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Pro Bono Committee Update

Newsletter of the International Bar Association Section on Public and Professional Interest

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INTERNATIONAL CONVENTION CENTRE (ICC SYDNEY)

IBA 2017 Sydney

8-13 OCTOBER

ANNUAL CONFERENCE OF THE INTERNATIONAL BAR ASSOCIATION



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This newsletter is intended to provide general information regarding recent developments relating to pro bono. The views expressed are not necessarily those of the International Bar Association.

Pro bono work worldwide

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The IBA Annual Conference in Washington, DC was, as it always is, a great opportunity to catch up with friends from all round the world. For the Pro Bono Committee, it is also an opportunity to share best practice on pro bono with colleagues, and to help those from countries where pro bono culture is less developed to grow their practice and encourage their own firms and professional bodies in this area.

We were pleased to run two sessions at the conference – the video of one of these will shortly be available on our website in full, and summaries of both are included in this newsletter. It was a privilege, at the first session, to present the Annual Pro Bono Award to Odette Geldenhuis from South Africa. At our open committee meeting, we engaged with lawyers from places as diverse as Nepal and Nigeria as we discussed how the committee can assist in growing international pro bono work.

Pro bono legal work is now a global phenomenon. A vibrant pro bono culture

has developed among law firms in North America and Europe, Australia and Latin America, and is growing in the major economies of Africa and Asia. This is work we do not just because our partners and staff feel good about it, but because it is part of who we are as lawyers. Access to justice and proper legal representation are at the heart of our profession.

While there are many pro bono organisations around the world, we hope that the unique international reach of the IBA will enable this Committee to do something that they cannot do in encouraging pro bono culture. We are always open to ideas: please contact Pam Kovacs, me or any other officer of the Committee if you have thoughts about what the Committee should be doing. And please consider joining us. We have a number of officer vacancies in 2017 and welcome applications by interested individuals.

Finally, we hope you enjoy reading this issue of our newsletter.

Pamela Kovacs

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Welcome to the newsletter

We begin this issue by featuring insights from our committee sessions at the Annual Conference in Washington, DC, as well as the winner and shortlisted nominees for the Annual Pro Bono Award, which helps to raise awareness of the importance of pro bono work and its positive impact.

For the first time, this issue features a contribution from a member of the IBA Law Students' Committee. We welcome the contribution and look forward to views and perspectives from law students in future newsletters. Articles in this issue focus on pro bono developments in Brazil, Canada, Malta and Europe, mentioning both progress and existing barriers in creating an enabling environment for pro bono legal services. Among others, issues discussed include building a culture of pro bono and sharing good practice, communicating the importance of pro bono to lawyers in countries where pro bono traditionally hasn't been in focus, recognising legislative barriers to pro bono and encouraging pro bono through the removal of conflict of interest provisions for short-term pro bono legal services.

Several of these articles highlight that many initiatives exist, focusing on pro bono legal services, corporate responsibility and legal aid. While the distinctions are important to highlight

where legal professionals can uniquely contribute their skills to doing good, our communities benefit by finding synergies and complementarity between these initiatives. And, as the article focused on one firm's efforts to help realise sustainable development goals highlights, pro bono work can also benefit the global community.

Finally, just before our 'Meet the officer' feature, we provide a reminder of a research initiative regarding pro bono legal services and barriers to access to justice, inviting participation. In this issue, you'll meet our newest officer, Sarah Morton-Ramwell, who is the Global Head of Pro Bono and Corporate Responsibility at Ashurst. Sarah will join the Committee as an officer starting January 2017 – welcome!

Our committee remains committed to actively encouraging lawyers, judges, law firms, bar associations, law schools, and governmental and non-governmental organisations to participate in pro bono legal services. Between newsletters, you can stay up-to-date with pro bono topics via our Twitter newsfeed and link to other helpful resources and networks on our website: www.internationalprobono.com.

As always, please be in touch if you share our passion for pro bono or would like to contribute an article or item of interest related to global pro bono programming!

Pro Bono... A Definition

The Latin phrase pro bono publico means 'for the public good'.

In the IBA Pro Bono Declaration, approved by the IBA Council in October 2008, pro bono legal service is defined:

'work by a lawyer of a quality equal to that afforded to paying clients, without remuneration or expectation of remuneration, and principally to benefit poor, underprivileged or marginalised persons or communities or the organisations that assist them.'

Pro bono legal service may extend to:

- advice to or representation of persons, communities or organisations, who otherwise could not exercise or assert their rights or obtain access to justice;
- activities supporting the administration of justice, institution building or strengthening;
- assisting bar associations and civic, cultural, educational and other non-governmental institutions serving the public interest that otherwise cannot obtain effective advice or representation;
- assisting with the drafting of legislation or participating in trial observations, election monitoring and similar processes where public confidence in legislative, judicial and electoral systems may be at risk;
- providing legal training and support through mentoring, project management and exchanging information resources; and
- other similar activities to preserve the rule of law.

