

Pro Bono Publico — lawyers serving
the public good in British Columbia



PROBONO



Report of the *Pro Bono* Initiative Committee,
a joint committee of the Law Society of British Columbia
and the Canadian Bar Association (B.C. Branch)

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The logo for PROBONO, featuring the word in a serif font with a stylized graphic element to the left.



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June, 2002

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Introduction

In 1996, the Task Force on Systems of Civil Justice Report of the Canadian Bar Association concluded that *pro bono* legal work is an important component of a plan to increase access to justice. At the Annual Meeting of the Canadian Bar Association in St. John's Newfoundland in 1998, it was resolved that the CBA should take steps to encourage and promote *pro bono* activity and to recognize *pro bono* efforts undertaken by members of the legal profession in Canada.

At the Annual General Meeting of the Law Society of British Columbia in September, 1998, it was resolved that the Law Society work cooperatively with the Canadian Bar Association (B.C. Branch) to develop and encourage programs for the delivery of *pro bono* legal services within the province of British Columbia.

In the fall of 1998, a Committee was struck by the Law Society and the CBA (B.C. Branch) to implement these resolutions. The Committee at that time consisted of the following members:

Robert W. McDiarmid, QC (Bencher, Law Society)
Carman J. Overholt, (CBA (B.C. Branch))
James Matkin, QC (Executive Director, Law Society)
Charlotte Ensminger (Staff Policy Lawyer, Law Society)

The current members of the joint Law Society/CBA (B.C. Branch) Committee on *Pro Bono* (“the Committee”) are:

Peter Keighley, QC, Co-Chair (Bencher, Law Society)
Carman J. Overholt, Co-Chair (President, CBA (B.C. Branch))
Mr. Justice Ian T. Donald (B.C. Court of Appeal)
Mr. Justice Bryan Ralph (Supreme Court of B.C.)
The Honourable Judge Margaret E. Rae (Provincial Court of B.C.)
Dugald Christie* (Western Canada Society Access to Justice)
Kelly Doyle (Lawson Lundell and CBA (B.C. Branch))
Charlotte Ensminger (Staff Policy Lawyer, Law Society)
Frank Kraemer (Executive Director, CBA (B.C. Branch))
James Matkin, QC (Executive Director, Law Society)
Robert W. McDiarmid, QC (Bencher, Law Society)
Anita Olsen (Lay Bencher, Law Society)
John Pavey (Salvation Army *Pro Bono* Lawyer Consultant Program)
Professor Wes Pue (UBC Faculty of Law)
John Simpson (Legal Services Society)
Professor Kim Hart-Wensley (UVic Faculty of Law)
Brad Daisley (Public Affairs Manager, Law Society)
Caroline Nevin (Director of Communications, CBA (B.C. Branch))

(Although a longstanding member of the Pro Bono Committee, Mr. Christie does not agree with the Committee's conclusions and recommendations contained*

in this report. He has prepared a separate short report to support his recommendation that pro bono services be delivered solely through a clinical program model.)

The purpose of this report is twofold. First, it identifies the issues raised in the course of the Committee's deliberations. Second, it describes the current implementation work of the Committee that we believe will provide an appropriate framework for the delivery of *pro bono* legal services in the province of British Columbia.

The urgent need for *pro bono* — Why should we care?

One need not look very far to see that the challenges of accessing justice are increasing daily. More and more people are appearing in court without a lawyer, largely because they cannot afford one. The gap between rich and poor has widened, the law has become increasingly complex and severe budget cuts have had a dramatic impact on the availability of legal aid. Social service and community organizations that have traditionally assisted those with limited means are finding their resources stretched to the limit. The challenges of gaining equal access to justice are real.

Lawyers hold a unique place within the justice system and are well positioned to respond to the urgent need that exists in our communities. Canada, Australia, the United States and Britain are just some of the countries around the world where the legal profession itself has taken a leadership role in finding ways to promote lawyers' participation in *pro bono* work.

(For a fuller discussion of the relationship between *pro bono* and legal aid, see page 19 of this report. For an analysis of the impact of reductions in legal aid services for low income people, and women and children in particular, see *Where the Axe Falls: the real cost of government cutbacks to legal aid*, a July, 2000 report of the Law Society of B.C.)

The obligation to do *pro bono* legal work

No one should be denied access to justice because of poverty. In a modern democracy that is dedicated to the rule of law, the justice system should be accessible to everyone. It is the Committee's strongly held view that government has the primary responsibility to provide adequate legal aid to ensure equal access to justice. The legal profession does, however, play a fundamental role in ensuring the proper administration of justice. Even with a properly funded legal aid system, there have always been those who lack the means to obtain legal advice or assistance. Lawyers who believe they have a moral and professional duty to break down the barriers that prevent full access to justice represent many of these people, either for free or for significantly reduced fees. These *pro bono* activities in the public interest are an important aspect of professionalism and the practice of law:

The lawyer's function is grounded in role morality, the idea that special obligations attach to certain roles, in this case, to render justice. Lawyers claim autonomy to perform their functions as a consequence of specialized knowledge and skill. The state grants autonomy, an effective monopoly, in exchange for lawyers, as officers of the court, discharging their duty to further equality before the law. After all, the very reason the state conferred such a monopoly was so that justice could best be served, a notion that surely means that even those unable to pay or those pursuing an unpopular cause can expect legal representation. A lawyer's duty to serve those unable to afford to pay is thus not an act of charity or benevolence, but rather one of professional responsibility, reinforced by the terms under which the state has granted to the profession effective control of the legal system.

Katzman, R. ed. (1995) *The Law Firm and the Public Good*, Washington DC: The Brookings Institution.

Although the Committee does not support mandatory participation in *pro bono*, there are compelling arguments for a high sense of calling to justice in the role of a legal professional.

(See also references to the *Charter of Rights and Freedoms* and the *CBA Code of Professional Conduct* found at pp. 4-5 of *Promoting a Pro Bono Culture in the Canadian Legal Profession: an Options Paper* by the *Pro Bono* Subcommittee – CBA Systems of Justice Implementation Committee (March, 1998).)

The *pro bono* experience in other jurisdictions

In 1998, the Committee reviewed various *pro bono* initiatives in other jurisdictions. The following is a summary of some of the *pro bono* experiences in Ontario, Alberta, the United States, Britain and Australia at that time.

Ontario

In 1998, Ontario had two primary *pro bono* programs. The first, the Volunteer Lawyers Service (VLS), is a joint project of the United Way of Toronto, the Volunteer Centre of Toronto, the Law Society of Upper Canada and the Canadian Bar Association. It was launched in 1994 and provides free legal services to charitable and not-for profit community organizations. Lawyers offer legal advice and services in many areas of law, such as incorporation and by-laws, charitable status issues, employment and labour matters, and tenant and landlord issues. VLS also offered seminars on such topics as board of directors' liability, Y2K readiness and charitable incorporation.

The second, *Pro Bono* Students Canada (PBSC), is a network of law schools and community organizations that matches law students with public interest and non-governmental organizations, legal clinics, tribunals, agencies and lawyers who are doing *pro bono* work. It encourages students to become more involved in their communities

while promoting a *pro bono* ethic that leads to continued volunteering throughout the student's professional career. During 1998, almost 300 students participated in PBSC across Ontario. The program has grown to include many other law schools including the University of Alberta, the University of British Columbia, the University of Calgary, the University of Manitoba and the University of New Brunswick. It is looking to expand further to other Canadian law schools. The program is principally funded by the Law Foundation of Ontario and the Kahanoff Foundation, a private foundation. UBC's involvement with PBSC began in 1999.

In September, 1998, a small group representing legal academics, lawyers and the judiciary began meeting to explore how best to encourage and support *pro bono* activity by Ontario lawyers. The membership of the Ontario *Pro Bono* Initiative included the Dean of the Faculty of Law, University of Toronto, as well as judges and private practitioners.

In December, 1998, the Ontario *Pro Bono* Initiative sponsored a roundtable at the University of Toronto's Faculty of Law. A follow-up roundtable was held in March, 1999. In April, representatives from the six Ontario law schools, firms of varying size and practice areas, the bench, the CBA, the Law Society of Upper Canada, the charitable sector and government participated in a *Pro Bono* Summit to discuss ways of enhancing *pro bono* services in Ontario. The roundtables and the Summit discussions identified a need for an ongoing institutional structure to function as a focal point for the delivery of *pro bono* services, as well as to facilitate research, debate, policy development and education on *pro bono*. The University of Toronto's Faculty of Law proposed the establishment of a Centre for the Advancement of *Pro Bono* to assist in a more effective delivery of *pro bono* services. One of the primary policy functions of the Centre was to identify the legal needs of low-income people and evaluate the public and private means available for meeting those needs.

