

Pro Bono Practices and Opportunities in Canada¹

I. Introduction

Canada has a rich tradition of promoting access to justice through, among other things, legal aid and pro bono legal assistance. In recent years there has been increased support for the active coordination of pro bono opportunities and, particularly as a result of the efforts of professional bodies such as the Canadian Bar Association (the “CBA”), various initiatives have been undertaken to promote, simplify and encourage pro bono participation across Canada. While pro bono legal services and legal aid are generally available across Canada, several factors affect the availability of such services, including underfunding, insurance requirements, uneven coverage, fragmented approaches, discretionary eligibility criteria and a lack of information to potential clients/applicants. Notwithstanding these factors, lawyers and law students across Canada increasingly continue to provide pro bono legal services.

II. Overview of Pro Bono Practices

(a)	Professional Regulation	
	<p>1. Describe the laws/rules that regulate the provision of legal services?</p>	<p>The legal profession is governed by provincial/territorial legislation.</p> <p>Each of the 14 provincial/territorial law societies is established by provincial/territorial law and is principally responsible for regulating the conduct of Canadian lawyers in the public interest of that jurisdiction. For example, the Law Society of Ontario’s (the “LSO”) authority to license and regulate lawyers was granted by the Ontario government through the Law Society Act, R.S.O. 1990, c. L.8, pursuant to which the LSO has developed by-laws and rules of professional conduct setting out the professional and ethical obligations of lawyers and paralegals and the manner in which they are regulated by the Law Society²</p> <p>The Federation of Law Societies of Canada (the “Federation”), which is the national coordinating body for Canada’s 14 law societies, leads the development of national standards for the legal profession and undertakes initiatives to promote access to legal services and introduce common standards in, among others, admissions, money laundering, codes of conduct and complaints and discipline across all provinces/territories.</p>
	<p>2. Describe any licensure requirements governing the provision of legal services.</p>	<p>To practice in Canada, each lawyer is required to be a member of a law society and be governed by its rules, i.e. the LSO. Each law society has set its own standards for admission to the profession, but</p>

¹ This chapter was drafted with the support of Diego Beltran and Shane D’Souza of McCarthy Tétrault LLP.

² See <https://lso.ca/about-lso/legislation-rules> (last visited on May 1, 2019).

		<p>generally speaking, admission to a provincial/territorial law society requires an applicant to have attended an approved law school in Canada, passed the relevant provincial/territorial bar admission course and completed a period of articling, which is a training period with a law firm.</p> <p>Foreign-qualified lawyers cannot practice law in Canada without being licensed to practice. To obtain a license to practice in a province/territory, foreign-qualified lawyers are required to complete the necessary accreditation licensing process and complete articling.</p>
<p>(b) Pro Bono Practice and Culture</p>		
	<p>1. Describe the rules that regulate the provision of pro bono legal services e.g. any explicit regulation or limitation on providing free legal services in some or all contexts, details of any mandatory or minimum fees imposed on provision of legal services.</p>	<p>There are no additional rules that regulate the provision of pro bono legal services, provided that the lawyer is appropriately licensed to practice in the relevant province/territory in Canada.</p>
	<p>2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?</p>	<p>Lawyers in Canada are not required to complete a minimum number of pro bono hours.</p> <p>Canadian lawyers are encouraged by their regulatory bodies and professional associations to provide pro bono representation to persons who would otherwise be self-represented. The CBA's Pro Bono Committee suggests that all members of the legal profession aim to contribute 50 hours or 3% of billings per year on a pro bono basis³ and the Federation's Model Code of Professional Conduct encourages lawyers to enhance the profession's standard and reputation by providing pro bono legal services⁴.</p>
	<p>3. Are aspiring lawyers required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers?</p>	<p>Aspiring lawyers in Canada are not required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers.</p> <p>Certain law schools in Canada, e.g. Osgoode Hall Law School, require law students to undertake public interest placements, but this is not a regulatory requirement.</p>

³ Canadian Bar Association, Resolution 98-01-A, Promoting a Pro Bono Culture in the Canadian Legal Profession, available at <http://www.cba.org/CBA-Equal-Justice/Resources/Resolutions> (last visited on May 1, 2019).

⁴ Federation of Law Societies of Canada, Model Code of Professional Conduct, available at <https://flsc.ca/wp-content/uploads/2018/03/Model-Code-as-amended-March-2017-Final.pdf> (last visited on May 1, 2019).

