

Report of the Joint LSBC/CBA *Pro bono* Initiative Committee

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***A Final Report on Pro bono Forum 2001 - for  
the public good***

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## **BACKGROUND**

### ***PRO BONO FORUM 2001 - FOR THE PUBLIC GOOD***

The joint Law Society/Canadian Bar Association (BC Branch) *Pro Bono* Committee (the “Committee”) in its 1999 interim report entitled “A Framework for the Delivery of *Pro Bono* Legal Services in the Province of British Columbia” made several recommendations to facilitate the development, coordination and delivery of *pro bono* throughout the Province of British Columbia. In particular, recommendation #8 stated that:

*The Committee continue consulting with stakeholders within and affected by the justice system including community organizations, health, social services, and advocacy groups.*

As part of its implementation of this recommendation, the Committee requested funding from the Law Foundation of British Columbia to hold a Forum on *pro bono*, entitled *Pro Bono Forum 2001 – for the public good*. The grant request was approved and *Pro Bono Forum 2001 – for the public good* was held at the SFU Morris J. Wosk Centre for Dialogue in Vancouver, BC on October 19<sup>th</sup> and 20<sup>th</sup>, 2001.

The Forum brought representatives of community organizations from around the province together with Judges, lawyers, Legal Services Society staff, law schools, *pro bono* service providers, courthouse library staff, court facilities staff and others interested in *pro bono* for an exchange of information, ideas and resources. It was intended to serve as a starting point for further dialogue and collaborations towards ensuring access to justice for everyone in BC, regardless of their financial circumstances.

### **Forum Objectives**

One of the overall goals of the Forum was to expand the collaborative approach already underway with respect to the delivery of *pro bono* legal services in BC. In particular, the Forum had three primary objectives:

- To consult with community organizations and other key stakeholders to identify and articulate the wider community's need for *pro bono* legal services, and to develop practical approaches for matching legal resources with these needs.
- To develop and disseminate materials, modules, information and advice to community organizations wishing to establish *pro bono* clinics or services.
- To consult with and receive input from community organizations and other stakeholders regarding development of a *pro bono* website for BC.

The Forum was organized as a working forum which allowed participants to discuss topics such as the promotion and coordination of *pro bono* services in BC; current gaps in service delivery and how to match *pro bono* clients with lawyers and community resources; different ways of delivering *pro bono*; overcoming obstacles to the effective delivery of *pro bono*; and the design of the *pro bono* website to serve community needs and the needs of lawyers interested in *pro bono*. A prototype of the website was introduced at the Forum and a workstation was available at all times so that interested participants could view and navigate the prototype.

Key speakers at the Forum included the Chief Justice of British Columbia Lance Finch; BC Supreme Court Chief Justice Donald Brenner; the Honourable Michael Harcourt, former BC premier and Vancouver mayor who in his early years helped establish one of the country's first free legal advice clinics; Professor Ron Daniels, Dean of Law at the University of Toronto and founder of *Pro Bono* Students Canada; and Esther Lardent, President of the *Pro Bono* Institute at Georgetown University Law Center, Washington D.C.

In addition to consulting with a wide range of stakeholders, another main purpose of the Forum was to provide practical resources and assistance to community organizations interested in *pro bono*. It is the Committee's experience that community groups, with the active support of the Bar, are in the very best position to identify *pro bono* needs and to deliver *pro bono* services in their communities.

## Assessing the Results

Early on in the planning stage, the Committee agreed that one of the keys to a successful Forum would be ensuring a province-wide representation of community groups, and good overall representation from the legal profession, the judiciary, Legal Services staff and others interested in *pro bono*.

A letter of invitation was first mailed to 772 community organizations throughout the province. Of these, a targeted group of approximately 273 organizations received a second letter of invitation. Invitations were also sent to members of the judiciary through the Chief Justices of the BC Court of Appeal and the BC Supreme Court, and the Chief Judge of the Provincial Court. Information about the Forum was distributed to members of the Law Society of BC through mailings, at Continuing Legal Education courses and through the Law Society and CBA websites. Invitations were also sent to Court Services Headquarters, the Legal Services Society including Community Law Offices and Native Community Law Offices, the Law Foundation of BC and to all law schools, Law Foundations and law societies in other Canadian jurisdictions.

In total, 127 participants attended the forum.

The actual participants of the forum can be broken into the following groups:

<i>Legal Services Society</i>	<b>11</b>	<i>Bar Associations</i>	<b>10</b>
<i>Law Schools</i>	<b>7</b>	<i>Judiciary</i>	<b>7</b>
<i>Members of Bar</i>	<b>16</b>	<i>Community Groups</i>	<b>63</b>
<i>Courthouse/Libraries</i>	<b>4</b>	<i>Other:</i>	<b>7</b>
<i>Government</i>	<b>2</b>		

Thirty-six of these participants also acted either as a panelist for one of four plenary sessions and/or as a facilitator for one of four afternoon workshop sessions.

