

ADDRESS BY CHIEF JUSTICE BAUMAN

to ProBono Appreciation Breakfast

March 26, 2010

INTRODUCTION

The purpose of today's breakfast is to recognize and express appreciation to those in our community who contribute their efforts to pro bono legal work. This includes not only the members of the legal profession who perform probono legal services, but the community participants and organizations who support the development and delivery of probono programs

I am very pleased to have been asked to speak to you on this occasion, and to extend my own congratulations to those of you whose efforts are being recognized and celebrated today.

ProBono work- a long standing tradition

Pro bono publico- The Latin expression means "for the public good".

Pro bono legal work is a long standing tradition within the legal profession. Some have observed that the obligation to undertake probono work is indeed the *quid pro quo* for the legal profession's self governing status and the monopoly it has been granted in the provision of legal services.

Probono service and professionalism

Let me quote two judicial colleagues, commenting upon the link between the duty of public service and professionalism.

In an address she gave in 2005 on *Professionalism and Barriers to Justice*,

Madam Justice Eleanor Cronk of the Ontario Court of Appeal said this:

The elements of professionalism include not only integrity, honour, independence, civility and leadership. Central to professionalism is the duty of service to the public: not to some of the public; not to only the dominant majority; but, to all the public, including the disadvantaged, the unpopular and the marginalized. Any contemporary definition of professionalism can import no less.

Similarly, in an address she gave to the Benchers' of the Law Society of Upper Canada in 1999, Madam Justice Rosalie Abella, then of the Ontario Court of Appeal in an speech entitled "*Professionalism Revisited*", said this:

My thesis is that there are three basic values which merge in a good lawyer: a commitment to competence, which is about skills; a commitment to ethics, which is about decency; and a commitment to professionalism, which transfuses the public interest into the two other values.

ProBono work- and access to justice

ProBono work is valuable, important work. All of you in this room recognize that probono work provides a critical service in improving access to justice.

Indeed I think it is fair to say that in recent years, the importance of pro bono legal work has assumed a new order of magnitude as we contend with what Chief Justice McLachlin has described as '*an epidemic of unrepresented litigants appearing in Canadian courtrooms*', and as the availability of government funded legal aid has steadily declined.

Let me give you some sense of the picture from the Court's perspective.

Increasing numbers of self represented litigants in our courtrooms

BCSC Stats

The number of self represented litigants appearing in our Court is significant and is on the rise. On average, over the last 4 years:

- in roughly 15% of the trials before the Supreme Court, one of both parties has been self represented;
- in roughly 21%; of the long chambers matters before the Supreme Court, one or both parties has been self represented, and
- in roughly 22% of the settlement conferences held, one or both of the parties has been self represented.

BCCA Stats:

The Court of Appeal is also seeing significant numbers of self represented litigants.

I am advised that in 2009, out of 784 civil appeals filed and applications for leave, 22% involved a litigant who was not represented by counsel. Of 295 civil cases disposed of in 2009, 14% involved at least one in-person litigant.

On the criminal side, there were 428 appeals or applications for leave to appeal filed. Of that total, 13% were appeals or applications by self-represented litigants. Of the 162 criminal appeals heard in 2009, 6% involved in-person litigants.

Access to justice in the broader formulation

Of course we must also not lose sight of the fact that access to justice is about much more than access to courtrooms. Although traditionally, the concept of access to justice focussed on access to legal services, court processes and the formal adjudication of disputes, over time this has come to be seen as only the tip of the iceberg and access to justice has come to embrace a much broader concept.

As a broader notion, access to justice includes the ability of people to have information about their legal rights, to gain greater legal insight into the benefits that the law can confer, and to be empowered to avoid legal problems.

In his book entitled *“The end of lawyers? – Rethinking the Nature of Legal Services* Richard Susskind’s urges a redefining of access to justice, in the broadest of terms. Susskind draws an analogy with the world of healthcare and observes that in law, as in medicine, prevention is better than cure.

In this broader formulation, access to justice is as much about dispute avoidance as it is about dispute resolution. As a broader concept, increasing access to justice is about finding ways to help members of society have access to the kind of services that foster problem solving, dispute avoidance and prevention.

The spectrum of pro bono initiatives that are underway in BC embraces a broadly based concept of access to justice. The work in which many of who have been involved brings assistance to people who need help in the context of litigation and court matters, and in other contexts as well.

The probono projects in place extend along a continuum of services including legal advice, drafting of legal opinions and documents, legal research, mediation, negotiation, legal policy reform, community legal education, courtroom representation and advocacy, and other diverse legal services.

The strong probono culture in BC

We have a strong and growing culture of probono commitment in BC, and a lot to celebrate. A report from the Law Foundation to the Law Society on the probono activities by lawyers in BC in 2009 gives the following statistics:

- **Total number of lawyers participating in formal ProBono programs** (that is those operated by the Salvation Army, Access Justice, ProBono Law BC, the Multiple Sclerosis Volunteer Legal Advocacy Program and Law Students Legal Advice Program): **1084**;
- **Number of lawyers volunteering in clinics** operated by the Salvation Army, Access Justice, and Law Students Legal Advice Program: **668**
- **Number of lawyers volunteering in roster programs: 416**
- **Number of clinic locations** (23 operated by Salvation Army, 78 operated by Access Justice, 23 operated by Law Students Legal Advice Program): **113**
- **Total number of clients served by clinics: 13, 371**
- **Number of clients served by roster programs: 568**
- **Number of community organizations served; 32**

- **Number of lawyers volunteering on the Civil Chambers Pro Bono Duty Counsel project; 48**
- **Number of clients served by the Civil Chambers ProBono Duty Counsel project : 32**

These numbers are impressive, and they do not include the significant probono work done by lawyers outside the formal probono programs every day, in every location around the province.