Highlights of the Ontario *Pro Bono* Summit discussion

The following highlights of discussions held at the Ontario *Pro Bono* Summit are of particular relevance to the work of the B.C. *Pro Bono* Initiative.

(a) Rationale for *pro bono* service delivery

The Ontario Summit found that the needs in the general community for free legal services are growing. It was their view that, while widespread access to legal services is a core responsibility of the state, *pro bono* is a complement to an appropriate level of state funding for legal services. In addition, lawyers who perform *pro bono* work derive many benefits, including increased professional satisfaction and further skills development.

(b) Barriers to delivery of *pro bono* work

The Summit identified and discussed in some detail the following existing barriers to the delivery of *pro bono* work:

- identifying needs in the wider community for legal services;
- the lack of formal support networks for the provisions of *pro bono* services within and across legal firms;
- training professionals for *pro bono* service delivery;
- matching professional resources with the needs of the community; and
- the need for financial resources to support disbursements and other out-of-pocket costs associated with *pro bono* work.

(c) Agenda for reform – identifying concrete initiatives to improve the delivery of *pro bono* services

The Summit set the following development and implementation agenda:

- develop a coherent and clear definition of *pro bono* services;
- develop a mechanism for identifying and articulating *pro bono* needs, and for matching those needs with resources within the profession;
- develop a capacity on the part of the profession for identifying and evaluating global trends in the demand for *pro bono* services;
- develop *pro bono* programs within and across the profession; and
- secure earmarked resources for covering various out-of-pocket costs associated with *pro bono* activity.

At the heart of the recommendations coming out of the Ontario Summit was the proposal to establish a Centre for the Advancement of *Pro Bono*. The Centre would facilitate a more effective delivery of *pro bono* services while also providing support and recognition to lawyers interested in doing *pro bono* work. *Pro Bono Law Ontario* was incorporated in 2001 as a non-share, non-profit corporation operating with an independent Board of Directors. The members of the PBLO Advisory Board are Chief Justice of Ontario Roy McMurtry; Chief Justice Pat LeSage; Chief Justice Brian Lennox; Justice Sidney Linden, the Chair of Legal Aid Ontario and June Callwood.

Alberta

Since 1971, Calgary Legal Guidance (CLG) has been providing legal assistance to financially disadvantaged people who do not qualify for legal aid and would not otherwise have access to a lawyer. In 1997, CLG assisted 4,192 clients with incomes below the poverty line in matters pertaining to criminal, family and poverty law. It did so through its downtown and community outreach clinics. CLG's programs are specifically targeted to Aboriginal people, persons with disabilities, women, the elderly, immigrants and illiterate and under-educated people.

CLG works with various partner organizations to offer five primary programs: a Volunteer Clinical Program, Follow-up Program, Public Legal Education Program, Court

Preparation/Restraining Order Program and a Social Benefits Advocacy Program. Volunteer lawyers at evening clinics provide the bulk of CLG's services. All lawyers volunteering at the clinics must be insured members of the Law Society of Alberta. Clinic clients receive follow-up assistance as necessary from a paid staff lawyer.

CLG's primary funders are the Alberta Law Foundation, the United Way, the City of Calgary and an anonymous donor. Recently, the Law Society of Alberta's *Pro Bono* Committee agreed to fund and partner with CLG to develop community legal clinics in other parts of the province. Rather than implement the clinic model as a province-wide program, Alberta decided it would be more effective to introduce the clinic model to individual communities because of the necessity of having the involvement and commitment of local volunteer lawyers. The first target area for a poverty law clinic is Edmonton. The initiative has involved a broad consultation with community organizations to ensure a community-based approach.

The United States

The ABA Center for *Pro Bono* was formed through the American Bar Association's Standing Committee on *Pro Bono* and Public Service. The mission of the Center for *Pro Bono* is to assist ABA members and the legal community in developing and supporting effective *pro bono* legal services in civil matters as part of the profession's effort to ensure access to legal representation and the American system of justice. It has articulated the following goals:

1. to help ensure that all lawyers have an opportunity to meet their ethical obligation to provide professional *pro bono* services;
2. to assist in the creation, design and implementation of effective organized *pro bono* programs;
3. to ensure that the existing *pro bono* programs continue providing high quality legal services to the poor;
4. to integrate *pro bono* representation into the system for delivering civil legal services to the poor.

The ABA Center for *Pro Bono* is just one of many initiatives underway in the United States. The *Pro Bono* Institute, housed at Georgetown University Law Center, is mandated to explore and identify new approaches to and resources for the provision of legal services to the poor, disadvantaged and other individuals or groups unable to secure legal assistance to address critical problems. In doing so, the Institute researches innovative programs and models.

The Institute undertakes evaluation to ensure that the proposals and methods identified are workable in the real world of legal services delivery. It seeks to look objectively and carefully at the strengths and limitations of current models and, working with key decision-makers and opinion leaders, to assess, improve and rethink those systems and

models to avoid stagnancy and to ensure responsiveness to new issues and opportunities. Among the projects operating under the aegis of the Institute is the highly regarded Law Firm *Pro Bono* Project, which also receives support and guidance from the American Bar Association Fund for Justice and Education.

The *Pro Bono* Institute has developed a *pro bono* website at www.corporateprobono.org. CorporateProBono.Org (CPBO) is a nationwide initiative designed to facilitate and increase the amount of *pro bono* work performed by in-house counsel and to assist legal services, *pro bono* and public interest programs in publicizing and placing *pro bono* matters with in-house lawyers.

In addition to these programs, there are a multitude of state and local *pro bono* initiatives provided through bar associations, law firms, community organizations and the courts. There is also another on-line *pro bono* service called Probono.net, which debuted in December, 1998. The site provides sample correspondence, pleadings and training materials for *pro bono* lawyers and answers frequently asked questions. It matches interested lawyers with *pro bono* opportunities. In addition to developing training materials in each practice area, it provides access to a community of other volunteer lawyers led by practitioners with expertise in the field.

Britain

In September, 1997, the Solicitors *Pro Bono* Group (SPBG) was launched in Britain. Its development grew out of a national meeting of lawyers who agreed that an entity should be formed to encourage and formalize *pro bono* activity. Based on similar models in other countries, the SPBG is an independent charity that supports, promotes and encourages a profession-wide commitment to *pro bono*. The Group's funding is provided solely by membership and donations. To achieve its aims, it works with members from the solicitors' profession as well as the advice and voluntary sector. It does not take on *pro bono* cases, maintain a list of solicitors undertaking *pro bono* work or refer cases to individual lawyers. Rather, it provides information and expertise about *pro bono* and lobbies government. It publishes a quarterly newsletter, is developing a practical manual and has organized a national conference on *pro bono*. British Aerospace's legal department was SPBG's first in-house member.

SPBG received the support of the Lord Chief Justice, Lord Bingham of Cornhill, who described its launch as "one of the most encouraging developments in our legal life for many years...." It also received support from the Law Society of England and Wales and government. SPBG says it was able to overcome the inevitable concern of the bar that government would use *pro bono* as an excuse for further cuts to legal aid. Many major private law firms in London have now appointed full-time *pro bono* officers to coordinate their firms' *pro bono* activities, both locally and globally.

Since the launch of SPBG, a range of *pro bono* initiatives and projects have been developed within the legal profession in the U.K. (See the SPBG website at www.probonogroup.org.uk for details.)

Australia

Several years ago, the Federal Court in Queensland proposed a *pro bono* scheme to enable unrepresented litigants with meritorious cases to obtain legal advice or representation. The scheme has the support of the Law Society and the bar. The scheme's key features include the following: the registrar will maintain a list of lawyers who have agreed to participate in the scheme; a court or judge may refer a litigant to the registrar for a referral; a referral may be for advice, drafting or settling documents or representation; a lawyer to whom a referral is made can choose whether or not to accept the referral; and, if costs are ordered in favour of a litigant assisted by a *pro bono* lawyer, the lawyer may recover fees and disbursements under the order.

