

Pro Bono Practices and Opportunities in Ireland

Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions

September 2010

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Although conceptually it has long been a part of Irish legal culture, efforts to undertake *pro bono* work are typically piecemeal and *ad hoc*, most often as a response to noteworthy occurrences in society or as the outgrowth of an individual lawyer's strong sense of civic duty.¹

Pro bono in Ireland is just beginning to become an established part of the legal practice of solicitors and barristers; however, the Irish state has long supported an extensive system of criminal and civil legal aid which has mitigated, although certainly not fully met, the need for *pro bono* services.² The "gap" in *pro bono* legal services is in part met by voluntary organizations providing basic legal advice, but Ireland is a country where it is still fair to say that *pro bono* is in its infancy.

I. Legal Services and the Legal Profession in Ireland

Ireland is a common law jurisdiction, and as in many common law countries legal services are provided by two distinct groups: barristers and solicitors. Each branch of the legal profession is subject to its own governing body and has its own code of conduct and ethical standards.³ The Bar Council of Ireland governs barristers and the Law Society of Ireland governs solicitors.

A. The Role of Barristers

There are approximately 2,000 barristers in the Republic, with over 1,700 of those practicing in or around Dublin.⁴ Members of the Bar are split into categories of junior and senior counsel.⁵ The difference is largely a formal one: the Irish government appoints lawyers as "senior counsel" in recognition of their experience and the quality of their practice.

Public service has long been a tenet of the Bar Council, and it has always encouraged its members to take on worthy matters on a *pro bono* basis.⁶ However, barristers traditionally practice before the courts and do not deal directly with the public, instead relying on referrals from solicitors.⁷ Predictably, this system limits the types of *pro bono* matters in which they are involved as barristers work independently and concentrate on "providing an advisory and/or advocacy service for which [they are] 'briefed' by a solicitor or other body having direct professional access [in certain non-contentious matters]."⁸

¹ See, e.g., *What Counts? A Compilation of Queries and Answers*, The Law Firm Pro Bono Project, 2003, at 6; cf. John Costello, *Why we need a solicitor's pro bono scheme*, Law Society Gazette, August/September 1998, at 5-6, available at: <http://www.lawsociety.ie/Documents/Gazette/Gazette%201998/augustseptember1998.pdf> (defining "pro bono" practice as "legal work done without charge or at reduced cost, for members of the public with limited means, or for charitable and other non-profit making organizations").

² See Citizens Information Online, *Civil Legal Aid*, available at: http://www.citizensinformation.ie/categories/justice/legal-aid-and-advice/legal_aid_intro; *Criminal Legal Aid*, available at: <http://www.citizensinformation.ie/categories/justice/legal-aid-and-advice/criminal-legal-aid>.

³ See Bar Council of Ireland, *The Irish Bar – Aims and Objectives*, available at: <http://www.lawlibrary.ie/ViewDoc.asp?fn=/documents/aboutus/irishbar.asp&CatID=1&m=a>; Law Society of Ireland, *History and Functions*, available at: <http://www.lawsociety.ie>.

⁴ See *id.*

⁵ *Id.*

⁶ See *id.*

⁷ *Id.*

⁸ *Id.*

In September 2005, the Irish Bar Council enacted a “voluntary assistance” scheme whereby barristers could provide their services to non-governmental organizations (“NGOs”) working with members of the community who could not otherwise afford representation.⁹ Under this program, NGOs serve the referral function that would normally be filled by solicitors.¹⁰ The NGOs filter claims and brief barristers, who in turn provide advocacy and advisory representation to clients.¹¹ All areas of the law except family law are eligible for assistance.¹² The main areas of support include: housing issues, landlord and tenant issues, prison-related issues, and social welfare appeals.

B. The Role of Solicitors

There are more than 12,000 solicitors in Ireland.¹³ Solicitors deal directly with the public, but do not have a regulatory obligation to provide volunteer services.¹⁴ In the past, solicitors have provided *pro bono* services, but have done so on a limited basis. Solicitors’ professional conduct and practice is governed by the standards established by the Law Society of Ireland.¹⁵ Solicitors are qualified to appear before a number of Irish courts, but the majority of their practice—*i.e.*, negotiating and facilitating transactions, “briefing” barristers, and providing legal opinions—is typically conducted outside the courts.¹⁶

There are no statutory restrictions on providing *pro bono* services contained in the laws regulating solicitors¹⁷ and the profession’s ethical regulations do not contain the mandated fee schedules that have frustrated *pro bono* development in other EU countries.¹⁸ Further, the regulations governing advertising by Irish solicitors do not bar the publication of information regarding prices or free services.¹⁹ During 2006, the Solicitors Acts 1954 to 2002 (Independent Law Centers) Regulations 2006 (SI No. 103 of 2006) were introduced, in order to regularize the previously anomalous position of solicitors working for registered charities providing legal services free of charge. This group, widely acknowledged as serving important, but otherwise unmet needs for legal services by disadvantaged groups of people, is discussed below.