See: www.internationalprobono.com/declarations

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ANNUAL CONFERENCE OF THE INTERNATIONAL BAR ASSOCIATION

CONFERENCE REPORTS

Pro Bono Committee Sessions

Sustainable development goals

Monday 19 September, 2016

Co-presented with the Poverty and Social Development Subcommittee

This session focused on the United Nations Sustainable Development Goals (SDGs), which provide an ambitious agenda for ending poverty, protecting the planet and ensuring prosperity for all. Constituting both opportunities and challenges for lawyers and their clients, this session provided a platform for lawyers to dialogue and engage on Agenda 2030 and the realisation of the Sustainable Development Goals.

Chaired by Pamela Kovacs of the International Development Law Organization, speakers included Yasmin Batliwala, Advocates for International Development; Norman Clark, Walker Clark; Lisa Dewey, DLA Piper; Neil Gold, University of Windsor; and Ursula Wynhoven, UN Global Compact.

During the session, topics covered how lawyers can be a positive influence in the achievement of the goals through their own practices and interaction with their

clients. Attention was directed to SDG 16, often called the 'rule of law' goal. It aims to 'promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'. The discussion emphasised how this goal is cross-cutting and helps to enable the other 16 goals, which address poverty; hunger; health and wellbeing; education; gender equality; clean water and sanitation; affordable and clean energy; decent work and economic growth; industry, innovation and infrastructure; reduced inequalities; sustainable cities and communities; responsible consumption and production; climate change; life below water; life on land; and partnerships to realise the goals.

The speakers highlighted existing pro bono projects that are helping to reach the objectives of these global goals, as well as forthcoming resources on the role of the law for achievement of the SDGs. The speakers

also touched on the economic benefit to law firms of actively supporting the SDGs, not only for the sake of doing good work, which is important, but also in terms of market building, especially in developing countries. It was noted that economic development that does not address unequal economic

opportunity is not sustainable development. Further, efforts by the UN Global Compact were highlighted, including an emphasis on private sector engagement and businesses acting responsibly, particularly through their general counsel.

Lisa Dewey

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DLA Piper's support for the UN Sustainable Development Goals through global pro bono

The IBA 2016 Annual Conference in Washington, DC covered an array of issues facing legal professionals around the world. I was fortunate to join a panel of distinguished speakers that discussed the role of the legal profession in supporting the United Nations Sustainable Development Goals (SDGs). In reflecting on the progress made toward ending poverty, reducing inequality and tackling climate change in the first year since the goals were established, the panel led to an illuminating discussion of how lawyers can contribute through pro bono legal services.

The professional and ethical obligation to provide pro bono services to those who would not otherwise have access to legal representation is a cornerstone of the United States legal profession. However, lawyers worldwide are increasingly taking an interest in pro bono and more and more global law firms are broadening their pro bono programmes to include work in countries where they may not have an office.

At DLA Piper, we have long focused on providing long-term pro bono legal assistance in underserved regions to support access to justice, social and economic development, and sound legal institutions. In 2005, we established a non-profit organisation called New Perimeter that harnesses the skills and talents of DLA Piper's global network of lawyers, as well as partnerships with our clients, academic institutions and non-governmental organisations, to further a more just world for all.

Goal 16 of the SDGs focuses on providing access to justice and building accountable institutions at all levels. Law firms are particularly well poised to assist in this area through pro bono legal services. As an example, New Perimeter has created numerous legal education projects that provide training to judges, lawyers and law students around the world. Improving critical legal skills, such as negotiating transactions, drafting agreements, legal writing and research methods, builds the capacity of local lawyers and institutions and encourages economic growth.

Lawyers can also promote access to justice by helping to strengthen the legal systems and the rule of law in countries that do not have a robust legal infrastructure. As one example, New Perimeter provided assistance to the Namibia Paralegal Association (NPA), an organisation focused on addressing the access to justice gap in that country. Namibia's small legal profession resides mainly in its capital city of Windhoek, but nearly 70 per cent of Namibians live in rural areas and have difficulty accessing legal services. New Perimeter has helped NPA to build the capacity of individual paralegal volunteers, developing a reference manual that serves as a guide to paralegals along with a training programme. In Kosovo, New Perimeter spent more than a decade helping local groups to draft laws that formed Kosovo's judicial and prosecutorial systems, as well as to provide training to

Kosovar lawyers operating within the newly created system and developing strategies for increasing the representation of women and minorities in the country's legal profession.

The SDGs are a crucial part of creating a better future for all. Lawyers have a unique

opportunity to assist individuals around the world in need of legal assistance and help to build the capacity of institutions to meet the ambitious targets set forth by the UN.