In South Australia, the Law Society has established a Litigation Assistance Fund that aims to assist people, corporations or incorporated associations to proceed with litigation when they cannot get legal aid but have insufficient resources to pay for litigation themselves. The Fund assists with personal injury claims, commercial and property matters, inheritance claims and general tort claims. It does not assist with family law or criminal matters, nor does it provide assistance for defending a claim. An application must satisfy both a means and a merits test to be eligible for assistance.

In 1998, the Law Foundation of New South Wales' Centre for Legal Process published a comprehensive report entitled *Future Directions for Pro Bono Legal Services in New South Wales*. Two key themes emerged from the study: modernizing traditional *pro bono* practice and resourcing *pro bono* legal services. The report sets out a number of principles for the delivery of *pro bono* legal services. These include addressing issues such as the role of *pro bono* in ensuring access to justice while maintaining adequate legal aid funding, ensuring quality in the delivery of *pro bono* legal services and providing adequate resourcing for and promotion of *pro bono*.

The Report proposed four different models for the delivery of *pro bono* services. Based on the report's findings, the Foundation's Centre for Legal Process supported adoption of the "central contact point" model. This model provides for centralized policy development and improved access to *pro bono* services while maintaining a diverse range of local and institutional schemes in operation. The proposed coordinating agency would operate as a first point of contact, directing referring organizations or individual clients to a scheme that is most appropriate for them. The agency would not be involved in providing legal services or screening cases in detail; however, it would assist by advising enquirers of the most appropriate avenue of assistance. The agency would also develop information materials and promote *pro bono* services to community organizations. It would facilitate the development of *pro bono* networks within the legal profession and create a register of non-legal experts willing to work on a *pro bono* basis. It was anticipated that the agency would also operate as a policy body in the area of *pro bono* in consultation with practitioners and organizations that provide *pro bono* legal services.

Joint Law Society of B.C./CBA (B.C. Branch) *Pro Bono* Committee's consultation with the profession

The Committee consulted extensively with the legal profession through various CBA (B.C. Branch) Provincial Council meetings, at which different aspects of the *Pro Bono* Initiative were introduced and discussed.

The Committee also took note of the fact that there is already substantial participation by members of the legal profession in the delivery of *pro bono* legal services. Many B.C. lawyers provide hundreds of hours of *pro bono* services per year on an ad hoc basis. In addition, the Salvation Army *Pro Bono* Lawyer Consultant Program has approximately 280 lawyers involved in its clinics, and the Western Canada Society to Access Justice *Pro Bono* Program has about 150 lawyers participating in its program.

The Committee was of the view that, in order to consult further with the profession, publicly acknowledge the *pro bono* work already being done by B.C. lawyers and obtain some statistical information on the extent to which the profession is currently involved in *pro bono*, a comprehensive survey of the profession was necessary. The information obtained from the survey would assist the Committee to identify barriers to *pro bono* and to create an appropriate framework for the delivery of the highest standards of *pro bono* legal services. It was also intended to guide the Committee in determining an appropriate definition of *pro bono* legal services.

The survey was distributed in May, 2001 to 10,330 B.C. lawyers and articling students. In total, 619 responses were received. This translates to a response rate of 6%, which is comparable to other surveys conducted by the Law Society. (A copy of the Survey Report is attached as Schedule A.)

The survey results show there is considerable interest in and support for the *Pro Bono* Initiative and they confirm the extensive participation by members of the profession in *pro bono*. The results indicate, however, that the provision of *pro bono* services may not be as much a part of the professional culture of those lawyers called within the last 15 years. One interpretation could be that recently called lawyers lack the time to do *pro bono* work because they are trying to establish a practice.

More than 20% of the respondents indicated that lack of insurance was the reason they did not currently provide *pro bono* services. Other reasons cited were the need to make a living, family commitments, working long hours to meet billing targets and lack of support from their law firms.

Insurance and regulatory issues

The Committee discussed the Law Society's regulatory regime and how this might impact on the recruitment of *pro bono* lawyers and the delivery of *pro bono* services. The Committee considered whether creating a separate class of members would encourage non-practising, retired and other members not insured by the Law Society (e.g. corporate

counsel and government lawyers) to participate in the delivery of *pro bono* legal services. These members would be subject to the Law Society Rules, and insurance coverage could perhaps be extended to them for the *pro bono* work they perform. The Committee agreed to recommend to the Lawyers Insurance Fund that, in order to encourage insurance-exempt, retired and non-practising lawyers to participate in the delivery of *pro bono* legal services, they should not be required to pay insurance premiums or practice fees in connection with their *pro bono* work.

The Committee did not anticipate much increase in cost to the Law Society or its members as a result of establishing the proposed new insurance coverage. The Committee was of the view, from their experience, that *pro bono* legal work would not likely give rise to any significant increase in claims against lawyers.

After consultation with the Lawyers Insurance Fund, a proposal for extending coverage for *pro bono* work to non-practising, insurance-exempt and retired lawyers was put before the Benchers for deliberation. At their October, 2001 meeting, the Benchers resolved to extend insurance coverage to non-practising, insurance-exempt and retired members who provide approved *pro bono* legal services through an approved *pro bono* legal service organization to persons not previously known to them (outside the *pro bono* program), without payment of an annual insurance fee or member deductible where otherwise applicable.

Coverage for *pro bono* is already available to lawyers in private practice who are insured under the mandatory insurance scheme. At the October meeting, the Benchers also decided that, in the event of a claim, these lawyers will not have to pay a member deductible if they are providing approved services through an approved service provider, to persons not previously known to them outside the *pro bono* program.

The changes to the insurance policy language were put in place in January, 2002. The criteria for approving *pro bono* service provider programs and determining which legal services will be approved for the purposes of coverage are still being developed by the Lawyers Insurance Fund, in consultation with the Committee.

Definition of *pro bono* legal services

During several meetings, Committee members discussed whether there was a need to clarify a definition of *pro bono* because it cannot be assumed that everyone means the same thing when using the term. For the purposes of the *pro bono* survey described previously, the Committee defined *pro bono* work as “legal services for persons of limited means or not-for-profit organizations, without expectation of a fee.”

While, at the end of the day, the Committee did not endorse one particular definition of *pro bono* and favours a fairly broad definition, it does not believe a definition of *pro bono* should include non-legal community service work. This approach is consistent with that advocated by Dean Ron Daniels of the Faculty of Law at the University of Toronto, who has been instrumental in developing law student *pro bono* programs in Ontario and

throughout Canada. It is also consistent with the approach taken by most other jurisdictions having active *pro bono* initiatives underway.

Conflict of interest and quality assurance

The Committee discussed the potential for conflict of interest when a member participates in *pro bono*. Lawyers participating in *pro bono* must ensure that they conduct all enquiries in their firm and through the *pro bono* service provider program (if they are working with one), in order to avoid contravening Chapter 6, Rule 7 of the *Professional Conduct Handbook*.

The Committee believes that operating procedures should be developed for *pro bono* service provider programs that will assist lawyers in ensuring there is no conflict of interest arising from the delivery of *pro bono*. To that end, and to maintain a consistent quality in the delivery of *pro bono* legal services, a best practices manual will be developed to assist both volunteer lawyers and *pro bono* delivery programs.

Inventory of existing *pro bono* legal services

As noted earlier, there is a considerable amount of *pro bono* currently being provided by members of the profession. The Committee saw an important need for a comprehensive list of existing *pro bono* programs in order to identify gaps in services. As a first step, the Committee has compiled an inventory of free legal services in the Lower Mainland. This project will be developed further in the months ahead.

Law firms and *pro bono* – model law firm policies

During the course of its deliberations, the Committee reviewed several sample law firm *pro bono* policies. The underlying premise of most policies is that it is part of a lawyer's professional responsibility to do some *pro bono* work. Most law firm *pro bono* policies create a framework for managing a *pro bono* program within a firm while also recognizing there are some expenses related to operating a *pro bono* file.

The Committee discussed holding consultation meetings with the managing partners of interested firms in order to build support for, and consensus about, implementing some form of law firm *pro bono* policy.

The Committee met with representatives of Fasken Martineau DuMoulin (“Fasken”) to discuss the development and implementation of *pro bono* policies for law firms. Mr. Greg Haywood and Mr. Andrew Haring gave a presentation about their work on developing a new *pro bono* policy for their firm to encourage greater involvement in *pro bono* by everyone at the firm.

