

## SUGGESTIONS FOR LAWYERS AT *PRO BONO* CLINICS

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### PART I – THE SOLICITOR-CLIENT RELATIONSHIP AT A *PRO BONO* CLINIC

#### **Releases and Notes**

You will find on the desk in the clinic room a blue file containing ‘*Pro Bono* Briefs,’ which are prepared by you and are to be signed by the client. Please follow the directions on the blue file cover. Please keep your copy in your own *pro bono* file. Do not leave notes or copies at the clinic, as it will create a confidentiality and conflict problem for us. We urge you to make as complete and legible notes as possible on the brief, especially as to your advice and time limitations. A copy is provided to the client. It is invaluable not only for the client’s own use, but if for some reason the same lawyer cannot give advice at a subsequent appointment, the second lawyer can tell from the previous lawyer’s summary what previous advice has been given. Legibility is also very important for other uses such as when the client seeks assistance with document preparation at the Supreme Court Self-Help Information Centre.

#### **Follow-up Meetings**

We suggest you ask the client at the outset if he/she has seen one of our *pro bono* lawyers previously. If so, the client should show you the previous lawyer’s notes so that there is some continuity and you have the benefit of knowing what was previously advised. Sometimes a number of appointments are required to deal with ongoing proceedings.

#### **Conflicts**

If a person opposed in interest to the client has received advice from another *pro bono* lawyer, it will not create a conflict problem for you. This is because we take care not to keep client information and the client’s confidentiality is preserved. Only you, the client’s lawyer (and perhaps your assistant) is privy to the client’s information. However, you should of course make sure in the usual way that you do not have your own conflict of interest concerning a client.

Where practicable, the appointment coordinator will fax to you a couple of days before the clinic a clinic report with the names of clients, the opposing party and the opposing party’s lawyer so that you can check whether you have a conflict in advance. It may also contain a short description of the client’s problem. This service is an aid only and we cannot guarantee that the information is complete or correct.

#### **Terms of Engagement with Client**

The *Pro Bono* Brief spells out in writing the basic nature of the engagement agreement, but it is as well to go over the following with the client:

- a) The work is mainly giving advice, but also making telephone calls and helping the client draw documents. There is no responsibility to appear in Court or do any work other than the above (unless the lawyer specifically chooses to the contrary).

- b) There are no facilities at the clinic for sending out correspondence or storing documents. The client keeps all documents and with guidance from the lawyer writes his/her own letters.
- c) The lawyer is not the client's "lawyer" and the term of engagement ends at the end of the meeting.
- d) If further help is needed, the client should contact the clinic and a further meeting, with the same lawyer if possible, can be arranged. The client should not call or write the lawyer at his/her office.

In this way, boundaries are established at the outset to protect your time and privacy.

### **Client Remuneration**

Our policy is to discourage lawyers acting for clients for remuneration. We find that lawyers accepting remuneration gives clients the wrong impression and tends to give the program a bad name. To many clients, a comment that the lawyer's normal rate is, say \$180/hour, sounds quite bizarre. It is best not to discuss your rate. If you do wish to take the file for compensation and there are exceptional circumstances (e.g. the client cannot obtain any other lawyer), please send the Executive Director an e-mail or fax.

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## **PART II – ADVICE TO CLIENTS**

### **Preparation of a Client's Documents**

Sometimes a client requires a lot of paperwork, whether it is a pleading, affidavit, contract, will or other legal instrument and complains of an inability to do it in person. It is truly tempting to then take over the task and have the necessary materials typed up at the office. The trouble is that may be the thin edge of the wedge and on the next appointment the client produces more materials from the other party that need answering. Our response to a lawyer's inquiry as to whether he/she should prepare *pro bono* clients' documents in the office is: *By all means, if you really want to! However, in many cases lawyers who adopt that practice burn out.* In other cases, the lawyer fails to get back to the client or there are mix-ups of communication and sometimes we are left to try to repair the situation! We encourage lawyers to protect their boundaries and not take on more than necessary unless it is easily manageable. If you agree to further communication, make sure you live up to your commitment!