## Subsidy Requests

The Committee was committed to ensuring representation from interested community-based organizations throughout the Province. Letters of invitation included information about a subsidy program that was developed to help defer Forum expenses for organizations that might otherwise be unable to attend a conference in Vancouver. The Committee formed a subsidies working group to establish criteria for subsidy eligibility, receive and review subsidy applications, and determine the amount of financial assistance to award for registration, accommodation, and/or travel expenses. The working group agreed on the following criteria for subsidy eligibility:

- Subsidies to be awarded based on need;
- Only one subsidy per organization to be considered;
- Financial assistance to be available for registration, accommodation and travel costs;
- A minimum of two representatives of community groups from each region outside the Lower Mainland to receive full subsidy, with partial subsidies also available;
- Organizations and individuals requesting a subsidy had to first register for the Forum and pay the registration fee.
- If a subsidy request was granted, or if the request was denied and the registrant wished not to attend the Forum, the registration fee would be refunded in full.

The subsidies working group identified seven regions of the province that it hoped would be represented at the Forum: Vancouver Island, the Lower Mainland, the North East region including Prince George; the West Coast region including the Chilcotin; the Okanagan, the Thompson/Cariboo region, and the Kootenays. The second mailing of a letter of invitation specifically targetted groups located in those regions of the province that are consistently underrepresented at events held in Vancouver.

The subsidy requests varied from organization to organization. Some groups required registration assistance only; others required full assistance. The subsidy amounts awarded per region were as follows:

<u>Region</u>	<u>Number of Requests</u>	<u>Total Amount</u>
West Coast	1	1,200.00
Vancouver Island	8	3,014.12
Kootenays	3	2,480.28
Okanagan	4	1,500.00
North East	0	0
Thompson/Cariboo	1	450.00
<u>Lower Mainland</u>	<u>7</u>	<u>1,016.50</u>
<b>Totals:</b>	<b>24</b>	<b>9,527.15</b>

<u>Region</u>		<u>Area of Advocacy</u>
West Coast	1	Poverty
Vancouver Island	2	Women's Issues
	1	Children's Issues
	2	<i>Pro bono</i> Providers
	2	Disability
	1	Sexual Abuse Survivors
Kootenays	2	Women's Issues
	1	<i>Pro bono</i> Providers
Okanagan	1	Multicultural
	1	Tenants Issues
	2	Poverty
Thompson/Cariboo	1	Poverty
Lower Mainland	3	Multicultural
	2	Women's Issues
	2	Poverty

## **SUMMARY OF FORUM PROGRAM**

### ***Opening Remarks***

Opening remarks and the Forum welcome were given by Peter Keighley QC, Bencher of the Law Society of BC and Co-Chair of the Law Society/CBA Committee on *Pro Bono*, as well as on behalf of Richard Margetts, President of the Law Society, and by Carman Overholt, President CBA (BC Branch) and Co-Chair of the Law Society /CBA Committee on *Pro Bono*.

### ***Keynote Address***

The Honourable Michael Harcourt gave the keynote address. Mr. Harcourt, former Premier of the Province of British Columbia from 1991 – 1996 presented an interesting summary of the history of legal aid in BC, and certain innovations that have been developed over the years to extend access to justice, such as the introduction of contingency fees and the creation of the Law Foundation of BC to use interest collected on lawyers' trust accounts for legal education, advocacy and law reform initiatives. He observed that lawyers in BC have a long and distinguished history of pushing back the barriers to access to justice.

Mr. Harcourt identified aboriginal law issues, lack of housing and homelessness, drugs and crime, and the high costs of litigation, as some of the most pressing present and future needs in the province.

He concluded by suggesting that a *pro bono* recognition or awards program would be an important way of acknowledging the *pro bono* work performed by lawyers and law firms.

### ***Plenary Sessions***

There were four plenary sessions held on Friday, October 19, 2001.

#### ***“Views from the Bench”***

The first session discussed how lack of legal representation affects the courts, the courts' on *pro bono*, and the need to ensure equal access to the justice system. The panelists were Madam

Justice Anne Rowles of the BC Court of Appeal, Mr. Justice Bryan Ralph of the BC Supreme Court, Judge Margaret Rae of the BC Provincial Court and Heather McNaughton, Chair of the BC Human Rights Tribunal.

