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Sarah J. Armstrong

Sarah is a partner at Fasken, where she chairs the firm’s Ontario Litigation Group. She is also chair of Pro Bono Ontario. Sarah is passionate about both of these chairs, but her favourite seat is the one on her Peloton, on which she recently completed her first thousand rides.



Emily Papsin

Emily is a litigation associate at Fasken in Toronto, where she works on general commercial matters. She has a background in neuroscience and psychology. While Emily has solid judgment otherwise, she is unfortunately a life-long Leafs fan.



Hilary Book

Hilary Book is a founding partner of Book Erskine LLP.



Michelle Psutka

Michelle Psutka is an associate at Fenton Law Barristers in Toronto. She practises criminal and regulatory law and has appeared before Canadian courts from coast to coast. Michelle is an avid musician and a self-described cat lady.



Professor Trevor C.W. Farrow

Professor Trevor Farrow is the dean of Osgoode Hall Law School at York University in Toronto. His teaching and research focus on access to justice, procedure, ethics, and legal education.



Alice Wang

Alice Wang is an associate at Fasken with a broad litigation and dispute resolution practice. She is also a painter.



Geoff R. Hall

Geoff Hall is a partner in the litigation group of McCarthy Tétrault LLP in Toronto. Although this article recounts a case that he managed to complete from start to finish in seven hours, he hastens to note that most of his cases last far longer.



Anna S.P. Wong

Anna S.P. Wong practises civil litigation with Weintraub Huang LLP. She asked AI for a joke and got this: “What do you get when you cross an AI with a lawyer? A legal briefcase!” Anna’s sense of humour is slightly more refined than AI’s ... for now.



Danny Kastner

Danny Kastner is a partner at Kastner Ko LLP, where he focuses on employment, labour, and civil litigation. Danny’s photo is out of date; he looks much younger now.



Alexi Wood

Alexi Wood is the founding lawyer at St. Lawrence Barristers PC, a boutique litigation firm. STL’s team of talented lawyers is managed by a canine HR team and a couple of disgruntled cats.

Moving the dial on pro bono:

Advocates as part of the solution to Canada's access to justice crisis



Sarah J. Armstrong and Alice Wang

The authors thank Daniella Muryinka, knowledge and practice innovation counsel at Fasken, for her input on an earlier draft of this article.

Meaningful access to justice is not a reality for many Canadians.¹ In any three-year period, adult Canadians experience approximately 35,745,000 separate everyday legal problems – but more than 20 percent of Canadians take no meaningful action to remedy these issues.² Barriers include financial cost, time, delay, lack of information, and lack of available services. These barriers are exacerbated for individuals with lower incomes and those belonging to vulnerable and traditionally marginalized populations.³ Legal problems cascade and lead to a vicious cycle.⁴

When a person cannot get the legal help they need, the result is that the civil justice system aggravates, rather than mitigates, inequality.⁵ Thus, as stakeholders in that justice system, advocates have a corresponding duty to advance the cause of access to justice. For many members of our profession, including those who work in clinics, who take legal aid certificates, and who work at reduced hourly rates, improving access to justice is a central tenet of their everyday practices. But through pro bono work – in whatever form resonates for the individual advocate – all members of the civil bar can be part of the solution to Canada's access to justice crisis.

Every effort counts

Current pro bono engagement in Canada is not enough to meet all needs – but every effort counts. The term “pro bono” comes from the Latin *pro bono publico*, meaning “for the public good and for the welfare of the whole.”⁶ The legal profession has a long tradition of contributing its services pro bono or “low bono” (at no or reduced fees). Pro bono work by lawyers even predates the rise of the modern government-funded, organized legal aid system in Canada.⁷

