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March 28, 2023

POLI 4360 Practicum Report: My Experience with Nova Scotia Legal Aid

**Introduction**

I completed my POLI 4260 practicum placement at Nova Scotia Legal Aid (NSLA), sharing my time between the Halifax and Dartmouth Provincial Courts. NSLA is a provincial service providing legal aid to economically disadvantaged persons facing legal matters in Nova Scotia. Generally, only people who qualify for social assistance qualify for NSLA. Provincial legal aid programs are collaborations with the federal government that aim to ensure that everyone has access to the Canadian justice system and that the system is fair and efficient (Government of Canada, 2023).

At NSLA, I shadowed duty counsel lawyers at work. I watched them do their jobs and had the opportunity afterwards to debrief with them what I’d just seen. I chose to spend most of my time in Dartmouth with the Cells lawyers to maximize my contact with clients, and most of my time in Halifax listening to court proceedings. I also got the chance to do some off-site legal research on days when I couldn’t make it to the office. For instance, one of my projects was researching whether someone who faces multiple charges and takes the stand at a bail hearing can open the door to being questioned about one charge while retaining their right not to be questioned about the other charge. I looked through Nova Scotia and Supreme Court cases to see whether courts had ruled on this issue before. This project was a great chance to get feedback on my research and communication skills. My practicum supervisor was Patricia Jones, the managing duty counsel lawyer, and in Halifax I shadowed Nicole Campbell, but I was regularly in contact with all the other lawyers in both offices and also had the opportunity to interact with Crown attorneys as well as private lawyers.

I intend to use this report to share some of my observations about legal aid and the Canadian criminal justice system after this brief practicum. The following information comes mostly from conversations I have had with the NSLA lawyers during the course of my practicum, but also partly from my own reflections on the access to justice crisis in Canada.

* + 1. **Mental illness is a primary driver in people’s involvement in crime.**

The vast majority of matters I encountered featured one or more mental illnesses, and addiction was a recurring theme. Addiction lies behind many people’s involvement with the criminal justice system, be it to alcohol or to “harder” drugs. Offences like impaired driving, theft, and assault, far from being moral failures or errors of judgment, can often be traced back to an untreated addiction or other mental illness. (Dr. Gabor Maté’s book *In The Realm of Hungry Ghosts* is a phenomenal read about addiction and other underlying causes of Vancouver’s Downtown Eastside’s homelessness and addiction crisis. As well, Dalhousie’s Forensic Psychology and Criminal Behavior courses were two of my favourites and they dive into what drives people to crime.)

This mental health epidemic is, from my perspective, one of the greatest challenges we face in Canada today, and it is a reality criminal lawyers face every day at work. It is not always easy to deal with clients who face significant mental illnesses. Compassion, patience, and empathy are crucial to being a functional professional within a dysfunctional criminal justice system.

* + 1. **Releasing people on bail is a complicated matter and is not always done right.**

People accused of a crime have a Charter right to reasonable bail, and the onus is normally on the Crown to demonstrate why someone should be held pending trial. However, many releases involve conditions that can be confusing at best and, at worst, downright unrealistic for people to meet. A classic example is a drinking prohibition condition applied to the release of someone who struggles with an alcohol addiction.

Courts are left spending an absurd amount of time and resources processing matters like breaching a curfew or breaching a drinking prohibition (meaning that instead of dealing with criminal acts, courts are dealing with people who are accused and not yet convicted of a crime and stayed out too late or were spotted having a few drinks while out on bail). And, arguably more importantly, people end up gradually “climbing the bail ladder” (facing increasingly restrictive bail conditions, right up to house arrest or imprisonment pending trial) each time they breach a condition and getting stuck in a criminal justice system increasingly resembling a revolving door. Many of these breaches are accidental (absent criminal intent), arise from a misunderstanding of their own conditions, or are driven by neurodivergence or the long-lasting effects of traumatic brain injury (a condition which is overrepresented in the criminal justice system). It is challenging to make a court date when you suffer from memory loss and do not own a cell phone or have access to email.

People get stuck in the system because they are unable to stick to their release conditions, which results in even stricter conditions that they are even less likely to be able to meet. I am generally anti-jail, but this paradox has led me to wonder whether many people accused of crime would be better off not being released pending trial to prevent them from worsening their situation by breaching their conditions. Of course, this is not a solution I would propose—protecting Charter rights is paramount. I only mean to highlight the difficulty of this situation I have repeatedly observed.

