



# Laying the Foundation: Second Annual Stakeholders' Round Table on Pro Bono Legal Services in Alberta

## Proceedings

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Calgary, Alberta

Completed for Pro Bono Law Alberta  
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## ACKNOWLEDGEMENTS

This document summarizes the proceedings of and presentations at the Second Annual Stakeholders' Roundtable on Pro Bono Legal Services in Alberta, which took place on November 1 and 2, 2007 in Calgary, Alberta.

Thanks are due to Pro Bono Law Alberta for sponsoring and organizing the event and, particularly, to Susan Billington, Executive Director, and her assistants Sharon Allard and Myra Skerrett, for their work in making the conference such a success.

Particular thanks go to speakers Andrew Bachelder, Jocelyn Frazer, Angela Gallo-Dewar, Jocelyn Hill, Diana Lowe, Jamie MacLaren, and Ross McLeod for their stimulating and informative presentations over the course of the two-day gathering, and to Rod Jerke, Q.C., Pro Bono Law Alberta President, for his excellent work in chairing the gathering.

In addition, many thanks are due to all of the members of the Pro Bono Law Alberta board of directors and the Pro Bono Committee of the Law Society of Alberta for the many years of work they have devoted to supporting the delivery of pro bono legal services and promoting the access to justice cause in Alberta.

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## 1. OPENING REMARKS

Rod Jerke, Q.C., President of Pro Bono Law Alberta, welcomed all the Round Table participants and thanked them for attending. He explained that the purpose of the gathering was to come together as committed individuals who understand the value of pro bono legal services for disadvantaged people in our province, who are convinced of the notion that there is value in a community of like-minded folk, and who are open to sharing with and gathering from each other ideas that will assist us in better serving our communities. He noted that this year's Round Table was larger than in 2006, with several new faces joining the gathering.

Susan Billington, PBLA's executive director, provided an overview of the agenda for the Round Table. She reported that PBLA began operations in March 2007, and she looked forward to providing participants with an update on activities and obtaining feedback on PBLA's strategic plan. Ms. Billington outlined the objectives of the Roundtable:

Session Objectives:

1. To bring the stakeholders together for education on matters relevant to the delivery of pro bono legal services including conflicts of interest, client confidentiality, solicitor client privilege and E & O insurance;
2. To discuss progress of PBLA within the last year and to discuss and obtain input on matters that have arisen in the past year including funding and the role of the staff lawyer;
3. To present and obtain feedback on the Pro Bono Law Alberta Strategic Plan;
4. To develop a plan for the developing and updating of outreach tools; and
5. To look to the future with the discussion of demographic trends and the gaps in legal service delivery.

## 2. PRESENTATIONS

### ***2.1 Conflicts of Interest, Client Confidentiality and Solicitor/Client Privilege***

Ross McLeod, Q.C., and Jocelyn Frazer, Practice Advisors, Law Society of Alberta

Mr. McLeod provided an overview of the roles of the practice advisors, which include ethics counseling for the profession; outreach services in such forms as ethics workshops and other types of education; practice management advice; and guidelines for lawyers working in particular areas of law, along with other duties within the Law Society. He noted that he would be pleased to provide an ethics workshop to the pro bono clinics upon request.

## *Confidentiality*

Jocelyn Frazer provided an explanation of solicitor-client confidentiality in the pro bono clinic setting. She stressed that the Code of Conduct creates a duty on counsel, their staff, and anyone otherwise associated with a clinic to protect client confidentiality. Confidentiality is broader than privilege, which is an evidentiary rule. Confidentiality extends to the client's identity and lasts forever. It applies from the first time a client requests information, even if no further work is done. A context of confidentiality is created even if questions are asked of a lawyer in an informal setting, such as a dinner party, and even if others are present. In addition, caution must be exercised in sharing information with other professionals, such as social workers or health care professionals. Just because such professions are subject to their own confidentiality rules does not bring them under the umbrella of solicitor-client confidentiality. Ms. Frazer urged the clinics to ensure that they have in place strict policies and procedures to protect clients' identities and records.

Ms. Frazer explained that confidentiality can be waived via fully informed consent or implied consent, but noted that this can be a tricky business, so lawyers may wish to consult the practice advisors in any murky situations: "If in doubt, ask." In addition, as a general rule, lawyers should never divulge more than is absolutely necessary to a third party.

