

Report of attendance by John Corker, Director, National Pro Bono Resource Centre, Sydney, Australia, at National Pro Bono Week UK and the European Pro Bono Forum November 2010

Overview

In the UK the uncertainty of the future of legal aid is generating greater debate about the role and future of pro bono legal services. The profession has recently put forward a united face through the establishment of the new national pro bono centre an initiative of the three arms of the profession in the UK supported by the large firms.

In Europe, there is a growing awareness of the upward arc of the legal pro bono movement and the infrastructure that facilitates pro bono is developing in various countries albeit off a low base.

The second European Pro Bono Forum attracted nearly 300 delegates to France from as far afield as China, Brazil, Russia and Tajikistan and will continue to provide a strong forum for the exchange of ideas and information.

Australian lawyers pro bono contribution, infrastructure and development compares very favourably with other countries. Based on recently published figures on top UK law firms by pro bono hours 2009/2010, our large firms are somewhere between 30-60% ahead on pro bono hours/lawyer basis.

UK

National Pro Bono Centre

The UK's new National Pro Bono Centre was opened on 19 October 2010. It brings together the profession's national clearing houses for legal pro bono delivered in England and Wales; the Bar Pro Bono Unit, LawWorks (the Solicitors Pro Bono Group) and the ILEX Pro Bono Forum (The Legal Executives pro bono group) under the one roof in a newly fitted out building at 48 Chancery Lane, London only doors away from the Law Society of England and Wales. The fit-out was fully sponsored by law firms, barristers chambers, a business advisory group and others.



One of the great achievements of the ‘coming together’ has been the very recent agreement of the Law Society to fund a third of the operating costs of the Centre for three years thus cementing a partnership between the three arms of the legal profession, through the Bar Pro Bono Unit, Law Works and ILEX providing a unified face for pro bono in the legal profession of England and Wales. To recognize this change LawWorks has changed its logo to include the words “Supported by the Law Society” thus demonstrating the importance of the relationship but at the same time indicating its independence from the Law Society. I had a discussion with all 3 CEOs to draw out the reasons and circumstances of their ‘coming together’ that will form a separate report that may inform the NSW situation in Australia.



Law Works had recently launched a “Life after Law” project aimed at helping retiring lawyers to effectively volunteer their skills in local, national and international charities. Relevantly to this Centre, Law Works has also had a Law Works Mediation program for nearly 5 years that offers free mediations throughout the UK, for disputes where one party is unable to pay for the services of a mediator being used in the areas of housing, consumer, employment, contract and debt. Service operates from a panel of 115 mediators who have volunteered to take on pro bono mediations. The service is supported by an electronic case placement system for the more straightforward cases.

Attorney General and the UK pro bono toolkit

The UK’s new Attorney-General is the Rt Hon Dominic Grieve QC MP. He has indicated that he is pleased to chair the Attorney-General’s Pro Bono Coordinating Committee established in 2002 by Lord Goldsmith and Harriet Harman MP. He recognizes that pro bono is “crucial work” and intends visiting Australia in July 2011 to attend a Law Ministers Conference and indicated a desire to visit the National Pro Bono Resource Centre. A statement of his support can be found on the [home page of the pro bono UK.net website](#)

Legal Aid

[Proposal for the Reform of Legal Aid in England and Wales](#) was released on Monday 15 November 2010 against the backdrop of government having to absorb an overspend of £150m from last year and a cut of £350m this year out of a total legal aid budget of £2.1bn as part of the Government’s stated policy to reduce its fiscal deficit. Comments are due by mid February 2011. Based on the consultation paper the Law Society says that nearly 550 000 cases a year – including 265,000 family cases – will no longer be

eligible for legal aid, and fees in civil and family cases will be cut by 10% across the board.

Law Centres UK

There are 56 Law Centres in the UK each with 20-30 staff members. Centre lawyers specialize in law most relevant to disadvantaged people including housing, employment, discrimination, welfare rights, debt, community care, mental health, education, immigration and asylum.



Edward Garnier QC MP, Solicitor General for England and Wales, Julie Bishop, Director, Law Centres Federation and John Corker, Director of National Pro Bono Resource Centre.

