

Investing in Pro Bono

*A Best Practice Guide
for Pro Bono Legal Services
by Law Firms*

- *Enhance the firm's relationship with the community*
- *Build policies that fit the firm's needs*
- *Strengthen the firm's pro bono culture with a program*



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Why Invest in Pro Bono?

Pro bono legal work addresses unmet legal needs in our community. Pro bono lawyers help fill this legal vacuum, fulfilling their professional responsibilities while also benefiting personally. Pro bono work is a way to give back to the community, by promoting access to justice and making a positive difference in someone's life. Participating in pro bono also brings a range of professional and personal rewards, through which lawyers can develop new areas of expertise, expand their perspectives, enhance their reputations, and serve the interests of their employer and the profession, while finding the experience personally gratifying.

Pro Bono Law Alberta's Role

Pro Bono Law Alberta (PBLA) is a charitable organization that promotes access to justice in Alberta by creating and promoting opportunities for lawyers to provide pro bono (free) legal services to persons of limited means who are ineligible for Legal Aid. As a legacy project of the Law Society of Alberta in celebration of its 100th anniversary in 2007, PBLA was created to build on the culture of pro bono service in Alberta and to make it easier for lawyers to engage in pro bono legal service delivery.

PBLA has developed this Best Practice Guide to assist law firms in developing programs for the delivery of pro bono legal services. This guide provides practical information and policy templates for creating a successful pro bono legal services program.

Why is a Pro Bono Program Important?

A law firm's pro bono program is a formal structure for the delivery of pro bono legal services by the law firm's lawyers. Developing a formal structure for a law firm pro bono program will help ensure a consistent level of quality in volunteer projects undertaken, reduce ambiguity about the appropriateness of taking on certain projects, foster team building, and provide recognition for volunteers.

Also, a pro bono program allows pro bono efforts to be recognized as an integral part of the firm's operations, which will increase the likelihood of success for the program.

Finally, a pro bono program enables pro bono hours to be tracked so that the firm can both quantify its aggregate pro bono contribution and recognize the individual pro bono contributions of its lawyers in evaluating and compensating them.

Advantages of having a Pro Bono Program

The adoption of a formalized pro bono program can enhance a law firm's goals and functions. The following are among the reasons why law firms adopt pro bono programs:

- Helps people who cannot afford a lawyer and do not qualify for Legal Aid to get access to justice.
- Enables the firm to provide its lawyers with an opportunity to give back to society.
- Creates opportunities for lawyers to develop skills and enhance training.
- Increases job satisfaction of the firm's lawyers by encouraging personally rewarding work and providing a challenge that may not otherwise be available.
- Helps recruit talented new lawyers by differentiating the firm by its commitment to pro bono legal work.
- Provides for better supervision, quality control and tracking of pro bono work done by the firm.
- Promotes a positive profile for the firm in the community.
- Strengthens relationships within the firm by encouraging senior lawyers to work with junior lawyers.
- Strengthens the client/firm relationship, since clients appreciate a firm's pro bono efforts and it may create an opportunity to partner with a client on a charitable project.
- Creates a culture of good will within the law firm.
- Builds public confidence in lawyers and the justice system.

What is Pro Bono Legal Work?

PBLA defines pro bono work as the voluntary delivery of legal services by a lawyer to low income clients or the communities that serve them without a fee or without expectation of a fee, which includes:

- providing legal advice and/or representation to a client of limited means to ensure access to the courts, the legal system and legal services regardless of the ability to pay;
- providing legal advice and/or representation to a client of limited means whose case raises a wider issue of public interest;
- delivering community legal education;
- providing legal advice and/or representation to charitable, not-for-profit and community organizations, and

- providing alternative dispute resolution, mediation or preventative law services to low income clients or the communities that serve them.

Pro bono legal services are usually thought of in the context of litigation but also include the full range of legal services including legal opinions and advice, drafting of documents, research, negotiations, involvement in law and legal policy reform, and community legal education.

Pro bono legal work does not include matters that are covered by Legal Aid. Pro bono services are meant to complement and not replace a properly funded legal aid system.

Pro bono legal services do not include:

- non-legal volunteer activities;
- sitting as a director of a non-profit organization;
- practice development and client development activities;
- continuing legal education (unless it involves training pro bono lawyers);
- speaking, writing or similar promotion activities when not associated with pro bono legal services;
- contingency fee cases;
- Legal Aid work; or
- law association activities not associated with improving the availability of legal services to persons of limited means or for charitable, non-profit or public interests.

Formalizing a Pro Bono Program

The structure of a law firm's pro bono program will vary depending on different factors, including the law firm's size, leadership structure, areas of expertise and law firm culture. Therefore, when structuring a pro bono program and writing a pro bono policy the law firm should consider the following.

Develop a Vision

Choosing a vision for the pro bono program helps identify the type of pro bono legal work best suited for the firm and the commitment the firm is willing to make. The best way to identify the vision is by conducting a Pro Bono Survey, which asks three main questions:

- What pro bono legal work are people doing now?
- What pro bono legal work are people interested in doing?
- What are the impediments to doing pro bono legal work?

PBLA has identified the following models for pro bono legal work from which an extensive list of initiatives can be generated.

Roster Programs: PBLA plans to develop and maintain a list of lawyers who will volunteer to represent low income clients who have specific legal needs. The roster of volunteer lawyers will represent various law firms and different areas of expertise and personal interest of the lawyers. In Alberta, the pro bono clinics screen clients for low income qualification and legal need but some clients need more than the summary legal advice or representational services provided by the pro bono clinics. Once the roster of lawyers is developed in conjunction with Alberta law firms, such pro bono clients will be matched with lawyers willing to represent them for specific legal tasks.

Volunteering with Pro Bono Providers: Lawyers can sign up for a time slot on the schedule of a pro bono clinic such as Calgary Legal Guidance, Edmonton Community Legal Centre, Central Alberta Community Legal Clinic, Lethbridge Legal Guidance or Grande Prairie Legal Guidance. Lawyers can also register to provide pro bono legal services at the Children's Legal and Educational Resource Centre or through the Volunteer Lawyers Service program. Law firms can foster volunteer assistance to such pro bono providers by recognizing the work done by volunteer lawyers as work done for the firm.

Pro Bono Partnerships: Partnerships may take different forms:

- Partnering with a pro bono legal clinic to provide a particular service or program;
- Partnering with a charitable organization to provide legal services to the organization and/or the individuals the organization serves; or
- Partnering with a corporation (which may be a client) to provide legal service to particular community organizations or targeted disadvantaged groups.

Signature Projects: A firm can identify a particular social issue or not-for-profit or charitable organization, and apply broad-based strategies and approaches to address particular legal issues.

Secondments: Law firm lawyers (generally associates or articling students) spend a negotiated period of time with a specified legal or public interest organization. When one lawyer/articling student's service terminates, the firm may send another to provide continuity of service.

Pro Bono Menu: A menu of pro bono opportunities undertaken by the firm is offered to available lawyers, including summary legal advice, legal representation for clients and community legal education.

The firm's vision and model for pro bono legal services, the reasons why it supports pro bono work and the reasons for implementing a pro bono policy should be set out in the policy. Sample policies for various sizes of law firms are attached to this Guide. Note that the sample policies are based on the Pro Bono Menu model described above.

Support the Vision

In order for lawyers and non-legal staff to dedicate firm time and resources to pro bono projects, the firm's senior management must recognize the benefits of a pro bono program and support the goals of the program. PBLA recommends securing management support of the pro bono program and designating personnel resources or establishing a Pro Bono Committee. Such personnel or committee would be responsible for:

- defining pro bono work for the firm's program;
- developing and writing a pro bono policy;
- implementing and managing the pro bono program;
- ensuring distribution and communication of the pro bono policy within the firm;
- monitoring and administrating the program; and
- evaluating and modifying the program.

Identify Community Needs and Potential Recipients

Community Needs

Understanding the needs of your community will help identify who is eligible to receive pro bono legal services. PBLA can assist law firms in identifying opportunities and legal needs within the community.

Firms can also familiarize themselves with local legal and other non-profit organizations that can screen and place pro bono cases for the firm and identify the types of matters for which they most need volunteer lawyers.

Case Criteria

Selecting the form of assistance the firm is able to provide ensures the likelihood of success of a pro bono program. Excluding areas of law in which the firm may not wish to provide assistance helps identify the appropriate program that best suits the interests of the firm.

The firm should establish a policy regarding the acceptance of legal matters which focuses on the purpose of its pro bono program, considers the maximum number of hours a volunteer lawyer can reasonably provide, and takes into account the resources available to provide volunteers with any necessary support.