Fasken formed a subcommittee that collected policies from old law firm meetings and then prepared a draft policy for discussion. When drafting its policy, the subcommittee looked at a broader definition of *pro bono* than just the provision of free legal services. It included a range of community service activities. Mr. Haring and Mr. Haywood stressed the critical importance of having the partners in a law firm recognize *pro bono* as a legitimate part of a lawyer's billing time and to have this reflected in the compensation paid to lawyers.

One idea considered at Fasken was inviting community organizations to a series of lunch seminars at which the organizations could describe their current *pro bono* opportunities to interested lawyers. The firm's *pro bono* committee has also been looking at some of the liability and insurance issues related to *pro bono*.

The *pro bono* work currently being done at the firm is quite diverse, and includes labour and corporate work. Fasken publishes a pamphlet about its community service activities. The presenters emphasized that the benefits to a law firm can be enhanced through greater public recognition and acknowledgement of the *pro bono* contributions of law firms and individual lawyers. Promoting a little friendly rivalry among firms, together with increased media exposure, would encourage more participation in *pro bono* work.

A law firm with an active *pro bono* policy will likely be more successful in recruiting top level articling students, and newly called lawyers and law students are asking more frequently about a firm's *pro bono* opportunities.

Mr. Haring used to practise law with a large New York City firm that had a *pro bono* policy. At that firm, he was involved on a *pro bono* basis with a prison rights case and some human rights cases. He observed that U.S. firms have a higher commitment to *pro bono* than do B.C. firms and, in his view, the bar in the U.S. performs more *pro bono* work than the bar in B.C., although he acknowledged the extent of community service work done by B.C. lawyers. He noted that, in the U.S., many bar associations recommend that firms commit to a minimum number of hours of *pro bono* per year or a cash donation in lieu of time.

Mr. Haywood suggested that one way the Law Society/CBA *Pro Bono* Initiative could assist law firms in their efforts to promote *pro bono* would be by supporting the development of model *pro bono* policies. He also said a formalized *pro bono* structure that provided training, coordination and recognition of *pro bono* efforts would be very useful.

Another national firm has expressed an interest in working with the Law Society/CBA *Pro Bono* Initiative to develop a specialized *pro bono* project for that firm; several other larger B.C. firms have indicated their interest in formalizing their approach to *pro bono*; and a number of insurance-exempt lawyers working either for government or as in-house counsel have contacted members of the Committee to discuss developing *pro bono* policies for their places of employment.

Acknowledging and encouraging lawyers' participation in *pro bono*

Although never supporting the idea of mandatory participation in *pro bono*, the Committee agreed that a great deal can be done to encourage law firms and lawyers to voluntarily participate in the delivery of *pro bono*.

The Committee considered various approaches to encourage participation:

1. liaising with law schools to ensure that *pro bono*, as an aspect of professional responsibility, is included in the curriculum;
2. incorporating information on *pro bono* in the PLTC curriculum;
3. making *pro bono* service one of the criteria for appointment as Queen's Counsel and other CBA and Law Society honours;
4. having *pro bono* service considered as a criterion for judicial appointments;
5. developing a *pro bono* recognition and achievement program.

The Committee's proposed framework from its 1999 interim report

As has been discussed in other parts of this report, there is a clear need and support for increased coordination, better organization and exchange of information on *pro bono* issues, as well as the promotion of *pro bono*, better matching between resources and client needs, research on *pro bono* and best practices and quality assurance guidelines.

After reviewing in some detail the experiences in other jurisdictions, the Committee consulted with Mr. Blake Bromley, a lawyer specializing in not-for-profit law and incorporations. The Committee was interested in obtaining information about the tax considerations involved in establishing a society for the purpose of administering *pro bono* legal services, and a separate foundation for fundraising from donors wishing to benefit from charitable tax deductibility rules.

In its 1999 interim report, *A Framework for the Delivery of Pro Bono Legal Services in the Province of British Columbia*, the Committee recommended that a more coordinated approach to the delivery of *pro bono* legal services be taken. It concluded that an organization should be created to support and coordinate the activities of existing services and to promote the delivery of *pro bono* legal services throughout the province.

The Committee believes that the creation of a body responsible for *pro bono* legal services will ensure consistency in the delivery and standards of those services. The proposed non-profit society would work towards the promotion of various programs and projects throughout the province that would assist everyone involved in the delivery of

pro bono legal services. For instance, the Committee believes that a manual or reference material outlining how a *pro bono* legal services clinic may be operated is needed to ensure that the services are being delivered at an appropriate standard.

There are many organizations, such as the Salvation Army *Pro Bono* Lawyer Consultant Program and the Battered Women's Support Services, that would benefit from the involvement of more lawyers. These programs need additional support to ensure their continued success and growth within the province.

The proposed Society would have responsibility for training, establishing standards and registering groups that wish to provide *pro bono* legal services.

As part of its interim report, the Committee developed the following "Purpose and Vision Statement" to guide the proposed *pro bono* society:

Purpose

To facilitate and promote *pro bono* legal services in the province of British Columbia.

Vision Statement/Strategic Planning

By December 31, 2000:

- (a) everyone who fits into the guidelines will have access to proper legal advice and/or representation;
- (b) every lawyer in the province will be contributing to the delivery of *pro bono* legal services;
- (c) an umbrella society will be established that:
 - (i) provides easy access to resources in connection with *pro bono* legal services;
 - (ii) coordinates the delivery of *pro bono* legal services;
 - (ii) supports law firms, lawyers and other societies in the delivery of *pro bono* legal services;
 - (iii) maximizes resources;
 - (iv) encourages members to participate in the delivery of *pro bono* legal services;
 - (vi) promotes a "*pro bono* culture" in the legal community, including law schools and community colleges;
 - (vii) develops and monitors policy, prepares information and liaises with other jurisdictions in connection with the delivery of *pro bono* legal services;

- (viii) is recognized as a leader in ensuring the effective delivery of *pro bono* legal services of the highest professional standards; and
- (ix) enhances the image of the legal profession.

The 1999 interim report contained the following recommendations, which were endorsed by the Benchers of the Law Society that:

1. The CBA (B.C. Branch) and the Law Society of British Columbia authorize the creation of a society that will have responsibility for promoting the delivery of *pro bono* legal services in the province of British Columbia.
2. The CBA (B.C. Branch) and the Law Society authorize the creation of a separate charitable foundation responsible for fundraising for this initiative.
3. The CBA (B.C. Branch) and the Law Society support the circulation of a *pro bono* survey to the profession in order to obtain information that will be used by the proposed societies.
4. A new class of membership, for insurance purposes, be considered by the Law Society for retired members, non-practising members and members not in private practice who wish to perform *pro bono* legal services. These members would be provided with insurance and not be required to pay additional insurance or practice fees for their *pro bono* work.
5. The Committee be given the mandate to vigorously pursue fundraising in order to establish the proposed entities and to promote and develop *pro bono* legal services in the province of British Columbia.
6. The Law Society and the CBA (B.C. Branch) continue to work together to promote participation by members of the profession in the delivery of *pro bono* legal services.
7. The CBA (B.C. Branch) and the Law Society establish a schedule and plan for implementation of these recommendations.
8. The Committee continue consulting with stakeholders within and affected by the justice system, including community organizations, health, social services and advocacy groups.

Consultation with the community

As part of its implementation of Recommendation 8, the Committee organized a conference on *pro bono* to discuss the ways in which *pro bono* legal services should best be administered in the province.

Pro Bono Forum 2001 – *for the public good* was held at the Morris J. Wosk Centre for Dialogue in Vancouver on October 19 and 20, 2001. More than 700 community groups from around the province were invited to attend the Forum and a subsidy program was developed to enable them to do so. Lawyers, law students, judges, Legal Services Society staff and others interested in *pro bono* were also invited to participate. The Forum was a great success in facilitating a meaningful dialogue with community organizations interested in the delivery of services to those who are the most vulnerable in society and who are in the greatest need of *pro bono* legal services. The *Pro Bono* Committee's final report on the Forum can be found at the Law Society's website under Resource Library/Reports at www.lawsociety.bc.ca.

As a result of discussions held at the Forum, the Committee is of the view that a community advisory group on *pro bono* should be established to ensure the ongoing participation of community organizations interested in *pro bono*.