The panel expressed concern about the high costs of litigation and the increasing number of self-representing litigants appearing before the courts. Madam Justice Rowles commented that many appeal cases are not pursued because litigants face complex procedural requirements and often cannot afford the expenses associated with their case, such as the cost of transcripts and appeal books. She discussed the limited amount of legal aid available, particularly at the Court of Appeal level, and she emphasized the important role the Court Registry performs in trying to assist self-representing litigants to proceed with their case. Madam Justice Rowles also identified language and literacy difficulties as significant barriers for many people wishing to access the court system.

Mr. Justice Ralph discussed the work being done by Court Services and the judiciary to assist self-litigants. He said that most *pro se* litigants appear on family law matters but he has also seen an increase in the areas of debt, foreclosure, and enforcement of court orders. Mr. Justice Ralph observed that while judges do their best to assist lay litigants appearing before them, it is sometimes at the risk of appearing to lose their impartiality. He also expressed his concern about the many people the courts never see – those who may have a valid claim but never even make it into the system to pursue their rights.

Judge Margaret Rae emphasized the need to maintain procedural fairness and she discussed some of the Provincial Court initiatives currently underway to streamline court procedures and manage cases more effectively. She noted that while many *pro se* litigants' problems are not necessarily complex, self-representing litigants often lack the problem solving skills necessary to present their case effectively. She also commented that she has seen an increase in the number of middle class people who can no longer afford legal services.

Ms. McNaughton discussed the role of administrative tribunals and identified some of the differences between administrative tribunals and the courts. Ms. McNaughton also expressed her

concern about the impacts of the increasing “judicialization” of the administrative tribunal system.

*“The Pro bono Experience in Other Jurisdictions”*

The second session examined how *pro bono* legal services are currently being delivered in other Canadian and American jurisdictions, as well as the development of several innovative initiatives to promote and facilitate the delivery of *pro bono*. The panelists were Ronald J. Daniels, Dean of the Faculty of Law at the University of Toronto, Esther F. Lardent, the President of the *Pro bono* Institute in Washington, D.C., and Jocelyn Hill, staff lawyer with Calgary Legal Guidance.

*“Identifying the Needs in our Communities”*

The third session examined the growth and range of unmet legal needs in BC, in both rural and urban centres, including the needs of First Nations people, immigrants, refugees, people of colour, people with disabilities, seniors, children and youth, those living in poverty and the working poor. The panelists were Sherman Chan of MOSAIC, Arthur Paul of the Native Courtworkers and Counseling Association of BC, Barbara Findlay, barrister and solicitor, Robin Loxton of the BC Coalition of People with Disabilities, Joyce Preston, Children and Youth Advocate, and Jenny Shaw of the West End Seniors Network.

*“Meeting the Needs in our Communities – Finding Solutions and Developing Partnerships”*

The final plenary session discussed how partnerships between community-based organizations, the legal profession and others interested in *pro bono* can increase the public’s access to justice. It examined the range of *pro bono* programs and projects currently underway in BC, the type of services being provided, their relationship to the communities they serve and the work that remains to be done to ensure that all British Columbians have access to justice, regardless of financial circumstances. The panelists were Jessie Basra, Legal Counselling Coordinator at Battered Women’s Support Service; Anne Beveridge, Client Services Manager and Poverty Law

Advisor, Legal Services Society; Dugald Christie, Coordinator, Western Canada Society to Access Justice *Pro Bono* Program; John Pavey, Coordinator, Salvation Army *Pro Bono* Program; and Ram Sidhu, Legal Advocate, South Surrey White Rock Women's Place.

### ***Lunchtime Presentation***

Chief Justice Donald Brenner of the BC Supreme Court, who introduced Ron Daniels, Dean of the Faculty of Law, University of Toronto as the luncheon speaker, strongly encouraged the bar to increase its involvement in the delivery of *pro bono* legal services. Chief Justice Brenner emphasized that the Courts are willing to work together with the bar to help to facilitate the delivery of *pro bono* to those who need it the most.

Dean Daniels then gave a luncheon address in which he focused on the growing need for *pro bono* in our communities to ensure that individuals are able to obtain the most basic necessities of life for themselves and their children. He also addressed the need for *pro bono* in the broader public policy-making arena to support the rule of law, and to contribute to the public weal. A copy of Dean Daniels' speech is appended to this Report.

### ***Workshop Sessions***

There were four afternoon workshop sessions held on Friday, October 19, 2001.

#### ***Workshop A: The Nuts and Bolts of Starting a Pro bono Delivery Service or Clinic***

##### Coordination of Resources

Participants discussed the fact that there are a lot of groups wanting to get involved in *pro bono*. Some expressed concern that this could place an overwhelming demand on those lawyers and law firms who are willing to do *pro bono*. The group acknowledged the need for a coordinated approach to managing *pro bono* requests and available resources. One person suggested that a phone service be implemented to provide people with one number to call so as to co-ordinate resources. Some participants felt that lack of co-ordination is one of the barriers preventing lawyers from doing *pro bono* legal work.