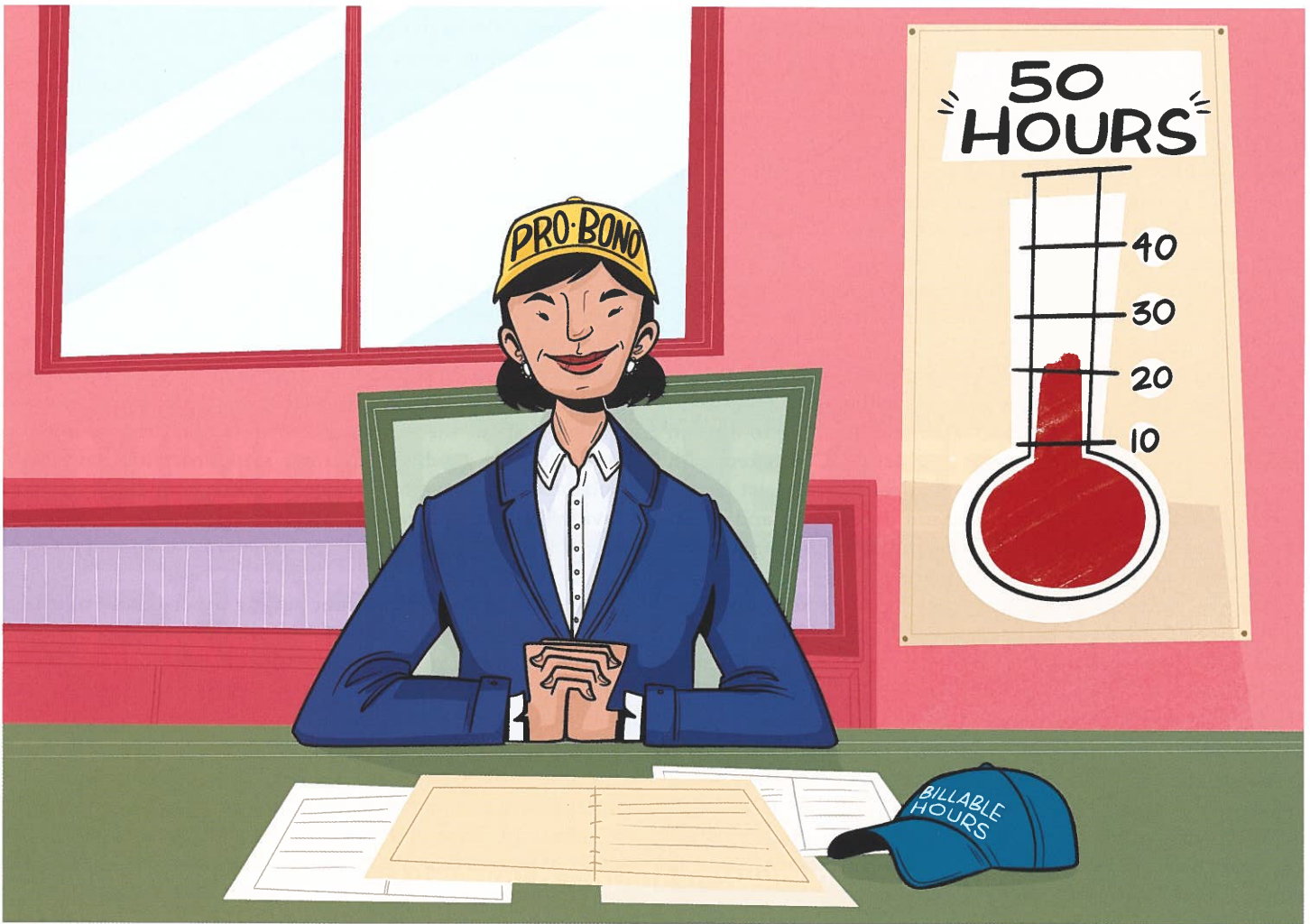
At its core, pro bono work involves providing free legal services to people or organizations who cannot otherwise afford them. These services may range from advising vulnerable

individuals on legal problems, to acting as duty counsel in court, to providing business advice to charitable or not-for-profit organizations and social service agencies.

The past two decades have seen a significant expansion of organized pro bono in Canada, with rapidly growing federal and provincial organizations.⁸ There has also been substantial growth in pro bono programs in larger law firms and some government law departments in Canada.⁹ These organizations and programs generate and facilitate opportunities for lawyers and law students to provide pro bono legal services, increasing access to justice for Canadians.

Despite these opportunities, engagement by Canadian lawyers in pro bono work remains low. The Law Society of British Columbia reports that 6,842 lawyers (or 55.5 percent of lawyers in the province) volunteered free legal services. A total estimate of 351,000 hours of free legal services are donated annually by BC lawyers, which adds an estimated \$87 million of value to the provincial economy. In addition, 40 percent of lawyers in British Columbia provide low-cost legal services at substantially reduced fees, and 1,189 lawyers perform an average of 581 hours of legal aid.¹⁰

