

# PRO BONO NEWS

A quarterly newsletter from PRO BONO LAW ONTARIO



Summer 2005

## Developing Ontario's pro bono culture

— A MESSAGE FROM PAUL SCHABAS, PBLO'S NEW CHAIR —



*At its April 2005 Annual General Meeting, PBLO welcomed a new Chair of its Board of Directors, Paul Schabas. Paul is a litigation partner at Blake, Cassels & Graydon, LLP in Toronto. Paul was called to the Bar in 1986 and has a varied litigation practice with an emphasis on media, constitutional and public law. He has been counsel on leading Charter cases dealing with freedom of expression, equality rights, judicial independence, fundamental justice, and search and seizure, and has appeared many times in the Supreme Court of Canada, including acting as counsel, pro bono, for the Canadian Foundation for Children, Youth and the Law on its landmark challenge to the corporal punishment defence in criminal law. Paul is a director, or former director, of several non-profit organizations including the Family Service Association of Toronto, the Canadian Civil Liberties Association and the National Youth Orchestra of Canada.*

**P**BLO'S MANDATE is to facilitate and support opportunities for all members of the legal profession to make significant contributions towards the improvement of access to justice.

As PBLO has grown as an organization, it has made significant gains in developing this province's pro bono culture. Perhaps PBLO's greatest achievement has been its ability to build upon and energize Ontario's proud tradition of pro bono by ensuring that access to justice is on the agendas of all members of the profession.

PBLO has worked with many major law firms to develop pro bono policies that count pro bono time as billable time; and it continues to develop pro bono projects tailored to their interests and resources. PBLO

is also working with a growing number of law associations.

Whether through its litigation assistance projects, child advocacy projects, or varied community economic development initiatives, PBLO has successfully tapped into the resources of both solicitors and litigators.

Recently, PBLO has been working with the Ministry of the Attorney General and the Department of Justice to develop pro bono policies that will, in effect, enable the province's and nation's largest "law firms" to participate in pro bono activities.

Looking to the future, PBLO intends to facilitate pro bono participation in a number of new sectors and to develop partnerships and pro bono projects that

continue to serve the legally disadvantaged members of our community.

PBLO hopes to broaden the profession's pro bono participation even further. Not only will PBLO continue working with large law firms and law associations, PBLO is developing pro bono policies and projects tailored to the resources of mid-size and smaller firms. PBLO is also looking for ways to engage in-house corporate counsel in pro bono activities.

As Chair of PBLO, I would like to take this opportunity to thank and congratulate all those that have joined us in our mission, and I welcome those who will work with us in the future. ■

### LAWYER DAVID BUTT JOINS MICROSOFT AND TORONTO POLICE COLLABORATION

## PBLO brings legal voice to the fight against child exploitation

**CANADA IS NOW AT** the forefront of tackling the problem of Internet child pornography thanks to an email plea sent to Microsoft Chairman, Bill Gates, by Toronto Police Detective Sergeant Paul Gillespie. Microsoft responded to the challenge by developing The Child Exploitation Tracking System (CETS), officially unveiled on April 7. The technology appears so promising that police agencies around the world are showing interest in this criminal-nabbing tool.

At the heart of this success story is industry and community collaboration. Industry has created a new breed of cyber-criminals using advanced technology that police agencies struggle to keep up with – the case is clear for industry to get involved in finding solutions. Collaboration between

Microsoft, Toronto Police Services and the RCMP got the ball rolling and now PBLO has brought the legal voice to this team through David Butt, a member of Torkin Manes' civil litigation department.

The CETS system is designed to allow multiple police agencies to capture and search a repository of information from the point of detection through to the investigative phase and arrest. CETS enables agencies to avoid duplicating their efforts. Officers share information over a secure network, matching up investigations that reference the same people or online identities. Using CETS, police agencies can manage and analyze huge volumes of information in powerful new ways, such as cross-referencing obscure data relationships and using social-network analysis to

identify communities of offenders. The RCMP will house the network.

David Butt was a natural to work on this project with a background of involvement in efforts to end child prostitution, child pornography and the trafficking of children for sexual purposes. David was first a Crown prosecutor for 13 years before joining Torkin Manes in a return to civil litigation practice. Over the years, he has advised police forces and Crown prosecutors across the country on Internet and child pornography issues, and is considered in the law enforcement community to be one of Canada's leading legal experts in the field. David also sits on the Board of



Microsoft Canada President, David Hemler (left), presenting an award to David Butt for his work on the CETS project. Photo courtesy Glenn Brown.

