

**Final Activity Report:**

**Access to Justice Through Incubation: Supporting Women Lawyers to Provide Access to Justice for Women**

(Reporting Period: August 1, 2018 – July 31, 2019)



Kate Feeney & Amber Prince, co-counsel in a *Charter of Rights* case, successfully settled in 2018

NAME OF ORGANIZATION: Atira Women's Resource Society

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NAME OF EXECUTIVE DIRECTOR: Janice Abbott (CEO)

NAME AND TITLE OF PROJECT CONTACT PERSON: Amber Prince, staff lawyer

PROJECT NAME: *Access to Justice Through Incubation: Supporting Women Lawyers to Provide Access to Justice for Women*

AMOUNT REQUESTED: \$35,000

START & COMPLETION DATE OF PROJECT: August 1, 2018 – July 31, 2019

## **1. PURPOSE OF THE PROJECT:**

- (1) To provide access to justice through the "Legal Incubator" model (i.e. provide a lawyer with the necessary supports, resources and mentorship, over the period of a year, to build a sustainable public interest and legal aid practice).
- (2) with the assistance of this incubation lawyer, better meet the legal needs of women including immigrant and refugee women, Indigenous women, women with mental health diagnoses, and mothers and their children.
- (3) contribute to the retention of women in the legal profession, legal aid lawyers (particularly in family law), and public interest lawyers.
- (4) test the use of the "Legal Incubator" Model for the provision of legal aid, pro bono services, poverty law, public interest law and to otherwise fill gaps in access to justice in BC.
- (5) provide a summary of the results and feasibility of this project as a cost-effective, innovative model for increasing access to justice in BC.

## **2. SPECIFIC OBJECTIVES:**

During this project the following specific objectives were met:

- (1) Atira's staff lawyer secured an Incubation Lawyer for the project by contract. Kate Feeney was the Incubation Lawyer for the entire Reporting Period.
- (2) Kate prioritized family law and *Child Family Community Services Act* ("CFCSA") files. 100% of her legal aid files were family and CFCSA files. Kate also had pro bono and low bono private family law cases, providing full-representation and unbundled services. Finally, Kate was available to provide family and CFCSA summary advice during her two summary advice clinics at Atira.
- (3) Kate's Law Society fees were paid through this grant to reduce Kate's risks, up-front costs, and barriers to developing a legal aid / public interest practice.
- (4) In consultation with Kate, Atira secured a suitable, senior supervising lawyer to supervise and mentor Kate, Clea Parfitt.
- (5) Kate was provided with an enclosed and private office space which includes a desktop computer and email, phone with a direct phone line with voicemail, and conference call capabilities, and basic office furniture and supplies. Kate was also provided with basic administrative and tech support for the project. Kate was able to print, copy, fax and scan using Atira's resources.
- (6) Atira has been a source of referrals for Kate's incubation-hour cases, legal aid and private practice files, and provided ad hoc volunteer / student support where appropriate / possible.

- (7) Atira provided the administrative support for the project, i.e. accounting support, payroll, supports, training, and general administrative support.

***Overview of pro bono legal services provided by Incubation Lawyer***

- (8) Kate provides 6 pro bono hours per week to women via Atira. The hours have been spent in a variety of way including:

- a. limited retainer / unbundled legal assistance, such as where women have been unable to obtain legal aid, find a legal aid lawyer or legal aid has run out;
- b. assisting women with completing court documents;
- c. assisting women with filing human rights complaints;
- d. writing letters for women to opposing parties / third-parties;
- e. assisting women with obtaining settlements;
- f. providing extra summary advice outside legal clinic time where women's cases are complex or women require more time;
- g. providing full-representation in a number of cases;
- h. acting as co-counsel with the staff lawyer and other pro bono counsel in complex cases;
- i. providing guidance and mentorship to the Legal Advocacy Program (e.g. to new volunteer lawyers and law students);
- j. providing extra summary advice clinics to augment the Legal Advocacy Program's service (e.g. when the staff lawyer is on vacation);
- k. teaching at Law Foundation conferences;
- l. legal research for a Law Foundation project; and
- m. providing legal research and document review for the Legal Advocacy Program (e.g. reviewing family law agreements or researching discreet points of law such as privilege with respect to experts, the jurisdiction of the Human Rights Tribunal).

- (9) Through Atira, Kate has been exposed to a variety of areas of law including but not limited to: family law, CFCSA files, human rights, Aboriginal law, administrative law, civil law, tenancy / strata law, income assistance, animal law, municipal law and constitutional law.