Lisa Dewey was a speaker at the Sustainable development goals session.

Building an effective (law firm) pro bono infrastructure

Tuesday 20 September

Co-presented with the Law Firm Management Committee

This session considered how a pro bono function can be managed within law firms. Chaired by Carmen Pombo of Fundación Fernando Pombo, the speakers included Maru Cortazar, Appleseed; Odette Geldenhuys, Webber Wentzel; Jim Jones, Pro Bono Institute; and Marc Kadish, Mayer Brown.

This session emphasised different models of managing pro bono within law firms and examined these models, including the involvement of dedicated legal and non-legal staff, and committee and similar structures. The speakers highlighted the possibility of dedicated pro bono departments or incorporating pro bono across the firm, and discussed targets, for example, three per cent of billable hours or 50 hours per year. The extent to which firms, particularly smaller firms, can share resources was also mentioned, as was the interaction with

supporting external parties, such as pro bono clearing houses.

It was highlighted that regardless of the model, pro bono should be well-managed internally, meaning treating pro bono work in the same manner as billable work with checks and balances. This can include selecting cases and establishing criteria, for example, indigence and merit, and appropriate supervision and file management. The discussion also included the importance of human resources and budget, and being prepared for conflicts of interests, referrals and collaboration where appropriate, and training for lawyers in areas in which they don't normally practice. Finally, the discussion with audience members highlighted that all models do not translate in the same way across borders, but incentives and starting early with creating a pro bono culture among law students, was viewed as universally important.

IBA PRO BONO AWARD 2016

Winner, Odette Geldenhuys

Congratulations to the 2016 Pro Bono Award winner, Odette Geldenhuys of Webber Wentzel in South Africa. Geldenhuys is the founder of ProBono.Org, the first pro bono clearing house in South Africa, which focuses on helping the country's underprivileged and marginalised people. As part of this, Geldenhuys created the first housing cooperation, 'Seven Buildings Project', as a way of securing black property ownership, became the first director of 'Legal Aid', an institution providing free legal services, and throughout her work recognises the importance of the role of the private profession in ensuring access to justice for all people. The selection committee cited her clear interest in, passion for, and track record of contributing to the area of pro bono and her resilience in getting ProBono.Org off the ground despite some local resistance.

Her nominators were also impressed by other public leadership roles she has held at different times, including deputy national director of the Legal Resources Centre and the first director of Legal Aid. Case work has also not been overlooked, for example, her outstanding work on behalf of 16 workers against a micro lending credit provider.

Nominees

The six other nominees shortlisted for the reward were Alan Wright, Cristina Puigdengolas, Katrina Crossley, Mandy Manda, Pooja Dela and Robert Reed. The selection committee often has a very difficult time. Below are brief summaries of the work of the shortlisted nominees for the 2016 Pro Bono Award, sponsored by LexisNexis.

Alan Wright, Senior Associate at Bowman Gilfillan Africa Group, was nominated by the firm's Pro Bono Manager Fatima Laher, who stated that throughout his career, Wright had dedicated considerable time, energy and effort in furthering Bowman Gilfillan Africa Group's commitment to pro bono. In particular, he should be recognised for his outstanding representation of the producers and executive producers of the feature film documentary *Blood Lions*, allowing the film's



producers to achieve their goal of raising awareness of the Blood Lion Campaign.

Cristina Puigdengolas, Business and Human Rights Officer at the Fernando Pombo Foundation (the 'Foundation'), works full-time on pro bono issues for the Foundation. This followed over 20 years of work as an in-house lawyer and legal adviser across Europe for different multinational companies. Carmen Pombo, Director of the Foundation, explained that through her work, Puigdengolas was instrumental in the development of a pro bono culture in Spain, and in particular exhibited a commitment to the rights of the underprivileged through a project on the role of the legal profession in business and human rights.

Katrina Crossley is a trustee of the International Law Book Facility (ILBF), a United Kingdom charity that she helped to launch a decade ago. The aim of the charity is to send good quality, second-hand UK legal textbooks to pro bono, educational and access to justice organisations across the world. Through working with a team of volunteers, and creating an effective operating model, the ILBF has sent almost

30,000 books to more than 100 organisations in over 40 countries. Jane Colston, Partner at Brown Rudnick, explained that Crossley's collaborative approach extended beyond the volunteers and UK partner organisations to the recipients of the books, building effective partnerships with local organisations.

Mandy Manda is the Executive Director of the National Legal Aid Clinic for Women, a legal aid service provider for women and children from marginalised social sectors in Zambia. In 2013, the clinic was selected to showcase its work at a regional symposium as a model for others in the southern region of Africa. She is also an advisor on policy and legal matters aimed at promoting gender equity and equality, to the Ministry of Gender in Zambia. Linda Kasonde, President of the Law Association of Zambia, nominated Manda for her level of commitment and dedication to providing pro bono services and access to justice in Zambia.