Client Criteria

The firm should establish a policy regarding a client's financial or other eligibility for pro bono assistance which is consistent with providing services to individuals of limited means. At the same time, the firm's policy and procedures should facilitate access to its pro bono legal services by the client community.

The firm may wish to give priority to a particular group or groups of people that it is inclined to assist based on its pro bono vision or area of expertise. Also, developing partnerships with other pro bono programs or community organizations will help firms identify and screen potential pro bono clients.

Manage Cases

The firm should establish a methodology for identifying and approving pro bono work before it begins.

It is best practice to track and handle a pro bono case in the same way the firm would handle any other case. This allows the firm to keep track of the resources spent on the file as well as individual lawyer's contributions to the firm's pro bono work.

Conflicts of Interest

Conflicts of interest may arise when delivering pro bono assistance. A lawyer delivering pro bono legal services must follow the same procedures used on any other client file to identify conflicts of interest. The Law Society of Alberta is reviewing the conflict of interest rules to accommodate inadvertent conflicts that may arise in the provision of pro bono legal services.

Quality of Service

Pro bono clients deserve the same level and quality of service that paying clients would receive. Pro bono clients are entitled to the same solicitor-client privilege and enjoy the same respect for confidentiality. They also instruct counsel in the same way that a paying client would.

Dedicate Resources

Law firms may wish to adopt a target for pro bono legal service delivery for each of their lawyers. The Canadian Bar Association has suggested a minimum 50 hours per lawyer per year as an achievable and appropriate target. Each law firm should determine an appropriate target for pro bono hours in accordance with the firm's culture, purpose and commitment. The best way to encourage lawyers to provide pro bono work and to demonstrate the firm's commitment to pro bono work is to count a certain number of pro bono hours as a part of a lawyer's billable hour requirement. Many law firms have adopted this approach and report that this is an essential component for the participation of the firm's lawyers and to the success of the firm's pro bono program.

Firms should consider what resources will be made available for pro bono work. Examples include staff time, online reference services, long distance telephone calls and faxes, and photocopies. Firms should also consider whether disbursements should or should not be paid by pro bono clients.

Resources may be allocated based upon identified client needs while taking into account areas of interest and expertise of volunteers, volunteer need for specialized training and support, and the priorities of other providers of legal services and social services in the service area.

Measuring and Evaluating Pro Bono Work

Tracking hours devoted to pro bono work by its lawyers is an essential component of determining the effectiveness of the firm's pro bono program. It also provides a tangible mechanism to track and publicize the firm's commitment to access to justice for low income clients who are ineligible for Legal Aid. This may be done in an annual pro bono report by providing a tally of the pro bono legal services the law firm and its lawyers have contributed.

Evaluating and Rewarding Contributions

Lawyers and other staff performing pro bono work should always be rewarded and never penalized for taking on pro bono cases. Pro bono work may be considered in regular performance evaluations. A firm may choose to recognize lawyers who have made exceptional contributions in pro bono work through awards or other forms of recognition.

Measure the Success of the Firm's Program

It is important to measure the success of a pro bono program through metrics, the corporate practice of measuring program effectiveness. Advocates of law firm pro bono believe the application of this well-established business principle should be applied to law firm pro bono work. PBLA recommends measuring the success of your program in three areas:

- Performance Measures – pro bono hours, number of lawyers involved and other appropriate measures
- Client and Community Impact – the number and nature of cases
- Benefits to Program Participants – the outcomes to the clients and communities served

Evaluate and Restructure the Firm's Pro Bono Program

It is important to evaluate and, if necessary, restructure pro bono programs every few years. Consider conducting another survey to identify new opportunities and possible new partnership relationships.

Publicize the Firm's Pro Bono Program and Recruit Participants

Once the firm has established the structure of its pro bono program and secured any partnership relationship, developing a communications strategy is important. This includes recruiting the firm's lawyers to become involved and publicizing the new program within the law firm, the legal profession and the wider community. PBLA can assist in developing key messages and publicity for your communications plan.

Share the Firm's Experience with PBLA and Other Pro Bono Stakeholders

Access to justice and helping people of limited means is a shared mission of members of the legal profession. PBLA recommends sharing your pro bono experiences and achievements with PBLA and other interested pro bono stakeholders. Part of PBLA's mandate is to publicize the pro bono contribution of law firms and facilitate such contributions. By exchanging information on a regular basis, pro bono service providers and facilitators can enhance current efforts and create new opportunities.

Appendix A:

Sample Pro Bono Policy for Smaller Law Firms

This sample pro bono policy is provided as a template that may be used by a smaller law firm in preparing its own pro bono policy. As such, the sample policy is intended as a precedent to be modified in accordance with the firm's vision for its pro bono program as well as the firm's administrative structure. To that end, the sample policy includes prompts where specific information is to be inserted: for example, the number of volunteer hours in sections 1 and 3.3, the naming convention for pro bono files in section 5.6, and the frequency of review of the pro bono policy in section 7.1. As with any precedent, the user is encouraged to modify the sample policy as required to fit the circumstances.

1. Purpose of (Firm Name)'s Pro Bono Program

(Insert Firm Name) (the “**Firm**”) recognizes the difficulties that some members of our society have in accessing the justice system to address their legal problems. As lawyers we are in a unique position to assist them. The legal profession possesses skills and abilities that allow us to serve the disadvantaged and promote the public interest in ways that no other profession can. The Firm supports pro bono work and we will strive to offer *(Insert Hours)* hours of pro bono service to the community per year for each lawyer in the employ of the Firm. While participation in pro bono matters is voluntary, all lawyers are strongly encouraged to participate.

The purpose of this Policy is to ensure the continuity of the Firm's tradition of community support through the provision of pro bono legal services. Consistent with that tradition, the Firm strongly supports the creation of a formal pro bono program. This program will not serve to limit a lawyer's pro bono work; rather, it will recognize and formalize the strong tradition of exceptional community contributions that the Firm is known for by tracking pro bono contributions and recognizing them in evaluating and compensating the Firm's lawyers.

The goal of the Firm's pro bono program is to endorse and encourage lawyers, paralegals and other employees to participate in pro bono matters and provide free legal services in our communities in a manner consistent with the overall obligation to make certain that all work is timely completed in a professional manner.

The phrase “pro bono” is derived from “pro bono publico”, which means “for the public good.” Our free legal services strengthen our community. Pro bono work also provides great personal and professional satisfaction to the lawyers involved and increases their awareness of the diversity in their communities.

2. Qualification for Pro Bono Legal Services

2.1 Definition of Pro Bono Legal Services

For purposes of this Policy, and without intending to preclude the ability to make flexible case-by-case determinations consistent with the spirit of the Firm's pro bono program, the term “pro bono legal services” refers to activities of individual lawyers undertaken normally without expectation of legal fees and consisting of the delivery of legal services.

Each lawyer in the Firm is free to determine how to fulfill their pro bono responsibilities. Eligible groups can include:

- (a) the disadvantaged and low income individuals; and

- (b) organizations that serve the community by providing services to disadvantaged and low income individuals.

Pro bono work is not limited to litigation but includes a full range of legal activities including legal opinions and advice, drafting of documents, research, negotiations, involvement in law and legal policy reform, and community education.

2.2 Exclusions from Definition of Pro Bono Legal Services

The definition of pro bono legal services includes only traditional legal services; it does not include time devoted to activities such as service on a board of directors or similar governing or advisory body of a not-for-profit organization, service to bar associations and other such organizations or lecturing on legal issues. Legal services performed with the expectation of receiving legal fees in a future matter for the same or a related client also do not qualify, nor does providing legal services on a contingency fee basis.

Pro bono service does not include non-legal volunteer activities, fee generating matters which have become uncollectible, or unsuccessful contingency matters.

3. Treatment of Pro Bono Work Within the Firm

3.1 General Principle

A successful pro bono program requires the steady support of management, and policies that support and encourage lawyers, paralegals and other employees who serve pro bono clients. In turn, lawyers, paralegals and other employees who work on pro bono matters must treat our pro bono clients as they would all other clients by providing excellent service that meets the highest ethical and professional standards, and that is performed in an efficient manner.

3.2 Participation in Pro Bono Matters

While participation in the Firm's pro bono program is not mandatory, all personnel are strongly encouraged to participate in pro bono matters to the extent their skills can be utilized to serve the interests of an approved pro bono client.

