

## Session 2A: Building Pro Bono Partnerships

### Opposites Attract, But Can They Last?

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**Abstract:** *This paper looks at building pro bono partnerships from the perspective of community legal centres in Queensland. The paper presents some ideas about how community legal centres and pro bono service providers can work together to provide services that meet the needs of the local communities.*

#### Introduction

This session is described as 'building pro bono partnerships'. The conference organisers have described it as follows:

How do pro bono legal service providers build and sustain multi-faceted partnerships with community organisations? This workshop will **focus on the key elements of such relationships and the extent to which they provide a useful model** for the legal services aspects of other partnerships. The session will consider such relationships from the perspective of the large law firm, and the community organisation. It will also examine the role of barristers, smaller rural and regional law firms and the potential involvement of law schools in pro bono partnerships. The workshop will allow time for discussion followed by an informal discussion amongst participants to enable representatives from community organisations to **raise ideas for partnerships**. Community organisations are encouraged to submit ideas for partnerships or areas of practical need before the conference to maximise the value of this part of the session. (emphasis added)

This paper gives some background to pro bono in Queensland. It also seeks to place pro bono work within the NACLC's framework for doing justice. It seeks to raise some key issues around provision of pro bono services in Queensland and some possible solutions to concerns that have arisen.

## **Community Legal Centres in Queensland**

The Queensland Association of Independent Legal Services Inc. (QAILS) is the peak association for community legal centres in Queensland and is a member of the National Association of Community Legal Centres (NACLC). QAILS has thirty-one (31) member centres, which include funded and unfunded centres.

The members of the Queensland Association of Independent Legal Services are:

- Aboriginal and Torres Strait Islander Womens Legal and Advocacy Service
- Arts Law Centre of Queensland
- Bayside Community Legal Centre
- Cairns Community Legal Centre
- Caxton Legal Centre
- Central Queensland Community Legal Service
- Environmental Defenders Office
- Environmental Defenders Office North Queensland
- Goondiwindi Community Legal Service
- Gold Coast Community Legal Advice Centre
- Highway Legal Service
- Logan Youth Legal Service
- Logan Legal Advice Centre
- North Queensland Womens Legal Service
- Nundah Community Legal Centre

- Peninsula Community Legal Service
- Petrie Community Legal Service
- Prisoners Legal Service
- Queensland Advocacy Incorporated
- Queensland Public Interest Law Clearing House
- Roma Community Legal Service
- South Brisbane Immigration and Community Legal Service
- South West Brisbane Community Legal Centre
- Suncoast Community Legal Service
- Stanthorpe Community Legal Service
- Tenants Union of Queensland
- Toowoomba Community Legal Service
- Townsville Community Legal Service
- Welfare Rights Centre
- Womens Legal Service
- Youth Advocacy Centre

QAILS members include general, specialist and hybrid centres. There are effectively three models of community legal centres in Australia. There are generalist centres that provide services to a geographically defined community. There are specialist centres that provide services to a particular section of the wider community (women, young people, migrants, people with disability) or in a particular area of law (tenancy, environmental, consumer credit). Finally there are hybrids – generalist centres with a specialist service based within, such as a children’s legal service or a disability discrimination unit.

### **Pro Bono Partnerships in Queensland**

The NACLC recently stated:

CLCs operate not only in partnership with their local community, but also in partnership with many private practitioners and legal aid lawyers who volunteer their time, expertise and energy to the work of the centres. Government funding of CLCs pays a dividend, in that centres actually leverage extra resources into the system through attracting and organising substantial volunteer labour. Beyond this cost-effectiveness of CLCs, it is in the interests of governments as well as the community for the independence of CLCs to be protected, for this valuable volunteer contribution will dry up rapidly if centres are forced to become 'little arms of the State'.<sup>1</sup>

These comments of the NACLC are important because they unveil one of the true strengths of pro bono service provision. By forming partnerships with pro bono service providers on their own terms, CLCs consolidate their position within the community. By doing this, they are also somewhat impervious to government interference. For example, reviews of community legal centres in Queensland and other states noted the significant volunteer base of centres and that this base was protective of the independence and operations of CLCs.