Pooja Dela of Webber Wentzel in Johannesburg has dedicated her work to the protection and enhancement of the rule of law and independence of critical state institutions, with a view to upholding the values of the constitution, including the National Prosecuting Authority, the Judiciary and the South African Police

Service. Her nominator, Vlad Movshovich, Partner at Webber Wentzel, stated that Dela has made a monumental contribution to South African jurisprudence and the safeguarding of fundamental constitutional values and institutions.

Robert Reed is Special Counsel at Minter Ellison, and has contributed the past 15 years to access to justice and the delivery of free legal services to disadvantaged citizens, including homeless people and victims of domestic violence. As part of this, he is a founding member of Queensland Public Interest Law Clearing House (QPILCH), an independent and non-profit, community-based legal organisation coordinating the provision of pro bono legal services for individuals and community groups in Queensland. In addition, Reed dedicates his pro bono work to Australia's CEO Challenge (ACEOC), a non-profit organisation dedicated to the elimination of domestic violence, with a focus on its impact on the workplace.



PRO BONO IN PRACTICE

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Brazil hosts the first edition of the Latin American Pro Bono Forum

This article provides an update on the journey of pro bono in Brazil and Latin America more broadly, where the culture of pro bono is expanding. Readers may recall a previous update titled ‘A major step forward for pro bono in Brazil’ published in the September 2015 newsletter. The article concerns a landmark decision by the Brazilian Bar Association Federal Council regarding the regulation of pro bono work, which approved an amendment to the Brazilian Bar Association Code of Ethics to permit lawyers in private practice to provide pro bono services to individuals and non-profit organisations who cannot afford legal services.

In September 2016, the Pro Bono Institute, a non-profit organisation founded in 2001, organised the first Latin American Forum focused on debating issues related to pro bono. The event took place in São Paulo, with the support of many local and international partners, and was attended by lawyers, other experts, scholars and activists from several Latin American countries.

Despite the peculiarities inherent to each country, unequal access to the justice system by historically discriminated groups is still a reality in the region. As a result, the low effectiveness and enforceability of human rights ends up weakening democratic systems.

In this context, pro bono activity has the potential to cause effective change and has much to contribute in reversing this unfair system.

The Forum enabled the discussion of different points of view on access to justice from a Latin American standpoint. Moreover, it was a great opportunity not only to share experiences, but also to establish a network of action aimed at protecting human rights between relevant players involved in pro bono projects.

Under the main theme of ‘Pro bono and Non-discrimination’, the initial session addressed the challenges to promoting access to justice for vulnerable groups in Latin America. This was followed by a discussion among members of leading law firms in Brazil, through which they shared ways of developing pro bono activities. Concomitantly, the relation between a wide-ranging institutionalisation of pro bono vis-à-vis the implementation of effective public policies was the subject of another session.

Other topics discussed included common challenges and even the inclusion of new issues in the pro bono agenda in relation to vulnerable groups aimed at fighting gender violence, the defence and guarantee of the rights of lesbian, gay, bisexual, transgender and queer (LGBTQ) people and the rights of refugees and immigrants. Students and members from academia also submitted proposals for the improvement of pro bono activities through legal clinics at universities.

The Forum ended with a lecture and debate led by Flavia Piovesan, scholar and Secretary of Human Rights of the Federal Brazilian Government. The subject was the opportunities to implement partnerships between government and organisations for improving access to justice.

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The premise of pro bono in continental Europe: lost in translation?

This article discusses how pro bono is a relatively new concept in continental Europe and how its relevance is distinct from explanations usually advanced in other parts of the world, which often emphasise associated gaps in legal aid. The author reflects on the European social contract and argues that pro bono is important to Europe, but the starting place for explanations as to its importance can be better framed as its ability to transform the life of the doer as much as the life of the receiver.

Pro bono is a relatively new concept in continental Europe compared to its history in the Anglo Saxon world. When one explains a new concept, one draws conclusions from its origins and adopts a comparative needs-based approach. This way of analysing the relevance of pro bono in continental Europe does not do justice to what it can promise. The comparative needs-based approach hides the real premise of it, which is much more than a trend to be followed.

Pro bono in continental Europe cannot rest on the same foundations as it does in the Anglo Saxon world. With a few exceptions, legal aid cuts in continental Europe are progressing much more gradually and often from a much lower base than in other parts of the Western world. On the whole, the government is still viewed as the big brother to and provider for all. In this context, pro bono must start from a different premise. When talking about pro bono in continental Europe, we need to start talking about what it has to offer to the doer and not start with the receiver or third parties, that is, governments or legal aid boards. Otherwise, there will be a danger of it being labelled as ‘just one of those trends’. There are significant economic, cultural and political differences too.