## *Conflicts*

Ross McLeod discussed the "bright line test" and the Code of Professional Conduct, Ch. 6, Rule 3, and explained that the pro bono clinics are subject to the same rules as law firms with respect to client conflicts.

Mr. McLeod acknowledged the challenge of avoiding conflicts in the pro bono clinics, given the high volume of individuals served and the fact that the pro bono lawyers have their own practices and firms. Nonetheless, steps must be taken to ensure that conflicts do not occur, including the creation and maintenance of up-to-date conflict checking systems at the clinics. The information that should be tracked includes the name of the client and the opposing party and, ideally, the name of opposing counsel and any others who may be involved in the matter (such as employers, corporations).

Mr. McLeod noted that conflicts can arise from dealings with prospective clients, who may have disclosed some information that could be used to their disadvantage (even having their name might count), and "accidental" clients, such as people who ask questions of lawyers in an informal setting. Lawyers must ask themselves whether the knowledge they have might

### **The Bright Line Test**

"...Nevertheless, it is the firm not just the individual lawyer, that owes a fiduciary duty to its clients, and a bright line is required. The bright line is provided by the general rule that a lawyer may not represent one client whose interests are directly adverse to the immediate interests of another client—even if the two mandates are unrelated—unless both clients consent after receiving full disclosure (and preferably independent legal advice), and the lawyer reasonably believes that he or she is able to represent each client without adversely affecting the other."

### **Code of Professional Conduct Ch 6, R. 3**

- (a) Except with the consent of the client, a lawyer must not represent a person whose interests are directly adverse to the immediate interests of a current client.
- (b) Except with the consent of the client or approval of a court pursuant to (c), a lawyer must not act against a former client if the lawyer has confidential information that could be used to the former client's disadvantage in the new representation.

influence their professional judgment: “If you wonder whether you have a conflict, you probably do.” On the other hand, if the lawyer does not have any confidential information, then the conflict can probably be managed.

In response to questions from participants, Mr. McLeod provided the following guidance.

- If, after interviewing a client at a clinic, the lawyer discovers that a colleague at his firm is acting for the opposing party, then the lawyer has to step back immediately, disclose to the firm that he has seen the client, and create an “ethical screen” around himself so that he “hears nothing, sees nothing.” A memo should be written by the lawyer to the firm stating that the lawyer is managing the conflict. The lawyer should also contact the practice advisor.

If a firm has multiple offices, it may not be a conflict if the opposing party is being represented by an office in another city. However, the lawyer must disclose to the firm that he cannot be involved in that particular matter.

- If, in the course of interviewing a client at a clinic, the lawyer discovers that the client is the opposing party in a matter in which he or his firm is involved, the lawyer should withdraw from the interview. This may be a problem in small centres, where there may be no other lawyer with whom they can speak. In this case, the lawyer should tell the client that someone at his firm is involved with the matter, and ask the client whether he consents to continue the interview. Mr. McLeod described this as a “chilling problem,” and asked participants whether, following the U.S. model, Alberta should create an exception for momentary conflicts such as this. Participants agreed that this should be considered.
- Mr. McLeod noted that staff lawyers at the clinics are not poisoned by conflicts encountered by the pro bono lawyers.
- To decline a client without breaching confidentiality, a clinic or a firm should simply state that they have a conflict of interest without revealing any other information.

Mr. McLeod noted that the duty of loyalty to a former client diminishes somewhat over time. Sometimes former client conflicts are very old and everything has changed since that time. Lawyers should ask themselves if the client will be deprived of access to justice: “Which is worse: No representation or conflicted representation?” In these instances, the practice advisor should be consulted.

In conclusion, the practice advisors were requested to write guidelines for the clinics on conflicts and confidentiality. Also, Jamie MacLaren, Executive Director of Pro Bono Law B.C., offered to share their conflict and confidentiality guidelines with Alberta. Finally, participants were encouraged to contribute to and stay tuned for the results of a CBA task force working on conflicts in and beyond the job context.

**Pro Bono Exception: U.S. Model**

A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

- (1) Is subject to (conflict rules) only if the lawyer knows that the representation of the client involves a conflict of interest; and
- (2) Is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified... with respect to the matter.

