

PRO BONO NEWS

A quarterly newsletter from PRO BONO LAW ONTARIO

PBLO

Winter 2007

— EXCERPT FROM DAVID W. SCOTT KEYNOTE ADDRESS AT FIRST NATIONAL PRO BONO AWARDS, NOVEMBER 2006 —

Change does not come easily: the plight of the self-represented litigant

THE INTENT OF MY DISCUSSION this evening is to test our professional contentment with our present level of access to justice and our appetite, if any, for real change. While there have been many recent developments in the administration of justice, we are still – as lawyers and judges – a distinctly conservative professional group with our values deeply rooted in historical experience largely associated with the development of the common law. Change does not come easily.

For the purpose of assessing the current state of the administration of justice, I would like to comment on the plight of the ordinary citizen, that is to say the non-institutional client, in terms of their capacity under current conditions and, in practical terms, to secure access to the courts in civil matters.

Although hard statistical information is limited, the consensus is that self-representation is rapidly on the rise and that it is in large measure a phenomenon that is driven by the high cost of legal services.

Studies have recently been undertaken across the provinces by the courts and the profession about self-representation as a developing phenomenon. The message is the same: in the absence of a major shift in the delivery of legal services, the self-represented litigant is here

to stay and her numbers will increase exponentially.

How should the Bar and society generally assess this phenomenon?

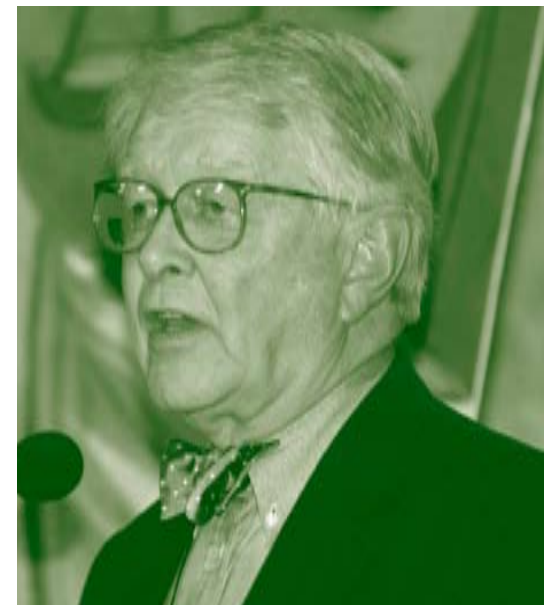
Surely there is no meaningful access to justice for the citizen below, or indeed even above, the poverty line who cannot afford a lawyer in the present environment. Furthermore, self-represented litigants are at times regarded by the custodians of the system as a nuisance.

In the face of the reality of accessibility, a 2005 Alberta Task Force study captured the options facing the custodians of the system: either make legal services available, or make self-representation a viable option. These are starkly competing ideas.

So the challenge for all of us in the legal profession is the availability of our services. Raising the profile

and the range of pro bono services is not the complete answer. Should we develop with the involvement of our Law Society regulators – for example – sliding scales of fees, improved prepaid legal services, new categories of service providers, expanded use of paralegal service, unbundled service offerings? *We are a self-governed monopoly so the ideas ordinarily generated by competing forces are not easily forthcoming.* We must find them nonetheless, or our commitment to access will be confined, to our detriment, to improving the plight of the self-represented litigant alone.

If self-representation is to be treated as an option, it must be facilitated by meaningful processes to ensure access. The courts must provide intake services to assist the ordinary citizen in accessing the courts and demystifying the process. It must develop user-materials that are manageable and it must provide aide stations when a movable impediment to progress is encountered. Access through self-representation must have administrative mechanisms and judicial oversight. It is not enough to focus on the problem of judicial management of the self-represented as has traditionally been the case – and to a degree is the current preoccupation of the judiciary. We must



Keynote speaker David Scott

elevate our concerns about the plight of the litigant and make her path more manageable at the point of entry.

By way of conclusion, in my admittedly uninformed opinion, if services for the citizen who wishes to self-represent were made available, a reasonable case could be made for the proposition that the result would be a simplification of our traditional processes. I further believe that the provision of such services would generate a competitive reaction by the Bar to meet the challenge of self-representation and create service offerings by the profession for the ordinary citizen tailored to their needs. ■

PILOT PROJECT

Online legal self-help comes to Ontario

EXCITING PLANS ARE underway to provide help to low-income, unrepresented litigants in 2007. In a first for Ontario, PBLO is developing a self-help pilot project that will provide procedural information and form completion assistance for civil matters not covered by Legal Aid.

