Pro Bono: Still Relevant for Access to Justice
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Introduction

A call to justice for the poor and marginalised is to be found in the three major monotheistic faith traditions. The Hebrew tradition specifically mentions the need for justice for the poor in their lawsuits.¹ In Christian scriptures, scribes or lawyers were encouraged to foster justice, especially among the poor and widows. A similar call to justice can be found in the Quran,² alongside calls to charity.³ Each tradition is intimately linked to law, and emphasises the need for its careful application with justice and mercy.⁴

These traditions are among the forces that have influenced the long-established practice of lawyers undertaking work pro deo, or pro bono publico (for the public good). What is now generally called ‘pro bono’ refers to work done by a solicitor or barrister without expectation of a fee.⁵

There is no definition of pro bono that is common to all jurisdictions.⁶ One simple definition is: ‘Lawyers providing free legal services to persons of limited means’.⁷ Broader definitions encompass not just work on behalf of individuals but work on behalf of organisations and communities. For example, in the Pro Bono Declaration for the Americas, the definition used is:

Pro bono legal services are those provided without a fee, or expectation of a fee, principally to benefit poor or underprivileged persons or communities or the organizations that assist them. They may include representation of persons, communities or organizations in matters of public interest who otherwise could not obtain effective representation. In addition, pro bono legal services can also benefit civic, cultural and educational institutions serving the public interest who otherwise could not obtain effective representation.⁸

This article first looks briefly at some high-profile pro bono activity and principles in various jurisdictions which have developed pro bono in a modern, proactive manner. Next, some features of international declarations concerning legal pro bono are outlined. Finally, a brief examination of pro bono activity in Ireland leads to some proposals for a more integrated, proactive approach to the provision of pro bono services in this country.

Pro Bono in other Jurisdictions

United States

The level of interest in pro bono work in the United States is reflected in the wide range of articles and books that have been published on the topic.

The American Bar Association (ABA) and several local bar associations strongly support pro bono initiatives. Within the ABA, there is a ‘Center for Pro Bono’ and a ‘Standing Committee on Pro Bono and Public Service’.⁹

The ABA Model Rule 6.1, ‘Voluntary Pro Bono Publico Service’, states: ‘Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.’¹⁰ Meeting this target is, of course, not mandatory but Deborah L. Rhode, who has written extensively on pro bono, has drawn attention to the fact that ‘most profitable firms often have high participation levels’. She adds: ‘Some evidence suggests that, at least for large firms, pro bono participation may be positively correlated with financial success.’¹¹

Pro bono services can range from very small-scale initiatives upwards to significant levels of legal assistance – from the provision of web-based information to education via the net or in classes, to advice by para-legal assistants, to assistance before the courts with various levels of expertise from law students to senior attorneys. This variety of services is referred to as Mixed Model Delivery.¹²

Rhode points to research findings on lawyers’ perceptions of the positive influences of pro bono: they ranked ‘personal satisfaction’ as number one and ‘professional obligation’ second.¹³ It is interesting that among the influences mentioned was ‘religion’.¹⁴

One well-developed area of pro bono service in
the United States is that provided by law schools across the country. Most of the major law schools (including, for example, Harvard, Georgetown, Fordham, Boston College, and Seattle University) have some provision for offering volunteer work or pro bono service opportunities; some law schools make pro bono work a requirement.

The standards and experience provided in law school placements vary considerably. Rhode states that for such programmes to be effective, ‘placements should provide meaningful work, offer opportunities to be involved in problem solving and decision making; supply adequate support and feedback; and enable individuals to develop skills and assume increasing responsibility’.16

A different aspect of pro bono educational work is legal education for a wide range of groups through a programme called Street Law. Arising from an initiative of law students in Georgetown University, Washington D.C. in 1972,17 Street Law programmes and materials were developed and systematised and they have been widely used in a variety of settings in the United States. Internationally, Street Law projects have been undertaken in over thirty countries, including the UK and South Africa.18 The Street Law Programme Handbook describes the approach used with community groups:

Under this scheme [law] students work with community groups to identify legal concerns. The students then research the relevant material and present their findings to the partner groups in a user-friendly form. Through discussion, rôle-play and other inter-active methods, students and the community group members both learn about the law.19