## 2.2 Insurance Provisions for Pro Bono Services

Angela Gallo-Dewar, Staff Lawyer, Membership Services, Law Society of Alberta  
Susan V.R. Billington, Acting Executive Director

Ms. Gallo-Dewar explained that active insured lawyers are covered through their existing liability insurance for pro bono legal services they provide. In addition, coverage at no cost has been extended by the Alberta Lawyers Insurance Association to government and corporate lawyers (who are insurance exempt) and to retired and inactive lawyers who provide pro bono legal services through an authorized pro bono provider. Retired and inactive lawyers also must be eligible for reinstatement to be considered for the membership category “active for pro bono purposes only” The insurance coverage extension ensures (a) that pro bono legal services are provided only to disadvantaged clients through an authorized pro bono provider, and (b) that service provision is monitored and procedures (such as confidentiality and conflict protocols) are followed. The insurance coverage is not intended to facilitate taking files for friends and neighbours who want free legal advice.

The Law Society is now advising lawyers who retire or go inactive about the extension of coverage and encouraging them to volunteer with an authorized pro bono service provider. So far, only nine lawyers and judges have applied for reinstatement

The Law Society through the Pro Bono Committee is also investigating unbundled legal services.

In response to questions from participants, Ms. Gallo-Dewar provided the following information:

- Insurance coverage continues if a pro bono lawyer decides to follow up on a matter they have dealt with at a clinic. However, both the lawyer and the client need to be very clear about the limits on the retainer to ensure that the file doesn't go on forever.
- Clinics that are not authorized pro bono legal service providers, such as Pro Bono Students Canada may be able to partner with an authorized pro bono provider to obtain access to government/corporate and retired/inactive volunteer lawyers. Work will need to be done to ensure that services meet the low income criteria.
- Retired and inactive lawyers who haven't practiced for 12 of the preceding 48 months may be required to complete exams or other steps in order to be reinstated. Reinstatement requests are reviewed by a committee. At present, doing pro bono work during that 48 month period is not counted toward the 12 month requirement. It was noted that the target market is lawyers and judges just as they are leaving the profession, so reinstatement shouldn't be too daunting.
- At present, the Law Society does have a process for including new services that they have started as authorized pro bono service providers. This includes ECLC and CACLC. However, a new clinic would need to demonstrate that they have adopted service delivery

### Authorized Pro Bono Service Providers

Volunteer Lawyers Service  
Calgary Legal Guidance  
Edmonton Community Legal Centre  
Lethbridge Legal Guidance  
Central Alberta Legal Clinic

standards and protocols such as those included in the pro bono clinic start-up kit in order to be considered. Best practices for pro bono delivery have been adopted by Pro Bono Law Ontario before a project becomes an authorized pro bono provider.

- More work is needed to ensure that retired and inactive lawyers who obtain reinstatement for the purpose of volunteering with one of the authorized providers actually go on to volunteer. So far nothing has been required but it may be desirable to outline some minimum expectations for the lawyers. Providing a Consent on the Undertaking to the Law Society allowing the disclosure to the Clinic (authorized pro bono provider) was requested by the stakeholders.

In conclusion, participants requested that the Law Society (i) investigate whether the names of retired and inactive lawyers and judges who are the “pro bono services” membership category could be provided to the clinics, (ii) consider other ways of encouraging these lawyers and judges to contribute their services on a pro bono basis, and (iii) consider imposing minimum pro bono hour requirements on those who are in the “pro bono services” membership category.

### ***2.3 The Trials, Tribulations, and Triumphs of Pro Bono Law of B.C.***

Jamie MacLaren, Executive Director, Pro Bono Law B.C.

Mr. MacLaren reported that Pro Bono Law B.C. (PBLBC) was founded in 2002 by the CBA and the Law Society of B.C., with a view to improving access to justice in the wake of a 40% funding cutback to Legal Aid. As might be expected, the founders were concerned about “letting government off the hook,” so PBLBC was structured as a facilitator, not a provider, of pro bono services, with the goal to “compliment and not replace a properly-funded legal aid system.” Pro Bono Law Ontario was very helpful in the start-up of PBLBC.

Mr. MacLaren explained that PBLBC’s efforts to engage lawyers in pro bono service delivery through a hastily-assembled website were unsuccessful, demonstrating that “you can’t do this work on the cheap and you need real people to make things happen.”