While the Law Society has begun efforts to form relationships with NGOs and legal service providers to encourage participation by mid- to large-sized firms of solicitors,²⁰ these

⁹ See *The Irish Bar Council’s Voluntary Assistance Scheme*, available at: http://www.lawlibrary.ie/docs/The_Bar_Councils_Voluntary_Assistance_Scheme/542.htm.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* The scheme does not provide assistance in the area of family law because government legal aid in that field has proven adequate.

¹³ See Law Society of Ireland Overview, available at: <http://www.lawsociety.ie/Pages/About-Us/>.

¹⁴ See generally Law Society of Ireland, *A Guide to Professional Conduct of Solicitors in Ireland* (2d ed. 2002) available at: <http://www.lawsociety.ie/newsite/documents/Committees/conduct2.pdf>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See generally, *The Solicitor Acts, 1954-2002*, available at: <http://www.irishstatutebook.ie>

¹⁸ See *A Guide to Professional Conduct of Solicitors in Ireland*, *supra* note 597.

¹⁹ The Solicitors Acts, 1954-2002, Solicitors (Advertising) Regulations, S.I. No. 518 § 4(b)(iv) (2002).

²⁰ See Law Society of Ireland, *Report of Law Society Council meeting held on 10 March 2006*, Law Society Gazette, June 2006 at 47, available at: <http://www.lawsociety.ie/Documents/Gazette/Gazette%202006/june>

efforts have stalled over recent years and *pro bono* work among solicitors is neither systematic nor comprehensive.²¹ While the Irish Bar suggests non-mandatory public service for barristers, the Law Society's efforts to create a comprehensive *pro bono* program for solicitors remain in their infancy. The Law Society did not adopt an official position on *pro bono* work until the late 1990's after members of the Law Society of Ireland had waged a campaign to create a formal *pro bono* scheme inspired, in part, by other common law countries, such as the U.K.²²

C. Legal Aid

There are two separate legal aid regimes in Ireland for criminal and civil law related representation. Irish legal aid provides free legal services to defendants in criminal matters and to qualifying applicants, who contribute to overall costs, in civil matters. These services are generally provided by state-employed legal aid lawyers or private lawyers reimbursed by the state for the services they provide.

Criminal legal aid, pursuant to the Criminal Justice (Legal Aid) Act, provides for free representation by a solicitor or barrister to any criminal defendant of insufficient means. The program is administered by the Department of Justice.²³ Representation is provided to any defendant who requests it and satisfies the "fair minimum standards" mandated by the European Union. In practice, this system is similar to the American program governing the representation of indigent criminal defendants.

Civil legal aid is administered by the Irish Legal Aid Board pursuant to the Civil Legal Aid Act of 1995 and uses a far more complicated analysis to determine eligibility.²⁴ A person must satisfy separate means and merits tests to meet the eligibility requirements for relief under the statute. Currently, the means test requires the applicant to show a disposable income of less than €18,000 annually and disposable capital of less than €320,000.²⁵ The merits test requires the Board to consider a number of factors including "the prospect of success in the proceedings, the availability of any method other than court proceedings for dealing satisfactorily with the problem [, and] the probable cost to the Board of providing legal services measured against the likely benefit to the applicant if he/she is successful in the proceedings."²⁶ The merits test is modified in cases involving the welfare of a child, such as custody and access issues.²⁷

Civil legal aid is provided by government-employed lawyers and financed with public money. In a few specified circumstances – including domestic violence, maintenance, and custody cases – services are provided by private practitioners who are compensated by the

2006.pdf (discussing an *ad hoc* committee formed within the Law Society to assess proposals for cooperation between the Law Society and community law organizations).

²¹ See Law Society of Ireland, News Report, Law Society Gazette, December 2000, at 19, *available at*: <http://www.lawsociety.ie/Documents/Gazette/Gazette%202000/december2000.pdf>.

²² See Law Society of Ireland, Report of the Law Society Council Meeting, Law Society Gazette, December 2001, at 40, *available at*: <http://www.lawsociety.ie/Documents/Gazette/Gazette%202001/december2001.pdf>.