Another view presented was that too much of a co-ordinated response might create a top-down system and it might be preferable for individual groups to develop their own methods of co-ordination. A participant from Kelowna commented that there is a large number of non-profit groups in that city. If all of these groups approached the same pool of volunteer lawyers, it would be overwhelming.

Another person expressed a concern that gender and racial issues must be taken into consideration, and that one system cannot serve everyone. There is a need for a range of approaches in order to address the different needs of various groups. As well, the task of teaching lawyers about sensitive issues requires a substantial amount of training. A homogenous pool of *pro bono* providers cannot do this and it would not be overly attractive to lawyers.

Another concern was that small towns do not have large pools of lawyers upon which to draw. If the few lawyers available are bombarded with individual requests, they will be overwhelmed and will not want to continue to meet *pro bono* requests.

The overall view of the group was that resources and requests must be co-ordinated.

Dorothy Cameron of the BC Courthouse Library commented that law libraries are only open for a limited amount of time because of staffing costs, and librarians are available primarily to assist lawyers and to maintain the library. Library staff generally do not know what materials or forms a self-representing person might need for a particular case. Accordingly, access does not necessarily equal more information. Ms. Cameron said that the courthouse library does have a toll free line, which people can call to obtain information and some assistance. Unfortunately however, many lawyers simply tell their clients to go to the law library and don't provide them with any further direction.

### Quality Assurance

Jocelyn Hill, staff lawyer with Calgary Legal Guidance, said that her organization asks its volunteer lawyers to sign a contract to ensure they provide good service to their *pro bono* clients. Calgary Legal Guidance also asks clients to fill out an evaluation form about the service they

have received. It was generally agreed that a *pro bono* lawyer who doesn't provide good service should be fired.

A question was raised as to whether this should be different in smaller communities where there might be only 1 or 2 lawyers available to do *pro bono* work. Ms. Hill felt that the issue is really about training lawyers properly before problems arise.

There was also a discussion about when it is necessary to use a lawyer, or when an advocate can do an adequate job serving a client. It was suggested that *pro bono* clinics could do a lot of the front-line work to avoid situations where someone might spend \$500 in legal fees for a \$200 dispute. Some participants felt that lawyers are preferable because they can provide strong, accurate advice. Some also felt that having a legal clinic training lay advocates might create a slippery slope, as lay advocates lack proper legal knowledge or training. Others felt that lay advocates perform an important function and are often better informed about particular legal issues than are some lawyers who practice in a different area of law.

The discussion moved on to whether providing specific training to volunteer lawyers is useful. Representatives from the MS Society and Battered Women's Support Services both indicated they provide training on their specific issues to their volunteer lawyers even though many of the people involved with these organizations already have some knowledge of the issues.

Some participants felt it was a question of screening, not training, and that the objective should be to find lawyers who have a certain type of practice, rather than train them for specific *pro bono* work.

Margrett George of the Lawyers' Insurance Fund informed the group that a new insurance initiative was being considered by the Benchers of the Law Society to provide insurance coverage, at no cost and with no deductible payable, to non-practising, retired, and insurance-exempt lawyers doing *pro bono* work, provided the work is delivered through an approved *pro bono* agency. The initiative also requires that the lawyers cannot provide *pro bono* to a person previously known to them. Under the new coverage, practising lawyers who are participating in an approved *pro bono* program will also have their deductible waived in the event of a claim.

The facilitators for this workshop were Jessie Basra, Legal Counselling Co-ordinator, Battered Women's Support Services; Adrienne Boothroyd-Sampert, Service Co-ordinator, Volunteer Legal Advocacy Program, MS Society; Dugald Christie, Co-ordinator, Western Canada Society Access to Justice *Pro bono* Program; Jocelyn Hill, Staff Lawyer, Calgary Legal Guidance; Jamie McLaren, Director of Communications, Law Students' Legal Advice Program; and Ram Sidhu, Legal Advocate, South Surrey White Rock Women's Place.

### ***Workshop B: Pro Bono Outreach – Matching Pro Bono Needs with Interested Lawyers***

The first question posed was how to recruit lawyers. The main suggestions offered were to ask them personally, rely on word of mouth, or to assign one person within an organization to work solely on recruiting lawyers.

Another suggestion was to ask one lawyer in a community to network and find other interested lawyers, keeping in mind the need to be careful not to overload a small group of lawyers so as to avoid burnout. Someone suggested that the Law Society's *Pro Bono* Initiative might prove useful for recruiting lawyers if lawyers think they will get credit for being involved in a Law Society initiative, or if they receive a letter from the Chief Justice encouraging their participation.

