

Pro Bono Practices and Opportunities in New Zealand

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

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

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I. Introduction

Like other jurisdictions, such as England and Wales, New Zealand has a legal aid system that uses public funds to provide free legal services to those in need. In particular, legal aid and other publicly funded legal services are administered in New Zealand through the Legal Services Agency. No *pro bono* referral or clearinghouse organizations or infrastructure currently exist in New Zealand.

A November 2009 report on New Zealand's legal aid system prompted further legislative and operational reviews and recommendations. As a result, the current legal aid system will likely change significantly over the next few years. The laws and structures currently in place, and the changes being proposed to New Zealand's legal aid system, are described below.

II. Current Legal Aid System

A. The Legal Services Agency

The Legal Services Agency (the "Agency") is a Crown entity¹, established under the Legal Services Act 2000 (the "Act"). The purpose of the Act is to promote access to justice by providing legal aid schemes and other means of legal assistance, and supporting community legal services by funding community law centers, education, and research.²

The Agency reports to the Minister of Justice (the "Minister") and advises the Minister on issues relating to the provision of legal services in New Zealand. The objectives of the Agency are to: (1) administer legal schemes in a consistent, accountable, inexpensive, and efficient manner; (2) fund, provide, and support community legal services for the public or any section of it; (3) investigate and advise on any matter relating to legal schemes or community legal services referred to it by the Minister; and (4) carry out any other functions conferred upon it by the Act or any other act.³ From July 1, 2009 to June 30, 2010, the Legal Services Agency assisted approximately 67,000 people with legal services through approximately 89,000 grants of legal aid.⁴

B. Agency Administered Legal Aid Schemes

Legal Aid. Legal Aid is available to individuals in New Zealand who have been charged with a criminal offense (Criminal Legal Aid), or have a legal problem that might go to court (Civil/Family Legal Aid). Being a citizen or permanent resident of New Zealand is not a requirement in order to qualify for Legal Aid.⁵

There are different financial thresholds for Legal Aid, depending on an individual's particular circumstances. In some situations, an individual may be required to pay back some, or

¹ "Crown entities" are organizations formed by law, which are legally separate from New Zealand's hereditary monarchy, the Crown, but in which the Crown has a controlling interest (for example, by having authority to appoint and replace a majority of governing members, or by owning a majority of voting shares). See www.treasury.govt.nz/statesector/crownentities.

² Preamble, Legal Services Act 2000.

³ About Us, Legal Services Agency, www.lsa.co.nz/about-us, 17 September, 2010.

⁴ Media Releases - 2 September 2010, Legal Services Agency, www.lsa.govt.nz/about-us/media-releases.php#Services09to10, 17 September, 2010.

⁵ Legal Aid, Legal Services Agency, available at: www.lsa.co.nz, 17 September, 2010.

all, of the fees for the Legal Aid they receive. The rules relating to eligibility, management, and repayment obligations for Legal Aid are set out in the Act.⁶

Duty Solicitor Scheme. In addition to administering legal aid, the Agency oversees the Duty Solicitor scheme, which provides free legal assistance for an individual's first appearance in court. The Duty Solicitor scheme is not means tested and anyone who does not have their own lawyer is entitled to use the scheme. Generally, a Duty Solicitor will explain the charge to the individual and will advise on pleas, bail, and the sentencing options available to the court. The Duty Solicitor may also assist the individual in applying for legal aid.

Police Detention Legal Assistance Scheme. The Agency also oversees the Police Detention Legal Assistance scheme, which enables anyone arrested or held by the police to obtain free and confidential legal advice from a lawyer. Advice may be provided by a lawyer over the telephone or in person.

Public Defense Service. The Agency employs full-time salaried criminal defense lawyers to take on criminal legal aid cases in the Auckland, Manukau, Waitakere, and North Shore courts through its Public Defense Service ("PDS"). The objectives of the PDS program are to: (a) provide high quality, consistent, and independent, value for money services to legally aided persons; (b) improve system flexibility and provide opportunities to test different approaches to meeting cultural and other needs of clients; (c) provide opportunities to test new and innovative approaches to the management of legal services, and to encourage the development of areas of expertise; and (d) improve the Agency's understanding of issues facing private practice lawyers when providing legal services to the public by collecting benchmark information.⁷

C. Law Related Education and Legal Information

In addition to administering its Legal Aid Schemes, the Agency also provides law-related education and legal information, such as Law Access, law-related education kits, and legal aid information sheets. Law Access is a web-based catalogue of law, related information, and resources listed by over 150 organizations throughout New Zealand. The resources, which are free of cost to anyone, include videos, website links, free phone numbers, and fact sheets.