Beyond Borders, a Canadian organization that fights to advance the rights of children to be free of abuse and exploitation.

With support and encouragement from Torkin Manes, PBLO facilitated David's involvement in the CETS project. In order for the project to produce real results and prove successful over the entire investigation to conviction phase, three key components

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# LAW FIRM PRO BONO

## GOWLINGS

### The Aboriginal Artists' Project

**THE INTELLECTUAL PROPERTY** law department of Gowlings' Toronto office has established an agreement with Aboriginal Legal Services to provide pro bono legal services to Ontario's Aboriginal artists and arts organizations.

Aboriginal Legal Services is a legal resource centre dedicated to defending and advancing the equality and rights of Aboriginal peoples generally. Aboriginal artists and arts organizations need access to legal advice to answer copyright questions, assist in reviewing contracts, and to secure payment for their creative works. Gowlings has agreed to take on this role and provide this much needed service to individuals who have little or no knowledge of the law or of their rights and responsibilities in the context of the judicial system. The goal of Gowlings' participation in this partnership is to assist in the protection and enhancement of legal rights of Aboriginals in Ontario and to provide some economic security to their artistic efforts. •

## TORYS

### Visual Artists' Legal Clinic of Ontario (VALCO)

**TORYS LLP** and CARFAC Ontario (Canadian Artists' Representation / le front des artistes canadiens) have joined forces to provide pro bono legal services to CARFAC members. Torys lawyers assist the artists with questions relating to copyright, commercial contracts, labour law, commercial leases, tenants' rights or incorporating as a business. Legal services are provided through pre-arranged appointments at clinics planned throughout the year, and in certain cases Torys will also take on full representation of artists. The first few clinics have been held at Torys' offices, but plans are in the works to hold future clinics in art galleries throughout the city.

CARFAC Ontario is the professional association of Ontario visual artists, dedicated to addressing the legal and economic issues faced by their members. CARFAC works to develop policies, publications and services that assist artists, galleries, curators and art patrons in creating an economic climate that benefits all visual artists.

PBLO recently spoke with Torys' VALCO coordinator, Eric Boehm, to find out how the process has been developing so far. "The first few clinics have been interesting test runs. This is a new initiative for us, and we're learning how to improve and streamline clinics."

Pro bono work is not new to Torys, which has a long-standing tradition of contributing to the community through direct, public service. Last year, they revamped their pro bono policy to ensure it provides that approved pro bono activities will be counted toward billable targets. Torys also stresses to its lawyers that pro bono clients are to be treated with the same care and professionalism as any other client.

"We are very happy to be of assistance to CARFAC members," says Boehm. "It's gratifying to be able to use our legal skills in different ways, and frankly it's just fun to meet some very interesting people."

"One particular benefit of this project with CARFAC," adds Boehm, "is that it provides our younger corporate lawyers with the chance to use their skills for pro bono work. Typically people think of pro bono as advocacy or litigation, but artists have a range of business needs as well. This is a way of getting our corporate people involved as well."

On May 12, an official launch party for the project was held at the Katherine Mulherin Contemporary Art Projects gallery. Staff from Torys, PBLO and CARFAC were on hand to celebrate this exciting collaboration. CARFAC Board Vice President, Merlin Homer, addressed the gathering, saying, "All the visual artists in Ontario have won something wonderful here today!" •

## BLAKES

### Evergreen / Don Valley Brickworks

**EVERGREEN, A NATIONAL** non-profit environmental organization, is undertaking a \$40 million transformation of Toronto's historic Don Valley Brick Works, working with a diverse range of non-profit organization partners and a select group of socially conscious private enterprises. One of those key collaborators is Blake, Cassels & Graydon who will be providing pro bono legal services on corporate, tax, real estate and charitable matters for the project.

The Evergreen Commons at the Brick Works, located on the west side of Bayview Avenue just south of Pottery Road, will be a 40-plus acre property of walking trails, natural wetlands and wildflower meadows. The site will likely become one of Toronto's top visitor destinations with a large nursery and garden centre, youth programs and summer camps, an organic farmers market, winter skating, artisan workshops, a restaurant, conference and event facilities, and more.

Geoffrey Cape, Executive Director for Evergreen, is excited to be working with Blakes on this innovative project. Geoff says, "PBLO offers a great service in connecting important social ideas with the best law firms in the city to explore creative solutions for some of our most complex social challenges." •

## MCCARTHY TÉTRAULT

### Regent Park Community Redevelopment Initiative

**A MAJOR 12-YEAR** redevelopment project is taking place in Regent Park, Toronto's largest public housing neighbourhood. The multi-phase work plan has developed through a consultative process with residents, community agencies, and design and planning experts. The changes will transform this impoverished area into a mixed-income neighbourhood with new streets, parks, shops and community services.

