

# ***Pro Bono Practices and Opportunities in Scotland***

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

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In recent years *pro bono* legal services have become an increasingly important focus for law firms within Scotland. The push towards the development of *pro bono* services in Scotland is the result of various factors including an awareness that the legal aid system is failing to serve charitable causes and the increasing visibility of corporate social responsibility (“CSR”) of both law firms and their corporate clients.

## **I. *Legal Services and the Legal Profession in Scotland***

An awareness of the structure of the Scottish legal system is necessary for an understanding of its *pro bono* practices. The legal profession in Scotland is split into two branches: solicitors and advocates. Solicitors are regulated and represented by the Law Society of Scotland and provide advice on all legal matters. They have rights of audience in the lower courts. Advocates, who are regulated by the Faculty of Advocates (the “Faculty”), are also able to provide advice on all legal matters but have rights of audience in the high courts in Scotland, the Court of Session and the High Court of Justiciary. Advocates are primarily instructed directly by solicitors.

### **A. Poor’s Roll**

Scotland has had a *pro bono* tradition since the establishment of the Poor’s Roll in 1424 “*for onie puir creature, for faulte of cunning or expenses, that cannot, nor may not follow his cause*” for civil matters and an act of the Scots Parliament of 1587 for criminal matters. Prior to 1950, with various refinements along the way, these matters were entirely staffed by solicitors and advocates on a voluntary basis.

### **B. Legal Aid**

In 1950 the Legal Aid and Solicitors (Scotland) Act 1949 came into force for civil matters and in 1964 for criminal matters. Legal Aid is means-tested on a person’s income and assets and the thresholds for suitability are re-assessed every year. In 2007-2008 the Scottish Legal Aid Board (“SLAB”) (the body which administers legal aid in Scotland) provided nearly 360,000 grants of legal assistance (initial legal advice) and received almost 100,000 requests for legal aid (funding actions or defenses). The total cost was just over £155 million<sup>1</sup>.

However, legal aid is not available to charities or other organizations and *pro bono* legal advice continues to be delivered by the legal profession to these organizations on an ad hoc basis.

### **C. Advice Agencies**

Within Scotland, as in England and Wales, there is a national network of advice agencies staffed primarily by volunteers. The two most prominent are the Citizens Advice Bureau Service in Scotland (the “CABS”) and the Scottish Association of Law Centers (“SALC”). CABS is a charity that provides free advice to the public on topics that include legal matters. CABS assists clients with the drafting of letters, the instigation of small claims, negotiating with creditors and also representing them in courts or tribunals. CABS is located throughout Scotland and is able to give advice on where to obtain legal services and often provide legal advice themselves. CABS is funded and supported mainly by government (through SLAB) and local authority grants but also by companies, charitable trusts and the legal professional bodies.

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<sup>1</sup> See *Scottish Legal Aid Board* Scottish Legal Aid Board publishes report 2007-08 available at: <http://www.slab.org.uk/news/2008/Annualreportpressrelease.htm>.

SALC is the representative organization for Scotland's community and user-controlled law centers and employs approximately 40 full time solicitors. All law centers are charities and they aim to tackle the unmet legal needs of those individuals in poverty and disadvantage within the centers' coverage area. The law centers give legal advice on multiple subjects, provide education and information on the law and individual rights, and advocate for improvements to existing laws. Funding for the law centers comes mainly from the law centers themselves and whatever local funding they raise.

## II. *Pro bono Opportunities in Scotland*

As discussed above, *pro bono* legal services have always been provided by solicitors and advocates. However, unlike in England and Wales with "LawWorks," there is no organization focused on encouraging and structuring the *pro bono* activities. Instead, the *pro bono* initiatives have been driven by the regulatory bodies for both branches of the legal profession.

### A. Scottish Legal Services Trust

The Scottish Legal Services Trust ("SLST") was established to provide financial assistance to facilitate a member of the Law Society of Scotland to meet any costs and expenses incurred for the provision of *pro bono* legal services. These are restricted to providing legal services to members of the public who are in need or are suffering financial hardship; or to charitable institutions of limited means which support community organizations or activities. Should financial help be sought from the SLST, applications should be addressed through a solicitor. SLST does not yet publish details on the amount or scope of the funding it provides.<sup>2</sup>

### B. Faculty of Advocates

The Faculty's Free Legal Services Unit ("FLSU") was established to provide advice and assistance where the legal complexity of the case makes it difficult for non-lawyers to help. The Faculty also organizes the Free Representation Unit ("FRU") whereby 'devils' (trainee advocates) provide written advice on legal issues and representation before Employment and Social Security Tribunals.

Both the FLSU and the FRU require a referral from a recognized agency, *i.e.*, CABS, SALC and the university law clinics outlined below.

Advocates who have volunteered to join the FLSU can provide written or verbal advice, help with mediation or appear in any court or tribunal in Scotland. Over 60 advocates (around 15% of the active bar) have signed up to advise or appear in cases free of charge.

### C. Law Firms

As mentioned above, the raising of the profile of *pro bono* in Scotland has coincided with an awareness of CSR. As a result many law firms in Scotland seek to fulfill their *pro bono* initiative through law centers and also through interaction with the local community. As discussed above, there is a wide array of organizations providing *pro bono* legal services, thus many law firms provide services other than legal advice to the local community, such as mentoring at local schools, offering commercial advice to local small businesses and volunteering

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<sup>2</sup> See *The Law Society of Scotland* Scottish Legal Services Trust Charity Registered in Scotland available at: [http://www.lawscot.org.uk/Public\\_Information/using/legal\\_fees/scot\\_leg\\_serv\\_trust.aspx](http://www.lawscot.org.uk/Public_Information/using/legal_fees/scot_leg_serv_trust.aspx).

in the community. Many large law firms also provide exclusive *pro bono* legal advice to one or more high profile charities.

#### D. Initiatives for Students

Additional sources for *pro bono* legal services are student initiatives organized by universities and law schools. Several law schools and universities have established *pro bono* centers and clinics where students have the opportunity to participate directly in *pro bono* work.

The two most notable student organizations are the Strathclyde University Law Clinic<sup>3</sup> and the University of Edinburgh-run, Pro Bono Advice Centre.<sup>4</sup> Both of these bodies are staffed by students and staff and are supported by law firms. The student-run bodies do not operate in fields where adequate *pro bono* services are already provided, such as debt or immigration.

### III. *Conclusion*

Due to the extensive provision of legal aid and professional and semi-professional citizens' support bureaus, there is a limited need for the provision of *pro bono* legal services to individuals. However, the growth of CSR and the increasing importance placed on *pro bono* services by corporate clients will necessitate an increase in the publicity and sophistication of law firms' *pro bono* services or community projects.

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<sup>3</sup> See <http://www.lawclinic.org.uk/>.

<sup>4</sup> See <http://www.law.ed.ac.uk/probono/>.