

THE CANADIAN BAR ASSOCIATION  
L'ASSOCIATION DU BARREAU CANADIEN



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## PRO BONO WORKING GROUP

### Mid-Winter 2003 Report

#### TABLE OF CONTENTS

- Introduction
- Nature of Pro Bono Work
  - Bar Sponsored Initiatives
  - Law Firm Initiatives
- CBA Pro Bono Action Plan
  - Activities to Facilitate Pro Bono Work
  - Activities to Promote and Recognize Pro Bono Work
  - Clinic Support
- CBA Structures to Oversee Pro Bono Work

#### INTRODUCTION

The Pro Bono Working Group was formed in fall 2001, at the direction of CBA Council. Its preliminary mandate is to report on three matters:

1. the nature of pro bono work being performed by CBA members and how to recognize that work;
2. the development of a business plan as to how the CBA should coordinate, facilitate and promote the pro bono of its members; and
3. methods of obtaining and sharing information about the pro bono initiative at the National and Branch levels.<sup>1</sup>

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<sup>1</sup> Resolution 01-15-A, adopted by CBA Council at the 2001 Annual Meeting

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In August 2002, the Working Group was also asked to consider whether the CBA should enter into a proposed program to support pro bono clinics and develop specific goals and strategies to enable all Canadians who cannot afford a lawyer or obtain legal aid to obtain free legal advice<sup>2</sup>

The members of the Working Group are:

**Carman J. Overholt**, Fraser Milner Casgrain LLP, Vancouver, Chair  
**Lynn Burns**, Pro Bono Law Ontario, Toronto  
**Charlotte Ensminger**, Pro Bono Law of BC and Law Society of BC, Vancouver  
**J. Thomson Irvine**, Department of Justice, Constitutional Law Branch, Regina  
**Jennifer L. Newbury**, Martin Whalen Hennebury & Stamp, St. John's  
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**Tamra L. Thomson**, Canadian Bar Association, Ottawa (staff liaison)

The Working Group is guided by CBA policy on pro bono legal services:

The Working Group is guided by CBA policy on pro bono legal services:

*It is inherent in the professional responsibility of a legal practitioner to voluntarily contribute an identifiable part of time without charge or at substantially reduced rates:*

- *to establish or preserve the rights of disadvantaged individuals;*
- *to provide legal services to assist organizations who represent the interests of, or who work on behalf of, members of the community of limited means or other public interest organizations; or*
- *for the improvement of laws or the legal system.*

*Each member of the legal profession should strive to contribute 50 hours or 3% of billings per year on a pro bono basis.*<sup>3</sup>

The Working Group sees its mandate as building on past CBA initiatives and the work of existing pro bono programs. Three principles are fundamental to its work:

1. pro bono is not a substitute for adequate government funding of legal aid plans;
2. CBA National is best placed to undertake a role of facilitation and promotion of pro bono activities; and
3. locally delivered pro bono programs are best placed to meet particular community needs.

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<sup>2</sup> Resolution 02-14-A, referred by CBA Council to the Pro Bono Working Group

<sup>3</sup> Resolution 98-01-A, adopted by CBA Council at the 1998 Annual Meeting. This resolution flowed from the report of the Pro Bono Working Group of the CBA Systems of Justice Task Force.

## NATURE OF PRO BONO WORK

The Working Group undertook two reviews, with a view to understanding the nature of pro bono work done by CBA members. The first study asked CBA Branches, law societies and law schools about formal and informal Bar-sponsored initiatives. The second reviewed selected law firm websites for information on their pro bono activities. The Working Group's resources did not permit any comprehensive study of programs sponsored by community groups and supported by individual lawyers, nor of informal pro bono activities by law firms or individual lawyers.

### Bar-Sponsored Initiatives

The most formalized Bar-sponsored pro bono initiatives have been developed in Ontario and British Columbia. Some other jurisdictions have less formal programs. Some jurisdictions informed the Working Group that they are reluctant to publicize pro bono activities, since in small communities any public acknowledgment may well compromise the client's privacy.

The following overview highlights the range of Bar-sponsored initiatives identified in the survey.