Establishment of a non-profit *Pro Bono* Society

The Committee supported the idea of incorporating a not-for-profit society that will have overall responsibility for promoting, coordinating and facilitating the delivery of *pro bono* legal services in B.C. An ongoing, centralized approach to *pro bono* would maintain, encourage and support a diverse range of local and institutional initiatives and programs, while at the same time facilitate the development of *pro bono* networks within the legal profession. The proposed name of the society is "Pro Bono Law BC."

The Joint Committee successfully applied to the Law Foundation for a three-year core funding grant of \$75,000 per year, beginning April, 2002. It is expected that the legal, business and general community will eventually be the source of any additional funds needed to support the entities.

The proposed by-laws of the new Society contemplate that the CBA (B.C. Branch) and the Law Society will lead these organizations through the appointment of directors. Each has appointed three directors. The Law Society appointments are: Mr. Justice Bryan Ralph (B.C. Supreme Court), Mr. Peter Keighley, QC (Bencher, Law Society) and Ms. Anita Olsen (Lay Bencher, Law Society). The CBA appointments are: Mr. Carman Overholt (President, CBA (B.C. Branch)), Mr. Kelly Doyle (Lawson Lundell) and Mr. Allan Parker (Legal Services Society).

These directors will have authority to appoint three representatives of community organizations to act as independent directors on the Board. In this way, the Society will benefit from the ongoing input of the community. It is envisioned that once a community advisory group has been established it may ultimately be responsible for nominating these three independent Directors.

Given a relatively small budget for its first three years, the *Pro Bono* Society will focus on five main areas:

1. community development;
2. lawyer and law firm recruitment;
3. development and maintenance of a *pro bono* website;
4. fundraising; and
5. lobbying for a properly funded legal aid system.

As part of its community development work, the Society will:

- operate as a first point of contact for community organizations looking for *pro bono* assistance for their clients and for lawyers interested in *pro bono*;
- provide program support to *pro bono* organizations and lawyers (it will not, however, provide direct delivery of *pro bono* legal services);
- direct agencies, lawyers and, in some cases, individual clients to a *pro bono* program most appropriate to them;
- function as a centralized source of information and other useful *pro bono* resource materials;
- assist community organizations with developing *pro bono* delivery models and resource materials to ensure consistent and high quality *pro bono* legal services;
- assist community organizations with publicizing their *pro bono* opportunities;
- develop and maintain a directory of *pro bono* programs available in the province; and
- coordinate the profession's *pro bono* programs.

As part of its lawyer and law firm recruitment work, the Society will:

- recruit lawyers and law firms to participate in *pro bono*;
- aid law firms in developing in-house *pro bono* policies;
- publicize *pro bono* work being done by volunteer lawyers;
- institute a *pro bono* recognition program;
- develop and maintain a roster of interested lawyers;
- stimulate a *pro bono* culture among firms and the profession generally;
- liaise with government and other institutions such as Legal Services Society, the Law Society of B.C. and the CBA (B.C. Branch); and
- develop a *pro bono* mentor program to assist *pro bono* lawyers as well as law firms with their *pro bono* cases and practice.

The maintenance and further development of a *pro bono* website will be provided by the Society.

As part of its fundraising work, the Society will enhance its fundraising capabilities by incorporating a separate body as a foundation, and it will research and pursue additional sources of core funding.

The Society's longer term objectives, once sufficient ongoing core funding has been secured, include working together with the courts and other participants in the justice system to address the increased number of unrepresented litigants and the pressure they place on the courts; conducting research into the *pro bono* work undertaken in B.C., including its quality, volume and value; developing policy on *pro bono*; holding seminars and forums from time to time on issues of interest to the *pro bono* sector; and working with interested parties to develop a disbursement system for *pro bono*, including looking at the feasibility of establishing a *pro bono* disbursement fund and a *pro bono* experts register.

This coordinated approach to *pro bono*, as envisioned by the Committee and implemented through the *Pro Bono* Society, will serve members of the legal profession who wish to volunteer their legal skills for the public good. It will benefit lawyers by matching them to *pro bono* opportunities and enable them to renew the tradition of their profession as one of service. It will also offer a means for gaining experience during and after legal training. Law students and inexperienced lawyers will be able to gain experience through working with clients from diverse backgrounds with a wide range of legal problems. It will assist law firms to recruit and retain the best and brightest new lawyers. Research from the United States suggests that, by engaging in a *pro bono* practice, law firms may actually increase their profitability overall.

Public and government relations implications

The public and government relations benefits of the proposed *pro bono* framework should not be underestimated. Lawyers are often criticized for their apparent lack of commitment to assisting people who need help the most, irrespective of whether the criticism is warranted. Many lawyers are committed to public service and they demonstrate that commitment by giving their time and resources to a variety of charitable organizations and worthy causes. Unfortunately, the public is not fully aware of the profession's philanthropic spirit. From a public relations perspective, the proposed framework for *pro bono* would accomplish the following objectives:

- demonstrate to the public that lawyers can and do perform charitable work;
- debunk the myth that lawyers do not currently provide or never have provided *pro bono* legal services;
- mobilize lawyers who are looking for new, meaningful ways to give back to the community; and
- generate positive media coverage about lawyers' humanitarian activities, thus improving the public image of lawyers.

The relationship between *pro bono* and legal aid

It is the Committee's view that the legal profession needs to participate in *pro bono* in order to be seriously included in the political debate about legal aid. Policies to promote equal justice emerge primarily through political debate, and the revitalization of government-funded legal aid requires the profession's active participation in seeking complementary solutions to access to justice concerns. Equal access to justice is clearly a fundamental element of a free and democratic society.

The Committee concluded that the *Pro Bono* Initiative would not in any way undermine the past, present or future efforts of the Law Society and the CBA (B.C. Branch) to lobby for adequate funding for legal aid. In fact, it was the view of the Committee that the proposed *Pro Bono* Society would be in a strong and credible position to support the ongoing efforts of the CBA and Law Society to lobby for a properly funded legal aid system.

In light of the concern expressed by some members that the Committee's efforts might inadvertently undermine ongoing efforts to secure adequate funding for legal aid, the Committee decided that it would not promote *pro bono* work in areas that have been historically covered by legal aid or in areas that the CBA (B.C. Branch) and the Law Society identify as areas that should be covered by legal aid. The provision of such services is a matter for the conscience of individual members, but it is not the intention of the Committee that its good and sincere efforts be turned to unintended political gain by the government of the day.

The Committee recognized that there are many areas of practice that have not been traditionally covered by legal aid. Moreover, the Committee recognized there are many areas of practice for which the CBA (B.C. Branch) and the Law Society have not lobbied for funding from legal aid. It also acknowledged the considerable *pro bono* work already being performed by lawyers.

The Committee has consistently emphasized the importance of working closely with the Legal Services Society and those who are fully engaged in the legal aid system in order to ensure that the work of the *Pro Bono* Society does not conflict with the efforts of the CBA (B.C. Branch) and the Law Society in lobbying for the proper funding of legal aid.

***Pro bono* website for B.C.**

In 2000, the Committee received funding approval from the Law Foundation of B.C. to develop a *pro bono* website for British Columbia.

One the major barriers to the effective delivery of *pro bono* legal services is identifying and communicating the wider community's need for *pro bono* legal services. The challenge is to effectively match professional resources with these needs. The website is being designed to make it easier for community organizations to communicate their *pro bono* opportunities and needs for volunteer legal services to interested lawyers. Many

volunteer lawyers are already doing *pro bono* work but are not networked by computer, nor is there support available to coordinate their valuable *pro bono* legal services. The website will help *pro bono* lawyers practise better, faster and easier, and produce high quality work for their *pro bono* clients. It will deliver legal information and resources to *pro bono* lawyers and community groups in all areas of the province, at any time of the day. The site will use volunteers to provide relevant, high quality content, and it will allow users to easily access resources important to their *pro bono* work.

The three main objectives underlying the project are:

1. to use Internet technology to facilitate the provision of high quality, free legal assistance to low income individuals and communities throughout B.C.;
2. to create a virtual community of private and public interest lawyers in B.C. who are interested in *pro bono* and link them with not-for-profit organizations in B.C. that provide or would like to provide legal advice, advocacy, legal information and legal education to low income people or on public interest issues; and
3. to deliver relevant, up-to-date information and legal and other resources to *pro bono* lawyers, *pro bono* service programs and community groups involved in *pro bono*.