3.3 Firm Recognition of Pro Bono Work

Up to (*Insert Hours*) hours of approved pro bono work annually will count as billable time in evaluating partner and associate performance and paying partner and associate bonuses (where applicable), with additional hours counting as approved non-billable time unless prior approval is granted. In the event that a particular project or matter requires an extra time commitment, the Firm will consider granting additional credit towards billable hour requirements. In any event, no lawyer will be penalized for having fewer billable hours due to an increased commitment to approved pro bono projects.

-or-

Each lawyer in the Firm may devote as much time to pro bono work as he or she wishes consistent with other responsibilities. The Firm expects each lawyer to perform not less than (*Insert Hours*) hours of pro bono service per year.

3.4 Staffing and Supervision of Pro Bono Matters

Pro bono matters are to be given the same level of staffing and supervision as any other legal matter that the Firm undertakes, with appropriate consideration to the experience of the lawyers, the complexity of the matter, and the time to be spent on the matter.

3.5 Addressing Pro Bono Expectations in the Hiring Process

Pro bono service is an integral part of the Firm's practice. The Firm's commitment to pro bono work should be emphasized throughout the hiring process. Pro bono service should be discussed when interviewing any job applicant.

4. Administering the Pro Bono Program

4.1 Partners

The partners of the Firm will administer the Firm's pro bono program and have general authority and responsibility for the supervision of the Firm's pro bono work.

5. The Process for Taking on a Pro Bono Case

4.1 Approval of Pro Bono Matters

All matters proposed to be undertaken on a pro bono basis should be reviewed by the partners to ensure that:

- (a) acceptance of matters is compatible with overall workload constraints;
- (b) there is no conflict with an existing client; and
- (c) the case is appropriate for pro bono representation.

5.2 Sources of New Pro Bono Matters

Lawyers are welcome to bring pro bono clients to the Firm. The Firm will also seek out and maintain connections with appropriate organizations in the community explaining the Firm's pro bono policy and inviting requests for pro bono services. These organizations are usually frontline agencies such as an existing pro bono program, community organization or legal aid clinic, that are able to identify cases and issues of real need and merit.

Regardless of the manner of referral to the program, all files are to be assessed and approved in the same way as for any other pro bono client and according to the same criteria.

5.3 Conflicts Check

A conflicts check must be completed before seeking approval of a proposed pro bono matter.

As with any other matter, the Firm cannot act on any pro bono matter that presents an ethical conflict with an existing or former client. Before any pro bono representation is submitted for approval, the responsible lawyer must ensure that a full conflicts check is completed and that any waivers, if appropriate, are signed.

5.4 Pro Bono Authorization Request

A lawyer seeking approval of a pro bono matter must give one of the partners a written authorization request. This request shall include information on a completed conflicts check, description of the issue, background information on the proposed client, expected disbursements, estimation of hours to be spent on the file, and office resources to be utilized. Before any agreement is made to act on the matter, the request must be approved by the partners.

All Firm resources are available to a lawyer working on a pro bono case. However, the lawyer is expected to discuss costs and other implications with the one of the partners when the draw on assistant time, long distance costs or photocopying charges are likely to exceed a minimal level.

5.5 Pro Bono File Opening

Once a pro bono matter is approved by the partners, the responsible lawyer should complete the Firm's standard file opening procedure.

5.6 Pro Bono Client and Matter Numbers

Normal client numbers should be used for individual pro bono clients or the pro bono referral organization, as the case may be. When the Firm establishes a relationship with a new pro bono referral organization, a new client number should be used to open a general file to enable tracking of all referrals from that organization, which should be opened as new matter numbers under that client number. Also, the general matter number can be used for time spent training or evaluating cases referred by that organization.

Whenever a file is opened for a pro bono client, the file should be coded with the client and matter type (*Insert Name*) to enable tracking of all time spent for pro bono clients.

Time on pro bono client matters will be recorded as billable or non-billable as provided in section 3.3. Disbursements shall be recorded as billable unless specific authorization has been received from one of the partners.

A general client number should be used to track general pro bono time that is not recorded under a specific pro bono matter number.

6. Quality and Scope of Pro Bono Representation

6.1 General Principle

The Firm promises its pro bono clients the same quality of exceptional service that it endeavours to provide to every client. Pro bono matters should be given the same priority as matters for paying clients when allocating time and resources.

6.2 Engagement Letters

Before any pro bono representation commences, the client shall sign a pro bono engagement letter.

The engagement letter shall clearly explain the scope of and potential termination of the representation, allocate responsibility for expenses, and include waivers of future conflicts, as appropriate.

For clients who are not competent to sign an engagement letter (e.g., a young child), the engagement letter should be signed by the client's guardian, if available, as long as the guardian is not an actual or

potential adverse party. If the client is a child who is competent to sign the letter, and who has no unconflicted guardian available to do so, then the letter should be tailored to ensure that the client understands the terms of the representation.

6.3 Fees and Expenses for Approved Pro Bono Matters

The Firm does not expect to be paid any fees for legal services on a pro bono file.

To the extent possible, a pro bono client should bear the burden of out-of-pocket expenses in order to ensure that the client has an appropriate investment in the outcome of the case.

Experts and other professionals retained to provide services for a pro bono matter should be expected to provide their services either for free or at a reduced fee to the extent possible and customary without compromising the representation.

6.4 Billing Statements for Pro Bono Clients

Each month the responsible lawyer for each active pro bono matter shall decide whether to issue an account.

Generally monthly statements describing the work completed and time expended on behalf of the client, including unbilled legal fees, should be sent to not-for-profit organization clients. Legal service providers may also request that the Firm inform them of total hours and unbilled fees worked on behalf of clients referred by them; in such event, if appropriate, a statement disclosing time and unbilled fees in the aggregate may be sent but such information should not include a description of work performed in order to protect the lawyer-client privilege. Except in unusual cases, low income individual clients should not be sent bills disclosing unbilled fees.

To the extent a pro bono client has agreed to pay expenses, a statement of such expenses should be sent to the client on a monthly basis, or when otherwise appropriate, for payment.

6.5 Closure of Pro Bono Matters

Once the matter described in the engagement letter has been completed, and no further work is expected, the responsible lawyer should send the client a letter stating that the matter is closed, and the pro bono matter should be administratively closed.

7. Evaluation of Program and Amendment of Policy

7.1 Review of Pro Bono Policy

This Policy will be reviewed (*Insert Frequency*) by the partners to ensure that it is effectively allowing, encouraging and supporting the members of the Firm to conduct pro bono work.

7.2 Approval and Amendment of Pro Bono Policy

This Policy was approved by the partners on (*Insert Date*).

This Policy may be amended by the partners from time to time.

A copy of the Firm's Pro Bono Policy shall be circulated to all staff to increase awareness of the program. As well, whenever changes to the Policy are made, the amended Policy shall be circulated to all staff.

Appendix B:

Sample Pro Bono Policy for Larger Law Firms With One Office

This sample pro bono policy is provided as a template that may be used by a larger law firm with one office in preparing its own pro bono policy. As such, the sample policy is intended as a precedent to be modified in accordance with the firm's vision for its pro bono program as well as the firm's administrative structure. To that end, the sample policy includes prompts where specific information is to be inserted: for example, the number of volunteer hours in section 3.3, the title of responsible persons or groups in sections 3.3, 3.4, 4.2, 4.3, 5.4, 5.5, 6.3 and 7.2, the number of committee members in section 4.2, the naming convention for pro bono files in section 5.6, cost thresholds in section 6.3, and the frequency of review of the pro bono policy in section 7.1. As with any precedent, the user is encouraged to modify the sample policy as required to fit the circumstances.

1. Purpose of (Firm Name)'s Pro Bono Program

(Insert Firm Name) (the “**Firm**”) recognizes the difficulties that some members of our society have in accessing the justice system to address their legal problems. As lawyers we are in a unique position to assist them. The legal profession possesses skills and abilities that allow us to serve the disadvantaged and promote the public interest in ways that no other profession can. The Firm recognizes its special obligation to assist our lawyers as they endeavour to serve the community.

The purpose of this Policy is to ensure the continuity of the Firm's tradition of community support through the provision of pro bono legal services. Consistent with that tradition, the Firm strongly supports the creation of a formal pro bono program. This program will not serve to limit a lawyer's pro bono work; rather, it will recognize and formalize the strong tradition of exceptional community contributions that the Firm is known for by tracking pro bono contributions and recognizing them in evaluating and compensating the Firm's lawyers.

The goal of the Firm's pro bono program is to endorse and encourage lawyers, paralegals and other employees to participate in pro bono matters and provide free legal services in our communities in a manner consistent with the overall obligation to make certain that all work is timely completed in a professional manner. It also is essential that there is close coordination of pro bono work to avoid conflicts of interest and to make certain that work is properly done.