Most centres are dependent on legal aid funding (by winning tenders) so uncertainty remains the greatest threat to the viability of these Centres. Two have recently had to close due to insolvency. Julie Bishop, Director of the Federation of Law Centres, says the downturn is still evident in the UK leading to greater demand for legal services. She says Law Centres have appreciated pro bono support in relation to financial modeling and partnership agreements essential to navigate the new UK system requiring centres to tender in partnership with private law firms to provide certain legal services in a geographic area designated by the Legal Services Commission.

Law Firm pro bono

Clifford Chance admitted a 29% fall in aggregate pro bono hours globally last year attributing much of the fall to the US operations. Community and pro bono hours are reported in aggregate but not separately in their 2010 Corporate Responsibility report.

An article in *Legal Business* in October 2010¹ contains a table of top UK firms by pro bono hours for 2009/2010. No definition of what constitutes pro bono is provided. At the top is Clifford Chance with 33,048 total pro bono hours equating to 32.92 hours per lawyer. Hogan Lovells were about the same and next was Withers at 24.22 and Linklaters at 18.64 hours/lawyer. Allen & Overy did not provide figures. On these figures Australian firms are doing considerably more and *The Guardian* commented that UK firms seem to be doing about a ¼ of what US firms are doing, should be doing more

¹ “Cracking”, *Legal Business* October 2010 p. 25.

and their pro bono programs should be better structured. Norton Rose admitted in the article as only just starting to capture the number of hours in their records.

The debate about whether the UK should have some sort of pro bono league tables like the American Lawyer is starting to take place. Surprisingly some law firms are suggesting that pro bono may have to fill some of the gap left by withdrawal of funds from the legal aid system rather than arguing that pro bono is not a substitute for legal aid.

There is a continuing emphasis on international and cross-border pro bono amongst London based firms.

Access to Justice Foundation and s. 194 orders

National Pro Bono Week saw re-launch of this initiative which empowers judges to make costs orders in favour of the Access to Justice Foundation when a pro bono matter is successful. The Foundation has received about £30,000 and for the first time made a number of grants to community legal agencies to assist their service provision.

The new campaign is called “Unlock Funds for Justice” and involves raising judicial and advocate awareness of the provision and provides a quick guide to advocates on how to seek the s.194 costs order when a party is represented pro bono. Issues being discussed include costs orders for interlocutory matters and retrospective retainers for matters done part paid/part pro bono in order to maximize the funds flowing to the Foundation.



International Pro Bono

An Advocates for International Development (A4ID) forum indicated that A4ID had brokered over 600 projects over 4 years since its inception in 2006. In the words of Roger Leese, chair of A4ID and a partner at Clifford Chance, “A4ID provides a bridge between the legal and the development communities”. These include such projects as negotiating commercial loan and resource extraction agreements and a comparative analysis of legislation around the world. They are tasks well suited to large law firms.

Alison Evans, CEO of Overseas Development Institute (ODI), Britain's leading independent think tank on international development and humanitarian issues, said that the development agenda had changed:

- More poverty now in middle rather than low income countries

- Ethical investors, venture social capitalists now occupying the space
- More private/govt/commercial partnerships in the space
- Increased focus on relative poverty and poverty in hard to reach places
- More focus on tailored knowledge and financial solutions
- More emphasis on policy coherence –solving through multi-lateral approaches
- Overall it's about protection and justice

There are a number of brokers and matchmakers in this space and a call was made in Paris for greater coordination and cooperation between these players. The IBA has initiated a project to provide an international clearing house registry on its website.

Public Legal Education

I visited the UK Citizenship Foundation particularly to learn more about the Lawyers in Schools program supported by many UK law firms and being trialed by Mallesons in NSW.