Giddings and Noone have commented that tampering with the operating structures of CLCs may adversely affect the level of pro bono support offered by the legal profession.<sup>2</sup> Clearly, considering the cost-effectiveness of these partnerships, government should be cautious in its approach to CLCs.

In Queensland, there are three models of interest to the pro bono community. Firstly, there are a large number of CLCs that are funded and maintain a pro bono advice clinic or service. Caxton Legal centre for example runs evening advice services four (4) nights per week.

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<sup>1</sup> National Association of Community Legal Centres, *Doing Justice: acting together to make a difference*, August 2003, 12.

<sup>2</sup> Jeff Giddings & Mary Anne Noone, Paper presented at the International Legal Aid Group Conference, Harvard Law School, 20 June 2003, 22.

Townsville runs a Thursday evening advice service and has in the past run specialist Tuesday evening family law advice services.

Secondly, there are unfunded CLCs that operate solely on a pro bono clinic or service model. These include organisations like Stanthorpe Community Legal Service and Gold Coast Community Legal Service. Communities create these services based on local need and demand. For example, the Mackay Community Legal Service was recently incorporated and has applied for membership of QAILS.

Thirdly, there are CLCs that specialise in linking clients with pro bono service providers. The Queensland Public Interest Law Clearing House is an example of this.

Finally, it should be noted that many QAILS members are assisted in other ways by pro bono service providers. For example, Queensland Advocacy Incorporated and Minter Ellison have maintained a partnership since 2000 and cooperate across a range of issues.<sup>3</sup> This partnership has included:

- Efforts to increase QAI's profile and funding
- Organisation of a National Disability conference
- Involvement in the management of QAI
- Drafting of legal issues papers and training packages
- Production of promotional material

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<sup>3</sup> National Pro Bono Resource Centre, *Working Together: Multi-tiered Pro Bono Relationships between Law Firms and Community Legal Organisations*, June 2003, 11.

## **Doing Justice – A Framework for Partnerships**

In August 2003, the NACLC released *Doing Justice, Acting together to make a difference*.

The NACLC states that:

With the release of this paper, NACLC signals our desire and willingness to be part of building a new partnership for justice aimed at delivering better outcomes for all Australians. We hope others will join with us – so that together we can make a difference.<sup>4</sup>

Clearly the NACLC's call squarely includes partnerships between community legal centres and the private legal profession, whether those relationships are characterised as pro bono or not.

The NACLC has also said:

Our goal is to begin the process of developing more vigorous partnerships based on shared understandings and joint action to build a fairer and more effective system of justice in Australia – one that is capable of delivering better outcomes for more people.<sup>5</sup>

## **Communities of Interest**

The NACLC has stated:

CLCs practice 'community law' that responds in a unique and effective way to community needs – whether that community is a geographical area or a group of people with similar needs and interests. As such, CLCs have developed an in-depth understanding of how the law and the legal system impact on specific communities within Australia but also on our society as a whole.<sup>6</sup>

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<sup>4</sup> Above note 1, 4.

<sup>5</sup> Ibid, 5.

<sup>6</sup> Ibid, 5.

This is the concept of ‘communities of interest’ and needs to be understood as the dominant paradigm for community legal centre practice. In particular, pro bono partners need to understand this concept before entering partnerships, because, it will inevitably shape the needs and interests of the CLC partner.

### **Some Barriers to Partnerships**

Clearly there are barriers to building and maintaining partnerships between the various interested parties.

