

Affordable Legal Advice For Nonprofit Organizations

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The Law Society of Upper Canada, which governs Ontario's 24,000 lawyers, has established a pilot project which it hopes will lead to widespread provision of affordable legal advice to nonprofit organizations across the province. Location of the project has not been decided as a number of County District Law Associations (who will help to run the program locally) have expressed interest. Most or all of the significant organizations of lawyers in the province are expected to participate. The pilot will be assessed after 12 months of operation to see if a province-wide system is feasible.

History

In 1990 the Law Society engaged Della Clarke, a consultant, to examine the need for legal services provided free of charge or at reduced rates—in the legal jargon, *pro bono [publico]*, i.e., for the public benefit. The following description borrows heavily from Ms Clarke's report.

The needs assessment was conducted for two groups: nonprofit organizations and legal aid clinics. This article deals only with the findings with respect to the former. With the aid of the community directories, a list of fledgling organizations funded by the United Way, and suggestions from members of the Law Society's subcommittee on the topic, a sample of 90 agencies was compiled. Half were within Metropolitan Toronto and half in the rest of the province. All regions were represented, as were various types of organization: social, cultural, health, and the like. Just over half the organizations had annual budgets of less than \$100,000, about 30 per cent were medium-sized (budgets from \$100,000 to \$500,000), and just under 15 per cent were classified as "large".

The organizations were approached first by letter and then with a detailed questionnaire. Co-operation was very good. Here are some of the significant findings.

Sixty-four per cent of the organizations had consulted a lawyer in the previous two years—71 per cent of those in Toronto and 58 per cent of those outside. Half of the small agencies had done so, as had nearly four-fifths of the medium group and over 90 per cent of the large agencies. Consultation occurred on a wide array of subjects. The most prominent were questions of incorporation or

management, employment matters, provincial or federal laws, landlord/tenant matters, litigation, human rights questions and zoning or by-law concerns. Several organizations had sought advice on criminal law, taxation, and collecting accounts.

Seventy-one per cent of those who consulted a lawyer had consulted that person before. Frequently the lawyer was a member of the organization or on the board of directors. In the case of small agencies, 44 per cent consulted a member or director. Over half of the organizations had received free legal advice the last time they had gone to their lawyers. This varied with the size of the organization. Seventy-two per cent of the small agencies, 56 per cent of the medium group, and only 27 per cent of the large ones had received legal services at no cost. An additional 20 per cent of small agencies and 22 per cent of medium-sized agencies benefited from reduced rates. Fifty-five per cent of the large organizations were charged full rates.

This is the first firm statistical evidence of the contribution that lawyers as a profession have been making to the charitable sector. While not as well publicized as corporate contributions, the financial benefit to the recipient organizations is very large.

Nevertheless, 25 per cent of the organizations surveyed said they had wanted to consult a lawyer in the preceding 24 months but had been unable to do so. The usual reason for this was lack of funds (92 per cent), though over half also were uncertain how to find the right lawyer for the problem. About a quarter of them were not sure whether a lawyer was needed at all. The subjects on which they wanted to consult were similar in nature and ranking to those on which similar organizations had received legal advice in the same period.

A quarter of the organizations said they were adversely affected by not being able to consult a lawyer, while 21 per cent noted the adverse effect of having to spend funds on legal fees rather than on other projects. Over 80 per cent of organizations of all sizes said they had no budget at all for legal expenses.

Seventy-five per cent of the groups anticipated a need for legal advice in the future. However, only five per cent of them found free legal advice "very accessible", 29 per cent found it "somewhat accessible", while 18 per cent found it "somewhat inaccessible" and 26 per cent "very inaccessible". Twenty-three per cent did not answer because they had not received free advice or had not sought it. Those who had access to free legal services sometimes wondered about the expertise of their particular lawyers in their specific problem areas, and occasionally about the quality of the service provided in any event.

In sum, the survey discovered a broad consensus that free advice was needed, since most nonprofit organizations had no safety net to help them deal with emergencies. Smaller organizations often lacked both the money and the

connections to get help when it was needed. If free services were available, it appeared they would be called on more often than at present. Even the largest budgets tended to be devoted as much as possible to program expenses, not legal services.

The Project

In March, 1991, Convocation (the governing body) of the Law Society of Upper Canada adopted a resolution to create a pilot project for 12 months, to begin on September 1, 1991, or as soon as possible after that date. The pilot would take the form of a "Pro Bono Referral Service", modelled on the Lawyers' Referral Service that has been run by the Law Society for many years. The Referral Service provides members of the public who call it with a short list of lawyers knowledgeable in the field specified by the caller. The lawyers involved all offer an initial consultation of 30 minutes without charge, after which the person can decide whether to retain the lawyer at rates agreed at the time.

The County Law Association will be involved in drawing up a list of nonprofit organizations in the county that may take advantage of the referral service. The main criterion for inclusion will be inability to afford the usual cost of legal services. The services offered will, in the early stages at least, be limited to the areas most frequently cited by the organizations that responded to the needs-assessment survey: incorporation or management questions, employment matters, interpretation of and compliance with provincial and federal laws, landlord/tenant matters and defending or bringing a lawsuit. An educational component will also be built in, to offer more general advice and information broadly throughout the nonprofit sector.

Services are not being made available to individuals, even those served by the nonprofit organizations themselves, because the Ontario Legal Aid Plan already provides access to lawyers for many of these people. The Law Society did not want to risk any mix of responsibilities with Legal Aid during the pilot project, which is aimed at making services available where no support now exists.

The County Law Association will also be responsible, with the help of the voluntary Pro Bono Subcommittee that initiated the project, for recruiting lawyers in the county who are willing to make themselves available to the nonprofit sector. Only lawyers who volunteer their services will be included on the referral list. The Association will also be charged with ensuring a proper standard of service throughout the life of the pilot project.

When enough lawyers have signed up, the County Law Association and the Communications Branch of the Law Society will publicize the new Pro Bono Referral Service among the nonprofit organizations in the county. Calls will

be handled through the Communications Branch. At the same time an evaluation system will be set up to determine the feasibility of a formal province-wide system to deliver *pro bono* legal services.

The Future

Non-profit organizations in the county will have the opportunity to assess the operation of the pilot project themselves. *The Philanthropist* will report the formal results as determined by the Law Society and the prospects for expansion to the rest of Ontario.

The Law Society has already receive inquiries from a number of charities seeking to benefit from the services, and intimations of interest from other provinces who may want to establish similar projects. Ontario may not be alone in this field for long.