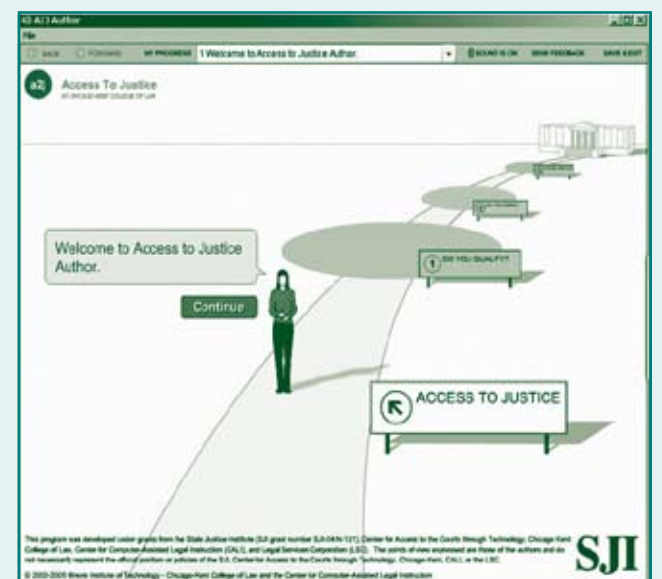
In order to ensure that access is available across the province, PBLO is taking a two-pronged approach – developing an online self-help portal

as well as a court-based centre. Toronto Superior Court is being considered as the location for the first pilot centre.

In recent years, PBLO has made unrepresented litigants a priority in its project development activities. It currently manages two litigation assistance projects – one for the Court of Appeal and Divisional Court (on appeals-related matters) and another for Small Claims Court. In 2007, another project at the Federal Court of Appeal will be

launched. However, requests for more pro bono representation in the courts has always exceeded the capacity to meet the need.

Not surprisingly, requests for help explaining court rules, *Rules of Civil Procedure*, and help completing court forms and pleadings are among the most frequently demanded services. To



• see **On-line help** *back page*

Screenshot of online form interview in A2J

Pro bono spreads across Canada as law firms reach out to the community

Over 200 individuals from across Canada gathered in Toronto for the first ever national conference to discuss pro bono legal services and their impact on low-income Canadians. Delegates represented community groups, lawyers, law firms, law associations, foundations, government agencies, court staff and judiciary from every province, except Newfoundland, Nunavut and the Territories. The two-day event – co-hosted by Pro Bono Law Ontario and Pro Bono Law of British Columbia – brought together a broad base of stakeholders to develop a full picture of the role that pro bono can play in improving access to justice.

Plenary sessions and workshops throughout the two days generated strong enthusiasm for finding creative ways of providing legal support for people and community groups who cannot afford legal services.

Participants at the event discussed improved coordination of services with legal aid programs, increasing involvement of the private bar, programs to support unrepresented litigants, and ways to leverage corporate law departments to contribute to local community development initiatives.

Ontario Attorney General Michael Bryant spoke at the event and encouraged Bay Street law firms to commit to the *pro bono publico* culture. Bryant pointed out that just two years ago, only a handful of firms credited their lawyers for pro bono work, but that today, 13 of Toronto's largest law firms have developed policies that encourage lawyers to do pro bono work.

At the opening plenary session on pro bono community development projects, law firms and directors of

community projects shared their experiences working together on pro bono joint ventures.

Rob Collins, a partner with Blake Cassels & Graydon spoke along side Geoff Cape, Executive Director of Evergreen, the organization taking on the revitalization of the Don Valley Brick Works. Collins sees these partnerships as win-win arrangements. "Pro bono helps young lawyers enhance their expertise – they are learning as they are doing," said Collins.

Cape is enthusiastic about the help they receive from Blakes. "We never could have done it without Blakes. The high level thinking required was beyond us; they helped us identify risk issues and to get clear and professional in our expectations," said Cape.

Another successful pro bono pairing is the McCarthy Tétrault and Regent Park Neighbourhood Initiative. Executive Director, Catherine Goulet spoke on behalf of RPNI, and Michael Barrack discussed McCarthys role in the project.

"We do two things as a law firm: we resolve disputes and we bring ideas to fruition. This is exactly the same thing we do for our pro bono clients," said Barrack. "Early on we met with RPNI and took their dreams and aspirations, and helped them formulate them and put them into place. It's a non-litigation project which is nice for a change – a great opportunity for young corporate lawyers."

Says Goulet, "They are not just our lawyers – McCarthys is a partner in all the work that we do. Some of it may be mundane for them, but it's critical pieces for us." RPNI has limited resources and McCarthys has helped them with incorporation, bylaws, planning their AGM, applying for charitable status, and even holding a resume clinic for youth in the Regent Park area.

