

WORKSHOP 2A: BUILDING PRO BONO PARTNERSHIPS

EXAMPLES FROM PRACTICE – MALLESONS STEPHEN JAQUES

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Abstract

Meaningful partnerships between law firms and non profit organisations are increasingly becoming a feature of pro bono programs in Australia. When approached in a considered manner, sustained partnerships add value for each partner and achieve tangible outcomes for the community. The paper examines Mallesons' experience in building successful and sustained partnerships. In particular, the paper examines how partnering with non profit organisations can promote the integration of a law firm's pro bono, volunteering and charitable giving programs, without limiting the firms pro bono focus on legal counsel and skills.

1 The Mallesons in the Community Program

Mallesons is proud of its innovative and comprehensive community program.

Launched in 2000, *Mallesons in the Community* is a nationally integrated strategy coordinated across our five Australian-based offices.

The purpose of the Program is to provide partners and staff with a more efficient and effective means of contributing to the community. There are four components in the

Mallesons in the Community Program:

- Pro bono program, where we provide free legal work for the needy and disadvantaged and not for profit and community organisations that support the needy and disadvantaged.
- Workplace Giving Program, a payroll based project which allows partners and staff to make regular contributions to one of the 30 charitable organisations that are part of the program. The donations are tax efficient and staff donations are matched by the firm.
- **Community partner program** in which Mallesons has formalised strategic community partnerships with community organisations, some Australia- wide and some locally based:
 - Abused Child Trust
 - Australian Red Cross
 - Barnardos Australia
 - Melbourne Affordable Housing (formerly Ecumenical Community Housing)
 - National Children's and Youth Law Centre
 - The Smith Family
 - Ted Noffs Foundation
- Volunteer program in which we support our people engaged in volunteer work and our community partners including with paid volunteer leave.

2 Rationale of the Community Partner Program

Mallesons was keen to style a program that was suitable to our large size and diverse legal and non-legal staff. For this reason, we were interested in the accounts of important developments between law firms and not for profit organisations in the UK and US. Professor Peter Sheldrake's paper at the first Pro Bono Law Conference in 2000 was on point.¹ Once largely limited to ad hoc pro bono legal advice and sponsorship or philanthropic support, Peter Sheldrake described the possibility for more complex collaborative activity and mutually rewarding relationships between law firms and not for profit organisations.

From Mallesons perspective, these 'community partnerships' also had appeal because of their potential as:

- a means of integrating the community program and the firms' commercial legal practice which is substantially built around long term relationships with an enhanced understanding by each other of the others' needs and capacities.
- a means of offering opportunities for engagement in the program to a wide range of both legal and non-legal staff in the firm.

As asserted recently by PwC Chief Executive Tony Harrington, "People spend a lot of time at work and want to see the organisation being involved in some of their interests."² This desire was confirmed at Mallesons by staff surveys which indicated a strong want by our non-legal staff to have some avenues of engagement in *Mallesons in the Community*;

¹ Sheldrake P, "The role of pro bono in the business plan" in *The First National Pro Bono Law Conference: Abstracts and Briefing Papers* (4 - 5 August 2000, Canberra).

² Buffini F, "Charity begins at the payroll" in *Australian Financial Review* (30/01/03) at 3.

- a means of heightening the focus on the areas of social need that a survey of our staff had identified as priority areas to be supported by the firm. The areas identified were the special needs of children and youth, and the alleviation of poverty.
- partnering with organisations such as The Smith Family that like Mallesons have multiple offices Australia wide, could create a common link between those offices.

3 Forming Community Partnerships

Like any other meaningful partnership, community partnerships work best if they are preceded by research and accompanied by an understanding of desired outcomes, a set of protocols describing the agreed arrangements, a system for measuring effectiveness, and an exit strategy.³ I will comment on two aspects of our process, our due diligence and the Memo of Understanding.

Due diligence research.

In considering whether an organisation would be an appropriate prospective partner, we had regard to a number of factors including:

- the scope for the provision of pro bono legal services?

Referring again to Peter Sheldrake's paper, it was noted that a key element of the successful community programs / partnerships was the extent to which

³ Denis Tracey describes these characteristics of partnership in Tracey D, *Ethical guidelines for relationships between corporations and not-for-profit organisations*, Proposal of Swinburne Institute for Social Research (September 2002).

they were “a natural part” of the firm.⁴ For Mallesons this meant identifying tangible opportunities for legal assistance, not only in the complex legal problems common to our practice but also in new or novel legal areas and in situations where our staff could have personal contact with individual pro bono clients. We also looked at how the provision of the legal services would assist the organisation. For example, would the provision of assistance have a marginal or a significant impact on the working of the organisation or on the individuals supported by the organisation?