One of the key collaborative groups working with city planners is the Regent Park Residents Council, set up in 2002 to ensure that the voice of residents is heard and represented through decisions that affect and impact the existing community. PBLO stepped in to help strengthen the efforts of this group with pro bono legal services. McCarthy Tétrault accepted the challenge and will provide legal support to the residents group on general matters and on Community Economic Development Initiatives. •

## THE ADVOCATES' SOCIETY

### Appeals Assistance Project

**IN EARLY 2005**, The Advocates' Society board of directors approved an expansion of the Court of Appeal Pro Bono Program to include appeals in the Divisional Court. This new, expanded program is now known as The Advocates' Society Appeals Assistance Project. The first year pilot of the Court of Appeal Program had proved very successful, with lawyers volunteering in large numbers, both as counsel and as mentors. In fact, the number of volunteers exceeded the number of active cases. With the recent expansion of the program to include appeals in the Divisional Court, it is expected that there will be more advocacy opportunities for the large number of Society members interested in doing pro bono work. The Advocates' Society, with the assistance of PBLO, is also reviewing the possibility of expanding the program even further to include motions in the Court of Appeal.

The Appeals Assistance Project offers pro bono legal services to unrepresented litigants in civil appeals. In order to qualify for the volunteer roster, lawyers must be members of The Advocates' Society and demonstrate knowledge of the principles of appellate review, either through direct experience or acquired knowledge. Junior counsel are required to have a more senior lawyer act as their mentor. The Advocates' Society co-ordinates the intake, screening and referral of cases that meet the criteria for the program, and provides general case management support.

Greg Richards, a lawyer at WeirFoulds LLP and a member of The Advocates' Society standing committee with responsibility for the Society's pro bono projects, is pleased with the expansion of the program. "The fact that so many of our members have volunteered shows the strong interest in these projects," he said. "Assistance is being provided to unrepresented litigants and the Courts in which they appear while, at the same time, additional opportunities are being provided to hone advocacy skills, particularly for our younger members. These pro bono programs are an excellent way for our members to act on the mission and core values of The Advocates' Society."

For more information about The Advocates' Society and its pro bono initiatives, please visit [www.advocates.ca](http://www.advocates.ca). •

## PRO BONO POLICIES ENTRENCHED

# Approved free legal work now carries same weight as billable hours at big law firms

By Beth Marlin

**A** KINDER, GENTLER sensibility appears to be taking root at the institutional core of many of Canada's most powerful Bay Street law firms.

Known more for their sweatshop culture, in which the number of billable hours can make or break an associate's hopes for a coveted partnership, seven of Toronto's biggest firms have recently announced new policies that not only encourage lawyers to do more free legal work for those in need, but – quite radically – also gives pro bono hours the same credit as chargeable hours in calculating their paycheques, bonuses and partnership points.

And, in the coming year, many more law firms are planning to introduce similar policies to formalize – and put their money where their mouth is – their support for the pro bono legal work that many of their lawyers have been doing on their own time for years on behalf of needy community groups and individuals not otherwise covered by legal aid.

"Our firm has adopted a policy that, for approved pro bono work, the associates will have their time treated as equal to billable time," says Paul Schabas, chairman of the pro bono committee at Blake Cassels & Graydon LLP. "It's an enormous step, but it's a critical step to showing a commitment to pro bono work."

Other major firms that set up pro bono approval committees and more formal policies of a similar nature during 2004 include Borden Ladner Gervais LLP, McCarthy Tétrault LLP, Ogilvy Renault, Torys LLP and Baker & McKenzie. Gowling Lafleur Henderson LLP also began giving full credit to approved pro bono work just a few years ago, although the firm has no plans to set up a formal pro bono approval committee. Even Osler Hoskin & Harcourt LLP, which introduced its community law program 15 years ago, only formalized their policy giving full credit to approved pro bono hours worked a few years ago, says Brian Morgan, chair of the firm's Community Law Committee.

Credited with driving this trend is Pro Bono Law Ontario, an organization that is strongly endorsed by Roy McMurtry, Chief Justice of Ontario, and serves as a broker to match up public service organizations and legal clinics that need free legal services with qualified lawyers willing to provide

them. "Prior to launching Pro Bono Law Ontario in January, 2002, none of the firms had formalized pro bono programs," says Lynn Burns, executive director of Pro Bono Law Ontario.