The Law Society of British Columbia is the only provincial or territorial law society to publicly report data on pro bono work by its members.¹¹ As a result, we do not have insight into levels of pro bono work in other jurisdictions. But whatever that level might be, it is not enough to meet the needs of Canadians. Pro Bono Ontario (PBO) is a nonprofit organization that develops and manages programs connecting volunteer lawyers with Ontarians who cannot afford a lawyer. One of those programs is the Free Legal Advice Hotline, which provides callers with free 30-minute consultations on civil law matters. In 2021, PBO and its volunteers were able to answer only about 50 percent of the calls that came in, and more than 20,000 calls were made just outside the hotline's limited hours. To expand the hotline's hours, in 2022 PBO issued an urgent call for 1,000 new volunteers.¹² Today, PBO's hotline receives an increased 400 to 500 calls per day and, on average, its volunteers are able to speak with only 30 percent of those callers.



Despite the scale of the access to justice crisis, the individual advocate is still capable of making a meaningful difference to real people and improving access to justice on a grassroots level. Pro Bono Ontario volunteers express this point best, saying that “the opportunity to use your skills to assist at the individual level for people in real distress is a true privilege,” and that they can “help a person in real time with a real problem.”¹³

Further, since pro bono files are usually smaller in scope than large-firm files, lawyers acting on a pro bono basis often benefit from seeing an immediate positive impact of their work on someone’s life.¹⁴ Dugald Christie, lawyer and founder of the Western Canada Society to Access Justice, often observed a cynicism among lawyers when it came to law reform. However, organized pro bono programs help erode that cynicism. It was Christie’s belief that when a lawyer is proactively helping individuals attain justice, the attitude of “There will always be poverty and injustice!” changes to “How can I help the situation?”¹⁵ The Western Canada Society to Access Justice operated a network of more than 60 legal clinics, and it eventually merged with Pro Bono Law of British Columbia to form today’s Access Pro Bono, which provides free legal services to more than 30,000 Canadians each year.¹⁶

There are lots of good reasons to do pro bono work, and some may surprise you

Many arguments in favour of pro bono work are well known.¹⁷ For example, pro bono work is often thought to be an aspect

of the advocate’s professional responsibility. In exchange for maintaining a self-regulated monopoly over legal services, lawyers have a duty to further equality before the law.¹⁸

This responsibility is reflected in the oath we take as members of the bar to facilitate access to justice and maintain confidence in the justice system and the rule of law. For example, the required oath for a lawyer-licensing applicant in Saskatchewan states: “I will seek to improve the administration of justice and uphold and maintain the interests of my fellow citizens according to the laws in force in the Province of Saskatchewan.”¹⁹ The oath in Ontario includes a similar statement: “I shall seek to ensure access to justice and access to legal services.”²⁰

From a practical perspective, pro bono work is an effective way for young litigators to accelerate their development from law students to skilled advocates.²¹ Particularly for young advocates working in large firms, who may regularly play secondary roles in their firms’ litigation practices, pro bono files present opportunities to take on more responsibility as “first chair” and to prepare for the tough decision-making they will encounter throughout their careers.²² For many top litigators today, their first contested hearing, appeal, or appearance as counsel at the Supreme Court of Canada was on a pro bono matter.

But there is another practical reason to pursue pro bono work – and one that applies to all advocates, regardless of seniority. Practising law in an area that isn’t an advocate’s primary focus expands legal knowledge and sharpens skills that may have atrophied. This kind of experience makes for a more effective,

well-rounded lawyer.²³ And by working with a diverse range of clients, in diverse areas of law, a lawyer learns to view the law as a problem-solving tool, to advise on the basis of sensitivity and common sense, and to use legal know-how to assist that result.²⁴

As one PBO volunteer explained, answering calls on the hotline made her “a better listener and problem-solver, two of the most critical skills of being a good lawyer.”²⁵ Another said: “Giving summary advice is good training for efficiency and clearly explaining legal matters to clients. It forces you to think about a problem one step at a time and consider the most efficient and strategic way to solve it.”²⁶

Another less obvious benefit to pro bono work is its positive impact on the advocate’s mental wellbeing. Involvement in activities that add a sense of value and meaning to life can make lawyers happier and more productive. Compared with the population generally, people who regularly assist others have longer lives, less pain, stress, and depression, and greater self-esteem.²⁷ Pro bono work can provide opportunities to express deeply felt values, beliefs, and principles, which a specialized or commodity legal practice may not fully satisfy.²⁸ This is why it is important for advocates to reflect on what type of pro bono practice will resonate for them and advance their values.

