

Pro bono support in times of crisis – developing a response plan - Pro Bono Committee, May 2018

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Crisis planning, contingency planning, emergency planning, resilience planning – whatever you call it, the process of planning how to expect the unexpected and ensure operational continuity is a topic that should be familiar to anybody in a legal practice.

Emergency services and public authorities plan how to coordinate and respond to whatever might occur: extreme weather, natural disasters, major incidents, medical epidemics and more. Businesses finalise operational continuity plans, developing back-up data centres, firm-wide messaging systems and other fall-back schemes intended to keep things as close to ‘business as usual’ as possible no matter what happens. Smaller businesses and non-profits develop their own version of ‘what if’ plans, albeit on a smaller scale.

All of this planning helps to ensure that if and when a crisis occurs, people are ready to step up and take on the specific responsibilities allocated to them; or step back, continuing with their usual tasks and awaiting further instruction.

However, there is another element to crisis planning which is arguably worthy of our time and attention: that of playing a support role in the crisis response itself. When a crisis occurs, people often need legal help – sometimes on a scale beyond that which existing infrastructure is able to support. In such situations, the legal community may mobilise to ensure sufficient pro bono support at focal points for those who need it.

2017 saw several events occur where legal mobilisation was required urgently, bringing lawyers into the ‘first responder’ phase of a crisis. In the United States, lawyers mobilised at airports to protect the rights of people who, mid-flight, suddenly found themselves without a legal right to enter their country of destination. In the United Kingdom, a horrific fire swept through a residential block leaving hundreds of people in need of immediate housing law advice. This role of lawyers as ‘first responders’ reinforces the importance of thinking about how we, as a global, regional or local legal community, can be better prepared to mobilise pro bono support in times of crisis.

Clearly not all crisis situations will generate immediate or high volume legal need and when such need arises it may not require the mobilisation of additional lawyers to help. Advice organisations, legal aid and other schemes may have sufficient resources to respond, negating the need to call on additional lawyers. Even where additional lawyers are required, there may be circumstances where pro bono lawyers are not appropriate; or where only specific legal skills are relevant.

However, somebody needs to make that call: ‘Is legal help needed? Can we cope with existing resources? Do we need to call on more lawyers? Is pro bono help an appropriate option?’ Somebody needs to ensure the wider legal community knows the outcome of that decision. And when the outcome is a need for more (pro bono) lawyers, it is better to have planned how the legal community can respond while things are calm, rather than wait until the crisis.

Start the conversation

An easy way to start thinking about legal sector crisis planning is to consider:

- do you know what the legal sector 'crisis plan' is for your community? If you don't know the plan, can you find out who does?;
- if no plan exists, who do you feel bears responsibility for leading discussions within your legal community?;
- if not your organisation, is there an umbrella body above you that you would look to for such leadership? Can you encourage that body to focus on this issue?;
- what role would you play in developing a plan? Would you be responsible for guiding members of your own organisation? If so, can you facilitate the necessary discussions to develop your internal response plan?; and
- who else should be involved in these discussions? Can you help map the range of groups and networks who could contribute to planning and implementation?

If plans already exist, take the opportunity to look through them and consider where you and your organisation would fit into them so that you can prepare your own organisation's response prior to such plans being activated – including your internal communications and messaging. You could also look at developments in other communities to consider whether any of the existing plan could be amended to improve your community's response.

If plans are yet to be developed, the first step is to bring together the people or groups who can lead on this and who could feasibly lead in the event of a crisis. Plans will be both macro (connecting the wider legal sector's response) and micro (governing the response of smaller subgroups within a legal sector). If a workable plan is to be designed, all stakeholders should be involved in relevant parts of the planning process to ensure networks and processes connect where they need to and will work in practice.

It may be helpful to undertake a mapping exercise to identify who does what in your legal community, looking at local and national bar associations, law firms, legal services organisations, non-profit advice organisations, other specialist non-profit organisations, professional networks; pro bono membership bodies, law schools and more. This gathering of networks to discuss and plan ahead also helps to develop and strengthen working relationships before a crisis emerges, making it much easier to rely on one another and work together in more chaotic circumstances.

Learn from others

In this context, learning from others envisages two different groups: others in your own community who already plan emergency responses; and other legal communities around the world that have had to plan crisis-based legal response.