Previously, says Ron Manes, a founding member of PBLO's board of directors and managing partner of Torkin, Manes, Cohen & Arbus LLP, "pro bono services would mean a person who would walk into a lawyers office and literally beg for some help that they couldn't afford. And lawyers, at least in this province, always responded. But it was disorganized, so lawyers who wanted to do pro bono work didn't necessarily get it and people who needed pro bono work weren't necessarily matched with lawyers to do it."

With the help of PBLO, law firms interested in doing pro bono legal work now can be matched up with a "turnkey program" to help those who need their services, says Mr. Manes, who says the matching service is particularly needed to find pro bono opportunities for lawyers who practise in areas other than litigation. "That is unique in North America."

At a conference sponsored by PBLO last May, Chief Justice McMurtry appears to have tickled the notoriously competitive spirit of Toronto firms by publicly congratulating those few firms that were leading the charge to implement the new policies. He and other highly respected legal figures have also been using their moral suasion on the managing partners of the big firms during luncheons and other meetings, say lawyers.

"There was a lot of recruiting of large law firms by Pro Bono Law Ontario to get them involved, including direct contact with the Chief Justice, who took a very active part in that recruitment," Mr. Manes says.

As a result, many more law firms have begun stepping up to the plate to become part of the new initiative. Ms. Burns says firms currently developing more formalized pro bono policies and programs in partnership with PBLO are Stikeman Elliott LLP, Lerner LLP, Heenan Blaikie, Fasken Martineau, Torkin Manes and WeirFoulds LLP.

The development is no mean feat for law firms in which top producers can charge more than \$500 an hour for their work.

"In every firm there's going to be a beancounter on the management committee. It's probably taken each of these firms a couple of years to convince

the beancounters that it was not going to hurt the bottom line of the firm," Ms. Burns says. "They really had to take a leap of faith to say: 'Let's try this.'"

PBLO is currently facilitating 33 projects in which lawyers are providing free legal services to the clients of such groups as Justice for Children and Youth, Evergreen, Aboriginal Legal Services, a residents association in the Regent Park neighbourhood of Toronto, the South Asian Legal Clinic of Ontario, the Canadian Artists Federation and Beyond Borders.

of team spirit and community within the firm," says Anne Ristic, assistant managing partner of the Toronto office of Stikeman Elliott LLP.

As well, law firms are keenly aware of the need to ensure such legal work – even if it is provided free of charge – is first submitted to a proper conflicts check and is properly supervised by a senior lawyer so the firm is not exposed to liability for errors and omissions by lawyers who might agree to do freelance pro bono work of a nature with which they are not fully experienced.

*"When we recruit people, they want to know that this type of involvement is going to be part of their professional life going forward and that the firm is supportive and provides opportunity to do it."*

— Darren Sukonick, Torys

While many lawyers believe they have a responsibility to provide free legal services to those in the community who might not otherwise be able to afford them, they also concede that doing such work fosters the sorts of community relationships that can help to develop paying clients down the road.

Establishing a firm's commitment to pro bono work is also an important factor in recruiting and retaining the best lawyers, especially the younger ones, who may want to continue the pro bono work they found so personally rewarding in law school.

"People like to think their opportunities to help in the community are not confined to their outside-of-work activities – that they can put the two together and they can, through their work, effect change in their community," says Darren Sukonick, a member of the pro bono committee in Torys' Toronto office. "When we recruit people, they want to know that this type of involvement is going to be part of their professional life going forward and that the firm is supportive and provides opportunity to do it."

Pro bono work also provides important training opportunities for young lawyers, allowing them a chance for courtroom advocacy experience or to work directly with clients, opportunities they might not have as a junior member of a large team working on a corporate file. It's also a good way to build a sense

"Lawyers, of course, have been doing this kind of work forever, whenever they've felt the need. What they used to do is just not keep track of their time or they did it on the sly and a file never got properly opened," says Peter Lockie, of Ogilvy Renault. "I don't think that a concern about liability is a driver of this, but that would be an issue. The firm would be liable for errors and omissions. It would be embarrassing if we had conflicts that we didn't deal with properly. What we're saying is that pro bono clients are entitled to all the full range of services we offer, all the confidentiality, the same quality of service, and so it needs to be run like a proper file."

Even with the new policies in place, lawyers with several firms say they are still waiting for some lawyers to officially open files for pro bono legal work they had begun previously.

Still, they say they haven't experienced problems with pro bono matters, nor have they found the new policies that encourage such work have had any negative impact on their bottom line.