What is your social contract?

The history of Europe is the history of monarchs who owned the land, power and people. With the advancement of democracy, many inherited governors were replaced with elected ones, but the social contract has

remained the same: ‘you pay me your dues and I will take care of your needs’.

Government is the guardian of social welfare and wellbeing, and collects high taxes for this purpose. In the Anglo Saxon world, the state is the enabler of commerce, which it is assumed will ensure social wellbeing in return for its liberty.

Commerce in continental Europe is not given the driving seat. It is seen as just another human activity, like sport or leisure, if not a little more sinister because of its ability to exploit and grow out of control. Governments are compelled to keep an eye on commercial activities to make sure they do not obstruct the primary objective of the state: to ensure the wellbeing of its citizens. That is why in France, shops are not allowed to open on Sunday, because the government wants you to rest. They do not want commerce to lure people with money and overwork them.

While the primary objective of being the caretaker of society is noble, like every good medicine, it comes with its side effects: delegation, rigidity and social isolation in society. This is manifested in different ways in continental European cultures and pro bono can provide a good antidote to these ills.

Who’s going to do the dishes?

If there are cracks in the system and people whose wellbeing is not ensured, people are quick to blame their governors. When something goes wrong in society or part of society is not being taken care of, the perception is that the government is failing to

honour its part of the social contract. That's why people pay upwards of 60 per cent of their salary in taxes and social contributions. When lawyers are asked to pay high taxes and donate time for social causes, they wonder whether they are being tricked – that is, being charged twice to support the system.

This brings a culture of delegation, which with time renders one cynical, bitter and powerless. Pro bono, on the other hand, empowers one and provides an opportunity to take charge. It gives one hope that instead of waiting and criticising, there are things one can do to right the system.

Is pro bono allowed?

A delegation culture also creates rigidity in the system. People play specific roles and are hesitant to move out of their comfort zone. For lawyers working in the civil law system, the law seems like it aims at a concluding solution for every legal situation so as to avoid interpretation by judges and ambiguity. From this perspective, everything is forbidden unless it is explicitly allowed by the law. This is why a continental European lawyer's immediate reaction to pro bono can sometimes be 'is this even allowed?'

This creates isolation as the profession becomes more of a technical exercise instead of ensuring a just world. Rendering law as just a technical exercise takes the soul out of the profession. One assumes that one becomes a doctor to save lives and not to make money. Similarly, one chooses law because one is drawn to justice. Pro bono work gives lawyers and law firms a chance to have a connection to the roots of the profession, which also provides a good antidote to the rigidity and isolation typical of the modern practice of law.

For pro bono to catch on in continental Europe among its elite lawyers and law firms, we need to focus on what it has to offer to the clogged pipes within the psyche of society and the legal professions.

Pro bono in continental Europe could apply the same principles as apply to oxygen masks on a plane: please save yourself before attempting to save someone else. That's why as a pro bono professional who often makes pro bono pitches to colleagues, I start with what is in it for them. This starting point might look like a selfish one reflexively, but just like the oxygen masks on the plane, it totally makes sense when you think about it.

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Pro bono services in Malta

This article provides an overview of the pro bono landscape in Malta, highlighting how the Maltese legal sphere has a strong sense of social responsibility as demonstrated by its advanced legal aid system, the work of non-profit organisations and private firms' corporate social responsibility. However, the author argues that the time has come for a more proactive stance on pro bono activity in Malta, with the removal of barriers to engaging in pro bono services.

It is generally accepted that legal practitioners owe a corporate social responsibility (CSR) towards those in need. In Malta too, the concept of pro bono assistance has become omnipresent in the legal sphere; however, as will be seen, the concept is more precisely tailored to the local scenario.

About Malta

Malta is renowned for its deep blue waters, vibrant history and friendly locals. However, Malta has also firmly established itself as one

of the economic success stories of Southern Europe. As a European Union member and eurostate, Malta is a recognised hub in financial services, logistics, professional and corporate services and remote gaming.

Legal aid

By virtue of Article 39 of the Constitution, Malta has a publically funded system of legal aid lawyers that represent persons who are unable to afford their own lawyer. This includes both civil and criminal claims.

Article 911 of the Code of Organisation and Civil Procedure (COCP), provides that a person (notwithstanding his or her nationality) wishing to benefit from legal aid may apply to the First Hall of the Civil Court. Moreover, Article 570 of the Criminal Code stipulates that the same protection afforded in civil cases shall apply to criminal cases. The same prerogative is vested in the Court of Magistrates when the case falls under the criminal jurisdiction.¹

In terms of Article 912 of the COCP, in order to qualify for legal aid, the law prescribes that an applicant must satisfy both a merits and means test. The merits test prescribes that the applicant must have in its favour a *probabilis causa litigandi*, that is, reasonable grounds for taking or defending any proceedings before the courts. The legal aid lawyer examines the substance of the case, the possible outcome of the proceedings and the prospects of success. The means test prescribes that an applicant must confirm on oath that he or she does not have:

- property, the net value of which is equal to or in excess of the sum of €6,988.12 (not including the matrimonial home and the property that is the object of the dispute); and
- an income that exceeds the national minimum wage applicable to persons who are 18 years old or older.