PBLBC then turned its attention to developing signature projects between law firms and not-for-profit organizations, following the Ontario model, and now has several on the go. However, in 2005, when Mr. MacLaren was hired as the executive director, the Law Society expressed its dissatisfaction with PBLBC’s facilitator role, and threatened to cut off funding. In response, PBLBC expanded its services by re-vamping its website, building roster programs, matching volunteers with pre-screened, meritorious clients, and taking referrals from poverty law clinics, among other things. Within a few months, PBLBC was arranging representation for one individual per day. In addition, PBLBC worked hard to promote a pro bono culture, particularly within law firms, and provided training for lawyers on poverty law issues and pro bono practices to enable firm lawyers to work at a clinic or provide representation at a judicial review. Between 2005 and 2007, the number of lawyers in B.C. providing pro bono services increased by 10%. This progress has been measured by a survey of the members of the Law Society.

As a result of these many new initiatives, funding began to flow from the B.C. Law Foundation in 2005. The Law Foundation provides funding for a special project that cover disbursements; up to \$2,500 is available for each pro bono file.

In 2006, PBLBC added a Court of Appeal program, services (by-laws, contracts, etc.) for not-for-profit societies, and a solicitors' program, which engaged a large section of the bar that had not previously provided pro bono services. They will now turn their attention to wills and estates and mediation and, in 2008, a civil chambers duty counsel project for unrepresented litigants.

Mr. MacLaren offered the following "key learnings" for success to Pro Bono Law Alberta:

- (1) Concentrate on building capacity for lawyers to do pro bono work by addressing issues like insurance, training, and disbursement coverage.
- (2) Work to gain the trust of existing service providers. Expect to be greeted with skepticism initially.
- (3) Develop strategic alliances with other pro bono providers, i.e., Ontario and B.C. Borrow everything you can from them; don't re-invent the wheel.
- (4) Provide cost-efficient programming for both individuals and agencies. This will increase your credibility and attract more funding.

In response to questions from participants, Mr. MacLaren provided the following information:

- The disbursement fund is \$50,000 per year provided by the Law Foundation of BC. Although they have not exhausted it yet in a year, it may be insufficient as they begin to take on Court of Appeal cases, where the cost of transcripts is high.
- In most cases, disbursements cost about \$500 per file. This may include travel costs.

## ***2.4 PBLA Progress Update***

Rod Jerke, Q.C., PBLA President and John Henderson, Q.C., PBLA Vice-President

Rod Jerke updated Round Table participants on PBLA's progress and accomplishments over the past year. The society was incorporated, Susan Billington was seconded from the Law Society to serve as the executive director, a board of directors and an advisory board were appointed, a website and newsletter were developed and launched, funding was provided by the Law Society and the Alberta Law Foundation, and Pro Bono Law Alberta was launched to the profession in May 2007.

Since then, a strategic plan and five-year vision have been drafted, and PBLA has begun to move on programming, beginning with the Child Advocacy Pro Bono Project which was launched this week, and will be discussed in more detail later.

Mr. Jerke explained that, as promised at last year's Round Table, the Law Society of Alberta has played a critical supportive role in all of this.

- The Pro Bono Committee has considered a number of policy issues from the perspective of pro bono legal services.
- The Law Society has provided \$200,000 in start-up funds and in-kind services, space, technology, accounting, human resources, and advertising and promotions, and generously seconded Susan Billington on favourable financial terms to PBLA.
- Law Society President Jim Peacock, Q.C. used the occasion of the Law Society's 100<sup>th</sup> anniversary to leverage support for PBLA and the culture of pro bono in the profession. His comments at the gala dinner in Calgary and Edmonton were the centrepiece of his speech to 1,500 participants, and resulted in great media coverage.

Mr. Jerke reminded Round Table participants that, last year, the Benchers approved an initiative to accommodate donations from the profession when they pay their annual fees, with any monies collected to be allocated to the clinics, referred to as the "tick box initiative." It should be stressed that this is an initiative of the Law Society via the Pro Bono Committee, not PBLA. The Committee continues to work to overcome some challenges in implementing the tick box initiative, such as the fact that many firms simply pay all their lawyers fees, and the individual lawyers never see the forms and wouldn't know that they were being asked to make a donation. This issue has now gone to the Law Society administration to determine how it might best be resolved. The PBLA board has put discussion of the allocation of funds raised among the clinics on hold until there are actually some funds to disburse, however, it has been agreed that the board will have to consider the varying needs of the clinics in its decision-making process. In the meantime, the PBLA board has been advocating with the Foundation as it deliberates its funding policies on the critical role of the staff lawyers, and supporting the clinics in their fundraising efforts by participating in events and helping with funding proposals to the Alberta Law Foundation. Jim Peacock and Rod Jerke recently assisted the Edmonton Community Legal Centre by speaking at a dinner with firms which resulted in three-year financial commitments from each of the six firms that attended.

