

LawSocietyofAlberta

**Stakeholder Consultation
on the Proposed Pro Bono
Alberta Network**

Final Report

Produced for the Pro Bono Committee,
Law Society of Alberta
By Merrill Cooper,
Guyn Cooper Research Associates

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Since establishing the Pro Bono Committee in 1998, the Law Society has been working to promote and provide a structure for the delivery of pro bono education and services in Alberta. In 1998, the Committee commissioned the creation of a pro bono legal clinic start-up kit, based on the Calgary Legal Guidance (CLG) model, which has served as a “how-to” manual for new pro bono clinics, including the Edmonton Centre for Equal Justice (ECEJ), the Children’s Legal Education Resource Centre (CLERC), and the Central Alberta Community Legal Clinic (CACLC). Among other accomplishments, the Committee has also facilitated the extension of insurance coverage to better accommodate retired and inactive lawyers who wish to provide pro bono services through an authorized pro bono provider, and helped to broker a successful partnership between a major law firm and both CLG and the ECEJ for the referral of specific pro bono files.

The Pro Bono Committee has proposed the development of a new service—a network—to support, maximize, and coordinate the delivery of pro bono legal services in Alberta. Given that the purpose of the pro bono network would be to enhance and support the delivery of pro bono services, it was clear to the Committee that both the feasibility and nature of the proposed new entity should be determined by key stakeholders, particularly not-for-profit organizations delivering or preparing to deliver such services, rather than the Committee alone.

Merrill Cooper, of Guyn Cooper Research, was engaged by the Law Society to complete consultations with stakeholder organizations around the province between February and April 2006 about the desirability, feasibility, and possible roles of new pro bono entity, and the ways in which it could be most helpful to clinics in facilitating the delivery of pro bono legal education and services.

This report provides a summary of the feedback and ideas provided by stakeholders at the consultation meetings, along with some suggested options.

I would like to thank all of the stakeholders who participated in the consultation process for sharing their expertise, experience, and perspectives with us. I look forward to your continued input as we strive to develop a pro bono network that will build on our strengths and enhance the delivery of legal services to disadvantaged Albertans.

Mona Duckett, Q.C.
President, Law Society of Alberta

Process and participants

Consultations were completed between February and April 2006 with representatives of organizations involved in the administration of legal services, the delivery of pro bono legal services, and the funding of pro bono legal services, as follows:

Not-for-profit service providers

Calgary Legal Guidance
Central Alberta Community Legal Clinic
Children's Legal Education and Resource Centre
Edmonton Centre for Equal Justice
Lethbridge Legal Guidance
Pro Bono Students Canada (Edmonton)
Student Legal Assistance
Student Legal Services

Other stakeholders

Alberta Law Foundation
Alberta Law Line
Alberta Child and Youth Advocate (Calgary)
Canadian Bar Association (Alberta Branch)
Family Law Information Centre (Calgary)
Family Law Information Centre (Edmonton)
Legal Aid Society of Alberta

Key issues discussed at the consultations included the following:

- What are the key gaps in and barriers to the delivery of legal services to low-income and marginalized populations in Alberta? Which groups and areas of law are under-served?
- What are the best means of addressing unmet needs? Would additional pro bono services be helpful in meeting these needs? Which services should fall within the government's scope of responsibility?
- If there is a role for pro bono services:
 - What should the role of government be in supporting and enabling pro bono services? What should the role of the Law Society be?
 - (For pro bono law clinics) What would be the most effective role and functions of a pro bono organization in supporting your organization in meeting the needs of the low-income and marginalized population?
 - (For pro bono law clinics) What role might your organization be willing to play in devising the structure and roles of PBAN?

Not all of these issues were discussed in each consultation meeting. Many people brought their own ideas to the table.

Gaps and barriers

Consultation participants reported that low-income people, particularly persons with mental and physical disabilities, mental health issues, literacy and numeracy challenges, along with immigrants and Aboriginal peoples, continue to experience serious challenges in obtaining legal advice and representation in many areas of law, with the possible exception of criminal law. Representatives of the pro bono law clinics noted that, while Legal Aid has improved service delivery to low-income people in recent years, many people are unable to access the services to which they may be entitled for several reasons including, for some, their inability to negotiate the application and appeals process to obtain coverage.

In addition, participants who provide front-line services observed that a growing number of people who live on incomes that are somewhat above the poverty line and even those in low-middle income brackets are unable to afford legal services, most notably in the area of family law. It is not feasible for Legal Aid or the clinics to raise their income guidelines to extend coverage to these people: The volume would simply be unmanageable.

Most participants commented that the introduction of the Alberta Law Line appears to benefit people with the skills to be able to act on the advice and instructions of an agent or lawyer and, particularly, to people living outside of the larger urban centres, who have difficulty accessing a lawyer. They cautioned that it does not, however, constitute a replacement for the in-person, individualized assistance required by many low-income and otherwise disadvantaged Albertans.