²³ Criminal Justice (Legal Aid) Act, 1962; Legal Aid Board, Home page, *available at*: <http://www.legalaidboard.ie>.

²⁴ Civil Legal Aid Act, 1995, *available at*: <http://www.irishstatutebook.ie/1996/en/si/0273.html> and Civil Legal Aid Regulations 2002, *available at*: <http://www.irishstatutebook.ie/2002/en/si/0008.html>.

²⁵ See Citizens Information Online, "Eligibility for Legal Aid," *available at*: http://www.citizensinformation.ie/categories/justice/legal-aid-and-advice/legal_aid_eligibility.

²⁶ *Id.*

²⁷ *Id.*

government. While services are available for a range of civil matters, the vast majority of cases which receive aid are in the area of family law.²⁸

The existence of legal aid has had an important impact on the practice of *pro bono* advice in Ireland by obscuring the pressing need for *pro bono* services. Many commentators agree that Irish legal aid has been woefully inadequate to meet the needs of deserving clients.²⁹ Unfortunately, the overstretched legal aid program has helped to create an impression that the legal needs of Ireland's indigent population are being met, and by doing so, legal aid has impeded the progress of formal *pro bono* schemes. Some critics have held that a formal *pro bono* scheme would be only a stop-gap solution that would further obscure the failings of a troubled legal aid regime and encourage the government to continue to underfund the existing programs.³⁰ This viewpoint has hindered progress in the past but has largely dissipated in recent years as the need for a formal *pro bono* network to complement legal aid has become more obvious.

II. *Pro Bono Opportunities in Ireland*

It has been widely recognized that the current legal aid regime fails to meet the demand for *pro bono* legal services in Ireland.

There are a small number of associations seeking to provide legal advice on a voluntary basis; these include the nationwide FLAC (Free Legal Advice Centres),³¹ and the Dublin based Northside and Ballymun Community Law Centers. These groups provide limited basic legal advice directly from volunteering solicitors and students, but also make use of barristers' services for voluntary work. These organizations are themselves oversubscribed and underfunded.

Two substantive areas of law have had a particularly high demand for volunteer legal services in recent years. The first is in the realm of human rights law, particularly for refugees and asylum-seekers. Since the passage of the Irish Human Rights Act, Irish litigants must either pay their own representation costs or hope to find a solicitor (often through FLAC) willing to represent them on a *pro bono* basis.³² Although the Civil Legal Aid Act makes provision for refugees and asylum-seekers, it is not clear that it has been successful in meeting the demand. The problem is magnified by Ireland's increasing popularity as a destination for would-be asylum-seekers. The second area of need relates to Ireland's "travellers," the nomadic people who roam the country's roadways living in caravans. The Irish Traveller Movement ("ITM") has an established legal unit to provide representation to these marginalized people. Travellers, many of whom are indigent, have difficulty securing even basic legal services, and the ITM is actively recruiting solicitors willing to undertake these representations, preferably on a *pro bono* basis.³³

²⁸ See *The Irish Bar Council's Voluntary Assistance Scheme*, *supra* note 593.

²⁹ See, e.g., *Can't Refuse*, *Law Society Gazette*, December 2003, at 17.

³⁰ See Law Society of Ireland, Report of Law Society Council Meeting held on 6 July 2001, *Law Society Gazette*, August/September 2001, at 39 (citing a report showing that in countries where an institutionalized *pro bono* scheme had developed, governments had used such schemes as excuses for refusing to subsidize legal aid).

³¹ www.flac.ie.

³² Law Society of Ireland, *An Unconventional Approach*, *Law Society Gazette*, January/February 2003, at 28.

³³ Law Society of Ireland, *Remember When You Wanted to Make a Difference?*, *Law Society Gazette*, March 2004, at 10-11.

III. *Conclusion*

A strong conception of *pro bono* legal work is already developing in the Republic of Ireland, with no legal impediments to its further development. *Pro bono* legal services are in great demand. The primary obstacle to *pro bono* legal service now is a logistical one and the governing bodies of the profession are gradually taking steps to remedy the deficiency. The Law Society's recent initiative to create an organized approach to provide *pro bono* services is a direct but untested solution which requires renewed vigor to produce material results; the "voluntary assistance" program instituted by the Irish Bar Council presents a more concrete opportunity for barristers to participate in community law projects.

In this context, mid-size national and large international law firms are in an excellent position to capitalize on Ireland's demand for *pro bono* legal services by providing support for developing programs and serving as an impetus for further progress.