

Pro Bono Practices and Opportunities in Northern Ireland

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

September 2010

Prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**

This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

@ Copyright 2010. All Rights Reserved.

In Northern Ireland, the provision of free or partly funded legal assistance from barristers and solicitors is achieved through publicly funded legal aid, voluntary legal aid, or through the services provided by the Northern Ireland Lawyers' *Pro Bono* Group.

The Northern Ireland Legal Services Commission assumed responsibility on November 1, 2003, for the provision of publicly funded legal aid services in Northern Ireland and is in the process of implementing radical changes in the provision of community legal services.

I. *Legal Services and the Legal Profession in Northern Ireland*

The legal profession in Northern Ireland is divided into two distinct branches, the Bar (which comprises barristers) and the Law Society of Northern Ireland (which comprises solicitors). A Code of Conduct governs barristers in Northern Ireland for the Bar of Northern Ireland¹ while solicitors' conduct is governed by the Law Society.² At present there are approximately 580 barristers in independent practice, 77 Queen's Counsel³ and approximately 1850 solicitors practising in Northern Ireland.⁴

A. The Judicial System in Northern Ireland

Northern Ireland's legal system is similar to that of England and Wales and jury trials have the same place in the system. Until 2007, the Northern Ireland (Emergency Provisions) Act 1978, the Terrorism Act 2000 and the Terrorism (Northern Ireland) Act 2006 governed the operation of the courts in the trial of terrorist offenses, and the circumstances in which there may be a trial without a jury to eliminate the possibility of jury intimidation. Non-jury courts were introduced in Northern Ireland in 1973 after a review of the then law by Lord Kenneth Diplock and have been a source of controversy ever since. Human rights groups were also opposed to them. Although 'Diplock' courts were abolished by the Justice and Security (Northern Ireland) Bill in July 2007, judge-only trials are to be retained for "exceptional" cases where juries could still be intimidated and currently the Director of Public Prosecutions is able to certify that a case should be tried without a jury if it meets a defined statutory test.⁵

The Northern Irish courts consist of superior courts and inferior courts; the former comprising the Court of Appeal, the High Court, and the Crown Court, and the latter comprising county courts and magistrates' courts.

Superior courts: All matters relating to the Court of Appeal, the High Court and the Crown Court are under the jurisdiction of the U.K. parliament, and judges are appointed by the Crown. Magistrates' courts deal with minor local criminal cases, while civil matters are covered in the county court.

¹ See Barristers' Code of Conduct, *available at*: www.barlibrary.com.

² Under the 1976 Solicitors (Northern Ireland) Order, the Law Society acts as the regulatory authority governing the education, accounts, discipline and professional conduct of solicitors.

³ See the Northern Ireland Bar Library website, *available at*: www.barlibrary.com.

⁴ See Law Society for Northern Ireland website, *available at*: www.lawsoc-ni.org.

⁵ This means that the presumption will be for jury trial in all cases, while the small number of exceptional cases requiring non-jury trial will still be able to be treated appropriately from Explanatory Notes to the Justice and Security (Northern Ireland) Bill, *available at*: www.nio.gov.uk.

The Court of Appeal has the power to review the civil law decisions of the High Court and the criminal law decisions of the Crown Court, and may in certain cases review the decisions of county courts and magistrates' courts. Subject to certain restrictions, an appeal from a judgment of the Court of Appeal can go to the House of Lords.

Inferior courts: The inferior courts are the county courts and the magistrates' courts, both of which differ in a number of ways from their counterparts in England and Wales. County courts are primarily civil law courts, and are presided over by county court judges. The county court judges in Belfast and Londonderry are called "recorder." The county courts also handle appeals from the magistrates' courts in both criminal and civil matters, and appeals go from the county courts to the High Court.

In civil matters, the county courts decide most actions in which the amount or the value of specific articles claimed is below a certain level. The courts also deal with actions involving title to land or the recovery of land, equity matters, such as trusts and estates, mortgages, and the sale of land and partnerships.

The day-to-day work of dealing summarily with minor local criminal cases is carried out in magistrates' courts, presided over by a full-time, legally qualified resident magistrate. The magistrates' courts also exercise jurisdiction in certain family law cases and have a very limited jurisdiction in other civil cases.

Court Administration: The Secretary of State for Justice and Lord Chancellor is responsible for court administration, while the Northern Ireland Office, under the Secretary of State, deals with policy and legislation concerning criminal law, the police and the penal system. The Secretary of State for Justice has general responsibility for legal aid, advice and assistance.

The Director of Public Prosecutions for Northern Ireland, who is responsible to the Attorney General, prosecutes all offenses tried on indictment, and may do so in other summary cases. Most summary offenses are prosecuted by the police.