In an effort to minimize the start-up costs of developing the website from scratch, the Committee researched the feasibility of using the code of an existing website as a template for the B.C. site. Discussions were held with the *Pro Bono* Institute at Georgetown University in Washington DC about their site www.corporateprobono.org, and with www.probono.net, a *pro bono* site originating in New York.

Negotiations with ProBono Net to use their code and software as a template began in earnest last year and concluded successfully last autumn when the Committee signed a licence agreement with them. The licence agreement entitles the B.C. *Pro Bono* Initiative to use and modify ProBono Net code and software to develop the B.C. *pro bono* site, www.probononet.bc.ca.

After receiving ProBono Net's code and software, the Committee worked quickly to build a prototype of the B.C. site so it could be introduced and displayed at *Pro Bono* Forum 2001 – *for the public good* held in Vancouver on October 19 and 20, 2001. Part of the Forum's Saturday morning session was dedicated to presenting the site and discussing its features with Forum participants.

This dialogue has since developed into an ongoing collaboration with representatives of the site's targeted user groups. Early in 2002 a website working group was struck to consider and make policy decisions and recommendations about its features and administrative procedures. The working group members are: Peter Keighley, QC and Carman Overholt, Co-Chairs of the joint Law Society/CBA (B.C. Branch) *Pro Bono* Committee, Sherman Chan (Director of Settlement Services, MOSAIC), John Pavey (Coordinator, Salvation Army *Pro Bono* Lawyer Consultant Program), Kelly Doyle

(Lawson Lundell), Charlotte Ensminger (Policy Lawyer, Law Society), Peter Beblo (Senior Technology Architect/Project Manager, Law Society), Desmond Olsen (website developer) and Laura Cooney (Legal Assistant, Law Society).

The website is split into five main areas:

- public area;
- lawyers and law firms;
- *pro bono* programs;
- community groups; and
- non-lawyers.

The website working group recognized the need to strike a balance between usability and security. The less security needed for a site generally, the more usable it is. Having secure areas requires passwords and extra administration, as information must be filtered for each separate area. Because some areas of the site will contain information that should be restricted to a particular user group, each user area has different security considerations and varying levels of access to information. The public area will contain links and other useful information for the public. It will not require users to register and log in to gain access. All other areas will require users to log in.

As well, each area will have its own unique colour scheme and content. Each user area, other than the public section, will have an “about” page, *pro bono* opportunities listings, news, events, resources, help section and a message board.

The site is a dynamic web site, meaning that information changes constantly as users add new information. Each different user group has information tailored specifically to that group. The more the site is used and updated by the users, the more useful an application it becomes.

The website is expandable to allow for future growth. The site only gets better as more users join and use the site. If the need arises, it is possible to add new areas or even new provincial websites to the existing site.

The original *probono.net* code was designed primarily as a lawyer-to-lawyer network, which had a number of security implications as well as implications for how information was categorized on the site. *Probononet.bc.ca* is a more ambitious project, as the Committee is attempting to build a site that not only serves lawyers but also *pro bono* service programs, community organizations, law students and non-lawyers such as mediators and legal assistants interested in *pro bono*, as well as the public. Introducing different user groups into the site has increased the complexity because of the need for varying levels of access for each user group.

It is expected that most of the programming modifications to the site will have been completed by the end of June, 2002. In May, 2002, a site administrator and a content

developer were hired to create and maintain relevant, up-to-date content for the site, which will be key to the site's success.

Version 1 of probonet.bc.ca is projected to be online by August, 2002, with further work being done over the following several months. Version 2 will be developed in response to the feedback received from users once Version 1 of the site is online, and will include additional features the website working group has identified as useful, project budget permitting.

The Committee has also entered into discussions with *Pro Bono* Law Ontario to allow PBLO to use the B.C. website model to develop a similar site for Ontario. These discussions are ongoing.

Conclusion

The Committee has taken a professional responsibility ideal and put into place a structure that creates a framework for formalizing the delivery of *pro bono*. The Law Society and the CBA (B.C. Branch) will have an ongoing role in the new Society through their Board appointment responsibilities.

In order for this initiative to succeed in meeting its goal of providing greater access to justice for all British Columbians, effective liaison with community organizations is essential. The new directors of the *Pro Bono* Society are aware of this, and one of their first priorities will be to establish a community advisory council.

There is an international movement underway on *pro bono* which, significantly, is based to a large degree on a growing awareness of the importance of, and the value in, serving the greater good. The Committee supports the efforts of the new Board to ensure that the *pro bono* ideal and a strong *pro bono* culture become a reality in British Columbia.

Schedule A

***Pro Bono* Legal Services Survey Results**

by Adam Whitcombe, Chief Knowledge Officer

Introduction

This paper reports on the results of the *Pro Bono* Legal Services Survey jointly conducted by the Law Society of British Columbia and the Canadian Bar Association (B.C. Branch).

The purpose of the survey was to collect sufficient information to publicly acknowledge the *pro bono* work already being done by lawyers in B.C. and to identify the barriers to effective delivery of *pro bono* legal services. The survey, including results, can be found at Appendix A (p. A-7).

The survey was sent to 10,330 members and articling students of the Law Society of British Columbia. In total, 619 responses were received. This translates to a response frequency of 6%. This is consistent with other issue-specific surveys that the Law Society has distributed in its regular mailings.

If the respondents are a random sample of the legal population in British Columbia, the results of the survey should be reliable +/- 3.8%, 19 times out of 20. However, the high non-response rate increases the possibility that the respondents are not a random sample. While the possibility of non-response bias cannot be ruled out, an evaluation of the respondent characteristics and the early and late responses suggests that the respondents are representative of the total population of lawyers in the province. A more detailed analysis of the reliability of the results can be found in Appendix B.

This paper is divided into three parts. The first part deals with who is providing *pro bono* legal services, what services they are providing and why. The second part deals with the respondents' opinions about lawyers providing *pro bono* legal services. The third part deals with respondents' views on the Law Society/CBA *Pro Bono* Initiative.

Part I: Providing *pro bono* legal services

Respondents were asked whether or not they were currently providing *pro bono* legal services. The question defined "*pro bono*" as "legal services for persons of limited means or for non-profit organizations, without expectation of a fee." Based on this definition, 78% of the respondents indicated that they were providing *pro bono* legal services.

Those who said they were currently providing *pro bono* legal services were more likely to be insured, practising lawyers with 15 or more years of call, practising on their own or in a firm of two to five lawyers.

Of those respondents who said they provide *pro bono* legal services, 58% indicated they provide the services to charitable, religious, civic, community, governmental or educational organizations that primarily address the needs of persons of limited means. Just under 44% provide the services to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights.

Respondents were asked to indicate the types of *pro bono* legal services they provide. The following table shows the responses for those respondents providing *pro bono* legal services.

Types of <i>pro bono</i> services provided		
Non-profit/society law	266	55%
Other	170	38%
Poverty law	147	31%
Family law	148	31%
Criminal law	87	18%
Immigration law	29	6%

Non-profit organizations and societies benefit most from *pro bono* legal services, with more than half the respondents indicating that they provide *pro bono* legal services to these groups. For nearly 30% of those who said they provide *pro bono* legal services, this is the only type of service they provide. On the other hand, over one third of the respondents said they provide types of *pro bono* legal services other than those listed in the survey. A number indicated that they provide *pro bono* legal services in relation to aboriginal law, civil litigation, creditor/debtor law and wills and estates.

In a typical month, 50% of respondents said they provide more than five hours; while the average was eight hours per month. Two respondents indicated that they were providing 60 hours per month on average while just over 6% of those who said they were providing *pro bono* legal services did not answer this question.

Seventy-six per cent of the respondents said that they perform volunteer community service other than providing *pro bono* legal services. Fifty per cent of the respondents spend 40 hours or less annually on volunteer community service, with an average for all respondents who answered this question of 36 hours per year.

Those respondents who said that they currently provide *pro bono* legal services were more likely to say that they perform other voluntary community services, with 79% of these respondents indicating that they perform other volunteer community service compared with only 66% of those who said that they do not provide *pro bono* legal services.

Similarly, those respondents who indicated that they work for clients whose fees are paid by the Legal Services Society were much more likely to say that they provide *pro bono* legal services than those who do no work for legal aid clients.

