notes that while legal aid focusses on access to the justice *system*, the other two have a “more substantive orientation toward access to justice.”<sup>146</sup> Currie also describes other aspects of the access to justice movement, namely: court reform (i.e. steps to increase the efficiency of court processes and simplifying court procedures, exemplified by the recent adoption of new rules of procedure in British Columbia, among other provinces), alternative dispute resolution (i.e. pre-trial conferences, court-ordered arbitration, small claims courts, divorce mediation, and specialized

---

<<http://www.theglobeandmail.com/news/british-columbia/public-faces-barriers-in-accessing-canadian-courts-chief-justice-says/article4476757/>>.

<sup>142</sup> *Christie*, *supra* note 30.

<sup>143</sup> *Canadian Bar Association v British Columbia*, 2008 BCCA 92, 76 BCLR (4th) 48, aff'g 2006 BCSC 1342, leave to appeal to SCC refused, 32600 (July 31, 2008).

<sup>144</sup> *Canadian Bar Association v British Columbia*, 2006 BCSC 1342, 59 BCLR (4th) 38. It is somewhat ironic that this case was decided by then-Chief Justice of the Supreme Court Donald Brenner, who was at that time acting as co-chair of the BC Civil Justice Reform Working Group on how to improve access to civil justice in B.C.

<sup>145</sup> Canada, Department of Justice, *Expanding Horizons: Rethinking Access to Justice in Canada* by Ab Currie (Ottawa: Department of Justice Canada, 2000) at 42, online: <[http://www.justice.gc.ca/eng/pi/rs/rep-rap/2000/op00\\_2-po00\\_2/b3.html](http://www.justice.gc.ca/eng/pi/rs/rep-rap/2000/op00_2-po00_2/b3.html)>.

<sup>146</sup> *Ibid* at 43.

tribunals for some types of cases<sup>147</sup>), pre-paid legal insurance (noting that this is quite prevalent in Europe, but also noting its rarity in Canada<sup>148</sup>), public interest advocacy (citing examples such as the Canadian Environmental Law Association, and Legal Actions and Education Fund, and noting that organizations like these have been active in Canada since the 1960s), and pro bono services.<sup>149</sup> In addition to these examples, recent work on access to civil justice in Canada has also explored ways to provide legal services in innovative ways. This has included calls for increased use of “unbundled” legal services, defined as “service[s] of limited scope for which a lawyer, paralegal, or legal service provider is retained”<sup>150</sup>, discussions about allowing partnerships between lawyers and other professionals<sup>151</sup>, and the relative merits of allowing third-party funding of litigation<sup>152</sup>.

As this brief history demonstrates, access to justice problems are not new, but efforts to understand and address the complex character of public need remain an area of active work.

---

<sup>147</sup> As a recent example of the latter, British Columbia has recently passed Bill 44, *Civil Resolution Tribunal Act*, 4th Sess, 39th Leg, British Columbia, 2012 (assented to 31 May 2012), creating a Civil Resolution Tribunal. Interestingly, the Tribunal, which proposes to provide “accessible, speedy, economical, informal and flexible” dispute resolution (s. 2(2)(a)), precludes representation by a lawyer in most circumstances (s. 20).

<sup>148</sup> See Vayda & Ginsberg, *supra* note 2; Sujit Choudhry, Michael Trebilcock & James Wilson, “Growing Legal Aid Ontario into the Middle Class: A Proposal for Public Legal Expense Insurance” in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 385.

<sup>149</sup> Canada, Department of Justice, *supra* note 145 at 43.

<sup>150</sup> Beg & Sossin, *supra* note 2 at 195.

<sup>151</sup> Michael Trebilcock & Lilla Csorgo, “Multi-Disciplinary Professional Practices: A Consumer Welfare Perspective” (2001) 24 *Dalhousie LJ* 1.

<sup>152</sup> Poonam Puri, “Financing of Litigation by Third-Party Investors: A Share of Justice” (1998) 36 *Osgoode Hall LJ* 515.

### 3 PROBLEM ONE: UNMET LEGAL NEED

Despite the long history of efforts to address perceived need for legal services, understanding the scope of this need has proven surprisingly difficult. Renowned law and society researcher Hazel Genn has commented on this, noting the need for better understanding of legal need in the U.K.:

It is perhaps remarkable that, in a period of unprecedented upheaval in the procedures for resolving civil disputes through the legal system, and historical alterations in the public funding of legal advice and representation, both the protagonists and opponents of change lack a solid empirical foundation for their respective positions. The rather unusually intense spotlight currently trained on the civil courts has been said to reveal a system in crisis: procedures that are too complicated; courts that are too slow; lawyers who are too aggressive; litigants who are bewildered and traumatised by their experiences; and an unquantified body of citizens whose access to the courts to vindicate rights is barred by these features. But where is the evidence for these assertions?<sup>153</sup>

Since the mid-1990s, largely in the wake of Genn's pioneering work in England and Wales, empirical research on legal need has proliferated, and today includes 23 national surveys, spanning 13 countries.<sup>154</sup> Recently, that research has expanded from trying to understand the scope of need to also trying to understand how need is related to other socio-economic factors.<sup>155</sup> In Canada, there has been growing interest on unmet legal need among those whose income is too high to qualify for what legal aid may be available, but too low to afford legal services. This population, the middle class, has been described as "staggering".<sup>156</sup> The legal needs of this population, I suggest, should help drive how legal services are provided.

---

<sup>153</sup> Hazel Genn, *Paths to Justice: What People Do and Think about Going to Law* (Oxford, UK: Hart Publishing, 1999).

<sup>154</sup> Pascoe Pleasence & Nigel J Balmer, "Caught in the Middle: Justiciable Problems and the Use of Lawyers" in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 27 at 28.

<sup>155</sup> Jamie Baxter, Michael Trebilcock & Albert Yoon, "The Ontario Civil Needs Project: A Comparative Analysis of the 2009 Survey Data" in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 55 at 57.

<sup>156</sup> Trebilcock, Duggan & Sossin, *supra* note 24 at 4.

This chapter will briefly review the international development of empirical studies of unmet civil legal need over the past decade and a half, before detailing recent findings on unmet legal need in Canada and, more specifically, British Columbia.

### 3.1 Defining and Studying Unmet Legal Need

While anecdotal reports about access to justice remain, and frequently capture headlines because of the prominent people making those reports, the emergence of robust empirical research on the scope of unmet legal need has provided a better foundation to not only understand the scope of access to justice problems, but also to design solutions which respond to the intricacies of access problems.<sup>157</sup> This empirical work is all the more important given that “[c]ivil laws regulate a great many aspects of life in western legal-bureaucratic societies”.<sup>158</sup> As Genn puts it:

We have little information about what the civil justice system delivers and the extent to which the courts are regarded as valuable or irrelevant to those for whom they ostensibly exist. The result is that we lack a context for evaluating proposals for change, and we lack the basic accounting data that might help us to know whether new policies implemented have changed things for the better, for worse, or not at all.<sup>159</sup>

The development of research on unmet legal need has involved detailed work to elicit greater understanding of the incidence of legal problems in the general population. A central aspect of this challenge is the reality that many individuals do not recognize or categorize their problems as “legal” problems at all.

Part of the difficulty in understanding and measuring legal need is the latent nature of civil legal need. Civil legal need has been described as a two-part phenomenon: “firstly, [to enable] the

---

<sup>157</sup> See e.g. Bailey, *supra* note 141; McLachlin, *supra* note 141.

<sup>158</sup> Currie, *supra* note 1 at 1.

<sup>159</sup> Genn, *supra* note 153 at 1.

client to identify and, if he [sic] judges it appropriate, to choose a legal solution and, secondly, [to enable] the client to choose a legal solution.”<sup>160</sup> Accordingly, if an individual does not recognize a problem as one with a legal solution, assessing need by counting cases in the legal system will under-estimate the true scope of need. This latency is not a factor in criminal legal matters, where the state actively inserts individuals into the justice system.<sup>161</sup>

Responding to this challenge, Genn’s research team developed the idea of a “justiciable event”, which Genn defines as “a matter experienced by a respondent which raised legal issues whether or not it was recognized by the respondent as being ‘legal’ and whether any action taken by the respondent to deal with the even involved the use of any part of the civil justice system.”<sup>162</sup>

The phrase legal need “says more about one possible solution to the problem than about the nature of the problem itself.”<sup>163</sup> The concept of the justiciable event moves the focus of enquiry away from the “legal” nature of a problem and closer to the lived experience of the respondent. Since the initial Paths to Justice study, though there has been some debate about and refinement to the justiciable event definition, it remains a central component of most studies of unmet civil legal need.<sup>164</sup> To date, studies on unmet legal need have been performed in Australia, Bulgaria, Canada, China, England and Wales, Hong Kong, Japan, the Netherlands, New Zealand, Northern Ireland, Scotland, Slovakia, and the United States.<sup>165</sup>

---

<sup>160</sup> *Royal Commission on Legal Services in Scotland* (Edinburgh: HMSO, 1980) (Commissioner: The Right Honourable the Lord Hughes) at 29.

<sup>161</sup> Currie, *supra* note 1 at 3.

<sup>162</sup> Genn, *supra* note 153 at 12.

<sup>163</sup> Currie, *supra* note 1 at 5.

<sup>164</sup> *Ibid* at 4–5.

<sup>165</sup> Pleasence & Balmer, *supra* note 154 at 31.

Elaborating on the concept of the justiciable event, the Paths to Justice study designed a process to elicit responses about these events from study participants. In face-to-face interviews, the research team used an interview questionnaire which covered a wide range of problems which raise legal issues. Questions were calibrated to elicit only “non-trivial” problems, and were tested in pilot studies. Subsequent unmet legal needs research has generally followed this pattern, though there has been some methodological variance, including whether interviews are done in person, by telephone, or via the Internet.<sup>166</sup>

Recent research has highlighted the ubiquity of justiciable problems throughout society, though there is some suggestion that “exposure to disputes can be expected to increase along with greater participation in social and economic life, and overall participation in social and economic life tends to increase with income.”<sup>167</sup> Indeed, the trend in research on unmet legal need appears to be toward closer investigation of the relationship among socio-economic factors, incidence rates, and response types for various types of justiciable problems.<sup>168</sup>

It is worth noting, however, that studies of unmet legal need are invariably couched in terms of “disputes” or “problems”.<sup>169</sup> This may reflect a common justification for improved access to legal services which rests upon the premise that “every society must ensure that there are readily available forums and devices through which disputes can be effectively and fairly resolved.”<sup>170</sup>

However, given the assertion that “[c]ivil laws regulate a great many aspects of life in western legal-bureaucratic societies” and that these laws “operate in all the corners and crevices of daily

---

<sup>166</sup> *Ibid* at 30–32.

<sup>167</sup> *Ibid* at 33, citing B. Van Velthoven and M. Ter Voert, Paths to Justice in the Netherlands, paper presented at the International Legal Aid Group conference, Killarney, Ireland, 8-10 June 2005.

<sup>168</sup> Baxter, Trebilcock & Yoon, *supra* note 155 at 56.

<sup>169</sup> Genn, *supra* note 153 at 290-382; Currie, *supra* note 1 at 91-115.

<sup>170</sup> Allan C Hutchinson, “Introduction” in Allan C Hutchinson, ed, *Access to Civil Justice* (Toronto: Carswell, 1990) vii.

life where activities regulated by civil laws take place”, it seems important to consider that unmet legal need might extend even beyond “disputes” or “problems”.<sup>171</sup>

Some have suggested that unmet legal need studies may underestimate the incidence of justiciable problems.<sup>172</sup> Indeed, there is evidence which suggests that legal needs surveys under-report as many as two-thirds of all justiciable events because of memory deterioration or failure to recall some types of events.<sup>173</sup> Moreover, it appears that memory deterioration is not uniform, and that some types of problems, such as consumer problems, have likely been systematically under-reported, compared to family law or mental health law problems.<sup>174</sup> Further, it may be that respondents under-report justiciable events where they do not seek assistance from someone else.<sup>175</sup>

Having sketched the evolution of efforts to study unmet civil legal need over the past 15 years, I now turn to a more detailed examination of legal need in Canada.

### **3.2 Unmet Legal Need in Canada**

A recent international comparative study suggests that access to civil justice is the most pressing problem facing the Canadian justice system. Canada ranked 16th out of 23 high income

---

<sup>171</sup> Currie, *supra* note 1 at 1.

<sup>172</sup> Rebecca L Sandefur, “Money Isn’t Everything: Understanding Moderate Income Households’ Use of Lawyers’ Services” in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 222 at 225.

<sup>173</sup> Pascoe Pleasence, Nigel J Balmer & Tania Tam, “Failure to Recall: Indications from the English and Welsh Civil and Social Justice Survey of the Relative Severity and Incidence of Civil Justice Problems” in Rebecca L Sandefur, ed, *Access to Justice* (Bingley: Emerald, 2009).

<sup>174</sup> *Ibid.*

<sup>175</sup> *Ibid.*

countries for access to civil justice, and ninth out of 12 high income countries in North America and Western Europe.<sup>176</sup>

The leading study of unmet legal need across Canada is Currie's 2006 survey of unmet civil legal need.<sup>177</sup> Currie's research is methodologically similar to the previous work of Genn and others, and thereby provides a credible foundation for comparative study.

Currie's study investigated the incidence of justiciable events among Canadians by conducting telephone interviews with 6665 people over the age of 18, distributed among the ten provinces. Currie developed a questionnaire which probed 80 specific types of problems. As with other unmet legal need studies, interview questions were tailored through pilot interviews to weed out trivial problems. The study also probed connections between problems, effects of the problems, socio-demographic information, and general attitudes toward society and the legal system.<sup>178</sup>

Other notable recent studies of unmet legal need in Canada have been narrower in geographic scope than Currie's study. In 2009, the Ontario Civil Legal Needs Project surveyed low- and middle-income Ontarians, publishing its findings in 2010. This project conducted a telephone interview with 2000 Ontarians with household incomes below \$75,000.<sup>179</sup> In British Columbia, the Legal Services Society (the "LSS") commissioned an online opinion poll of everyday legal

---

<sup>176</sup> M Agrast, J Botero & A Ponce, *WJP Rule of Law Index 2011* (Washington, D.C.: The World Justice Project, 2011) at 23 and 51.

<sup>177</sup> Currie, *supra* note 1.

<sup>178</sup> Currie, *supra* note 1 at 6.

<sup>179</sup> *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project* (Toronto: Ontario Civil Legal Needs Project Steering Committee, 2010) (Chair: R Roy McMurtry) at 64-65[OCLNP].

problems in 2008. This survey drew on responses from 1,189 respondents over the age of 18 and with household incomes below \$50,000 annually.<sup>180</sup>

Currie's study interviewed 1100 people in British Columbia, or 16.5% of the total sample. This was slightly higher than the proportion of the Canadian population living in British Columbia, which was 13% in the 2001 census. The survey sample was also designed to be representative of various community sizes.<sup>181</sup>

### **3.2.1 Problem Incidence Rates**

Currie's survey reported 8,873 justiciable events over the past three years, or approximately 1.3 justiciable problems per individual. Based on this rate, Currie estimates that "out of the 25.9 million Canadians aged 18 and older, about 11.6 million experienced at least one justiciable event or problem during the three-year reference period."<sup>182</sup>

Looking deeper into the rate of reported justiciable events, Currie notes that 44.6% of all respondents experienced more than one justiciable event, with those reporting justiciable events experiencing three events, on average. Interestingly, Currie found some incident variation by province, with Western provinces generally reporting a higher incidence rate than Eastern provinces. British Columbia reported the second highest incidence rate, with 52% of BC respondents reporting at least one justiciable event. Alberta reported an identical incidence rate; only Saskatchewan reported a higher rate of 61.2%.<sup>183</sup> The LSS study, by comparison, suggested

---

<sup>180</sup> "Legal Problems Faced in Everyday Lives of British Columbians", (2 December 2008), online: Legal Services Society < [http://www.lss.bc.ca/assets/aboutUs/reports/legalAid/IPSOS\\_Reid\\_Poll\\_Dec08.pdf](http://www.lss.bc.ca/assets/aboutUs/reports/legalAid/IPSOS_Reid_Poll_Dec08.pdf)>[LSS Survey].

<sup>181</sup> Currie, *supra* note 1 at 10.

<sup>182</sup> *Ibid* at 10–11.

<sup>183</sup> *Ibid* at 10, 16.

a much higher incidence rate of 83%.<sup>184</sup> It is unclear whether the LSS study limited questions about justiciable events to those experienced over the past three years, as Currie's study did. If the LSS study did not limit the scope of its enquiry, this might help explain the difference between the two studies.

By comparison, the Ontario Civil Legal Needs Project reported an incidence rate of 35% over a three year period.<sup>185</sup> Currie's study reported an incidence rate of 49.4%, also over a three year period.

These reported differences in incidence rates suggest that there is still uncertainty about the exact scope of unmet legal need in Canada. These differences may result from methodological differences between the studies, such as differences in interview methods, time periods, types of questions, or economic background of the sample populations.<sup>186</sup> The Ontario Civil Legal Needs Project, in particular, deviated from the methodology of the Paths to Justice research in several significant ways.<sup>187</sup> It appears safe to say, however, that incidence rates are significant, even if there is uncertainty about exactly what those rates are. This finding is consistent with comparisons between national surveys of unmet legal need.<sup>188</sup>

Currie also noted that some vulnerable groups, not surprisingly, appear to experience higher incidence rates of justiciable events than the population at large: Aboriginal people, foreign-born individuals, members of visible minorities, people with self-reported disabilities, and those

---

<sup>184</sup> LSS Survey, *supra* note 180.

<sup>185</sup> OCLNP, *supra* note 179 at 20.

<sup>186</sup> Pleasence & Balmer, *supra* note 154 at 32.

<sup>187</sup> Baxter, Trebilcock & Yoon, *supra* note 155 at 75-76.

<sup>188</sup> *Ibid* at 65.

receiving social assistance. A multivariate analysis indicated that “being disabled is a significant predictor of all 15 problem types.”<sup>189</sup>

In further analyzing the effect of justiciable problems on the lives of individuals, Currie’s study examined the monetary value associated with certain types of those problems, such as consumer problems and debt problems. For many of these problems, the amount of money involved was quite low: in the hundreds or low thousands of dollars. Currie notes that “[s]ensible ways of resolving problems involving these amounts of money would probably not include engaging private counsel at normal rates.” Yet at the same time, people indicated that they attached high importance to resolving these problems. While this importance appeared to be directly related to the amount of money involved, even problems which involved low amounts were rated as important to the people dealing with them. That is, debt collection monetary problems ranked in the lowest quartile of value were listed as “important to resolve” by 76.6% of respondents, compared with 88.8% of those for problems in the highest quartile of value.<sup>190</sup>

### **3.2.2 Responses to Justiciable Problems**

Turning to the question of how people responded to their problems, both the Currie and LSS studies found that most British Columbians dealt with their problems alone, without any form of assistance. Currie reported that 44% of respondents with a justiciable problem handled the problem on their own, while 22.1% of respondents dealt with the problem with non-legal assistance. 11.7% of respondents dealt with their problem with some legal assistance.<sup>191</sup> The

---

<sup>189</sup> Currie, *supra* note 1 at 23–26.

<sup>190</sup> *Ibid* at 38–40.

<sup>191</sup> *Ibid* at 56.

LSS study reported responses by problem type, and rates of self-action ranged from a low of 26% for discrimination problems, to a high of 67% for consumer problems.<sup>192</sup>

Currie noted that self-helpers were most frequent for debt problems (59.4%), consumer problems (58.7%), and problems related to social assistance (55.1%). Self-helper responses made up less than half of responses to all other problems, though it is interesting to note self-helpers made up 37.3% of responses to “threat of legal action”, 34.3% of those with immigration problems, 26.7% of responses citing personal injury problems, and 24.2% of those with wills and power of attorney problems. Currie speculates that the high rate of self-help in response to the threat of legal action may “reflect the anticipated high cost of retaining legal counsel.”<sup>193</sup>

Currie also noted that of those that took no action for a reason (16.5% of respondents), almost half (46.4%) cited informational deficits – thinking nothing could be done, being uncertain about one’s rights, or not knowing what to do – for not taking action.<sup>194</sup> In light of this, he suggests that “[m]ost of the responses suggest the potential value of initial legal information and advice to assist the person in understanding the nature of the problem and the courses of action that may be open.”<sup>195</sup>

Of the 9.2% of respondents to Currie’s study who sought legal assistance, 79.8% did so from a private lawyer, while 9.6% turned to legal aid. Legal assistance was used most frequently for family law matters, but was used infrequently for discrimination, consumer, employment, social assistance, and debt problems (less than 10% in each case). Legal assistance was sought

---

<sup>192</sup> LSS Survey, *supra* note 180.

<sup>193</sup> Currie, *supra* note 1 at 58, 64.

<sup>194</sup> *Ibid* at 56.

<sup>195</sup> *Ibid* at 57.

between 14 and 20% of cases for matters related to immigration, personal injury, disability benefits, housing, police action, and wills and power of attorney matters.<sup>196</sup>

Interestingly, Currie reported that “[i]n most cases where the problem did involve an appearance at a court or administrative tribunal, respondents were represented”, noting that respondents were represented in 72.5% of such cases. In 58.1% of these cases, the individual was represented by a lawyer.<sup>197</sup>

Currie noted that although many respondents were able to resolve problems on their own and get on with their lives, “[m]any of the self-helpers achieve outcomes that they consider to be unfair and, among those, some feel, in retrospect, that some help would have produced a better outcome. Many people who do not resolve their problems feel that the situation is becoming worse.”<sup>198</sup>

### **3.3 Role of Lawyer Cost in Responses to Justiciable Problems**

From much of the work done to date on unmet legal need – both work in Canada and other work around the world – it seems clear that individuals turn to lawyers in a minority of cases.<sup>199</sup> It remains unclear, however, how people choose strategies in response to justiciable events.

Understanding why people choose to respond to justiciable problems in one way or another is an area of active research.<sup>200</sup>

---

<sup>196</sup> *Ibid* at 60–61.

<sup>197</sup> *Ibid* at 66.

<sup>198</sup> *Ibid* at 88–89.

<sup>199</sup> Pleasence & Balmer, *supra* note 154 at 47-49.

<sup>200</sup> Sandefur, *supra* note 172 at 222.

To date, international studies have generally shown that rates of seeking advice (from all sectors, not only lawyers) generally rise with the severity of the problem.<sup>201</sup> Further, income level seems to have a small influence on whether people decide to use lawyers or not. Instead, the nature of the problem and a cost/benefit analysis of retaining a lawyer seem to drive many of these decisions.<sup>202</sup>

Currie's research does not suggest reasons why respondents chose to deal with matters on their own. In *Paths to Justice*, however, follow-up research suggested that perception of high costs for lawyers was a significant factor cited by respondents in avoiding the justice system in England and Wales.<sup>203</sup> That research found that those with moderate incomes – between £10,000 and £41,000 per year – were most likely to view lawyers as over-priced (as indicated by agreement or disagreement with the statement “Lawyers’ charges are reasonable for the work they do.”). The findings on this point did not vary much depending on the type of justiciable problem the respondent had experienced. Genn notes that perceptions of legal costs came both from personal experiences and from media reports.<sup>204</sup> For example, the following quotation was listed in the *Paths to Justice* study, discussing legal costs:

Sometimes they go to astronomical levels. You see all these things with solicitors and how much solicitors' bills are and you see this thing like with the two Princes. £400,000 for solicitors! And you think, ‘God how much would they charge me?’ But if you knew that you could go to a solicitor and all it would cost you for some decent advice was say £30 or something like that, or to a body of people who was set up. I mean I'd willingly pay for advice, but it's going through my mind all the

---

<sup>201</sup> Pleasence & Balmer, *supra* note 154 at 37.

<sup>202</sup> *Ibid* at 38, citing Herbert M. Kritzer, “To Lawyer or Not to Lawyer? Is That the Question?” (2008) 5 *Journal of Empirical Legal Studies* 875 at 875; Baxter, Trebilcock & Yoon, *supra* note 155 at 84.

<sup>203</sup> Genn, *supra* note 153 at 233–239.