*R v Zora* (2020 SCC 14) comes up frequently when discussing this issue with lawyers. In *Zora*, the Supreme Court warned that in imposing restrictive bail conditions lawyers have essentially created a new category of offenses. *Zora* did not create new law, but it reminded courts of how existing law should be interpreted; people should be released if they can be, and conditions for release must be connected to the offence. The three grounds for detention of the accused (to prevent the accused from absconding, to protect public safety, and to maintain the public’s confidence in the justice system) must not be interpreted too liberally, and any condition upon release must be “reasonably connected and necessary” to address these three grounds (para 87). We must not set people up for failure when releasing them on bail, but currently, we often do.

* + 1. **Even with provincial legal aid programs, not everyone has access to the legal aid they need.**

Applying to NSLA is not always a straightforward process. People can get turned away for a myriad of reasons, which is problematic because NSLA is meant to be the backstop for people who cannot access legal aid anywhere else. To put it bluntly, NSLA lacks the funding and staffing that would be required to accept every client who walks through the door, so it is crucial that they maintain criteria for qualification to ensure they can help the people who need it most.

Unfortunately, not everyone who needs legal aid meets these criteria. The gap between someone who qualifies for legal aid and someone who earns enough to afford private counsel is troublingly large. Many people are caught in the no-man’s-land of being too wealthy to access legal aid but still cannot afford a private lawyer. Self-representation is not a good option for the majority of people without law degrees because few outsiders can navigate the justice system as well as lawyers can; the result would be a less-than-optimal defense, which calls into question the equity of proceedings involving self-representation.

There are safeguards in place to try to address this. For instance, if someone does not qualify for legal aid because of a conflict of interest (NSLA cannot represent both parties in a matter), that person can be granted a certificate, which covers the cost of their defense but refers them to a private lawyer to handle this case at legal aid rates. A potential solution to the issue raised in the previous paragraph might be to offer scaffolded certificates for people who are just over the income threshold for legal aid, which could cover a portion of defence costs.

* + 1. **People don’t know how the criminal justice system or the law work, but we expect them to.**

This is another problem for which I can offer no solution. The legal principle that ignorance of the law is no excuse is crucial to prevent the malicious use of ignorance as a universal defence. However, the reality is that many people who come into contact with the system have little to no education (and are sometimes entirely illiterate), face language or cultural barriers, and lack access to the internet. I am a university-educated student going to law school next year and I cannot overstate how frequently I was confused about what was going on in court.

This challenge underlines the importance of having the right people working at Legal Aid. The lawyers with whom I worked had the singular ability to distill complex situations to simple choices for their clients. The conversation did not end until the clients understood their predicament and made an educated decision given their limitations on how they would like their lawyer to proceed. One hears horror stories of defense lawyers who choose to “play judge” and sabotage their own clients, often believing that this would yield the most just result. But no matter how heinous a client’s charges are (and make no mistake, some of these alleged offenses truly are heinous), a defense lawyer’s job is to give them the best possible defense and allow the judge to make the final decision. This is what I saw NSLA lawyers do to the best of their ability, every day, and their dedication to their clients and to the administration of justice left a strong positive impression on me.

**Concluding thoughts**

I am neither the first nor last person to point out how massive our access to justice crisis is in this country. This practicum has only increased my resolve to spend my legal career trying to improve rather than merely maintain the inequities and inefficacies that permeate the legal system. I cannot recommend this placement strongly enough to anyone interested in learning more about Canada’s criminal justice system, or anyone interested in spending time with intelligent, ethical, and purpose-driven professionals.

I have three main pieces of advice for future practicum students who match with NSLA. First, be ready to be challenged. Some of the clients are difficult, and many of the situations are emotionally challenging, like assaults, intimate partner violence, offences against children, and so on. Second, on that note, keep an open mind to people, and try to leave your preconceived notions at the door. On the first day of my practicum, I asked my supervisor Patricia why she worked for legal aid. Her response was, “because there but for the grace of God go I.” She meant that when intergenerational factors, neurodivergence, and socioeconomic pressures are taken into consideration, there is very little that separates any one of us from the clients NSLA defends. Third, ask as many questions as you can come up with. I learned so much from the lawyers I shadowed and worked with, and the next steps I take in my career will be informed by this experience and by their mentorship.

**References**

Government of Canada (2023). “Legal Aid Program.” Accessed from <https://www.justice.gc.ca/eng/fund-fina/gov-gouv/aid-aide.html>.

*R v Zora*, 2020 SCC 14.