Volunteer feedback makes clear that pro bono work is personally rewarding. One PBO volunteer, who is also a partner at a Bay Street firm, found that volunteering puts everything she does in perspective and reminds her not to “sweat the small stuff.” Another volunteer made a similar observation: “Success isn’t always what one would think of as a legal success. I believe it is in the act of assisting people that we can provide success.”²⁹

On a related point, pro bono work helps to foster community bonds. On her final day on the Supreme Court of Canada, Justice Rosalie Abella stated that “[j]ustice is the application of law to life, not just the application of laws to facts.”³⁰ Through pro bono work, lawyers establish meaningful connections to and insights into their communities. It is through personal commitment, involvement, and individual relationships that social justice is pursued.³¹ For some volunteers, offering pro bono services is a way to honour and reciprocate the assistance and support they received themselves over the years.³²

The community impact of pro bono is especially emphasized during times of crisis. It was against the backdrop of the 2007–08 financial recession that several provincial pro bono organizations emerged and others experienced significant growth.³³ Pro bono services were essential to ease the strain on the court system, amidst a growing volume of unrepresented litigants and increasingly complex and lengthy litigation.³⁴

At the start of the COVID-19 pandemic, pro bono organizations had to adapt quickly to continue delivering free legal services remotely. New organizations sprang up to meet community needs. For example, in Ontario, a group of lawyers came together to form Frontline Legal Support, an initiative that offered free commissioning of wills, powers of attorney, and virtual documents to frontline medical workers.³⁵

Pro bono encourages lawyers to consider their role in the greater collective, beyond the formal justice system and the legal community. One PBO volunteer acknowledged that he cannot solve everyone’s problems, but he believes he can use his skills to help develop steps toward a solution.³⁶

If you are not doing pro bono work, consider reflecting on the reasons

The Canadian Bar Association’s Pro Bono Committee suggests that all members of the legal profession aim to contribute 50 hours or 3 percent of billings per year on a pro bono basis,³⁷ and the Federation of Law Societies of Canada’s Model Code of Professional Conduct encourages lawyers to enhance the profession’s standard and reputation by providing pro bono legal services.³⁸ Aside from these suggestions and words of encouragement, lawyers in Canada are not required to complete a minimum number of pro bono hours.

Advocates who are not currently engaging in pro bono work should consider reflecting on why that is. Many operational concerns likely have answers. For example, those who are concerned about the need to perform conflict checks may be assured by the modified conflicts standards that have been implemented in several provinces – such that a lawyer may provide short-term legal services, which generally include pro bono work, without taking steps to determine whether a conflict of interest exists.³⁹

Advocates may also consider setting a personal, voluntary target for pro bono matters in a way that makes sense for their practice. On this score, Canadian lawyers can learn something from our Australian colleagues. Australia established a national program of aspirational pro bono targets in 2007. According to the Australian National Pro Bono Centre, having a target raises the profile of a lawyer’s professional and ethical responsibility to enhance access to justice for those who would not otherwise have access to legal assistance; highlights the shared nature of that responsibility across the profession; and provides a formal benchmark for conduct of pro bono work.⁴⁰ The target’s reporting guidelines include a clear definition of pro bono that focuses on the provision of legal services and is coupled with a plan to keep track of progress and measure it from year to year.

The numbers appear to show that adoption of the targets has progressively increased over time. This increase has driven growth in the overall volume of pro bono legal work being conducted in Australia and strengthened the pro bono culture across the profession.⁴¹ In the program’s first year, 58 organizations signed on, accounting for about 3,000 full-time-equivalent professionals. By fiscal year 2023, the total number of signatories reached 286, which represented 18,731 full-time-equivalent professionals. This increased adoption of the targets appears to have translated into a significant increase in the number of pro bono hours. In 2008, target signatories had collectively reported volunteering 115,334 hours of pro bono legal work. The number grew to 420,195 by 2017, and by 2023 the total continued to trend upward at some 700,910 hours of pro bono work, averaging 38.3 volunteer hours per lawyer. Signatories to the target have collectively reported more than 5.5 million hours of pro bono legal work since its implementation.

When Pro Bono Ontario (PBO) was created in 2001, considerable discussion centred around creating aspirational goals and targets as a means of encouraging the pro bono culture in the province. PBO decided not to do so because at that time not enough organized pro bono opportunities were available for volunteers. PBO lacked the infrastructure and technology to connect clients in large enough volumes with lawyers

seeking to meet their goals.