<sup>204</sup> *Ibid* at 237-238.

time, ‘Oh what happens if it’s this amount of money’, and you think to yourself ‘Oh can I pay for it?’”<sup>205</sup>

Legal sociologist Rebecca Sandefur notes that “surveys of Americans who considered and decided not to use lawyers have found that this decision is motivated by cost in only a minority of instances.”<sup>206</sup> Sandefur suggests that two other factors – the social construction of legality and social searching – also play significant roles in an individual’s determination of whether to seek the services of a lawyer or not.<sup>207</sup> She suggests that “[i]f increasing middle income people’s use of lawyers’ services is a policy goal, the present analysis suggests that potential market innovations or public policies that focus solely on lowering prices or subsidizing purchase may not be as effective as desired.”<sup>208</sup> Sandefur also notes that there is very little research (or information) about what lawyers charge, on average.

Legal researchers Pascoe Pleasence and Nigel Balmer cite studies which demonstrate that lawyer use by the unemployed is predicated on the availability of legal aid for their justiciable problems.<sup>209</sup> Further, they note that many studies have drawn attention to the “U-shaped” distribution of lawyer use, suggesting that those without financial means (either from private wealth or from a targeted legal aid scheme) are less likely to turn to lawyers. Their work “indicate[s] clearly that as income increases, so too does the rate at which people act to resolve problems.”<sup>210</sup>

Recent research has also indicated that there is a discrepancy in response steps between high and low income individuals in Canada, with high income individuals much more likely to use formal

---

<sup>205</sup> *Ibid.*

<sup>206</sup> Sandefur, *supra* note 172 at 222.

<sup>207</sup> *Ibid.*

<sup>208</sup> *Ibid* at 244.

<sup>209</sup> Pleasence & Balmer, *supra* note 154 at 39.

<sup>210</sup> *Ibid* at 48.

dispute-resolution mechanisms than low income individuals, who often take no action in response to some civil disputes.<sup>211</sup> As stated by Pleasence and Balmer, “the varying use of lawyers by people on different incomes demonstrates the value of a broader advice sector that can provide low or no cost (legal) advice across a broad range of problem areas.”<sup>212</sup>

In summary, although it is unclear at this point why individuals choose to seek help or to deal with problems on their own, there is support for the idea that problem type and severity are significant factors in motivating individuals to seek legal assistance. Researchers have also suggested that middle-income individuals – those who do not qualify for legal aid, but who would struggle to afford a lawyer – may be less likely to turn to lawyers than others. While more research is needed to understand how individuals choose to deal with legal problems, one point is clear: justiciable events are pervasive throughout society.

---

<sup>211</sup> Agrast, Botero & Ponce, *supra* note 176 at 24.

<sup>212</sup> Pleasence & Balmer, *supra* note 154 at 54.

#### 4 PROBLEM TWO: LAWYER DISSATISFACTION

As noted in the introduction, unmet legal need is one of two problems that drive this thesis. Over the past several decades, a large number of reports have emerged which suggests pervasive malaise and disenchantment among practicing lawyers.<sup>213</sup> According to these reports, the legal profession itself is broken.

Indeed, lawyer dissatisfaction was a factor in the creation of Pivot Legal LLP. Several interview participants suggested that one of the goals of the firm was to completely re-work how legal services are delivered.<sup>214</sup> The partners wanted to create an alternative to the hierarchical, pyramidal structure of many law firms.<sup>215</sup> They also recognized that dominant models of providing legal services do not work for many lawyers, and saw an opportunity for reform. One partner described the LLP's vision of recruiting in the following way:

...looking at the number of women who don't carry on in the legal profession and so providing flexibility around hours of work, flexibility around mat leave and other concerns, so that we could tap into this huge pool of very educated and successful female lawyers who were being shut out of the traditional practice of law. So we saw opportunities there.<sup>216</sup>

As noted in Chapter 6, a common thread among many LLP recruits was that they were dissatisfied or unhappy with work at more conventional law firms.<sup>217</sup>

---

<sup>213</sup> See e.g. Susan Daicoff, *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (Washington, DC: American Psychological Association, 2004); Douglas Litowitz, *The Destruction of Young Lawyers: Beyond One L* (Akron, OH: University of Akron Press, 2006); Jean Stefancic & Richard Delgado, *How Lawyers Lose Their Way: A Profession Fails Its Creative Minds* (Durham, NC: Duke University Press, 2005).

<sup>214</sup> Interview of Partner 1 (May 16, 2012)[Partner 1]; Interview of Partner 2 (May 4, 2012) [Partner 2A]; Interview of Partner 3 (March 30, 2012) [Partner 3].

<sup>215</sup> Partner 1, *supra* note 214; Partner 2A, *supra* note 214.

<sup>216</sup> Partner 1, *supra* note 214.

<sup>217</sup> Interview of Partner 4 (June 5, 2012)[Partner 4]; Partner 3, *supra* note 214.

This leads to an interesting question: if unmet legal need constitutes a “pull” from outside the legal profession to change how legal services are delivered, does lawyer discontent constitute a “push” from within the profession to similarly drive change?

The idea that lawyers might drive change in the legal profession in response to dissatisfaction with dominant models of lawyers’ work has been mooted in the context of legal ethics and professional responsibility.<sup>218</sup> It has not, as far as I am aware, been explicitly applied to access to justice problems.

In this chapter, I will explore two aspects of lawyer discontent: career dissatisfaction and attrition. It is important to differentiate between these two since, while there is some evidence that career dissatisfaction plays a significant role in decisions to leave the profession, the two are not the same.<sup>219</sup> I will first explore lawyer career dissatisfaction before turning to lawyer attrition, in order to understand how both of these could shape legal service delivery.

#### **4.1 Understanding Career Dissatisfaction among Lawyers**

Despite the popular perception of the unhappy lawyer, there is academic debate about whether lawyers experience significantly more career dissatisfaction than others. Jean E. Wallace, a sociologist at the University of Calgary, has described two streams of literature regarding lawyer job satisfaction: one “journalistic” stream suggests that significant numbers of lawyers are dissatisfied and are leaving the profession, while another “more academic” stream suggests that most lawyers are generally satisfied with their careers. The first stream often consists of

---

<sup>218</sup> See e.g. Trevor C W Farrow, “Sustainable Professionalism” (2008) 46 Osgoode Hall LJ 51.

<sup>219</sup> Jean E Wallace, “Explaining Why Lawyers Want to Leave the Practice of Law” in Jerry Van Hoy, ed, *Legal Professions: Work, Structure and Organization* (np: JAI Press Inc., 2001) 117 at 118–119.

“journalistic reports and biographical accounts, . . . articles in lawyer trade publications” and studies that “typically rely on lawyers’ first-hand reports of their personal experiences practicing law or interviews with a small number of lawyers.” The second stream is usually characterized by “larger, representative samples and more structured data collection techniques”, sometimes including sophisticated statistical methods. While the first stream is valuable, as Wallace notes, for theory-building and identifying potential reasons for lawyer dissatisfaction, the second stream is valuable to understand how widespread career dissatisfaction is within the profession.<sup>220</sup>

Among the second stream research, there is broad consensus that lawyers are generally satisfied with their careers. A recent longitudinal study in the U.S. found typically high levels of work satisfaction among young lawyers, with three quarters of respondents indicating that they were moderately or extremely happy with their decision to become a lawyer.<sup>221</sup> This is in keeping with other studies, including those of Canadian lawyers, which report approximately 80% of lawyers surveyed being satisfied with their careers.<sup>222</sup>

There is, however, more to be said about how the story of career satisfaction plays out among sub-populations of lawyers, and in different circumstances. As sociology and legal scholars Ronit Dinovitzer and Bryant Garth have noted, commenting on the divergence between reports on lawyer career satisfaction in the popular press and in most academic work, “[s]orting out this

---

<sup>220</sup> *Ibid* at 118.

<sup>221</sup> Ronit Dinovitzer et al, *After the JD II: Second Results from a National Study of Legal Careers* (Chicago: NALP Foundation for Law Career Research and Education and the American Bar Foundation, 2009) at 46.

<sup>222</sup> Wallace, *supra* note 219 at 127–128; John P Heinz, Kathleen E Hull & Ava A Harter, “Lawyers and Their Discontents: Findings from a Survey of the Chicago Bar” (1999) 74 *Ind LJ* 735 at 736.

divergence – and in particular, determining *who* is satisfied and who is not – has become the key source of debate in this area.”<sup>223</sup>

Researchers have grappled with the relationship between numerous variables and lawyer career satisfaction. For the purposes of this thesis, I will highlight and briefly discuss the following nine, either because they have been well-studied, or because they appear to be emerging areas of research interest:

1. Gender;
2. Family status;
3. Work demands;
4. Extrinsic rewards;
5. Intrinsic rewards;
6. Ethnicity;
7. Personal characteristics and psychological make-up;
8. Organization type and size; and
9. Mentorship.

Importantly for the purposes of this thesis, a substantial amount of empirical work has been done on Canadian lawyers, principally those in Alberta and Ontario. The existence of this literature, which forms a significant part of the academic dialogue, provides some comfort that, to the

---

<sup>223</sup> Ronit Dinovitzer & Bryant G Garth, “Lawyer Satisfaction in the Process of Structuring Legal Careers” (2007) 41:1 Law & Society Review 1 at 6.

extent that there are differences between the experiences of American and Canadian lawyers, those differences will be drawn out and discussed.<sup>224</sup>

#### 4.1.1 Gender

The role of gender has been one of the most active areas of focus in lawyer career satisfaction research.

Interestingly, research in both Canada and the U.S. has consistently shown that women and men report similar levels of job satisfaction in law.<sup>225</sup> The apparent job satisfaction parity between men and women, despite demonstrable differences in levels of pay, levels of authority, and mobility prospects, has long puzzled researchers.<sup>226</sup> Recent research on this apparent paradox has suggested that there are pathways by which gender may be indirectly connected to career dissatisfaction.<sup>227</sup> This research suggests that female lawyers are significantly more likely than male lawyers to report feelings of depression or despondency, and more likely to internalize those feelings than to express them in career satisfaction surveys.<sup>228</sup> This suggests that studies of career satisfaction may be misleading unless they assess the possibility of depressed aspect on

---

<sup>224</sup> For an example of how research on Canadian lawyers has been incorporated into a major U.S. empirical study of the sociology of lawyers, see e.g. Kenneth G Dau-Schmidt et al, “Men and Women of the Bar: The Impact of Gender on Legal Careers” (2009) 16 Mich J Gender & L 49 at 67, 77, 87–88, 102, 109.

<sup>225</sup> Fiona Kay & Elizabeth Gorman, “Women in the Legal Profession” (2008) 4:1 Annual Review of Law and Social Science 299 at 316.

<sup>226</sup> Charles W Mueller & Jean E Wallace, “Justice and the Paradox of the Contented Female Worker” (1996) 59:4 Social Psychology Quarterly 338; Kathleen E Hull, “The Paradox of the Contented Female Lawyer” (1999) 33:3 Law & Society Review 687; John Hagan & Fiona Kay, “Even Lawyers Get the Blues: Gender, Depression, and Job Satisfaction in Legal Practice” (2007) 41:1 Law & Society Review 51.

<sup>227</sup> Hagan & Kay, *supra* note 226.

<sup>228</sup> *Ibid* at 68–69.

the part of the lawyers surveyed, a point I will return to below in the section on personal characteristics and psychological make-up.<sup>229</sup>

The question of gender and job satisfaction remains a topical one in British Columbia, as demonstrated by recent publications by the Law Society of British Columbia and prominent members of the bar which exhort law firms and lawyers to find ways to improve the career experiences of women in law.<sup>230</sup>

#### 4.1.2 Family Status

The effects of family and childcare activities on lawyer advancement and career satisfaction have often been considered in conjunction with questions about gender.<sup>231</sup> A number of these studies have emphasized the importance of flexible work schedule arrangements to enable lawyers to maintain both career commitments and family commitments.<sup>232</sup> Yet while work/nonwork conflict has been shown to contribute both to decreased career satisfaction and to a desire to leave the profession, autonomy – the degree to which lawyers make their own decisions about how they do their work – does not appear to contribute to career satisfaction or commitment.<sup>233</sup>

A recent study focussing on the transformation of the legal profession in the U.S. has suggested that lawyers make trade-offs between family/satisfaction and career/income. The study

---

<sup>229</sup> *Ibid* at 69.

<sup>230</sup> See e.g. Law Society of British Columbia, Retention of Women in Law Task Force. *The Business Case for Retaining and Advancing Women Lawyers in Private Practice* (Vancouver: The Law Society of British Columbia, 2009) (Chair: Kathryn Berge), online: <<http://www.lawsociety.bc.ca/publications-forms/report-committees/docs/Retaining-women-business-case.pdf>>; Lisa Vogt, “Gender Diversity: Preparing for the New Legal Environment” (2011) 44 UBC L Rev 55.

<sup>231</sup> Kay & Gorman, *supra* note 225 at 317; Fiona M Kay, “Flight from Law: A Competing Risks Model of Departures from Law Firms” (1997) 31:2 Law & Society Review 301 at 312.

<sup>232</sup> Kay & Gorman, *supra* note 225 at 307; Vogt, *supra* note 230 at 65.

<sup>233</sup> Wallace, *supra* note 219 at 134-135.

conceptualized lawyers on a “family/work continuum”, with those who make life choices consistent with greater family commitment on one end of the spectrum, and those who make choices consistent with greater work commitment on the other.<sup>234</sup> While noting that such choices are influenced and constrained by personal traits, social norms, and mate expectations, the authors found a positive correlation between work commitment and income, but also a negative correlation between work commitment and career satisfaction.<sup>235</sup> That is, those on the “family” end of the spectrum appear to enjoy greater career satisfaction, while those on the work end enjoy greater income.<sup>236</sup>

#### **4.1.3 Work Demands**

Despite this apparent inverse relationship between work commitment and career satisfaction, other studies have found that the number of hours worked per week has no effect on job satisfaction, but a positive effect on career commitment.<sup>237</sup> That is, more hours worked does not lead to greater dissatisfaction, but may actually lead to a reduced desire to leave the practice of law.

An emphasis on securing law firm profits has been shown to increase job dissatisfaction among lawyers.<sup>238</sup> Wallace has noted that:

...the most unexpected aspect of practicing law is the disappointment resulting from its business-oriented or “bottom-line” pressures. Lawyers are generally surprised by the underlying driving force for profit in the profession, which is

---

<sup>234</sup> Dau-Schmidt et al, *supra* note 224 at 129.

<sup>235</sup> *Ibid* at 129–130.

<sup>236</sup> *Ibid*.

<sup>237</sup> Wallace, *supra* note 219 at 135–136; Jean E Wallace, “Work commitment in the legal profession: a study of Baby Boomers and Generation Xers” (2006) 13:2 *International Journal of the Legal Profession* 137 at 147.

<sup>238</sup> *Ibid*.

typically associated with extreme time commitment and an emphasis on generating profit.<sup>239</sup>

This surprise was mentioned by one of the Pivot Legal LLP lawyers, as recounted in section 6.1.2 below.

#### **4.1.4 Extrinsic Rewards**

Extrinsic rewards such as pay, benefits, and promotional opportunities do not appear to play a significant role in career satisfaction.<sup>240</sup> Despite theories that extrinsic rewards play a gender-specific role in career satisfaction, in which men value extrinsic rewards more than women, studies have generally refuted this suggestion.<sup>241</sup> These findings are not, however, universal.<sup>242</sup> These inconclusive results provoke interesting questions about how lawyers structure their life choices. Would lawyers – of both genders – be willing to accept lower levels of extrinsic reward in exchange for higher levels of other rewards that contribute to career satisfaction? This appears to have been one of the trade-offs consciously offered by Pivot Legal LLP.<sup>243</sup>

Other research has demonstrated that the importance of extrinsic rewards varies with age: Baby Boomers (those born between 1946 and 1964) appear to value pay more than Generation X lawyers (those born between 1965 and 1980).<sup>244</sup>

---

<sup>239</sup> *Ibid* at 133.

<sup>240</sup> *Ibid* at 137.

<sup>241</sup> Kay & Gorman, *supra* note 225 at 317–318; Hull, *supra* note 226; Mueller & Wallace, *supra* note 226.

<sup>242</sup> Dau-Schmidt et al, *supra* note 224 at 54, 127.

<sup>243</sup> Partner 1, *supra* note 214.

<sup>244</sup> Wallace, *supra* note 237 at 147.

#### 4.1.5 Intrinsic Rewards

A similar but inverse age relationship holds for intrinsic rewards: socially significant work and positive co-worker relations are more important for Generation X lawyers than for Baby Boomers.<sup>245</sup> Studies point in both directions over the question of whether intrinsic rewards vary by gender.<sup>246</sup>

Intrinsic rewards such as social significance, collegiality, and variety have been shown to play a significant role in increasing job satisfaction.<sup>247</sup> These factors were cited by Pivot Legal LLP lawyers as important in their sense of job satisfaction, as noted in section 7.1 below.<sup>248</sup>

#### 4.1.6 Ethnicity

While there is a dearth of methodologically robust research on career satisfaction levels among minority lawyers, recent U.S. results suggest generally high levels of career satisfaction among minority lawyers in that country.<sup>249</sup> This stands in contrast to attrition rates among minority lawyers, discussed below in section 4.2. This appears to be an area of growing research interest.<sup>250</sup>

---

<sup>245</sup> *Ibid.*

<sup>246</sup> See Dau-Schmidt et al, *supra* note 224 at 127; but see Hull, *supra* note 226; and Mueller & Wallace, *supra* note 226.

<sup>247</sup> Wallace, *supra* note 219 at 133–135.

<sup>248</sup> Interview of Associate 2 (May 25, 2012) [Associate 2]; Interview of Associate 3 (May 29, 2012) [Associate 3]; Interview of Staff 1 (May 26, 2012) [Staff 1]; Partner 2A, *supra* note 214.

<sup>249</sup> Dinovitzer et al, *supra* note 221 at 76–77.

<sup>250</sup> See e.g. Elizabeth H Gorman & Fiona M Kay, “Racial and ethnic minority representation in large U.S. law firms” (2010) 52 *Studies in Law, Politics, and Society* 211.

#### 4.1.7 Personal Characteristics and Psychological Make-up

As noted above in the discussion of gender, psychological composition has been mentioned as a possible explanation for similar levels of career satisfaction among male and female lawyers, despite documented disparities between the genders in terms of pay, authority, and mobility. Psychologists have taken some interest in the question of lawyer satisfaction, though there is relatively little empirical work to integrate psychology into studies of lawyer career satisfaction.<sup>251</sup>

Martin E.P. Seligman, a former President of the American Psychological Association, and co-authors Paul R. Verkuil and Terry H. Kang, explored the connection between lawyer satisfaction and psychology in a 2001 article.<sup>252</sup> They suggested that lawyer unhappiness may result both from pre-existing personality traits and from environmental factors specific to the practice of law. They noted that lawyers are selected for their pessimism – where “pessimism” refers to the psychological explanatory style of interpreting causes of negative events in stable, global, and internal ways.<sup>253</sup> Also, they noted that young lawyers are likely to experience jobs with high pressure and low decision latitude, a combination which has been demonstrated to lead to increased rates of depression.<sup>254</sup> Decision latitude is defined as “the number of choices one has or, as it turns out, one believes one has.”<sup>255</sup> Noting that junior lawyers “often have little voice or control over their work, only limited contact with their superiors, and virtually no client contact”, they point out that these conditions create high pressure, low decision latitude situations, and that this may explain why many lawyers who leave law firms “choose alternative legal careers, such

---

<sup>251</sup> See e.g. Daicoff, *supra* note 213; Martin EP Seligman, Paul R Verkuil & Terry H Kang, “Why Lawyers Are Unhappy” (2001) 23 Cardozo L Rev 33.

<sup>252</sup> Seligman, Verkuil & Kang, *supra* note 251.

<sup>253</sup> *Ibid* at 50.

<sup>254</sup> *Ibid* at 56–57.

<sup>255</sup> *Ibid* at 56.

as legal aid or assistant district attorney, where the pay is considerably lower but the decision latitude is considerably greater.”<sup>256</sup>

Other personal characteristics, such as the degree to which individuals hold realistic expectations about the day-to-day reality of the practice of law, also appear to play a significant role in career satisfaction.<sup>257</sup> Dinovitzer and Garth suggest that job satisfaction reflects and re-inscribes social origins, and that low career expectations that are a product of modest social origins may explain some career satisfaction reports in law.<sup>258</sup> Their work is based on the results of a longitudinal study of young U.S. lawyers in which lawyers from non-elite law schools report higher levels of career success than elite law school graduates.<sup>259</sup>

These studies suggest that the multivariate nature of career satisfaction must be considered in light of personal characteristics. Recent studies have begun doing so.<sup>260</sup>

#### **4.1.8 Organization Type and Size**

Recently, sociologists Jean Wallace and Fiona Kay have investigated, using Canadian data samples, how organization type and size may affect lawyer satisfaction. In one study, they found that sole practitioners experience more autonomy and a greater sense of public service than

---

<sup>256</sup> *Ibid* at 57.

<sup>257</sup> Wallace, *supra* note 219 at 131.

<sup>258</sup> Dinovitzer & Garth, *supra* note 223 at 3.

<sup>259</sup> *Ibid* at 13.

<sup>260</sup> See e.g. Dau-Schmidt et al, *supra* note 224.

lawyers in law firms.<sup>261</sup> As noted above, a sense of public service – though not increased autonomy – has been correlated with increased career satisfaction.<sup>262</sup>

In another study, Wallace and Kay demonstrated that large law firms offer more extrinsic rewards – such as wages, benefits, and opportunities for promotion – compared to small firms, but that small firms offer more autonomy than large firms.<sup>263</sup> They conclude that, after accounting for other employee characteristics, large firms generally offer better extrinsic rewards but, with the exception of autonomy, do not differ from small firms in terms of intrinsic rewards.<sup>264</sup> Based on this, they suggest that big firms offer a better mix of extrinsic and intrinsic rewards than small firms.<sup>265</sup> Accordingly, one might expect career satisfaction to be generally higher at large firms than at small firms.

In contrast, Dinovitzer and Garth report that for lawyers working in private practice, “the larger the firm, the lower the expressions of career satisfaction, with satisfaction decreasing as firm size increases”.<sup>266</sup> This correlation was echoed by one of the Pivot Legal LLP partners, based on personal experience.<sup>267</sup> The apparently contradictory results of the studies are difficult to reconcile, and suggest that the relationship between organization size and career satisfaction requires further research. This research should be supplemented by further research on the roles that autonomy and public service play in career satisfaction: while some studies, such as

---

<sup>261</sup> Jean E Wallace & Fiona M Kay, “The Professionalism of Practising Law: A Comparison Across Work Contexts” (2008) 29:8 Journal of Organizational Behavior 1021 at 1039.

<sup>262</sup> Wallace, *supra* note 219 at 133–135. Social significance is discussed above in section 4.1.5, while autonomy is discussed in section 4.1.2.

<sup>263</sup> Jean E Wallace & Fiona M Kay, “Are Small Firms More Beautiful or is Bigger Better? A Study of Compensating Differentials and Law Firm Internal Labor Markets” (2009) 50:3 Sociological Quarterly 474 at 487.

<sup>264</sup> *Ibid.*

<sup>265</sup> *Ibid* at 488–489.

<sup>266</sup> Dinovitzer & Garth, *supra* note 223 at 22.

<sup>267</sup> Interview of Partner 2 (May 17, 2012) [Partner 2B].

Wallace's work on lawyers, suggest that autonomy itself does not play a role in career satisfaction, other studies have come to opposing conclusions.<sup>268</sup>

There is surprisingly little research on career satisfaction variation by practice area – most existing research goes only as far as to separate “private practice” from government work or in-house counsel work.<sup>269</sup>

#### **4.1.9 Mentorship**

Finally, there has been increased research interest in recent years on the role of mentorship in career development and career satisfaction. While the relationship between different types of mentorship and career satisfaction is still being elaborated, mentorship appears to be “central in the careers of new lawyers.”<sup>270</sup> Recent research suggests that lawyers who establish positive relationships with informal mentors experience increased job satisfaction.<sup>271</sup>

#### **4.1.10 Conclusions on Career Satisfaction**

Research on lawyer career satisfaction reveals a very complex picture. Reconciling the various factors which play into career satisfaction is beyond the scope of this thesis, and may be impossible at this point given gaps in the research and the extensive variation in research questions and methodologies among studies. Nevertheless, there are some findings which appear to hold up through multiple studies of different populations.