B. Legal Aid Scheme in Northern Ireland

1. *Publicly Funded Legal Aid*

At present, legal aid falls mainly under two distinct headings: Civil Legal Aid, which provides help and assistance in civil and family matters and Criminal Legal Aid, which provides help and assistance to those accused of a criminal offense.

Civil Legal Aid: Civil Legal Aid provides help across a range of areas: bail, bankruptcy, family matters, injunctions, judicial review and negligence and personal injury cases for example. Within Civil Legal Aid there are three main stages: legal advice and assistance, Assistance By Way of Representation ("ABWOR") and legal aid.

Legal advice and assistance consists of the provision of initial advice on any aspect of Northern Ireland law, and qualification is subject to the individual's financial circumstances (the "means test"). This scheme extends to Assistance by Way of Representation (known as "ABWOR") for court proceedings in very specific cases.

Legal Aid provides for more comprehensive assistance including, where required, representation at court. To qualify for Legal Aid, two tests must be met. The first involves financial eligibility; depending on the applicant's personal circumstance, he or she may receive

free assistance or may have to contribute towards the cost of the case. The second test involves the merits of the case, *i.e.*, a person shall not be given legal aid in connection with any proceedings unless he shows that he has reasonable grounds for taking, defending or being a party thereto.

The Northern Ireland Legal Services Commission is currently undertaking a substantial reform program which it is hoped will result in the introduction of Community Legal Services under the Access to Justice Order (Northern Ireland) 2003 (“AJO”). This is discussed in detail below.

Criminal Legal Aid: There are three levels of service in criminal Legal Aid: (i) advice and assistance on criminal matters in general (under the same provisions for civil cases); (ii) free advice and assistance for anyone being interviewed at a police station in connection with a suspected offense (PACE advice); and (iii) free legal aid.

To grant criminal legal aid, the court must satisfy itself on two matters: (i) that the means of the accused are insufficient to enable him to obtain legal aid; and (ii) that it is desirable in the interests of justice that the accused, or a person brought before the court to be dealt with, should have free legal aid.

Currently there is free Legal Aid in all criminal proceedings in Northern Ireland. Approximately 35% of the total of individuals who appeared in the magistrates’ court and 98% of the total individuals who appeared in the Crown Court were legally aided.⁶

Under the Legal Aid (General) Regulations (Northern Ireland) 1965 and the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, which prescribe the terms under which legal aid can be paid, approximately 500 solicitor firms are remunerated for the provision of their public legal services. The aggregate cost of legal aid in civil and criminal cases in Northern Ireland is estimated to be £90 million per annum in 2008.⁷

2. *Voluntary Legal Aid*

The main organizations within the voluntary sector that provide legal services for the public include Citizens’ Advice Bureaux, Law Center (NI), Children’s Law Center, and Housing Rights and Services.

Within the framework of voluntary Legal Aid, Law Center (NI) provides legal services to other advice agencies in Northern Ireland. It is a non-profit charity and provides a specialist legal service (advice, representation, training, information and policy comment) in five areas of law: immigration, social security, community care, employment law and mental health. These services are provided to almost 500 member agencies, and members include local Citizen Advice Bureaux, independent advice agencies, local solicitors, trade unions, social services, probation offices, constituency associations of local political parties, libraries and other civic organizations.

All of the above organizations operate under a waiver agreement with the Law Society of Northern Ireland, allowing them to employ solicitors.

⁶ See commentary on “Legal Aid” on Northern Ireland Court website, *available at*: www.courtsni.gov.uk.

⁷ See “Lawyers Face Legal Aid Fees Cut,” *available at*: http://news.bbc.co.uk/1/hi/northern_ireland/8319449.stm.

C. Northern Ireland Legal Services Commission

The Northern Ireland Legal Services Commission (the “Commission”) assumed responsibility on November 1, 2003 for the provision of publicly funded legal aid services in Northern Ireland.

The Commission is an executive Non-Departmental Public Body (“NDPD”) that is sponsored by the Northern Ireland Court Service, a part of the Ministry of Justice. The Commission’s aim is to promote fair and equal access to justice in Northern Ireland in its provision of publicly funded legal services. It operates within the powers set out in Article 7 of the Access to Justice (Northern Ireland) Order 2003 (the “AJO”).