"In 15 years of supervising the program, I have not seen a problem with lawyers doing pro bono work to the detriment of their chargeable work," says Osler's Brian Morgan, who says lawyers at his firm have contributed 2,500 pro bono hours a year for each of the past several years. "We could always do more." ■

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PROJECT HIGHLIGHT

# The Hamilton Pro Bono Project

**I**N 2003, THE Hamilton Pro Bono Council identified two areas of unmet legal services – areas not covered by Legal Aid Ontario’s certificate program or the community legal clinic system – assistance in preparing a will or power of attorney and education law. Thus the Hamilton Pro Bono Project was born, partnering the Hamilton community legal clinic system with the Hamilton Law Association.

Project Coordinator Mark Williams has seen the project grow quickly to its current roster of 27 lawyers. “Lawyers with the project have provided public legal education to more than 150 staff and clients of community organizations in Hamilton.” In fact, more than 35 clients have been matched with project lawyers. Most of these clients have received assistance in preparing a will or power of attorney. In a few cases, project volunteers have visited local hospitals to assist people with a terminal illness in preparing a will or power of attorney.

Unfortunately, Williams says, “the project has not had the same success with education law files. As we have gained experience in the area of education law, we have come to recognize that there are many steps that parents can and should be taking on behalf of their school-aged children prior to seeking the services of a lawyer.”

Issues faced by parents of special needs students or students facing multiple suspensions, can be sensitive and complex. Years of difficulties have led to strained and sometimes hostile communications between families and school boards. “What’s worse,” says Williams, “the project is aware of a number of cases in which parents have been banned from school premises, so that no communication is taking place.”

Other serious education issues identified by the project include: a disproportionate number of special

education students being suspended and expelled; suspensions in general, as well as cases of multiple suspensions, appear to be on the rise in Hamilton area schools; reports of instances where children identified as exceptional sitting idle in resource rooms or libraries; and “zero tolerance” policies being used by schools as a means of discipline and classroom size control.

“The lesson learned from this first year of handling education law cases is that the Hamilton Pro Bono Project needs to help families link up with other community organizations *before* addressing any legal needs,” says Williams.

As a result, the Hamilton Pro Bono Project is networking with other community organizations to develop a web-based resource that would provide high-quality information to parents about communicating effectively with schools on behalf of their children. The site would provide basic principles of self-advocacy and peer-support, information about policies and procedures of school boards in Hamilton, the latest news on special education and school discipline in the province and locally, and a listing and description of community resources.

“Parents and guardians are well positioned to effectively communicate their child’s situation, and are, next to their children, the first line of contact with public schools,” says Williams. By encouraging and supporting parents to be their child’s own best advocate – linking parents and community organizations, and providing tools to parents that will help them to communicate more effectively with schools and school boards – the Hamilton Pro Bono Project hopes to empower parents, improve parent-school communication, reduce suspensions, and more effectively utilize the legal resources available to the project. ■

## NEWS & EVENTS



Chief Justice R. Roy McMurtry receives the Guthrie Award. Photo courtesy Tom Sandler.

### McMurtry receives 2005 Guthrie Award

ON MARCH 1 at a gala reception at the Art Gallery of Ontario, the Honourable Chief Justice R. Roy McMurtry received the Law Foun-

datation of Ontario Guthrie Award in recognition of his lifelong commitment to improving the administration of justice and his contribution to the public good. Justice McMurtry is the Chair of the PBLO Advisory Committee and a constant voice in support of organized pro bono. Proceeds from the event have been used to establish the *Roy and Ria McMurtry Endowment* which will be directed to the *Second Chance Scholarship Foundation*. •

### Lawyers Volunteering Internationally

A GROUP OF North American and British lawyers have founded *Legal Aid Afghanistan* in an effort to bolster Afghanistan’s newly formed democracy’s judicial system. Volunteers commit to two to six month assignments coaching Afghan lawyers on advocacy skills. For more information, visit the job postings section of the CANADEM website at [www.canadem.ca](http://www.canadem.ca). •

### Three key components

▶▶▶ **from front page** were required – the investigative know-how, the technical expertise, and important legal considerations. “A host of legal and prosecutorial issues had to be built into the system”, David explains. “For example, the structure of the system had to respect fundamental rights and freedoms, information management could not be unduly

intrusive, and the system had to create results that would stand up in court from an evidence perspective.” In this first phase of deployment, 26 police agencies across the country will be connected – 18 are already up and running. The entire project is a prime example of pro bono services in action, but this time involving government, industry, policing, as well as legal. “It’s a marvellous partnership”, David says. “Everybody essentially recognized the need to help kids and stepped up and donated what they needed to do to get the job done.” ■