**Pro Bono Law of BC** is a non-profit society, formed through a joint project of CBA-BC and the Law Society of British Columbia, and funded by the Law Foundation of BC with in-kind support from the Law Society. In November 2002, it launched the ProBonoNet web site at [www.probononet.bc.ca](http://www.probononet.bc.ca) to promote pro bono work and make it as accessible as possible.

- Members of the public can find information about the law and how to find legal help.
- Lawyers can find pro bono work and share information.
- Community groups can make pro bono work requests and share information.
- Pro bono program deliverers can find resources and volunteers and make pro bono work requests.

Pro Bono Law of BC also acts as a resource centre for information on pro bono, and provides consultation on various delivery models, as well as the development of pro bono projects and services. For example, unrepresented litigants involved in Court of Appeal proceedings can seek legal assistance from the Salvation Army Court of Appeal Pro Bono Project.

**Volunteer Lawyers Service** offers legal assistance at no charge to non-profit and charitable organizations in Ontario, by matching lawyers with non-profit and charitable community-based organizations that have insufficient funds to hire legal counsel. VLS partners are the Law Society of Upper Canada, United Way of Greater Toronto, Ontario Bar Association and the Volunteer Centre of Toronto. It receives financial support from the Law Foundation of Ontario and the Ontario Ministry of Citizenship. Its website is at [www.volunteerlawyers.org](http://www.volunteerlawyers.org).

**Pro Bono Law Ontario** is an independent nonprofit organization, created to recognize and support the efforts of volunteer lawyers. It:

- acts as a resource center and clearinghouse of information on pro bono and development of pro bono projects
- assists local and specialty pro bono programs, which match clients to lawyers

- provides consultation on various models of pro bono projects/delivery systems, and technical support and assistance.

Funding is provided by the Law Foundation of Ontario and Legal Aid Ontario. In-kind support is provided by the Law Society of Upper Canada.

Some projects now operating in conjunction with PBLO include:

- Connecting Communities With Counsel (CCWC), a joint project between numerous community agencies and the Law Society of Upper Canada. The program matches lawyers with individuals who cannot afford counsel and have equality rights issues. Lawyers volunteer to help individuals from Aboriginal, Francophone and other equity-seeking groups who require legal counsel to address equality issues before courts, tribunals and in mediation processes.
- The Child Advocacy Project, a collaborative effort of Justice for Children and Youth and The Advocates' Society.

**Manitoba Bar Association** assists the **Public Interest Law Centre** with a pro bono enrollment form. MBA members can participate in three ways: by accepting a legal aid certificate referral from the PILC, and donating up to \$250 of the fee to PILC; by making a cash donation to the Centre, or by enrolling on the public interest pro bono panel to take on a case of public importance on referral from the Centre.

**CBA-Alberta** has recently formed a **Community Responsibility Committee**, to investigate how the Branch can better facilitate pro bono activities by its members.

In the **Dispute Resolution Office** pilot project, at the Court of Queen's Bench in Calgary, senior family lawyers volunteer one day per month to mediate family law disputes. The project is sponsored the Court of Queen's Bench, Alberta Justice, and Justice Canada.

Through **Calgary Legal Guidance** lawyers give free legal advice on family matters on a voluntary basis. The **Edmonton Centre for Equal Justice**, a project of the Edmonton Social Planning Council, provides free legal advice, representation, referral and legal education to low-income Edmontonians. Both receive funding from the Law Foundation of Alberta.

**Pro Bono Students Canada** originated at the University of Toronto in 1996, and now operates at most law schools across the country. PBSC is a network of law schools, community organizations and lawyers that facilitates law students' pro bono work with public interest and non-governmental organizations, agencies, tribunals, legal clinics and lawyers working pro bono on a particular case.

Some clinic support programs were also reported in Manitoba, Nova Scotia and Saskatchewan.

### **Law Firm Initiatives**

Websites of 120 law firms with universal CBA membership were reviewed, namely firms with 25 or more lawyers in Ontario or British Columbia and firms with 10 or more lawyers in other jurisdictions. While most firms mentioned charitable or other "good works" to "give back to the community", only three firms specifically noted their pro bono legal services.