Mr. Henderson added that the tick box initiative is important because, in addition to having the potential to raise some funding for the clinics, it shows significant support from the Law Society for the clinics, particularly since the Law Society does not normally engage in fundraising, and it will raise awareness among the profession about opportunities to do pro bono work and to make charitable contributions to the clinics. PBLA will continue to support and assist the clinics with their crucial fundraising initiatives. Mr. Henderson encouraged the clinics to think of ways in which PBLA can assist them with fundraising and anything else that they need help with.

## **2.5 Role of a Staff Lawyer at a Pro Bono Clinic**

Andrew Bachelder, Alberta Justice and former staff lawyer at ECLC, and Jocelyn Hill, Legal Aid Family Law Office and former staff lawyer at CLG

Mr. Bachelder described the work in which he engaged and the roles he played during his five-year tenure as staff lawyer at the Edmonton Community Legal Centre (ECLC). He explained that the ECLC provides services in the area of poverty law only. ECLC offers two clinics each week. Most matters are resolved by the volunteer lawyers, but some clients require ongoing assistance from the ECLC staff. He emphasized that the clients want advice from the lawyers, not just information, and it is an objective of ECLC to ensure that the clients' capacity to manage similar situations that may arise in the future (such as residential tenancy problems and evictions) has increased as a result of the services they have received. Because a single lawyer could not possibly assist every client who requires post-clinic help, lay staff members are educated so that they can pass on advice from the lawyer. He noted that many clients don't recognize which actions and decisions are in their own best interest, and often undermine their own cases unless they receive support and clear direction.

Mr. Bachelder explained that, when deciding whether to provide follow-up services, ECLC considers whether:

- there is merit to the case (although they occasionally represent clients who might cause further problems for themselves if they were to appear on their own);
- the matter is within ECLC's mandate of taking on civil and administrative matters;
- the client is capable of self-representation;
- the client falls within ECLC's income guidelines; and
- the lawyer is available to appear for the client on his or her court date (although a volunteer will often step in if necessary).

He noted that, because effective representation includes searching out alternatives to litigation, such as negotiation and mediation, it is vital for staff lawyers to build positive relationships with people who can affect the client's situation, as many matters can be worked out to the advantage of all parties without going to court.

Jocelyn Hill described that challenges and rewards of being a staff lawyer at Calgary Legal Guidance (CLG). She explained that the CLG clinical program is a large operation, serving over 300 clients each month through four evening clinics downtown and several monthly and semi-monthly outreach clinics. Of the 4,000 clients served each year, about 1,300 received some form of follow-up assistance from the staff lawyer, two to three articling students, an articling student seconded from a law firm, and four summer law students. Follow-up assistance ranges from letters and phone calls to trials in family, criminal and civil courts and administrative appeals in federal court and on landlord and tenant matters. CLG also runs Do Your Own Divorce clinics and the lawyer engages in a lot of public speaking. In addition, CLG now provides duty counsel in chambers every morning. All of this occurs under the guidance (and the insurance) of the staff lawyer.

Ms. Hill explained that it takes an experienced lawyer to manage this volume of work and to supervise so many students and volunteers. She noted that many clients come to the clinic with what might not normally be considered serious legal problems, but for these people, they are indeed serious. Receiving assistance from CLG is actually life altering for many of these clients. Many of the clients are very difficult, facing challenges such as addictions, homelessness, cultural and language barriers, literacy barriers, physical health problems, and mental health and emotional problems, and many are extremely frustrated as a result of their experiences in trying to negotiate the legal system. The lawyer has to be very good at translating difficult concepts into plain language that clients can understand, and exercise extreme patience. They can't follow simple steps on their own and many can be abusive, cranky and irrational, hindering their own cause.