The phrase “pro bono” is derived from “pro bono publico”, which means “for the public good.” Our free legal services strengthen our communities. Pro bono work also provides great personal and professional satisfaction to the lawyers involved and increases their awareness of the diversity in their communities. In addition, the Firm itself obtains many benefits from such work, such as (i) enhancing its image in the community and helping to improve society's view of lawyers and the legal profession in general, (ii) strengthening recruitment of top associates who are interested in the social contribution of law, (iii) providing junior lawyers with opportunities both for excellent training and to conduct their own matters with their own clients, (iv) enhancing associate morale by allowing junior lawyers to become more involved in their communities, and (v) providing opportunities for mature lawyers approaching retirement to be involved with charitable endeavours.

While this Policy recognizes various categories of pro bono work, it is designed particularly to encourage involvement in providing legal services to disadvantaged and low income individuals and organizations that serve the community by providing services to disadvantaged and low income individuals.

2. Qualification for Pro Bono Legal Services

2.1 Definition of Pro Bono Legal Services

For purposes of this Policy, and without intending to preclude the ability to make flexible case-by-case determinations consistent with the spirit of the Firm’s pro bono program, the term “pro bono legal services” refers to activities of the Firm undertaken normally without expectation of legal fees and consisting of the delivery of the following legal services:

- (a) providing legal advice and/or representation to a client of limited means in civil and criminal matters to ensure access to the courts, the legal system and legal services regardless of the ability to pay;
- (b) providing legal advice and/or representation to a client of limited means whose case raises a wider issue of public interest;
- (c) delivering community legal education;
- (d) providing legal advice and/or representation to charitable, not-for-profit and community organizations; and
- (e) providing alternative dispute resolution, mediation or preventative law services to low income clients or the communities that serve them.

[●Note to draft: This definition follows the Pro Bono Menu model described in *Investing in Pro Bono: A Best Practice Guide for Pro Bono Legal Services by Law Firms* of Pro Bono Law Alberta.●]

Pro bono work is not limited to litigation but includes a full range of legal activities including legal opinions and advice, drafting of documents, research, negotiations, involvement in law and legal policy reform, and community education.

2.2 Exclusions from Definition of Pro Bono Legal Services

The definition of pro bono legal services includes only traditional legal services; it does not include time devoted to activities such as service on a board of directors or similar governing or advisory body of a not-for-profit organization, service to bar associations and other such organizations or lecturing on legal issues. Legal services performed with the expectation of receiving legal fees in a future matter for the same or a related client also do not qualify, nor does providing legal services on a contingency fee basis.

While the following legal services might in some circumstances fit the definition of pro bono legal services in section 2.1, the Firm has decided, as a matter of policy, to decline representation on a pro bono basis in the following circumstances:

- (a) legal services provided for lawyers, staff members or other employees of the Firm or their family members, or for employees of a paying client of the Firm;
- (b) disputes between rival groups seeking to control a not-for-profit organization; and
- (c) legal services that are otherwise covered by legal aid.

3. Treatment of Pro Bono Work Within the Firm

3.1 General Principle

A successful pro bono program requires the steady support of management, and policies that support and encourage lawyers, paralegals and other employees who serve pro bono clients. In turn, lawyers, paralegals and other employees who work on pro bono matters must treat our pro bono clients as they would all other clients by providing excellent service that meets the highest ethical and professional standards, and that is performed in an efficient manner.

3.2 Participation in Pro Bono Matters

While participation in the Firm's pro bono program is not mandatory, all personnel are strongly encouraged to participate in pro bono matters to the extent their skills can be utilized to serve the interests of an approved pro bono client.

- (a) Lawyers: While the participation in any individual pro bono matter is voluntary, the Firm encourages every lawyer to participate actively in the Firm's pro bono program by representing clients directly, providing necessary expertise on pro bono legal matters, or supervising junior lawyers working on pro bono matters.
- (b) Non-lawyers: Paralegals and other employees are encouraged to work on pro bono matters to the extent they can assist in the matter with appropriate supervision. Lawyers are encouraged to find appropriate roles for participating non-lawyers on pro bono matters.

3.3 Firm Recognition of Pro Bono Work

Up to (*Insert Hours*) hours of approved pro bono work annually will count as billable time in evaluating partner and associate performance and paying partner and associate bonuses (where applicable).

It is the responsibility of all lawyers to consult with their (*Insert Title*) in advance if they expect to spend more than (*Insert Hours*) hours on pro bono work in a year. If a lawyer would like to spend more than (*Insert Hours*) hours on pro bono work and would like to include those additional hours as billable hours, they must receive written permission from the PBC for the first (*Insert Hours*) additional hours. For any hours over and above this, written permission must be received from the (*Insert Title*).

3.4 Staffing and Supervision of Pro Bono Matters

Pro bono matters are to be given the same level of staffing and supervision as any other legal matter that the Firm undertakes, with appropriate consideration to the experience of the lawyers, the complexity of the matter, and the time to be spent on the matter.

A lawyer seeking approval of a pro bono matter should obtain approval of the staffing of the matter from the (*Insert Title*).

Supervisors on pro bono matters are expected to provide guidance and close supervision of the supervised lawyers or paralegals, and to provide substantive reviews where appropriate.

A partner (who may also serve as the direct supervisor) should serve as the billing lawyer on each pro bono matter, and review pro forma billing statements on a monthly basis to ensure that the time and

expenses devoted to the pro bono matter are appropriate. The billing partner should also ensure that the matter continues to be staffed adequately in the event a lawyer working on the matter leaves the Firm.

3.5 Addressing Pro Bono Expectations in the Hiring Process

Pro bono service is an integral part of the Firm's practice. The Firm's commitment to pro bono work should be emphasized throughout the hiring process. Pro bono service should be discussed when interviewing any job applicant. Each new lawyer and paralegal shall be given a copy of the Firm's Pro Bono Policy and encouraged to meet with the chair of the Pro Bono Committee to discuss his or her specific areas of interest. Summer associates are expected to participate in pro bono matters.

4. Administering the Pro Bono Program

4.1 Pro Bono Committee

The Pro Bono Committee will administer the Firm's pro bono program and have general authority and responsibility for the supervision of the Firm's pro bono work.

4.2 Pro Bono Committee Membership

The Pro Bono Committee ("PBC") will consist of the following individuals:

- (a) a partner appointed as the Chair of the PBC by the *(Insert Title)*; and
- (b) at least *(Insert Number)* partners and *(Insert Number)* associates appointed by the Chair of the PBC.

4.3 Duties of the PBC

The role of the PBC will be to encourage and promote pro bono work. Among other things, the PBC will have responsibility for the following tasks:

- (a) developing annual budgets for the Firm's pro bono activities in conjunction with the *(Insert Title)*;
- (b) developing appropriate oversight and audit procedures to ensure that time is productively expended on pro bono matters and developing appropriate procedures to manage and control expenses related to pro bono matters; and
- (c) acting as a repository of information regarding pro bono opportunities and identifying new pro bono opportunities;
- (d) fostering relationships with pro bono resource centres, legal service providers and human rights and civil rights organizations that can attract, screen and refer potential pro bono matters;
- (e) investigating whether there are opportunities to develop "partnering" relationships with the legal departments of one or more of the Firm's corporate clients to provide pro bono legal services;
- (f) coordinating and encouraging work on pro bono matters, including assistance in arranging staffing and supervision of pro bono matters;

- (g) reviewing and approving proposed pro bono matters (including any arrangements relating to expenses for which approval by the PBC is required) and, when needed, helping identify supervisors with appropriate expertise for proposed pro bono matters;
- (h) assisting the appropriate personnel to determine whether proposed pro bono matters will generate any conflicts or questions of appearance of conflict, monitoring potential conflicts and assisting the appropriate personnel to deal with any conflicts or questions of appearance of conflict that may arise after a representation has been undertaken;
- (i) work to identify and recognize exceptional pro bono contributions from associates and partners in the Firm;
- (j) promote and publicize the Firm's commitment to pro bono work;
- (k) reviewing and recommending amendments to the Firm's pro bono policy and procedures from time to time as appropriate and establishing criteria for approving proposed pro bono matters from time to time as appropriate;
- (l) reporting to the *(Insert Title)* annually on the Firm's pro bono activities, including a report on the amount of the Firm's resources in terms of billable and non-billable hours, support staff and expenses that are contributed to pro bono activities and an analysis of deviations from budget of such amounts; and
- (m) reporting to Pro Bono Law Alberta annually the amount and nature of pro bono work undertaken by the Firm in the preceding year.

