

Leaving a Legacy – *Pro bono* Law Alberta¹

Rod Jerke, Q.C., Chair *Pro Bono* Committee

Co-Chairs of the 2007 Alberta Law Conference, Ms. Wayne and Mr. Andrew; all Members of the organizing committee; panelists; colleagues in the Justice system.

INTRODUCTION

As members of the legal profession, we have no obligation to provide legal services *pro bono*; that is, as lawyers we have no obligation to provide legal services for free.

We do, however, have an obligation to provide access to justice. Our Code of Professional Conduct confirms, in Chapter 1, that we have special duties by virtue of the privileges accorded to the legal profession². Rule 4 of Chapter 1 provides that as lawyers, we “should support and contribute to the profession’s efforts to make legal services available to all who require them, regardless of ability to pay”. The Code’s commentary links that duty accurately when it says that the right of every person to legal counsel creates a corresponding obligation on the part of society and the profession to supply legal representation³.

The primary obligation of the Law Society is to serve the public interest. It is often said that an independent legal profession is fundamental to the rule of law and a democratic system, both of which are key matters of public interest. The Law Society of Alberta, in

¹This paper was originally delivered as a speech to the Law Society of Alberta Plenary session on “Access to Justice” held at the Canadian Bar Association Alberta Law Conference – Thursday, March 15, 2007 by Rod Jerke, QC, Chair of the *Pro bono* Committee of the Law Society of Alberta and the first President of the newly formed society, *Pro bono* Law Alberta. The speech was edited by Susan V.R. Billington, Policy and Program Counsel at the Law Society and acting Executive Director of Pro Bono Law Alberta.

²The Statement of Principle in Chapter 1 of the Law Society of Alberta Code of Professional Conduct states: *A lawyer shares the responsibility of all persons to society and the justice system and, in addition, has certain special duties as an officer of the court and by virtue of the privileges accorded the legal profession, including a duty to ensure that the public has access to the legal system.*

³Chapter 1, Rule 4, Commentary 4 at page 1-3 of the Law Society of Alberta Code of Professional Conduct

its 2006 Strategic Plan⁴, includes the goal to uphold and preserve the fundamental principles of justice, including the Rule of Law, the independence of the bench and bar, effective and equal access to justice, and to promote equity and diversity in the legal profession. To accomplish this goal, the Law Society's objectives include visible support for the principle of effective and equal access to justice, and the promotion and facilitation of the provision of *pro bono* services to those in need, and to speak in support of this principle on every occasion on which it is called for. The Law Society of Alberta plenary session of the Alberta Law Conference is such an occasion.

The Right Honourable Beverley McLachlin, PC, Chief Justice of Canada in a recent speech stated: "the most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve. Access to justice is therefore critical. Unfortunately, many Canadian men and women find themselves unable, mainly for financial reasons, to access the Canadian justice system."⁵

Lawyers provide access to justice by the delivery of legal advice and service in many ways. The methods lawyers provide access to justice include: the provision of legal services on a standard retainer (a fee for service basis); reduced fee agreements; contingency fee agreements; participation in the formalized Legal Aid system; and the provision of legal services *pro bono*.

In many European societies from where the Canadian legal systems stems, the concept of *pro bono* representation dates to the middle ages, when clergy and canon lawyers were expected to provide at least some assistance to the "worthy poor".

Historically in Alberta, *pro bono* has been a proud tradition of our profession and included Court appointed counsel for needy litigants. Many Alberta counsel have provided outstanding examples of *pro bono* service to disadvantaged Albertans. Consider Ruth Gorman, a lawyer admitted to the bar in 1940. She worked for many years *pro bono* for Aboriginal peoples and was instrumental in their success in receiving the vote. She also worked tirelessly to defend and secure Aboriginal treaty

⁴Law Society of Alberta/Alberta Lawyers Insurance Association: Strategic Planning 2006 – Background materials, p. 8

⁵"*The Challenges We Face*" - Remarks of the Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada to the Empire Club of Canada, Toronto, Ontario, March 8, 2007.

rights. She appeared before the Senate on these issues and was ultimately awarded the Order of Canada⁶.

In Alberta, and indeed in much of Canada, the landscape for the provision of legal services *pro bono* changed notably with the introduction of the Legal Aid system, and changed again with the significant financial cutbacks in the 1990's. A scan of the international scene shows that the provision of legal services *pro bono* has a deep historical background and continues to be seen as a positive social value.⁷

VOLUNTEERISM IN THE LEGAL PROFESSION IN ALBERTA

In 2004, the Canadian Bar Association Alberta Branch, provided a report on volunteerism following an extensive survey of many Alberta Lawyers⁸. The results of the survey demonstrated that the average lawyer spends over 15 regular working days per year, approximately 120 hours, volunteering their time, skills, and expertise to individuals and organizations within Alberta.