- the scope for the provision of non-legal services and volunteering?

We wanted to be able to offer realistic volunteering opportunities for our staff. Interestingly, not all not for profit organisations have an automatic need for volunteers. We were also interested in identifying how the provision of these non-legal services and cash donations through workplace giving would complement the pro bono legal work.

- would the organisation be willing to partner with Mallesons, including consideration of whether partnering with the organisation would compromise a pre-existing relationship with other law firms?
- would assisting the organisation place the firm in conflict with the interests of our existing clients?

⁴ Sheldrake P, *op cit* n1 at 78.

Memorandum of Understanding

Mallesons took the view that formation of these mutually beneficial strategic associations should be recorded in a Memorandum of Understanding.

The Memorandum of Understanding set out:

- objectives, strategies and mechanisms for dealing with common issues in connection with the partnership;
- an agreed minimum term, bases for termination and a mechanism for periodic review;
- the respective agreed roles, including the appointment of a relationship partner as a central point of contact, together with key contacts in each state;
- identified areas of support and the basis of ongoing development of the partnership;
- agreements about insurance, the parties' intellectual property and confidential information.

4 Features of our Community Partnerships

Our community partnerships are characterised by their long term collaborative nature, multi-tier engagement and mutual benefits.

Long term collaborative venture

Partnerships, by their very nature, involve a substantial long-term investment of firm time and resources. Mallesons partnerships have been entered into for a minimum of two years. It is only in this way that there will be a development of relationships between firms and community organisations which result in an enhanced

understanding by each of the others' needs and capacities. Only then will both organisations start to think of a variety of ways in which the law firm can assist the organisation.⁵

Multi-level support

The relationship between Mallesons and our community partners offers different levels of support and, in the case of some of our partners, Australia-wide support. In this way, the law firm brings a wide range of skills, knowledge and tools to bear.

These include:

- pro bono legal assistance, according to an annual budget, which draws on Mallesons' legal expertise and in new areas
- monthly flow of funds through our Workplace Giving Program
- volunteering initiatives and providing volunteers for one off and long term activities
- holding lectures and other events
- technical, IT, library and other support

Example: Australian Red Cross (ARC)

- in conjunction with ARC, QPILCH and Hopgood Ganim, Mallesons has set up Brisbane's Red Cross Homeless Youth Clinic which operates at the ARC Night Café. A rostered team of 21 solicitors and administrative staff work at the Clinic's Tuesday evening advice sessions;
- volunteers serve meals at the ARC Night Café;

⁵ For further discussion on this point, see National Pro Bono Resource Centre, *Working together: Multi-tiered pro bono relationships between law firms and community legal organisations* (June 2003) at www.nationalprobono.org.au.

- monthly flow of funds through the Workplace Giving Program to targeted programs such as the ARC's Glen Mervyn project. Glen Mervyn offers accommodation, support and education programs for young women who are pregnant or have a child, and are homeless or require intensive support;
- ARC and Mallesons joined with NSW Law Week in 2002 and 2003 to present Mock Trials in the NSW Banco Court on The International Criminal Court;
- staff volunteers planned and assisted ARC in the dissemination of international humanitarian law issues through, for example, in Sydney a CLE seminar series and related information booklet on "Prosecuting Crimes Against Women in War", in Perth a Conference on Peace Operations and in Canberra a public forum on the legal issues relating to the role and situation of women in armed conflict.

Example: National Children's and Youth Law Centre (NCYLC)

- legal staff are provided on secondment;
- law clerks volunteer in the NCYLC Cyber Volunteer Program;
- monthly flow of funds through the Workplace Giving Program;
- sponsored and judged at the NCYLC 2002 National Children's Lawyers Awards;
- provide technical assistance and computer hardware.

In a recent paper on signature projects, Esther Lardent summarises as follows:⁶

The ideal [partnership] should offer a meaningful opportunity to serve to virtually everyone at the firm ... from the firm's managing partner / chair to its messengers. While that ideal may be difficult to achieve, [partnerships]

⁶ Lardent E, "The ten essential elements of a signature project" in *What's new in law firm pro bono ...* (November / December 2002, Issue # 45) at 5.

should take advantage of the firm's wealth of diverse expertise and should afford a teaming opportunity to those who do not traditionally work together.