5. The Process for Taking on a Pro Bono Case

5.1 Approval of Pro Bono Matters

It is recognized that lawyers in the Firm are currently involved in pro bono matters. It is expected that such lawyers will advise the PBC of these matters for record keeping purposes.

Approval by the PBC is required to act on a proposed new pro bono matter. There is a general principle against retro-active approvals of pro bono matters, as a safeguard against lawyers taking on pro bono matters without approval which are later declined.

5.2 Sources of New Pro Bono Matters

Lawyers are welcome to bring pro bono clients to the Firm. The Firm will also seek out and maintain connections with appropriate organizations in the community, explaining the Firm's pro bono policy and inviting requests for pro bono services. These organizations are usually frontline agencies such as an existing pro bono program, community organization or legal aid clinic, that are able to identify cases and issues of real need and merit. They can also help determine whether or not a client could afford to pay for their own representation and whether there is an alternative way of having the matter dealt with.

Regardless of the manner of referral to the program, all files are to be assessed and approved in the same way as for any other pro bono client and according to the same criteria.

5.3 Conflicts Check

A conflicts check must be completed before seeking approval of a proposed pro bono matter.

As with any other matter, the Firm cannot act on any pro bono matter that presents an ethical conflict with an existing or former client. Before any pro bono representation is submitted for approval, the responsible lawyer must ensure that a full conflicts check is completed and that any waivers, if appropriate, are signed.

If, for some reason, an unforeseen conflict arises after a representation has been undertaken, the responsible lawyer should immediately identify the conflict to the PBC.

5.4 Pro Bono Authorization Request

A lawyer seeking approval of a pro bono matter must give the PBC a written Pro Bono Authorization Request. This request shall include information on a completed conflicts check, description of the issue, background information on the proposed client, expected disbursements, estimation of hours to be spent on the file, and office resources to be utilized. Before any agreement is made to act on the matter, the Pro Bono Authorization Request must be approved by the PBC

The PBC will review the Pro Bono Authorization Request to determine whether the proposed matter is consistent with the Firm's Pro Bono Policy, whether the proposed allocation of hours and expenses is an appropriate use of the Firm's pro bono resources and will further the goals of its pro bono program, and whether there are any reasons why the matter may not be in the Firm's best interests.

All Firm resources are available to a lawyer working on a pro bono case. However, the lawyer is expected to discuss costs and other implications with the PBC when the draw on assistant time, long distance costs or photocopying charges are likely to exceed a minimal level.

If a proposed pro bono matter is expected to involve substantial work, the PBC will consult with the (*Insert Title*) to determine whether there are any reasons why the matter may not be in the Firm's best interests.

The PBC may consult with the (*Insert Title*) in order to determine whether the proposed pro bono matter is appropriate in light of the responsible lawyer's and the Firm's work load, the responsible lawyer's career development, and the expertise required.

5.5 File Opening for Pro Bono Matters

Upon approving a Pro Bono Authorization Request, the (*Insert Title*) of the PBC shall prepare a Pro Bono Authorization Memo outlining the parameters of the pro bono matter and give it to the lawyer responsible for the matter.

Once a Pro Bono Authorization Request is approved by the PBC, the responsible lawyer should complete the Firm's standard file opening request form. A copy of the Pro Bono Authorization Memo shall be submitted to (*Insert Title*) with the file opening request form.

5.6 Pro Bono Client and Matter Numbers

Normal client numbers should be used for individual pro bono clients or the pro bono referral organization, as the case may be. When the Firm establishes a relationship with a new pro bono referral

organization, a new client number should be used to open a general file to enable tracking of all referrals from that organization, which should be opened as new matter numbers under that client number. Also, the general matter number can be used for time spent training or evaluating cases referred by that organization.

Whenever a file is opened for a pro bono client, the file should be coded with the client and matter type (*Insert Name*) to enable tracking of all time spent for pro bono clients.

Time on pro bono client matters will be recorded as billable or non-billable as provided in section 3.3. Disbursements shall be recorded as billable unless specific authorization has been received from the PBC.

A general client number should be used to track general pro bono time that is not recorded under a specific pro bono matter number.

6. Quality and Scope of Pro Bono Representation

6.1 General Principle

The Firm promises its pro bono clients the same quality of exceptional service that it endeavours to provide to every client. Pro bono matters should be given the same priority as matters for paying clients when allocating time and resources.

Pro bono matters should be limited in scope to the particular issue at hand; except in cases of certain approved representations of not-for-profit organizations, the Firm should not act as “general counsel” to a pro bono client. In some cases, it may be appropriate to limit the scope of a potential representation by providing specific assistance to the organization that represents the client rather than representing the client directly.

6.2 Engagement Letters

Before any pro bono representation commences, the client must sign a pro bono engagement letter substantially in the form prescribed by the PBC.

The engagement letter shall clearly explain the scope of and potential termination of the representation, allocate responsibility for expenses, and include waivers of future conflicts, as appropriate.

For clients who are not competent to sign an engagement letter (e.g., a young child), the engagement letter should be signed by the client’s guardian, if available, as long as the guardian is not an actual or potential adverse party. If the client is a child who is competent to sign the letter and who has no unconflicted guardian available to do so, then the letter should be tailored to ensure that the client understands the terms of the representation.

6.3 Fees and Expenses for Approved Pro Bono Matters

The Firm does not expect to be paid any fees for legal services on a pro bono file.

To the extent possible, a pro bono client should bear the burden of out-of-pocket expenses in order to ensure that the client has an appropriate investment in the outcome of the case and so that the Firm’s pro bono resources are available to assist other clients. Nonetheless, the fact that a pro bono client cannot afford to bear the expenses in connection with a representation should not interfere with the Firm discharging its professional responsibilities. In all cases, lawyers should make use of procedures and

services that reduce expenses without reducing the quality of the legal services provided. Any arrangement for a pro bono client to forego the payment of out-of-pocket expenses in whole or in part is subject to the approval by the PBC as part of the approval process.

- (a) Expenses related to the representation: In appropriate circumstances described below, where the pro bono client cannot pay for part or all of the expenses relating to the representation, the Firm will bear the burden of such expenses. However, the Firm will not pay expenses for the client that are not closely related to the representation, such as living expenses or other monetary assistance paid directly to the client or the client's family, nor will the Firm pay penalties or fines levied on the client.

Low income individuals should not be asked to pay for the Firm's routine office expenses, such as copying, printing, faxes, phone, mailing and messenger fees, to the extent those costs are necessary to the representation. Except in those cases where low income individuals cannot pay for any expenses whatsoever, they should be expected to pay, either in full or in part, filing fees and other out-of-pocket expenses.

Not-for-profit organizations typically should not be asked to pay for the Firm's routine office expenses, such as copying, faxes, phone, mailing and messenger fees, to the extent those costs are necessary to the representation. The Firm will not pay for copying and other office expenses that are part of the normal operating expenses of the not-for-profit organization. Other out-of-pocket expenses, such as filing or licensing fees, typically should be paid by the not-for-profit organization, as long as the payment of such costs will not substantially interfere with the organization's mission.

- (b) Experts and professional fees: Experts and other professionals retained to provide services for a pro bono matter should be expected to provide their services either for free or at a reduced fee to the extent possible and customary without compromising the representation. If professional fees to be paid by the Firm are expected to be greater than \$(*Insert Cost*) for a matter, but less than \$(*Insert Cost*), approval by a member of the PBC is required before the Firm commits to such an expenditure. If professional fees to be paid by the Firm are expected to be greater than \$(*Insert Cost*) for a matter, but less than \$(*Insert Cost*), advance approval by the Chair of the PBC is required. The (*Insert Title*) must approve any such expenditures expected to be greater than \$(*Insert Cost*).
- (c) Travel expenses: Unreimbursed travel expenses in pro bono matters should be kept to a minimum; lawyers should seek lower-cost alternatives to travel where appropriate, such as video-conferences. To the extent that travel is necessary for the representation of a pro bono client, any trip that is expected to cost more than \$(*Insert Cost*) should be approved in advance by the PBC except in cases where the client has agreed to pay such expenses.

6.4 Billing Statements for Pro Bono Clients

Each month a pro forma billing statement for each active pro bono matter will be sent to the billing lawyer and the Chair of the PBC, who shall decide collectively on whether to issue an account.

Generally, monthly statements describing the work completed and time expended on behalf of the client, including unbilled legal fees, should be sent to not-for-profit organization clients. Legal service providers may also request that the Firm inform them of total hours and unbilled fees worked on behalf of clients referred by them; in such event, if appropriate, a statement disclosing time and unbilled fees in the aggregate may be sent but such information should not include a description of work performed in order

to protect the lawyer-client privilege. Except in unusual cases, low income individual clients should not be sent bills disclosing unbilled fees.