Many communities already have well-rehearsed plans to ensure that emergency services, public authorities and humanitarian organisations can coordinate in a crisis. In devising plans for your community to coordinate pro bono or other legal support following a crisis, it may be helpful to locate such plans, which are often freely available online. They may provide valuable insight into how and where the legal community in your area could play a role following a crisis.

In the UK, for example, where community resilience forums develop response plans for crisis response at local level, these plans should make it easier to identify who would be key points of contact for the

legal community to engage with during a crisis and how legal need planning could integrate into those plans.

Other legal communities may be helpful sources of knowledge despite geography and other factors producing variations in the types of crisis that could affect a specific region. It is likely that at least one other legal community has planned for – or experienced – whatever crisis you could envisage. You may find it helpful to look at what materials and learning you can draw on from other legal communities and use that as a basis for discussions with stakeholders in your own community. Plans may still need amending to reflect local infrastructure, resources and culture but they provide a good outline of the range of issues that you may need to consider in developing a comprehensive response.

Both Australia and the US have extensive experience in community needs following natural disasters, such as bushfires, floods or hurricanes. The Australian National Pro Bono Centre website hosts a comprehensive document that details the process of planning ahead and the Disaster Legal Help Victoria initiative is an example of such planning in action.^[4] The global Association of Pro Bono Counsel (APBCO) has drawn on its US-based members' experience of coordinating law firm pro bono support in multiple crisis situations to develop models of pro bono coordination and is engaged in ongoing discussion to bring in additional learning to further refine future response planning.

Finally, the American Bar Association's Young Lawyers Division Disaster Legal Services Program and the national Disaster Legal Aid websites are examples of how technology can be helpful in crisis response: both sites can quickly add in resources for an emerging crisis and with archive material from previous responses, it is possible to analyse and develop a better understanding of the different ways a legal community might respond to a crisis. For example, analysis of previous responses demonstrates that legal help is often required to support claims several months after a natural disaster, which in turn would allow legal networks to plan coordinated training in advance of future events.

Technology can do more than just provide easy access to materials developed by other communities. Technology can make active crisis response more efficient: it can make training materials easily accessible to all; it can enable communities to quickly signpost to available legal resources or pro bono opportunities; it can reduce administrative demands on those at the heart of the response, freeing up capacity to address legal need.

However, to achieve this, technology needs to be fit for purpose: it should be user-friendly and accessible to all; it should be capable of easy integration with other systems where possible to reduce time spent on duplicating or re-entering information. This again highlights the importance of advance planning to fully understand which solutions have proved helpful to other communities in previous incidents and to identify any constraints your legal community faces which might impact on the choice of technological solutions available.

Think about messaging

While many lawyers are understandably keen to provide pro bono support following a crisis, by helping them to understand the wider context it becomes easier for them to understand when their pro bono support might – or might not – be needed. This understanding, combined with well-organised messaging systems (see below), can go a long way towards reducing the risk of a lawyer deluge overwhelming those at the heart of a crisis.

It can be helpful to consider what your community understands about the wider legal sector, to identify and fill gaps in knowledge. For example:

- are lawyers generally aware when pro bono may not be the preferred or appropriate solution? (eg, people who receive legal aid assistance in England and Wales benefit from costs protection should the matter proceed to court; a protection which does not automatically extend to people receiving pro bono assistance);
- do lawyers need reminding that when pro bono legal needs arise, the legal community's primary focus ought to be on first exhausting pro bono support from lawyers who specialise in the relevant area of law before scaling up support from lawyers with no such knowledge?;
- do lawyers understand that regular, ongoing participation in pro bono work makes them much more helpful in times of crisis as they then have relevant skills and knowledge of the organisations involved in the response?; and
- is it helpful to remind lawyers that many of the organisations at the heart of a crisis response may be non-profit or low-profit organisations operating with limited resource, such that every direct approach by a lawyer during a crisis risks diverting scarce staff resources away from helping clients?

This last point – educating lawyers to understand the challenge of coordinating a crisis response with few resources – links to one of the most important things that can be done within our individual organisations, within our sector, within the wider community of our country/region.