Background

The Citizenship Foundation was established in 1989 following a project commenced by the Law Society and then solicitor Andrew Phillips called the Law in Education project. In 2002 citizenship became a compulsory statutory subject in English secondary schools. In 2007 the Public Legal Education and Support Taskforce was established to develop proposals for how to promote and improve public legal education (PLE). The Task Force was supported by the Department for Constitutional Affairs – now the Ministry of Justice and completed its work in July 2007 with the publication of the report '*Creating capable citizens: the role of public legal education*'. The report's main recommendation was for a development strategy for public legal education to be led by a new PLE organisation. When the UK *Legal Services Act 2007* was passed one of its objectives was "(g) increasing public understanding of the citizen's legal rights and duties".

Plenet, the Public Legal Education Network, was launched in 2008 funded by the Ministry of Justice but only with a small staff of 2-3 persons.

Plenet claims to be a network of organisations and individuals working in the field of public legal education with a range of participants including statutory bodies, not-for-profit organisations, legal professionals, researchers, educators and campaigners.

The Lawyers in Schools Scheme started in 1999 in partnership with law firm Linklaters. The number of participating law firms has increased to 11 by 2007/2008. It provides a volunteer opportunity for lawyers in corporate law firms to provide legal education in secondary schools predominantly in economically deprived areas. Lawyers are trained by the Citizenship Foundation and then lead six one-hour sessions at their partner school. Students who complete the course are given a Young Citizen's Passport that covers areas of law concerning issues that include pregnancy, HIV and AIDS, drugs, discrimination as well as contracts, insurance, banks, voting and human rights.

Europe

European Pro Bono Forum 2010

This conference was organised by the Public Interest Law Institute (PILI) based in New York (with offices also in Budapest, Moscow, Beijing). PILI will change its name to PILnet: *The Global Network for Public Interest Law* in January 2011, “to better reflect its strategy of bringing together networks of a global nature”.



Attendance was nearly 300 delegates up from 140 at the first Forum held in Budapest in 2008. Representatives from a broad range of countries attended including from the US, UK, (including Esther Lardent and Tammy Taylor from the US) and Lord Andrew Phillips and Rebecca Hilsenrath, Director Law Works, from the UK) and countries with developing pro bono cultures including Azerbaijan, Hungary, Poland, Slovenia, Russia, Ireland, Brazil, China, Tajikistan, Mongolia, and Romania. Law firms were also well represented including pro bono coordinators/partners from Allen & Overy, Ashhurst LLP, Baker McKenzie, Clifford Chance, Dechert LLP, Debevoise & Plimpton LLP, DLA Piper, Freshfields, Hogan Lovells, Latham and Watkins, Linklaters, Jones Day, Mayer Brown, Orrick, Reed Smith LLP, Skadden Arps, Weil Gotshal and Mangel, White & Case and others.

A number of “cross-border” brokers were present including A4ID, Trust Law, Vance Centre, Lawyers Without Borders and International Senior Lawyers Project (soon to merge with the International Lawyers Project). There were also a good range of NGOs seeking assistance including larger ones such as Oxfam which made for a busy “marketplace session” where about 30 NGOs put themselves on show in a dedicated table session inviting law firms to talk to them. Pro Bono Clearing Houses were also present (see below).

The emphasis of the conference was on the development of pro bono culture in European countries particularly France (see below) but also discussed was Spain and Germany and reports given on existing work in Hungary, Poland, Slovenia and Ireland. Also reports from China and Brazil were presented. Topics ranged from the role of European Law

Schools in promoting pro bono to cross-border pro bono and pro bono for in-house lawyers.

Almost all organised pro bono in Europe is for organisations not individuals. Individuals seem to be the province of the State to represent through various forms of legal aid. One of the themes of the conference was to encourage law firms to develop more long standing relationships with an NGO or NGOs in order to align more closely with public interest goals. The importance of screening NGOs thoroughly was discussed ‘in order to weed out any fronts for racist organisations’.

I was interviewed about pro bono in Australia by Trust Law and the interview can be seen on the Trust Law website at <http://www.trust.org/trustlaw/news/video-australia-owes-some-key-legal-cases-to-pro-bono-lawyers/>

Pre-Conference Workshop on Clearing Houses

This was held the day before the conference co-hosted by Allen & Overy LLP and Orrick LLP. I chaired one session and was a discussant in another. The principal aim of the workshop was to collaborate, network and problem solve issues around the operation of pro bono clearing houses and it was a privilege to be able to share the Australian experience to the 37 participants from 18 separate countries. Feedback was that the Australian experience was very useful to a number of participants in helping them deal with various issues.