D. Report on the 2006 National Survey of Unmet Legal Needs and Access to Services

The Agency undertakes its own research, or funds research projects, to identify community legal services, proposed schemes, and the currently unmet legal needs of communities, and ways to meet these needs. In June and July 2006, the Agency undertook a national survey to identify unmet legal needs and access to services (the "Survey"). The survey was the largest of its kind in New Zealand, providing a comprehensive picture of the individuals seeking legal assistance, including information about where and why they sought assistance.

In addition, the Survey identified barriers to access and the outcomes of those who did not access services. The Agency reasoned that, by quantifying the number of people with a legal problem who could not afford a lawyer or access services, it could identify gaps in service availability and, thus, better target and develop regional and national strategies to help people

⁶ Part 1-4, Legal Services Act 2000.

⁷ Legal Services Agency, *available at*: www.lsa.co.nz, 17 September 2008.

access justice. The Survey found that 30% of New Zealanders surveyed had unmet legal needs. The Survey defined “unmet legal need” as:⁸

- a problem that is currently being experienced, but the person is not doing anything to resolve it because they do not know what to do;
- the person gave up trying to resolve the problem; or
- no advice or help was sought for the problem because of specific barriers, *e.g.*, language barriers, anticipated costs, or intimidated by the legal process.

In addition, 27% of New Zealanders surveyed stated that the fear of cost had stopped them from approaching a lawyer or inquiring about legal aid.⁹

The Survey has not been repeated to date, nor has the Agency announced plans to repeat or update the Survey in the near future.¹⁰

III. *Advice Agencies*

A. Community Law Centers

There are 26 Community Law Centers (“CLCs”) throughout New Zealand that provide a mix of legal services tailored to their community’s needs. Services provided by CLCs may include representation of individuals of limited financial means, the provision of law-related education and information, law reform submissions, and various other services aimed at addressing the needs of particular communities.

The Agency contracts with, and allocates funding to, CLCs, and is responsible for ensuring that CLC-provided legal services meet clients’ needs and achieve governmental objectives for the justice sector. In May 2010, the Agency developed national performance standards relating to the nature and quality of community legal services. These performance standards are based on the principles of lawfulness, accountability, openness, value for money, fairness, and integrity.¹¹

B. Citizens Advice Bureau

The New Zealand Citizens Advice Bureau is an independent community organization whose member bureaus and specialist services around New Zealand provide free information, advice, advocacy, and support to individuals. There are over 90 locations throughout New Zealand, and their mission is to promote awareness of the legal rights, responsibilities and resources/services available to individuals, and to influence the development of national and local social policies and services.¹²

⁸ Pg 3, 2006 National Survey of Unmet Legal Needs and Access to Services, July 2006. Copies of the full survey report are *available at*: www.lsa.co.nz.

⁹ Pg 5, National Survey of Unmet Legal Needs and Access to Services, July 2006.

¹⁰ P. 44, Bazley, Dame Margaret DNZM, Transforming the Legal Aid System: Final Report and Recommendations, *Legal Aid Review*, November 2009.

¹¹ “Legal Services – Community Law Centres,” Legal Services Agency, *available at*: www.lsa.co.nz, 17 September 2010.

¹² Citizens Advice Bureau, *available at*: www.cab.org.nz, 17 September 2010.

C. Consumer NZ

Consumer NZ, formerly known as the Consumers' Institute, is an independent, nonprofit organization established in 1959. Its work covers a wide range of activities relating to consumer protection and information, including comparative tests and surveys of consumer goods and services; research into and advice on financial, food, health, safety, welfare, and environmental matters; representation at parliamentary committees and public enquiries; and other projects related to the organization's interest in consumer education and complaints advisory work.¹³

IV. *Pro Bono Initiatives by New Zealand Law Firms*

In New Zealand, solicitors have a history of providing *pro bono* services. To date, however, no clearinghouses, referral organizations, or other infrastructure have been established to allocate *pro bono* legal services, nor are there any rules that encourage lawyers to undertake *pro bono* work. The general practice in New Zealand is for law firms to develop their own *pro bono* strategies in conjunction with the CLCs and other Agency-administered legal aid programs, as well as through sponsorship of other nonprofit organizations.