---

<sup>268</sup> See e.g. Wallace, *supra* note 219 at 133–135; but see Daniel Pink, *Drive: The Surprising Truth About What Motivates Us* (New York, Edinburgh; Riverhead Books, Cannongate, 2009, 2011) at chapter 4. See also the discussion of lawyer motivation below in section 7.1.

<sup>269</sup> See e.g. Dau-Schmidt et al, *supra* note 224 at 124–126.

<sup>270</sup> Ronit Dinovitzer et al, *After the JD: First Results of a National Study of Legal Careers* (Chicago: NALP Foundation for Law Career Research and Education and the American Bar Foundation, 2004) at 80.

<sup>271</sup> Fiona M Kay, John Hagan & Patricia Parker, “Principals in Practice: The Importance of Mentorship in the Early Stages of Career Development” (2009) 31:1 Law & Policy 69 at 90.

First, although most lawyers are broadly satisfied with their careers, there remains a significant population of lawyers – many studies suggest approximately 20% - who are not. In British Columbia, based on the total number of lawyers practicing in 2010, this could constitute almost 2000 dissatisfied lawyers.<sup>272</sup>

Second, gender does not appear to play a significant role in career satisfaction. Factors that are important for career satisfaction include having realistic expectations about the daily experience of practicing law. Control over work time and flexibility also appear to be important. Other factors, such as meaningful mentorship relationships, may also increase career satisfaction, though more research is needed to confirm this.

Third, there is research which suggests that pay is not a significant factor in career satisfaction for many lawyers. Other factors, such as intrinsic rewards like social usefulness and workplace collegiality, appear to contribute significantly to career satisfaction. This appears to be particularly true for young lawyers.

Finally, research on the effects of factors such as ethnicity, firm size, and practice area is inconclusive at this point, though there appears to be research interest in each of these areas.

Accordingly, while research on career satisfaction contradicts the crisis of unhappy lawyers often described in media reports, there are compelling reasons to believe that there is room for innovative approaches to legal services, particularly if those approaches focus on improving career satisfaction.

---

<sup>272</sup> Finch, *supra* note 141.

## 4.2 Lawyer Attrition

Does lawyer attrition constitute a problem for the legal profession?

The rate at which lawyers leave the profession is important for several reasons. First, loss of lawyers from the profession may represent a loss of invested time and money, both for the lawyers themselves and for their employers. A recent study has suggested that the loss of an associate lawyer from a large Canadian firm translates to a \$315,000 loss for the firm – approximately twice the average associate salary at such a firm.<sup>273</sup> Second, if this attrition rate is not uniform across demographics and practice areas, this has significant implications for attempts to increase diversity in the profession. Former Federal Minister of Justice Anne McLellan has suggested that women leaving the legal profession in significant numbers poses a threat to public confidence in the legal system.<sup>274</sup>

Interestingly, although women appear to be as satisfied with their legal careers as men, they leave the profession at a greater rate than men.<sup>275</sup> In British Columbia, approximately one-third of women who were called to the bar in 2003 had left practice within five years, compared to only 17% of male lawyers.<sup>276</sup> This skewed attrition rate has been frequently noted.<sup>277</sup> In a study of Ontario lawyers, for example, sociologist Fiona Kay found that women leave private practice

---

<sup>273</sup> *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (New York: Catalyst, 2005) at 13, online: <[http://www.catalyst.org/file/17/canadalaw3\\_14\\_05\\_final.pdf](http://www.catalyst.org/file/17/canadalaw3_14_05_final.pdf)>.

<sup>274</sup> A Anne McLellan, “Where Have All the Women Gone” (2007) 45 *Alta L Rev* 259 at 261.

<sup>275</sup> Wallace, *supra* note 219 at 140.

<sup>276</sup> Ellen V Schlesinger, *Non-Practicing Female Lawyers: Why Did They Leave and Where Are They Now?* (MA Thesis, The Adler School of Professional Psychology, 2012) at 1 [unpublished].

<sup>277</sup> Hagan & Kay, *supra* note 226 at 52; Joan Brockman, “Leaving the Practice of Law: The Wherefores and the Whys” (1994) 32 *Alta L Rev* 116 at 120, 123; Kay, *supra* note 231 at 302; Joan Brockman, “Resistance by the Club to the Feminization of the Legal Profession” (1992) 7 *Can JL & Soc* 47 at 58.

60% faster than men, and that small law firms (fewer than 10 lawyers) were least successful in retaining women.<sup>278</sup>

Kay and collaborator Elizabeth Gorman have noted that while there is “an extensive research literature” on representation of women in law firms, only “a handful” of theoretical or empirical studies on representation of racial or ethnic minorities in the legal profession exist.<sup>279</sup> Noting the underrepresentation of minority lawyers in law firms, they suggest that attrition is a leading cause of this reality:

...it is likely that minority underrepresentation in law firms is largely shaped by their disproportionately elevated rates of attrition, which have been described as “devastatingly high” and a mass “exodus”, rather than by low rates of entry. Associates are more likely to exit when they perceive their future prospects in a firm as unattractive. In the case of minorities, such perceptions are often realistic.<sup>280</sup>

Kay has noted that “[m]inority lawyers are more likely to leave private practice, while white Anglo-Saxon Protestants move out of law firms to nonprivate practice 27% more slowly”.<sup>281</sup>

Wallace has attempted to link attrition rates to levels of career dissatisfaction.<sup>282</sup> She found that dissatisfaction itself is a major factor in deciding to leave the profession.<sup>283</sup> In addition, the extent to which a person’s expectations of the profession are met (or not) is the major factor affecting individuals’ level of job satisfaction, and a major factor affecting individuals’ decisions to leave law.<sup>284</sup> Wallace noted that “if lawyers feel they are making a difference in people’s lives

---

<sup>278</sup> Kay, *supra* note 231 at 318.

<sup>279</sup> Gorman & Kay, *supra* note 250 at 212.

<sup>280</sup> *Ibid* at 213 [citations omitted].

<sup>281</sup> Kay, *supra* note 231 at 325.

<sup>282</sup> Wallace, *supra* note 219.

<sup>283</sup> *Ibid* at 134.

<sup>284</sup> *Ibid* at 131.

and that their work is important to society, (i.e. that their work is service oriented), they are less dissatisfied with, and less likely to want to leave, the practice of law.”<sup>285</sup> Investigating work demands, Wallace found that work-nonwork conflict contributed to both job dissatisfaction and desire to leave law. She also found that a feeling of being overwhelmed by deadlines and work demands contributed to an increased desire to leave law, but not to dissatisfaction.<sup>286</sup>

One of the former Pivot Legal LLP lawyers interviewed for this thesis, a woman of less than ten years’ call, described her reasons for wanting to leave practice at a large (i.e. >30 lawyers) firm to work at Pivot Legal LLP in terms which appear to reflect some of Wallace’s findings:

The work/life was okay. I didn't mind the billable hours. I wasn't doing anything else with my time, other than working and living my life. But just that pressure to have to be there... If you don't have work... That was a big problem generally at the time. A lot of associates didn't have a lot of work. My thought was “go home!” If you don't have work, let's all be adults about it. And I really didn't get that impression. And then the work in and of itself was really dry and dull. I didn't feel like I was a part of anything. That I was just another person working at a big law firm. That if I left, or didn't leave, no one would really care.<sup>287</sup>

Accordingly, there is evidence to show that lawyer attrition patterns pose a problem for the legal profession. Research suggests that increasing control over work commitments and providing more socially relevant work may help reduce factors that contribute to decisions to leave law.

### **4.3 Conclusions on Lawyer Discontent**

This brief review of research on lawyer career satisfaction and attrition has indicated that although lawyers do not appear to be as unhappy as they are often depicted in media reports, there are reasons to believe that conditions within the legal profession may constitute a “push” to

---

<sup>285</sup> *Ibid* at 133.

<sup>286</sup> *Ibid* at 135.

<sup>287</sup> Associate 3, *supra* note 248.

improve how legal services are delivered. These reasons are rooted both in career satisfaction factors and in the uneven rate of attrition within the profession that sees women and minorities leaving at elevated rates. These factors and the previous discussion of unmet legal need set the stage for new approaches to the practice of law. The following chapter examines one such approach, that of Pivot Legal LLP.

## 5 HOW PIVOT LEGAL LLP WORKED

The idea for Pivot Legal LLP (the “LLP”) emerged in 2004.<sup>288</sup> Originally, the law firm was intended to act as a fundraising tool for Pivot Legal Society.<sup>289</sup> By selling a broad range of legal services, the LLP would provide a steady source of funding for Pivot Legal Society that was independent of government and also independent of other funding bodies.

As discussed in Chapter 1, Pivot Legal Society (“PLS”) was, and is, a non-profit legal advocacy organization located in Vancouver’s Downtown Eastside. Founded in 2000, PLS’s stated mandate is “to use the law to address the root causes of poverty and social exclusion.”<sup>290</sup> PLS has been funded from public donations, government grants, private fundraising, and also through affiliated fundraising operations.<sup>291</sup> In some ways, PLS echoes the goals of the “neighbourhood law offices” which developed in the U.S. after the mid-1960s and were characterized by “(1) activist, social-reform-oriented lawyers for the poor, (2) location in lower-class neighbourhoods, and (3) salaries generally paid by a government (or, in a few cases, a charitable organization)”.<sup>292</sup> The LLP was designed to supplement PLS’s income stream, as discussed below in section 5.1.<sup>293</sup>

PLS is, first and foremost, a legal advocacy society devoted to promoting social justice through legal change. By 2006, PLS was generally well-known and well-regarded within the legal community in the Vancouver area. As one advisor noted: “they caught the attention of the legal community. People knew who Pivot was, and had respect for Pivot”.<sup>294</sup> One of the LLP partners

---

<sup>288</sup> Partner 4, *supra* note 217; Partner 3, *supra* note 214.

<sup>289</sup> Partner 4, *supra* note 217.

<sup>290</sup> “About Pivot Legal Society”, online: Pivot Legal Society < <http://www.pivotlegal.org/about> >.

<sup>291</sup> Milton Kiang, “‘Unique model’ for public service work”, *The Lawyers Weekly* (22 May 2009), online: The Lawyers Weekly <<http://www.lawyersweekly.ca/index.php?section=article&articleid=925>>.

<sup>292</sup> Garth, *supra* note 62 at xvii.

<sup>293</sup> Partner 4, *supra* note 217.

<sup>294</sup> Interview of Advisor 1 (May 24, 2012) [Advisor 1].

noted that many lawyers donated to PLS, and many lawyers were willing to take on pro bono litigation for PLS.<sup>295</sup>

Many lawyers also appear to have been attracted to the LLP because of its ties to PLS and the work done by PLS. As one partner described it,

...we had lawyers who came to work for the LLP... because they wanted to represent individuals who needed help and... part of their social change work was representing refugees, representing low income people in civil suits against police. They were very committed to that... and so they were saying ‘no I’m not going to turn away clients and files that don’t pay well, because that’s why I’m here.’<sup>296</sup>

Having established the basic relationship between PLS and the LLP, the following sections examine four distinct aspects of the LLP: its goals, its revenue structure, how it was staffed, and its overhead costs. While some of these features - such as its goals of reforming how law firms run – attest to the innovative energy of the LLP’s founders, others – such as its shaky revenue stream and high initial overhead costs – foreshadow some of the problems that ultimately contributed to the demise of the LLP.

## 5.1 Goals

The LLP started with three lawyers as partners.<sup>297</sup> A fourth partner joined the LLP approximately one year after its doors opened.<sup>298</sup>

While the initial goal of the LLP was to fund PLS, the actual goals of the LLP appear to have been several, and to have changed slightly over time.<sup>299</sup> Each of the four partners identified the

---

<sup>295</sup> Partner 2A, *supra* note 214.

<sup>296</sup> Partner 3, *supra* note 214.

<sup>297</sup> Partner 3, *supra* note 214; Partner 1, *supra* note 214.

<sup>298</sup> Partner 2A, *supra* note 214; Partner 3, *supra* note 214.

original goal of the LLP as providing a source of funding for PLS.<sup>300</sup> One of the partners described the origin of the LLP as follows:

[Two of the partners] had had a conversation about stable funding that was separate from granting agencies who had onerous reporting requirements, and separate from government so that the organization could maintain independence, and wasn't so reliant on the sympathies of rich people, and basically to try to avoid all the pitfalls of traditional fundraising. So they were looking at social enterprise models and were like we could do bake sales or a carwash and joking around, but then it sort of hit them, we're lawyers. We could sell legal services for money and it's a huge market and there are significant markups and you can make a fair amount of dough doing it. So we could stream income from the law firm to the non-profit and support that work. And not only that, it would give us a whole bunch of lawyers working for the organization indirectly who could also bring their expertise to bear on pro bono cases and whatever else. So that's where it came from.<sup>301</sup>

As the LLP grew, its goals also seemed to shift slightly; as one partner described it, the LLP “accumulated associated goals”.<sup>302</sup> Other goals identified by the partners included:

1. developing legal expertise among lawyers who could provide that expertise to PLS;<sup>303</sup>
2. providing a supportive workplace for employees, including adopting a flattened and consultative decision-making model;<sup>304</sup>
3. completely re-working how legal services are delivered;<sup>305</sup> and
4. providing affordable legal services.<sup>306</sup>

---

<sup>299</sup> Kiang, *supra* note 291.

<sup>300</sup> Partner 4, *supra* note 217; Partner 3, *supra* note 214; Partner 1, *supra* note 214; Partner 2A, *supra* note 214.

<sup>301</sup> Partner 1, *supra* note 214.

<sup>302</sup> Partner 4, *supra* note 217.

<sup>303</sup> Partner 4, *supra* note 217; Partner 3, *supra* note 214.

<sup>304</sup> Partner 1, *supra* note 214; Partner 3, *supra* note 214; Partner 2A, *supra* note 214.

<sup>305</sup> Partner 1, *supra* note 214; Partner 3, *supra* note 214.

<sup>306</sup> Partner 3, *supra* note 214.

The last of these, providing affordable legal services, was cited by virtually all interview participants.<sup>307</sup> The development of this “associated goal” was described as follows by one of the lawyers:

[Funding PLS was] the very initial goal. But then I personally, and I think others also, took it as the work that we're doing in the law firm isn't just about providing money for funding [PLS], but we're also serving particular communities that, at least in my case, I felt like I was serving particular communities that were not well represented, and that if some of the profit from that could go back into the work that the Society was doing then great, but also it in and of itself was important work to do.<sup>308</sup>

In 2010, in an application for funds after winning a competition for social entrepreneurship in Vancouver, the LLP defined itself as follows:

The LLP stands apart from other law firms in three significant ways:

1. The LLP is the first social enterprise law firm of its kind, dedicating its human resources and profits to support the legal campaigns of Pivot Legal Society;
2. The LLP provides financially accessible legal services, focusing on lower and middle-income earners; and
3. The LLP provides a collaborative and meaningful work environment, offering lawyers a new way to approach the practice of law.<sup>309</sup>

Although these goals may seem compatible, they are not. As would later become clear, the first and second of these goals lead to two distinct business models, and each of these undermines the other. I will return to this point in section 6.1.3.

## 5.2 Revenue

At the outset, the LLP conducted a survey of the legal marketplace in Vancouver, and worked with several business, accounting, and marketing experts before it opened its doors in the Fall of

---

<sup>307</sup> Advisor 1, *supra* note 294; Partner 1, *supra* note 214; Partner 4, *supra* note 217; Partner 3, *supra* note 214; Associate 2, *supra* note 248; Partner 2A, *supra* note 214; Associate 3, *supra* note 248.

<sup>308</sup> Associate 2, *supra* note 248.

<sup>309</sup> “Pivot Legal LLP Grant Application” (2010) [unpublished] [Grant Application].

2006.<sup>310</sup> Based on the market survey, which indicated an average price for civil legal services of approximately \$300 per hour, the LLP hoped to situate itself below the market average by charging \$100 to \$200 per hour for legal services.<sup>311</sup>

The LLP started doing work in criminal law, immigration and refugee matters, human rights work, and some additional civil litigation.<sup>312</sup> After approximately one year, it added its fourth partner, who commenced a solicitor's practice, focussing on business matters (i.e. incorporations, preparing shareholders agreements, etc.).

A number of partners commented that despite the LLP's wide breadth of practice, some expected clients did not materialize. This will be discussed in more detail in section 6.1.3, but briefly, the LLP's business was a greater proportion of community members seeking personal legal services – who often could not afford to pay much or anything – than expected, and a lower proportion of paying businesses or not-for-profits. One lawyer described having a practice in which “80 to 90% were low income or Downtown Eastside residents.”<sup>313</sup> The LLP also did contract work for other lawyers – generally acting as juniors in cases or commissions of inquiry – and grew to work in areas including conveyancing work and work on aboriginal residential school compensation claims, among others.<sup>314</sup>

Another revenue source for the LLP was contract work with PLS. PLS engaged the LLP as a sub-contractor to provide services for contracts PLS had been awarded by third-party funders.

For example, if PLS obtained funding to run a community legal clinic, it contracted the LLP to

---

<sup>310</sup> Partner 3, *supra* note 214; Partner 4, *supra* note 217; Partner 1, *supra* note 214; Gerry Bellett, “Pivot founded to give leverage to the city's disadvantaged”, *Vancouver Sun* (15 June 2007) A11.

<sup>311</sup> Partner 1, *supra* note 214; Partner 3, *supra* note 214.

<sup>312</sup> Partner 4, *supra* note 217; Partner 3, *supra* note 214; Partner 1, *supra* note 214; Associate 2, *supra* note 248.

<sup>313</sup> Associate 3, *supra* note 248.

<sup>314</sup> Partner 1, *supra* note 214; Associate 3, *supra* note 248.

actually provide those services. While this provided a necessary revenue stream for the LLP, it soon ran into opposition from other lawyers, who objected to the LLP benefiting from funding awarded to PLS.<sup>315</sup>

Before the LLP ceased operations in 2010, it won \$15,000 in funding support from Vancity Community Foundation, a community funding organization organized by the largest credit union in Vancouver, as the winner of the 2010 “Social Enterprise Dragons” contest held in April 2010 – an annual competition held to highlight promising social enterprises in the Vancouver area.<sup>316</sup>

By its fourth year of operations, the LLP had annual revenue of approximately \$350,000 and 11 lawyers.<sup>317</sup>

To understand the LLP’s revenue sources, it is essential to understand the structure of the LLP’s relationship with its lawyers, which is the subject of the next section.

### **5.3 Staffing**

Initially, the LLP started with three partners, two additional lawyers under salary, and one support staff.<sup>318</sup> It shared its physical space with PLS, and arranged to pay rent to PLS.<sup>319</sup>

Funding for the LLP was initially provided in the form of low-interest loans, which were jointly held by the partners and guaranteed by PLS.<sup>320</sup>

---

<sup>315</sup> Partner 1, *supra* note 214.

<sup>316</sup> Social Enterprise Dragons, *supra* note 9.

<sup>317</sup> Grant Application, *supra* note 309.

<sup>318</sup> Partner 3, *supra* note 214.

<sup>319</sup> *Ibid.*

<sup>320</sup> *Ibid.*; Partner 1, *supra* note 214.

The LLP grew quickly by adding lawyers. The LLP typically attracted lawyers in the one to five year call range.<sup>321</sup> However, the LLP did not add lawyers as typical employees. These lawyers entered an “associates’ agreement” with the LLP, whereby they were granted space in the LLP’s office in exchange for a portion of their billings.<sup>322</sup> The associates were permitted to set their own rates.<sup>323</sup> The associates’ agreement changed a number of times over the life of the LLP.<sup>324</sup> As discussed below, this staffing arrangement and the rate of the LLP’s growth appear to have been significant factors in the LLP’s ultimate demise.

At its largest, the LLP consisted of at least a dozen lawyers, with two support staff.<sup>325</sup> Part of the reason for the LLP’s growth was to ensure that it provided a sufficiently broad range of legal services to capitalize on available opportunities.<sup>326</sup> Accordingly, the LLP grew to include criminal defence, family law, personal injury and civil litigation, business law, non-profit law, foundations and charity law, immigration and refugee law, administrative law, wills and estates law, labour law, employment and workers compensation claims, human rights complaints, real estate law, and aboriginal residential school survivor claims.<sup>327</sup>

Another important aspect of the LLP was the partners’ ambition to create a “flat” organizational structure, so that decision-making authority would be shared among all staff, and the most senior lawyer would not make significantly more than the most junior staff.<sup>328</sup> Originally, the partners hoped to structure the LLP as a co-operative, whereby lawyers and staff would share decision-

---

<sup>321</sup> Partner 3, *supra* note 214.

<sup>322</sup> *Ibid*; Associate 2, *supra* note 248; Associate 3, *supra* note 248.

<sup>323</sup> Partner 2A, *supra* note 214.

<sup>324</sup> *Ibid*; Associate 3, *supra* note 248; Associate 2, *supra* note 248; Partner 1, *supra* note 214.

<sup>325</sup> Staff 1, *supra* note 248.

<sup>326</sup> Partner 4, *supra* note 217; Partner 2A, *supra* note 214.

<sup>327</sup> Partner 3, *supra* note 214; Partner 2A, *supra* note 214; Associate 2, *supra* note 248; Associate 3, *supra* note 248; Grant Application, *supra* note 309.

<sup>328</sup> Partner 4, *supra* note 217; Partner 3, *supra* note 214.

making power, and each would have a similar ownership interest in the organization.<sup>329</sup> The idea of a co-operative, however, was ultimately foiled by Law Society of British Columbia regulations prohibiting ownership of a law firm by non-lawyers.<sup>330</sup> Ultimately, the LLP started as a limited liability partnership, with a legal management corporation commenced simultaneously to handle the administrative needs of the law firm as it grew. The legal management corporation was never very active because the LLP did not grow large enough or last long enough to use this separate management structure.<sup>331</sup>

#### 5.4 Overhead

A second reason for the LLP's growth was to both utilize and pay for the rather large space that the LLP rented from PLS.<sup>332</sup> The partners expected that associates would create revenue that would help to cover the LLP's rent, among other overhead costs.<sup>333</sup>

One of the partners described a typical work day at the LLP as being "a bit nine to five"<sup>334</sup>, and less than that at large law firms. In contrast, two of the lawyers who worked there described working as many hours, or more, at the LLP as they did in private practice.<sup>335</sup> As one described it: "I worked more hours at Pivot than I did at [a mid-sized regional law firm] over the same period. And that says a lot."<sup>336</sup> There appears, however, to have been significant variation

---

<sup>329</sup> *Ibid.*

<sup>330</sup> Partner 3, *supra* note 214.

<sup>331</sup> *Ibid.*

<sup>332</sup> Partner 4, *supra* note 217; Partner 3, *supra* note 214.

<sup>333</sup> Partner 1, *supra* note 214; Partner 2A, *supra* note 214.

<sup>334</sup> Partner 2B, *supra* note 267.

<sup>335</sup> Associate 3, *supra* note 248; Associate 2, *supra* note 248.

<sup>336</sup> Associate 3, *supra* note 248.

between lawyers<sup>337</sup>, and there may also have been variance at different times over the lifespan of the LLP<sup>338</sup>. As one lawyer described it:

Eventually I had about 60 files. I was supposed to be doing part time civil litigation, because I was working part-time for the Society. But then to make a financial go at it, you can't really have a half-time practice. So really at the end of the day, I worked seven days a week, by the end, every day, for three or four months. So when I would take a Friday afternoon off once in a while... I still had gone in... I don't remember taking a day off until I went on holiday in April, after starting in May. Like a full year. It started off really slowly, and really well, but by the end it was just gruelling and had encompassed everything.<sup>339</sup>

Many lawyers worked from home or were not regularly present at the LLP's office.<sup>340</sup>

During the course of its operations, the LLP provided legal services to 1381 clients. In the view of several of the partners, many of these clients would likely not have obtained any legal services if the LLP had not existed.<sup>341</sup>

Although the LLP never succeeded in fulfilling one of its goals – funding PLS – it was able to meet another goal: providing legal services to those who could not otherwise afford them.

