

THIRD NATIONAL ACCESS TO JUSTICE PRO BONO CONFERENCE

Brisbane 27 August 2010

Plenary Session 1: The role of pro bono in access to justice
Presenter: Esther Lardent
Chair: David Hillard

Ms Lardent raised the following points:

1. In the interest of the clients and the viability of the justice system, the system in US needs more resources and funding. The issue is determining 'resources for what' and 'funding for what'.
2. The US access to justice system has the lowest per capita funding of any developed nation.
3. There is a high demand for legal assistance. Based on a very conservative poverty threshold, over 54 million people in the US are poor.
4. There are currently no available statistics regarding individuals who are disadvantaged in some other way.
5. Income inequality occurs at very profound levels. Consequently, there are clear obstacles to social inclusion.
6. Currently, the US has the highest ratio of lawyers to the rest of community in the developed world. There are currently 1.2 million lawyers in the US. There are nearly 100 million not-for-profit organisations.
7. 2009 was a difficult year for the legal profession in the US in terms of high redundancies, shut downs and reduction in salaries. Over 5 million hours of pro bono were conducted.
8. US pro bono lawyers assist in providing legal advice in matters such as family law and tenancy law, which also tend to be the most time consuming areas of work. The US had reached a point where there were more lawyers wanting to represent Guantanamo Bay detainees than detainees themselves. Other matters of interest to pro bono lawyers are death penalty cases and public policy work.
9. The focus is on the institutions in addition to individual lawyers. Firm culture and attitude toward pro bono work makes a difference.

What is the expected level of pro bono within those firms?

10. Initially, there was very little information sharing.
11. There is an incredible and enormous range of what the firms considered to be appropriate level of pro bono work. Currently, it appears that the progressive institutional standard of 3%-5% of total billable hours is applied. When that standard was originally set it was considered unachievable. Leading US law firms perform closer to 10% of pro bono work.

What have the law firms done to encourage pro bono work?

12. Advanced the notion that pro bono is important, integral and vital part of the fabric and culture of the law firm.

13. Publicised information to law students which has seen a dramatic growth in pro bono work done by young lawyers.
14. Used the definition and publicised the value pro bono work.
15. In US firms, we typically see a broader range of work, primarily for the low-income clients. There is significant interest among young lawyers in doing this work as it gives them an opportunity to work with a client.

What can be done better within law firms?

16. There is an obvious strong commitment to doing pro bono by law firms.
17. However, pro bono legal work can only be part of the solution but not the entire solution.
18. In order to do pro bono well, not only do the law firms have to partner with organisations similar to PILCH, they also have to provide financial support. Pro bono could not work at all without this support.

Pro bono – A vehicle to help fill in the gap

19. Even if magically the world understood what we are committed to and we had a fully funded legal assistance sector, it would be important to continue to maintain the pro bono ethic.
20. Reality is that those lawyers providing pro bono legal services care deeply for issues they are involved with but it is always important to look at these issues with fresh eyes. These lawyers can get tunnel vision, become staggered and fail to step back and look at the issue from a different perspective.
21. It is important to adopt some of ideas regarding practice, modalities, and theories coming out of the private profession and provide pro bono in a smarter and better way. It is important that some rethinking, redesigning and reinventing the system is considered.

Questions

1. *Is any facilitation of pro bono work done by the US Bar Association?*

The Bar Association has a significant and an important role regarding admission of lawyers, providing support services and establishing ethics rules. The Bar Association also runs its own pro bono program.

It also assists in sending the message to the profession that pro bono is important, awards those involved in pro bono work and provides training.

2. *How should we convince large law firms to take on more controversial public interest cases?*

Many firms are not only willing to take on a range of public interest cases but welcome those cases. These cases usually involve immigration law matters, death penalty, Guantanamo Bay, and abortion cases. These matters give lawyers an opportunity to shape the cutting edge issues as these matters

affect the society as a whole. For instance, in the matter involving affirmative action and diversity there were 75 law firms involved in the case on a pro bono basis.

Media is also used as a conscious pro bono recruitment strategy. For instance, articles will appear on the front page of the *Wall Street Journal* but also in the less well known newspapers which highlight a firm's involvement in pro bono. Using media in this way ensures that firms are getting positive attention and results in other firms also taking on pro bono work.

Summary by Téa Paris
Policy Lawyer, Law Council of Australia