V. *Initiatives by Students*

Pro bono legal services are also provided by student initiatives organized by universities and law students. Such initiatives generally include the opportunity for law students to volunteer at CLCs.

One prominent example of a student initiative is the Equal Justice Project ("EJP"), a student-run organization sponsored by the Auckland District Law Society. The EJP was launched in 2005 through the Auckland University law school. It aims to promote access to justice in Auckland by providing assistance to those who cannot access CLCs, or otherwise fall outside of the legal aid scheme.¹⁴ Services are provided by law student volunteers in partnership with community groups and members of the legal profession. The EJPs current initiatives include: (1) promoting access to justice for particular communities such as refugees and migrants; (2) conducting legal education workshops in schools to increase awareness about practical aspects of law; (3) through partnerships with CLCs, operating legal clinics and conducting legal research to increase the capacity for CLCs to meet legal needs in their communities; and (4) furthering discourse related to human rights by contributing to various government and nongovernment initiatives.¹⁵

VI. *Current and Future Reforms to the Legal Aid System*

In November 2009, Dame Margaret Bazley, a prominent New Zealand public servant, published a report analyzing the current legal aid system in New Zealand.¹⁶ This report, along with subsequent Cabinet decisions, is leading to the development and implementation of broad changes in the nation's legal aid system. It is not yet clear how these changes, described below, will impact the scope and nature of law firm participation in the realm of *pro bono*.

¹³ Consumer Institute, *available at*: www.consumer.org.nz, 17 September 2010.

¹⁴ Equal Justice Project, *available at*: www.equaljustice.co.nz, 17 September 2010.

¹⁵ *Id.*

¹⁶ Bazley, "Transforming the Legal Aid System."

A. Changes Under Current Legislative Framework

Currently, the Agency is implementing several changes within the existing legislative framework. These include: (1) expanding the Public Defender Service to several new sites by mid-2011; (2) implementing changes to the Agency's duty lawyer service designed to ensure that defendants receive consistently high quality representation; (3) reforming criminal case assignment; (4) appointing a central officer to manage complaints from lawyers, courts, and the general public; and (5) improving CLCs nationally.¹⁷

B. Proposed Legal Services Bill

Additionally, Parliament is currently considering a new legal services act, the Legal Services Bill (the "Bill"), to replace the Act.¹⁸ The Bill, introduced into Parliament on August 4, 2010, is expected to take effect in mid-2011, and will likely introduce several additional changes to the legal aid system. These changes include: (1) unwinding the Agency and moving its functions to the Ministry of Justice; (2) creating a new quality assurance framework to make sure legal aid lawyers have the skills required to do the jobs assigned to them; and (3) streamlining the legal aid granting processes. Within the Ministry of Justice, new offices and review bodies will be established, such as a Legal Aid Commissioner, responsible for ensuring that there is independence in the granting of legal aid to individuals, a Legal Aid Review Tribunal, and Review Authority.¹⁹

VII. *Conclusion*

Free legal services are available in New Zealand through Agency-run initiatives and other organizations, but a portion New Zealanders' needs for legal aid and *pro bono* support are not being met. While some law firms engage in providing *pro bono* legal services, there is generally no organizational support or infrastructure to allocate *pro bono* legal services, nor are there any rules that encourage lawyers to undertake *pro bono* work. As a result, there is much scope for further initiatives and involvement. It is possible that development in this area will be supported and expedited by the broad changes in the legal aid system that are expected to come into effect in the coming years.

¹⁷ More information about these changes is available at: www.justice.govt.nz/policy-and-consultation/legal-aid/overview-of-reforms-to-the-legal-aid-system, 17 September 2010.

¹⁸ Explanatory Note, Legal Services Bill, *draft available at*: www.legislation.govt.nz/bill/government/2010/0189/10.0/whole.html, 17 September 2010.

¹⁹ www.justice.govt.nz/policy-and-consultation/legal-aid/overview-of-reforms-to-the-legal-aid-system, 17 September 2010.