As a well-accessed, high volume program, Kate has had the opportunity to work on a varied case load, cases of precedential or systemic value, a constitutional challenge and appellate work.

Amber, Kate & Alice celebrating their success in *Campbell v. Vancouver Police Board*, a landmark human rights decision.



### ***Breakdown of Incubation Lawyer's cases***

Kate worked directly on women's cases as follows:

- 29 legal aid cases including 20 family law cases and 9 CFCSA files. All cases have involved Court hearings, Family Case Conferences, Judicial Case Conferences or mediations. These cases primarily have involved protection orders, interim parenting arrangements, child support and spousal support orders.
- 11 private family law files in the low-bono range, including full representation files and unbundled services to self-represented litigants.
- 12 human rights cases, including one Canadian Human Rights Commission case. In 11 of these cases Kate provided pro bono legal assistance, in 1 case low bono assistance and in all cases Kate has been able to utilize her incubation hours.

Human rights cases involve drafting complaints, negotiations, early settlement meetings, responding to applications to dismiss and hearing preparation. Human rights complaints generally involve allegations of gender, gender identity, race, religion (e.g. the right to smudge) or mental / physical disability discrimination.

- Kate was able to successfully settle human rights cases. In two cases that were challenging to prove, Kate obtained settlements for her clients of \$5000 and \$7500 respectively.
- Kate also ran two weekly legal clinics (for a total of 5.5 hours per week) through the Legal Advocacy Program, during which she provided summary advice and unbundled services to women. One clinic was by drop-in and

another was appointment based. These clinics were well-utilized and augmented the drop-in legal services offered at Atira and the family / CFCSA assistance Atira could provide.

In her summary advice clinics Kate advised on a range of legal issues including: tenancy, pets, family law, CFCSA, contracts, debts, information & privacy law, income assistance, government benefits, police complaints, human rights, and court procedure.

During her legal clinics, Kate saw, on average 6 women per week or approximately 312 women during the Reporting Period, in addition to her incubation files.

### **Case highlights**

Kate and I acted as co-counsel to the complainant in *Campbell v Vancouver Police Board*, a human rights complaint concerning the discriminatory treatment of an Indigenous mother by VPD officers. Kate and I dealt with several interim applications before Kate withdrew in mid-August 2019 because of her imminent parental leave (see Alice, above, the resulting human of Kate's parental leave).<sup>1</sup>

Kate provided many hours of support and hearing prep in *Campbell v. Vancouver Police Board*. Amber continued the case to hearing in September, 2019 with pro bono counsel Myrna McCallum, where they succeeded in obtaining a landmark decision.<sup>2</sup>

- Kate's incubation hours were otherwise spent on other complex cases including:
  - i. Acted as co-counsel with me on a constitutional challenge to the actions of a municipality. In this case animal control officers followed and filmed our pregnant and distressed client. Kate spent many hours with me preparing for trial, researching *Charter* arguments, interviewing witnesses, preparing exhibits and preparing for cross-examinations. We successfully settled this matter on the day of Court with the assistance of the Judge.
  - ii. An appeal to the BC Court of Appeal in *Ma v Zhao*, 2019 BCCA 248.<sup>3</sup> I represented the client at the BC Supreme Court ("BCSC") arguing that our client ought to receive a fee waiver to have a residential

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<sup>1</sup> See: *Campbell v. Vancouver Police Board*, 2019 BCHRT 12 (CanLII), <http://canlii.ca/t/hx4vb>; *Campbell v. Vancouver Police Board (No. 2)*, 2019 BCHRT 128 (CanLII), <http://canlii.ca/t/j178m>; *Campbell v. Vancouver Police Board (No. 3)*, 2019 BCHRT 145 (CanLII), <http://canlii.ca/t/j1k9c>; *Campbell v. Vancouver Police Board (No. 4)*, 2019 BCHRT 275 (CanLII), <http://canlii.ca/t/j4824>

<sup>2</sup> See: <https://www.cbc.ca/news/indigenous/vancouver-police-discriminated-against-indigenous-mother-b-c-rights-tribunal-rules-1.5394835>. Myrna McCallum's legal services can be found here: <https://traumainformedlegal.ca/about/>

<sup>3</sup> See: *Ma v. Zhao*, 2019 BCCA 248 (CanLII), <http://canlii.ca/t/j1bsj>

tenancy decision judicially reviewed. I was unsuccessful and did not have capacity to appeal the BCSC decision.