To the extent a pro bono client has agreed to pay expenses, a statement of such expenses should be sent to the client on a monthly basis, or when otherwise appropriate, for payment.

6.5 Closure of Pro Bono Matters

Once the matter described in the engagement letter has been completed and no further work is expected, the responsible lawyer should send the client a letter stating that the matter is closed, and the pro bono matter shall be administratively closed.

7. Evaluation of Program and Amendment of Policy

7.1 Review of Pro Bono Policy

This Policy will be reviewed (*Insert Frequency*) by the members of the PBC to ensure that it is effectively allowing, encouraging and supporting the members of the Firm to conduct pro bono work.

7.2 Approval and Amendment of Pro Bono Policy

This Policy was approved by (*Insert Title*) on (*Insert Date*).

This Policy may be amended by (*Insert Title*) from time to time on the recommendation of the PBC.

A copy of the Firm's Pro Bono Policy shall be circulated to all staff to increase awareness of the program. As well, whenever changes to the Policy are made, the amended Policy shall be circulated to all staff.

Appendix C:

Sample Pro Bono Policy for Larger Law Firms With Multiple Offices

This sample pro bono policy is provided as a template that may be used by a larger law firm with multiple offices in preparing its own pro bono policy. As such, the sample policy is intended as a precedent to be modified in accordance with the firm's vision for its pro bono program as well as the firm's administrative structure. To that end, the sample policy includes prompts where specific information is to be inserted: for example, the number of volunteer hours in section 3.3, the title of responsible persons or groups in sections 3.3, 3.4, 4.2, 4.3, 4.5, 5.4, 5.5, 6.3 and 7.2, the naming convention for pro bono files in section 5.6, cost thresholds in section 6.3, and the frequency of review of the pro bono policy in section 7.1. As with any precedent, the user is encouraged to modify the sample policy as required to fit the circumstances.

1. Purpose of (Firm Name)'s Pro Bono Program

(Insert Firm Name) (the “**Firm**”) recognizes the difficulties that some members of our society have in accessing the justice system to address their legal problems. As lawyers we are in a unique position to assist them. The legal profession possesses skills and abilities that allow us to serve the disadvantaged and promote the public interest in ways that no other profession can. The Firm recognizes its special obligation to assist our lawyers as they endeavour to serve the community.

The purpose of this Policy is to ensure the continuity of the Firm's tradition of community support through the provision of pro bono legal services. Consistent with that tradition, the Firm strongly supports the creation of a formal pro bono program. This program will not serve to limit a lawyer's pro bono work; rather, it will recognize and formalize the strong tradition of exceptional community contributions that the Firm is known for by tracking pro bono contributions and recognizing them in evaluating and compensating the Firm's lawyers.

The goal of the Firm's pro bono program is to endorse and encourage lawyers, paralegals and other employees to participate in pro bono matters and provide free legal services in our communities in a manner consistent with the overall obligation to make certain that all work is timely completed in a professional manner. It also is essential that there is close coordination of pro bono work to avoid conflicts of interest and to make certain that work is properly done.

The phrase “pro bono” is derived from “pro bono publico”, which means “for the public good.” Our free legal services strengthen our communities. Pro bono work also provides great personal and professional satisfaction to the lawyers involved and increases their awareness of the diversity in their communities. In addition, the Firm itself obtains many benefits from such work, such as (i) enhancing its image in the community and helping to improve society's view of lawyers and the legal profession in general, (ii) strengthening recruitment of top associates who are interested in the social contribution of law, (iii) providing junior lawyers with opportunities both for excellent training and to conduct their own matters with their own clients, (iv) enhancing associate morale by allowing junior lawyers to become more involved in their communities, and (v) providing opportunities for mature lawyers approaching retirement to be involved with charitable endeavours.

While this Policy recognizes various categories of pro bono work, it is designed particularly to encourage involvement in providing legal services to disadvantaged and low income individuals and organizations that serve the community by providing services to disadvantaged and low income individuals.

2. Qualification for Pro Bono Legal Services

2.1 Definition of Pro Bono Legal Services

For purposes of this Policy, and without intending to preclude the ability to make flexible case-by-case determinations consistent with the spirit of the Firm’s pro bono program, the term “pro bono legal services” refers to activities of the Firm undertaken normally without expectation of legal fees and consisting of the delivery of the following legal services:

- (a) providing legal advice and/or representation to a client of limited means in civil and criminal matters to ensure access to the courts, the legal system and legal services regardless of the ability to pay;
- (b) providing legal advice and/or representation to a client of limited means whose case raises a wider issue of public interest;
- (c) delivering community legal education;
- (d) providing legal advice and/or representation to charitable, not-for-profit and community organizations; and
- (e) providing alternative dispute resolution, mediation or preventative law services to low income clients or the communities that serve them.

[●Note to draft: This definition follows the Pro Bono Menu model described in *Investing in Pro Bono: A Best Practice Guide for Pro Bono Legal Services by Law Firms* of Pro Bono Law Alberta.●]

Pro bono work is not limited to litigation but includes a full range of legal activities including legal opinions and advice, drafting of documents, research, negotiations, involvement in law and legal policy reform, and community education.

2.2 Exclusions from Definition of Pro Bono Legal Services

The definition of pro bono legal services includes only traditional legal services; it does not include time devoted to activities such as service on a board of directors or similar governing or advisory body of a not-for-profit organization, service to bar associations and other such organizations or lecturing on legal issues. Legal services performed with the expectation of receiving legal fees in a future matter for the same or a related client also do not qualify, nor does providing legal services on a contingency fee basis.

While the following legal services might in some circumstances fit the definition of pro bono legal services in section 2.1, the Firm has decided, as a matter of policy, to decline representation on a pro bono basis in the following circumstances:

- (a) legal services provided for lawyers, staff members or other employees of the Firm or their family members, or for employees of a paying client of the Firm;
- (b) disputes between rival groups seeking to control a not-for-profit organization; and
- (c) legal services that are otherwise covered by legal aid.

3. Treatment of Pro Bono Work Within the Firm

3.1 General Principle

A successful pro bono program requires the steady support of management, and policies that support and encourage lawyers, paralegals and other employees who serve pro bono clients. In turn, lawyers, paralegals and other employees who work on pro bono matters must treat our pro bono clients as they would all other clients by providing excellent service that meets the highest ethical and professional standards, and that is performed in an efficient manner.

3.2 Participation in Pro Bono Matters

While participation in the Firm's pro bono program is not mandatory, all personnel are strongly encouraged to participate in pro bono matters to the extent their skills can be utilized to serve the interests of an approved pro bono client.

- (a) Lawyers: While the participation in any individual pro bono matter is voluntary, the Firm encourages every lawyer to participate actively in the Firm's pro bono program by representing clients directly, providing necessary expertise on pro bono legal matters, or supervising junior lawyers working on pro bono matters.
- (b) Non-lawyers: Paralegals and other employees are encouraged to work on pro bono matters to the extent they can assist in the matter with appropriate supervision. Lawyers are encouraged to find appropriate roles for participating non-lawyers on pro bono matters.

3.3 Firm Recognition of Pro Bono Work

Up to (*Insert Hours*) hours of approved pro bono work annually will count as billable time in evaluating partner and associate performance and paying partner and associate bonuses (where applicable).

It is the responsibility of all lawyers to consult with their (*Insert Title*) in advance if they expect to spend more than (*Insert Hours*) hours on pro bono work in a year. If a lawyer would like to spend more than (*Insert Hours*) hours on pro bono work and would like to include those additional hours as billable hours, they must receive written permission from the Local Pro Bono Committee for the first (*Insert Hours*) additional hours. For any hours over and above this, written permission must be received from the National Pro Bono Committee.

3.4 Staffing and Supervision of Pro Bono Matters

Pro bono matters are to be given the same level of staffing and supervision as any other legal matter that the Firm undertakes, with appropriate consideration to the experience of the lawyers, the complexity of the matter, and the time to be spent on the matter.

A lawyer seeking approval of a pro bono matter should obtain approval of the staffing of the matter from the (*Insert Title*) of each Practice Group that is expected to do a substantial portion of the work.

Supervisors on pro bono matters are expected to provide guidance and close supervision of the supervised lawyers or paralegals, and to provide substantive reviews where appropriate.