Alternative methods of dealing with the drawing of documents are:

- Encourage the client to hand-write the document with the benefit of your advice. If necessary, dictate the draft.
- If the client has difficulty writing, suggest that he/she bring a friend to the next meeting to help.

- Ask the client if he/she can find or hire a typist. Some typists charge little more than the minimum wage. Sometimes your *pro bono* coordinator can provide the name of a volunteer.
- The client may be able to get Supreme Court document preparation assistance at the Self-Help Information Centre at the Vancouver Courthouse, or through a kiosk operated by the Legal Services Society (clients can call 604-601-6000 for details)
- If it appears that the client, even with help, is unable to write a reasonable first draft, the lawyer may write a draft in longhand and the client can either copy or type it. In such case write "draft" on the document. You do not want a judge asking whose writing it is if your client files your draft as an original document! It is also advisable to copy everything you give the client lest there be a complaint or claim later. (We have found there are rarely such complaints, but they do happen.)

### **Wills**

We consider wills a very important part of *pro bono* work. The feeling of security that poor people enjoy from knowing they have a properly prepared will is of great benefit to them. Many poor cannot afford probate but nevertheless, if there is a clear will, the assets will usually be distributed to the heirs. If there is no will, whatever assets a deceased person has will frequently not reach the heirs at law. The client should be encouraged to prepare his/her own will but with guidance. The form of will at the end of this section was evolved with the help of one of Vancouver's leading probate lawyers. However, it is dangerous to give a client such a form without pointing out the required changes to meet the client's wishes and warning that it is only a precedent and on no account should the client complete and sign without a lawyer's assistance. We therefore attach a warning with the draft and suggest the client bring back a finished draft to be corrected and/or executed before the lawyer at the next meeting. Leaving the client to sign the will without a lawyer present is to invite trouble. No matter how clearly the lawyer explains the requirements of the Wills Act, few clients will observe its niceties to the letter. Even if the will is executed properly, there is a presumption of validity if the attending witness is a lawyer. If the signature is ragged or there is something suspicious about the will, the lawyer's signature may years later save an unnecessary appearance before a judge for the probate order.

### **Standards**

Remember that the same standards of practice (though perhaps not of neatness) apply to the *pro bono* will as that prepared for the paying client in your office. No lawyer should advise a paying client to prepare his/her own will unassisted. Nor does advising the client to prepare a will from a will kit meet the required standard. There is no reason why first class professional standards not be maintained for *pro bono* work.

### **Follow-up Meetings**

If a follow-up meeting is recommended, ask the client to call the clinic coordinator as soon as possible and to ask for the next available date for the same lawyer. The client should be sure to bring the copy of the previous lawyer's notes (see "lawyer's module") to subsequent meetings so that if there is a different lawyer attending he/she can know what previous advice has been given.

### **Advice Outside Lawyer's Specialty**

If the lawyer encounters a major problem outside his or her field, the coordinator should be notified and another appointment arranged (if possible) with another lawyer who is more knowledgeable in that field.

### **Abuses of Our Service**

We attempt to screen clients as to their financial means before the session, but sometimes clients who can afford a lawyer slip through. If this occurs, it is the lawyer's judgment call as to whether to end the session or continue. In any event, the lawyer should advise the coordinator.

Some clients may try "shopping around" with our lawyers until they find one that gives them the answers sought. That is not how we intend the program to be run. Please advise the coordinator if any such abuse comes to your attention.

## NOTES ON DIFFICULT CLIENTS –originally prepared by Dugald Christie, Jan 19, 2005

A small but significant minority of clients, usually with mental and/or substance abuse problems, will demand almost limitless help. They may not take advice though they keep returning for it. Others may misrepresent their income or assets so as to receive help. Yet others may be in an anxiety state where in their minds the world will come to an end the next day if they do not have a lawyer appear for them. (Unfortunately, there are occasionally instances where this is a justifiable fear.) Others are clearly immoral and will think nothing of hurting family members, including children. Many are desperate and will go to any length to recover a small sum, and others are greedy, wanting thousands where there are only nominal damages.