Accordingly, understanding whether something like the LLP could be sustainable as a business is an important addition to efforts to improve access to civil legal services. The next chapter explores why the LLP ultimately folded.

---

<sup>337</sup> Staff 1, *supra* note 248.

<sup>338</sup> Associate 2, *supra* note 248.

<sup>339</sup> Associate 3, *supra* note 248.

<sup>340</sup> Partner 2B, *supra* note 267.

<sup>341</sup> Partner 3, *supra* note 214; Partner 4, *supra* note 217.

## 6 WHY PIVOT LEGAL LLP DIDN'T WORK

The LLP operated for four years, but ultimately ceased providing legal services in or around 2010.<sup>342</sup> In the aftermath of the LLP closing its doors, two of the partners created a summary report, with input by email from the remaining two partners, outlining the reasons for the LLP's demise. They set out nine reasons for the LLP's closure, as follows:

1. Lack of distinct, independent management for LLP and PLS;
2. Lack of effective business planning;
3. Branding problems;
4. Lack of effective recruitment and retention strategies;
5. Lack of mutual support between lawyers due to a lack of common areas of practice;
6. Inefficiencies in practice management systems and support staff;
7. Operating the LLP in the same space as PLS;
8. Lack of senior counsel to attract clients and mentor lawyers; and
9. Growing operating costs.<sup>343</sup>

Do these explain why the LLP didn't survive? Based on interviews and some analysis of the LLP's business records, some of these do help explain the downfall of the LLP, but there are other factors which also played a role. Understanding all of these factors is important to not only understand why the LLP was not sustainable, but to design a business model that is sustainable.

At a very basic level, the LLP was forced to close because its expenses exceeded its revenues. The reasons for this state of affairs are far more complex than this, of course. But framing the

---

<sup>342</sup> Partner 3, *supra* note 214.

<sup>343</sup> Email from Partner 4 (4 June 2012)[Partner 4 Email].

LLP's problems in terms of revenues and expenses at least provides an analytical framework in which to examine these various, complex factors.

## **6.1 Not Enough Revenue**

The LLP did generate revenue. By 2009, for example, it was generating \$100,000 in billings in the first three months of the year.<sup>344</sup> The LLP's business records for 2009 record total billed fees in excess of \$330,000, by far the LLP's biggest source of income.<sup>345</sup> However, interview participants suggested that the LLP did not generate as much revenue as was necessary to meet their initial business plans.<sup>346</sup> The following sections highlight some of the persistent revenue-related problems that the LLP suffered. These sections explore three aspects of the LLP's revenue-generating problems, namely: lawyers who were busy with non-paying files; the types of lawyers who worked at the LLP; and difficulties in finding paying clients.

### **6.1.1 Busy, but Broke**

The LLP's lawyers were, at times, busy.<sup>347</sup> Unfortunately, this busy-ness did not translate into paying business.

Despite the partners' optimistic projections of revenue, reality proved more difficult:

We said let's assume that every lawyer is able to bill 15 hours a week at our maximum billing rate, which was like \$150 an hour, and we were like "oh my God, we're going to be rich!" And 15 hours a week is not a lot of billable hours for a lawyer. ... And we did a market survey and everybody else is charging \$300 an hour. And the scope is reasonable. 15 hours a week is totally achievable,

---

<sup>344</sup> Kiang, *supra* note 291.

<sup>345</sup> "Pivot Legal LLP Business Records - 2009-2011" (17 July 2012) [unpublished] [Business Records].

<sup>346</sup> Partner 1, *supra* note 214.

<sup>347</sup> *Ibid.*

and everything flows from that: salary, admin staff, and all of that. And everybody around the table nodded their heads and agreed. But you know, most of our lawyers, even in their best weeks, would do five or 10 billable hours a week. And the rest of the time was unbilled time.<sup>348</sup>

What explains the discrepancy between busy lawyers and lack of billing?

Some interview participants commented that their practices were not efficient because they had to do everything themselves – including photocopying, binding, etc. – because there was insufficient support staff.<sup>349</sup> Other interview participants commented that many lawyers took on files that were either pro bono or significantly discounted.<sup>350</sup> As one partner put it, “we attracted lawyers... who had a lot of trouble saying no for all the right reasons.”<sup>351</sup> This inability to say no appears to have persisted despite the partners’ efforts to increase the proportion of billable files.

As one partner described the perverse outcome of the LLP’s efforts to limit non-paying files:

...we actually had lawyers who were taking files and not entering them into the system because they knew that we could not afford to do any more pro bono work. We had to do paid work. And so the lawyers would say to a client who came in and was really sympathetic “okay, I’m not supposed do this, but I’ll help you out with this case”. So we had lawyers leave the firm and then we’d find 10 or 15 files that were not in our system. And people would show up and say “where is so-and-so”, and we’d say well that person doesn’t work here anymore, and they’d say “well I’m a client of that person.” And we’d be like – “what are you talking about? Who are you?”<sup>352</sup>

Another explanation for the divergence between lawyer busy-ness and revenue is that the LLP took on too many contingency files. Contingency files are cases in which a lawyer receives payment only if the case is successful, usually a portion of damages awarded if a plaintiff is

---

<sup>348</sup> *Ibid.*

<sup>349</sup> Staff 1, *supra* note 248; Associate 2, *supra* note 248; Partner 3, *supra* note 214; Associate 3, *supra* note 248.

<sup>350</sup> Staff 1, *supra* note 248; Associate 2, *supra* note 248; Partner 3, *supra* note 214.

<sup>351</sup> Partner 3, *supra* note 214.

<sup>352</sup> Partner 1, *supra* note 214.

successful. Several interview participants commented on this.<sup>353</sup> Moreover, the contingency files that the LLP took on were often complex, resource-intensive cases:

We had so many contingency cases. If any of them ever paid off, it would be the greatest. We had a lot of contingency work, which was a huge mistake. And not bread-and-butter contingency work like ICBC, but we were suing the sheriffs' office. Just crazy stuff. ... Complex, multi-year litigation that required crazy experts and would be fought aggressively by the other side.<sup>354</sup>

It is also important to note that not all lawyers were busy. One partner, who did solicitor work and expected to work for businesses and not-for-profit organizations, commented on not being as busy as expected.<sup>355</sup> Another interview participant suggested that some lawyers were not busy, and may have taken advantage of the essentially free work space provided by the LLP.<sup>356</sup> Indeed, it is hard to get a good sense of work rates and billability during the LLP's operations. Accordingly, it is safe to say that while some LLP lawyers were very busy, particularly towards the end, not all LLP lawyers were busy over the duration of the firm's existence.

### 6.1.2 Lawyer "Type"

The anecdote about lawyers taking on clients but not entering them into the LLP's system raises an issue that many interview participants discussed: the "types" of lawyers who worked at the LLP.<sup>357</sup> While these comments often differentiated between lawyers interested in social justice work and those interested in paying work, this may be a false dichotomy. A better distinction is that between motivated lawyers and those disillusioned with the legal profession.

---

<sup>353</sup> *Ibid*; Associate 2, *supra* note 248; Advisor 1, *supra* note 294; Partner 3, *supra* note 214.

<sup>354</sup> Partner 1, *supra* note 214.

<sup>355</sup> Partner 2B, *supra* note 267.

<sup>356</sup> Staff 1, *supra* note 248.

<sup>357</sup> Partner 2B, *supra* note 267; Staff 1, *supra* note 248; Partner 3, *supra* note 214; Partner 4, *supra* note 217; Advisor 1, *supra* note 294; Associate 3, *supra* note 248.

Some interview participants indicated that because the LLP attracted lawyers interested in doing social justice work, those lawyers were often not effective at cultivating paying clients.<sup>358</sup> This seems to have been a major surprise for the partners. The LLP took on associates premised on the belief that they would earn money and then be able to pay a percentage of their earnings to cover the LLP's overhead. However, many associates "were very optimistic about their ability to bill and it didn't materialize."<sup>359</sup> Indeed, many did not earn enough to support themselves or cover the LLP's costs:

...a lot of people were coming to us, and we signed them on to basically rent-free workstations and then they would pay back a portion of their fees to the LLP, which we thought would be a sure win, because they weren't costing us anything. But they were broke like crazy, and they were borrowing personal money to practice law with us, so they had to service that personal debt, and also we had to really press them on paying what they promised, because we had calculated that money as helping to pay for rent and service our own debt. So that became a real thing.<sup>360</sup>

Although it is tempting to understand this in terms of the wrong "type" of lawyers – meaning lawyers interested in social justice work – this is a dubious conclusion. While it is probably accurate to observe that the LLP needed more lawyers who were motivated to bring in paying clients, is it important to recognize that some lawyers – including those with a professed interest in social justice work – grew into their practices and their abilities to develop clients. For example, one lawyer, after discussing her interest in public interest matters and stating that she had expected to work for a non-profit after law school, commented that private practice grew on her: "I actually liked doing files, casework... In some ways it suited my personality more than doing the broad policy work. I liked working with clients and... understanding completely what

---

<sup>358</sup> Partner 4, *supra* note 217.

<sup>359</sup> Partner 2A, *supra* note 214.

<sup>360</sup> Partner 1, *supra* note 214.

my role would be.”<sup>361</sup> This lawyer was often described by others as one of the most prolific lawyers at the LLP, and successfully moved into private practice after the LLP folded.

Also, as another lawyer noted, associates were not always given much support to develop business: “I don't remember having any [business planning assistance] while I was there. I don't remember ever having a plan. I feel like I created an ad hoc plan myself, and in retrospect it was completely unrealistic. But I did that for myself.”<sup>362</sup>

This points to the importance of understanding that the ability to do legal work is different than the ability to attract new clients. Pointing this difference out does not, however, lead to the conclusion that someone capable of one is incapable of the other – just that firms should pay attention to both aspects of lawyer development. It also points to the importance of ensuring that lawyers understand and support the business model of a firm, recognizing that if the firm is unable to maintain itself, it will be unable to provide legal services to those who need them. The experience of trying to make the LLP work was likely eye-opening for many of the lawyers involved. As one lawyer described it, the LLP experience forced a change in thinking about whether law is a business:

I used to hate it [when the partners at a previous firm] would say to me “[Associate 3], as much as it's law, it's a business.” And I wanted to strangle them. I'd say “I went to law school to help the world.” I would get so irritated. But then as I got going, I began to understand. But it wasn't until Pivot that all those words they had said to me became really clear to me. And then I was like “Oh gosh, I can never admit to them that they were right.” But it is. At the end of the day, you still have bills to pay, you still have life to run, and the idealism of your twenties starts to die when you want to have things.<sup>363</sup>

---

<sup>361</sup> Associate 2, *supra* note 248.

<sup>362</sup> Associate 3, *supra* note 248.

<sup>363</sup> *Ibid.*

Some interview participants commented that in retrospect, it was important for all legally-trained individuals at the LLP to work to cultivate clients. As one partner put it:

I don't think you should have non-practicing partners, especially at the start. I mean maybe you end up down the line somebody semi-retires or retires or you end up they're a rainmaker partner but I don't think that's ideal because you need at the beginning income generating partners and we didn't have that.<sup>364</sup>

The absence of lawyers with existing, paying clients was a problem generally for the LLP.

Ideally, at least some of the partners could have brought in business, but at the outset only one of the partners had any kind of established practice.<sup>365</sup> When, later in the LLP's existence, the partners tried to take steps to bring in a lawyer with existing clients, they ran into push-back from associates because of the proposed lawyer's practice area. As one interview participant described the friction caused by efforts to bring in a lawyer who had a steady source of business, but whose practice profile did not fit with the expectations of others in the LLP:

...at one point [the partners] wanted to bring in someone who did mining law. And you should have seen the look on some of the people in the room who were like, "we're a social justice law firm, and you're going to bring someone in who does work for mining companies?" It just blew people away. But I think it was sort of when they were realizing "we need someone here to make money." And I think that's where it came from. This woman already billed that much, and she's willing to come to Pivot because she wants to work at a socially-conscious place, but the room just sort of exploded. People were like "well, we're environmentalists, and we have all these beliefs, and that's why we're here", and that I think was telling. Because I was like, I get what they need, is someone making money. They need business lawyers here. But business lawyers, at the end of the day, are all going to work for companies, which we're probably all theoretically, fighting in our heads, if not actually in our files.<sup>366</sup>

This lawyer was not ultimately brought on to work at the LLP.

---

<sup>364</sup> Partner 3, *supra* note 214.

<sup>365</sup> *Ibid.*

<sup>366</sup> Associate 3, *supra* note 248.

The LLP's revenue generating efforts were also impaired by the structure of its associates agreement. The general idea with this agreement, which was renegotiated throughout the LLP's existence, was to develop a formula whereby associates would pay a portion of their revenue to the LLP in exchange for use of the LLP's assets, such as office space, office resources, and its brand.<sup>367</sup> The success of this agreement rested both on properly incentivizing associates to cultivate clients and remain with the LLP, and on the associates being able to cultivate paying clients. While the LLP explored this profit-sharing model as a novel way of encouraging associates to bring in work without inflating its personnel costs, the model had significant shortcomings from a cash-flow perspective.

As one interview participant described the associates agreement:

The agreement ended up being that you kept your first so much. I think each associate kept their first 40%. ... essentially, it was like up to the first \$2000 each month you kept, and then after that it was split. The LLP got something. And then it was split 50/50 or something. But the point was that until you hit your year max, you got to keep everything. But that also meant that the LLP had no cash flow, because every associate would take three or four or five months to build up the annual amount...

Interviewer: So for January, February, March, there was no money coming in.

Associate 3: I think actually it was March, April, May. There was no money coming in. How does a business keep going when there is no revenue? That was problematic from day one. I didn't like the original agreement, because I didn't think it supported the associates, but then [a subsequent version of the] agreement was going to kill the LLP, which I think it did at the end of the day.<sup>368</sup>

There is another "type" of lawyer that may have been important to the LLP's inability to create business. The LLP seemed to attract young lawyers who were disillusioned with the typical practice of law. This is not surprising, since reforming the typical practice structure was one of

---

<sup>367</sup> *Ibid.*

<sup>368</sup> *Ibid.*

the goals of the LLP, cited by several of the partners.<sup>369</sup> The LLP “attracted a lot of lawyers who had gone to firms and were disillusioned and wanted to do something different.”<sup>370</sup> But to the extent that these lawyers were no longer interested in practicing law, this likely posed a significant hurdle for the LLP’s success. As one lawyer commented: “as time went on, people were also coming who were fed up with legal practice. So that’s also strange, because in fact, there was no difference. You were still going to have to do it. You would still have to practice law.”<sup>371</sup>

### 6.1.3 Client Development Difficulties

Looking beyond lawyer “type” as an explanation for the LLP’s inability to attract paying clients, there appear to have been other, structural impediments to client development. Some interview participants suggested that the LLP should have focussed on billing to a greater degree. As one partner put it:

In retrospect maybe it would have been good if we had put more billing pressure on people. We had people who were highly unproductive and generating more expense and aggravation than revenue. And had they been in a more traditional firm they would have been booted out much sooner rather than our nice, non-hierarchical, egalitarian, we’re-all-in-it-together kind of environment where people wanted to be supportive but we actually were not very effective in doing that. There wasn’t enough pressure put on people. Well, there wasn’t enough pressure put on people for the good of the firm. I’m not saying it would have been good for the people, but in terms of keeping a viable firm we were not nearly as tough as was necessary to keep things going.<sup>372</sup>

Putting more billing pressure on lawyers would, however, seem to undermine some of what was attractive about the LLP – its difference from “typical” law firms, and the non-hierarchical

---

<sup>369</sup> Partner 1, *supra* note 214; Partner 4, *supra* note 217; Partner 3, *supra* note 214.

<sup>370</sup> Partner 3, *supra* note 214.

<sup>371</sup> Associate 2, *supra* note 248.

<sup>372</sup> Partner 2A, *supra* note 214.

nature of its organization and decision-making.<sup>373</sup> Instead, the LLP could have taken a more focussed and hard-headed approach to the firm's financial difficulties, while also providing lawyers with more tools to cultivate clients. Referring to the partners, one lawyer said:

They talked money in the sense of "we don't have money, we're not paying rent because the Society's carrying us." But it was very broad, sweeping money discussions. It was never "you're not billing enough. How are we going to make this happen? What's your business plan?" Which I think another law firm would. Because if you're just kind of working... You're taking up office space, you are taking up resources. And if you're not making money, then out you should go.<sup>374</sup>

Finding paying clients was a significant problem for the LLP. Several of the partners commented that some clients who they expected to come to the LLP never materialized:

I was surprised by who really didn't come in for us. We really expected when we opened up we would immediately have a large number of socially progressive businesses... but they didn't really show up. The unions - we thought we would be able to get a piece of their work here and there, but they didn't show up until much later, in fact when it was too late unfortunately. And we thought that we might get some work from [a progressive financial institution], and we did get one piece from them, but it was really crazy beyond our capabilities so that was the end of that. So that was the people who didn't show up.<sup>375</sup>

While clients who didn't materialize proved a key unpleasant surprise for the LLP, referral work was another problematic area. In contrast to the support for PLS in the legal community, the LLP did not benefit from as many referrals as it had hoped for.<sup>376</sup> While some types of referral work played a key role in the LLP staying afloat as long as it did, several interview participants

---

<sup>373</sup> Staff 1, *supra* note 248; Associate 3, *supra* note 248; Partner 2A, *supra* note 214.

<sup>374</sup> Associate 3, *supra* note 248.

<sup>375</sup> Partner 1, *supra* note 214.

<sup>376</sup> Partner 2A, *supra* note 214.

indicated that the LLP might have been more successful if it had obtained more work from other lawyers.<sup>377</sup>

One partner described the importance of referral work as follows: “Our best work as far as I can tell, and what paid most of the rent for those years, was a senior lawyer who found him or herself on a big case and needed a junior and they would hire one of our lawyers to junior. And that was probably the most successful aspect.”<sup>378</sup>

But aside from these types of cases, referral work seemed difficult to come by. Some attributed this to the relative inexperience of LLP lawyers, suggesting that they had not been practicing long enough for colleagues to know them and refer work.<sup>379</sup> The perceived inexperience of LLP lawyers is captured in the following comment by a former LLP lawyer:

I won things while I was at Pivot, but I felt it was always surprising to them [i.e. opposing counsel]. And they were like “oh my God, she knows something!” And that was the general feeling I would get in the community, was that people would be like “we thought you were just a bunch of hippies running around doing stuff. We didn’t know you practiced real law.”<sup>380</sup>

One advisor, however, suggested that the LLP could have been more successful in generating referrals if it had made better use of available resources, such as lawyer conferences and public media, to build the LLP’s profile.<sup>381</sup>

Interview participants offered seven distinct potential explanations for the LLP’s failure to secure expected business. These explanations are set out in Table 1.

---

<sup>377</sup> Partner 1, *supra* note 214; Partner 2A, *supra* note 214; Partner 3, *supra* note 214; Partner 4, *supra* note 217; Advisor 1, *supra* note 294.

<sup>378</sup> Partner 1, *supra* note 214.

<sup>379</sup> Partner 2A, *supra* note 214; Partner 4, *supra* note 217.

<sup>380</sup> Associate 3, *supra* note 248.

<sup>381</sup> Advisor 1, *supra* note 294.

**Table 1: Explanations for business development problems for Pivot Legal LLP.**

<b>Explanation</b>	<b>Quotation</b>
No perceived legal need	I don't think [progressive organizations] were actually in the habit of actually hiring lawyers, many of them... I don't think they decided to go to a traditional law firm instead of us. I think they just weren't going to law firms at all. And wrapping their heads around coming to us... some of them did it. Some of them made it. But those were the ones that looked deep and said "despite my expectations, they have a business lawyer", and "despite my expectations about this business lawyer, this business lawyer is actually competent." And so it took a few levels for them to actually dig in and see that there was a good lawyer there. <sup>382</sup>
Had existing counsel	...most of them had existing relationships with other law firms and so being risk-averse in legal matters, and generally satisfied with the services of a firm, why would they come over to a bunch of junior lawyers setting up a new law firm, and put their hard-won company on the line to support Pivot. And so that's something that wasn't said, but is something that I think was a subtext to what didn't show up. <sup>383</sup> [This view was supported by another former partner. <sup>384</sup> ]
Perceived cost of lawyers	I think also there's a perception of cost of lawyers. People didn't realize how cheap [one of the LLP's lawyers] was – she was cheap. Actually very accessible. But people didn't have that frame. <sup>385</sup>
Concern about inexperience of LLP lawyers	I knew that most people would look at [the LLP] and say it sounds so rosy and wonderful and you can sell that to a degree but my debate with them all along was that you can't sustain this. It won't work... I want to do business with you, but don't give me a 25-year-old lawyer with no experience to do my real estate work. Have them be part of the team that you have to have... You can't sell law on mission alone. <sup>386</sup>
LLP lawyers were "too desperate"	One of our problems was that we were too desperate from the beginning. So we launched the whole firm without having a couple of big clients ready to go. Probably we should've had commitments from them before starting. That once you open, here is some work that we'll transfer over from firm X to work with you, and then you know you'll be able to keep one lawyer busy. And instead, we hired a bunch of lawyers and then sent them out there really hungry for work. And I think that raised a red flag. Like "all other lawyers I know are really busy, why is nobody else hiring you?" <sup>387</sup>
Branding confusion	I don't think Pivot Legal LLP ever got out from under the Society as a brand in and of itself. And I know a lot of people who bought and sold houses and didn't come to the LLP for their conveyancing. And I was like what do you think we are, chopped liver? And these were really good, close friends of mine, and they said "we forgot about Pivot". They just couldn't remember that we were a law firm for them. By people I mean middle-class folks or people who were paying. So that was a challenge. <sup>388</sup>
Legal conflicts	...there were the clients who wanted to work with us, and were able to pay, but we weren't able to take work from... the large, non-profit social housing management companies that had work that we understood, had clients - their clients - we understood, we understood the sensitivities of it, we were perfectly placed to provide them with legal services. But as soon as we took work from them and they paid us, we were conflicted out of representing any of their tenants, which was the whole point of Pivot, which was that we would represent people from the Downtown Eastside. So that was also a dilemma for us. <sup>389</sup>

<sup>382</sup> Partner 4, *supra* note 217.

<sup>383</sup> Partner 1, *supra* note 214.

<sup>384</sup> Partner 2A, *supra* note 214.

<sup>385</sup> Partner 4, *supra* note 217.

<sup>386</sup> Interview of Advisor 2 (April 30, 2012) [Advisor 2].

<sup>387</sup> Partner 1, *supra* note 214.

<sup>388</sup> Partner 3, *supra* note 214.

<sup>389</sup> Partner 1, *supra* note 214.

Assessing the relative merit of these explanations is challenging, and further research on this issue would be instructive. One surprising factor is that the LLP engaged in quite extensive business planning, both at the outset, and during its operations.<sup>390</sup> Yet all of this planning seems to have been of very limited value in generating paying clients. As one of the partners noted ruefully, many of the business plans were “largely aspirational” when it came to revenues.<sup>391</sup>

Nevertheless, some of these explanations suggest a broader lesson. The partners may not have recognized at first that the LLP was pitching its services to two different market segments, and that each of these segments required very different client development efforts. Indeed, as noted earlier in section 5.1, it may have been impossible for these two market segments to co-exist within the same firm.

The first market segment which the LLP tried to cultivate consisted of clients with financial resources who were would be attracted to the LLP because of its mission to fund PLS. This strategy in itself might have been successful. As one partner noted:

...we wanted to say to people “we know you have options out there” - especially the higher-paying client people – “we know you have options out there, but we are as good as everyone else or better and we are socially responsible and give our money away to [PLS]... As a socially responsible consumer, we're the right choice for you.” That was kind of the way we wanted to message it. And there's a real emergence now - thank goodness - of socially responsible consumption and consumerism and purchasing... I think that was a legitimate marketing strategy.<sup>392</sup>

There were obstacles to this strategy, such as legal conflicts with some of these potential clients or the fact that these clients may have had lawyers already. The most significant obstacle for

---

<sup>390</sup> Partner 3, *supra* note 214; Partner 4, *supra* note 217; Advisor 2, *supra* note 386.

