

NEWS

Taking off the blinkers

Published 5 March 2008

The Pro Bono Declaration for the Americas launched in North America at the end of January. Clare Bolton attended to find out how Latin America is accepting the initiative

One image summed up the discussion, and it came from Colombia's Paula Samper, partner at Gómez-Pinzón Abogados. "Many of you have spent time in Latin America, and have seen horses on the busy streets wearing blinkers to ensure they do not get distracted," she said. "For my colleagues signing the declaration, it has been like taking off the blinkers – now they can see the real need surrounding them."

The Pro Bono Declaration for the Americas is a hemispheric initiative designed to support and promote the practice of pro bono work. Initiated by the Cyrus Vance Center of the New York City Bar, the declaration has been drafted by prominent lawyers from throughout the region. It explains the reasons behind pro bono work, gives a concrete definition of pro bono, and asks signatories for a commitment both to the aims and the practice of pro bono – notably, asking them to commit to a minimum of 20 pro bono hours per lawyer per year.

The drafting process took two years and was completed in June. Since then, the drafters have been soliciting signatories in their countries throughout the region. Three hundred law firms, bar associations, law schools, prominent individuals, NGOs and others have already signed up – and the list is growing.

Perusing the initial list, (available on the Vance Center's website) it is clear how hard the drafting committee members must have worked to get this many people to sign up. Guillermo Morales is the Chilean drafter and a partner at Morales & Besa. "The declaration was enthusiastically signed by a number of law firms in Santiago," he said. "There were concerns – political, business-based – but essentially, ethical concerns weighed more heavily than firms' bottom lines, which was very encouraging."

That's not to say that the impact of pro bono on profitability was not raised, simply that the issue did not prevail. "When looking at how such a commitment affects the business, it is very far from a simple equation of 'number of lawyers multiplied by 20 equals the numbers of hours taken away from client work'," he explains. "Associates often work harder to fit in pro bono hours, the work provides a useful tool for training younger lawyers, and a successful pro bono practice is a definite boon in recruitment – so in many ways the impact on business is a positive one."

Morales notes that in Chile, pro bono was already an accepted concept; all lawyers must work for six months for free for those in need of public legal aid before they can qualify, while the Fundación Pro Bono, a clearing house which links the need (such as charities) to the provision of services (the lawyers), pre-dates the declaration and is successful. Yet this initiative has harnessed that willingness and given it new energy. "It defined certain concepts of a vague ethical duty which all had felt but not all had pinned down," says Morales.

Both drafters and signatories admit, however, that in other countries in Latin America, the situation is not as advanced. In Colombia, for example, there is no pre-existing requirement to do pro bono, or infrastructure to link law firms to those in need of legal services. That has not hampered the considerable drive of the Colombian drafter Paula Samper – 18 of the country's top law firms have signed up.

But the declaration has compelled the country's legal profession to go through a process of introspection, and no lawyer or firm has undertaken the decision lightly. "What has been clear is that signing up is a definite commitment," says Samper. "The Colombian signatories have recognised that pro bono work really can help – and is different from charity."

At this point, the potential of the declaration is enormous. The sheer volume of people that have signed up to the 20-hour commitment has created a great reservoir of time – in Colombia alone (which hardly has the region's biggest law firms), 5,800 annual pro bono hours have been promised from just nine of the 18 law firms; in Brazil, six of the country's seven biggest law firms have signed up, promising 38,000 hours a year between them.

Issues clearly remain. In all countries in Latin America there is a resistance among some lawyers to doing pro bono work for an NGO on the opposite side of the political spectrum. The Andean region in particular has problems as big business and NGOs can see themselves on a natural dialectic. This position is particularly sharp in Colombia, where there is a demonstrable threat to personal security from some of these situations. A way through this minefield needs to be secured, which can only be done through extensive dialogue.

Infrastructure to link cases and charities to those lawyers willing to work in many places needs to be strengthened and in some places created – signatories must spend time building that before any true pro bono work can be undertaken. Some countries – Peru and Ecuador, for example – must overcome both of these hurdles before the practice of pro bono can become truly and broadly embedded. The declaration's drafting committee also has yet to incorporate Venezuela, Bolivia, the Central American nations, Uruguay and Paraguay to the programme (Venezuela has one signatory, the local office of Hogan & Hartson, and the parent firm has also signed up).

While of course work remains to be done, the progress so far is remarkable – not least in the region's biggest jurisdiction, Brazil. The Ordem dos Advogados do Brasil is not favourable to the practice of pro bono. Under a 2002 restriction, pro bono work is so heavily regulated as to make the actual practice of it very difficult (although that regulation is no longer broadly enforced). However, under the guidance of Antonio Meyer (a director of the OAB), not only have 54 law firms signed up – including seven of the 10 largest – but so has the São Paulo chapter of the OAB. Such a public commitment to pro bono is an astonishing but encouraging commitment from what is broadly seen as a traditional and overbearing institution. Coverage is not complete, of course – it is the only country in which partners of prominent law firms have signed up while the law firms themselves have felt unable to do so. But as a mechanism for driving change in Brazil, the declaration so far has been a powerful tool.

Also encouraging was the presence of Justice Luiz Fux at the launch of the declaration. A Brazilian Supreme Court judge, he has done a significant amount for developing pro bono at universities in Brazil, supporting programmes such as 'Justice on Wheels', in which students and lawyers travel to local communities to regularise documents and resolve disputes. "There is a significant task ahead to change both the culture and the education of the legal profession for the practice of pro bono to be deeply ingrained," he says. "But I am absolutely certain we will be able to bring numerous other colleagues on board – from the judiciary, universities, and private practice – to achieve this dream."

More important, perhaps, than the potential of the declaration is the sense of energy among the signatories. Even in countries where the biggest hurdles exist, some of the country's most senior lawyers have committed, and begun, to overcome them. Partners from Peruvian firms Estudio Echeopar (whose partner, Javier de Belaunde, helped draft the declaration) and Estudio Rubio Leguia & Normand attended the launch and made plans for the way forward. The indefatigable Paula Samper, with a head start, has laid the foundations for a pro bono clearing house in Colombia.

Equally encouraging is the engagement of the younger generation to the cause. At a post-launch meeting of Latin American associates on foreign exchange programmes in New York – many of whom are the partners of the future – there was broad buy-in to the concept. As Eric Ordway of Weil Gotshal & Manges LLP, who led the discussion, said: "This is a significant landmark for the development of pro bono in the region. Those of you here may look back at this meeting in 20 years – or 10, or even five – and think, there it all began."