Barrack is a vocal supporter of pro bono and of giving legitimacy to these activities in law firms by setting policies. He lists six key points for lawyers to embrace in terms of adopting an attitude toward providing pro bono: "Professionalism, Passion, Incentive, Initiative, Sign Up, and Reach Out." Barrack says, "Staff are not engaged solely as a means to an end – pro bono can rekindle the passion that brought you to the profession to begin with. And never forget where you came from – reach out and reach back to those communities you know – create your own pro bono projects if necessary."

The two-day conference ended with a luncheon event called the Pro Bono Marketplace where representatives from a number of local community groups joined conference participants over lunch to discuss potential new pro bono partnerships.

As Rob Collins of Blakes quipped, "Lynn Burns runs a dating service!" It's a matchmaking model that PBLO has perfected and hopes to see spread to other provinces. Currently, only Ontario and BC have province-wide organizations that support the delivery of pro bono services. However, they are soon to be joined by sister pro bono law organizations in Alberta and Quebec.

The conference was made possible by generous grants from The Law Foundation of Ontario, The Law Foundation of British Columbia, and The Alberta Law Foundation. In addition, law firms Blake Cassels & Graydon LLP, Borden Ladner Gervais LLP and McCarthy Tétrault, sponsored special events such as the Pro Bono Marketplace. Organizers PBLO and PBLBC intend to collaborate on an ongoing basis to hold the national conference every two years as a way of sharing success stories and best practices. ■



Catherine Goulet (RPNI) and Michael Barrack (McCarthys) discuss their joint project on the Regent Park redevelopment.

FIRST NATIONAL PRO BONO AWARDS

Canadian lawyers honoured for work with the poor and disadvantaged



2006 National Pro Bono Award recipients with the Chief Justice of Ontario, R. Roy McMurtry (middle). From left: Iain Scott (McCarthy's), John-Paul Boyd, Mary Lynn Dorsey (Calgary Legal Guidance), and James Peacock (Gowlings).

THE FIRST NATIONAL PRO BONO awards were presented by the Honourable Roy McMurtry, Chief Justice of Ontario at a special dinner and awards event held at the Fermenting Cellar of Toronto's Distillery District on November 16, 2006.

Over 250 guests applauded the access-to-justice efforts of Vancouver lawyer John-Paul Boyd, Calgary Legal Guidance, and McCarthy Tétrault LLP – the three award recipients honoured for distinguished service in the provision of pro bono legal services for the poor and disadvantaged.

Presented as part of the 1st National Pro Bono Conference: Building Bridges to Justice, the awards are a national celebration of the dedication and commitment of the many lawyers who give their time freely to represent those who need – but cannot afford – legal assistance.

DISTINGUISHED SERVICE AWARD (INDIVIDUAL)

The Distinguished Service Award for an individual went to Vancouver lawyer, John-Paul Boyd. Boyd is a family law litigator and mediator with an impressive list of volunteer and public education efforts. He presents to the public on family law topics through a number of organizations such as the BC Law Society, Battered Women's Support Services, and the People's Law School and also runs a free public seminar series through the Mission public library system. Boyd provides pro bono services as a resource lawyer for the University of British Columbia's Students' Legal Advice Program, as a clinic lawyer for the Salvation Army's pro bono program, and as a referral lawyer for the Battered Women's Services Society.

PRO BONO PROGRAM AWARD

The Pro Bono Program award was presented to Calgary Legal Guidance, one of the oldest pro bono programs in Canada – established over 35 years ago. Over the years, this responsive organization has developed a range of

diverse and innovative pro bono projects that address the unmet legal needs of low-income Albertans. Its infrastructure enables it to successfully leverage the resources of the private bar, and as a result, is used as a model for most of the pro bono legal clinics in Alberta. Calgary Legal Guidance has a solid reputation for collaboration with community groups and lawyers alike, and has a proven ability to sustain ongoing successful alliances with these groups.

Its core program is an evening legal clinic that runs every week from Monday to Thursday. Appointments with clients are pre-booked and volunteer lawyers devote one evening per month to help out at the clinic. Calgary Legal Guidance boasts support to over 5,000 people each year.

LAW FIRM AWARD

The Law Firm award was presented to McCarthy Tétrault LLP, a national law firm that prides itself on growing staff involvement in pro bono. McCarthy's has been a leader in Ontario pro bono activities, participating in at least seven separate projects organized through PBLO; among these, three signature firm projects – the Unaccompanied Minors Project, the Regent Park Redevelopment Initiative and a support project for Artscape's Green/Arts Barn Project. In addition, the firm supports staff-driven pro bono activities and has drafted and adopted a national pro bono policy for staff that includes counting pro bono time as part of a lawyer's billable time. So far this year, McCarthy's has donated over \$1.2 million in free legal services.