<sup>391</sup> Partner 1, *supra* note 214.

<sup>392</sup> Partner 3, *supra* note 214.

these clients, however, may have been the LLP's difficulty in projecting itself as a law firm that is as competent, or more competent, than any others. Several of the partners remarked on the importance of proven competence as the number one criterion for sophisticated clients.<sup>393</sup> As one partner explained:

The challenge and the thing I'm really realizing about legal services is that really progressive people will hire really big firms despite all of the other stuff they do because so much is at stake in terms of their legal needs. Like when they are coming to a lawyer, it's such a big deal and things they're dealing with in most circumstances - as you know - is of such incredible importance to their business that what matters more than anything else is that the lawyer's going to do a good job and do the best job. And I'm not saying that people don't make decisions based on their values and principles when they're hiring lawyers, but I know now and am coming around more and more to the fact that there's something about the big firm, stable, authority, expert vibe that sells, that some people are willing to compromise on some of the other stuff. So "okay, we know you represent big oil and we're maybe an environmental NGO or we're an environmental company or we're a something similar, but we're going to hire you because what we're doing here we can't compromise on the quality of this." And I may be overstating it a little bit, but I really have realized and learned that above all else it's quality of service and that was something that we struggled to demonstrate for a bunch of different reasons.<sup>394</sup>

This view was corroborated by one of the LLP's advisors, who indicated that his criteria for hiring a lawyer were "success and competence, number one".<sup>395</sup>

One of the partners, who agreed that paying clients are often driven by a successful track record, suggested that the LLP's low fee model may have undermined its appeal to these clients:

I do think that people have an expectation that when they need legal services, they are going to want the big firm and the QC, and you know—"I have hired the biggest firm in Vancouver to take on my case because it's so important." They are not excited about "I have hired the community legal clinic that is marketed as providing affordable legal services to the east Vancouver neighbourhood."

---

<sup>393</sup> Partner 3, *supra* note 214; Partner 1, *supra* note 214; Partner 4, *supra* note 217.

<sup>394</sup> Partner 3, *supra* note 214.

<sup>395</sup> Advisor 2, *supra* note 386.

Nobody gets excited about that. And so people will pay more to get that for their case. So there's a flaw there. But there's also clients that would have – I still believe – that would have liked to have branded themselves as working through the LLP, but I think the mistake we made was leading with price as opposed to leading with the social benefits. And saying you would pay as much with us as you would with any other law firm, but understand that a portion of that's going to fund this other work that we do, and in fact you might even pay a premium for that, in order to work with us, because our first goal is to fund this other work [done by PLS]. Our mistake was to think that we could offer a discounted rate and that that would be enough. So I don't think the idea itself was flawed.<sup>396</sup>

Another partner made a similar point, suggesting that many clients use price as a proxy to determine a lawyer's skill.<sup>397</sup> One of the LLP's advisors also adverted to the difficulty of assessing lawyer competence:

And honestly who in the heck could tell you really if the lawyer did a great job or not. You know that they were responsive. You know that the job got done. You know that the bill didn't completely wreck your life. But you don't really know if somebody a little smarter... It's like a doctor. The doctor puts on a white coat and stethoscope and listens. How do you know? Why - because he's been in the office for 30 years.<sup>398</sup>

This doctor analogy suggests that a professional's longevity in practice is a proxy for competency, since a doctor sufficiently bad would not be in the office for 30 years. Presumably a lawyer's rate should also be related in some way to that lawyer's skill, since an incompetent lawyer charging a high fee would eventually have few clients. But as legal scholar Gillian Hadfield has recently noted, the legal marketplace for individuals is poorly documented – meaning that it is difficult to understand how well or poorly this marketplace resembles a properly-functioning market.<sup>399</sup> To the extent that some clients evaluate the quality of

---

<sup>396</sup> Partner 1, *supra* note 214.

<sup>397</sup> Partner 2B, *supra* note 267.

<sup>398</sup> *Ibid.*

<sup>399</sup> Gillian K Hadfield, "Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans" (2010) 37 *Fordham Urb LJ* 129 at 151.

prospective lawyers by high hourly rates though, the LLP's reduced fee model actually undermined its appeal to many potential paying clients.

The second market segment to which the LLP appealed was those members of the Downtown Eastside who could not afford legal services elsewhere. One of the partners described the situation of this second group, and noted the conflict between this group and those clients in the first market segment:

The group that wants their low cost legal services – they don't give a shit. You're all they can afford. If they could afford more, they would go somewhere else. So whatever, they don't care. And the ones who could afford more, they're choosing you because you're using – and they actually expect to pay more. So putting those things together was really tough.”<sup>400</sup>

One final factor, noted by one of the partners, was that it was very difficult for young lawyers to set up a practice in the aftermath of the devastating cuts to legal aid that were made in British Columbia in 2002.<sup>401</sup> These cuts made it more difficult for the LLP to develop revenue streams that were available before the cuts.

A better understanding of how to generate revenue and find paying clients would have been useful for the LLP. This would have required the LLP to understand and focus on one market segment. Similarly, the LLP would have benefitted from having more lawyers who had paying clients or were interested in cultivating them, and in having lawyers who understood the LLP's limited initial ability to take on many pro bono cases.

---

<sup>400</sup> Partner 1, *supra* note 214.

<sup>401</sup> *Ibid.*

But revenue-generation was only half of the LLP's problems. High expenses also contributed to the LLP's downfall.

## **6.2 Too Many Expenses**

The LLP's expenses always exceeded its revenues.<sup>402</sup> These expenses seemed to prevent the LLP from taking steps to address its negative cash-flow situation. The following sections explore three elements of the LLP's high expenses: debt servicing; high overhead; and problems stemming from the LLP's physical premises.

### **6.2.1 Death by Debt**

At the outset, the LLP took on debt from friendly lenders who offered good rates and tended to work with the LLP to develop its business model.<sup>403</sup> This initial debt allowed the LLP to pay upfront for some business expenses, but it also seems to have contributed to setting the LLP on an economically unsustainable path. As one partner explained:

...I think the next time I think that in the circumstances that we should have not borrowed any money and we should have just worked with what we had because I don't think we needed that much to get it off the ground actually. I think we did some unnecessary spending on things like websites and stuff that we probably could have done either more minimally or for free or through other creative avenues riding on the Pivot brand to not spend money in those ways."<sup>404</sup>

Ultimately, although debt payments were on relatively good terms and the total debt does not seem to have been particularly onerous in the context of the LLP's total operation, debt was cited

---

<sup>402</sup> Business Records, *supra* note 345.

<sup>403</sup> Partner 3, *supra* note 214.

<sup>404</sup> *Ibid.*

by several partners as factors in the LLP's ultimate demise.<sup>405</sup> This seems to have operated in several ways. Two partners noted that over time, debt servicing played a role in preventing the LLP from attracting or retaining associates – particularly associates with paying clients. As one partner noted:

...eventually it became not very attractive for the a new person to come in if they had revenue, because if funds were going to the LLP, they were being directed towards debt-servicing, rather than towards providing any new facilities. And what happened of course was that because we took on a lot of associates too early on, the debt essentially would go to subsidize people until a stage where, if they were making money, then they would go somewhere else and leave the debt behind, and if they weren't making money, they weren't able to pay the debt. So you do need debt when you start a law firm, but ideally you should do something like say to the firm, ok, we borrowed some money, all of us co-signed the debt, but none of us are sitting here not billing anything and then going to run away and leave the debt for everybody else, which is essentially what happened. The people benefiting from the borrowing were not the people who ended up stuck paying for it.<sup>406</sup>

Another partner noted that debt created external billing pressure on the LLP:

...it starts you out in a negative position and then you're constantly trying to get yourself out of that and that was the legacy really was what ended up happening was that our debt payments just constantly placed us in this pressured situation where our billings had to be at a certain level and that was in the end not really manageable.<sup>407</sup>

Ultimately, the LLP was not able to fully repay all of its lenders.<sup>408</sup> Of course, debt was not the only, or even the most significant of the LLP's expenses. Other overhead expenses contributed significantly to the "pressured situation" to meet billable targets.

---

<sup>405</sup> Business Records, *supra* note 345; Partner 3, *supra* note 214; Partner 1, *supra* note 214; Partner 2A, *supra* note 214.

<sup>406</sup> Partner 2A, *supra* note 214.

<sup>407</sup> Partner 3, *supra* note 214.

<sup>408</sup> Advisor 2, *supra* note 386; Partner 4, *supra* note 217.

## 6.2.2 Unheralded Overhead

Table 2 illustrates the LLP's most significant expenses in 2009 and 2010. The LLP's total revenue is listed for both of those years, to provide context.<sup>409</sup>

---

<sup>409</sup> Business Records, *supra* note 345.

**Table 2: Pivot Legal LLP top five expenses, total expenses, and revenue for 2009 and 2010.**

<b>Year</b>	<b>Expense Type</b>	<b>Expense Amount</b>	<b>Revenue</b>	
2009	Associates Fees	135,618		
	Wages/Source Deductions	112,617		
	Rent Expense	48,000		
	Equipment Lease	24,000		
	Accounting	13,136		
	<b>TOTAL (ALL EXPENSES)</b>	<b>391,972</b>		<b>350,199</b>
2010	Associates Fees	103,829		
	Wages/Source Deductions	57,992		
	Rent Expense	36,600		
	Write Off - Accounts Receivable Fee	21,833		
	Equipment Lease	10,600		
	<b>TOTAL (ALL EXPENSES)</b>	<b>263,949</b>		<b>262,364</b>

By far the largest annual expense for the LLP, as for almost any professional services firm, was payroll. Because the LLP did not pay salaries to its associates, it appears to have recorded its payroll obligations in two ways: payments to associates are recorded as “associates fees”, while payments to employees – presumably the partners and office staff – are recorded as “wages/source deductions”.

Another significant expense for the LLP was rent. The LLP shared space with PLS, which had an ownership interest in a building on East Hastings Street in Vancouver.<sup>410</sup> In 2009 and 2010, rent was the second highest single expense for the LLP, after only personnel costs.<sup>411</sup> Rent was described as “a killer” by one of the partners: rent accounted for almost 14% of total revenue in 2009 and 2010.<sup>412</sup>

Finally, some interview participants suggested that marketing costs contributed to the LLP’s failure.<sup>413</sup> Others disagreed, with one interview participant who was familiar with the LLP’s expenses describing the firm as spending “almost nothing extraneous”, particularly by 2009 and 2010.<sup>414</sup> While it is probably true that the LLP’s marketing efforts did little to attract clients to the firm, marketing expenses do not appear to have been a significant expense for the LLP, based on its business records.<sup>415</sup>

---

<sup>410</sup> Partner 4, *supra* note 217; Advisor 2, *supra* note 386; Kiang, *supra* note 291.

<sup>411</sup> Business Records, *supra* note 345.

<sup>412</sup> Partner 4, *supra* note 217.

<sup>413</sup> Associate 3, *supra* note 248; Partner 2A, *supra* note 214.

<sup>414</sup> Partner 4, *supra* note 217; Staff 1, *supra* note 248.

<sup>415</sup> Partner 2A, *supra* note 214; Associate 3, *supra* note 248.

### 6.2.3 Location, Location, Size

Another, and perhaps more pernicious, problem with the LLP's premises is that they appear to have exerted growth pressure on the LLP. Burdened with large premises, the partners felt pressure to quickly fill that space with practicing lawyers in order to meet their business model predictions.<sup>416</sup> As one advisor describes it, "they had lots of people, and they had lots of space, which I think was more ambitious than it should have been, given the time they had."<sup>417</sup>

The LLP's premises were also a problem for generating revenue. First, the LLP was located in a "dead zone" that did not result in much walk-in business.<sup>418</sup> While walk-in business was not a major source of work for many of the LLP lawyers, it remains that a more accessible space might have helped increase revenue either directly from walk-in clients, or indirectly through profile-building. One partner commented that since the LLP was located outside the central business district, it was difficult to cultivate relationships with other lawyers or businesses over lunch, which could have been a source of business for the LLP.<sup>419</sup>

Also, the LLP's co-location with PLS, in the Downtown Eastside, seems to have led to some conflict. One partner described the negative aspects of the LLP's location as follows:

...basically we were a social services agency. People would come to the LLP and need legal services and not be able to pay for it, and we had a bunch of bleeding hearts there who weren't able to say no, and still needed to support themselves on the commission structure that we had there. It was just too tempting to... The temptation to not make money was ever present. And also, it is just a very distracting environment, you know... It was social service plus law.<sup>420</sup>

---

<sup>416</sup> Partner 2B, *supra* note 267.

<sup>417</sup> Advisor 1, *supra* note 294.

<sup>418</sup> Partner 3, *supra* note 214.

<sup>419</sup> Partner 2B, *supra* note 267.

<sup>420</sup> Partner 4, *supra* note 217.

This led to problems not only for the LLP's lawyers, but for its clients. The mix of clients in the LLP's office space sometimes led to unfortunate situations for some clients. As one partner describes it:

...people would come and our clients would come and they would sit in the waiting room next to marginalized folks who could be also in different states of mind. And that didn't work for some people. It didn't work for some people either a) because they had attitudes about who marginalized people are and they don't want to sit next to them. That's not okay, and we were very principled about that. Like, "if you can't sit next to marginalized groups in our waiting room, then we don't want you as client." And we honestly had those conversations. And that's just not realistic... but the second thing was we had people with trauma who also found it pretty scary to sit in the waiting room if somebody was in cocaine psychosis or screaming at our secretary or coming in because they were all bloody and... we were a real drop-in centre. So that was terrible. We had refugees who had had horrible experiences who told us that they found it terrifying.<sup>421</sup>

In sum, the LLP's premises contributed to several problems, including expenses, client development problems, and contributing to the LLP's too rapid growth. Although the partners talked about moving the LLP to a different location in a different neighbourhood, these conversations occurred only after the LLP was well on the path to breakdown.<sup>422</sup>

### **6.3 Other Problems**

While insufficient revenue and excessive expenses were the proximate causes for why the LLP ultimately folded, there were other problems that afflicted the LLP.

---

<sup>421</sup> Partner 3, *supra* note 214.

<sup>422</sup> *Ibid*; Partner 4, *supra* note 217.

For example, eight of nine interview participants cited inadequate lawyer support as a significant problem.<sup>423</sup> Two aspects of this problem emerged: first, there was insufficient practice area overlap among lawyers, and second, there was insufficient support staff for lawyers.<sup>424</sup> Another aspect that was identified by several interview participants was the LLP's decision-making process.<sup>425</sup> These aspects are discussed in the following three sections.

### **6.3.1 Lawyer Support – Insufficient Practice Overlap**

Insufficient practice area overlap caused problems for the LLP in three ways. First, because most LLP lawyers were practicing in different areas, they could not discuss their work or professional challenges with colleagues. Second, insufficient overlap meant that lawyers could not cover for each other. Finally, important opportunities for collaboration and work cross-referral were missed. As one lawyer described it:

I think that was everyone's complaint, was that you had each person practicing their own thing, but nobody really around. At lunch, in the lunchroom, [Associate 2] could talk about immigration law, but it would have to be so cursory, because you never really got to the nitty-gritty of it. Yeah, that sucked a little bit. I mean you go to court and you're fighting a technical issue in litigation and you come back, and you can say you won, but you never really get that "and then I said this, and then I said that, and they said this." You'd never really get that feel.<sup>426</sup>

Since lawyers were spread thin and practiced in different areas, there was little capacity to provide coverage for lawyers who were away from the office. One partner described the situation as follows:

---

<sup>423</sup> Associate 3, *supra* note 248; Associate 2, *supra* note 248; Advisor 1, *supra* note 294; Staff 1, *supra* note 248; Partner 1, *supra* note 214; Partner 4, *supra* note 217; Partner 3, *supra* note 214; Partner 2A, *supra* note 214; Partner 2B, *supra* note 267.

<sup>424</sup> Advisor 1, *supra* note 294; Associate 3, *supra* note 248; Partner 3, *supra* note 214; Partner 1, *supra* note 214; Associate 2, *supra* note 248; Partner 4, *supra* note 217; Staff 1, *supra* note 248.

<sup>425</sup> Partner 2A, *supra* note 214; Advisor 2, *supra* note 386; Associate 2, *supra* note 248; Partner 3, *supra* note 214.

<sup>426</sup> Associate 3, *supra* note 248.

Say a solicitor goes on vacation or something for two weeks. And then something shows up in the mail, and we're like "what the hell is this?" So we had no depth in terms of backup. If somebody was away because they were sick, or on leave, or whatever...<sup>427</sup>

Also, the individual nature of each lawyer's practice meant that there were few opportunities for collaboration between lawyers, or for work referrals within the firm. One partner described this problem, while also noting the challenges of isolation within the small firm:

The problem though with a medium or small, smallish, small-medium firm is if you end up with one lawyer in each practice area, you end up with a whole bunch of really isolated people with no one else to talk to. And that's what happened. ... I go off and I do a prison parole thing and it's so intense... Or you go to court and you don't know what to do with something that comes up and you just want someone to call... And that just didn't exist. So the collegiality, the support, and the emotional support as well as intellectual support wasn't available for the most part in the office. And that just doesn't work. If you're going to have criminal defense lawyers, you need people who can go to court for each other. So that was a good idea but at the end of the day just left people feeling isolated. There's obviously so many benefits to having colleagues where you can... And you can and share clients and you can take on big files and co-counsel and there's all sorts of good stuff that comes out of those connections.<sup>428</sup>

Indeed, this lack of practice-area support was described by one lawyer as one of the major reasons why she ultimately left the LLP: "I know that one of the reasons why I wanted to leave is I wanted to be surrounded by other people doing the same work, because I wanted to be able to vent about issues and also to get advice."<sup>429</sup> Since one partner cited the difficulty of marketing the LLP because of associates leaving, this problem may have contributed to the LLP's revenue-generating problems.<sup>430</sup>

---

<sup>427</sup> Partner 1, *supra* note 214.

<sup>428</sup> Partner 3, *supra* note 214.

<sup>429</sup> Associate 2, *supra* note 248.

<sup>430</sup> Partner 3, *supra* note 214.

### 6.3.2 Lawyer Support – Insufficient Support Staff

The other aspect of the lack of support problem – the lack of support staff – was described as follows by one of the interview participants:

I couldn't do very many files at Pivot. I actually had not a big case load because administratively there was so little support that... You know, I'm writing the arguments and doing the research, but I'd also do the copies and binding and delivery. So I did everything to produce whatever it was. And so that takes... You can only reasonably do a certain number of cases, and so it was limited.<sup>431</sup>

One of the partners, commenting on this problem, suggested that finding good legal support staff was a significant challenge for the LLP: “We worked hard over the years to get that in place with file management systems and all that sort of stuff, but at the end of the day we just didn't have a super genius legal administrator who was able to run a tight ship, and an assistant who could make your letters look perfect at a moment's notice and all that stuff.”<sup>432</sup>

The specialized nature of support staff may have been underestimated also. One partner indicated that practice-specific support staff is necessary:

Paradoxically, you have to have a sufficient level of expenses to generate the revenue for you to generate the efficiencies of scale. And we didn't have that. The support staff that we had could not be expected to help family lawyers, immigration lawyers, and personal-injury lawyers, and business lawyers all at the same time.<sup>433</sup>

And yet another lawyer stated that lack of support staff was a contributing factor to her decision to leave the LLP:

---

<sup>431</sup> Associate 2, *supra* note 248.

<sup>432</sup> Partner 3, *supra* note 214.

<sup>433</sup> Partner 2A, *supra* note 214.

Having to do marketing, business development, practice support work... You're doing it all. And there is burnout. I think that was a big part of it. It burned me out. That was one of the big reasons why I was like "I can't do practice anymore."<sup>434</sup>

Relatedly, it was impossible for the LLP to develop precedents or standardized materials, both because lawyers did not practice in the same areas, and because they did not have support staff to curate and maintain precedent materials.<sup>435</sup> This made it difficult for lawyers to make their practices more efficient, which likely inhibited some lawyers from cultivating more paying work.<sup>436</sup>

### 6.3.3 Decision-Making

Another part of the LLP that many interview participants commented on was the LLP's inclusive, consultative decision-making model. Some interview participants identified the decision-making structure employed by the LLP as problematic.<sup>437</sup> Paradoxically, a transparent, egalitarian and collaborative decision-making model was also cited as a real benefit for the LLP – often by the same people who identified it as problematic.<sup>438</sup> In the words of one lawyer:

It's kind of funny, because one of the things I loved about it, and one of my best experiences, was the collaborative nature and the fact decision-making was transparent, we were involved in decision-making. That was really neat, but also very wearing. Because now you're involved in every decision and every meeting, and in a week you'd spend 10, 15 hours decision-making over something that you wish... In hindsight, I wish someone else had just made a decision. So funny that there was almost too much transparency and openness. I felt like maybe there should have been a balance. If you have a managing partner, and you have

---

<sup>434</sup> Associate 3, *supra* note 248.

<sup>435</sup> Partner 1, *supra* note 214; Associate 2, *supra* note 248.

<sup>436</sup> Associate 2, *supra* note 248.

<sup>437</sup> Partner 2A, *supra* note 214; Advisor 2, *supra* note 386; Associate 2, *supra* note 248; Associate 3, *supra* note 248.

<sup>438</sup> Staff 1, *supra* note 248; Partner 2A, *supra* note 214; Associate 3, *supra* note 248.

partners involved, at the end of the day, the buck does stop with them. And so on those debt issues and stuff, they should have put their foot down, I thought.<sup>439</sup>

Based on the varied views expressed by the interview participants, it is difficult to conclude that the decision-making model was a problem for the LLP.

## 6.4 Conclusions

Looking back to the causes identified by the partners after the LLP closed, I found support for some of their conclusions, but not for others. Here, again, are the partner-identified causes, with brief commentary:

1. Lack of distinct, independent management for LLP and PLS – while this may have been difficult, it is hard to understand this as a true cause. Certainly, some poor business decisions were made, and these decisions were no doubt complicated if the decision-makers were trying to promote the interests of both the LLP and PLS. However, without evidence of this conflict as a cause of the LLP's demise, it would be more accurate to say that poor business decisions by the LLP's management contributed to its demise.
2. Lack of effective business planning – the LLP benefited from significant business planning expertise, both at the outset and during its operation. It appears, however, that much of this planning advice was not helpful. Advice which focussed on how to develop paying clients, or more tailored advice for individual associates, might have been more helpful.

---

<sup>439</sup> Associate 3, *supra* note 248.

3. Branding problems – this appears to have been a problem for the LLP in developing paying clients. More research in how to attract clients would be valuable.
4. Lack of effective recruitment and retention strategies – the LLP appears to have made the mistake of hiring lawyers who did not want to practice. That, combined with the lack of effective practice support described below, seems to have contributed to high associate turnover, which in turn hurt efforts to cultivate clients.
5. Lack of mutual support between lawyers due to a lack of common areas of practice – this appears to have been a significant problem that tied in to lawyer retention and development.
6. Inefficiencies in practice management systems and support staff – this appears to have been a significant problem which reduced the LLP’s ability to cultivate paying clients.
7. Operating the LLP in the same space as PLS – the overhead costs of the LLP’s space may have played some role in its downfall. Also, the shared space created some client conflict problems on occasion.
8. Lack of senior counsel to attract clients and mentor lawyers – the LLP appears to have benefitted from the advice of senior counsel, and senior counsel were available to LLP lawyers by phone. Although there was no real criticism of the mentorship program from the interview participants, there is no substitute to having experienced lawyers in the same physical space as junior lawyers, so that the two can mix in a relatively informal way.<sup>440</sup> Also, the absence of experienced lawyers with existing clients was a problem for the LLP, as this limited its sources of revenue limited.

---

<sup>440</sup> Partner 2B, *supra* note 267.