University of Malta

The Faculty of Laws, as part of its modules on advocacy skills, offers postgraduate students supervised work with lawyers offering pro bono legal assistance in the fields of consumer law, refugee law or family law.² This offers students first-hand legal experience and gives the practitioners providing such assistance much needed manpower.

Refugees

As an island in the centre of the Mediterranean Sea, Malta has experienced an influx of asylum seekers travelling from Somalia, Syria and Libya, among other places. These people have little consciousness of their rights in terms of international, European and Maltese law. As a result, non-profit organisations, including the People for Change Foundation, the Jesuit Refugee Service, the Aditus Foundation and the United Nations Refugee Agency promote human rights and offer pro bono legal services to these asylum seekers both through community advocacy projects and aid to individual clients.³

Private firms

Notwithstanding that private commercial law firms are not required by law to perform pro bono work, several firms recognise a CSR towards those in need and in fact they do provide free legal assistance to environmental organisations, vulnerable persons and the like. Recently, a local law firm launched a programme to provide pro bono assistance to startup companies that often find considerable legal impediments in commencing their commercial activities.

Legislative considerations

Maltese law does not explicitly provide for pro bono assistance. However, there are certain legislative barriers, which shall be considered briefly. Maltese law does not permit lawyers to advertise their services and this also applies to promoting pro bono services, which may discourage lawyers from offering this service due to the difficulties of attracting potential clients. The Maltese tax system facilitates pro bono assistance as there is no value added tax if the lawyer charges no fee. In Maltese litigation, the ‘loser pays’ and there can be no *quotae litis* agreement, whereby the lawyer would receive a percentage of the amount awarded when a case has been pleaded successfully before the courts. Arguably, these may serve as a disincentive to offering pro bono services in Malta.⁴

Conclusion

The way forward is for the legislator to remove barriers to pro bono work in Malta. Although the Maltese legal sphere has a strong sense of social responsibility, as is evidenced by the advanced legal aid system, the work of non-profit organisations and private firms’ CSR, the time has come for a more proactive stance on pro bono activity, with greater incentives that encourage practitioners to engage in pro bono services further.

Notes

- 1 Latham & Watkins, *Pro Bono Practices and Opportunities in Malta*, www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-malta.pdf, accessed 16 October 2016.
- 2 University of Malta, *Advocacy Skills Practicum*, www.um.edu.mt/laws/studyunit/CVL5023, accessed 16 October 2016.
- 3 Federation des Barreaux d’Europe, *Pro Bono Directory for Refugee Assistance*, www.fbe.org/IMG/pdf/PRO_BONO_DIRECTORY_FOR_REFUGEE_LEGAL_ACTION_STRASBOURG_12-05-16.pdf, accessed 16 October 2016.
- 4 Cf (n 1).

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Reducing 'conflicts' to pro bono work in Canada

This article summarises changes to the rules regulating the legal profession in Ontario (a provincial jurisdiction in Canada). These changes have reduced obligations relating to conflicts of interest when providing short-term pro bono legal services.

Lawyers and law firms in Ontario will now face one less obstacle when providing pro bono services to the vulnerable and marginalised members of their communities.

In September 2016, the Law Society of Upper Canada (LSUC) approved amendments to the Rules of Professional Conduct (the 'Rules') that will modify lawyers' conflict of interest obligations when providing 'short-term pro bono services'.

'Short-term pro bono services' are defined as 'pro bono legal advice or representation to a client under the auspices of a pro bono provider with the expectation by the pro bono lawyer and the client that the pro bono lawyer will not provide continuing legal advice or representation in the matter.'

The amended Rules allow pro bono lawyers to provide these services without taking steps to determine whether there is a conflict of interest arising from duties owed to current or former clients of their firm. If the lawyer knows or becomes aware of a conflict, through reasonable recollection or

information provided by the client during the initial consultation, the lawyer must cease providing services. Lawyers must also take care (and screening measures should be put in place) to prevent confidential information relating to pro bono clients from being disclosed to other persons at their firm.

These modified obligations were first introduced in 2010, but previously only applied to lawyers participating in specific programmes managed by Pro Bono Ontario (formerly Pro Bono Law Ontario). They will now apply more widely to all pro bono and non-profit legal services providers. Given the delay and frustration that clearing conflicts can cause in the pro bono context, this is a positive development that will allow lawyers to provide short-term pro bono assistance more quickly and with less apprehension about the potential conflicting interests of their firm's clients.