Ms. Hill noted that working within the administrative structure of a not-for-profit organization carries its own challenges. Funders' reporting and accountability requirements are onerous and detract from service delivery, funding is often unstable and precarious from year to year, and organizations have to scramble to scrimp together the lawyer's salary. She commented that it is most vexing to learn that some people might perceive that the clinic lawyers are taking paid work away from lawyers, when the clinics are actually doing a favour to the profession, the courts, and the public by serving this highly disadvantaged and difficult client population.

## ***2.6 PBLA 2007-08 Strategic Plan***

Susan Billington, PBLA Executive Director; Rod Jerke, Q.C., PBLA President; John Henderson, Q.C., PBLA Vice-President; Bruce Churchill-Smith, PBLA Member-At-Large; John Cuthbertson, PBLA Member-At-Large; Gillian Marriott, PBLA Treasurer; Cyndy Morin, Flying Lawyers Association; Merrill Cooper, Guyn Cooper Research Associates

Presenters reviewed PBLA's mission and objectives as identified at last year's Round Table and subsequently adopted by the society.

### ***The vision***

Rod Jerke introduced PBLA's vision for the next five years, describing it as "access to justice for all, regardless of ability to pay for legal services." He stressed that the Legal Aid Society plays the major role in this vision, but that the legal aid program will never be able to provide coverage for all low-income individuals who need legal services. In five years, the board and staff of PBLA envision the organization as:

- a model of a pro bono organization that enables a significant number of lawyers to provide access to justice through pro bono projects and programs;
- working alongside the Legal Aid Society;
- supporting our clinics – which are a national model for service delivery;
- having implemented all of the programs that we have already identified;
- having established remote and satellite clinics for remote and smaller communities;
- having secured sustainable operational funding
- working with an active and involved board and advisory board;
- assisting clinics with fundraising;

- having engaged law firms and lawyers in a wide range of pro bono programs and projects;
- enjoying vibrant relationships with pro bono organizations across the country
- capturing the notice and recognition of the government and the public for all of our efforts and contributions.

Mr. Jerke observed that much of this work is already underway, and that much more can happen.

### *Governance*

John Henderson added that the PBLA board includes representation from each of the authorized pro bono service providers and, now that things are up and running, is beginning to function as a policy board. The board may seek to expand its membership over the next year. He explained that the members of the advisory board had been very carefully identified as individuals from the Bench and the Bar who could help move PBLA and the pro bono cause forward.

### *Priorities*

Susan Billington identified PBLA's immediate priorities as developing programs and obtaining sustainable funding.

### Program and project development

With respect to program development, PBLA is working to expand pro bono services throughout the province, to develop programs in cooperation with the clinics to include new areas of law and to increase direct representation of clients, and increase pro bono service delivery by the profession.

Bruce Churchill-Smith explained that PBLA's first project is the Child Advocacy Pro Bono Project, a project brokered by PBLA, with his firm, Borden Ladner Gervais (BLG) and the Children's Legal Education and Resource Centre (CLERC). He reported that, within minutes of sending out an email to his colleagues announcing the project, he had six volunteer lawyers. BLG will do some training and policy work for CLERC, and they will also represent children and youth on civil law matters such as housing, education hearings, employment problems—any matter other than family law and child protection matters. Mr. Churchill-Smith noted that many lawyers are willing to volunteer; they just need the right project.

Ms. Billington talked about PBLA's recent work to establish outreach or satellite clinics in Grande Prairie and Fort McMurray and, eventually, Medicine Hat. Discussions are underway with both lawyers and social service providers in the first two cities, which were targeted on the basis of demonstrated need. PBLA was contacted by Medicine Hat court administrators who have also identified a need for pro bono services in that city.

Within Calgary, PBLA is assisting the Women's Centre to provide a woman-focused legal clinic on a weekly basis, investigating area of law roster programs, and considering other law firm representational projects. Two firms have expressed interest in engaging in follow-up projects with the clinics.

Ms. Billington also noted that both Manitoba and Saskatchewan have heard about PBLA, and hope to establish their own pro bono organizations over time.

Finally, Ms. Billington introduced Cyndy Morin, with the Flying Lawyers Association, which may become another PBLA project. Ms. Morin is a member of the Flying Lawyers Association, a social organization for lawyers who are also pilots. They are interested in putting their skills to work in a pro bono capacity by flying to remote areas to provide clinics in a project called Just Air. PBLA hopes to help them find community partners and to support their work in other ways.