Strong leadership for ProBono work

The strong and growing culture of probono commitment that we see in BC is a reflection of the strong leadership at work and the tireless efforts of many.

The work that Dugald Christie began as the founder of the Western Canada Society to Access Justice, the vision that he imparted to others to support probono work, has taken hold and is flourishing in this Province. Support for probono work has been engaged all across the spectrum of stakeholders. Let me mention some of these.

The Law Society of BC and the Canadian Bar Association (BC)

In 1998, the Law Society of BC and the CBA- BC Branch resolved to work cooperatively to develop and encourage programs for the delivery of probono legal services in BC. A joint Committee on ProBono was established to implement that resolution.

Since then many successes and milestones have been achieved:

- Increasing numbers of lawyers are engaged in clinics;
- The predecessor to ProBono Law BC was formed;
- A probono website for BC was developed;

- A probono mapsite was developed featuring an interactive and searchable map of probono services located through BC, including probono clinics, LSS programs, courthouse programs and advocacy programs;
- Insurance coverage for probono work was extended to non practicing, insurance exempt, and retired members providing approved probono services;
- Lawyers and law firms have been recruited to participate in probono work;
- Assistance has been given to aid law firms to develop in-house probono policies;
- The roster program has been developed;
- A probono mentoring program has been established.
- Co-ordination and collaboration with government and the Legal Services Society has been fostered.

Salvation Army, Access Justice, ProBono Law BC provide the umbrella

The Salvation Army, Access Justice, and ProBono Law BC are an impressive triumvirate and the bulk of formal probono services are delivered through them. They work collaboratively to meet probono needs.

Access Justice and ProBono Law BC will merge next month which will allow for integration between the legal advice work done by many of you in legal clinics around the province, and the representation work that is provided through the roster program and the civil chambers projects.

A new project on the horizon is the children's' lawyer project that will start in Nanaimo next month.

Law Firms have signed on:

Many law firms have undertaken a significant commitment to pro bono work, and are recognizing the value of providing pro bono opportunities for junior lawyers as a means of mentoring. Some firms include pro bono hours in their billing targets. Many firms have established partnerships with non profit organizations, such as Blakes with the Parkinson's Society of BC. The leadership shown by the private bar and by large firms in particular serves to engender and reinforce a culture of commitment to pro bono work.

Law Schools and ProBono Students Canada are actively involved:

Today's law schools are producing tomorrow's pro bono lawyers. Our law schools in BC actively support pro bono commitment on the part of law students, and legal advice clinics and programs are in place at both UBC and UVIC.

ProBono Students Canada serves as a network of law schools and community organizations to match law students with public interest organizations, legal clinics, tribunals, agencies and lawyers doing pro bono work.

In short, we have a strong and growing commitment to pro bono work in BC under an effective leadership of which we can be very proud.

The judiciary, the Law Society, the CBA, government lawyers, the private bar, law schools and law students are all involved in the development and support of initiatives.

The value of Probono work from the other side of the coin

Doing probono work undoubtedly has tremendous value from the point of view of the individual clients and organizations that are assisted by that work.

But let's talk about the other side of the coin.

Winston Churchill said:

We make a living by what we get. We make a life by what we give

I expect that many of you who have become involved in probono work have found it particularly satisfying.

The legal profession imposes many pressures including onerous billing targets. Doing probono work is often a way of connecting lawyers with their communities and with initiatives that seem meaningful and worthwhile. It fosters the satisfaction of addressing social justice issues.

Former journalist June Callwood, O.C. at a 2005 symposium on *Access to Justice for A New Century: The Way Forward*, called pro bono, the legal conscience in motion.

The American Bar Association has recognized the importance of probono work to the maintenance of a spirit of idealism within the profession. A 2006 report entitled

“Renaissance of Idealism in the Legal Profession” prepared for ABA’s Standing Committee on ProBono & Public Service, contains the following observation:

Meanwhile the practice of law has undergone a transformation so sweeping as to cause many to question whether the ideal of service can survive the tyranny of the billable hour and the relentless focus on the bottom line. Some have argued that the profession is losing its soul, that the ideal of the lawyer-statesman has been replaced by what Professor Robert Gordon of Yale Law School has called ‘a whole new style of corporate practice- ruthlessly competitive, powered nearly exclusively by the drive for profits, so demanding as to leave little time or energy for other commitments, and mostly indifferent to social responsibility and public values.’

...If this situation is to change, lawyers must be able to strike a better balance in their lives and law practices

The key to that balance is persuading the decision makers in America’s law offices to free up time for lawyers to volunteer their skills to those in need, to help improve their communities, and in the process to find greater satisfaction in their legal careers.

CLOSING

In closing, let me reiterate that probono legal work is important, valuable work. It provides assistance in a very direct way to those in our community who would not otherwise be able to engage lawyers or have the benefit of legal advice and representation.

It reflects a commitment to public service and fosters a spirit of idealism within our profession. It offers an avenue to engage in satisfying work and remain connected

with our communities in a meaningful way. It retains a spirit of idealism, and puts a legal conscience in motion.

I commend all of you for your efforts and encourage you not only to continue your commitment to pro bono work, but to inspire others to do so.