### **Separate Communities of Interest**

The NACLC stated:

If we are to successfully build on the willingness of the private legal profession to contribute their expertise on a pro bono basis, a number of barriers need to be overcome. These include tackling the apparent mis-match between the areas of law with the highest incidence of unmet legal needs, and those where the private profession is most likely to be expert. Centres and firms have developed some innovative responses to this dilemma and the National Centre has targeted it for further work.<sup>7</sup>

Additionally the NACLC has noted the problems associated with competing priorities:

We acknowledge that other stakeholders may hold different views as to priority areas, and believe these should all be aired and considered as part of the process of seeking broad-based agreement on areas for priority action. Together and through this process, we can develop the strategies required to ensure a fair and effective justice

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<sup>7</sup> Ibid, 15.

system that balances the needs of all the citizens of Australia and ensures justice for all.<sup>8</sup>

Solutions:

- More work needs to be done to ensure that all parties understand each other's constituencies or communities of interest. This is preferable to value laden assumptions and stereotypes on both sides.
- More work needs to be done to identify common constituencies and communities of interest, particularly in developing transactional legal services with multi-professional providers. For example, a community development model may assist.
- Whenever a partnership is envisaged, all parties must ensure that the project has a common community of interest that is understood and accepted by all parties.
- Whenever a partnership is envisaged, all parties must ensure that they have a shared understanding of competing demands, needs and priorities involved in the project.

### **Complement, Supplement or Replacement**

The NACLC has stated:

Another concern is the lack of clarity about which matters are properly the responsibility of government and which are properly addressed through pro bono services. While this question is unlikely to be resolved definitively, a stronger commitment by government at all levels to funding legal aid and community legal services would pay-off in less cynicism in the profession and elsewhere and a likely greater commitment to pro bono. In other words, government investment in legal aid is very likely to leverage a further significant contribution from the profession.<sup>9</sup>

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<sup>8</sup> Ibid, 7.

<sup>9</sup> Ibid, 15.

Solutions:

- Pro bono providers and community legal centres take the opportunity suggested by the NACLC to make a clear statement about the nature of their collaboration to dispel myths and anxieties about pro bono replacing legal aid.
- Pro bono providers and community legal centres make joint statements about doing justice.
- Pro bono service providers and community legal centres acknowledge the existence of the current range of partnerships.

### **Sexy versus Mundane**

It could be argued that one barrier to creating partnerships is an unwillingness to undertake work of a routine or mundane nature. Often the pro bono provider is inclined to undertake work of a test case, public interest or novel nature. Conversely, pro bono providers may be unwilling to undertake work that is more run of the mill, such as family law, even if it is where the needs and demands lie.

Solutions:

- Focus on the needs of the client and forget about what sort of matter it is
- Engage all stakeholders in continuing professional education to ensure competence
- Develop national competency standards for providers, including training packages

## **Some Other Issues**

The National Pro Bono Resource Centre (the NPBRC) has released a range of publications that tell us about the state of play of pro bono in Australia. The NPBRC publication, *Working Together: Multi-tiered Pro Bono Relationships between Law Firms and Community Legal Organisations*, reveals a number of key issues.<sup>10</sup>

For all intents and purposes, none of the thirteen (13) case studies revealed a significant and/or ongoing commitment to providing services in regional, rural or remote (RRR) locations. Further, none of the case studies revealed a significant and/or ongoing commitment to work in family law – the most commonly encountered area of law in CLC practice. This clearly needs to be addressed.

## **Unbundled Legal Services**

The NPBRC has suggested that ‘unbundled legal services’ or ‘discrete task assistance’ is one key to success in building pro bono relationships.<sup>11</sup> This seems correct based on CLC experience in Queensland, and, in fact, is the very essence of the ‘Thursday night evening advice service’ where people receive discrete or limited help with the legal issue. This is often called the ‘clinic’ or ‘shopfront’ model. The drawback is that we can end up with what Legal Action of Wisconsin has called ‘Platte River Legal Services’ which are ‘a mile wide and an

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<sup>10</sup> National Pro Bono Resource Centre, *Working Together: Multi-tiered Pro Bono Relationships between Law Firms and Community Legal Organisations*, June 2003.