The sharp growth curve in developing this infrastructure (such as Hungary and Ireland) was noted and a discussion about the more mature stages of a clearing house was a topic to which I could contribute drawing on the Australian experience. What was remarkable was the range of models and problems ranging from pro bono work done without a solicitor-client agreement due to VAT (GST) tax concerns to how to manage the effects of competitive pressures generated by law firm’s commercial environments.

Discussion followed the chapters in a draft Clearing House Guide distributed beforehand which covered issues such as relationships with clients and firms, creating a supportive environment for pro bono practice and financial sustainability.

Comment is still sought on the guide and the Centre will play the role of coordinating comment from Australian clearing houses.

Pro Bono development in France

France has a series of regional bars ranging from the largest Paris Bar with 22,000 members to a Bar in SE France with only 8 members. There is no national bar association and as one French based lawyer said, “Lawyers are weak in France – even judges are appointed from non-lawyers.” Interestingly also French law requires lawyers to take a legal aid brief when it is presented to them by the legal aid office, a state run organisation perhaps providing part of the answer to why structured pro bono in France has been slow to develop.

To their credit the Paris Bar detailed a number of initiatives that it has been and proposes to take to improve its pro bono culture. Amongst these were the existing “Solidarity Bus” where those with no identity papers can get legal advice without the fear of being apprehended (which would occur if an inquiry is made to a legal aid office). The City of Paris and the Police had agreed to the bus service and not to apprehend illegal immigrants in the vicinity of the bus. The Bar announced the creation of a Pro Bono Foundation “to support work where the State never goes” and the leader of the bar said, “There must be a change of the French mentality –we have a welfare state that no longer has the means. We have to confront attorneys who believe the State must provide”

Follow Up

i-pro bono – this is a web based network that connects organisations in need of legal assistance with lawyers who want to use their skills for the public good. One strategic advantage of this tool is its ability to record individual lawyer’s interests and skills and match them to requests for assistance. I-probono does not purport to make automatic matches like other online resources but to better inform pro bono coordinators and clearing houses to assist them to make appropriate referrals. This is an improvement on existing attempts in Australia and is supported by a number of large firms including Allen & Overy who would be willing to support its introduction in Australia. The Centre would like to discuss the initiative with clearing houses and firms to see whether there is support for development in Australia and how it might enhance existing referral mechanisms. See www.i-probono.com

Australian Pro Bono Manual

London based firms are discussing creating a guide for mid sized firms to help them develop their pro bono practices and have sought copies of the Australian Pro Bono Manual as a possible template for developing a UK guide.

Comment on Draft Clearing House Guide

As above. See Pre-Conference Workshop on Clearing Houses.

Comment on UK pro bono toolkit

This was circulated in Australia last year on CD for comment and comment is still sought in advance of a possible second edition.

International/Cross border opportunities

- Senior International Lawyers project + ILP – they want to talk about Australian Lawyers involvement.
- Center for International Legal Cooperation (CILC) – This Dutch based NGO commenced in 1985 designs and implements Rule of Law programs and projects in various countries (Georgia, Mali, Estonia) and operates in Indonesia. It would like to cooperate with Australian Lawyers.

- A4ID and Trust Law – both these organisations seek more Australian law firm involvement.
- Vance Centre – Another organisation that would welcome Australian lawyer involvement in various projects in the South Pacific.
- Lawyers without Borders – Advocats Sans Frontiers would be interested/willing to talk to Australia's (AVI's) Lawyers Beyond Borders and see whether they could consolidate as part of the well established Lawyers Without Borders program.

The European Pro Bono Forum.

This forum is the only forum to draw together the full range of countries that are developing pro bono infrastructure within their legal professions and as such deserves our attention and attendance. Some of our clearing houses and law firms would also benefit from attendance at this forum when it is next held in Berlin late in 2011.

John Corker
25 November 2010