A partner (who may also serve as the direct supervisor) should serve as the billing lawyer on each pro bono matter, and review pro forma billing statements on a monthly basis to ensure that the time and expenses devoted to the pro bono matter are appropriate. The billing partner should also ensure that the matter continues to be staffed adequately in the event a lawyer working on the matter leaves the Firm.

3.5 Addressing Pro Bono Expectations in the Hiring Process

Pro bono service is an integral part of the Firm's practice. The Firm's commitment to pro bono work should be emphasized throughout the hiring process. Pro bono service should be discussed when interviewing any job applicant. Each new lawyer and paralegal shall be given a copy of the Firm's Pro Bono Policy and encouraged to meet with the chair of the Local Pro Bono Committee to discuss his or her specific areas of interest. Summer associates are expected to participate in pro bono matters.

4. Administering the Pro Bono Program

4.1 Pro Bono Committees

A National Pro Bono Committee together with Local Pro Bono Committees will administer the Firm's pro bono program and have general authority and responsibility for the supervision of the Firm's pro bono work.

4.2 National Pro Bono Committee Membership

The National Pro Bono Committee ("NPBC") will consist of the following individuals:

- (a) a partner appointed as the Chair of the NPBC by the *(Insert Title)*;
- (b) at least two partners and two associates appointed by the Chair of the NPBC; and
- (c) the chair of each of the Local Pro Bono Committees, who may be counted against the required number of lawyers in section 4.2(b).

4.3 Local Pro Bono Committee Membership

A Local Pro Bono Committee ("LPBC") shall be established for each local office. Each LPBC shall consist of the following individuals:

- (a) a lawyer appointed as the Chair of the LPBC by the *(Insert Title)*;
- (a) a partner appointed by the *(Insert Title)*; and
- (b) at least two associates appointed by the *(Insert Title)* of the local office.

4.4 Duties of Both the NPBC and the LPBCs

The role of the NPBC and the LPBCs will be to encourage and promote pro bono work. Among other things, both the NPBC and the LPBCs will have responsibility for the following tasks:

- (a) acting as a repository of information regarding pro bono opportunities and identifying new pro bono opportunities;
- (b) fostering relationships with pro bono resource centres, legal service providers and human rights and civil rights organizations that can attract, screen and refer potential pro bono matters;
- (c) investigating whether there are opportunities to develop "partnering" relationships with the legal departments of one or more of the Firm's corporate clients to provide pro bono legal services;

- (d) work to identify and recognize exceptional pro bono contributions from associates and partners in the Firm; and
- (e) promote and publicize the Firm's commitment to pro bono work.

4.5 Duties of the NPBC

The NPBC will have responsibility for the following tasks:

- (a) reviewing and recommending amendments to the Firm's Pro Bono Policy and procedures from time to time as appropriate and establishing criteria for approving proposed pro bono matters from time to time as appropriate;
- (b) developing annual budgets for the Firm's pro bono activities in conjunction with the *(Insert Title(s))*;
- (c) drafting appropriate request forms for use in the Firm's pro bono program;
- (d) developing appropriate oversight and audit procedures to ensure that time is productively expended on pro bono matters and developing appropriate procedures and services to manage and control expenses related to pro bono matters;
- (e) reporting to the *(Insert Title(s))* annually on the Firm's pro bono activities, including a report on the amount of the Firm's resources in terms of billable and non-billable hours, support staff and expenses that are contributed to pro bono activities and an analysis of deviations from budget of such amounts; and
- (f) reporting to Pro Bono Law Alberta annually the amount and nature of pro bono work undertaken by the Firm in the preceding year.

4.6 Duties of the LPBCs

The LPBCs will have responsibility for the following tasks:

- (a) coordinating and encouraging work on pro bono matters, including assistance in arranging staffing and supervision of pro bono matters;
- (b) reviewing and approving proposed pro bono matters (including any arrangements relating to expenses for which approval by the LPBC is required) and, when needed, helping identify supervisors with appropriate expertise for proposed pro bono matters;
- (c) assisting the appropriate personnel to determine whether proposed pro bono matters will generate any conflicts or questions of appearance of conflict, monitoring potential conflicts and assisting the appropriate personnel to deal with any conflicts or questions of appearance of conflict that may arise after a representation has been undertaken; and
- (d) reporting to the NPBC annually on the local office's pro bono activities, including a report on the amount of the Firm's resources in terms of billable and non-billable hours, support staff and expenses that are contributed to pro bono activities and an analysis of deviations from budget of such amounts.

5. The Process for Taking on a Pro Bono Case

5.1 Approval of Pro Bono Matters

It is recognized that lawyers in the Firm are currently involved in pro bono matters. It is expected that such lawyers will advise the LPBC of these matters for record keeping purposes.

Approval by the LPBC is required to act on a proposed new pro bono matter. There is a general principle against retro-active approvals of pro bono matters, as a safeguard against lawyers taking on pro bono matters without approval which are later declined.

5.2 Sources of New Pro Bono Matters

Lawyers are welcome to bring pro bono clients to the Firm. The Firm will also seek out and maintain connections with appropriate organizations in the community, explaining the Firm's pro bono policy and inviting requests for pro bono services. These organizations are usually frontline agencies such as an existing pro bono program, community organization or legal aid clinic, that are able to identify cases and issues of real need and merit. They can also help determine whether or not a client could afford to pay for their own representation and whether there is an alternative way of having the matter dealt with.

Regardless of the manner of referral to the program, all files are to be assessed and approved in the same way as for any other pro bono client and according to the same criteria.

5.3 Conflicts Check

A conflicts check must be completed before seeking approval of a proposed pro bono matter.

As with any other matter, the Firm cannot act on any pro bono matter that presents an ethical conflict with an existing or former client. Before any pro bono representation is submitted for approval, the responsible lawyer must ensure that a full conflicts check is completed and that any waivers, if appropriate, are signed.

If, for some reason, an unforeseen conflict arises after a representation has been undertaken, the responsible lawyer should immediately identify the conflict to the LPBC.

5.4 Pro Bono Authorization Request

A lawyer seeking approval of a pro bono matter must give the LPBC a written Pro Bono Authorization Request. This request shall include information on a completed conflicts check, description of the issue, background information on the proposed client, expected disbursements, estimation of hours to be spent on the file, and office resources to be utilized. Before any agreement is made to act on the matter, the Pro Bono Authorization Request must be approved by the LPBC.

The LPBC will review the Pro Bono Authorization Request to determine whether the proposed matter is consistent with the Firm's Pro Bono Policy, whether the proposed allocation of hours and expenses is an appropriate use of the Firm's pro bono resources and will further the goals of its pro bono program, and whether there are any reasons why the matter may not be in the Firm's best interests.

All Firm resources are available to a lawyer working on a pro bono case. However, the lawyer is expected to discuss costs and other implications with the LPBC when the draw on assistant time, long distance costs or photocopying charges are likely to exceed a minimal level.

If a proposed pro bono matter is expected to involve substantial work, the LPBC will consult with the (*Insert Title*) in the local office to determine whether there are any reasons why the matter may not be in that office's best interests.

The LPBC may consult with the relevant (*Insert Title*) in order to determine whether the proposed pro bono matter is appropriate in light of the responsible lawyer's and the Firm's work load, the responsible lawyer's career development, and the expertise required.

5.5 File Opening for Pro Bono Matters

Upon approving a Pro Bono Authorization Request, the (*Insert Title*) of the LPBC shall prepare a Pro Bono Authorization Memo outlining the parameters of the pro bono matter and give it to the lawyer responsible for the matter.

Once a Pro Bono Authorization Request is approved by the LPBC, the responsible lawyer should complete the Firm's standard file opening request form. A copy of the Pro Bono Authorization Memo shall be submitted to (*Insert Title*) with the file opening request form.

5.6 Pro Bono Client and Matter Numbers

Normal client numbers should be used for individual pro bono clients or the pro bono referral organization, as the case may be. When the Firm establishes a relationship with a new pro bono referral organization, a new client number should be used to open a general file to enable tracking of all referrals from that organization, which should be opened as new matter numbers under that client number. Also, the general matter number can be used for time spent training or evaluating cases referred by that organization.

Whenever a file is opened for a pro bono client, the file should be coded with the client and matter type (*Insert Name*) to enable tracking of all time spent for pro bono clients.

Time on pro bono client matters will be recorded as billable or non-billable as provided in section 3.3. Disbursements shall be recorded as billable unless specific authorization has been received from the LPBC.

A general client number should be used to track general pro bono time that is not recorded under a specific pro bono matter number.