England and Wales
LawWorks is the operating name of the Solicitors Pro Bono Group; it was set up by a group of solicitors concerned about access to justice. It provides free legal help (including legal advice, mediation and casework assistance) to individuals who are unable to access legal aid. It also provides legal assistance to small charities, not-for-profit, voluntary and community organisations. The membership of LawWorks includes ‘almost all the major law firms in the UK’. The organisation seeks to encourage ‘the widespread involvement of law schools and their students in pro bono activity’ and it is actively engaged in policy work in relation to pro bono service.20

The Law Society of England and Wales has held a Pro Bono Awards ceremony each year since 1998. The awards celebrate outstanding pro bono work undertaken by trainees, in practice or on course work, as well as that of newly-qualified solicitors with up to five years experience. These awards recognise both individual pro bono activities and participation in team projects.21

Since 2001, there has been a National Pro Bono Week, with events organised by various groups involved in the provision of legal aid and advice and legal education.22 In 2008, there were seventy events on the theme of public legal education and partnership between the professions and the voluntary sector. A committee, formed from the Law Society, Bar Council, LawWorks and others, plans the events for the week.23 During the 2008 Pro Bono Week, the Law Society highlighted the value of the work done by lawyers on a pro bono basis, estimating this to be the equivalent of nearly £350 million or 2 per cent of gross income.24

European Pro Bono Forum
In the broader European context, the European Pro Bono Forum is a major international conference organised by the Public Interest Law Institute (PILI). The Forum, which was first held in 2007, aims to provide a platform for the exchange of information relating to pro bono activities in Europe, and for networking among lawyers, academics and NGOs committed to pro bono work. The 2009 Forum, held on 5–6 November 2009, considered the impact of the global economic crisis on pro bono practice.25

Canada
The Canadian Bar Association (CBA) is active in encouraging pro bono work, and has established a Pro Bono Committee to foster such service among the bar (the Canadian Bar is now unified, each lawyer qualifying as both a solicitor and barrister).26 The Committee provides practical aid to law firms in setting up a pro bono policy and in deciding whether to accept a pro bono file.

In practice, the implementation of some of the principles of pro bono service is managed at province level by a pro bono law group, such as Pro Bono Law Ontario.27 These provincial bodies provide a system to enable lawyers become involved in pro bono work and to link skills to needs. They supply resources such as online tools and advice, and also provide a special insurance
for lawyers who give their services pro bono.

Other Countries

In Australia, a 2007 report, *Mapping Pro Bono in Australia*, looked at existing provision and made proposals in regard to principles and practice for the future development of pro bono work.28 Interestingly, the report noted that sole practitioners appeared to engage in more pro bono work than did solicitors in large firms.29

In outlining the constraints on the delivery of pro bono, the report drew attention to the fact that there is often a mismatch between client needs and the skills of the lawyers willing to undertake pro bono work.30 It also noted the various factors which contribute to lawyers being reluctant to engage in litigation, including uncertainty as to the size, scope, length, and complexity of the case, and the adverse costs that may be involved.31

Regarding future strategy in relation to pro bono, the report focuses on greater co-ordination, with service providers working together. There was recognition that single pathways for accessing services help avoid confusion among potential clients. One organisation indicated as enabling enhanced coordination was the Public Interest Law Clearing Houses, which facilitate the connecting of clients and relevant lawyers.32 Other issues which the report suggested needed to be addressed were: training of volunteers; promotion of law school volunteer programmes, and provision of courses which address the legal needs of poorer clients.

In recent years, the Israel Bar Association has been active in developing a pro bono legal aid programme for the poorer sections of society.33 The programme, called ‘Schar Mitzva’, has been described as the social flagship project of the Israel Bar.34 It operates a hotline staffed on a volunteer basis by students. The programme also operates in thirty-four ‘rights centres’, providing pro bono counselling by professional and certified lawyers. The President of the Israel Bar has commented that an initial concern that the programme would hurt the livelihoods of lawyers ‘has gradually faded away from the arguments of opponents’.35

An interesting recent development in pro bono internationally is a new requirement in the Philippines that all practising lawyers provide mandatory free legal aid service in all cases involving marginalised and poor litigants.36

The rule, introduced on 1 July 2009, requires each practising lawyer to undertake a minimum of sixty hours of free legal aid work per year, with a minimum of five hours each month. Continuation in practice depends on being issued with a certificate attesting to hours given in pro bono service. Furthermore, lawyers who fail to comply with the free legal aid requirement for three years will face disciplinary proceedings.