9. Growing operating costs – The LLP made the mistake of taking on too many junior lawyers, too quickly. Rather than providing additional revenue needed to cover the LLP’s expenses, these associates often merely added to the expenses.<sup>441</sup>

Reflecting on the partner-identified problems and the other problems noted in this chapter, several general problems appear to underlie more specific problems. While this case study cannot ground conclusions about causal relationships between the LLP’s apparent problems and its ultimate downfall, it is possible to speculate about possible relationships based on analysis of the interviews and the LLP’s business records. Two general problems in particular stand out: lack of focus, and premature growth.

First, the LLP lacked focus. Not only were lawyers spread too thin among practice areas – a condition which led to morale problems, problems retaining support staff, and business development difficulties – but the LLP’s goals themselves were too diffuse. The LLP should have clearly focussed on either charging paying clients in order to support PLS financially, or providing legal services within its community in an affordable way. Additionally, the LLP tried to address too many issues at the same time – trying to abandon the law firm model to become a co-operative and implementing a consultative decision-making model while also pursuing its varied goals as a legal services firm. While some of these issues fit well together, the LLP tried to address too many at once, leading to unwieldy complexity and confusion. Clarity, simplicity and consistency in the LLP’s mission would have helped avoid confusion.

Second, the LLP grew too large, too fast. Rather than figuring out how to execute its business model with a limited number of people before growing, the LLP took on many new personnel

---

<sup>441</sup> Partner 4 Email, *supra* note 343.

almost from the outset. This was likely driven by early decisions about physical premises and business structure, but meant that the LLP could not easily refine its model. By the time the organization was learning from its mistakes, it was already overcommitted to its creditors and its numerous associates.

The downfall of the LLP was unfortunate, not only because it meant a lost funding source for the LLP and fewer legal services in the Downtown Eastside, but also because it seemed to signal that the LLP's new business model was not viable. But, as the next chapter illustrates, there are reasons to believe that the Pivot Legal LLP model could work.

## **7 COULD PIVOT LEGAL LLP WORK?**

The story of Pivot Legal LLP could be read as a daunting cautionary tale for anyone hoping to start a legal services business dedicated to improving access to legal services. The LLP was built by four very intelligent and dedicated lawyers, some of whom had already created a successful legal advocacy not-for-profit organization. It received significant early access to credit from well-established funders in Vancouver that were committed to ensuring the long-term success of the organization. It was able to leverage the existing investments of a sibling organization for operating necessities, particularly office space and office equipment. Its principals were well-known within the Vancouver legal community and also to key funders. The organization won an award as a promising social enterprise, having been evaluated by some key business minds in Vancouver. It had excellent access to business planning resources, and made use of these resources on a number of occasions.

If an organization like this ultimately failed, what hope is there for others?

In fact, there is reason for considerable hope. First, every single interview participant was asked if they thought that Pivot Legal LLP, or a similar business, could work if a few key changes were made based on the LLP's experiences. All answered in the affirmative. Second, some of the apparent advantages enjoyed by the LLP may actually have been hindrances, and understanding this could help future law firms avoid the same mistakes.

Bearing in mind the problems that the LLP experienced, noted in Chapter 6, these problems do not suggest that the LLP's business model failed. They do suggest several correctives, primarily

to tighten the focus of the organization and to resist pressure to grow until the organization has developed a sound financial foundation.

These points are reinforced by the interview participants' comments on how the LLP could have succeeded. In the words of one interview participant: "I think they needed to do what they originally did, which was keep it very limited. They needed to stick to their original practice areas, and make sure it was sustaining, and working, and making money, and thriving, before expanding into the other areas."<sup>442</sup>

Another interview participant voiced similar sentiments:

...I think if it started with a group of people who had similar ideas about what they wanted for it, and then have a real plan as to how to implement that. So, not just "we need to get clients", but how? What kind of clients? How are we going to do this? I guess just more planning around what the work is. But I don't think that I ever thought it was impossible to work... It's just it has to operate, has to function as a firm. You have to have things in place that would allow you to do the legal work, which I don't think we ever were able to put in place. And that's... Some of that was just inexperience. People not knowing what is needed.<sup>443</sup>

One of the partners indicated that the LLP had provided valuable experience, and was optimistic that the firm could have been very successful if it had avoided some mistakes:

I think by the end we had figured it out. By the end we had a small number of lawyers, we had some firm, core clients who came regularly and were able to pay, and we had stopped taking crappy cases - we knew what a crappy case was and what a good case was, in terms of the ability to keep our doors open - but by then our debt servicing costs were so high that we were unable to stay above water. We had such incredible overhead that there was just no way to succeed. So that's why [another firm formed by two of the former LLP partners], I think, has been successful, because it took the learnings from the LLP. And I think that... I know that if we had a hundred thousand dollars, paid off all our debt and - just won it in

---

<sup>442</sup> Associate 3, *supra* note 248.

<sup>443</sup> Associate 2, *supra* note 248.

a lottery let's say - that the firm would still be going, and would be very successful.<sup>444</sup>

These comments suggest that a law firm similar to the LLP could succeed. Perhaps more important than the comments, two of the former partners and one former associate *were* successful in creating two viable, stand-alone legal practices after the demise of the LLP.<sup>445</sup> In each of these cases, the lawyers set up their new firms to either donate profits to PLS or to engage in significant amounts of pro bono or reduced-fee representation for clients who otherwise could not afford legal services. But in both cases, these new firms were much more disciplined than the LLP was initially.

In both cases, the new firms found reliable support staff, focussed on limited practice areas, and controlled their access to justice work by *either* charging commercially competitive rates and donating some profits to PLS *or* focussing on charging lower rates for members of the public who could not afford legal services. Not both. These lawyers learned lessons from the LLP experience.

These examples suggest that it is possible to create a successful law firm that focusses on social justice lawyering or improving access to legal services. These examples also suggest, however, that lawyers who create these firms will have to make strategic and perhaps difficult choices about how to be financially viable: for example, choosing to embrace low fee legal services instead of hoping to fund an organization like PLS, or vice-versa.

Lawyers in such firms may also have to define “success” differently than lawyers in most law firms or businesses. Success for those lawyers will be measured by whether the firm improves

---

<sup>444</sup> Partner 1, *supra* note 214.

<sup>445</sup> Partner 2A, *supra* note 214; Partner 3, *supra* note 214; Associate 2, *supra* note 248.

access to legal services, rather than by the firm's profitability for its partners. But as discussed in the following section and noted in section 4.1.4, research suggests that the extrinsic motivator of monetary compensation does not lead to satisfied lawyers. Instead, by paying more modest salaries but creating an enviable work environment built around a mandate to improve access to legal services, law firms might lower their overhead costs, thereby allowing them to provide legal services at reduced rates. Other firms might choose a different balance, such as higher salaries but less focus on improving access. Creating law firms which explore how such business models could work could be an important component of innovation in delivering legal services to improve access to justice.

## 7.1 Motivating Lawyers

Several interview participants noted that many law firms do work to promote socially beneficial causes such as access to justice, but that relatively few of these firms identify this aspect publically or prominently.<sup>446</sup> Engaging in a direct conversation with lawyers about not only the need to improve access to civil legal services, but *how* individual lawyers can help improve access, is an important way to encourage innovation in delivering legal services.

Luz Herrera, for example, has argued for more U.S. lawyers to adopt a “low bono” approach to providing legal services.<sup>447</sup> Herrera describes this approach as follows:

‘Low bono’ is the most popular term used to describe discounted-rate arrangements between attorneys and clients, particularly those clients who are underrepresented. ‘Low bono’ arrangements consider the financial constraints of those who seek representation and the attorneys who must charge fees to sustain their own livelihood. Individuals who are unable to obtain free legal services but

---

<sup>446</sup> Partner 3, *supra* note 214; Associate 2, *supra* note 248.

<sup>447</sup> Herrera, *supra* note 2 at 6-7.

who cannot pay market rates, and attorneys who depend on paying clients for their livelihood both benefit from such arrangements.<sup>448</sup>

Herrera argues that the legal profession has an obligation to address lack of access, and that pro bono models do not sufficiently address the problem. To meet this need, she advocates a more inclusive focus by encouraging service providers to shift to a low bono model of providing services at affordable rates to low and middle income persons. In addition to suggesting that “legal services leaders” expand their approach by including affordable services, she also notes that “Main Street lawyers”, who have historically made up the largest sector of the private bar, must be deliberately integrated into this process.<sup>449</sup>

There are also supply-side reasons to suppose that the time is right for new approaches to law firm business models. In terms of career advancement in the legal profession, some have noted that “money and the golden ring of partnership are not the motivators they once were”.<sup>450</sup>

Seligman et al. summarize the problem, and allude to possible solutions, succinctly:

The pervasive disenchantment among lawyers and the concomitant attrition rate among law firms can be remedied. The solutions will be found not by increasing compensation or perks, but instead by using more valuable, but less tangible rewards. This will require changes in law firm culture - greater emphasis on positive-sum games and cooperation - as well as reforms at three levels: individual, firm-wide, and institutional. . . . At the law firm level, those members with the most power to effect change should actively participate in creating more decision latitude for junior associates. At the least, partners should create mentoring relationships with junior associates. They should also delegate responsibilities and allocate tasks to junior associates that better speak to their signature strengths, thereby providing more control and decision-making power at an earlier stage in their development.<sup>451</sup>

---

<sup>448</sup> *Ibid* at 39-40.

<sup>449</sup> *Ibid* at 6.

<sup>450</sup> Wallace, *supra* note 219 at 139.

<sup>451</sup> Seligman, Verkuil & Kang, *supra* note 251 at 65-66.

Dinovitzer and Garth have suggested that U.S. law firms could increase associate retention and improve career satisfaction by paying lower salaries, but providing better working conditions, mentorship, evaluation, and development.<sup>452</sup> As they explain:

If firms lower pay but keep the same misery and engineered attrition for associates, they will get a short-term profit boost. But if lower pay also means a better lifestyle, more instruction and responsibility, and better evaluation, firms can lay the groundwork for success well beyond the end of the current recession.<sup>453</sup>

Paying attention to how to motivate lawyers is of key importance to any public-focussed law firm. For example, while interview participants noted the attraction of the LLP as a work place, that attractiveness was predicated on how well it lived up to its promise of doing law differently.

As one interview participant commented:

That was another idea that was going around a lot, was the idea that this is a different kind of place to work. So we were creating a law community that has certain kinds of values ... I felt, nearer to the end, that I wasn't so sure about that. I wasn't so sure that there weren't other places where people, where lawyers, held similar values. That it wasn't such a unique place. In fact, it may have just been a difficult place to do the work. That was near the end.<sup>454</sup>

This comment illustrates the importance of the firm functioning as a sustainable business, so that it can deliver on its promises to its employees. Importantly, those promises need not include the highest salary. The LLP tacitly worked on the premise that lawyers would be willing to work for a lower than market salary, provided that they could do more meaningful work. As one of the partners explained:

---

<sup>452</sup> Ronit Dinovitzer & Bryant Garth, "Getting at the Cause of Dissatisfaction" (2010) 10:4 Compensation & Benefits for Law Offices 1.

<sup>453</sup> *Ibid* at 10.

<sup>454</sup> Associate 2, *supra* note 248.

One of the key ideas behind the employment – because we were all in that scenario - was that lawyers would give up some portion of their salary in order to do more meaningful work. And so sure you would only be making \$60,000. But you would be working on cases that were going to the Supreme Court of Canada on drug user rights like Insite, or whatever. So that would make up for whatever you were giving up in terms of having a bigger place, or whatever...<sup>455</sup>

This approach appears to have been successful. As one interview participant, who had moved on to private practice, described the role of money as a motivator:

Even here, doing private practice, I still don't earn a high salary. ... So that's not a motivator. The motivation is I really think it's important work that has to be done. And I generally like my clients, and I think I'm good at it, so that motivates me. And because I think that I can contribute. Sometimes it can be difficult. I still feel lucky. In my work there's always something changing. There is always something new. I get to meet people that I otherwise don't think I would ever get to know, just the way our society is, I don't think I would ever get to know them. So it's interesting to just know about things that I wouldn't otherwise. So I'm always learning in that sense."<sup>456</sup>

Dinovitzer and Garth note that factors that have been found to increase work satisfaction include control over decision making, and mentoring.<sup>457</sup> Seligman et al. also suggest that law firms can provide lawyers with more personal control over their days and their work schedules.<sup>458</sup> On this, they suggest that "[a]ntidotes to associate malaise include more substantive training, mentoring, a voice in management, and earlier client contact - not expensive dinners or Cuban cigars. Those firms who understand the need to make these changes will benefit."<sup>459</sup>

Wallace explains the importance of intrinsic factors to workplace commitment as follows:

It appears that when lawyers' work is sufficiently challenging and serviced oriented, while not overly demanding or conflicting with their nonwork life,

---

<sup>455</sup> Partner 1, *supra* note 214.

<sup>456</sup> *Ibid.*

<sup>457</sup> Dinovitzer & Garth, *supra* note 452 at 7-8.

<sup>458</sup> Seligman, Verkuil & Kang, *supra* note 251 at 58.

<sup>459</sup> *Ibid.*

lawyers are more satisfied with and committed to the practice of law. In addition, the results from the interviews with ex-lawyers suggested that they felt law school had not adequately prepared them for the practice of law and they felt there was a considerable incongruence between what they expected from practicing law and what they actually experienced. The results from testing the model with survey data show that lawyers are more satisfied and committed if earlier on in their career they formed realistic expectations of the practice of law. This factor has been largely neglected in both streams of publications on lawyers' work attitudes.<sup>460</sup>

Hagan and Kay note that existing research suggests that improving professional fulfilment is a function of several workplace factors:

Research identifies several conditions that are likely to yield professional fulfillment (and organizational commitment): tasks that individuals view as challenging and rewarding; a degree of autonomy and control over work; sufficient time for personal, public service, and family commitments; and supportive, collegial work environments.<sup>461</sup>

These conclusions appear to build on theories of motivation that have recently begun migrating into business practices. Author Daniel Pink argues that there is a gap between motivation theory and practice.<sup>462</sup> He cites extensive psychological and social science research in support of his suggestion that motivation has been poorly understood by the business community. He suggests a new approach that has three essential elements: autonomy; mastery; and purpose. Pink suggests that extrinsic motivation (e.g. monetary compensation, praise, etc.) often actually inhibits creative work.<sup>463</sup>

Echoing the importance of autonomy, one of the LLP partners noted the effect of autonomy at the LLP:

---

<sup>460</sup> Wallace, *supra* note 219 at 138.

<sup>461</sup> John Hagan & Fiona Kay, "The Masculine Mystique: Living Large from Law School to Later Life" (2010) 25:2 CJLS 195 at 225.

<sup>462</sup> Pink, *supra* note 268.

<sup>463</sup> *Ibid* at 203.

People were very autonomous, which created its own problems, but it does also have its own advantages. You don't have someone standing over you all the time telling you how to practice, which nobody really likes. I'm sure that some people do, but they must be in the minority.<sup>464</sup>

All of this suggests not only that the LLP model is viable, with some modifications, but also suggests how that model could improve lawyer motivation and career satisfaction. A law firm focussed on developing a collegial workplace, doing socially-meaningful work to improve access to legal services, providing lawyers with some work autonomy and time flexibility, and providing good mentorship opportunities to young lawyers might be able to attract and retain lawyers without promising them an industry-leading salary. The following chapter details some further lessons for law firms, based on the experiences of the LLP.

---

<sup>464</sup> Partner 2B, *supra* note 267.

## 8 A TOOLBOX FOR LEGAL ENTREPRENEURS

Having established why there is need for law firms like Pivot Legal LLP, this chapter offers suggestions on *how* to make those firms successful. These suggestions are presented as tools – based on the case study research of this thesis but also on research in employee motivation discussed in the previous chapter – to be used by those setting up innovative law firms in the future. The 11 tools set out in this chapter discuss the following issues: focus, recruiting, income stream, support staff, mentorship, keeping overhead low, using existing work forms, location, branding, decision-making models, and sources of business.

### 8.1 Focus

Lack of focus seems to have been a driving force behind several other problems for the LLP. There are several aspects of this lack of focus problem. For individuals, this means recognizing that running a law firm is a significant time investment, and requires considerable amounts of work, particularly in the early stages. At an organizational level, this means committing to a relatively narrow band of services in which lawyers already possess some expertise. While this focus may grow over time, it seems prudent to do so only slowly, and to wait for demand to exceed the firm's capacity before expanding. Also, deciding on a single – rather than composite – business model will help a firm decide where to focus its business generation efforts. If, for example, a firm hopes to generate profits for an advocacy arm by doing legal work, it will be important to ensure that it develops a reputation for legal excellence. This can be done only through experience, including work with experienced and successful lawyers.<sup>465</sup> If, however, a firm chooses to deliver legal services at rates lower than those generally available, that firm

---

<sup>465</sup> Partner 3, *supra* note 214; Advisor 2, *supra* note 386; Partner 4, *supra* note 217; Partner 1, *supra* note 214; Advisor 1, *supra* note 294.

should build its profile among potential clients who may be looking for legal services for relatively important problems, but who may be dissuaded from retaining counsel because of perceptions of legal cost or for other reasons.<sup>466</sup>

One partner expressed this problem in terms of the market problems that the LLP experienced because of its lack of focus:

I think if the LLP had... a narrower focus on like 2 to 3 areas of law and also a particular market... We also tried to cross between this... you know, “we represent middle-class people who can’t afford big firm retainers” and “we’re there for poor people who are on legal aid” and so our marketing was kind of all over the place. So I think we needed to get clear on our areas of practice, and more focussed on our areas of practice, and we needed to get clear on who our target market was. And maybe our market was going to be we’re going to do solicitor’s work for progressive companies, non-profits and charities, we’re going to do more affordable family law and maybe wills and estates. Like you can see who your market is and you can see how all those things lead to each other. For example you’ve got your business client who is divorced and wants their will changed, you know? Like you can see all the different sections. Or you decide you’re going to do criminal, immigration, and whatever. You have to kind of have both connections in terms of how the practice works and what you do in your day as well as the possibility for cross referral and all that stuff.<sup>467</sup>

By creating a more focussed organization, the LLP might have been able to better tailor its expenses to the imperatives of its desired market segment.

## **8.2 Recruiting**

It is important to ensure that those working for the firm are interested in practicing law. As one lawyer noted, this became a problem for the LLP: “I knew that we needed people who enjoyed

---

<sup>466</sup> Partner 1, *supra* note 214; Partner 3, *supra* note 214; Pleasence & Balmer, *supra* note 154; Genn, *supra* note 153.

<sup>467</sup> Partner 3, *supra* note 214.

doing legal work, because if you didn't, then this isn't your... It's not going to make any difference.”<sup>468</sup>

Accordingly, the LLP might have benefitted from a more selective hiring process that focussed on recruiting employees who were interested in practicing law and would create a supportive, collegial environment. While it would also have been good to have employees with existing business or a strong interest in developing paying clients, those qualities should not overwhelm the importance of a collegial work environment, which seems to contribute significantly to work satisfaction.

### **8.3 Establish A Steady Income Stream**

While this is obviously easier said than done, establishing a steady income stream is an element whose importance cannot be overstated.<sup>469</sup> One of the partners noted: “Maybe build a firm around a couple of lawyers who have practices, rather than trying to build it up from scratch.”<sup>470</sup>

How to do this will likely vary depending on the firm's market segment. For a firm focussing on providing low cost services in a community setting, it might be possible for that firm to quickly cultivate paying clients so long as its lawyers are able to work enough to generate sufficient revenues. In this case, young lawyers with minimal experience might be effective. For other market segments, it is important that lawyers have existing, paying clients. This could be accomplished by recruiting senior lawyers, perhaps those who are close to or have recently retired, who could bring some clients and business development expertise to the firm.

---

<sup>468</sup> Associate 2, *supra* note 248.

<sup>469</sup> Advisor 2, *supra* note 386; Associate 2, *supra* note 248; Partner 1, *supra* note 214; Associate 3, *supra* note 248.

<sup>470</sup> Partner 4, *supra* note 217.

## 8.4 Support Staff

There was a widespread perception that the LLP should have invested in more support staff – both administrative support and accounting support.<sup>471</sup> This suggestion should be read with the “focus” suggestion, since one of the attributes of the LLP that made it difficult to develop appropriate administrative support was the lack of overlap between lawyers’ practice areas. One partner suggested that the most important aspect of hiring good support staff is salary; this appears to be somewhat contradicted by another interview participant who was support staff, and described the attraction of the LLP not in terms of salary but in terms of the non-hierarchical and consultative model employed by the LLP.<sup>472</sup> That interview participant also suggested that a good legal administrator might be enticed to work for a firm that recruited a semi-retired or retired lawyer.<sup>473</sup>

## 8.5 Mentorship

Building on the idea of recruiting senior lawyers, mentorship has recently been identified as an important aspect of lawyer career development and can have a positive effect on career satisfaction.<sup>474</sup> Interview participants identified important mentorship qualities as being “willing to help out” and being able “to treat others as equals”.<sup>475</sup> As one advisor, who had acted as a mentor, put it:

...the critical thing for a relationship to work at all is for people to treat each other as equals. I'm not there to sit in judgment on what they're doing. I'm not higher than they are. We're all trying to do the same thing. ... I've been through the

---

<sup>471</sup> *Ibid.*

<sup>472</sup> *Ibid*; Staff 1, *supra* note 248.

<sup>473</sup> *Ibid.*

<sup>474</sup> Wallace & Kay, *supra* note 261; Dinovitzer et al, *supra* note 270 at 80.

<sup>475</sup> Advisor 1, *supra* note 294.

campaigns more than they have, so I can offer something there, but I don't offer it as I'm better than you. And so the first things that mentors have to be willing to accept is that they are there to help, and not to issue edicts from on high. ... One of the problems with litigators, or anybody who has to make decisions on their feet that have big consequences... is that it takes a strong ego to be able to do that. And so one of the problems with these types of people is that their egos can get away on them. ... for mentoring, in this kind of situation you have to put your ego on the shelf. And you have to remember that you once were wet behind the ears as well, and have the respect for these people that they're trying to do things...<sup>476</sup>

This was echoed by one of the lawyers who has benefited from mentorship relationships.<sup>477</sup>

Other important aspects of mentorship that were mentioned by interview participants include: ample experience, similar practice area, and ability to meet with mentees face-to-face in an environment conducive to relatively informal conversation.<sup>478</sup> On this last point, face-to-face meeting seems particularly important early in the relationship, since some lawyers described useful mentorship discussions by phone or email. However, in both of these cases, those relationships were not created by phone or by email.<sup>479</sup> One advisor described a set-up that seems like an excellent idea for any firm with a senior lawyer and one or more junior lawyers:

...what we did, and this wasn't by design, it just happened, was every day pretty much at the end of the day we would end up in someone's office - usually [the most senior lawyer's] because it was the biggest. And we'd just chew around cases, just yakking about cases... well the three of us would just chew stuff around. Nothing specifically directed or anything, but the value of those sessions was huge, and the value to the clients was huge. And we had a practice, when you got three people talking – and it really was billable because you're talking about some file – we would only bill the senior person. The other two we'd record their time but not bill for it.<sup>480</sup>

---

<sup>476</sup> *Ibid.*

<sup>477</sup> Associate 3, *supra* note 248.

<sup>478</sup> Associate 3, *supra* note 248; Advisor 1, *supra* note 294; Partner 2A, *supra* note 214; Associate 2, *supra* note 248.

<sup>479</sup> Associate 3, *supra* note 248; Associate 2, *supra* note 248.

<sup>480</sup> Advisor 1, *supra* note 294.

Another interview participant offered a very promising suggestion to help set up a new firm which includes someone with significant legal experience:

I think what would be ideal would've been a semiretired lawyer, or a retired lawyer, that now had enough money and enough experience in working for a profitable law firm, to head up that, and to not care whether they got paid, but cared deeply about the cause. ... There were some law firms that other lawyers were going to, where these senior lawyers were getting ready to retire. They had all the money they ever needed, but they did care what Pivot was doing. So I would suggest that finding someone like that. And I bet they're there.<sup>481</sup>

This strategy, of recruiting senior counsel, offers several potential benefits. In addition to mentorship opportunities, the senior lawyer might bring clients to the firm to help establish a revenue stream, as discussed above. Certainly, the senior lawyer would bring experience in finding and cultivating clients, and experience in law firm organization. This arrangement would offer the senior lawyer the opportunity to pass on knowledge and to act as a teacher to young and energetic lawyers. This arrangement could prove rewarding for both young and more senior lawyers.