6. Quality and Scope of Pro Bono Representation

6.1 General Principle

The Firm promises its pro bono clients the same quality of exceptional service that it endeavours to provide to every client. Pro bono matters should be given the same priority as matters for paying clients when allocating time and resources.

Pro bono matters should be limited in scope to the particular issue at hand; except in cases of certain approved representations of not-for-profit organizations, the Firm should not act as "general counsel" to a pro bono client. In some cases, it may be appropriate to limit the scope of a potential representation by providing specific assistance to the organization that represents the client rather than representing the client directly.

6.2 Engagement Letters

Before any pro bono representation commences, the client must sign a pro bono engagement letter substantially in the form prescribed by the NPBC.

The engagement letter shall clearly explain the scope of and potential termination of the representation, allocate responsibility for expenses, and include waivers of future conflicts, as appropriate.

For clients who are not competent to sign an engagement letter (e.g., a young child), the engagement letter should be signed by the client's guardian, if available, as long as the guardian is not an actual or potential adverse party. If the client is a child who is competent to sign the letter and who has no unconflicted guardian available to do so, then the letter should be tailored to ensure that the client understands the terms of the representation.

6.3 Fees and Expenses for Approved Pro Bono Matters

The Firm does not expect to be paid any fees for legal services on a pro bono file.

To the extent possible, a pro bono client should bear the burden of out-of-pocket expenses in order to ensure that the client has an appropriate investment in the outcome of the case and so that the Firm's pro bono resources are available to assist other clients. Nonetheless, the fact that a pro bono client cannot afford to bear the expenses in connection with a representation should not interfere with the Firm discharging its professional responsibilities. In all cases, lawyers should make use of procedures and services that reduce expenses without reducing the quality of the legal services provided. Any arrangement for a pro bono client to forego the payment of out-of-pocket expenses in whole or in part is subject to the approval by the LPBC as part of the approval process.

- (a) Expenses related to the representation: In appropriate circumstances described below, where the pro bono client cannot pay for part or all of the expenses relating to the representation, the Firm will bear the burden of such expenses. However, the Firm will not pay expenses for the client that are not closely related to the representation, such as living expenses or other monetary assistance paid directly to the client or the client's family, nor will the Firm pay penalties or fines levied on the client.

Low income individuals should not be asked to pay for the Firm's routine office expenses, such as copying, printing, faxes, phone, mailing and messenger fees, to the extent those costs are necessary to the representation. Except in those cases where low income individuals cannot pay for any expenses whatsoever, they should be expected to pay, either in full or in part, filing fees and other out-of-pocket expenses.

Not-for-profit organizations typically should not be asked to pay for the Firm's routine office expenses, such as copying, faxes, phone, mailing and messenger fees, to the extent those costs are necessary to the representation. The Firm will not pay for copying and other office expenses that are part of the normal operating expenses of the not-for-profit organization. Other out-of-pocket expenses, such as filing or licensing fees, typically should be paid by the not-for-profit organization, as long as the payment of such costs will not substantially interfere with the organization's mission.

- (b) Experts and professional fees: Experts and other professionals retained to provide services for a pro bono matter should be expected to provide their services either for free or at a reduced fee to the extent possible and customary without compromising the representation. If professional fees to be paid by the Firm are expected to be greater than \$(*Insert Cost*) for a matter, but less than

\$(*Insert Cost*), approval by a member of the LPBC is required before the Firm commits to such an expenditure. If professional fees to be paid by the Firm are expected to be greater than \$(*Insert Cost*) for a matter, but less than \$(*Insert Cost*), advance approval by the Chair of the LPBC is required. The (*Insert Title*) must approve any such expenditures expected to be greater than \$(*Insert Cost*).

- (c) Travel expenses: Unreimbursed travel expenses in pro bono matters should be kept to a minimum; lawyers should seek lower-cost alternatives to travel where appropriate, such as video-conferences. To the extent that travel is necessary for the representation of a pro bono client, any trip that is expected to cost more than \$(*Insert Cost*) should be approved in advance by the LPBC except in cases where the client has agreed to pay such expenses.

6.4 Billing Statements for Pro Bono Clients

Each month a pro forma billing statement for each active pro bono matter will be sent to the billing lawyer and the Chair of the LPBC, who shall decide collectively on whether to issue an account.

Generally, monthly statements describing the work completed and time expended on behalf of the client, including unbilled legal fees, should be sent to not-for-profit organization clients. Legal service providers may also request that the Firm inform them of total hours and unbilled fees worked on behalf of clients referred by them; in such event, if appropriate, a statement disclosing time and unbilled fees in the aggregate may be sent but such information should not include a description of work performed in order to protect the lawyer-client privilege. Except in unusual cases, low income individual clients should not be sent bills disclosing unbilled fees.

To the extent a pro bono client has agreed to pay expenses, a statement of such expenses should be sent to the client on a monthly basis, or when otherwise appropriate, for payment.

6.5 Closure of Pro Bono Matters

Once the matter described in the engagement letter has been completed and no further work is expected, the responsible lawyer should send the client a letter stating that the matter is closed, and the pro bono matter shall be administratively closed.

7. Evaluation of Program and Amendment of Policy

7.1 Review of Pro Bono Policy

This Policy will be reviewed (*Insert Frequency*) by the members of the NPBC to ensure that it is effectively allowing, encouraging and supporting the members of the Firm to conduct pro bono work.

7.2 Approval and Amendment of Pro Bono Policy

This Policy was approved by (*Insert Title*) on (*Insert Date*).

This Policy may be amended by (*Insert Title*) from time to time on the recommendation of the NPBC.

A copy of the Firm's Pro Bono Policy shall be circulated to all staff to increase awareness of the program. As well, whenever changes to the Policy are made, the amended Policy shall be circulated to all staff.

Appendix D: Acknowledgements

Developing and maintaining access to pro bono services is a shared initiative among all members of the legal profession. Whatever their method and means of practice, lawyers throughout the ages have maintained an obligation to render legal services “pro bono publico”, which means “for the public good”. These initiatives of the legal profession freely cross all jurisdictional and institutional boundaries. Within this initiative is an element of collaboration. Whether it is through sharing knowledge, experience or legal work, pro bono efforts would not be possible without legal professionals coming together to work for the greater good.

This spirit of collaboration is evident in this publication, which would not have been possible without the shared support of the pro bono and legal communities. Many resources were utilized as sources of information, inspiration and collaboration for this work. These resources may also prove useful for those who wish to learn more about pro bono work and policies. Pro Bono Law Alberta would like to thank the authors of the following publications for their contributions to this body of work:

1. Canadian Bar Association, “The ABCs of Creating a Pro Bono Policy for Your Law Firm,” <http://www.cba.org/cba/practicelink/cs/probonopolICY.aspx> (13 May 2008).
2. Canadian Bar Association, “Sample National, Mid-Sized, and Small Pro Bono Policies,” Not Presently Available Online.
3. Corporate Pro Bono, “Pro Bono Program Development Guide,” <http://www.corporateprobono.org/archive/resources/resource1396.pdf>, (20 May 2008).
4. Law Society of British Columbia, “Pro Bono Publico- Lawyers Serving the Public Good in British Columbia,” http://www.lawsociety.bc.ca/publications_forms/report-committees/docs/ProBono_02-06.pdf, (13 May 2008).
5. Michigan Bar Association, “Law Firm Pro Bono Policy,” <https://www.michbar.org/programs/atj/pdfs/ModelProBonoPol03.pdf>, (20 May 2008).
6. National Pro Bono Resource Center, “Australian Pro Bono Manual,” http://www.nationalprobono.org.au/probonomanual/ProBono_Manual_01_a.htm, (13 May 2008).
7. National Pro Bono Resource Center, “Working Together: Multi-Tiered Pro Bono Relationships Between Law Firms and Community Legal Organizations,” <http://esvc000464.wic006u.server-web.com/publications/multitier.pdf>, (20 May 2008).
8. Pro Bono Law of B.C., “Best Practices for Pro Bono Delivery Programs in British Columbia,” http://probononet.bc.ca/content/pdf/Best_Practices.pdf, (20 May 2008).
9. Pro Bono Law Ontario, “Best Practices Guide for Law Firms,” http://www.lexmundi.com/images/lexmundi/PDF/ProBono/Blakes_ProBonoGuide.pdf, (13 May 2008).
10. Tennessee Bar Association, “Model Pro Bono Policy for Law Firms,” http://www.tba.org/committees/AcctoJus/atj_model_policy.doc, (20 May 2008).
11. Washington State Bar Association, “Proposed Model Pro Bono Policy for Lawyers,” <http://www.wsba.org/atj/documents/modelprobonopol.doc>, (14 May 2008).

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