Kate acted as co-counsel with Meera Bennet's for our client. The Court of Appeal allowed the appeal, holding that while the decision to waive fees is a discretionary decision, the context in which this discretionary decision is made has assumed a constitutional dimension since the decision of the Supreme Court of Canada in *Trial Lawyers v. BC*.

Once it is determined that the applicant cannot afford to pay the fees, without undue hardship, to bring a non-frivolous claim, there will be few cases where discretion may be exercised against the applicant.



Kate Feeney & Meera Bennett successfully arguing that their client ought to have received a fee waiver to proceed with a judicial review.

This decision makes an important contribution to the law with respect to fee waivers.

- iii. Kate acted as counsel to the complainant in *Smith v. Mohan*, a human rights complaint concerning (a) the right of an Indigenous woman to smudge in her rental unit and (b) the landlord's racial microaggressions toward the tenant.<sup>4</sup> Amita Vulimiri of the Community Legal Assistance Society joined the case as co-counsel in the spring of 2019 and Kate and Amita conducted a 4-day hearing in July 2019. The Tribunal member advised that her decision would be released in about February 2020.
- iv. Kate also acted as co-counsel (along with Monique Pongracic-Speier, QC., Raji Mangat, and Kasari Govender) to the plaintiffs in *SMA et al. v British Columbia*, a Charter challenge to BC's family law legal aid

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<sup>4</sup> See: *Smith v. Mohan*, 2018 BCHRT 207 (CanLII), <http://canlii.ca/t/httjd>



regime.<sup>5</sup> The plaintiffs overcame applications to strike their claim by BC and the Legal Services Society, which were heard over the course of 4 days in February 2019. The trial is scheduled for 2021.

- v. Acted as counsel to a woman with mental and physical disabilities in a human rights complaint about her right to have an emotional support animal in her supportive housing. The complaint settled through mediation.
- vi. Acted as counsel to an Indigenous woman with mental and physical disabilities in a human rights complaint alleging harassment and other discriminatory treatment in her workplace. Kate is continuing to represent this client on a pro bono basis during her parental leave. I am assisting on the case and may come on as co-counsel with Kate if the case proceeds to hearing.
- vii. Support to me in negotiating a spousal support settlement, drafting a separation agreement, and, since our client has provincial disability benefits, protecting her disability benefits as much as possible. We are now working on a constitutional challenge against the Ministry of Social Development and Poverty Reduction as a result of the Ministry reducing our client's disability benefits related to her receipt the spouse support monies.

Kate accepting her *Access Pro Bono Allan Parker QC Award for Representation Services* in 2019! This award is given each year to recognize a lawyer who has shown a remarkable commitment to providing pro bono representation to people of limited means.



### 3. PROJECT OUTCOME & SUCCESSES:

Kate worked on hundreds of cases at Atira, providing women with timely advice, unbundled services, low bono services, and full representation services where possible. As discussed above, Kate had many successful outcomes in her cases. Women accessing Atira really grew to trust Kate as lawyer who understood their needs and advocated passionately for their interests. She is missed by everyone who came to know her at Atira, from clients and staff to volunteers and students.

<sup>5</sup> See: *Single Mothers' Alliance of BC Society v British Columbia*, 2019 BCSC 1427 (CanLII), <http://canlii.ca/t/j23z6>

Having Kate with us has allowed me to take on larger files such as a constitutional challenge and a landmark human rights case. Kate also increased our capacity to provide family law and CFCSA assistance to women, including full resolution of many cases, which would not have otherwise been possible.

It was helpful to me to have Kate in the office on a semi-full-time basis to confer with about case brain storming, strategies and ethical dilemmas. I benefitted and learned from Kate's unique blend of experiences, knowledge and skills. Her support eased the burdens and responsibilities of being the only staff lawyer at Atira.

I am really grateful to Kate for rolling up her sleeves alongside me to take on difficult and complex cases. Our program had many successes during the Reporting Period because of Kate's skills, dedication, and hard work. Kate's significant pro bono contributions at Atira were only possible because of the Law Foundation's funding of this Project.

