

PRO BONO CLINICS IN BRITISH COLUMBIA

The purpose of this article is to describe the need for *pro bono* in B.C. and the remarkable response of the profession to that need; to present a short description of how *pro bono* clinics work and the advantages of those clinics over *pro bono* work done from a law office; and, finally, to offer some thoughts on the nature of the *pro bono* solicitor-client relationship in a clinic.

- I The need for *pro bono* clinics.** The need for free legal services, in terms of statistics, is not generally appreciated. According to Statistics Canada, the median income for British Columbians is approximately \$1,750 per month. That figure is about the same as the threshold limit used by the Salvation Army, Access Justice and other social agencies for clients' income. *Pro bono* clinics are serving approximately half the population of BC!

The problem is evident not only from the number of clients who need *pro bono* service, but also from the extent of that need. Litigants who could fend for themselves in our justice system 20 years ago can no longer do so. The complexity both of the substantive law and of criminal and civil procedure has increased markedly. An accused in a criminal proceeding 20 years ago did not have to consider *Charter* jurisprudence or to understand the technological evidence that the Crown so often now introduces. Civil litigants used to be able to bring an application before the court by affidavit and notice of motion. Now, the same application usually requires a host of documents that have to be filed and served according to a specific timetable. To an experienced litigation lawyer there is nothing intimidating about the process, but to a lay person, especially one with little formal education or perhaps a reading disability, the requirements can be baffling. Complexity in the law abounds in almost every area. The need, therefore, for legal counsel has dramatically increased over the past 20 years.

In some areas of the law, reforms have not only added to the law's complexity but have also made it more difficult for the client to obtain counsel. For example, there have been numerous changes to the *Residential Tenancy Act*, and very few lawyers have kept abreast with those changes. Similarly, the guidelines for determining the amount of maintenance in family proceedings (though an admirable reform) are not well understood by many lawyers who could otherwise assist family law clients.

The combined effect of the increased complexity in the law and the ever-quickenning pace of change in the law makes it increasingly difficult for clients to find a *pro bono* lawyer whose skills match their needs.

To all these problems, we must now add the severe provincial government cutbacks to the Legal Services Society. Now no more than approximately 10 percent of persons on low income with legal problems can obtain help from legal aid. That help is restricted primarily to serious criminal charges where the Crown seeks a prison term, deportation order or child detention order. Often a mother who has a claim on behalf of her children for child maintenance has nobody to help her in fighting counsel for her husband unless a *pro bono* lawyer assists.

II The response of the profession. The long-standing and traditional response of the legal profession to the need for free legal counsel has been two fold: first, to pressure the government to increase its budget for legal aid and, second, to provide free legal services from lawyers' offices. Unfortunately, the former has been singularly ineffective. The latter, though many lawyers are very well intentioned and make substantial sacrifices to provide such *pro bono* service, is insufficient to satisfy the demand.

To meet the need the Western Canada Society to Access Justice ("Access Justice"), the Salvation Army and some other providers over the last seven years have established approximately 52 clinics in the province. About 600 lawyers give their time, *pro bono*, at those clinics. Many other lawyers support *pro bono* clinics by helping in their administration or making donations. (Approximately 230 lawyers have made donations and 340 provided their time to Access Justice.)

Since there are approximately 9000 lawyers who are insured to practise law in the province, the proportion of lawyers who support *pro bono* clinics is well below 10 percent. That percentage is continuing to increase.

III How *pro bono* clinics work. *Pro bono* clinics in B.C. are conducted primarily from social agencies, including churches and synagogues. The host agency provides a room for the *pro bono* clinic, usually for two hours each week. It advertises its service, takes calls from the public and arranges half-hour client appointments. It screens out clients who can afford a lawyer or obtain legal aid and sorts the criminal, family and other cases for assignment to the appropriate lawyer. The day before the clinic, the agency faxes to the *pro bono* lawyer a list of the next day's clients and the opposing parties and counsel.

When a client comes in, he or she can watch a video as preparation for the *pro bono* session. Often the client has an unrealistic expectation of finding a lawyer who will produce a quick result. The video helps the client to develop more realistic expectations and encourages him or her to prepare for succeeding sessions by bringing all necessary documents and preparing a summary of the facts and questions for the lawyer.

At the *pro bono* session, the lawyer usually sees three or four clients within approximately two hours. The lawyer prepares a *pro bono* brief, which is a simple form containing a summary of the client's situation and the lawyer's advice. A copy of the *pro bono* brief is given to the client to sign and keep. The lawyer advises the client to make arrangements for any subsequent meetings with the *pro bono* agency and not to contact the lawyer directly. In that way, the lawyer's boundaries are protected and the lawyer's work is confined to the two-hour sessions.

IV Advantages of *pro bono* clinics. *Pro bono* work done from a clinic has a number of advantages over the traditional method of helping *pro bono* clients on an *ad hoc* basis from an office.