While these volunteer efforts are not restricted to the delivery of *pro bono* legal services, it is obvious that the efforts of lawyers are essential in ensuring access to justice to low income, needy individuals, and the commitment of lawyers is commendable.

PRO BONO INITIATIVES IN ALBERTA

The provision by the legal profession of *pro bono* services can and should occur in many forms. These may vary from the informal efforts of individual lawyers who choose to provide legal services without a fee, to the more formal provision of *pro bono* legal services through programs and initiatives. A number of such initiatives currently exist in Alberta.

⁶ Pannekoek, Frits, *BEHIND the MAN, John Laurie, Ruth Gorman, and the Indian Vote in Canada*, University of Calgary Press, (2006)

⁷ Rhode, Deborah L., *Pro bono in Principle and in Practice*, Stanford Law School, Public Law Working Paper No. 66, June 2003

⁸ Canadian Bar Association Alberta Branch, *Report of the Task Force on Community Responsibility*, Sandra L. Schulz, QC, Chair,

A very successful “made in Alberta” access to justice initiative by the legal profession is the development, operation and sustaining of local, *pro bono* clinics. Each of the four *pro bono* clinics operating in Alberta to date are the result of the volunteer efforts of lawyers coming together to organize a charitable society that provides free legal services through volunteer lawyers to Albertans of limited means who do not qualify for Legal Aid.

The first of these clinics is Calgary Legal Guidance (CLG).⁹ CLG is a charitable society that provides free legal advice and assistance to individuals who do not qualify for Legal Aid and would not otherwise have access to legal services. Evening clinics are operated four nights per week throughout the year with volunteer lawyers providing free legal advice. In 2005, CLG provided service to over 8,000 clients. CLG’s longstanding service to the community (since 1971) recently received national recognition as the first winner of the National *Pro bono Programs Award* announced at “Building Bridges to Justice” the 2006 National *Pro bono Conference*¹⁰.

Edmonton Centre for Equal Justice (ECEJ)¹¹ is a community based project that provides many of the services provided by CLG, including legal assistance, information, and referral to low income individuals who would otherwise be unable to access such services. ECEJ assists its many clients through evening clinics with legal advice provided by volunteer lawyers. ECEJ also provides staff lawyer and social worker support.

Central Alberta Community Legal Clinic was established in 2006 in Red Deer to serve that City and the surrounding communities, and is very successfully operating based on the CLG model.

(2004)

⁹See the Calgary Legal Guidance website at www.clg.org

¹⁰*Building Bridges to Justice* the first national Pro Bono Conference sponsored by Pro Bono Law Ontario and Pro Bono Law of BC, held in Toronto, Ontario on November 17 and 18, 2006. See also *The Benchers’ Advisory Volume 5, Issue 1, February 2007, Calgary Legal Guidance Wins National Award, page 1.*

¹¹ See the ECEJ website at www.ecej.org

On February 5, 2007, Lethbridge Legal Guidance opened its doors as the newest *pro bono* clinic in Alberta with the first clients seen in evening clinics with volunteer lawyers on February 20, 2007. It is another example of a very successful beginning of a *pro bono* clinic based on the CLG model.

There are other *pro bono* initiatives that are operating in Alberta. For example, the Children's Legal and Education Resource Centre (CLERC) provides *pro bono* legal representation and education for children and youth through the staff lawyer model. CLERC is beginning to explore tapping into the expertise of volunteer lawyers to provide *pro bono* services to children and youth that seek assistance from CLERC.

Free legal assistance is also provided to members of the public by Student Legal Assistance (comprised of students from the University of Calgary - Faculty of Law and supported by the Calgary legal community) and Student Legal Services (comprised of Law Students from the University of Alberta, and supported by the Edmonton legal community).

Alberta lawyers also participate in the provision of *pro bono* legal services for charities and not for profits through organizations such as *Pro bono* Students Canada, and Volunteer Lawyers Service. Volunteer Lawyers Service, for example, is coordinated by the Alberta Branch of the Canadian Bar Association together with sponsorship from the United Way and the Law Society of Alberta. The VLS provides free legal assistance by matching lawyers with non profit and charitable community based organizations that have insufficient funds to pay for legal services.

There are many other services that exist which use the services of volunteer lawyers to assist in the provision of legal services and information to qualified individuals.

In June, 2005, the Law Society of Alberta was invited to participate in a meeting convened by then Federal Minister of Justice, the Honourable Irwin Cottler, to provide an opportunity for dialogue among the various stakeholders in the legal profession across Canada regarding *pro bono* legal services. A report entitled "*Pro bono* Initiatives

in Alberta” was prepared and presented by Susan Billington, Policy and Programs Counsel with the Law Society of Alberta, and then President of the Law Society of Alberta, Douglas McGillvray, Q.C., to the Federation of Law Societies for presentation to the Minister of Justice. This report, which can be accessed on the Law Society of Alberta’s website¹², provides an excellent summary of the status of *pro bono* initiatives in Alberta, as of that date.

