

WORKSHOP 4A: BEYOND CASE WORK: PRO BONO STRENGTHENING COMMUNITIES

EXAMPLE FROM PRACTICE – ARNOLD BLOCH LEIBLER

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Abstract: *Commitment to client communities beyond providing one-off legal services is a key aspect of relationship building. Being available and accessible on an “as needs” basis is another key aspect. Building trust is essential. So too is an appreciation of the critical importance of gaining informed consent. The principles relating to professional responsibility and acting in accordance with instructions are of paramount importance. Accepting responsibility, being a team player and working cooperatively and respectfully with clients in a way that empowers are also important, as is the capacity to understand and appreciate the contribution of other disciplines to the particular legal task at hand.*

Identifying and remaining aware of the characteristics of ineffective and effective community client relationships can be one of many useful strategies for legal service providers to contribute to community development and client empowerment. An ineffective relationship is characterised by: a lack of informed communication and an inability or a unwillingness by the service provider to listen and take instructions; disconnectedness between the service provider and either or both the representatives of the client community and the community more generally; and failure of the service provider to provide sufficiently clear and comprehensive information to the client community to enable informed decisions to be made. An effective relationship involves: being able to effectively prioritise research and activities; having the highest respect for the client community; being able to stand aside from any internal community disputes, whilst continuing to recognise and be attentive to the importance of such matters; and having mechanisms in place to ensure that these matters are continually re-affirmed.

BACKGROUND

Definition of public interest law practiced at ABL

- Defend rights;
- Develop the law; or
- Improve the administration of justice;

in the public interest.

Practice strategy at ABL

ABL's Public Interest Law Practice strategy has the following features:

- Client, not matter, focussed;
- Relationships and commitment driven;
- Clear support of the firm's leaders;
- Full time, partner co-ordinator;
- Dedicated and significant budget;
- Clear policy and guidelines;
- Annual audits;
- Work treated, performed and credited in the same way as other work that the firm undertakes;
- Targeted to areas of greatest need where the firm's skills and resources can be best utilised; and
- Interested personnel at all levels of the firm can participate: practice lies like a transparency over the whole firm.

Audits and results for 2002/2003

Annual audits of public interest work are carried out by ABL to:

- Formally measure associated benefits;
- Give proper recognition;

- Approximately 3,750 hours spent in 2002/3 on public interest law or 40 hours spent on average by each ABL professional; and
- 60% of ABL professional staff involved.

Experience and expertise

- Arnold Bloch Leibler looks for a natural fit of vision and culture with:
 - “Not for profit” cultural, social justice and environmental organisations;
 - Various Indigenous communities and organisations, in particular.
- Some examples of the firm’s relationships and partnerships with Indigenous communities:

Yorta Yorta Nation Aboriginal Corporation

- Instructions received 1993;
- All aspects of Yorta Yorta native title application from mediation to the 2002 High Court appeal;
- Now before the United Nations;
- Ongoing negotiations with Victorian Government and separately with VicRoads- Yorta Yorta management of Yorta Yorta country.

Neminuwarlin and Jirrawun Arts

- East Kimberley performers and artists – eg. empowering corporate structures; ongoing corporate governance requirements; Arts Festival contracts; estate planning for Jirrawun artists; sale of artworks contracts.

Murray Darling Rivers Indigenous Nations

- Unique confederation of the Indigenous nations of the Murray and Darling Rivers – eg. from 2001 to date in relation to a MOU with the MDBC; incorporation of cutting edge cross-cultural corporate structures.

Wuthathi peoples (through and with the ACF, Wilderness Society and others)

- Working with the Wuthathi peoples of Shelburne Bay, Cape York, the ACF, the Wilderness Society and others within the conservation / Indigenous confederacy of Cape York, for Wuthathi to return to country and to help them to stop mining of it.