Finally, some participants described gaps in legal services for children and youth, which might be best remedied by the introduction of paid, staff lawyers for children and youth, particularly for family law matters.

The role of pro bono services

Most participants agreed that there is a role for pro bono services in meeting the needs of low-income people in Alberta, and that lawyers have an obligation to contribute a certain number of pro bono hours each year. Many people believe that the government should assume more responsibility in meeting the legal needs of low-income Albertans, but stated that they harbour little hope that the government would ever step up to the plate. At best, the government may be convinced to contribute financially to low-cost service delivery via not-for-profit pro bono law clinics. Most participants also expressed skepticism that Legal Aid might be willing and able to expand or revisit the ways in which its services are delivered to improve access for low- and middle-income Albertans; moreover, even if Legal Aid were to expand, they argued that there will always be a need for pro bono to fill the gaps.

There was some disagreement about whether it is realistic to call upon the legal profession to “do more” in the area of pro bono: Most people argued that big law firms could make a more significant contribution, but caution that such firms only exist in Calgary and Edmonton. Concerns were expressed about foisting more obligations on small firms, sole practitioners and, particularly, lawyers practicing family law.

Feedback on a pro bono network

For the most part, representatives of existing and proposed pro bono law clinics expressed cautious support for an Alberta pro bono network, with some caveats, although opinion differed about its form and functions. On the other hand, some of the non-clinic stakeholders were less enthusiastic about the idea of any form of network.

Consultation participants unanimously panned the working title of the network because of the acronym “PBAN.” No suggestions for a new title were offered, however.

Feedback from the pro bono law clinics

Consultation participants commended the Law Society for its interest in and support for the provision of pro bono services for disadvantaged Albertans. People particularly wanted to thank the Law Society for extending insurance coverage to retired and inactive lawyers who wish to provide pro bono services through an authorized pro bono provider and for the help provided to establish new clinics.

Most of the participants support the idea of a network to coordinate and increase fundraising, and to present a stronger and more unified voice to governments for financial support. The clinics need help in funding for staff lawyers in particular, as this is something the Alberta Law Foundation does not fund. Some clinics require financial support for other much-needed programs.

Some participants suggested that the network could raise and distribute funds among the clinics. Clinics outside of Calgary and Edmonton face serious challenges in raising funds, as they do not have access to United Way or FCSS funding.

Most participants envision a continued, strong role for the current Pro Bono Committee as an advocate for government funding and for institutional changes to improve access to justice for disadvantaged Albertans. People pointed out that the Law Society has a stronger voice with government than a network of service providers ever would. Most people said that they would welcome an increased role for the Law Society in supporting pro bono services, because the Law Society is charged with acting in the public interest.

Some participants urged the Law Society to impose a special pro bono financial or service levy on all Alberta lawyers to help fund or otherwise support the poverty law clinics. On the other hand, a few people are strongly opposed to any form of incentive to lawyers to perform or pay for pro bono services, on the argument that motivations must remain "pure."

"The Pro Bono Committee should do what it does best and represent the clinics in discussion with governments. Remain a high level player. This is critical for credibility purposes."

"Only a small percentage of lawyers discharge their pro bono obligation. The Law Society should step in, just as they do when lawyers are not fulfilling their trust obligations."

In addition to raising funds, the following functions for the network were suggested during the consultations with clinic representatives. (Note: Some of these suggestions are not endorsed by all participants.)

“Don’t give up on the idea just for fear of letting government off the hook – there is a role for pro bono too.”

“In order to function properly, poverty law clinics and PBAN really need a staff lawyer to oversee the pro bono work. This is the only way to ensure that cases are seen through to completion and provide a measure of quality control.”

- Develop strategies to increase effectiveness;
 - Introduce video conferencing with Calgary or Edmonton to handle conflicts and to assist with matters that other centres may not have the expertise to handle, like WCB;
 - Provide support to ECEJ and CLG to assist new clinics in getting up and running;
 - Help in recruiting articling students to serve as clinic volunteers;
 - Provide technical support (possibly centralized technology, particularly to produce statistics), standardization of resource and training materials (one clinic strongly objects);
 - Raise public awareness about the legal problems of the poor;
- Find law firms to take on signature or high profile cases, or “big issues,” such as complaints about police;
- Find a way of linking clinics so that they can draw on the expertise of lawyers elsewhere in the province (e.g., on WCB, AISH matters) and streamline processes for inter-clinic referrals for representation of clients;
 - Lobby government to fund legal services for children. Minimally, consider ways of expanding pro bono services to include children;
 - Pull together web-based materials and guidelines for all clinics, including a precedent bank that is updated regularly;
 - Serve as a clearinghouse for information, in-service training and, perhaps, provide some evaluation and management consultation services;
 - Complete research on issues that are common to all the clinics and no one has time to pursue; and
- Lobby the Queen’s Printer to donate copies of legislation and regulations to the clinics.