Genuine benefits to each partner

We believe that the partnerships between Mallesons and our community partners provide a genuine benefit to each partner through the collaborative promotion of common community interests. Regular consultation and the appointment of Mallesons relationship partners, responsible for promoting the interests of our community partners, assists in ensuring the evolution of mutually-beneficial relationships.

Benefits for community partners

- pro bono legal services directly offsets community organisations budgets and enables more resources to be allocated directly to programs;
- stable, zero cost source of funding through the Workplace Giving Program which increases the impact of the community organisations by reducing their operating costs;
- a direct link to Mallesons human resources of over 1,800 people of the promotion of volunteering opportunities, which increases the sustainability of volunteer programs by increasing the number of volunteers participating in community programs.

Benefits for Mallesons

- direct avenue for community involvement;

- develop the skills and experiences of staff through opportunities to provide personal assistance to diverse clients and advise on a range on legal subject matters;
- promote relevant legal issues, including access to justice and social justice principles;
- improve staff morale and commitment by providing diverse professional and networking opportunities;
- enhance team building and staff development through participation in community-based volunteering opportunities and team sponsored initiatives.

5 Downsides in community partnerships

Clearly, any account of the development community partnerships would not be complete without some examination of the concerns about these community partnerships. To this end I will mention two matters of concern recently commented on in the literature: diminished pro bono commitment and ethical concerns.

Diminished pro bono commitment

Esther Lardent notes that one potential downside of the heightened focus on such projects is the perception that other ongoing pro bono commitments and activities at the firm will become less important and receive fewer resources.⁷

She counsels that it is important that such projects should not be undertaken in lieu of existing pro bono commitments. Rather, the firm in making an institutional

⁷ Lardent E, *ibid* at 4.

commitment to a community partnership, should strongly and consistently affirm its continued support of other pro bono work.

I support the analysis by Esther Lardent that in the large law firms no single partnership or project will engage the interest and participation of all the firm's employees and, given the heterogeneity and vast human capital of large law firms, there should not be an issue with these firms continuing to make their skills and time available in a broad range of pro bono matters.⁸

Conscious of these issues, we have an agreed cap or budget of legal hours of pro bono work to support our community partners and programs. In 2002/03 this budget was approximately 20% of our national pro bono budget.

Ethical mine fields

Australian and overseas research describes the changing power structures between governments, the individual and business caused by the trend to privatisation of government services. This trend has placed new pressures on not for profit organisations by prompting new approaches that require greater resources and generate complex legal needs for not for profit organisations.⁹ Community partnerships can be seen as a response to these trends.

Some commentators have noted with concern that ethical issues may arise from the relative power imbalance in the partnership and the potential lack of clarity between the social and commercial objectives of the parties.¹⁰

⁸ Lardent E, *ibid.*

⁹ Tracey D, *op cit* n3 at 2 - 3.

¹⁰ Tracey D, *ibid.*

To this end, our due diligence process uncovered numerous ‘war stories’ arising from power imbalances in partnerships. For example, problems have arisen where not for profit organisations rush into partnerships without considering the future demands that may be made by their corporate partner and their corporate partner’s marketing department. These demands may stretch to dictating governance and board membership matters. In a different vein, issues have also arisen where a not for profit organisation, tempted by a grant, creates programs that are beyond the organisation’s mission or where the not for profit organisation offers, for example, volunteering opportunities to the corporate that are not particularly useful for the not for profit organisation.

As a result of these kinds of concerns, Dennis Tracey from the Swinburne Institute for Social Research has described corporate partnerships as an “ethical mine field” and proposes the development of ethical guidelines for interactions between not for profit organisations and business.¹¹ We support the creation of such guidelines and will be speaking about the importance of recording the rights and obligations of both parties in corporate partnerships at the Corporate Social Investment conference to be held in November 2003.

6 Conclusion

Despite these criticisms, community partnerships are becoming an increasing reality in pro bono. For partnerships to work, it is important that they suit both the firm and the not for profit and for this, the rights and responsibilities of each party should be

¹¹ Tracey D, *ibid* at 4.

researched and clearly documented. It is important to get a right fit. We have found community partnerships to resonate with the large size and diverse staff of our firm.