National and International Instruments

Several bar associations have some form of explicit pro bono rule,37 policy, protocol38 or declaration which is intended to guide this form of service.39 LawWorks in England, for example, has a Pro Bono Protocol which sets out the ‘core values’ of pro bono work, and which aims to assist ‘both those who undertake it and their clients’.40

Pro bono declarations tend to be more comprehensive – often including specific goals for hours spent in pro bono work as well as minimum standards to guide the service.

‘Members of the legal profession have a responsibility to provide pro bono legal services. This responsibility stems from the profession’s role and purpose in society ...’

Lawyer associations of several countries in the Americas produced the *Pro Bono Declaration for the Americas*. This declares: ‘Members of the legal profession have a responsibility to provide pro bono legal services. This responsibility stems from the profession’s role and purpose in society, and from its implicit commitment to a fair and equitable legal system.’41 The Declaration suggests a minimum of twenty hours service per year, a focus on support for NGOs and the promotion of pro bono as an ethical obligation.

The International Bar Association (IBA), of which both the Bar Council of Ireland and the Law Society of Ireland are members, approved the *IBA Pro Bono Declaration* in October 2008.42

This international agreement is ‘inspired by the
vision of a better, more just world’. It points out that access to justice is, for all individuals, a human right, that barriers to justice should be dismantled, and that the legal profession has ‘the duty and opportunity to provide pro bono legal service’.

It calls on lawyers to specify a proportion of their time and resources for pro bono, on firms to promote and value this work, and on governments to support the provision of services by various means, including reduced court fees. Moreover, it urges the promotion of broad educational activities to foster pro bono service.

Pro Bono in Ireland

Current Situation

Not much has been written on pro bono law in Ireland. Yet pro bono service has long been feature of the legal profession in Ireland, and the tradition has continued despite the introduction of a system of civil legal aid in the late 1970s.

Personal conversations reveal that many solicitors and barristers give free legal assistance. Most of this voluntary work is ad hoc, and depends on a pre-existing relationship, with the client being perhaps a family member, friend, associate, neighbour, club or work colleague. However, some pro bono work is carried out in a more formal way, through FLAC (Free Legal Aid Centres) or in a community law centre, such as Ballymun Community Law Centre or Northside Community Law Centre.

The Bar Council of Ireland has explicitly commended its members to offer assistance pro bono. Furthermore, the Council recognises pro bono service as fulfilling some of the requirements for Continuing Professional Development.

Writing in the Law Society Gazette in 1998, John Costello, solicitor, drew attention to the tangible benefits to lawyers arising from engaging in pro bono work; he suggested that personal development, training, staff morale and public relations are all seen to improve when firms implement pro bono schemes. He pointed to a number of specific areas in which there were needs not being met by the statutory legal aid service; these included, employment appeals; environmental law; copyright law for young artists; housing and tenancy law; health law; community law; public interest law, which might include constitutional law.

This identification of a broad spectrum of need is still valid today, more than ten years later. One other area of concern might be added – that is, social welfare law. This is an area which affects in particular those who are financially deprived, yet it is an aspect of law rarely addressed in law schools or in the very practice-oriented courses provided by the Law Society of Ireland and King’s Inns in the training of lawyers in Ireland.

Given the type of needs outlined above, how does a lawyer in Ireland make available his or her skills to those in need of a legal service without seeking out clients, or soliciting custom? This question focuses attention on the issue of a formal, organised approach to the provision of pro bono legal services in Ireland.

Pro Bono Task Force


The Report acknowledged the pro bono work being done in Ireland but argued that it should be provided in a more organised manner. Ireland is, it noted, ‘one of the few common law countries without a properly organised Pro Bono Scheme’. The Report argued that there was need to move beyond the existing ‘piecemeal and ad hoc’ approach to pro bono activity and that official support by professional bodies was necessary for pro bono to flourish. In effect, the Task Force seemed to hold that pro bono work is not an optional ‘work of charity’ but a professional responsibility.