Technology has changed this situation. Today, a significant proportion of clients find pro bono legal services providers through web searches and social media, with the balance of clients referred by the courts, government agencies, community groups, law societies, and legal aid clinics. Pro Bono Ontario's Free Legal Advice Hotline, for example, has separated legal assistance from in-person service. The impact on PBO's ability to reach new populations is radical. Currently, 88 percent of people served by PBO's hotline say that the hotline provided their first opportunity to get legal assistance for their problems. All they need to get help is access to a phone.

As well, one of the unanticipated benefits of the pandemic was that it forced PBO to accelerate plans to work virtually. In fact, PBO effected this transition within 48 hours of the WHO's declaration of a global pandemic, ensuring that its clients didn't lose a single day of service.⁴² Lawyers volunteering with the hotline can take calls from their homes or offices and serve clients across the province while accessing PBO's Salesforce platform and database, knowledge management materials, and support from PBO staff in real time.

Advances in technology and available pro bono opportunities across the country may mean that the time is now right

for introducing voluntary targets for pro bono in Canada⁴³ – whether at an institutional or personal level. The demand for legal services far outweighs the number of volunteers, so the opportunities are there for lawyers.

Every advocate has a role to play – and that might look different for every advocate

Responsibility for the administration of justice is shared between the federal and provincial/territorial governments, and increased funding for broader and more sustainable legal aid programs is needed. But we also believe that every advocate has some role to play in mitigating the access to justice crisis. In this article, we have tried to highlight how pro bono work should be a fulfilling personal experience that has real benefits for lawyers. Lawyers who are not currently doing pro bono work should seriously reflect on why that is the case, on whether perceived barriers have solutions, and on what kind of pro bono practice would be most fulfilling and make the most sense for their practice.

We know from the data that every bit of help is meaningfully felt by the Canadians who would not otherwise have access to justice. Now is the time to consider how all advocates can have a hand in delivering that assistance. 📌

Notes

1. "Although the access to justice crisis is now well recognized among stakeholders in the Canadian justice system, a knowledge gap continues to exist regarding the degree of inadequacy in access to justice in Canada. The nature and level of unmet legal needs in Canada and elsewhere are neither well understood nor comprehensively researched. Compared with other areas of social services, such as medicine or education, we have comparatively little empirical data about justice issues, their social or financial impacts, or how to avoid or best deal with them." (Trevor CW Farrow & Lesley A Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) at 4–5.)
2. Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: the Committee, October 2013) at 4, 7.
3. *Ibid* at 4.
4. Canadian Bar Association, *Reaching Equal Justice Report: An Invitation to Envision and Act* (Ottawa: Canadian Bar Association, November 2013) at 34.
5. *Ibid* at 52.
6. Canadian Bar Association, "Tension at the Border": *Pro Bono and Legal Aid* (Ottawa: Canadian Bar Association, November 2013) at 2.
7. Before the creation of publicly funded and operated legal aid plans in Canada in the 1960s and 1970s, some provincial governments offered what was essentially a pro bono referral service for people who could not pay for legal counsel, where potential clients were matched with volunteer lawyers: *Ibid* at 3–4.
8. Active pro bono organizations in Canada include Pro Bono Ontario (PBO), Access Pro Bono in British Columbia, Pro Bono Law Alberta (PBLA), Pro Bono Law Saskatchewan (PBLs), Justice Pro Bono in Quebec, and Pro Bono Students Canada (PBSC). In 2012, Pro Bono Canada (PBC) was created to encourage and support the expansion of provincial pro bono organizations.
9. Canadian Bar Association, "Tension at the Border," *supra* note 6 at 6.
10. Law Society of British Columbia, "Lawyers Giving Back: Volunteer Legal Services"; online: <lawsociety.bc.ca/our-initiatives/access-to-justice/lawyers-giving-back-volunteer-legal-services>.
11. We have not identified any other reporting of this kind by other provincial or territorial law societies.
12. Pro Bono Ontario, news release, "Pro Bono Ontario Issues Urgent Call for Volunteers" (4 April 2022).
13. In 2022, Pro Bono Ontario conducted a survey of its volunteers to gain insight into lawyers' motivations for volunteering, lawyers' takeaways from participating in PBO's programs, and how PBO's programs may be improved. Anecdotal volunteer feedback, which was derived from this survey, has been incorporated throughout this article.
14. Janice Mucalov, "How to Successfully Build Pro Bono Work into Your Practice," *Canadian Bar Association* (1 December 2011).
15. Dugald E Christie, "Blueprint for Access to Justice: A Visionary, Practical Plan for B.C. and Canada" (2007) 40 UBC L Rev 455.
16. Access Pro Bono, "History"; online: <accessprobono.ca/about-us/history>.
17. For example, in a 2022 *Advocates' Journal* article, Mary Paterson, Gordon Currie, and Jesse-Ross Cohen elaborated on the business case for law firms to invest in pro bono. While we endorse the message of that article and agree that there is also a business case for pro bono, we do not repeat those arguments here. See Mary Paterson, Gordon Currie, and Jesse-Ross Cohen, "The Business Benefits of Pro Bono: Not Just for the Public Good" (2022) 41:2 Adv J 31.
18. Lynn Burns, "Pro Bono Work Should Benefit All Parties," *The Lawyers Weekly* (17 March 2006).
19. Law Society of Saskatchewan, *Rules of the Law Society of Saskatchewan* (1 January 2020) at Rule 715.
20. Law Society of Ontario, By-law 4, *Licensing* (1 May 2007) at s 21(1).
21. Cyrus R Vance Centre for International Justice & PILnet, The Global Network for Public Interest Law, *Pro Bono Handbook: A Guide to Establishing a Pro Bono Program at Your Law Firm* (2015) at 36.