## **CBA PRO BONO ACTION PLAN**

The Working Group recommends that the CBA undertake a number of activities to assist lawyers in meeting the goal of contributing 50 hours or 3% of billings per year on a pro bono basis.

### **ACTIVITIES TO COORDINATE AND FACILITATE PRO BONO WORK**

#### 1. Remove barriers to pro bono service

The law society insurers in British Columbia and Ontario have made changes to the professional liability insurance coverage for lawyers, so that insurance-exempt lawyers (such as those employed by government or as corporate counsel), as well as non-practicing and retired lawyers can volunteer their services for pro bono work.

*The Working Group recommends that the CBA:*

- *develop template policies for law societies and their insurers, to permit E&O insurance coverage for pro bono work by lawyers who are otherwise exempt from insurance coverage (for example, public sector lawyers, corporate counsel, non-practising and retired lawyers); and*
- *encourage each law society and its respective insurer to implement the necessary insurance coverage to permit insurance-exempt lawyers to act on a pro bono basis.*

#### 2. Law firm policies

While many lawyers provide pro bono legal services on an ad hoc basis, law firms can engender a pro bono culture, support specific pro bono programs and encourage more systematic pro bono work by their lawyers.

*The Working Group recommends that the CBA develop model policies and check lists for law firm pro bono work, and make them available to members on the CBA website.*

#### 3. Promote best practices

The good intentions of lawyers and law firms wishing to do pro bono work are often thwarted by not knowing how to connect with the individuals or groups that could benefit from their particular expertise. The Working Group recognizes that there are a number of models for law firms to realize more effective pro bono activities. For example, a firm could: partner with a community group to deliver legal services to that group or the constituency it serves; second a lawyer to a community clinic; give cash donations or in-kind services; or staff a legal clinic one night per week.

*The Working Group recommends that the CBA create a clearinghouse to inform its members of best practices for pro bono delivery on a sector basis (for example, for small and medium firms, young lawyers, or national firms). The information should be available to members on the CBA website.*

4. CBA Branch support of pro bono work

*The Working Group recommends that the CBA encourage its Branches to support pro bono activities in their respective jurisdictions, by:*

- *urging each Branch to explore, in cooperation with the law society and legal aid program in their jurisdiction, the feasibility of developing an Internet-based delivery system similar to that of ProBonoNet BC, where community groups can request legal services and lawyers can register to do pro bono work; and*
- *provide assistance with funding applications for the cost of licence fees and development work, for smaller Branches that wish to opt into a web-based delivery system.*

*The Working Group recommends that the CBA website provide links to provincial and territorial Internet-based pro bono initiatives.*

5. Specialized pro bono services

*The Working Group recommends that the CBA consult with National Sections to explore need for specialized pro bono services in particular areas of law.*

#### **ACTIVITIES TO PROMOTE AND RECOGNIZE PRO BONO WORK**

6. Young Lawyers Pro Bono Award

The Young Lawyers' Pro Bono Award recognizes outstanding pro bono legal services to the community by a young lawyer in Canada. The winner receives a \$1500 cash prize and a tribute is published in the National. This year's award is sponsored by the Canadian Bar Financial Corporation.

*The Working Group encourages the CBA and the Young Lawyers Conference to continue this award.*

7. Pro bono challenge for law firms

*The Working Group recommends that the CBA issue a challenge for all law firms to adopt a pro bono policy and increase the pro bono service of their lawyers to 50 hours or 3% of billings per year.*

8. Peer recognition of pro bono service

*The Working Group encourages the Editorial Board of the CBA National magazine to consider publishing a “pro bono focus” issue, and profiles of lawyers doing pro bono work in each issue.*

9. Documentation of pro bono activity

*The Working Group recommends that the CBA undertake a regular survey of CBA members' pro bono activity, to document statistical and anecdotal information.*

## CLINIC SUPPORT

The resolution and background materials from Western Canada Society for Access Justice, which were referred to the Working Group in August 2002, propose that the CBA assume a leadership role in providing pro bono clinics across Canada and develop a vision statement with specific goals and strategies. The goals of the proposed program would be:

- to establish recommended national standards for pro bono clinics.
- to provide letters, certificates, plaques, awards, and publicity to acknowledge individuals and groups promoting pro bono clinics.
- for those provincial bars that are interested in participating in the program to assist them create vision statements for their provinces. A suggested format is the Vision Statement of the Western Canada Society to Access Justice for Western Canada.
- to lobby stakeholders in the justice system including Legal Aid Societies, Law Societies, Law Foundations, community legal programs, and government agencies (municipal, provincial, and federal), foundations, and law firms to support pro bono clinic programs.
- to promote and facilitate free or low-cost insurance for non-practicing lawyers engaged in work at a pro bono clinic.
- to otherwise facilitate pro bono clinics by enhancing their programs and promoting their fundraising drives.