THE ROLE OF THE LAW SOCIETY OF ALBERTA

The Law Society of Alberta has been very active in taking a leadership role in promoting and providing a structure for the delivery of *pro bono* legal services in Alberta. In 1998, the Law Society established its *Pro bono* Committee, which identified as its first task the development of a *pro bono* clinic start up kit which has since been used as a resource for creating the *pro bono* clinics in Edmonton, Red Deer, and Lethbridge.¹³

In 2003, the Pro Bono Committee released its report entitled “*Pro bono* Publico - For the Public Good”.¹⁴ In this report, the Committee articulated the role of, and guiding policy considerations for the Law Society regarding the provision of *pro bono* legal services. The key policy considerations which have and continue to guide the Law Society’s initiatives include:

1. *Pro bono* service should not be mandatory.
2. The most pressing need for *pro bono* legal services is the need for legal advice and representation for persons who do not have the resources to pay for these services.
3. *Pro bono* legal services are meant to complement, not replace, a properly funded legal aid program.
4. The Law Society needs to be cognizant of the resources that we have to expend on facilitating *pro bono* legal services. We need to leverage our

¹²www.lawsocietyalberta.com

¹³The CLG *pro bono* clinic start-up kit was developed for the LSA Pro Bono Committee in 1998 by Merrill Cooper, former Executive Director of CLG and principal with Guyn Cooper Research Associates

¹⁴Available on the LSA website at www.lawsocietyalberta.com

resources for maximum benefit and provide a structure so that *pro bono* programs can be developed by the appropriate agencies.

5. In promoting a *pro bono* legal culture, we need to be cognizant of the legal services and programs already provided by others and not duplicate the efforts of other organizations.

6. In expending the time and effort to encourage and promote the *pro bono* legal services of our members, any program that is adopted should have a maximum benefit to, and profile with, our members and the public.

As well, the Benchers adopted four key recommendations made by the Committee in the 2003 *Pro bono Publico* report.

Firstly, the Benchers adopted the definition that a lawyer who voluntarily provides legal services without fee and without expectation of a fee is providing a *pro bono* service. Some specific examples of such services are also provided in the definition.

Secondly, the Benchers instructed the Committee to contact and liaise with local bar associations to garner the legal community's interest in promoting the establishment of a CLG model legal clinic in those locations as was done in Edmonton. As mentioned earlier, clinics have now been established and are operating in Red Deer and in Lethbridge.

The third recommendation urged the *Pro bono* Committee to work with the Law Society's Insurance Committee to review the possibility of the extension of insurance coverage to retired and inactive lawyers who provide *pro bono* legal services through approved clinics. The Benchers approved the recommendation. The Law Society Rules now permit and the Alberta Lawyers' Insurance Association policy includes insurance coverage for lawyers who provide services through an authorized *pro bono* provider and who are active but exempt from the insurance requirements (corporate and government lawyers) or who would otherwise be inactive or retired (active for *pro bono* only).¹⁵

¹⁵ The Rules of the Law Society of Alberta, Rule 148(2.1)

The fourth recommendation suggested the formation of a broad stakeholder group with the mandate to develop a *pro bono* regime that maximizes and coordinates the resources for the delivery of *pro bono* services for those clients who do not qualify for Legal Aid and do not have the ability to pay for legal services. While the full extent of this recommendation will not be implemented until later this year, I am pleased and proud to say that this initiative has progressed to the point that I am able to stand before you today as the first President of Pro bono Law Alberta. This newly incorporated society is the product of the diligence and dedication of many visionary members of our profession, after nearly a decade of hard work.

But we need to back up a bit, so that you can know how we got from vision to action.

Most recently, in pursuing this recommendation, extensive consultations occurred in the spring of 2006 with representatives of a large number of organizations involved in the administration of legal services, delivery of *pro bono* legal services, and the funding of legal services. That process revealed a willingness among the service providers to take the next step of looking more closely at whether the formation of a network would be a benefit to the public and the profession in the provision of legal services to disadvantaged Albertans.¹⁶ In October, 2006, a Round Table conference entitled “Building the Vision” was held with funding from the Alberta Law Foundation and the Law Society of Alberta. The Round Table was attended by delegates from 10 stakeholder organizations, Law Society representatives, and speakers, with the purpose to discuss and reach consensus about the need to develop a new provincial organization to foster and support the delivery of *pro bono* legal services in Alberta. The mandate of the Round Table was to determine whether a new organization should be established and if so, to devise objectives and a model for the new organization. By the conclusion of the Round Table, participants had not only agreed to move the vision forward, they had developed a draft model for the new organization and convened a working committee to implement and launch the model.¹⁷