General Booth, the founder of The Salvation Army, stated the foregoing in a different way:

*"Most schemes that are put forward for the improvement of the circumstances of the people are either avowedly or actually limited to those whose conditions least needs amelioration ... No one will ever make even a visible dint on the morass of squalor who does not deal with the improvident, the lazy, the vicious and the criminal."*

If all persons who are poor and need legal help were innocent and helpless, lawyers would flock to *pro bono* clinics. It is the unpalatable nature of the occasional *pro bono* client that is the reason why many lawyers will not act for the very poor. Some may once have generously helped a person and then found their advice was ignored. Many a senior practitioner has told of such experiences and concluded that giving legal help to the "poor" is not for them. Such unfortunate experiences usually result from poorly-delineated lawyer-client boundaries.

I once worked with a very difficult *pro bono* client for three years. I was finally persuaded that the only way to effectively help him was to go into court with him. When I did so (after considerable preparation), he dismissed me just as the judge entered the courtroom. That experience ultimately saved me much time and money! I cannot recall an instance since then where a client has taken similar advantage of me. I have obtained this result not by shying away from all *pro bono* cases, or by dealing with every *pro bono* client with guarded suspicion, but by realising that I had not adequately met either the client's or my own needs. Nor did I have any viable boundary between those differing needs. In that particular case, it was quite evident that the client did not want to win a substantial amount of money so much as he had a need to be heard. My own needs included the need to limit and budget the time I spent on non-paying files, while at the same time obtaining satisfaction in helping those less fortunate than I. I learned much about my own boundaries from that experience!

The true criterion for success is not just what tangible result the client receives. If the lawyer's yardstick is whether the client receives a financial remedy, the *pro bono* experience is likely to be a very frustrating business with little benefit. For the lawyer who is open in a deep and spiritual sense, helping the poor is enriching. It has little to do with doing one's duty to society. It has everything to do with developing the mind to deal with new and strange problems, thinking laterally, using strength of character to its best advantage, and, above all, the ability to listen and to observe without being insensitive. These are indefinable qualities that are exercised in indefinable ways. They are "spiritual" qualities.

We see it all the time. Many of our volunteer lawyers have that ability to put their finger not just on the “bottom line” of the issue (as is the want of every lawyer) but to touch and reach the client in such a way as to meet his or her real needs. The client often is not happy with the advice given; that is not the point. Whether the client adopts the advice to meet his or her needs is the point. Such things are not usually taught. They are learnt by experience and by exposure to others who have those qualities.

### **Giving Advice to the Mentally Challenged**

Perhaps 30% of *pro bono* clients at some clinics are mentally or emotionally disadvantaged, and some of them are clearly psychotic. Whether the client suffers from dyslexia, a serious persecution complex, or a manic depression condition (to name just three conditions that are quite common), it is well worthwhile for the lawyer to attempt to assist the client. It is only natural for a lawyer charging \$200 per hour or more outside the clinic and faced with a handicapped client with no definable legal problem to conclude that there is no significant legal issue at stake and that the session is a waste of time. However, the lawyer should not forget that he/she has a unique opportunity to steer the client to professional assistance and/or provide the client with some measure of insight.

In some instances the client is his/her own worst enemy and continually sees others as the sole authors of his/her misfortune. In such cases the client should be referred to counselling in addition to legal help. Try to have the client obtain counselling through his/her welfare worker, minister, rabbi, etc. or physician. A psychiatrist is preferable in more extreme cases. It may be that the agency where the clinic is situated has a counsellor.

If the client is clearly delusional with an obsession to litigate against some real or perceived adversary while stoutly maintaining he or she has no need for psychiatric help, there are various effective strategies. One that I have used successfully is to take down notes of the client's intended claim and then give the client advice to the following effect:

“If I am to help you, you will have to deal with the defendant’s claim that you are mentally challenged. That means you will have to obtain a psychiatrist’s report stating that you are perfectly well mentally. To do that, you have to go to a psychiatrist to get a report. It should be free. Without that report, I am sorry, but I am not prepared to help you in your claim.”

I have had dozens of such cases and I do not waste time with the clients if they are not prepared to deal with the defense that they have a mental disorder.

One gentleman came to me with the complaint that he was receiving radio communications which were distorting his dreams. I used the above approach, and eventually he saw a psychiatrist and reached some degree of insight and dropped his lawsuit. Using the same method, I have avoided spending valuable time with clients who refuse to have any measure of insight. We may try but we cannot help everyone!