The proposal foresees a geographic goal of clinics across Canada meeting national pro bono standards, with a clinic in every community in Canada over 30, 000 and, in larger communities one clinic for every 60, 000 people.

This proposed program would support clinics modeled on the Western Canada Society for Access Justice delivery system. While there are merits to this particular delivery model, the Working Group does not believe that the CBA should promote one model to the exclusion of other equally meritorious ones. Some of these are highlighted above. In our view, local communities and organizations should have the flexibility to develop programs that meet their particular needs.

The Working Group has looked at each of the proposed goals against the guiding principles outlined in the introduction of this report.

### *National standards for pro bono clinics*

The Working Group recognizes clinics as one model for effectively delivering pro bono services. It is of the view, however, that developing national standards for pro bono clinics would not give sufficient flexibility to adapt to local delivery needs.

***Acknowledge individuals and groups promoting pro bono clinics***

The Working Group agrees that a pro bono culture can be promoted by acknowledging individual or group efforts. This acknowledgment should not be limited to those promoting pro bono clinics, but to any lawyer demonstrating exemplary pro bono service. To this end, the Working Group has endorsed the Young Lawyers' Pro Bono Award, and has suggested ongoing acknowledgment of pro bono work through the National magazine.

***Assist interested provincial bars to create vision statements***

The Working Group agrees that the CBA should provide leadership and assistance for pro bono initiatives by its Branches. The suggested vision statement would set specific goals and strategies only for the particular clinic model. The Working Group has recommended that the CBA create a clearinghouse, to share information on best practices for a variety of delivery models, model law firm policies, assistance for funding applications, and the like.

***Lobby justice system stakeholders to support pro bono clinic programs***

The Working Group agrees, but would not limit CBA lobbying efforts to support for clinics.

***Promote free or low-cost insurance for non-practicing lawyers at a pro bono clinics***

The Working Group agrees, and has recommended that law societies and their respective insurers remove insurance-related barriers to all lawyers providing pro bono services, not just those working at pro bono clinics.

***Facilitate pro bono clinics by enhancing programs and promoting fundraising drives***

Again, the Working Group would not limit CBA efforts only to the support of clinics.

***The Working Group recommends that:***

- ***the CBA not endorse a single model of pro bono delivery service delivery, but should promote a variety of models to best meet local needs;***
- ***the CBA should not directly fund pro bono clinics.***

**CBA STRUCTURES TO OVERSEE PRO BONO WORK**

Promoting a pro bono culture within the legal profession is sufficiently important to be an ongoing CBA priority, with a specific group in the organization mandated to implement the recommendations in this report, raise funds to ongoing initiatives and oversee the work. The Working Group examined a number of implementation models against the principles outlined on page 2. To meet these principles, the implementation group should:

- be permanently established within the CBA governance structure;



- have representation from each Branch, to ensure input of regional interests and needs (like, for example, the Legal Aid Liaison Committee and the Law Day Committee); and
- recognize that pro bono work complements, but does not replace a properly funded legal aid program.

*The Working Group recommends that:*

- *the CBA create a Pro Bono Standing Committee with a mandate to implement the recommendations in this report, and to promote and facilitate pro bono service in the legal profession;*
- *the Chair of the Standing Committee be nominated by the Nominating Committee and elected by Council in accordance with the CBA By-Laws;*
- *each Branch name a member to the Standing Committee;*
- *the Chair of the Legal Aid Liaison Committee be an ex officio member of the Pro Bono Standing Committee, and vice versa; and*
- the work of the Standing Committee be conducted predominately by conference call and e-mail.