Overall, few possible functions proposed for consideration by the Pro Bono Committee were endorsed by the pro bono law clinics. In addition, all respondents stressed that what they do **not** want is:

- Another level of bureaucracy;
- Additional draws on their limited time;
- Any loss of local autonomy, including autonomy in recruiting volunteers;
- Diversion of limited funding from front-line service delivery to the network or to administration;
- Increased competition among clinics for funding: "It is vital that a culture of cooperation be maintained;"
- To create a stable of lawyers who are "dragooned" by judges for unrepresented litigants
- To overtax the bar: "Everything can not be done on the backs of lawyers;"
- Unequal representation of all clinics on the network; and
- Any impact on legal aid certificates: "Do not replace fee for service."

Finally, a strong caveat expressed by the clinics about support for a pro bono network is that it must be funded from a new funding source. Serious concerns were voiced about the possibility of a network diverting funding from existing services.

Feedback from other stakeholders

Some of the consultation participants who are not involved with the pro bono law clinics expressed support for the idea of a pro bono network. There was however, a variety of opinion and ideas.

One participant envisions a service in which people are referred to one service or lawyer for pro bono representation, but noted that the demand would be so high that it may be necessary to limit the services to "cases of extreme hardship." Some participants believe that the network's key role should be to increase lawyers' pro bono contributions. To this end, they suggested that the Law Society implement some incentive, such as an annual fee that could be paid or worked off in pro bono hours, or a requirement that a lawyer must complete a certain number of pro bono hours to be appointed as a QC or to make partner in a firm.

It was recognized, however, that lawyers at some large firms do not have the relevant expertise to do pro bono work with disadvantaged clients, so they would not be useful volunteers, and that some lawyers, particularly those practicing family law, often make substantial pro bono contributions already.

It was also suggested that the network could establish an on-line pro bono job bank (as Volunteer Calgary does with volunteer opportunities), from which lawyers could select cases to take on. A similar system could be introduced at law firms for articling students, whose pro bono work would be appropriately acknowledged as part of their responsibilities. Concerns were expressed about how conflicts (seeing both parties in a dispute) can be avoided in venues with a small bar.

On the other hand, some participants expressed skepticism and concerns about the proposal, arguing that lawyers are already “spread thin” by their current pro bono commitments, and should not be called upon to do more. They also suggested that, in championing the pro bono cause, the Law Society may be stepping beyond its mandate of serving the public.

Some people cautioned that a pro bono network may promote the development of a parallel, unsustainable, and inferior system of legal representation for low income people, and further fragment the delivery of legal services.

They suggested that promoting more pro bono services and not-for-profit pro bono law clinics is “letting government off the hook.” Rather, the community should be challenging Legal Aid to address unmet needs by providing services, expanding the guidelines and so on, rather than developing new services on an ad hoc basis to fill gaps. For now, they submitted, clinics should focus on providing summary advice via a volunteer clinic format, and try to convince Legal Aid to provide more follow-up legal representation.

“Nobody wants to move to an American model of poverty law services in Alberta. The American model of pro bono services has developed because they don’t have the kind of extensive, government-funded legal aid system that we have here.”

Next steps

Representatives of the pro bono law clinics are cautiously supportive of a pro bono network, and very appreciative of the Law Society's efforts in bringing this new initiative forward. They clearly want to have a strong voice in identifying the mandate, functions, and structure of the pro bono network. This is ideal, because these are the people who are most knowledgeable about the legal, social, and other needs of disadvantaged Albertans; the gaps and barriers they contend with in accessing appropriate services; and the best ways of using and maximizing pro bono services to the benefit of all parties. The clinics fully recognize the high volume of need that exists in the community, and understand that meeting these needs requires a comprehensive web of services delivered by the public, private, and not-for-profit sectors. They know that no one sector can do this job alone.

Many different and, sometimes, inconsistent ideas have been expressed by representatives of the pro bono law clinics and the other participants about the ways in which a network might be helpful in supporting and maximizing the delivery of pro bono services. A main concern of the pro bono law clinic participants is the possibility that the network could create a new level of bureaucracy or divert funding from front-line service delivery and from existing organizations.

Participants from all of the existing and proposed clinics were extremely keen on the idea of coming together in a round table format to collectively discuss the proposal in more detail. Therefore, the next step is to organize a Stakeholders' Roundtable Discussion. The Roundtable will provide delegates with an opportunity to talk about the findings of this consultation process and move toward a consensus on forming a pro bono network in Alberta.

Calgary Legal Guidance, with support from the Edmonton Centre for Equal Justice and the Central Alberta Community Legal Clinic, has agreed to partner with the Law Society to sponsor a round table. The Roundtable will be partially funded by the Law Society. An application has been made to the Alberta Law Foundation for additional funding. Pending the outcome of that application, the Roundtable discussions will be planned for September 2006.

Information about the Roundtable will be provided to Stakeholders when dates and venues have been confirmed. An agenda and background materials will be sent to delegates closer to the date of the gathering.



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