A full copy of the Rules is available at www.lsuc.on.ca.

PARTICIPATE IN A SURVEY

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Global research: legal barriers to human rights violations through legal remedies

This piece is a final request for assistance with research by the Willamette University College of Law Human Rights Clinic in association with the American Bar Association (ABA) Human Rights Center. The research looks at legal barriers to victims of human rights violations bringing lawsuits against their perpetrators within their national jurisdiction. Surveys in three languages are available – please consider participating in the research or sharing with colleagues! Results of the research will be featured in a future newsletter.

In association with the ABA Human Rights Center, the Willamette University College of Law Human Rights Clinic is researching certain legal barriers to victims of human rights violations bringing lawsuits against their perpetrators within their home nation.

We would like to know responses to important questions regarding global access to justice:

- Is pro bono or free legal aid available?
- Do parties in a case have to pay legal costs if they lose?

In particular, we are focusing on statutes or bar association rules regarding:

- Pro bono representation or taxation of pro bono work as well as free legal aid for low-income clients;
- Contingency fee arrangements or lack thereof, where lawyers bringing suits are able to be paid a percentage of an award if they prevail); and
- Loser-pay rules.

A significant initial barrier many plaintiffs face in bringing human rights claims in their own country is the inability to pay for legal representation. Despite increasing globalisation, there are few comprehensive resources detailing these types of barriers to access to justice for human rights violations country-by-country.

By gathering information on these rules and disseminating this knowledge, we hope to empower legal leaders in those communities to initiate local change.

To receive a copy of the survey in English, Spanish or French, please contact: Gwynne L Skinner, Associate Professor of Law at the Human Rights and Immigration Clinic, Willamette University at gksinner@willamette.edu.

MEET THE OFFICER

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Sarah Morton-Ramwell

Every issue, we introduce an officer of the Pro Bono Committee. This issue we feature our newest Committee officer, joining us in January 2017, Sarah Morton-Ramwell, who is a partner and Global Head of Pro Bono and Corporate Responsibility at Ashurst. Through a series of questions posed below, Morton-Ramwell reflects on engagement as a pro bono professional, pursuing opportunities in this field, and new horizons and challenges for pro bono legal services.

What do you do?

I am a partner and the full-time Global Head of Pro Bono and Corporate Responsibility at Ashurst, a global commercial law firm with offices in 15 countries. With a background in human rights law, gender rights and reproductive rights, I run Ashurst's global pro bono practice and global corporate responsibility programme. I am a qualified lawyer in both Australia, in the state of New South Wales (NSW) and England and Wales.

I am also involved with a number of organisations that shape the way pro bono is conducted and ensures it is well regarded and developing on a wide scale. I sit on the Council of TrustLaw and the Leadership Committee of PILnet. Both organisations are leading global providers of pro bono. In 2016 and 2015, I co-authored commentaries on pro bono and developed two pro bono 'Masterclass' videos on pro bono (in collaboration with Thomson Reuters). I am a founding member of the Institute of Corporate Responsibility and Sustainability and was named in their first group of fellows in 2016. I am also a member of the Association of Pro Bono Counsel (APBCo).

Why did you become a lawyer? How did you get into the law/your area of practice?

I had an epiphany at the age of 14 when I was studying social geography at school, in particular, the plight of girls in Afghanistan who did not have access to education. I was so struck by what I learned and the injustice they were suffering. I knew from that point onwards I wanted to be a human rights lawyer. Gender equality and the protection of women's rights is an area I feel very passionately about and has been a large part of my career to date.

I began my career at the Center for Reproductive Rights in New York and then at International Planned Parenthood Federation in London. I then worked at Freshfields Bruckhaus Deringer in London, first as a fee-earner and, after discovering the joy of pro bono, full-time in their pro bono practice. I also spent five years working at Reed Smith in London as their responsible business senior manager, where I was responsible for corporate responsibility and pro bono in their Europe, Middle East and Asia offices.

What types of pro bono work form Ashurst's pro bono practice?

Pro bono projects at Ashurst sit under the global themes of justice, opportunity or empowerment. For example:

Justice: Amicus is a small legal charity which helps provide representation for individuals facing the death penalty in the United States. Through Amicus, Ashurst lawyers assisted US capital defenders in a case where the client was on federal death row, reviewing over 40,000 documents covering a period of 50 years.

Opportunity: The growing area of social finance and impact investing sees funds invested in ventures and initiatives that are designed to create positive impact in communities and provide a financial return. Ashurst has developed a global impact

investing group. In Australia, Ashurst is active in industry initiatives relating to the National Disability Insurance Scheme and impact investing opportunities it is creating. *Empowerment:* Ashurst lawyers in London continue to work in partnership with Citizens UK, Islington Law Centre and Bhatt Murphy to provide pro bono assistance to unaccompanied refugee minors who have been in the Calais 'jungle' camp.