Another idea was that the Community Law Office system (through the Legal Services Society) might work well if they can get support from well-known lawyers and large law firms in their communities. Some participants also thought that it would be useful to place a one-page ad in local newspapers to acknowledge publicly the *pro bono* contributions of lawyers and firms.

It was also suggested that lawyers could be given an incentive to participate in *pro bono* if their insurance premiums were cut or they were given a recommendation.

A question was raised about the impact of disbursement costs on *pro bono* lawyers and their firms, and how to ensure that lawyers have to deal only with the legal issues in a *pro bono* case. Some thought it imperative to have a support system in place so that lawyers have resources available to assist clients with other issues such as a client's mental illness. The key would be to

have services such as counselling, screening of the issues, and follow-up provided by other organizations within the community instead of by the lawyer. The point was made that a lawyer is not a counsellor or social worker but is a legal advisor, and it was thought best to have those other roles fulfilled by suitable people.

Some participants thought it would be useful to have clients receive preliminary information through brochures, pamphlets etc. before meeting with a lawyer to ensure the lawyer's time is used productively. One participant stressed that lawyers must separate their private practice from their *pro bono* practice. They need support from community organizations to help keep administrative matters away from their private firm. One representative of a community organization thought, however, that this often places too much of a burden on community groups if they are expected to deal with all of the non-legal issues related to client's *pro bono* file.

Someone suggested that perhaps lawyers and law firms could donate money to these organizations to support this preliminary work, in exchange for a tax receipt.

A concern was raised about ensuring that a lawyer is qualified to provide a particular service. For example, arbitration is becoming more legalistic and therefore less accessible, and how does one encourage a lawyer to learn a new area of law? Some felt that because community groups are experts in their particular areas of advocacy, they can do part of the work and assist with training *pro bono* lawyers and directing them to the appropriate issues. Another suggestion was increasing the use of paralegals.

Another participant discussed the issue of a client's ability to understand the legal concepts that are described to them by a lawyer. Some thought that it might be useful to have a second person in the room with the client to help explain what is going on, if the client agrees. The client's agreement is necessary to avoid any confidentiality issues.

There was also a discussion about meeting the needs and expectations of clients, and quality assurance generally. Some recommended having lawyers sign confidentiality, diversity and policy agreements, and providing them with access to information and lists. It was generally agreed that *pro bono* providers should be responsible for interviewing volunteer lawyers to

ensure that they understand the needs and issues of the specific type of client they will be assisting.

Final key points raised by the group were conflict checks, possible problems arising with a self-governing body reviewing complaints about lawyers who are doing *pro bono* work, and the need to provide information on different legal procedures to clients so that they can better understand what is happening, and to reinforce this information through follow-up letters.

The facilitators for this workshop were: Anne Beveridge, Client Services Manager & Poverty Law Advisor, Legal Services Society; Kristiina Harris, Student Co-ordinator, *Pro bono* Students Canada; John Pavey, Co-ordinator, Salvation Army, BC *Pro bono* Program; and John Simpson, Legal Services Society.

### ***Workshop C: Overcoming Economic and Structural Barriers to Pro Bono – Creating a Pro Bono Friendly Legal System***

Margrett George of the Law Society's Insurance Department discussed the general requirement that all lawyers must have insurance if they are to practice in British Columbia. Lawyers who are not in private practice (i.e. if they are in-house lawyers or government lawyers) are exempt from this requirement. Ms. George mentioned that 15% of lawyers responding to a recent Law Society *Pro Bono* Survey said lack of insurance was their reason for not participating in *pro bono*.

She discussed the new insurance initiative being considered by the Benchers of the Law Society to provide insurance coverage, at no cost and with no deductible payable, to non-practising, retired, and insurance-exempt lawyers doing *pro bono* work provided the work is delivered through an approved *pro bono* agency.

The Insurance Department will be looking to the Joint LSBC / CBA *Pro Bono* Committee to approve *pro bono* service providers for insurance purposes. Insurance will be effective January 2002 – details of the coverage are still being worked out. The new coverage does not affect staff lawyers who have insurance and are providing legal advice to their own organization

The group as a whole then identified and discussed the following barriers to *pro bono* and some possible solutions.

**Barriers to *pro bono*:**

It was felt that the government's approach to Legal Aid is a barrier to the provision of *pro bono* services because organizations and lawyers are discouraged by the cutbacks to Legal Aid. They fear that *pro bono* will be relied on by government to fill in the gaps left by the cutbacks. There was also concern expressed about the governments' failure to apply the PST collected on lawyers' services, to fund Legal Aid.

The complexity of issues and of court rules and procedures is also a barrier because most litigants cannot competently handle their own cases. This increases the demand for *pro bono* assistance.