Two-thirds of respondents who provide *pro bono* legal services indicated the most significant reason they do so is professional responsibility, as reflected in the following table.

Most significant reason cited for providing <i>pro bono</i>		
Professional responsibility	317	66%
Volunteerism	112	23%
Market exposure	6	1%
Educational experience	5	1%
Other	45	9%

Respondents who do not currently provide *pro bono* legal services were asked to identify the most significant reason.

Most significant reason cited for <i>not</i> providing <i>pro bono</i>		
Family commitments	21	16%
Other volunteer commitments	9	7%
Government responsibility	3	2%
Not interested	6	5%
No firm support	12	9%
Other	79	61%

More than 60% of respondents who do not currently provide *pro bono* legal services indicated “Other” as the most significant reason.

One reason given for not providing *pro bono* legal services was the respondents’ lack of insurance, while a number of respondents indicated that all of their time was consumed trying to make a living or working long hours trying to meet billing targets.

Interestingly enough, over 80% of those who said that they were not interested in providing *pro bono* legal services indicated that they perform voluntary community service other than *pro bono* legal services.

Of those who are not currently providing *pro bono* legal services, over 70% said it was not likely that they would provide *pro bono* legal services in the future.

Likelihood of non-providers providing <i>pro bono</i> services in the future		
Very likely	9	7%
Likely	26	21%
Not likely	87	71%

Part II: Opinions about providing *pro bono* legal services

The survey sought respondents' opinions about several issues relating to the provision of *pro bono* legal services.

The first question was whether the respondents believe that lawyers should voluntarily provide a minimum number of hours of *pro bono* legal services annually. The responses to this question were almost evenly divided between those who agreed and those who did not.

Do you believe that lawyers in British Columbia should voluntarily provide a minimum number of hours of <i>pro bono</i> annually?		
Strongly agree	99	17%
Agree somewhat	180	30%
Disagree somewhat	102	17%
Strongly disagree	168	28%
Don't know	42	8%

Those who agreed were asked to indicate the minimum number of hours annually that they thought lawyers should provide. The average response was 46 hours per year with more than half of the respondents indicating that they thought 30 or more hours was appropriate.

Those who disagreed expressed concerns about being coerced into volunteering by guidelines or commented that *pro bono* should be promoted but not mandatory. Although those who agreed were less likely to comment on the question of a minimum number of hours, one respondent did state that he or she thought all lawyers should be required to provide some level of *pro bono* service as it was the only way to ensure that we all do our share to ensure that the legal system is accessible to everyone.

Respondents were also asked whether they thought it was important that lawyers who provide *pro bono* legal services be formally recognized and acknowledged in a public manner. Once again, responses were almost equally divided between those who agreed and those who did not.

Do you think it is important that lawyers who provide <i>pro bono</i> be formally recognized and acknowledged in a public manner?		
Strongly agree	99	17%
Agree somewhat	177	30%
Disagree somewhat	151	25%
Strongly disagree	117	20%
Don't know	54	8%

Some of those who agreed suggested that lawyers who provide *pro bono* legal services should be profiled in Law Society materials and commended for their contribution, while others preferred general, as opposed to individual, recognition of the substantial *pro bono* work undertaken by lawyers in B.C. On the other hand, some respondents who disagreed commented that a genuine willingness to do *pro bono* work is the result of a caring and giving heart, which is not something that can be elicited by any reward system. One respondent found “... the whole idea repugnant. I do a significant amount of *pro bono* and community work. I want no credit for it.”

Respondents were also asked whether they would support the creation of a non-profit service to promote, support and serve as a resource to organizations and lawyers delivering *pro bono* legal services. While 48% of the respondents agreed they would support the creation of such a service and 34% indicated they would not, there was a significant minority who were undecided.

It has been suggested that <i>pro bono</i> in B.C. could be enhanced through a non-profit service that would not deliver <i>pro bono</i> directly, but would promote, support and serve as a resource to organizations and lawyers in delivering <i>pro bono</i>. Would you support the creation of such a service?		
Strongly agree	83	14%
Agree somewhat	197	34%
Disagree somewhat	93	16%
Strongly disagree	105	18%
Don't know	109	19%

Respondents who currently provide *pro bono* legal services were less likely to support the creation of a non-profit service than those who are not currently providing any *pro bono* legal services.

Those who indicated support for the non-profit service were often highly enthusiastic: “This is a wonderful initiative and I wish you every success.” “I applaud the creation of the *pro bono* committee.” Those who did not agree or who did not know expressed reservations about the impact of this initiative on government support for legal aid, about the creation of a bureaucracy without benefits necessarily being delivered to those whom it is intended to assist and, in some cases, outright annoyance at the initiative: “I resent that the law society is doing this — and spending money on it.” “Do not create another bureaucracy that costs, and distances lawyers from others in community.”

While the responses and the comments indicate some support for a voluntary minimum number of hours of *pro bono* legal service, for recognition of lawyers who provide *pro bono* legal services and for a non-profit service to support the delivery of *pro bono* legal services, a majority of the respondents were undecided or opposed to the propositions implicit in the questions.

Part III: The Law Society/CBA *Pro Bono* Initiative

The final group of questions concerned the particulars of the Law Society/CBA *Pro Bono* Initiative. Respondents were asked to indicate what legal services they thought should be included in the Initiative.

What legal services do you think should be included in the Law Society/CBA <i>Pro Bono</i> Initiative?		
Legal services to persons not eligible for legal aid	399	64%
Legal services to organizations that address the needs of persons of limited means	317	51%
Legal services to secure civil rights and liberties	270	44%
Other volunteer or community service	182	29%
Don't know/no opinion	100	16%

Perhaps not surprisingly, nearly two-thirds of all respondents thought the Initiative should include the provision of legal services to those who were not eligible for legal aid. On the other hand, nearly 25% of the respondents did not answer this question or indicated that they did not know or had no opinion.

For the purposes of the Law Society/CBA *Pro Bono* Initiative, respondents were asked to indicate whether they thought *pro bono* legal services should include work undertaken in expectation of a substantially reduced fee. Just over half of the respondents thought *pro bono* legal services should include such work.

For the purposes of the Law Society/CBA <i>Pro Bono</i> Initiative, do you think that <i>pro bono</i> should include work undertaken with the expectation of a substantially reduced fee?		
Yes	323	56%
No	151	26%
Don't know/no opinion	107	18%

Respondents were also asked to indicate whether they thought *pro bono* legal services should include work undertaken in expectation of a fee where the fee was not received because the client could not pay. More than half the respondents thought *pro bono* legal services should not include such work.

For the purposes of the Law Society/CBA <i>Pro Bono</i> Initiative, do you think that <i>pro bono</i> should include work undertaken in expectation of a fee, when that fee is ultimately not received because the client cannot pay?		
Yes	143	25%
No	303	53%
Don't know/no opinion	130	23%

Appendix A to the Pro Bono Legal Services Survey Results

PART 1: PRO BONO LEGAL SERVICES CURRENTLY PROVIDED BY LAWYERS
<p>1. If pro bono means “legal services for persons of limited means or not-for-profit organizations, without expectation of a fee,” do you currently provide <i>pro bono</i>?</p> <p style="margin-left: 20px;">78% Yes 22% No If you answered no to this question, please skip ahead to Question 8.</p>
<p>1.1 In providing <i>pro bono</i>, do you ever pay for disbursements without expectation of reimbursement?</p> <p style="margin-left: 20px;">11% Never 29% Rarely 40% Occasionally 17% Frequently 3% Always</p>
<p>2. Do you provide <i>pro bono</i> to charitable, religious, civic, community, governmental or educational organizations that primarily address the needs of persons of limited means?</p> <p style="margin-left: 20px;">58% Yes 42% No</p>
<p>3. Do you provide <i>pro bono</i> to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights?</p> <p style="margin-left: 20px;">44% Yes 56% No</p>
<p>4. Please indicate the type of <i>pro bono</i> you provide: (check one or more)</p> <p style="margin-left: 20px;">31% poverty law (includes EI, GAIN, WCB, landlord/tenant, debtor issues)</p> <p style="margin-left: 20px;">18% criminal law</p> <p style="margin-left: 20px;">31% family law</p> <p style="margin-left: 20px;">6% immigration law</p> <p style="margin-left: 20px;">55% non-profit / society law</p> <p style="margin-left: 20px;">36% other (please specify) _____</p>
<p>5. In an average/typical month, how many hours of <i>pro bono</i> do you perform? Average 8 hours per month</p>
<p>6. If you currently provide <i>pro bono</i> through a structured program, please name the program:</p>
<p>7. Why do you provide <i>pro bono</i>? (check only the most significant reason)</p> <p style="margin-left: 20px;">66% professional responsibility 23% volunteerism 1% marketing exposure</p> <p style="margin-left: 20px;">1% educational experience 9% other (please specify) _____</p> <p style="margin-left: 20px;">Please skip ahead to Question 10.</p>
<p>8. If you are not currently providing <i>pro bono</i>, how likely are you to provide <i>pro bono</i> in the future?</p> <p style="margin-left: 20px;">7% very likely 21% likely 72% not likely 0% not interested</p>
<p>9. Why do you not currently provide <i>pro bono</i>? (check only the most significant reason)</p> <p style="margin-left: 20px;">16% family commitments</p> <p style="margin-left: 20px;">7% other volunteer commitments</p> <p style="margin-left: 20px;">2% it is the government’s responsibility to provide adequate resources</p> <p style="margin-left: 20px;">5% not interested</p> <p style="margin-left: 20px;">9% my firm won’t support me in doing <i>pro bono</i></p> <p style="margin-left: 20px;">61% other (please specify) _____</p>