Firm philosophy

- “Right thing to do”.
- Acknowledge mixed motives.
- Committing as proud supporters and advisers for the “long haul”:
 - Giving effect to instructions to support Indigenous empowerment;
 - Communicating clearly, respectfully in a cross cultural environment;
 - Ensuring client community groups act on informed consent; traditional decision-making processes are respected and upheld – “ground up, not top down”.

Firm methodology

- In a native title claim, for example, legal adviser has responsibility for preparation of application and for other legal transactions under *Native Title Act*, on instructions.
- Quality of instructions determined by the quality of advice and explanations provided.
- Principles relating to professional responsibility; acting in accordance with instructions - paramount importance.
- Legal adviser usually acts as a member of a team; eg. community's claim coordinator, anthropologists, linguists, historians, field staff and administrative assistants.
- Duty to understand and appreciate contribution of other disciplines to the particular legal task.
- Accepting responsibility is important, as is being a team player, able to work cooperatively and respectfully.

LESSONS LEARNT IN THE FIELD

- Learn from mistakes.
- Due diligence before giving commitment.
- Give up-front commitment to client communities beyond one-off legal services, particularly remote, disenfranchised and disempowered communities - key to managing expectations, building trust, loyalty, relationships.
- Learn about clients, their pressures, concerns, aspirations, by respectfully listening.

- Clients are experts on empowering outcomes needed – listen, learn and respectfully contribute legal strategies to achieve outcomes sought, when requested.
- Being accessible on “as needs” basis is also key – spend time “client-side”.
- Journey; life experience; privilege; not necessarily connected to “winning”.
- Public education, hand in hand with understanding that law may just be a means to effect political solutions.

INEFFECTIVE V’S EFFECTIVE RELATIONSHIPS

An ineffective community client relationship is characterised by:

- Lack of informed communication;
- Inability or a unwillingness by the service provider to listen and take instructions;
- Disconnectedness between the service provider and either or both the representatives of the client community and the community more generally; and
- Failure to provide sufficiently clear and comprehensive information to the client community to enable informed decisions to be made.

An effective relationship involves learning from mistakes and is characterised by:

- Being able to effectively prioritise research and activities;
- Having highest respect for the client community;
- Being able to stand aside from any internal community disputes, whilst continuing to be attentive to their importance; and

- Having mechanisms in place to ensure these matters are continually re-affirmed.

OTHER USEFUL STRATEGIES

- Representative Bodies need partnerships from commercial law firms and are windows to further opportunities.
- Learn the dynamics on the ground before making offers of support - are those instructing part of “top down” or “ground up” structures? Are those instructing organised in a manner consistent with the traditional territorial area concerned?
- Help build hands-on “owning of the process” at the community level - **community focussed team environment.**
- Team should consist of a community coordinator; administrative assistant; to 3 community field staff; researchers; Elders Council / instructing committee; and solicitor.
- Ensure internal community disputes resolved internally; separate legal representation only as a last resort.
- Preferable to delay a hearing, or a mediation rather than allow substantial, unresolved, conflict to arise publicly.
- Planning, allocation of work responsibility to involve consultative processes in which all members participate.
- The solicitor’s aim: achieve consistent physical presence in the community’s country, to generally advise and to carry out necessary responsibilities.
- The adoption of a community-focussed team structure should assist greatly in ensuring effective communication.
- Maintaining this process should be high on team’s list of priorities.

- Regular briefing meetings and discussions with members of the client community are critically important; need to be complemented with written material outlining state of play, work undertaken, future activity and developments in the law.
- Client community should always know the status of its legal matter; its context in the political struggle; the critical forthcoming dates; and all other relevant matters.

CONCLUSIONS

- The key matters dealt with in this presentation include the need:
 - For proper, respectful and effective communication structures between the client community and those assisting, it to achieve empowering outcomes;
 - For clear accountability in meeting community's needs;
 - To establish clear goals, priorities and timelines;
 - To safeguard against internal communication breakdown between people working on common tasks; and
 - To ensure that the work of the team is effectively and efficiently coordinated.
- The requirement to successfully address these matters cannot be overemphasised.