## **8.6 Keep Overhead Low**

This was a key factor noted by one of the partners, whose current practice has flourished.<sup>482</sup> One potential way to deal with office space was mentioned by an advisor, who suggested that some law firms undoubtedly have space – such as meeting rooms – that are not always used. The advisor opined that a number of law firms would be willing to provide this space to a law firm devoted to improving access, so long as reasonable advance notice is given.<sup>483</sup>

---

<sup>481</sup> Staff 1, *supra* note 248.

<sup>482</sup> Partner 2A, *supra* note 214.

<sup>483</sup> Advisor 1, *supra* note 294.

## 8.7 Don't Reinvent the Wheel

Several interview participants noted that the LLP tried to create new ways of doing things all at once.<sup>484</sup> While one of the LLP's goals was to do law differently from other firms, it likely overburdened itself with the number and scope of changes. One advisor described this in the following terms:

They created a huge number of obstacles to success and that's not the smartest way to reach success. ...let me say what could have happened. Forget the equal decision-making. Let there be partners. Use some things that have been tried and true. First let's start with "we are a social justice focussed law firm, we are going to create a profit stream that goes towards advocacy work." Awesome. There is the anchor. Now how do we build a smart system around it? Now I'm with you.<sup>485</sup>

Further, the LLP was left in a position of having to come up with solutions on the fly. While there is certainly room for firm innovation, it is important to constrain the scope of innovation and situate that innovation alongside some tried and proven approaches. In other words, pick your battles, and fight them one at a time.

## 8.8 Location

While the LLP existed within the context of the Downtown Eastside, several partners suggested that it would have been a good idea to have moved to another community to separate the LLP from PLS.<sup>486</sup> Practice areas should also influence location – one partner suggested that location in or near the city's business district can be important to develop and maintain connections with other lawyers and possible clients.<sup>487</sup> Similarly, a practice that requires a community profile and obtains business from within a community should likely be located prominently in, and

---

<sup>484</sup> Partner 3, *supra* note 214; Staff 1, *supra* note 248.

<sup>485</sup> Advisor 2, *supra* note 386.

<sup>486</sup> Partner 3, *supra* note 214; Partner 4, *supra* note 217.

<sup>487</sup> Partner 2B, *supra* note 267.

accessible to, that community. Finally, one advisor suggested that a model similar to the LLP's could function outside of an urban centre, provided that the firm develops a revenue base and designs its practice profile accordingly: "...you could be in Kamloops or a smaller centre and still be doing good. Just it's not going to be 90% of your practice, but it will be a portion of your practice, and if you could keep your overhead down, you would still be able to do okay in terms of income."<sup>488</sup> This suggestion is promising, given the need for legal services outside of large urban centres.<sup>489</sup>

## 8.9 Branding

Although the LLP suffered from branding confusion, interview participants supported the notion that a law firm that branded itself as an "ethical" firm – one that was committed to supporting access to justice, for example – would attract some clients to that brand. In the words of one partner, whose current firm operates successfully as an ethically-branded law firm:

I mean this firm [the partner's current firm] has a commitment to donating a portion of its profits every year to Pivot but we just don't have Pivot in our name. But we have clients who find that attractive. And we have clients who come to us because they like some of the pro bono, values-driven work that the partners of the firm do. So I think that's definitely attractive to people. But we don't have the same name so we avoid that confusion.<sup>490</sup>

In doing so, as already mentioned, it is important to ensure that this branding approach fits with the firm's chosen market segment. Understanding how different types of clients choose legal services would be useful.

---

<sup>488</sup> Advisor 1, *supra* note 294.

<sup>489</sup> See e.g. "REAL Initiative in Full Swing", (2012) online: Law Society of British Columbia <<http://www.lawsociety.bc.ca/page.cfm?cid=2505&t=REAL-initiative-in-full-swing>>; Law Foundation of Ontario, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services* by Karen Cohl and George Thomson (Toronto: Law Foundation of Ontario, 2008) at 34.

<sup>490</sup> Partner 2A, *supra* note 214.

## 8.10 Decision-making Model

Although some cited the detailed nature of the LLP's decision-making model as a problem, those interview participants also, paradoxically, indicated that the consultative, non-hierarchical nature of the firm was one of its big attractions.<sup>491</sup> Further, this aspect of the firm was cited as important with respect to attracting and maintaining support staff<sup>492</sup>.

## 8.11 Sources of Business

A steady stream of business can provide important stability early in a firm's existence. In addition to the obvious financial benefit of a paying client, this also allows the firm to develop its reputation for doing work of a quality that can attract other clients. One partner explained the benefit of core clients in the following way:

In hindsight I would definitely have said one of the things you need to run a legal practice is either a core group of clients that is returning, or one good core client that is funding an ongoing piece of work for you. And if you don't have that central piece, you're going to be hustling and marketing all the time, and you're not going to be lawyering as much as you're going to be trying to sell your legal services to everybody.<sup>493</sup>

Recognizing the importance of a steady stream of business for the viability of a law firm, here is a list of potentially useful sources of business, derived from the interviews: 1) referrals; 2) avoiding contingency cases; 3) profile-building; 4) contract work; 5) establishing work relationships with sympathetic organizations; 6) identifying and planning for market niches; and 7) client surveys.

---

<sup>491</sup> *Ibid*; Associate 3, *supra* note 248.

<sup>492</sup> Staff 1, *supra* note 248.

<sup>493</sup> Partner 1, *supra* note 214.

### **8.11.1 Referrals**

This is theoretically an easy source of income, but one that was more difficult for the LLP to realize than expected. Several partners admitted that the LLP would have benefitted from more referrals.<sup>494</sup> One interview participant suggested that the LLP could have been more successful if it had made more effort to build its profile within the bar, particularly among plaintiff-side personal injury lawyers.<sup>495</sup> The logic behind this particular type of practice is that in many motor vehicle cases with both driver and passenger injuries, the passenger will have to sue the owner of the vehicle in order to trigger insurance. Since a plaintiff-side firm would be conflicted out of acting for both driver and passenger, this creates an opportunity for a referral – to the LLP.<sup>496</sup>

### **8.11.2 Avoid Contingency Cases**

While contingency files are sometimes considered ways to improve access to justice (since clients do not pay ongoing fees or disbursements up front), they are difficult or impossible for firms to run effectively until those firms have both the capital to cover necessary disbursements (often measured in tens of thousands of dollars – or more – for medical negligence cases) and the experience to understand how to run those cases well (and to decide early whether a case is likely to be successful or not).<sup>497</sup>

### **8.11.3 Profile Building**

Although marketing was cited as a potential waste of the LLP's money, there are other ways to raise a firm's profile. This suggestion can tie in with the idea of developing more referrals from

---

<sup>494</sup> Partner 4, *supra* note 217; Partner 1, *supra* note 214; Partner 2B, *supra* note 267.

<sup>495</sup> Advisor 1, *supra* note 294.

<sup>496</sup> *Ibid.*

<sup>497</sup> *Ibid.*; Partner 1, *supra* note 214.

other lawyers. One advisor suggested forming connections with local media outlets, offering to provide commentary on legal topics on a regular basis.<sup>498</sup> If successful, this can help build a firm's profile among potential clients. While it may seem obvious, it is important to understand that different types of legal work may require different profile-building efforts. For example, obtaining referrals from other lawyers may require building connections within the legal community, but with lawyers in slightly different practice areas who will refer work without worrying that a referral may lead to loss of a client.<sup>499</sup> Solicitor work appeared to come almost exclusively from referrals. Also, the LLP had success in generating immigration law business from developing good contacts within immigrant service non-profits in the Vancouver area.<sup>500</sup> Describing what would make an attractive firm, one LLP advisor, who has considerable experience hiring lawyers and law firms, commented: "I think the feeling would be, well, show me a fantastic partnership that wants to do law, that cares about the issues I care about, and I'll see if I can do some business there, refer people... But it's not going to be the big kahuna on the first try."<sup>501</sup> This speaks to the need to build a reputation for doing high quality legal work.

#### **8.11.4 Contract Work for Experienced Lawyers**

One of the LLP's partners described the best, and best-paying, work acting as a junior for a senior lawyer on a large file.<sup>502</sup> This obviously depends on the existence of senior lawyers who need juniors and cannot find them within their own firm.

---

<sup>498</sup> Advisor 1, *supra* note 294.

<sup>499</sup> Partner 4, *supra* note 217; Partner 2B, *supra* note 267.

<sup>500</sup> Partner 4, *supra* note 217.

<sup>501</sup> Advisor 2, *supra* note 386.

<sup>502</sup> Partner 1, *supra* note 214.

### 8.11.5 Work for Sympathetic Organizations

After some initial difficulty, the LLP was able to obtain work from at least one union. This proved to be a reliable source of income for the LLP.<sup>503</sup>

### 8.11.6 Identify Market Niches and Plan Accordingly

The LLP struggled by trying to be too many things to too many people: part neighbourhood law firm, part ethical firm marketed to savvy consumers of legal services. However, these market niches actually undermined each other, as noted above in section 6.1.3. As one partner observed:

[Most clients] can't tell if their lawyer is a whole lot better than somebody else's lawyer. Some sophisticated clients can. In-house counsel can sometimes. But it's not always that easy to tell. So if you try to run a low-cost law firm, the problem you'll run into is that some people believe that you must be bad lawyers if you're not expensive lawyers. As a friend of mine who is a partner at a law firm says "nobody who charges under \$300 an hour can be any good –it's not possible."<sup>504</sup>

It is important to understand what features of a law firm will move clients in that market segment to the law firm. While low fees may be a good strategy for a firm trying to build a profile within a low- or middle-income neighbourhood, that strategy may be antithetical to the success of a law firm which seeks sophisticated, paying clients. Ultimately, this means that a law firm seeking to improve access to legal services will have to recognize that it cannot solve all access problems at once. Instead, it will have to choose a financially viable business model which will allow it to improve access, even if this means more measured improvements than some would want. This might be a difficult choice, but it is one better made up front than when faced with insolvency.

---

<sup>503</sup> *Ibid.*

<sup>504</sup> Partner 2A, *supra* note 214.

### 8.11.7 Survey Clients

Although the LLP conducted a market survey that led them to understand what other lawyers were charging, they did not take steps to understand what their potential clients wanted. Indeed, it is surprising that relatively little academic work has been done to understand why and how individuals (or organizations) choose lawyers.<sup>505</sup>

---

<sup>505</sup> Sandefur, *supra* note 172 at 232.

## 9 FURTHER STEPS

This thesis has shed some light on how Pivot Legal LLP functioned. I have argued that the LLP's business model could be successfully revived and replicated elsewhere. This research has also, however, raised a number of ancillary questions that it was not possible to address in this thesis. In this chapter, I will briefly outline some of these additional questions that might lend themselves to further research.

All of the interview participants commented on the “types” of lawyers who worked at, or were attracted to, the LLP. This may be a further, fertile ground for research, to either understand the interplay between personality traits and decisions about the practice of law, or the interplay between lawyers' values and their practice profiles. There is also the associated, but separate, issue of how perceptions of “culture” may affect different types of legal practice. A number of partners described the difference between a “not-for-profit culture” and a “law firm culture”. In the words of one partner:

It's a totally different deal for the non-profit sector. You put a whole bunch of stuff out there and wait for grants. The grants come in these big chunks and lumps and then you do whatever you can with them and then in the end of the lumps of money, if it all runs out and you've got nothing left and nothing else coming in, well, I guess your non-profit's done. And it's just a really different phenomenon and you go out in the world and then you ask to be rescued sometimes if you're doing all this good work and it's valuable. And it's just a different mentality than the business world. It's got a different kind of bottom-line: if no one's buying your widgets, no one buying. It's just a reality and that reality is really clear every single month. Whereas in the non-profit sector, you're riding these huge waves and I don't know... I think it's something really interesting, this social enterprise perspective about what people in the non-profit sector need to learn and understand before they can venture into the business side. And we were part of a

lot of those conversations and we've been able to continue those with [a progressive financial institution] and other people like that.<sup>506</sup>

Another interesting area for further study is the interplay between law firms and emerging business models. Building on the comment above, one of the partners noted that the LLP evolved alongside several other social enterprise ventures in Vancouver, and suggested that social entrepreneurship remains an evolving field:

I think that there's a really interesting social enterprise community in Vancouver and we were part of a couple of years where a lot of enterprises went down. I think four major social enterprises in Vancouver folded and so I think that in and of itself is a business model that is like an emerging business model still and one people are really working on and trying to figure out”<sup>507</sup>

The question of how clients choose lawyers is another significant unanswered question. This topic was raised by six interview participants, but was largely speculative. A better, client-based understanding of how clients *actually* choose lawyers in different situations would be valuable, both for firms seeking to improve their client development tactics, but also to understand how individuals and organizations act when faced with legal problems.

More broadly, this research may point to the need for cultural change within the legal profession, to prioritize improving access to legal services over comfortable lifestyles for many lawyers.

Several interview participants indicated that practicing law at Pivot Legal LLP required lawyers

---

<sup>506</sup> Partner 3, *supra* note 214.

<sup>507</sup> *Ibid.*

to make choices about the type of lifestyle they wanted.<sup>508</sup> This issue may be tied up with questions about how lawyers are educated – an area that is a fertile ground of academic work.<sup>509</sup>

Finally, thinking about how business models may improve access to legal services provokes deeper reflection about how the legal marketplace is structured. Legal scholar Gillian Hadfield has written recently about how little information is available about the structure of the legal marketplace for individuals in the U.S.<sup>510</sup> Recently, Professor Sujit Choudhry, Professor Michael Trebilcock and James Wilson have elaborated a suggestion for widespread public legal expenses insurance in Ontario.<sup>511</sup> This is an intriguing proposal. Further work on market restructuring, perhaps including comparative study with the medical profession, would be valuable.

---

<sup>508</sup> Advisor 2, *supra* note 386; Associate 3, *supra* note 248; Staff 1, *supra* note 248; Associate 2, *supra* note 248; Partner 1, *supra* note 214.

<sup>509</sup> See e.g. Seligman, Verkuil & Kang, *supra* note 251 at 65; Gillian K Hadfield, “Equipping the Garage Guys in Law” (2011) 70 Md L Rev 484; Gillian K Hadfield, “Legal Barriers to Innovation: The Growing Economic Cost of Professional Control over Corporate Legal Markets” (2008) 60 Stan L Rev 1689 at 1720-1722.

<sup>510</sup> Hadfield, *supra* note 399.

<sup>511</sup> Choudhry, Trebilcock & Wilson, *supra* note 148.

## 10 CONCLUSION

In this thesis, I have suggested that a law firm that is designed not around maximizing profits for partners, but around providing legal services to priced-out citizens, or to advance social justice causes, might hold promise alongside other projects to improve access. By taking steps to improve career satisfaction, law firms could improve retention rates while lowering their personnel costs, thereby enabling them to provide legal services at reduced rates.

The research in this thesis does not offer definitive proof that innovative law firms which address unmet legal need will succeed, but the case study of Pivot Legal LLP is suggestive. This research sets out two problems which might drive change in legal service delivery, and outlines some lessons from the experience of Pivot Legal LLP to show how that change could happen. Unmet civil legal need is pervasive in British Columbia, as it is across Canada. Lawyers – and young lawyers in particular – appear ready for innovative approaches to the practice of law.

Dinovitzer and Garth have suggested that law firms should seriously consider fundamental changes to how they attract and retain lawyers:

A bold solution [to lawyer attrition] would be to radically improve the lifestyle of associates, encourage them to stay, and cope with the potential lower attrition rate by better mentorship and evaluation processes... an improvement in lifestyle would have to come with a reduction in associate pay... But if lower pay also means a better lifestyle, more instruction and responsibility, and better evaluation, firms can lay the groundwork for success well beyond the end of the current recession.<sup>512</sup>

Pivot Legal LLP was on to something when they started in Vancouver's Downtown Eastside in 2006. Although the firm lasted only four years, those involved remain optimistic about the long-

---

<sup>512</sup> Dinovitzer & Garth, *supra* note 252 at 10.

term viability of a similarly-structured firm. The Pivot Legal LLP experience provided valuable lessons to the staff and lawyers involved about how to run a successful law firm. In this thesis, I have tried to uncover some of those key lessons and share them with a wide audience.

Hopefully, some will take these lessons and use them to create new and sustainable law firms dedicated to improving access to legal services.

Though Pivot Legal LLP is no longer in operation, it did not fail in demonstrating that there are innovative and exciting ways to practice law. In the words of one advisor: “Something not working is not failure. Failure of imagination, failure of values, failure of integrity – those are failure. But failure of an innovative, bold business idea?”<sup>513</sup> This is a call for lawyers to engage their imaginations.

---

<sup>513</sup> Advisor 2, *supra* note 386.

## BIBLIOGRAPHY

### LEGISLATION

*Access to Justice Act 1999* (UK), 1999, c 22.

Bill 44, *Civil Resolution Tribunal Act*, 4th Sess, 39th Leg, British Columbia, 2012 (assented to 31 May 2012).

*Economic Opportunity Act of 1964*, Pub L No 88-452, 78 Stat 508.

*Legal Aid Act 1988* (UK), 1988, c 34.

*Legal Aid and Advice Act*, 1949 (UK), 12, 13 & 14 Geo VI, c 51.

*Legal Aid Services Act, 1998*, SO 1998, c 26.

*Poor Prisoners' Defence Act*, 1903 (UK), 3 Edw VII, c 38.

*The Legal Aid Act, 1966*, SO 1966, c 80.

### JURISPRUDENCE

*British Columbia (AG) v Christie*, 2007 SCC 21, [2007] 1 SCR 873.

*Canada (AG) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45.

*Canada (AG) v PHS Community Services Society*, 2011 SCC 44, [2011] 3 SCR 134.

*Canadian Bar Association v British Columbia*, 2006 BCSC 1342, 59 BCLR (4th) 38.

*Canadian Bar Association v British Columbia*, 2008 BCCA 92, 76 BCLR (4th) 48, aff'g 2006 BCSC 1342, leave to appeal to SCC refused, 32600 (July 31, 2008).

*Gideon v Wainwright*, 372 US 335 (1963).

*Lassiter v Department of Social Services*, 452 US 18 (1981).

*New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46, 216 NBR (2d) 25.

*Vilardell v Dunham*, 2012 BCSC 748.

## REPORTS AND GOVERNMENT DOCUMENTS

*Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (London: Her Majesty's Stationery Office, 1996) (Chair: The Right Honourable the Lord Woolf).

Attorney General. *Review of Legal Aid Services in British Columbia* by Timothy D Agg (Victoria: Queen's Printer, 1992).

British Columbia. *Access to Justice: The Report of the Justice Reform Committee, 1988*, (Victoria: Ministry of the Attorney General, 1988) (Chair: The Honourable EN Hughes).

British Columbia. *A Criminal Justice System for the 21<sup>st</sup> Century: Final Report to the Minister of Justice and Attorney General Honourable Shirley Bond*, (Victoria: nd, 2012) (Chair: D Geoffrey Cowper).

British Columbia, *Effective and Affordable Civil Justice: Report of the Civil Justice Reform Working Group to the Justice Review Task Force*, (np: nd, 2006) (Co-Chairs: Donald Brenner & Allan Seckel).

Canada, Department of Justice. *The Legal Problems of Everyday Life The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* by Ab Currie (Ottawa: Department of Justice Canada, 2007), online: <[http://www.justice.gc.ca/eng/pi/rs/rep-rap/2007/rr07\\_la1-rr07\\_aj1/rr07\\_la1.pdf](http://www.justice.gc.ca/eng/pi/rs/rep-rap/2007/rr07_la1-rr07_aj1/rr07_la1.pdf)>.

———. *Expanding Horizons: Rethinking Access to Justice in Canada* (Ottawa: Department of Justice Canada, 2000), online: <[http://www.justice.gc.ca/eng/pi/rs/rep-rap/2000/op00\\_2-po00\\_2/b3.html](http://www.justice.gc.ca/eng/pi/rs/rep-rap/2000/op00_2-po00_2/b3.html)>.

*Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia* (Vancouver: The Public Commission on Legal Aid, 2011) (Commissioner: Leonard T Doust).

Law Foundation of Ontario, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services* by Karen Cohl and George Thomson (Toronto: Law Foundation of Ontario, 2008).

Law Society of British Columbia, Independence and Self-Governance Advisory Committee, *Alternative Business Structures in the Legal Profession: Preliminary Discussion and Recommendations* (Vancouver: The Law Society of British Columbia, 2011) online: <<http://www.lawsociety.bc.ca/docs/publications/reports/AlternativeBusinessStructures.pdf>>.

Law Society of British Columbia, Retention of Women in Law Task Force. *The Business Case for Retaining and Advancing Women Lawyers in Private Practice* (Vancouver: The Law

Society of British Columbia, 2009) (Chair: Kathryn Berge), online:  
<<http://www.lawsociety.bc.ca/publications-forms/report-committees/docs/Retaining-women-business-case.pdf>>.

*Listening to Ontarians: Report of the Ontario Civil Legal Needs Project* (Toronto: Ontario Civil Legal Needs Project Steering Committee, 2010) (Chair: R Roy McMurtry).

Legal Services Society. *Making Justice Work: Improving Access and Outcomes for British Columbians – Report to the Minister of Justice and Attorney General The Honourable Shirley Bond* (Vancouver: Legal Services Society, 2012).

Ontario, Attorney General. *Report of the Legal Aid Review 2008* by Michael Trebilcock (Toronto: Ministry of the Attorney General, 2008).

Ontario, Attorney General. *Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services* (Toronto: Ministry of the Attorney General, 1997) (Chair: John D McCamus).

Ontario, Attorney General. *Report of the Task Force on Legal Aid* (Toronto: Ministry of the Attorney General, 1974) (Chair: The Honourable John H Osler).

Ontario Law Reform Commission. *Report on Administration of Ontario Courts* (Toronto: Ministry of the Attorney General, Ontario, 1973) (Chair: H Allan Leal).

Ontario. *Report of the Joint Committee on Legal Aid* (Toronto: Queen's Printer, 1965) (Chair: William B Common).

*Report to the Attorney General by the Task Force on Public Legal Services in British Columbia* (Victoria: Queen's Printer, 1984) (Chair: The Honourable EN Hughes).

*Report of the Ontario Courts Inquiry* by The Honourable TG Zuber (Toronto: Ministry of the Attorney General, 1987).

*Royal Commission on Legal Services in Scotland* (Edinburgh: HMSO, 1980) (Commissioner: The Right Honourable the Lord Hughes).

United Kingdom. *Civil Justice Review: Report of the Review Body on Civil Justice* (London: Her Majesty's Stationery Office, 1988) (Chair: Maurice Hodgson).

United Kingdom, Royal Commission on Legal Services. *Final Report* (London: Her Majesty's Stationery Office, 1979)(Chair: Henry Benson).

## SECONDARY MATERIAL: MONOGRAPHS

Agrast, M, J Botero & A Ponce. *WJP Rule of Law Index 2011* (Washington, DC: The World Justice Project, 2011).

- Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (New York: Catalyst, 2005), online: <[http://www.catalyst.org/file/17/canadalaw3 14 05 final.pdf](http://www.catalyst.org/file/17/canadalaw3%2014%2005%20final.pdf)>.
- Buckley, Melina. *The Legal Aid Crisis: A Time for Action* (Ottawa: Canadian Bar Association, 2000), online: Canadian Bar Association <<http://www.cba.org/CBA/Advocacy/pdf/Paper.pdf>>.
- . *Moving Forward on Legal Aid: Research on Needs and Innovative Approaches* (Ottawa: Canadian Bar Association, 2010), online: Canadian Bar Association <<http://www.cba.org/cba/Advocacy/PDF/CBA%20Legal%20Aid%20Renewal%20Paper.pdf>>.
- Cappelletti, Mauro, James Gordley & Earl Johnson Jr. *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies* (Dobbs Ferry, NY: Oceana, 1975).
- Cappelletti, Mauro & Bryant Garth, eds. *Access to Justice* (Alphen aan den Rijn, The Netherlands: Sijthoff & Noordhoff, 1978).
- Coupland, Douglas. *City of Glass: Doug Coupland's Vancouver* (Vancouver: Douglas & McIntyre, 2003).
- Daicoff, Susan. *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (Washington, DC: American Psychological Association, 2004).
- Demers, Annette. *A History of the University of Windsor Faculty of Law 1968-2008* (Windsor, ON: University of Windsor, 2010) online: University of Windsor <<http://www.uwindsor.ca/law/system/files/law40thBook.pdf>>.
- Dinovitzer, Ronit et al. *After the JD: First Results of a National Study of Legal Careers* (Chicago: NALP Foundation for Law Career Research and Education and the American Bar Foundation, 2004).
- . *After the JD II: Second Results from a National Study of Legal Careers* (Chicago: NALP Foundation for Law Career Research and Education and the American Bar Foundation, 2009).
- Dul, Jan & Tony Hak. *Case Study Methodology in Business Research* (Oxford, UK: Butterworth-Heinemann, 2008).
- Friedland, ML, Peter ES Jewett & Linda J Jewett. *Access to the Law* (Toronto: Carswell/Methuen, 1975).
- Garth, Bryant. *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (Alphen aan den Rijn, The Netherlands: Sijthoff & Noordhoff, 1980).
- Genn, Hazel. *Paths to Justice: What People Do and Think about Going to Law* (Oxford, UK: Hart, 1999).

- Gillham, Bill. *The Research Interview* (London: Continuum, 2000).
- Litowitz, Douglas. *The Destruction of Young Lawyers: Beyond One L* (Akron, OH: University of Akron Press, 2006).
- Pink, Daniel. *Drive: The Surprising Truth About What Motivates Us* (New York, Edinburgh; Riverhead Books, Cannongate, 2009, 2011).
- Plucknett, Theodore FT. *A Concise History of the Common Law*, 5th ed (London: Butterworth & Co, 1956).
- Rhode, Deborah L. *Access to Justice* (Oxford, UK: Oxford University Press, 2004).
- Schlesinger, Ellen V. *Non-Practicing Female Lawyers: Why Did They Leave and Where Are They Now?* (MA Thesis, The Adler School of Professional Psychology, 2012) [unpublished].
- Smith, Reginald Heber. *Justice and the Poor* (Boston: Merrymount Press, 1919).
- Stefancic, Jean & Richard Delgado. *How Lawyers Lose Their Way: A Profession Fails Its Creative Minds* (Durham, NC: Duke University Press, 2005).
- Yin, Robert K. *Case Study Research: Design and Methods*, 4th ed (Thousand Oaks, CA: Sage, 2008).

#### SECONDARY MATERIALS: ARTICLES AND ESSAYS IN COLLECTIONS

- Abramowicz, Lenny. "The Critical Characteristics of Community Legal Aid Clinics in Ontario" (2004) 19 J L & Soc Pol'y 70.
- Bala, Nicholas. "Reforming Family Dispute Resolution in Ontario: Systemic Changes and Cultural Shifts" in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 271.
- Baxter, Jamie, Michael Trebilcock & Albert Yoon, "The Ontario Civil Needs Project: A Comparative Analysis of the 2009 Survey Data" in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 55.
- Baxter, P & S Jack. "Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers" (2008) 13:4 The Qualitative Report 544.
- Beg, Samreen & Lorne Sossin. "Should Legal Services Be Unbundled?" in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 193.

- Bigelow, Arthur F. “Epitome of Legal Aid History in the United States, 1876-1925” (1926) 124 *Annals of the American Academy of Political and Social Science* 20.
- Brenner, Donald & Allan Seckel. “Making Justice Affordable” (2007) 40 *UBC L Rev* 745.
- Brockman, Joan. “Resistance by the Club to the Feminization of the Legal Profession” (1992) 7 *Can JL & Soc* 47.
- . “Leaving the Practice of Law: The Wherefores and the Whys” (1994) 32 *Alta L Rev* 116.
- Cahn, Edgar S & Jean C Cahn. “The War on Poverty: A Civilian Perspective” (1964) 73:8 *Yale LJ* 1317.
- Choudhry, Sujit, Michael Trebilcock & James Wilson. “Growing Legal Aid Ontario into the Middle Class: A Proposal for Public Legal Expense Insurance” in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 385.
- Dau-Schmidt, Kenneth G et al. “Men and Women of the Bar: The Impact of Gender on Legal Careers” (2009) 16 *Mich J Gender & L* 49.
- Davies, Libby. “Foreword” in Brad Cran & Gillian Jerome, eds, *Hope in Shadows: Stories and Photographs of Vancouver’s Downtown Eastside* (Vancouver: Arsenal Pulp Press, 2008) 9.
- Devlin, Richard. “Breach of Contract?: The New Economy, Access to Justice and the Ethical Responsibilities of the Legal Profession” (2002) 25 *Dalhousie LJ* 335.
- Dinovitzer, Ronit & Bryant Garth. “Getting at the Cause of Dissatisfaction” (2010) 10:4 *Compensation & Benefits for Law Offices* 1.
- . “Lawyer Satisfaction in the Process of Structuring Legal Careers” (2007) 41:1 *Law & Society Review* 1.
- Dunlop, Judith M. “Social Policy Devolution: A Historical Review of Canada, the United Kingdom, and the United States (1834–1999)” (2009) 24:3 *Social Work in Public Health* 191.
- Farrow, Trevor C W. “Sustainable Professionalism” (2008) 46 *Osgoode Hall LJ* 51.
- Gavigan, Shelley AM. “Twenty-Five Years of Dynamic Tension: The Parkdale Community Legal Services Experience” (1997) 35 *Osgoode Hall L J* 443.
- Gorman, Elizabeth H & Fiona M Kay. “Racial and Ethnic Minority Representation in Large U.S. Law Firms” (2010) 52 *Studies in Law, Politics, and Society* 211.
- Hadfield, Gillian K. “Equipping the Garage Guys in Law” (2011) 70 *Md L Rev* 484.

- . “Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans” (2010) 37 *Fordham Urb LJ* 129.
- . “Legal Barriers to Innovation: The Growing Economic Cost of Professional Control over Corporate Legal Markets” (2008) 60 *Stan L Rev* 1689.
- Hagan, John & Fiona Kay. “Even Lawyers Get the Blues: Gender, Depression, and Job Satisfaction in Legal Practice” (2007) 41:1 *Law & Society Review* 51.
- . “The Masculine Mystique: Living Large from Law School to Later Life” (2010) 25:2 *CJLS* 195.
- Harrison, Alan. “Case Study Research”, in David Partington, ed, *Essential Skills for Management Research* (Thousand Oaks, CA: Sage, 2002) 158.
- Heinz, John P, Kathleen E Hull & Ava A Harter. “Lawyers and Their Discontents: Findings from a Survey of the Chicago Bar” (1999) 74 *Ind LJ* 735.
- Herrera, Luz E. “Rethinking Private Attorney Involvement through a Low Bono Lens” (2009) 43 *Loy L A L Rev* 1.
- Hull, Kathleen E. “The Paradox of the Contented Female Lawyer” (1999) 33:3 *Law & Society Review* 687.
- Hutchinson, Allan C. “Introduction” in Allan C Hutchinson, ed, *Access to Civil Justice* (Toronto: Carswell, 1990) vii.
- Kay, Fiona M. “Flight from Law: A Competing Risks Model of Departures from Law Firms” (1997) 31:2 *Law & Society Review* 301.
- Kay, Fiona M & Elizabeth Gorman. “Women in the Legal Profession” (2008) 4:1 *Annual Review of Law and Social Science* 299.
- Kay, Fiona M, John Hagan & Patricia Parker. “Principals in Practice: The Importance of Mentorship in the Early Stages of Career Development” (2009) 31:1 *Law & Policy* 69.
- Larsen, Norman. “Seven Years with Legal Aid (1972-79): A Personal View of Some Events and Background Literature” (1981) 11:3 *Man LJ* 237.
- Macdonald, Roderick A. “Access to Justice and Law Reform #2” (2001) 19 *Windsor YB Access Just* 317.
- McLellan, A Anne. “Where Have All the Women Gone?” (2007) 45 *Alta L Rev* 259.
- Menkel-Meadow, Carrie. “Legal Aid in the United States: The Professionalization and Politicization of Legal Services in the 1980’s” (1984) 22:1 *Osgoode Hall LJ* 29.

- Mossman, Mary Jane, Karen Schucher & Claudia Schmeing. "Comparing and Understanding Legal Aid Priorities: a Paper Prepared for Legal Aid Ontario" (2010) 29 Windsor Rev Legal Soc Issues 149.
- Mueller, Charles W & Jean E Wallace. "Justice and the Paradox of the Contented Female Worker" (1996) 59:4 Social Psychology Quarterly 338.
- Pleasence, Pascoe & Nigel J Balmer. "Caught in the Middle: Justiciable Problems and the Use of Lawyers" in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 27.
- Pleasence, Pascoe, Nigel J Balmer & Tania Tam. "Failure to Recall: Indications from the English and Welsh Civil and Social Justice Survey of the Relative Severity and Incidence of Civil Justice Problems" in Rebecca L Sandefur, ed, *Access to Justice* (Bingley, UK: Emerald, 2009) 43.
- Pue, W Wesley. "Becoming 'Ethical': Lawyers' Professional Ethics in Early Twentieth Century Canada" (1991) 20 Man LJ 227.
- Puri, Poonam. "Financing of Litigation by Third-Party Investors: A Share of Justice" (1998) 36 Osgoode Hall L J 515.
- Richardson, John. "A History of Pivot Legal Society" in Brad Cran & Gillian Jerome. *Hope in Shadows: Stories and Photographs of Vancouver's Downtown Eastside* (Vancouver: Arsenal Pulp Press, 2008) 18.
- Robinson, Ian & Richard Simeon. "The Dynamics of Canadian Federalism" in James Bickerton & Alain-G Gagnon, eds, *Canadian Politics*, 3rd ed (Peterborough, ON: Broadview Press, 1999) 239.
- Sackville, Ronald. "Some Thoughts on Access to Justice" (2004) 2 NZJPIL 85.
- Sandefur, Rebecca L. "Money Isn't Everything: Understanding Moderate Income Households' Use of Lawyers' Services" in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 222.
- Seligman, Martin E P, Paul R Verkuil & Terry H Kang. "Why Lawyers Are Unhappy" (2001) 23 Cardozo L Rev 33.
- Smith, Roger. "Clinics in a Cold Climate: Community Law Centres in England and Wales" (1997) 35 Osgoode Hall L J 895.
- Trebilcock, Michael & Lilla Csorgo. "Multi-Disciplinary Professional Practices: A Consumer Welfare Perspective" (2001) 24 Dalhousie LJ 1.
- Trebilcock, Michael, Anthony Duggan & Lorne Sossin. "Introduction" in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 3.

Vayda, Paul A & Stephen B Ginsberg. “Legal Services Plans: Crucial-Time Access to Lawyers and the Case for a Public-Private Partnership” in Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) 246.

Vogt, Lisa. “Gender Diversity: Preparing for the New Legal Environment” (2011) 44 UBC L Rev 55.

Wallace, Jean E. “Explaining Why Lawyers Want to Leave the Practice of Law” in Jerry Van Hoy, ed, *Legal Professions: Work, Structure and Organization* (np: JAI Press, 2001) 117.

———. “Work Commitment in the Legal Profession: A Study of Baby Boomers and Generation Xers” (2006) 13:2 *International Journal of the Legal Profession* 137.

Wallace, Jean E & Fiona M Kay. “The Professionalism of Practising Law: A Comparison Across Work Contexts” (2008) 29:8 *Journal of Organizational Behavior* 1021.

———. “Are Small Firms More Beautiful or Is Bigger Better?: A Study of Compensating Differentials and Law Firm Internal Labor Markets” (2009) 50:3 *Sociological Quarterly* 474.

## INTERVIEWS

Interview of Advisor 1 (May 24, 2012).

Interview of Advisor 2 (April 30, 2012)

Interview of Associate 2 (May 25, 2012).

Interview of Associate 3 (May 29, 2012).

Interview of Partner 1 (May 16, 2012).

Interview of Partner 2 (May 4, 2012).

Interview of Partner 2 (May 17, 2012).

Interview of Partner 3 (March 30, 2012).

Interview of Partner 4 (June 5, 2012).

Interview of Staff 1 (May 26, 2012).

## OTHER MATERIALS

“2010 Social Enterprise Dragons Winner”, online: Social Enterprise Dragons  
<<http://www.socialenterprisedragons.com/s/LastYear.asp>>.

“About Pivot Legal Society”, online: Pivot Legal Society < <http://www.pivotlegal.org/about> >.

Bailey, Ian. “Public faces barriers in accessing Canadian courts, chief justice says”, *The Globe and Mail* (11 August 2012) online: The Globe and Mail  
<<http://www.theglobeandmail.com/news/british-columbia/public-faces-barriers-in-accessing-canadian-courts-chief-justice-says/article4476757/>>.

“BC Justice Reform Initiative Terms of Reference”, online: BC Justice Reform Initiative <  
<http://bcjusticereform.ca/the-review/terms-of-reference/>>.

Bellett, Gerry. “Pivot founded to give leverage to the city’s disadvantaged”, *Vancouver Sun* (15 June 2007) A11.

“Civil Justice Reform Working Group”, online: BC Justice Review Task Force  
<[http://www.bcjusticereview.org/working\\_groups/civil\\_justice/civil\\_justice.asp](http://www.bcjusticereview.org/working_groups/civil_justice/civil_justice.asp)>.

“Co-op to recruit 3,000 staff as it bids to dominate consumer legal market”, *Legal Futures [UK]* (24 May 2012) online: *Legal Futures* <<http://www.legalfutures.co.uk/latest-news/co-op-to-recruit-3000-staff-as-it-bids-to-dominate-consumer-legal-market>>.

Email from Partner 4 (4 June 2012).

Finch, The Honourable Lance. “Access to Justice: The Elephant in the Room” (Address delivered at the Canadian Bar Association – British Columbia Branch meeting in Scottsdale, AZ, 20 November 2010),[unpublished].

“History of NLADA”, online: National Legal Aid & Defender Association  
<[www.nlada.org/About/About\\_HistoryNLADA](http://www.nlada.org/About/About_HistoryNLADA)>.

“History of Student Legal Services of Edmonton”, online: Student Legal Services of Edmonton  
< <http://www.slsedmonton.com/about/student-legal-services-history/>>.

“History of the Law Foundation”, online: The Law Foundation of British Columbia <  
<http://www.lawfoundationbc.org/about-us/history/>>.

Kiang, Milton. “‘Unique model’ for public service work”, *The Lawyers Weekly* (22 May 2009), online: The Lawyers Weekly  
<<http://www.lawyersweekly.ca/index.php?section=article&articleid=925>>.

“Legal Problems Faced in Everyday Lives of British Columbians”, (2 December 2008), online: Legal Services Society <  
[http://www.lss.bc.ca/assets/aboutUs/reports/legalAid/IPSOS\\_Reid\\_Poll\\_Dec08.pdf](http://www.lss.bc.ca/assets/aboutUs/reports/legalAid/IPSOS_Reid_Poll_Dec08.pdf)>.

- MacIver, Ken & Allan Rodgers. “A Brief History of Legal Services in Massachusetts”, online: MassLegal Services <[http://www.masslegalservices.org/system/files/Brief\\_History\\_of\\_Legal\\_Services\\_in\\_Massachusetts.pdf](http://www.masslegalservices.org/system/files/Brief_History_of_Legal_Services_in_Massachusetts.pdf)>.
- McLachlin, The Right Honourable Beverley. “The Challenges We Face” (Address delivered at the Empire Club of Canada, Toronto, 8 March 2007), online: Supreme Court of Canada <<http://www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm07-03-08-eng.asp>>.
- Middlemiss, Jim. “More pro bono work needed: Chief Justice; Cost of accessing legal system too high: Winkler”, *National Post* (8 June 2007) A8.
- O’Connell, Jonathan. “New Washington law firm looks to break the billable-hour mold”, *The Washington Post* (8 May 2011), online: The Washington Post <[http://www.washingtonpost.com/business/capitalbusiness/new-washington-law-firm-looks-to-break-the-billable-hour-mold/2011/05/05/AFY14sRG\\_story.html](http://www.washingtonpost.com/business/capitalbusiness/new-washington-law-firm-looks-to-break-the-billable-hour-mold/2011/05/05/AFY14sRG_story.html)>.
- “Parliament of Canada – The Hon. Mark R. MacGuigan”, online: Parliament of Canada <<http://www.parl.gc.ca/Parlinfo/Files/Parliamentarian.aspx?Item=4b34370d-5e62-4479-a0b0-7bd3a601fef1&Language=E&Section=Publications>>.
- “Pivot Legal LLP Business Records - 2009-2011” (17 July 2012) [unpublished].
- “Pivot Legal LLP Grant Application” (2010) [unpublished].
- Quine, Stephanie. “IMF not about ‘access to justice’”, *Lawyers Weekly [Australia]* (17 August 2012), online: Lawyers Weekly <<http://www.lawyersweekly.com.au/News/IMF-not-about-access-to-justic>>.
- “REAL Initiative in Full Swing”, (2012) online: Law Society of British Columbia <<http://www.lawsociety.bc.ca/page.cfm?cid=2505&t=REAL-initiative-in-full-swing>>.
- Shepherd, Leslie. “Gov’t., five provinces sign legal aid funding pact”, *The Ottawa Citizen* (4 May 1984).
- Spencer, Ben. “The Poor Man’s Lawyer Service: A Precursor to Legal Aid”, *Legal Action* (May 2009) 6, online: LegalAction <[http://www.lag.org.uk/files/92932/FileName/MayLA\\_06\\_07.pdf](http://www.lag.org.uk/files/92932/FileName/MayLA_06_07.pdf)>.
- Updegrove, Andy. “Killing the Roach: The Incredibly Illogical, Fundamentally Odious – but Seemingly Ineradicable – Billable Hour” *The Standards Blog* (13 April 2009), online: ConsortiumInfo.org <<http://www.consortiuminfo.org/standardsblog/article.php?story=20090411131326749>>.

## APPENDICES

### Appendix A – Methodology

To understand the challenges and successes of Pivot Legal LLP – and to determine whether a similar business model could succeed in the future – I conducted semi-structured one-on-one interviews with nine individuals who were involved with Pivot Legal LLP. These individuals included the four former partners, two former lawyers, two former advisors, and one former staff member. In addition to these interviews, the partners of Pivot Legal LLP also granted me access to the firm’s business records and to some of their post-mortem discussion documents.<sup>514</sup>

The case study method is well-suited to research projects seeking to answer ‘how’ or ‘why’ questions, and also where the focus “is on a contemporary phenomenon within a real-life context.”<sup>515</sup> Robert K. Yin’s text on case study research is widely recognized as a leading text in the field, and offers the following definition of case study research: an empirical inquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used.<sup>516</sup>

The case study method has also been described broadly as “a study in which (a) one case (single case study) or a small number of cases (comparative case study) in their real life context are selected, and (b) scores obtained from these case studies are analysed in a qualitative manner.”<sup>517</sup>

---

<sup>514</sup> Business Records, *supra* note 345; Partner 4 Email, *supra* note 343.

<sup>515</sup> Robert K. Yin, *Case Study Research: Design and Methods*, 4th Edition (Thousand Oaks, CA: Sage, 2008) at 2.

<sup>516</sup> *Ibid* at 12.

<sup>517</sup> Jan Dul & Tony Hak, *Case Study Methodology in Business Research* (Oxford, UK: Butterworth-Heinemann, 2008) at 4.

Jan Dul and Tony Hak's definition seeks to build on Yin's description of the case study by highlighting the fact that "a case study basically is an inquiry of only *one single* instance (the case), or sometimes a small number of instances, of the object of study."<sup>518</sup> They expressly omit statements on data collection or measurement from their definition, emphasizing again that case studies may employ both qualitative or quantitative methodologies, and are often strengthened by incorporating a mix of both.<sup>519</sup>

In defence of the case study method, Alan Harrison cites three benefits of such research: 1) "there is a continual 'reality check' with what is being researched [in that] [w]hat you see and hear poses a constant challenge to your emerging theoretical ideas", 2) both quantitative and qualitative techniques can be deployed under the banner of the case study, and 3) "because it is essential to draw a boundary around your study, the circumstances under which the conclusions apply are normally apparent."<sup>520</sup>

In any case study method, it is important to determine the "unit of analysis", or the boundaries of the subject of the case study.<sup>521</sup> For this research, the unit of analysis was all of the individuals who worked for or advised Pivot Legal LLP during its four-year existence.

Ethics board approval for this research was obtained from the University of British Columbia's Research Ethics Board in March, 2012. Research interviews were conducted between March 30 and June 5, 2012.

---

<sup>518</sup> *Ibid* at 4.

<sup>519</sup> *Ibid* at 5.

<sup>520</sup> Alan Harrison, "Case Study Research", in David Partington, ed, *Essential Skills for Management Research* (Thousand Oaks, CA: Sage, 2002) 158.

<sup>521</sup> *Ibid* at 167-168. See also P Baxter & S Jack, "Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers" (2008) 13:4 *The Qualitative Report* 544 at 545; Yin, *supra* note 515 at 27.

Interview participants were generally contacted initially by email, but two individuals were first approached in person, and another was initially approached by phone. In all cases, interview subjects were provided with a copy of the research consent form by email at least one day before the interview took place. All interview participants were required to read and sign this consent form before participating in a research interview. One interview was conducted by video-conference using Skype, while all others were conducted in person. Interviews were generally limited to one hour, though one participant indicated an interest in having a longer discussion. As a result, this interview took place on two separate days, each for one hour.

All interviews were recorded using a digital voice recorder. These recordings were later transcribed using Dragon NaturallySpeaking 11.0 software, and individually verified. All names have been redacted from all transcripts, and each transcript was sent to the corresponding interview participant to ensure accuracy.

Interviews were conducted based on a prepared series of questions which were grouped into three topical areas: how Pivot Legal LLP worked; how Pivot Legal LLP attracted lawyers and clients; and why Pivot Legal LLP ultimately folded. Since these were semi-structured interviews, some of the pre-set questions were not asked in every interview, but supplemental questions were often asked based on the interview participant's answers. For all interviews, questions were asked in each of the three topical areas.

In spite of the semi-structured nature of the interviews, some questions were asked to each interview participant. Each interviewee was asked whether they thought the Pivot Legal LLP model could succeed with some modification. In addition, each interviewee was asked at the end of the interview if they had any thoughts on Pivot Legal LLP that had not been canvassed during

the interview, and also whether there were they could think of any individuals who should be interviewed to ensure a complete understanding of how Pivot Legal LLP worked.

By conducting semi-structured interviews with a variety of partners, lawyers, staff and advisors, the interviews should avoid, or at least mitigate, the likelihood that expressed opinions were tainted by a single perspective. By supplementing the interviews with analysis of the business records, the robustness of this case study methodology was increased by using a type of triangulation within the case itself.<sup>522</sup> Data sources were both records made relatively contemporaneously to events in the past (i.e. the financial records) and recollections of those past events (i.e. the semi-structured interviews). These contrasting sources should help reduce biases introduced through one source or another and increase internal validity in the research.

The fact that the interviewer is a “research instrument” implies a self-awareness during the interview that connects the interviewer “in the moment” with the larger research project.<sup>523</sup> Preparation for the interviews ranged from the prosaic (e.g. obtaining a good-quality voice recorder and knowing how to use it) to the intellectual (e.g. ensuring enough time to consider and structure questions in order to obtain answers that are likely to be relevant to the research project) to the personal (e.g. practicing an interview to observe my style as an interviewer and to be aware of any habits which might be misinterpreted by interviewees – such as checking a watch too much).

---

<sup>522</sup> Yin, *supra* note 515 at 24.

<sup>523</sup> Bill Gillham, *The Research Interview* (London: Continuum, 2000) at 25-36.