The key recommendation of the Task Force was that a formal pro bono scheme be established. This, it emphasised, would not replace the existing work of solicitors or the work done by the Legal Aid Board but would augment what was already being provided. The Task Force highlighted in particular the need for free legal advice, noting that the potential demand for this far exceeded the capacity to respond of the existing statutory service.

The Task Force suggested that the key steps towards establishing a pro bono scheme included:

(i) Joint Action by the Law Society and Bar Council: In light of the fact that Ireland is a small jurisdiction with limited financial resources, it was essential that the Law Society and the Bar Council
should act together in establishing one limited pro
bono scheme.

(ii) Establishment of a Pro Bono Charity: An
‘urgent practical step’ was the establishment of a
‘Pro Bono Charity’. This would be ‘a Company
Limited by Guarantee whose board would
comprise both solicitors and barristers’
(Recommendation 8).

This proposal envisaged the Pro Bono Charity
providing services for FLAC, Citizen Information
Centres, NGOs and community groups. Initially, it
was suggested, individuals would not have direct
access to the Pro Bono Charity but in time such
access might be possible under strict criteria to be
established during the early development of the
charity.

(iii) Appointment of Pro Bono Co-ordinator: The
Law Society ‘should appoint a co-ordinator to
represent the Society in liaising with the charity to
identify areas in which solicitors/apprentices could
assist with the work of the charity’
(Recommendation 11). The Pro Bono Co-
ordinator or some member of the Council would
have special concern for the development and
fostering of pro bono.

While the Report of the Task Force was widely
welcomed at the time of publication, its
recommendations have yet to be implemented.

Indemnity and Adverse Costs

Two obstacles to the provision of pro bono
services were not the subject of recommendations
by the Task Force but both are crucial: these are
indemnity and adverse costs.

The question of indemnity – professional liability
insurance – constitutes a major barrier to lawyers
who would like to assist NGOs on a pro bono
basis. The issue of adverse costs arises because, in
Irish law, costs follow the event, which means the
final legal bill must be borne entirely by the losing
party, unless a judge makes no order as to costs
and lets each side pay its own way. Pro bono
litigants, therefore, could be liable for any costs
ordered in favour of the opponent. While it is
possible to apply to the High Court for a
protective cost order, such orders do not seem to
have been granted in practice. A resolution of the
difficulties in relation to both indemnity and costs
would be essential for the development of pro
bono in Ireland.

FLAC and PILA

The establishment of FLAC by law students in
1969 was a key moment in pro bono legal
provision in Ireland. FLAC was set up to provide
free legal advice to those who could not afford
legal services and to campaign for the
establishment of a system of civil legal aid. The
organisation still provides ‘basic free legal
services to the public’, as well as campaigning on
a range of legal and human rights issues.48

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law countries without a properly
organised Pro Bono Scheme’.

Early in 2009, FLAC established a new initiative,
Public Interest Law Alliance (PILA), ‘to facilitate
and promote the use of the law in the public
interest’.49 One of the aims of this project is to
establish a register of lawyers available to
undertake public interest/pro bono work and
develop pro bono initiatives amongst law firms
and with practitioners. This new initiative raises
the question of the desirability, and feasibility, of
the Law Society and Bar Council establishing a
pro bono/public interest law officer in their
respective associations.

Pro Bono and Legal Education

In other jurisdictions, law schools play a
significant role in the provision of legal services
for free. This is in part due to the fact that the law
schools undertake not only legal education but the
training of lawyers in legal skills. However, it may
be noted that some pro bono work is organised in
UK law schools, which do not have responsibility
for legal training.

The fact that it was law students who were
responsible for the founding of FLAC should
inspire those currently involved in legal education
in Ireland to seek new ways of providing pro bono
services to meet present needs. In the
circumstances of today, there is room for
developing forms of clinical legal education in
law schools in Ireland, and in the professional
training schools at the Law Society and at King’s
Inns.
NUIG has already begun to provide placements for some students with statutory and voluntary bodies (such as the Equality Authority, the National Federation of Voluntary Bodies, Rape Crisis Network Ireland) and with practitioners throughout the country. This is a start. Law schools might be encouraged to actively and formally promote pro bono by students and to appoint a pro bono officer to promote this service.