If 2017 taught the legal community anything, it was that many lawyers have an innate desire to help. Well-meaning lawyers were present in every crisis (eg, holding signs at the airports, attending training, walking through the doors of local advice organisations in North Kensington, etc). However, this outpouring of support also generated significant coordination demands on those at the heart of the response.

If we are to ensure the best use of available resources in responding to a crisis, the legal community would do well to reflect the *'first do no harm'* mantra of the medical profession. In responding to a crisis, we should first ensure that we do not add to the overwhelming burden faced by those at the heart of responding to it. That starts with ensuring that we do not take up any resource that ought to be directed towards those in need. Consider the two examples below:

Scenario 1

A crisis takes place and 100 different legal entities contact non-profits that appear to be involved in the response, asking if they can help. Many of the non-profits are able to handle the volume of legal demand but must reply to each entity's enquiry to let them know this, which distracts them from responding to legal need. One of the non-profits requires specialist lawyers to scale up its ability to advise people affected by the crisis and informs all 100 entities of this need, prompting a new round of queries as each entity tries to ascertain more information. 200 individual lawyers also contact the non-profit directly to ask if it needs their help (they range from specialists to people who are willing to train to help), creating more work for the non-profit as it tries to assess each offer and how it could make use of the lawyer. While this is happening, people in need are contacting the non-profit using the same phone number and email as those above. It becomes increasingly time-consuming for the non-profit to sift out and address legal need requests that are buried amid the phone and email messages offering legal help, which in turn makes it increasingly difficult for the non-profit to finalise and communicate ways in which the lawyers can actually help.

Scenario 2

A crisis takes place and each legal entity immediately reminds its members/employees to await guidance on whether their help is required. One non-profit requires specialist pro bono lawyers to scale up its ability to advise people affected by the crisis. It flags the need once to a 'hub' of 20 people who each represent a legal sector, professional body, membership body, and then returns its focus to helping people in need. The hub, meanwhile, confirms the response that will be activated – for example, a sign-up roster for specialists with briefing information available on the same online portal as the sign-up roster. Each hub representative cascades that request and activation plan out to its members who may number 40, 100 or 500 organisations. Those organisations in turn update their individual members/employees with the specific request. From this the most suitable lawyers step forward, sign up for roster slots, review briefing materials and attend for their assigned slot.

Conclusion

Although the specific response and messaging approaches will vary by region, the example scenarios underline the difference that advance planning can make. Instead of overwhelming the organisations at the heart of the response, a pre-planned communications system allows a legal community to coordinate quickly, efficiently and with minimal demand on resources.

In devising wider plans for coordinating legal response, it is crucial to devise messaging systems that: make it easy to communicate whether pro bono (or other) help is or is not required in a particular crisis; keep lawyers behind the start line until they are needed; and make it easy to capture and redirect the goodwill of lawyers in ways that support instead of overwhelm those at the heart of the response.

If your community has never previously been asked to scale up legal support for a crisis, you may feel that advance crisis planning is not necessary and you can address it should the need ever arise in practice. However, consider a comment on the United Kingdom Emergency Planning College website: 'If you are learning how to manage an emergency during an emergency it's probably too late.'^[2] If your planning never turns into action, you can be thankful; but if your plans are ever called on, the community in which you live will thank you far more.

Resources

National Disaster Legal Aid Resource Center: www.disasterlegalaid.org.

American Bar Association Young Lawyers Division Disaster Legal Services Program: www.americanbar.org/groups/young_lawyers/disaster_legal_services.html.

Disaster Legal Help Victoria: www.disasterlegalhelp.org.au.

Guidance on emergency planning and legal preparedness hosted by the Australian National Pro Bono Resource Centre: www.probonocentre.org.au/wp-content/uploads/2015/02/Emergency-Preparedness-and-Disaster-Planning-for-the-Legal-Profession.pdf.

The Association of Pro Bono Counsel: www.apbco.org.u.

Notes

^[1] See www.probonocentre.org.au/wp-content/uploads/2015/02/Emergency-Preparedness-and-Disaster-Planning-for-the-Legal-Profession.pdf.

^[2] Taken from [www.epcresilience.com/services/training/training-courses/emergency-control-centre-operation-\(revised\)/](http://www.epcresilience.com/services/training/training-courses/emergency-control-centre-operation-(revised)/) accessed on 28 March 2018.