The response to this inaugural year for national pro bono awards was encouraging, with over 30 nominations received. Organized pro bono represents a call to action for all lawyers to undertake pro bono work whenever possible and provide support to our provincial legal aid systems. Providing recognition for these contributions generates a drive to firmly establish a pro bono culture within the profession. These award recipients show leadership in this effort and set the standard for all. ■

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Ontario lawyers provided 15,000 hours of pro bono work last year, according to survey

CREATING MORE brief services projects may be a key factor to increasing pro bono participation among Ontario's lawyers, according to a recent survey conducted by PBLO.

The survey is conducted every five years and asks lawyers about the pro bono work they do, their perceptions of pro bono, and what can be done to better support these efforts. As a result of its first survey in 2001, PBLO undertook a number of measures to support lawyers volunteering through its programs. These steps included obtaining malpractice coverage, providing free training, precedents, and forms to its volunteers, as well as developing pro bono recognition programs.

In 2006, pro bono participation was robust in Ontario with 70 per cent of respondents (n=448) providing over 15,000 hours of pro bono legal services over the past 12 months – an average

of 33 hours per respondent. The same majority believe that lawyers have a professional obligation to provide pro bono services to help low income people who would otherwise be unable to hire a lawyer.

In addition, participation rates remain consistent across practice size, with respondents from large firms (20-plus lawyers) providing an average of 42 pro bono hours in the past 12 months on the high end and respondents from mid sized firms (7–20 lawyers) providing 30 hours on the low end.

Respondents agreed that greater recognition of the work they are doing, increased access to precedents, forms, and templates, as well as enhanced awareness of the availability of free malpractice coverage for certain kinds of pro bono work will all contribute to improving pro bono participation among Ontario's lawyers.

However, with nearly one third of respondents not engaged in pro bono

work over the past 12 months, more work clearly needs to be done to encourage participation.

One issue to be addressed is pro bono's profile among the bar's leadership at all levels. Respondents agreed at alarming levels that they do not believe bar leaders genuinely value pro bono. This holds especially true of respondents from suburban and rural communities who also reported almost 90 per cent pro bono participation rates. It should be noted that this group of respondents was most likely to consider legal aid certificate work and writing off the debts of their clients as pro bono work. Clearly the provision of free or inexpensive legal services is a part of the practice in these communities, and more needs to be done at the local and provincial level to recognize and support their work.

Furthermore, lawyers' busy schedules (63 per cent) and the fear that a referral will require more resources than originally anticipated

(62 per cent) are the main drivers that prevent lawyers from getting involved.

Many PBLO projects provide opportunities for lawyers to get involved while limiting their time commitments up front, such as public legal education workshops and court-based (civil) duty counsel programs. PBLO is also expanding its court-based projects to provide more brief service opportunities. However, current conflict of interest rules and a lack of clear guidance regarding a lawyer's potential ongoing professional obligation to clients that receive brief services are proving to be barriers to participation in brief service projects, especially among its core of volunteers from large firms.

As a result, PBLO is making regulatory reform an advocacy priority for 2007. It intends to work with regulators, insurers and the judiciary to ensure that the needs of those who provide pro bono services are accommodated as much as possible. ■

PILOT PROJECT

On-line help

• *continued from page one*

address this, a web site is in the works to provide users with consolidated, plain language information about court rules and procedures for civil matters. In addition, an online form completion program will ask users basic questions about their case and merge their answers onto pre-formatted court forms and pleading templates.

PBLO has partnered with Chicago-Kent Law School to adapt its innovative client interview program, called Access to Justice – or "A2J." The software, which has been in use in self-

help programs in the United States for over a decade, is sophisticated enough to screen users to ensure that they are completing the correct form for their proceeding and provides audio and visual support to users that have literacy or language barriers.

LexisNexis Canada has generously donated its HotDocs Pro software, which generates the forms based on answers from the A2J interview.

A consortium of partners, including the courts, the Ministry of the Attorney General, The Advocates' Society and a number of law firms, are working together to develop the content for this project.

COURT-BASED SELF-HELP CENTRES

While the online self help program could function as a stand-alone service, the long-term plan is to incorporate it into court-based self-help centres, where volunteer lawyers and other front-line workers could lend a hand in using the web-based system. The idea is to create a space in the court house where self-represented litigants can get basic procedural information, help with online forms, summary advice, or get referral information for other programs. The centres would also offer pro bono duty counsel programs wherever possible. Low-income unrepresented litigants would be able to return to the centre as often as they need to move

their cases forward.

The first pilot centre is expected to launch later this year, with the different functions of the centre rolling out in phases.

Although online and court-based self-help projects are no substitute for full representation, these projects will fill a vital gap in services. By providing unrepresented litigants with the basic tools to help move their cases through the court system, litigants who cannot afford a lawyer and who do not qualify for other forms of assistance will have an equal chance at getting the full access to justice to which they are entitled. ■