Geography and the growing number of people who cannot afford legal services has resulted in many people requiring help with their problems. A few workshop attendees said that another impediment to access to justice is the lack of coordination, collaboration and communication among service providers. There is, they said, a tremendous need to network and to find out where to refer those in need of services. One needs to be passionate about the issues and about the need to work together.

One community group representative observed that those who have legal problems also often face other bureaucratic challenges. Once people lose their disability benefits, for example, they are "off the rails" and end up with even fewer financial and emotional resources left to fight for their due. Since government agencies do not coordinate their actions, individuals must go to multiple agencies and can end up in a bureaucratic nightmare. This becomes an access to justice problem because those involved are worn down by the system and by circumstances. In the end, they lose faith in their ability to do anything about the problems they face.

Another community group representative said government cutbacks to programs serving those with disabilities complicates the process of getting funding for housekeeping and personal care, to the extent that legal assistance is now required.

There are additional administrative complexities for lawyers who volunteer to do *pro bono* work. Some workshop attendees observed that *pro bono* lawyers have to ensure that a conflicts system is in place to cover both their *pro bono* work at clinics and their paid work. One community group representative noted that there can be an additional conflicts issue for small town and rural lawyers who may be reluctant to take *pro bono* cases that could conflict with their work for a paying client, or because of certain political considerations.

Volunteer burnout is also a barrier. As one advocate observed, volunteers cannot "run on autopilot". If the volunteer has to develop the process as well as perform the service required, it becomes too time consuming and too draining. The volunteer needs to know where (s)he can go for support. The volunteer needs an infrastructure already in place.

One attendee said that volunteerism itself might be an impediment to providing legal services as it can be hit and miss – not the best approach for legal matters.

Language is another barrier to access to justice and to the provision of *pro bono* services. It can be difficult to find out who to contact about legal issues and also difficult to discuss the issues once they find the relevant community group or lawyer.

Many barriers to the justice system and to *pro bono* are based on poverty. The centralized nature of the justice system was said to be a particular problem for the poor. In Kelowna this problem has been recognized and accommodated by providing bus tickets so litigants can get to the courthouse. It was also noted that, for the poor, the courthouse is a major source of legal information. Court registry staff, already stressed for time, see many people who lack the resources to obtain legal assistance. Many litigants also turn to courthouse libraries as a primary legal resource. Courthouse staff and librarians find that litigants become frustrated when staff and librarians cannot provide legal advice.

Attitude can be an impediment to doing *pro bono* work. One of the lawyers attending the workshop noted that some lawyers equate *pro bono* work with bad debts and do not want to take on further "bad-debt" clients. The reaction to this observation was that the difference between bad debts and *pro bono* work must be emphasized. Though in neither case does the lawyer get paid, *pro bono* is a different way of doing law.

Another lawyer noted that *pro bono* clients can be more demanding than paying clients. Litigants seem to expect more when they are not paying for legal advice. Part of the problem might be that *pro bono* clients are not familiar with the legal process and often have complex problems extending beyond the legal issues. Their issues are often interconnected and can absorb more time than those of a paying client.

Lawyers who fail to explain what they are doing present barriers because clients give up. One attendee, agreeing on the importance of communication, added that what lawyers traditionally offer might not be what a particular client needs. She said that (too often) lawyers are not trained to take direction.

In addition to the attitude of lawyers and clients, the attitude of law firms also affects the provision of *pro bono*. One workshop attendee observed that young lawyers often want to help with *pro bono* work, but their employers do not encourage it. Another attendee wondered whether or not it would help if all law firms' annual reports listed hours of *pro bono* work performed.

One representative said that their success in recruiting *pro bono* lawyers doubled when the organization took out an advertisement to specifically thank the lawyers who had contributed *pro bono* work. She noted that those lawyers are now getting more paying business.

Urgency can also be an impediment to accessing *pro bono* assistance. Workshop attendees said that it can be difficult to obtain lawyers on such short notice. Examples of urgent cases were evictions, and some domestic matters.

There was general agreement that there is a shortage of *pro bono* lawyers, but no shortage of clients. One attendee commented that 20% of lawyers are doing 80% of the *pro bono* work and said that this, too, was a burnout issue.

## **Solutions**

The workshop considered solutions to the barriers to *pro bono* and access to justice. Some suggestions were about making it more enticing for lawyers to participate (e.g., give lawyers

incentives, such as an insurance break for doing *pro bono* work, or some kind of credit – like the CLE credit given in the U.S. – for doing *pro bono* work). Another suggestion was that funding be provided (perhaps by the Law Foundation) to cover lawyers' disbursement costs in *pro bono* cases. One attendee noted that, in Ontario, litigants can apply to a Class Proceedings Fund.