¹⁶Stakeholders Consultation on the Proposed Pro Bono Alberta Network, June 2006, by Merrill Cooper of Guyn Cooper Research (available on the Law Society Website at www.lawsocietyalberta.com)

¹⁷ Report on Building the Vision: Stakeholders Roundtable on Pro Bono Legal Services in Alberta; October 20-21 2006, by Merrill

In the meantime the Benchers were planning activities and events to recognize this year, 2007, the 100th Anniversary of the Law Society of Alberta. Identifying the four goals for the Anniversary activities and events as celebration, recognition, education, and leaving a legacy, the Benchers adopted the *pro bono* initiative resulting from the Round Table as the Law Society's Legacy Project. The Law Society has provided start up funding for the initiative and other support to ensure both a successful launch of the initiative, and an assurance of its long term success. In this regard, the Benchers were careful to ensure alignment of the program initiative to the guiding policy considerations, including the need to leverage resources for maximum benefit, thereby allowing *pro bono* programs to be developed by the appropriate agencies, rather than dedicating ongoing program funding to such initiatives. An innovative step taken by the Benchers was to authorize the inclusion in the annual membership renewal forms commencing January, 2008, of a tick box which will allow each of us to consider making a donation for the direct benefit of *pro bono* programs.

Much has been accomplished by Pro bono Law Alberta since the October Round Table:

1. The new Society is being incorporated and registration as a charity is being sought.
2. A Board of Directors has been appointed¹⁸.
3. An acting Executive Director has been hired.
4. A start up and first year action plan has been adopted.
5. Funding approval for the first year of operations has been provided by Alberta Law Foundation.
6. Most importantly, the Board has begun the work of putting in place programs. The programs that are being pursued fall into essentially three categories:
 - a) Expanding the delivery of *pro bono* services throughout Alberta.
 - b) Supporting and enhancing the work of the *pro bono* clinics.

Cooper, Guyn Cooper Research Associates (available on the Law Society website at www.lawsocietyalberta.com)

¹⁸The Pro Bono Law Alberta Society Board of Directors are : Rod Jerke, QC President; John Henderson, QC, Vice-President; Gillian Marriott, Treasurer; Suzanne Alexander-Smith, Secretary; Bruce Churchill-Smith, QC; John Cuthbertson; and Douglas McCallum

- c) Increasing the number of lawyers providing *pro bono* legal services and the number of individuals receiving them.

A number of specific programs are being considered. A website, based on a very successful system used extensively throughout North America, is being developed. The establishment of satellite clinics using the resources of existing clinics while tapping into the resource bank of willing *pro bono* lawyers in non-clinic locations is being pursued.

A program for the provision of *pro bono* services via remote delivery, using volunteers at existing clinic locations to provide *pro bono* legal services to remote locations where no lawyers are available, is being worked on.

In addition, *pro bono* programs, working in conjunction with the Courts and groups of lawyers to provide discrete task legal services to disadvantaged Albertans, and other programs designed to foster and encourage partnerships between clinics or groups of disadvantaged Albertans, and large firms are all being pursued and enhanced.

For this new society, whose objects are to promote access to the justice system in Alberta by creating and promoting opportunities for lawyers to provide *pro bono* legal services to persons of limited means, and judging by the wealth of creative programs which currently exist in other places, there is much that can be done.

You can be sure that the excitement level is high as we move closer to the date when we, the legal profession, will be formally launching this legacy initiative, Pro Bono Law Alberta, to the people of the Province of Alberta.¹⁹

Ladies and gentlemen, the privilege that each and every one of us enjoy as members of a learned profession, that is the privilege to participate as gate keepers in providing access to justice, is the legacy which is at stake for us as lawyers. This initiative, Pro bono Law Alberta, will allow each of us to participate more easily, more effectively, and more creatively, in access to justice as an independent legal profession.

¹⁹The launch of Pro Bono Law Alberta will take place in Edmonton on May 23, 2007 and in Calgary on May 24, 2007.

Whether we choose to provide *pro bono* legal services informally, to participate in the Legal Aid system, to act as volunteers in any of the clinics or other initiatives, to become involved in the new and innovative programs which are being developed, or to provide financial or governance and leadership support to our clinics, our other service providers, or to Pro bono Law Alberta itself, we can all satisfy our duty to provide access to justice to all Albertans.

In closing, a story from a senior member of the Bar serving at one of our *pro bono* clinics:

“It was my distinction to see the first client of the first clinic. As my fellow volunteer said, we saw people with "complex problems involving no money". I had a great evening; the two hours fly by, and barely seems enough. It's like being newly admitted to the bar again. I hope all of our volunteers have a positive experience, and that we're able to expand this to meet what will no doubt be a growing demand.”

Ladies and Gentlemen, this is indeed an initiative of our profession worthy of being our legacy.

Thank you.