Every lawyer has different strategies in dealing with the mentally challenged, but experience has shown such an approach is effective.

If the client insists on coming to the meeting with a friend, that may be because the client is dyslexic, a condition the client may be ashamed of and deny. It is always useful to watch the client fill out the release form to discover if there is difficulty in writing. It may also be that the client has repeatedly failed to control his or her emotions.

In all such cases, the lawyer should, with a little creative thinking, be able to induce the client to seek professional help. In appropriate cases of uncontrolled conflict, the lawyer can paint a very nasty and accurate picture of what will likely happen in the future if the client's approach does not change and the conflict scenarios recur.

### **The Client With a Substance Abuse Problem**

Sometimes clients with serious substance abuse problems will come to a clinic. Whether to try to help such a client with a legal problem can be a difficult decision! Some lawyers will tell the client that the legal problem is secondary to the addiction problem and will not help until the client gets a real handle on that problem (e.g. goes regularly to AA meetings or successfully completes a drug recovery program and keeps clean for at least three months thereafter). Other lawyers may take the view that some help is better than none and try to assist the client muddle through. Personally, I favour the first—the “tough love approach.” I have seen too many drug or alcohol addicts bumbling or abandoning their court proceedings and coming back to our clinics for endless “help,” all to no effect.

My own preference is to advise the client orally and in writing (on the *Pro Bono* Brief) that (1) the courts give little or no weight to evidence of someone who is a substance abuser, (2) most conflicts in court are won after a long, hard struggle, and the client with substance abuse problems will be at a distinct disadvantage in that regard, (3) there may be some way of putting off the legal problem until the client has recovered from the substance abuse, and (4) the client may attend a recovery program, if I know of a suitable one, or if not a doctor. Such advice may go unheeded, but in my view it is better than ignoring the problem.

Deciding whether the client is mentally challenged or a substance abuser is a tough call, especially for those lawyers inexperienced with such clients. Personally, if there is any serious question in this regard, I prefer to give the client the benefit of the doubt. If you do decline to give help to mentally challenged clients or substance abusers who will not begin to come to terms with their condition, you can be sure that we will stand behind you if the client complains.

### **The Client Who Can Afford a Lawyer**

You may discover that a client's household income is more than \$2,500 net per month or that the client has assets of more than \$10,000 (excluding an equity in a home—we allow an equity of up to \$60,000 for regular clients, or an unlimited equity for disabled clients or those over 65). If so, please feel free to decline to help the client. Our income and asset requirements are well published in our brochures and materials, and our intake volunteers are trained to screen clients. However, some such clients may occasionally get through, and we do not expect you to spend your valuable time on clients who can pay! In clinics where the problem becomes serious we require the clients to sign a declaration as to their income/assets before they see a lawyer. If you do decide to help someone whose income or assets are more than those allowed in our guidelines, you may be doing the client a disservice: the client may be better off paying for a

lawyer and receiving full service, rather than just a half-hour interview. It may also be that you are depriving a lawyer of a paying client! We therefore suggest you not help clients who do not qualify. We will stand behind you!

### **The Persistent Client With a Just Cause Who “Cannot Win”**

To me the greatest challenge is the persistent client with a just cause who cannot win without insane hardship and delay.

Some clients who are well-adjusted, with no trace of substance abuse or mental problems, are determined to persevere in a cause that is entirely just despite overwhelming odds. For example, a person claiming worker’s compensation who may have been denied the opportunity to see materials that the WCB tribunal saw has *prima facie* grounds for setting aside the decision because the client’s right of *audi altarem partem* has been denied. However, it is futile to issue a petition for judicial review until all the WCB appeals have been exhausted. Not only must the appeals be exhausted, but the issue of *audi altarem partem* must be explicitly raised on those appeals. There are various other technical niceties that have to be observed. To exhaust the appeals will likely take several years. The best advice to the client might therefore seem to be to forget the whole matter! However, many clients are determined to pursue their remedies, notwithstanding warnings as to the time and energy that will be required in the proceedings.