The lawyer's time is better utilized. Claims for relatively small amounts that are handled in the usual way from a lawyer's office can be eclipsed by the cost in lost time incurred by the lawyer. If, however, the lawyer acts as a clinic advisor rather than as an advocate for the client, the time spent will more likely bear some reasonable relationship to the amount of the

claim. For example, a lawyer at a clinic dealing with a client's small claims court action will first advise the client on how to prepare the case and may meet again with the client shortly before the trial to advise on how to present the evidence.

***Pro bono* clinics avoid hidden costs.** In a law office the cost of the secretary's time in making *pro bono* appointments, preparing documents, making photocopies and posting correspondence, and so on are usually lost in the firm overhead. *Pro bono* from the office is thus often an indeterminate drain on the firm's resources.

Pro Bono clients who are truly deserving may not be presentable. In a prestigious law firm's reception area, an unkempt-looking *pro bono* client may be an embarrassment to himself (or herself) and to the firm.

***Pro bono* clinic clients are screened.** Lawyers in an office often do not know how to screen *pro bono* clients, what income threshold to use or whether legal aid can assist. Clinics, on the other hand, are accustomed to screening clients.

The *pro bono* clinic can meet other needs of the client. Frequently, *pro bono* clients suffer from a host of problems, only some of which may be legal. Most agencies hosting *pro bono* clinics have counselling and other services that can help meet those needs. Ideally, the lawyer can work with the agency workers as a team in a holistic manner to help tackle all of the clients' problems.

Convenience. Greater Vancouver now has more than 20 *pro bono* clinics, and most lawyers can visit a clinic nearby their office. Downtown lawyers can attend clinics at the Smithe Street courthouse (where the *pro bono* registration centre is found just inside the Smithe Street entrance).

Specialization. An increasing number of lawyers giving *pro bono* assistance do not feel comfortable giving advice unless it is within their own preferred area. At a clinic, clients are screened by the agency so that the lawyer's clients all present with problems within his or her field expertise.

Pro bono from the office may be more suitable for certain types of client, but clinics generally serve clients better. There are simply not enough lawyers doing *pro bono* from their offices to meet the demand. Thus the only way the demand can be met is through the increased use of *pro bono* clinics.

V The solicitor–client relationship at a *pro bono* clinic. Many lawyers ask the question, “How much can a lawyer do for a client at a *pro bono* clinic without the resources of a secretary and office facilities?” They may think that without such resources the lawyer can only provide a second-rate service. However, the fact is that a *pro bono* clinic lawyer can frequently better serve a client than the lawyer making a much greater sacrifice using a law office. The difference between the two lies in the nature of the solicitor–client relationship. The normal office engagement contract contemplates the lawyer managing the client's file on an ongoing basis, and the client delegates authority to the lawyer.

The *pro bono* clinic lawyer has an entirely different relationship with the client. The client does not delegate the handling of the case to the lawyer. The lawyer is primarily an

advisor. If the client needs to prepare a pleading, the lawyer will not take the file away to do the drafting himself (or herself) but, instead, shows the client how it is done. The lawyer may draft a few paragraphs by way of demonstration, but the client creates the document and can come back to check the final draft with the lawyer.

The result is that clients take responsibility for the conduct of their own cases. At first a client may feel helpless and may resist the process. However, most clients become proactive and, under the encouragement of the lawyer, gain the confidence required to do the job themselves. Over the long term, the client is shown not only how to address the legal problem but also learns how to act on his or her own behalf and represent him- or herself effectively in court.

Clients who present their own cases in court may well have the assistance of the judge if their attitude is correct and if they have taken the trouble to prepare properly. The client that has a defiant attitude and is off-hand in preparation is unlikely to succeed. It is confidence, respect and thorough preparation that win cases for persons without counsel. A *pro bono* lawyer can do much to assist clients to attain that goal.

Most litigants, once they have such winning attitudes, find that their cases can be settled out of court. However, many do not know the rules relating to court offers to settle. They do not know how to present a “without prejudice” offer so as to preserve their position should the offer be declined. All too often, unrepresented clients will settle their claims without securing the settlement funds. If a client does not have *pro bono* legal advice, he or she may have to start a second action to enforce his or her settlement.

The *pro bono* lawyer is frequently invaluable in guiding the client through what can seem to be a jungle of incomprehensible rules to obtain a proper binding settlement.

VI Conclusion. At least one half British Columbians cannot afford a lawyer when the need for one arises, and if they cannot find a *pro bono* lawyer, they must fend for themselves. Specialization, complexity and government cuts make that need all the more pressing. Without fanfare, individual members of the profession in B.C. are addressing the problem in an organized and cooperative manner at *pro bono* clinics. The advantages of the clinic over the law office are compelling. The *pro bono* clinic is an increasingly vital tool to meet the need for access to justice.