### Sustainable funding

Rod Jerke opened the discussion about sustainable funding for PBLA, stressing that a strong operational structure is required to bring all of these projects and initiatives along. Sustained, secure revenues will be needed to carry forward PBLA as an enduring legacy of the legal profession.

John Cuthbertson thanked the Alberta Law Foundation and the Law Society of Alberta for their contributions of \$200,000 each toward first year administration and program start-up costs. Over time, the budget will shift from administration to programs. Mr. Cuthbertson commented that if the legal profession has a monopoly on legal services but it cannot meet rising needs for legal services, an argument might be advanced for a legislated solution and a loss of self-governance. Gillian Marriott commented on the outcomes from the 2006 Stakeholders Roundtable regarding sustainable funding for PBLA. Potential conflicts were recognized and the stakeholders were clear that PBLA must not interfere with existing clinic funding and fundraising. Further PBLA should seek to augment clinic funding (particularly for the staff lawyer positions) if possible.

### *The not-for-profit funding environment*

Merrill Cooper provided a brief summary of her research completed for PBLA on the not-for-profit funding environment and sustainable funding options.

The key findings of her research were as follows;

- The charitable sector is in a state of crisis due to funding challenges;
- Competition for grants and donations has become fierce and sophisticated;
- Funders are now developing detailed funding frameworks and investment strategies;
- It is extremely difficult to obtain core funding for operations (which include rent and utilities, administration, accounting, board expenses, and insurance);
- Funders do not generally fund legal services; it is expected that the legal profession should bear some responsibility for providing legal services to the poor;
- Fundraising efforts targeting the legal community would likely be perceived as competition with the clinics and generate enmity from the clinics; and
- Gaming initiatives should be considered, with due consideration of both ethical issues and the challenge of recruiting sufficient volunteers

Ms. Cooper concluded that, for PBLA, the most feasible and desirable sources of sustainable funding would be the Alberta Law Foundation and the Law Society of Alberta, with smaller

grants from various funders to develop particular projects. Round Table participants recommended that provincial funding should also be pursued. A discussion on casino and other gaming revenue ensued. Jim Peacock, QC rejected the idea of gaming as a source of funds for ethical reasons.

## ***2.7 Tools for Pro Bono Outreach Initiatives***

Susan Billington, Executive Director, PBLA

Susan Billington presented the Calgary Legal Guidance Start-Up Kit, which was created in 1999 and subsequently used to inform the development of the pro bono clinic model for the Edmonton Community Legal Centre, the Children's Legal and Educational Resource Centre, Central Alberta Legal Clinic and Lethbridge Legal Guidance. Ms. Billington noted that it may be advisable to update and revise the kit for use in Grande Prairie, Fort McMurray, and Medicine Hat and other outreach initiatives.

Ms. Billington asked whether the four clinics would be willing to share their current policies and procedures in order to update the kit. Calgary Legal Guidance and the other clinics present indicated that they would be pleased to provide any materials that would be helpful.

## ***2.8 Social Implications of Demographic and Economic Trends in Alberta***

Merrill Cooper, Guyn Cooper Research Associates

Merrill Cooper provided an overview of demographic and economic trends in Alberta and the social implications of these trends over the next decade.

She concluded that, if problems continue to evolve along their current trajectories, we can expect:

- Increased adult, family, and youth homelessness;
- Increased spatial segregation by income, ethnicity and neighbourhood decline;
- A shrinking middle class and increased polarization of the population into rich and poor;
- Increased social exclusion, particularly among immigrant and Aboriginal youth;
- Increased racism against immigrants and Aboriginal people; probably, increased backlash against Muslims;
- Possibly, same or declining crime rate but more crime by some individuals;
- To see the future of Calgary and Edmonton in about 10 years, we can look to the current social climates in Toronto, Montreal, Vancouver, Winnipeg, and Saskatoon; and
- Alberta is not immune to the kinds of racial problems experienced in London and Paris.

Ms. Cooper noted that all of these issues will result in significantly increased demand for a range of legal services from the pro bono clinics.