Another example is the motor vehicle mishap victim who insists that his/her damages are greater than the amount paid into court. That may well be, but the client has to undergo a jury trial in order to attain the desired goal. As any litigation lawyer knows, the amount of work and the danger of some tragic misunderstanding are so great that it is seldom worthwhile for the unrepresented plaintiff to risk a jury trial if there is an offer that bears some relationship to the value of the claim.

Sometimes the *pro bono* lawyer will advise the client to take the settlement offered or abandon the case, but the client perseveres. I have on various occasions met with clients in such situations many months or years after giving such advice and they were still struggling with the claim. My practice is to telephone the opposing lawyer with the words to the effect, “I am calling again concerning Mr. X. I recall that when I spoke to you last about a year ago you insisted that the amount you had paid into court was your maximum. I understand that this is still so, and that the matter is still not set down for trial. Mr. X seems very determined and I question whether this matter will be resolved inside two or three years. How about settling for...\$10,000? I think we can settle this matter now, but if not, I suspect I will be calling you again next year with a similar proposal.” If nothing comes of that call, I suggest to the client to persevere and come back the next year and we will try again. Usually such methods eventually lead to a settlement. The client’s greatest advantage is perseverance, and that advantage should not be ignored!

At other times, the claim is impossible to settle and the only way to achieve justice is for the client to battle on to the moment of truth at a hearing or trial. Perhaps I am a romantic, but in my experience something almost magical happens for the truly deserving clients and some form of victory is achieved!

Much more could be written on the subject of assisting the unrepresented litigant. Every counsel has different methods of helping the underdog despite overwhelming odds. It is indeed a challenge!

### **The Bottom Line**

The seasoned, veteran lawyer, who may be most tempted to conclude his or her talents are being wasted at a *pro bono* clinic, may well have the advantage, by virtue of experience and character, to guide the troubled client out of a nightmare life to a measure of insight and recovery.

We have conducted a survey of our clients and our *pro bono* lawyers to assess their satisfaction with our services. The survey was conducted by a sociology student under the supervision of a professor at Kwantlen College. The results showed that the *pro bono* lawyers were, on the whole, satisfied, but their main concern was whether the clients were satisfied with the service. Fortunately, the client survey clearly indicated that they were!

The bottom line is that our program is not only growing fast, but it works for our clients—they may be critical of some things, but they like it!

**WARNING TO CLIENT: This is a suggested form of Will. You may complete or change this document, but do not sign it until you can do so before a lawyer.**

THIS IS THE WILL OF ME, \_\_\_\_\_ of **DRAFT**  
Province of British Columbia, Canada. in the

I. If my spouse survives me I GIVE all my property to my spouse whom I appoint to be the Executor or Executrix of my estate (referred to in this will as “my Trustee”).

II. If my spouse fails to survive me I DIRECT as follows:

(1) I APPOINT \_\_\_\_\_ to be my Trustee and if he/she is unable or unwilling to so act I APPOINT \_\_\_\_\_ to be my Trustee.

(2) I APPOINT \_\_\_\_\_ to be the Guardian of my infant children then alive and if he/she is unable or unwilling to so act I APPOINT \_\_\_\_\_ to be such Guardian.

(3) I GIVE all my property to my Trustee in trust as follows:

(a) TO DIVIDE all the residue of my estate after payment of my debts and funeral expenses into as many equal portions as there shall be children of mine alive at the time of my death, and if such children be infants, to pay the income and such portion of principal as my Trustee may deem appropriate to such child until his or her majority whereupon the balance remaining shall be paid to such child.

(b) If there be no children of mine alive at the time of my death I DIRECT that all the residue of my estate be paid to \_\_\_\_\_ of \_\_\_\_\_.

IN TESTIMONY WHEREOF I have hereunto set my hand at Vancouver, British Columbia, this \_\_\_\_\_ day of 200 \_\_\_\_\_.

SIGNED, PUBLISHED AND DECLARED BY \_\_\_\_\_  
for his/her last will and testament in the presence of us, both  
present at the same time, who at his/her request, in his/her presence  
and in the presence of each other have hereunto subscribed as witnesses:  
WITNESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WITNESS: \_\_\_\_\_

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