In November 2007, the Commission published consultation papers⁸, setting out the reforms to the current Legal Aid system, which the Commission intends to implement through the AJO. These include the introduction of the following financial reforms: (i) a new funding code (the “NI Funding Code”) which sets out the criteria for the provision of civil legal services; and (ii) the Financial Eligibility leading to Civil Legal Services (Financial) Regulations (NI) 2007, which creates a simple and transparent “means test” to decide who qualifies for legal aid. From April 2009, the lower limit for disposable income below which legal advice is provided without any contribution is set at £3,355, while the upper limit of disposable income above which legal aid is not available is set at £9,937. This upper limit is raised to £10,955 in personal injury cases. From April 2006, the lower disposable capital limit is set at £3,000, while the upper limit is set at £6,750 and for personal injury cases it is £8,560.⁹

Development of “Community Legal Services”: This is the term which is given to the mixed model in the provision of publicly funded legal services through which advice can be provided by a trained person (although formal legal training is not necessary) in a community or voluntary organization. Legal Aid organizations in England, Scotland and Wales have already established pilot community legal services in their respective jurisdictions, and the Commission aims to introduce such pilot projects in Northern Ireland in 2008.

D. Northern Ireland Lawyers’ Pro Bono Group

The Northern Ireland Lawyers Pro Bono Unit (the “Unit”) is a joint venture sponsored by the General Council of the Bar of Northern Ireland and the Law Society of Northern Ireland. The objective of the Unit is to provide *pro bono* free legal advice and representation in deserving cases where legal aid or other funding is not available and where the applicant is unable to afford legal assistance. The Unit was set up as a company limited by guarantee and was registered as a charity in October 2000. As the Unit is a charity, it relies on donations and covenants to meet all of its running costs.

Advice and representation is provided by barristers and solicitors who have volunteered to join the panel and who cover the full range of legal specialisations. Each has to offer their services free of charge up to 3 days or 20 hours each year. More than 100 barristers from across Northern Ireland, including more than 30 QCs,¹⁰ have volunteered for this scheme, which

⁸ See “A Strategy for the Development of Community Legal Services” and “Draft Equality Impact Assessment: Financial Eligibility for Legal Aid,” available at: www.nilsc.org.uk.

⁹ See http://www.nilsc.org.uk/faq_view.asp?faq_catid=4&on=faqs.

¹⁰ See the figures in ‘NI Pro Bono Group,’ available at: www.barlibrary.com.

formalizes and complements a long tradition of barristers individually acting without a fee in deserving cases. The Barristers' Code of Conduct expressly states that an employed barrister may give advice on legal matters free to a friend or relative or on a charitable basis.¹¹ The 1976 Solicitors (Northern Ireland) Order doesn't directly address the provision of free legal services by solicitors, and instead there is an established culture of informal *pro bono* assistance among Northern Irish solicitors. At present, over 100 firms of solicitors have volunteered to participate in the Unit.¹²

The Unit is designed to help those who cannot reasonably afford the legal assistance they need and who are not eligible for Legal Aid or other forms of help with legal expenses. The factors which are normally taken into account in deciding whether it is appropriate for the Unit to offer advice and/or representation are as follows: the merits of the case; whether the applicant or members of his or her family can reasonably afford Legal Aid; and the estimated length of the representation (the Unit will not be able to provide a barrister or solicitor to advise on a continuing basis over a long period or to provide assistance for long cases in court).¹³ The cases most likely to meet the eligibility criterion of the Unit will be appeals, applications for leave to appeal, judicial review applications, specific steps in proceedings, tribunal hearings and advisory work. Cases that raise a specific issue of principle or test cases are particularly welcomed.

The Unit can help by putting members of the public in touch with barristers and solicitors who can give advice or represent them, free of charge, in any Court or Tribunal in Northern Ireland. Where representation in a Court or Tribunal is involved, it would normally not be possible to act unless a solicitor or Citizens Advice Bureau is prepared to assist, however, there will be some cases where a barrister may be able to act even though there is no solicitor involved. These cases are currently decided by a senior member of the Unit's management committee and the barrister who is willing to act.

II. Conclusion

The availability of *pro bono* assistance from the legal profession in Northern Ireland shares elements in common with both English and Irish legal systems. The existence of the Northern Ireland Lawyers' Pro Bono Group and the pilot concept of "community legal services" shares a public recognition of *pro bono* with the English legal system which is not apparent in Ireland. On the other hand, the informal and ad hoc provision of *pro bono* services by solicitors in Northern Ireland is more akin to the Irish model which supports volunteer work, but has not established any institutionalized *pro bono* practice for solicitors.

¹¹ See Section 26.06 Barristers' Code of Conduct, *available at*: www.barlibrary.com.

¹² See the figures in 'NI Pro Bono Group,' *available at*: www.barlibrary.com.

¹³ See pdf entitled 'Further Information about the Lawyers' Pro Bono Unit,' *available at*: www.barlibrary.com.