	<p>4. What are the main areas of law which require or present opportunities for the provision of pro bono legal services? What are the major unmet legal needs?</p>	<p>The main areas of law which require the provision of pro bono legal services in Canada include criminal, family, employment, immigration advice, human rights and welfare rights.</p>
	<p>5. Who are the main providers of pro bono legal services? e.g., NGOs, governmental or other public services, schools and universities, private law firms (local or international) or corporate organizations?</p>	<p>The main providers of pro bono legal services in Canada are NGOs, such as Pro Bono Law Ontario, Pro Bono Law Alberta, Pro Bono Law Saskatchewan, Access Pro Bono - British Columbia and Pro Bono Quebec, private law firms, such as McCarthy Tétrault LLP⁵ and Blake, Cassels & Graydon LLP⁶ and law students under supervision of lawyers in legal aid clinics⁷.</p>
<p>(c) Obstacles to Provision of Pro Bono Legal Services</p>		
	<p>1. Do lawyers require a license to provide pro bono legal services?</p>	<p>Lawyers do not require an additional license to provide pro bono legal services in Canada, provided that the lawyer is appropriately licensed to practice in the relevant province/territory.</p>
	<p>2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?</p>	<p>Foreign lawyers do not require an additional license to provide pro bono legal services in Canada, provided that they are appropriately licensed to practice in the relevant province/territory.</p>
	<p>3. Do lawyers require professional indemnity legal insurance cover for any pro bono legal services that they provide? If so, are they prohibited from working under the cover of another pro bono provider, such as a private law firm or organization working on the same pro bono project?</p>	<p>In Canada, professional indemnity legal insurance is required for the provision of any pro bono legal services.</p> <p>Whilst all lawyers in Canada are generally required by their relevant law society to maintain adequate professional indemnity insurance in order to practice, some provinces provide an exemption from maintaining insurance for certain groups of lawyers, such as in-house, government/public, non-practicing and retired. Some provincial/territorial law societies and insurance providers have made arrangements for such uninsured members to benefit from extended indemnity insurance coverage when providing pro bono legal services, although this is not currently available in all provinces/territories and, where it is available, is generally subject to limitations, such as only extending protection for certain “approved”</p>

⁵ <https://www.mccarthy.ca/en/community/corporate-social-responsibility/pro-bono-community-work> (last visited on May 1, 2019).

⁶ <https://www.blakes.com/English/WhoWeAre/SocialResponsibility/Pages/ProBono.aspx> (last visited on August 1, 2019).

⁷ Pro Bono Students Canada, available at <http://www.probonostudents.ca/> (last visited on May 1, 2019).

		services and programs. Some provincial law societies provide insurance coverage for a nominal annual fee to retired or non-practicing lawyers with a status of “active for pro bono only.” Please see the websites of the provincial pro bono organisations for more information on insurance ⁸
	4. Are there any rules that prohibit advertising of pro bono successes or soliciting new pro bono clients?	There are no rules that prohibit advertising of pro bono successes or soliciting new pro bono clients.
	5. Do lawyers receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked?	The practice regarding continuing legal education varies between each of Canada’s provincial/territorial law societies. Some law societies, such as the LSO and the Law Society of British Columbia, have formal Continuing Professional Development (“CPD”) requirements, which explicitly exclude pro bono activities, and others, such as the Law Society of Alberta, have less formal CPD requirements but suggest that their members undertake pro bono legal services.
(d) Sources of Pro Bono Opportunities and Key Contacts		
	1. Describe any governmental sources of pro bono and/or other legal services in Canada.	<p>Free legal support funded by the Canadian government takes the form of legal aid.</p> <p>The administration of legal aid services in Canada falls mainly within the responsibility of the provincial/territorial governments. Each province/territory has established its own legal aid plan, utilising different delivery mechanisms, employing varying eligibility criteria and coverage provisions.</p> <p>For criminal matters, legal representation is generally provided for indictable offences and for certain summary offences if there is a likelihood of imprisonment or, for some schemes, loss of livelihood, if convicted. For civil matters, most plans provide legal representation for disputes involving child protection/welfare matters, while some also cover matters such as child custody and immigration/refugee issues.</p>

⁸ See e.g., the insurance provisions of Alberta, available at <https://www.lawsociety.ab.ca/lawyers-and-students/membership-services/applying-for-insurance-and-insurance-exemptions/> (last visited on May 1, 2019) and Ontario, available at http://www.lawpro.ca/Insurance/Practice_Type/Practice_Type.asp (last visited on May 1, 2019).

<p>2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in Canada.</p>	<p>Several province-wide pro bono organizations have been established (i.e., Pro Bono Law Ontario,⁹ Pro Bono Law Alberta,¹⁰ Pro Bono Law Saskatchewan,¹¹ Access Pro Bono - British Columbia¹² and Pro Bono Quebec¹³ to increase access to justice by creating and facilitating opportunities for lawyers to provide pro bono legal services particularly through referral programs.</p> <p>The CBA has a dedicated pro bono committee that is mandated to recognize and support the efforts of pro bono lawyers, share information about the provision of pro bono legal services across the country, and provides resources to lawyers in private practice, the public sector and the corporate sector. The CBA lists numerous pro bono opportunities on its website¹⁴</p> <p>Pro Bono Students Canada (“PBSC”) relies on volunteer lawyers supervising its various projects. PBSC has a chapter in 22 law schools across Canada, with about 1,600 law students volunteering approximately 140,000 hours of free legal services to 400-500 public interest groups, community organizations, pro bono lawyers, courts and tribunals across the country.¹⁵</p>
<p>3. Is there any public or private organization with which a local or foreign attorney can register in order to be made aware of pro bono opportunities?</p>	<p>See above.</p>

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⁹ See <http://www.pblo.org> (last visited on May 1, 2019).

¹⁰ See <http://www.pbla.ca/> (last visited on May 1, 2019).

¹¹ See <http://www.pblsask.ca> (last visited on May 1, 2019).

¹² See <http://accessprobono.ca/> (last visited on May 1, 2019).

¹³ See <http://justiceprobono.ca/en/> (last visited on May 1, 2019).

¹⁴ See <https://www.cba.org/Sections/Pro-Bono/Pro-Bono-Resources-in-Canada/Resources> (last visited on May 1, 2019)..

¹⁵ See <https://www.probonostudents.ca/> (last visited on May 1, 2019)

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