Community organizations (particularly those which take a holistic approach to the client) could handle the non-legal aspects of the *pro bono* client's case and reduce or eliminate the time the lawyer has to spend on non-legal issues.

It was suggested that, when advertising for *pro bono* lawyers, it is important to be specific about the type of service and the legal area. One attendee added that letting the lawyer know in advance how much time is required and keeping to that time encourages their participation.

Clients need to know where to turn for *pro bono* help. It would help if Judges and Masters directed people to available *pro bono* legal services. It would also help if a list of lawyers interested in doing *pro bono* work was available. Apparently, the Ministry of Justice is putting together an index of those willing to do *pro bono* work / advocacy.

Several attendees agreed that it would be helpful to have duty counsel for litigants in family law.

Education was mentioned a few times as providing a means of overcoming one barrier to *pro bono* work. If lawyers were informed about what to expect from *pro bono* clients, and *pro bono* clients were informed about what to expect from lawyers, efficiency would be increased and the frustration level for both would decrease. While most members of the public are not interested in legal issues until they are affected by them, the earlier they can be informed, the more likely they will address the issue before it becomes complex and expensive.

The Forum, and conferences like it, can reduce barriers to *pro bono* work, an attendee said. The Forum was a much needed opportunity to share ideas and learn from one another. Another suggestion was putting in place a centralized chat room focusing on *pro bono* programs, which would offer an ongoing opportunity to share ideas and information.

The facilitators for this workshop were Margrett George, Program Administrator & Claims Counsel Law Society of BC Insurance Department; Stephanie Lightfoot, Legal Services Society, *Pro Bono* Disbursement Program; Brent Messenger, Manager, Civil Programs - Law Courts; Richard Rondeau, Regional Director, Lower Mainland Court Services; Professor Margot Young, Faculty of Law - UBC and The University of Victoria; and John Simpson, Legal Services Society.

### ***Workshop D: Law Firms and Pro bono – Managing Pro bono in Practice***

Stanley Martin from Fasken Martineau DuMoulin outlined his firm's *pro bono* policy, which has been in existence since the mid 1980's but was recently updated. The policy encourages lawyers to take on *pro bono* work and community service. To encourage their lawyers' involvement, the firm provides recognition of *pro bono* work in lawyer evaluations, has a time record item for *pro bono*, and a conflict checks system. The firm also provides educational opportunities for lawyers to learn about doing *pro bono* work.

Esther Lardent commented that *pro bono* policies in US firms are common. She suggested that a firm could encourage and recognize lawyers by offering billable hours credits (because billable hours requirements are now so high) for *pro bono* work performed. She said this tends to work in large firms because larger firms normally have so many policies in place. In smaller firms, however, where not much policy is put into writing, it makes *pro bono* "stick out like a sore thumb".

She said that because in the US a lawyer cannot advocate a position opposite to a firm's clients, certain firms couldn't take certain *pro bono* cases. Some firms have worked it out with their clients so they can do *pro bono* in the same area of law. Some firms have done very controversial work – and their clients applaud the firm for being passionate about their legal work.

Ms. Lardent was asked how one sells something like the need for *pro bono* in the poverty law area to a firm that specializes in corporate/commercial law. She said that the way to do it is to sell the idea to associates in the firm as a means for them to gain experience handling a case

under supervision. Some firms use *pro bono* as a training opportunity. Through taking on *pro bono* cases, associates can gain courtroom and other professional experience which they might not otherwise have available to them.

Mr. Martin explained that at his firm they expect associates to be relatively independent, which is different from the US model. His view was that the real potential problem they face is one of conflicts.

Kelly Doyle inquired about the experience Ontario has been through since 1989. Dean Ron Daniels said that there have been some difficulties in Toronto. They are currently trying to get a minimum commitment of *pro bono* hours per firm and have been sending students into the firms to promote *pro bono*. One of the problems has been the increased competition among firms, in particular vis-à-vis US firms. Firms in Toronto are trying to increase the number of associates and their billable hours in an attempt to be competitive with New York. Clients and good students are moving to New York and to other large US cities. He said the debates within firms and partnerships are so taxing that *pro bono* is not seen as a priority.

Esther Lardent said that her program focuses on large firms because institutional overlay of firms impacts on a lawyer and affects their decision about whether to do *pro bono*. She offered the following ideas about techniques that work: calls from respected people such as judges who can act as a source of encouragement and recruitment. Judges can also set priority in court for *pro bono* matters if the *pro bono* lawyer is waiting to be heard. Ms. Lardent also said that a lot of lawyers work in isolation and *pro bono* work can provide opportunities to socialize.