<sup>11</sup> National Pro Bono Resource Centre, ‘Pro Bono Opportunity in Discrete Task Assistance’ July 2003, *Law Institute Journal*, 54-55.

inch deep'.<sup>12</sup> We must avoid this at all costs as no one benefits from this approach. Statistical satisfaction is not the same as client satisfaction.

### **Ghost-writing**

The pro bono movement in the United States refers to 'ghost-writing' as the act of assisting to prepare court documents without formally entering on the record in a matter. These haunted documents now fill our courts and tribunals. Ghost-writing does raise ethical and professional issues for pro bono lawyers – can you ever really be 'half on the record'? These issues have been faced by CLC lawyers for years. Ghost-writing is part and parcel of unbundled legal services. The danger is that a 'one size fits all' approach can be encouraged by the use of self-help kits and pro forma pleadings.

### **Turn on the Precedent Tap**

To avoid the dangers inherent in ghost-writing, it may be appropriate to consider building stronger networks between CLCs and librarians within firms. That is, turn on the precedent tap. Clearly arrangements need to be made to protect the intellectual property rights of the authors. The Arts Law Centre in Brisbane is an example of this in action, where complex commercial pleadings find their way into the hands of artistic folk who do not have the means to pay top dollar.

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<sup>12</sup> John Ebbott (ed), *High Quality Representation: Why and How to Pursue the Fundamental Goal of Legal Services*, 2003, 120.

## **The Last Word - The Work of Dr McGraw**

Some general strategies have been developed from the works of **Dr Phillip C. McGraw**.<sup>13</sup>

These eleven (11) general strategies are taken from the episode: **Opposites Attract – But Can They Last?**<sup>14</sup>

Dr McGraw suggests as follows:

1. It is an adjustment. It takes sacrifice. Merging two lives together — and then adding a project — and putting them all under one roof is difficult. Don't expect it to be easy.
2. Manage your expectations. What makes people upset is not what happens in their life ... but when their expectations are violated. Be realistic.
3. You have a responsibility to resolve your differences so they do not negatively impact your project.
4. Look at your own behaviour. Is it changeworthy? The only person you control is you. Take ownership of your partnership, and don't wait for your partner to take action. Remember that you teach people how to treat you.
5. Have a spirit of acceptance. CLCs and private law firms are different because they're supposed to be! The last thing you'd want is to roll over in the morning and wake up looking at yourself.
6. Stop complaining and start asking for what you want. Be specific.

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<sup>13</sup> Dr McGraw is a psychologist and co-founder of Courtroom Sciences, Inc., a company that assists the legal profession by conducting mock trials, behavioral analysis, jury selection and mediation.

<sup>14</sup> The term 'kids' and 'children' have been replaced with 'project' and the terms 'husband' and 'wife' have been replaced with 'CLCs' and 'Private Law Firms'.

7. Remember the **10 relationship myths**. Keep in mind, for example, that a great relationship does not require a great meeting of the minds. You and your partner are entirely different people. Recognize how your partner enriches your life, rather than simply reflecting it. Appreciate your differences.
8. Ask yourself every day: "What can I do to make my partnership better today? What can I communicate to my partner that I really value?" You don't have a right not to.
9. Pick your battles. If you don't like the way your partner brushes his hair, leave the room and don't watch.
10. Don't wait until there's a fight to talk about how to resolve your differences. That's when blood is flowing and tempers are high. Have a calm discussion during times of peace.
11. Compromise. Relationships are continually negotiated. If you miss an episode of *Friends* to spend quality time with your partner, will the world crumble? (Sitting shoulder to shoulder and watching TV does not count as time spent together.) Instead of complaining about your partner's hockey game, how about going and watching it? Opposites can compromise and find middle ground if you're both willing to work on it.

Dr. Phil believes there is a formula for success in a partnership: A solid partnership is based on an underlying friendship and is a function of how well it meets the needs of the two people involved. Find out your partner's needs. Do you know your partner's needs? Do you know what your own needs are?

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