22. *Ibid.*
23. Zino I Macaluso, "That's OK, This One's on Me: A Discussion of the Responsibilities and Duties Owed by the Profession to Do Pro Bono Publico Work," (1992) 26 UBC L Rev 65.
24. Christie, *Blueprint for Access*, *supra* note 15.
25. PBO 2022 Volunteer Survey, *supra* note 13.
26. *Ibid.*
27. Deborah L Rhode, "Pro Bono in Principle and in Practice" (2003) 53 J Legal Educ at 7.
28. Kelly Doyle, "Practicing Pro Bono" (paper arising out of the online continuing legal education session sponsored by the Canadian Bar Association ["Integrating Pro Bono Initiatives into Your Practice"] and the CLE conference sponsored by the Continuing Legal Education Society of BC ["Pro Bono Practice"]) (April 2007) at 3.
29. PBO 2022 Volunteer Survey, *supra* note 13.
30. Andromache Karakatsanis & Sheilah L Martin, "The Joy of Judging with Justice Rosalie Silberman Abella" (2021) 105:3 *Judicature* 89.
31. Lorne Sossin, "The Public Interest, Professionalism, and Pro Bono Publico" (2008) 46. *Osgoode Hall LJ* 131 at 140.
32. PBO 2022 Volunteer Survey, *supra* note 13.
33. Jamie Maclaren, "Pro Bono Lawyers Rise to the Challenge in Tough Times," *The Lawyers Weekly* (24 October 2008).
34. *Ibid.*
35. Lucy Saddleton, "Ontario Lawyers Launch Pro Bono Legal Service for Essential Workers During COVID-19 Crisis," *Canadian Lawyer* (30 April 2020).
36. PBO 2022 Volunteer Survey, *supra* note 13.
37. Canadian Bar Association, Resolution 98-01-A, *Promoting a Pro Bono Culture in the Canadian Legal Profession* (1998).
38. Federation of Law Societies of Canada, *Model Code of Professional Conduct* (October 2022).
39. Law Society of Alberta, *Code of Conduct* (5 October 2023) at 3.4-15; Law Society of British Columbia, *Code of Professional Conduct* (1 January 2013, amended July 2023) at 3.4-11.2; Law Society of Manitoba, *Code of Professional Conduct* (1 January 2011) at 3.4-2B; Law Society of Ontario, *Rules of Professional Conduct* (1 November 2000, amended 28 June 2022) at 3.4-16.3.
40. "Target FAQs for All Target Signatories," Australian Pro Bono Centre (June 2023); online: <probonocentre.org.au/provide-pro-bono/target/faqs-2/>.
41. "16th Annual Performance Report of the National Pro Bono Target," *Australian Pro Bono Centre* (September 2023).
42. Gordon Currie, "COVID-19's Unsung Hero: Pro Bono Ontario," *Canadian Lawyer* (6 May 2020).
43. Reasonable people can disagree about the wisdom and feasibility of having voluntary aspirational targets for pro bono. Mandatory targets are unlikely to be effective and, from a client service perspective, we do not want a vulnerable client in crisis to interact with a lawyer who clearly does not want to help or does not have the capacity to help.

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