Australia actively encourages the establishment of Pro Bono Student Associations [PBSA] with the provision of relevant material to set up associations in law schools. The primary features of the PBSA programme are:

- The programme matches law students to a need;
- Each student is assigned a project that has achievable goals;
- Each student is supervised by a lawyer;
- Students are introduced to the workings of the legal profession;
- The student must undertake the project without fee;
- The primary focus of the programme is community service.

Conclusion

This article has sought to highlight the importance and value of the tradition of pro bono legal service and the desirability of looking again at the need and scope for a more organised approach to pro bono work in Ireland.

The current recessionary times may seem, at first sight, to provide an unfavourable backdrop against which to explore how pro bono might be developed in Ireland. Yet, it is precisely such times which draw attention to the need for, and potential value of, structured, well-organised pro bono legal services. On the one hand, a range of problems consequent on the economic crisis will, for some people, mean a need for legal advice and support – but the cost of such services may be well beyond what they can afford. On the other hand, a widespread rise in unemployment will inevitably mean that a significant number of well-qualified lawyers will find themselves without work. Many would welcome the opportunity to utilise and develop their skills in a structured pro bono system during this temporary interruption in their professional life.

It is interesting to note that the American Bar Association Center for Pro Bono has drawn attention to the fact that both newly-qualified and experienced lawyers may be unable to obtain employment during the current economic crisis, and it has sought to encourage firms and lawyers to consider the possibilities offered by pro bono work in the face of this difficult situation.

This, then, is an opportune time for Ireland’s professional legal bodies, and institutions involved in legal education, to seriously examine the possibilities for establishing pro bono service on a more organised basis, which could provide supports and back-up for practitioners and safeguards for clients and lawyers. The findings of the 2001 Task Force Report are a very useful starting point for discussion of how Ireland might move towards a more structured approach to the provision of pro bono services.

We in Ireland also have the advantage of being able to mimic and adapt the various structures and initiatives existing in countries which have an established framework for supporting pro bono work. The task might be summed up as building on our tradition of charity and solidarity, in the context of current circumstances, in order to respond to the never-ending challenge of ensuring access to justice for all.

Notes

2. ‘Stand out firmly for justice...’ Quran, 4:123; ‘Be just, that is next to Piety’, Quran, 5:8.
5. Pro Bono Law Alberta at http://www.pbla.ca/about/
6. See ‘General Observations’ on definitions at International Bar Association website on pro bono at: http://www.internationalprobono.com/resources/
7. Pro Bono Law Alberta at http://www.pbla.ca/about/


14. Ibid.


17. See website http://www.streetlaw.org/


19. Streetlaw Programme Handbook, 2006, p. 5. This is a generic text to be adapted to local situation; see: www.probonogroup.org.uk/lawworks/law_schools/Streetlaw%20Handbook.doc


25. For further details, see http://www.probonolawyer.eu

26. See CBA website at http://www.cba.org/CBA/groups/probono/


29. Ibid., p. 81.

30. Ibid., p. 102.

31. Ibid., p. 104 ff.


34. Ibid.

35. Ibid.


38. See website of LawWorks at http://www.lawworks.org.uk/

39. See: http://www.internationalprobono.com/resources/

40. See website of LawWorks at http://www.lawworks.org.uk/

41. ‘Pro Bono Declaration for the Americas’, http://www.internationalprobono.com/resources/

42. Access at http://www.internationalprobono.com/resources/

43. Ibid.

44. See http://www.lawlibrary.ie


46. Ibid.


48. See http://www.flac.ie

49. See http://www.flac.ie/publicinterest/

50. See NUIG Law School website at http://www.nuigalway.ie/law

51. National Pro Bono Resource Centre (at: http://www.nationalprobono.org.au). Other details considering placements, supervisions and benefits of pro bono within a university setting are found at University of Western Australia, Pro Bono Students Australia http://uws.clients.squiz.net/law/sol/associated_bodies/pro_bono_students_australia


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