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10. Does your firm have a <i>pro bono</i> policy? 4% Yes 93% No 3% In the process of development (Optional: If yes , please provide us with a copy.)
11. Do you believe that lawyers in British Columbia should voluntarily provide a minimum number of hours of <i>pro bono</i> annually? 17% agree strongly 30% agree somewhat 17% disagree somewhat 28% disagree strongly 8% don't know 11.1 If you agree, how many hours annually? Average of 46 hours per year
12. Do you think it is important that lawyers who provide <i>pro bono</i> be formally recognized and acknowledged in a public manner? 17% agree strongly 30% agree somewhat 25% disagree somewhat 20% disagree strongly 8% don't know
13. Do you work for clients whose fees are paid by the Legal Services Society? 29% Yes 71% No
14. It has been suggested that <i>pro bono</i> in B.C. could be enhanced through a non-profit service that would not deliver <i>pro bono</i> directly, but would promote, support and serve as a resource to organizations and lawyers in delivering <i>pro bono</i> . Would you support the creation of such a service? 14% agree strongly 34% agree somewhat 16% disagree somewhat 18% disagree strongly 19% don't know
15. Do you perform volunteer community service other than <i>pro bono</i> ? 76% Yes 24% No
16. How many hours annually do you spend on volunteer community service other than <i>pro bono</i> ? Average of 37 hours per year
PART 2: THE LAW SOCIETY / CBA PRO BONO INITIATIVE
17. What legal services do you think should be included in the Law Society/CBA <i>Pro Bono</i> Initiative? (check as many as apply) 64% the delivery of free legal services to persons of limited means who are not eligible for legal aid 51% the delivery of free legal services to charitable, religious, civic, community, governmental and educational organizations that primarily address the needs of persons with limited means 44% providing free legal assistance to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights 29% other volunteer or community service 16% don't know / no opinion
18. For the purposes of the Law Society/CBA <i>Pro Bono</i> Initiative, do you think that <i>pro bono</i> should include work undertaken with the expectation of a substantially reduced fee? 56% Yes 26% No 18% Don't know / no opinion
19. For the purposes of the Law Society/CBA <i>Pro Bono</i> Initiative, do you think that <i>pro bono</i> should include work undertaken in expectation of a fee, when that fee is ultimately not received because the client cannot pay? 25% Yes 53% No 23% Don't know / no opinion

20. Please list any suggestions you have about how lawyers can be encouraged to deliver <i>pro bono</i> to people who are ineligible for legal aid and cannot afford a lawyer.
21. Comments (feel free to attach an additional sheet):
PART 3: GENERAL INFORMATION
22. Describe your practising status: 93% a practising lawyer 2% a non-practising lawyer 5% a lawyer practising part-time 1% a retired lawyer 0% an articled student (<i>Skip to Question 27</i>)
23. If practising law, are you: 88% insured 12% exempt from insurance
24. If you are a lawyer in private practice, check the statement that best describes your practice situation: 29% a sole practitioner practising on your own, or with one or more lawyers in shared facilities 27% an employee, associate or partner in a law firm of 2 to 5 lawyers 15% an employee, associate or partner in a law firm of 6 to 10 lawyers 9% an employee, associate or partner in a law firm of 11 to 25 lawyers 5% an employee, associate or partner in a law firm of 26 to 50 lawyers 11% an employee, associate or partner in a law firm of more than 50 lawyers 2% an independent contractor providing legal services to lawyers or law firms 2% other (please specify) _____
25. If you are a lawyer in a setting other than private practice, check the statement that best describes your employment situation: 22% Crown Counsel 38% a government department, agency or Crown Corporation (other than as Crown Counsel) 18% a society, union, or other non-governmental organization 0% a faculty of law or other legal education organization 10% a business or corporation (other than a law corporation) 12% other (please specify) _____
26. How many years has it been since you were called to the Bar? 3% less than one 16% 1 - 5 19% 6 - 10 17% 11 - 15 15% 16 - 20 14% 21 - 25 7% 26 - 30 10% more than 30
27. If you are practising law or employed as an articled student, where is your chief place of practice or employment? If you are not practising law or employed as an articled student, where do you reside? 62% Lower Mainland 18% Vancouver Island 9% Kamloops / Okanagan Valley 5% Northern B.C. 3% Kootenays 3% other (please specify) _____
28. Sex: 72% Male 28% Female

PART 4: OPTIONAL INFORMATION		
Name:		
Address:		
Telephone: ()	Fax: ()	E-mail:
Would you like to receive more information about <i>pro bono</i> opportunities in your community? 33% Yes 67% No		

Appendix B to the Pro Bono Legal Services Survey Results

Response Rate and Reliability

The *Pro Bono* Survey was distributed to 10,330 practising, non-practising and retired members of the Law Society and articling students in conjunction with a regular mailing of Law Society materials, including the *Benchers' Bulletin* and other notices. In total, 619 usable responses were received and the data entered for analysis. This represents a response rate of just under 6%. This is consistent with other issue-specific surveys that the Law Society has distributed in a regular mailing of materials.¹ However, the response rate is much lower than has been experienced with issue-specific surveys distributed by separate mailing² or by facsimile.³ It is also much lower than experienced last year with the voluntary Annual Survey distributed with the Annual Practice Declaration.

If the respondents constitute a random sample of lawyers, a response of 619 returns is likely to be representative of the target population +/- 3.8%, 19 times out of 20. However, the relatively low response rate raises the potential that the responses are not representative of the total population. This is particularly true where the entire population of interest had the opportunity to respond to the survey. It also raises the potential for non-response bias. This occurs because the degree of interest of the respondents in the survey topic is the single most important reason for responding. As a result, the responses may over-represent the views of those members of the target population who are interested in the topic of the survey and under-represent the views of those who have no particular interest in the topic.

While the extent of non-response bias cannot be evaluated directly, there are techniques for evaluating the possibility of bias.

The first technique is to compare known characteristics of the respondents, such as age and gender, with known characteristics of the target population. If the known characteristics of both groups are statistically similar, this reduces the likelihood that the respondents are unrepresentative.

A comparison of the gender, insurance status and years of call of the respondent population who indicated that they were practising with the total population of practising lawyers reveals that women are slightly under-represented in the respondent population and that insured lawyers and more experienced lawyers are slightly over-represented. However, the differences between the respondents and the total population are not large.

The second technique is to evaluate the responses of those who responded early with those who responded late. The assumption here is that those most interested in the topic will respond soonest. If the early responses are statistically similar to the late responses,

¹ The Practice Management Survey distributed in 2000 had a response rate of 6.6%

² The Articling Survey achieved an overall response rate of 54%.

³ The Form 47 Cost Survey achieved an overall response rate of 48%.

this reduces the likelihood that the respondents are unrepresentative. Based on a comparison of the first hundred respondents with the last hundred respondents, there were no significant differences between the responses of these two groups.

While the possibility of non-response bias cannot be ruled out, evaluation of the respondent characteristics and the responses over time suggest that the respondents are representative of the total population of lawyers in the province.

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