

Executive Summary

The Nova Scotia Pro Bono Study (NSPBS) came together in 2008 to assess the feasibility of establishing a provincial pro bono organization. The purpose of the NSPBS was to assess the legal community's current level of interest and engagement in pro bono work, identify gaps in existing legal services, examine how pro bono organizations work in other jurisdictions, and gather feedback on a prospective provincial pro bono organization for Nova Scotia. This was done through an overview of existing services in Nova Scotia, an assessment of need, analysis of pro bono service delivery models in other jurisdictions and discussions among the possible stakeholders.

Although there are many ways to define 'pro bono' we understand the term to mean legal services provided free of charge to marginalized persons and charitable organizations to whom the government is not obligated to provide counsel. During the course of this study we heard concerns about a number of issues relating to organized pro bono, including:

- Mandatory pro bono programs;
- Government responsibility; and
- Pro bono on an ad hoc basis vs. formal pro bono.

Our conclusion is that pro bono should not be mandatory, should complement rather than duplicate legal aid services, and should be provided through a formal structure so as to minimize many of the barriers currently faced by lawyers interested in providing such services.

Existing organized legal support services

In order to understand whether or not a formal pro bono program could respond to unmet legal needs, it was essential to first examine what free or subsidized legal services currently exist for Nova Scotians. Aside from ad hoc pro bono, free legal representation is only available through existing legal aid programming with the exception of the representation available to refugees through the Halifax Refugee Clinic. Limited summary advice is available through a few organizations and court services, while legal information is available to anyone through the Legal Information Society of Nova Scotia.

Unmet legal needs

Our findings indicate that unmet legal needs primarily arise among the working poor or middle class demographic who are unable to afford a lawyer but do not qualify for legal aid. Need exists in all areas of law, but particularly in family and civil law. Many individuals who are unable to hire a lawyer represent themselves in the courts, and could benefit from summary legal advice, partial or full representation. Legal advice and representation would also streamline court processes. We also found that the need for legal service is most significant in rural communities and among identified marginalized groups.

The current state of pro bono in Nova Scotia

Of the lawyers who responded to our survey, 61% currently provide free legal services, and 57% indicated that they undercharge clients who are unable to pay. Only 23% of respondents do not currently provide any type of pro bono work. Some of our more specific findings on pro bono work in Nova Scotia include:

- Most pro bono work is done on mainland Nova Scotia, outside the HRM. Cape Breton lawyers are more likely to undercharge their clients than to provide free service;
- The highest participation rates for pro bono work come from the most senior members of the bar, and those who work in private practice;
- Lawyers generally dedicate less than 10 hours per month to pro bono work, serving fewer than 6 pro bono clients per year;
- Areas of law in which pro bono is provided differ significantly by region; and
- Very few lawyers have any formal support for pro bono in their workplace.

Lawyers providing pro bono services are motivated by a sense of professional responsibility, commitment to social justice or spirit of volunteerism. Barriers to pro bono work include time constraints, workload and work culture but there is no significant ideological resistance to pro bono among individuals in the Nova Scotia bar.

Pro bono delivery models in other jurisdictions

Extensive pro bono programming exists at a provincial level currently in Ontario, Saskatchewan, Alberta, British Columbia and Quebec. In order to facilitate a discussion about appropriate programming for Nova Scotia, we have described and provided examples of the following service delivery models employed in other provinces:

- Legal advice clinics;
- Issue-based advocacy projects;
- Assistance for non-profits and charities;
- Roster programs;
- Law firm partnerships;
- Self-help centres and resources;
- Duty counsel programs;
- Mediation;
- Mentorship and support; and
- Distance projects.

We also described the invaluable role other provincial organizations play by providing funding for disbursements, arranging insurance for pro bono work, helping law firms to implement pro bono policies, and promoting pro bono services to the public and the legal community.

Support for organized pro bono in Nova Scotia

We gauged support for an organized pro bono program in Nova Scotia by canvassing lawyers, law students, the judiciary and members of the public for their opinions.

- Most lawyers indicated that they would participate in organized pro bono if it were made convenient, but were wary of additional bureaucracy and red tape;
- The majority of law students surveyed indicated they intended to provide pro bono upon graduation, and that they held workplace support for pro bono to be very important;
- The judiciary demonstrated support for organized pro bono, with individual judges indicating that they would be willing to promote a pro bono program in their courtrooms, speak publicly about the importance of pro bono, and assist in program development; and
- The public indicated that they would welcome increased access to quality legal services in their communities and would support the implementation of a pro bono program.

Encouraging pro bono

We look at the following factors and analyze their impact on motivating lawyers to provide pro bono services:

- Public recognition;
- Charitable tax receipts;
- Mentorship and learning opportunities;
- Finite time commitment; and
- Widening client base.

Recommendations

This report concludes with a recommendation to establish a formal pro bono organization and provides a number of concrete suggestions. These include:

1. Developing a sound governance structure with stable funding sources.
2. Increasing the availability of free summary advice and full representation to individuals who are unable to afford a lawyer through appropriate pro bono delivery models.
3. Eliminating existing barriers to lawyers' participation in pro bono work.
4. Supporting lawyers who already provide pro bono services, and encouraging greater participation from the bar.
5. Designing an effective publicity and outreach strategy.
6. Maximizing accessibility of services to rural communities and vulnerable groups.
7. Advocating for increased resources dedicated to improving access to justice.