Here is what Kate has to say about her work with us as an Incubation Lawyer:

*I am grateful for the Incubation Grant because it helped me to develop a private practice that almost exclusively served women with low incomes and other barriers to accessing the legal system. The Incubation Grant also allowed me to take on complex and challenging cases that developed my skills as a lawyer. A highlight of 2019 was gaining hearing experience before the Court of Appeal and the Human Rights Tribunal. By the end of the Incubation Grant, I was feeling confident as a sole practitioner and had developed contacts for contract work that could have continued to support my practice.*

*I was also excited to share my experience of running a low-overhead, social justice-oriented practice with others. In April 2019, I was honoured to receive the Allan Parker QC Award for Representation Services. In accepting the award, I made clear that I was able to provide more extensive pro bono representation services because of the support of Atira and the Law Foundation.*

*Unfortunately, I had to shut down my practice just as it was gaining momentum because of having a baby in September 2019. With a couple of exceptions, I also had to stop accepting new clients (for full representation) in the three months prior to my parental leave, and devote most of August 2019 to the administrative tasks involved in closing a practice. This affected my practice statistics for the period January 1 to August 31, 2019. That being said, if I return to private practice after my parental leave, I will be in a position to "hit the ground running." If I return to working for a public interest organization, I will have a deeper skill set and a better understanding of access to justice needs from a front-line perspective.*



*I am also grateful for the opportunity to work and learn with Amber. One of the challenges of being a sole practitioner early in my career is lack of support and mentorship from co-workers, which affects my ability to take on more demanding litigation. However, Amber and I were co-counsel on several cases in which we tackled challenging legal and client management issues as a team. I would not have been able to do these cases on my own. Further, Amber always made herself available to talk through problems in my own cases. Finally, Amber taught me both directly and through example about how to deliver truly accessible legal services to women.*

#### **4. KEY FACTORS THAT CONTRIBUTED TO THE SUCCESS OF THIS PROJECT ARE:**

- a. In-house expertise and resources of Atira (office space, equipment, accounting and managerial expertise).
- b. Project funding for a supervising lawyer for the incubation lawyer.
- c. An incubation lawyer who understands the nature of Atira's work and feels comfortable working in a low-barrier / high volume feminist work place.
- d. An incubation lawyer with experience in family law, legal aid, and poverty law.
- e. Volunteers and students able to assist with Program and Project intake, research and other related tasks.
- f. The ability for Kate to use the incubation hours flexibly depending on Kate's schedule, the needs of Atira and the types of cases arising through the project.
- g. A staff lawyer on-site and available to support the project.

#### **5. PROJECT CHALLENGES:**

- a. A lack of disbursement coverage (e.g. for expert reports or transcripts). A lawyer is only eligible for disbursement coverage through Access Pro Bono if the lawyer is acting pro bono. It has been difficult for Kate to take on more complex files on an exclusively pro bono basis as these files take up a significant amount of time.
- b. It can take time to develop a new practice and find the right balance to ensure the incubation arrangement is financially sustainable but that the incubation lawyer is not overwhelmed with too many clients.
- c. Kate has had to decline taking on trials because the obligation is often too onerous for a sole practitioner.

- d. It may be challenging for a brand new lawyer to take up the varied and complex cases women need assistance with while also developing a practice and managing the related administrative tasks involved with starting a law practice.
- e. Cases sometimes take years to resolve. It posed some hardship to Kate, clients and Atira for the project to end before cases were resolved. However, the Law Foundation's renewal of this Project (for 2 years) – now with Incubation Lawyer Frances Rosner – has addressed much of that hardship.<sup>6</sup> We are very pleased to have Frances aboard for 2019-2021.

## 6. WHAT COULD MAKE TO PROJECT MORE EFFECTIVE:

- a. A larger budget for disbursement coverage or clear eligibility for Access Pro Bono disbursement coverage for incubation lawyers.
- b. Funding for another staff person at Atira to assist with managing projects and other administrative tasks so that the staff lawyer has more time to take on client files, support the incubation lawyer more with complex cases (including trials possibly) and capacity to engage more in systemic social justice issues.
- c. Incubation funding for multiple years. We are grateful that the Law Foundation renewed the funding for this project over two years (rather than one), which gives us more time and stability for the Project.

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All of which is respectfully submitted by:

Amber Prince, Staff Lawyer  
with Kate Feeney, Incubation Lawyer

Atira Women's Resource Society

February 21, 2020



Kate, Amber & the Legal Advocacy team of volunteers & students at Atira celebrating our work together in 2019.

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<sup>6</sup> For more information about Frances Rosner, see: <http://www.westcoastleaf.org/people/frances-rosner/>