Carman Overholt commented on the CBA mentor program, which recently had fifty to sixty lawyers attend a reception to greet students. Ms. Lardent suggested using this approach with big firms. Her organization is currently working with in-house counsel and seeing more joint *pro bono* ventures between clients' legal departments and law firms, including staffing clinics together.

Rolf Weddigen, Q.C. advised that his firm has four to five lawyers doing the *pro bono* work of 30 lawyers. When lawyers come back from clinics they have gained valuable experience. Mr. Weddigen felt that it might be a mistake to link *pro bono* experience with billing. While his firm

does keep track of billable hours, it emphasizes the joy and reward of being a professional on a *pro bono* case without having to think about billing.

Ms. Lardent said that when her organization works with the larger firms on their *pro bono* policies, many firms are motivated to improve their *pro bono* programs so that they can be seen as “A” firms in every aspect of their business. In the US, corporate clients are now starting to ask firms about their *pro bono* involvement. Corporations need to know that their in-house counsel are doing *pro bono* as well.

Mr. Overholt discussed the new *pro bono* website currently being developed in BC that will match lawyers with *pro bono* needs and service providers including community groups.

Julia Bass from Ontario said that there is a continuum between *pro bono* work and community service so we should resist defining *pro bono* as litigation. Ms. Lardent agreed that it could take a range of shapes such as negotiation, mediation, financing for projects, and corporate and governance for non-profit groups, to name just a few. In large US firms, the majority of lawyers are not litigators. Firms in state capitals have large public policy practices. Many non-litigation practices are transferable to *pro bono*.

Dean Daniels said that in a large firm, a solely litigation-based *pro bono* program wouldn't work because many solicitors want involvement and credit too. Mr. Martin said that approximately 80% of his firm's *pro bono* work is solicitors' work and they are able to maintain a broad base of support for *pro bono* within the firm by having a lot of people each doing a little bit.

Mr. Doyle thought that the community service angle would help to get solicitors involved in *pro bono*, but community groups are saying their clients often need full legal representation, so no single model is sufficient. Ms. Lardent said that a firm could find a way to involve everyone in the firm, including non-lawyers. For example, by creating a special project and focusing on one particular poor neighborhood, a firm would be able to clearly see the difference it is making.

There was a brief discussion about allocation issues. For example, in Saskatchewan, big firms are still small compared to firms in Vancouver but they have a long tradition of *pro bono* work. Ms. Lardent emphasized the importance of setting priorities to determine the greatest need.

The facilitators for this workshop were Dean Ron Daniels, Faculty of Law - University of Toronto; Kelly Doyle, Lawson Lundell, Member CBA/Law Society Committee on *Pro Bono*; Esther Lardent, President - *Pro Bono* Institute, Georgetown University, Washington, D.C.; Stanley Martin, Fasken Martineau DuMoulin LLP; and Carman Overholt, President, CBA BC Branch; Co-Chair, Joint Law Society/CBA Committee on *Pro Bono*.

## **Saturday Session, October 20, 2001 - Where are we now and where do we go from here?**

Forum participants were honoured to have the Chief Justice of British Columbia, Chief Justice Lance Finch, welcome them to the Saturday morning session. Chief Justice Finch encouraged all lawyers and law firms to participate in *pro bono*, especially those who have succeeded mightily at the practice of law. He said that even if a lawyer or firm is not able to provide *pro bono* services directly, they are still subject to at least the same responsibility to help those in need, perhaps through developing a *pro bono* policy to positively encourage all lawyers in the firm to perform *pro bono* legal work, or by providing financial and other support and resources. The Chief Justice concluded his remarks by stressing that it is incumbent on firms to find ways to ensure that all lawyers participate in *pro bono*, and he encouraged healthy competition among firms to see which firm could give the most.

Carman Overholt then presented an overview of the joint Law Society/CBA (BC Branch) *Pro Bono* Initiative and invited comments and questions from Forum participants. Following this excellent exchange of ideas, Charlotte Ensminger, staff lawyer at the Law Society of BC and Coordinator of the *Pro Bono* Forum, with the assistance of Desmond Olsen, led a discussion about the features of the new *pro bono* website that is being developed for BC.

## Conclusion

In his concluding remarks, Mr. Overholt encouraged Forum participants to continue the consultation and collaborations begun at the Forum. He invited community groups, *pro bono* service providers, the legal profession and others interested in *pro bono* to provide ongoing input into all aspects of the joint Law Society/CBA *Pro Bono* Initiative and to assist in developing this “work in progress”. Mr. Overholt stressed the importance of continuing to work cooperatively to ensure that the Initiative meets the needs of the communities it is intended to serve. He concluded by thanking the participants, speakers, facilitators and volunteers for their contributions to making the Forum a success.