## 2.9 Gaps in Legal Service Delivery

Diana Lowe, Executive Director, Canadian Forum on Civil Justice

Diana Lowe provided an overview of the Canadian Forum on Civil Justice (CFCJ), explaining that the organization was formed in 1999 to improve communication between the civil justice system and the public. Since then, CFCJ has taken on a wide range of projects, most recently focusing on self-represented litigants. As explained in more detail in handouts provided by Ms. Lowe, a comprehensive national research initiative on self-represented litigants in 1998 revealed the following:

- People who need or want to represent themselves don't know where to begin. The legal maze is so complicated, and they never see the same judge twice. They don't know what they need to bring to court: a lawyer? particular documents? the opposing party?
- People are unable to navigate their way through the system. Even well-educated people can't obtain the information they require to complete the required documentation and procedural steps in an accurate and timely way. Self-represented litigants find the process to be daunting and distressing.
- Few people actually want to represent themselves; most self-represented litigants, many of whom are middle-income earners, can't afford the cost of legal representation.

Ms. Lowe explained that the various players in the legal system have become more aware of the plight of self-represented litigants and have taken steps to mitigate the problems. For example:

- Public legal education providers are providing written information and in-person instruction for self-represented litigants;
- Law societies across Canada are looking at ways to improve access to justice via paralegals, unbundling of legal services, and accreditation of foreign professionals;
- Legal aid societies are changing the way they do business in ways such as introducing duty counsel in civil and family courts, legal aid clinics, and law lines;
- Court administrators are working on simplified forms and better ways of helping self-represented litigants;
- Alberta Justice established Family Law Information Centres in Calgary and Edmonton to assist self-represented litigants with family law applications; and
- Law Information Centres are being piloted in Edmonton and Red Deer to help self-represented litigants to understand general court procedures and access legal information such as cases and precedents.

The Law Information Centres were introduced following CFCJ's *Self-Represented Litigants Access to Justice Mapping Project*, which documented the range of government and non-government services and supports currently available to self-represented litigants in Edmonton, Grande Prairie and region, and Red Deer and region. A larger project mapping all legal services throughout the province is now underway. It is hoped that the mapping projects will result in increased service coordination to the benefit of self-represented litigants.

### 3. SUMMARY OF ROUNDTABLE OUTCOMES

Susan Billington summarized the key outcomes of the Round Table as follows:

#### *Conflicts and confidentiality*

- Support was expressed for a model pro bono rule on conflicts. This should be pursued by the Law Society of Alberta.
- Participants would like the Law Society's practice advisors to develop conflicts and confidentiality guidelines for the clinics.

#### *Pro bono insurance*

- The Membership Department of the Law Society offered to explore additional ways of recruiting retired and inactive lawyers and judges for pro bono service and to seek consent from those who seek pro bono coverage to provide their names to the clinics.

#### *Strategic plan*

Based on the information provided by Jamie MacLaren, the following items will be added to the PBLA Strategic Plan:

- Disbursement coverage
- Details on how to design and run a roster program
- Survey of the profession to measure and track pro bono contributions and awareness about pro bono opportunities
- Attendance at the 2008 pro bono conference in Vancouver

#### *Tick box initiative*

- Participants affirmed the need for continued efforts to raise funding for staff lawyer salaries,

#### *Sustainable funding*

- PBLA will seek ongoing funding from the Law Society, the Alberta Law Foundation, and the Government of Alberta before pursuing any other options.

#### *Outreach Tools*

- PBLA will continue to liaise and collaborate with the clinics to develop and update outreach tools to be used in developing additional pro bono programs and projects throughout the province.

## 4. CONCLUDING REMARKS

The Honourable Madam Justice June Ross, a former chair of the Law Society's Pro Bono Committee, provided a brief history of the Committee and its work. She noted that the Committee's 2003 paper, *Pro Bono Publico: For the Public Good*, was really a strategic planning document and demonstrates the Law Society's long-time commitment to promoting pro bono involvement by the profession.

Justice Ross observed that much has been accomplished since the paper was released five years ago, and there is now a strong foundation for future work and developments. It will be important to work to build a strong relationship with the Law Society to ensure that resources are invested well and to nourish credibility with the public and the legal profession.

Rod Jerke thanked Susan Billington and her staff for their work on the conference and Ms. Billington for her ongoing work for PBLA and the pro bono cause. He thanked all Round Table presenters and participants for the comments and contributions over the past two days, for their passion for ensuring that all Albertans have access to justice, and for their support and enthusiasm for creating and supporting an organization that is a legacy for our province.

## PARTICIPANTS

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