In Australia, Ashurst also runs nine pro bono clinics and secondments, including a full-time secondment to the North Australian Aboriginal Justice Agency (NAAJA) Katherine office, where Ashurst lawyers assist NAAJA by providing legal advice and community legal education to indigenous clients in Katherine and remote communities. Ashurst has a further five pro bono clinics in London, as well as a clinic in Frankfurt and a clinic in Madrid. Ashurst also has a pro bono secondment in Singapore with Justice Without Borders.

What advice would you give to someone interested in your area of practice?

Pro bono and human rights is a relatively small sector, and I would advise those starting out who are interested in working in this space to look to create their own opportunities and always be persistent. For example, in my final year at university, I choose a subject that enabled me to draft a thesis on an emerging legal topic and I wrote about the future of reproductive laws in NSW. I did this, and chose the US as the spot for my academic exchange, as I wanted to push for an internship at the leading body in this area – the Center for Reproductive Rights (the 'Center') in New York. During the six months I was studying at the University of Chapel Hill in North Carolina, I emailed and called the Center very regularly to see if there was any way I could assist them. I was told that this was not possible as they only took interns in July (and I was finishing up in December). I was persistent and explained I would be happy to do anything to help them (even simply picking up coffees or photocopying). They gave in and created a role for me and this really was the start of the rest of my career.

What area of your work do you enjoy most?

I most enjoy doing outreach pro bono work. For example, in 2011, I travelled to Haiti to

run several of Reed Smith's human rights pro bono projects there. I worked with potential clients who had been victims of gender based violence (GBV) for the firm's humanitarian parole cases; I worked with United Nations agencies and local women's organisations as part of a project to educate Haitians about their rights in relation to GBV; and ran a conference, in partnership with SOS Journalists, for Haitian journalists on ethical reporting of cases of GBV.

Now that I am based in Australia, Ashurst's pro bono practice focuses on indigenous Australians; people with a cognitive disability or mental illness and their carers; and people in rural, regional and remote locations. As a result, we do a lot of outreach work, including our wills project in NSW.

It is estimated that only about two per cent of Aboriginal people in Australia make wills compared with about 55 per cent in the wider community. In recent years, there have been three key significant studies on the legal needs of indigenous Australians, each of which identified wills as one of the most significant areas of legal need. Our wills project assists individuals in rural, regional and remote communities in NSW to develop and finalise their wills and other estate planning documents. Each year, our lawyers travel to regional and remote areas of NSW to provide pro bono estate planning assistance to Aboriginal people. Our lawyers deliver community legal education sessions in relation to both wills and advanced decision-making in the morning and take instructions from those who want to prepare estate planning documents in the afternoon. I have recently come back from a clinic held in Walgett and Lightning Ridge, which was a fantastic experience.

What area of your work do you enjoy least?

The least enjoyable part of my work is when we cannot assist with a pro bono referral. At Ashurst, we operate pro bono as a stand-alone legal practice. The pro bono legal services are provided in accordance with our established pro bono criteria, which state that pro bono is the provision of legal assistance free of charge:

- to disadvantaged and marginalised people of limited means;
- to non-profit organisations and social enterprises assisting people who are disadvantaged and marginalised, where

payment of legal fees would unreasonably deplete the organisation's economic resources; and

- in matters for the public good of broad public or community concern.

When referrals come to us that do not fit under the above criteria, we always work to refer them on to other sources of support.

What are the current challenges facing your area of practice?

Two of the greatest challenges facing those involved in the pro bono sector are that corporate firms generally have little or no pro bono capacity to assist with family law, criminal law or immigration, and that the delivery of many pro bono services for low-income and disadvantaged people by the private legal profession requires a partnership or collaboration with legal assistance services, many of which are facing cuts to their funding in many jurisdictions.

What is an exciting development in pro bono?

New models of pro bono provision continue

to emerge around the world that focus on greater collaboration between a number of agencies. For example, the Collaborative Legal Service Delivery (CLSD) model in NSW. CLSD started in 2004, and is a regionally based approach to legal service delivery based on the theory that better coordination and cooperation in the planning and delivery of legal services will improve access to justice for disadvantaged people. Each region of the state has a coalition of legal and non-legal service providers (usually including a large pro bono law firm) that form a referral network, and meet face-to-face quarterly to exchange information and to identify service delivery priorities. Coordinated by Legal Aid NSW, CLSD has led to a more coordinated approach to referrals in regional areas, and notably has been accompanied by the opening of new Legal Aid offices in some regional centres.

What do you do in your free time?

Having moved back to Sydney last September after ten years abroad, I spend much of my free time near or in the water.