

PARTNERSHIPS

Corporate responsibility — Gilbert + Tobin's pro bono practice

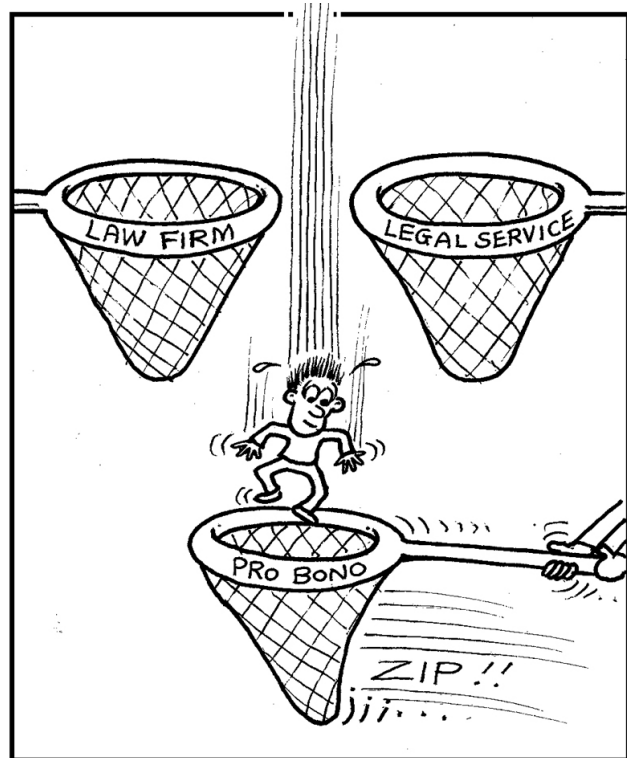
MICHELLE HANNON presents a law firm that takes its pro bono work seriously.

Gilbert + Tobin's commitment to assisting those who are marginalised and disadvantaged gain access to legal services has been demonstrated since the firm's inception in 1988. Since that time lawyers at the firm have undertaken pro bono work. In 1996 Gilbert + Tobin took an innovative approach to the provision of pro bono services and became the first law firm in Australia to engage a full-time, in-house pro bono lawyer. Since then the practice has grown along with the rest of the firm and we now have two full-time pro bono lawyers who run the practice on a day-to-day basis. The practice is supported by all lawyers and partners in the firm who also take on pro bono work.

The practice has developed to the point where we are currently handling approximately 200 pro bono matters a year. The nature of these matters varies widely and has included:

- successfully running a public interest disability discrimination claim on behalf of a seven-year-old girl against the New South Wales Department of Education;
- representing more than 25 students from Mt Druitt High School in a defamation claim against the *Daily Telegraph*;
- representing an 80-year-old woman who had been left homeless after her family sold her home and used the proceeds of sale for their own benefit;
- acting for a family in their claim against a Sydney Hospital in relation to their child;
- providing ongoing commercial advice in relation to a range of matters for several community organisations including a peak childcare organisation, several arts organisations, and Aboriginal community organisations;
- advising community organisations in relation to their involvement in the establishment of a community bank;
- drafting submissions on behalf of a client in relation to a Bill of Rights in New South Wales;
- providing advice to Northern Territory organisations in relation to the constitutionality of mandatory sentencing;
- providing community legal education to legal centre workers about administrative law issues;
- travelling to far north west New South Wales every six weeks to provide advice and assistance to people in remote communities; and
- attending the Downing Centre as part of Domestic Violence Court Assistance Scheme every week to represent women seeking apprehended violence orders.

The practice is an integral part of the firm and its culture. Although each of the lawyers and partners at the firm might be motivated differently as to why they personally choose to undertake pro bono work, the firm's commitment to



providing pro bono services derives from two fundamental premises. First, it is the firm's belief that as all members of the community are subject to the laws of our society, lawyers have an ethical responsibility to help ensure all people have access to legal services when they are confronted with legal issues. Second, we also recognise that lawyers are relatively privileged members of the community both financially and socially and are in a position to make a strong and positive contribution to members of our community who are less privileged in these respects.

Our experience is that the practice promotes the firm's success by attracting and retaining talented and dedicated staff and creating a workplace that is imbued with a greater sense of unity and accomplishment as a result of the work undertaken in the pro bono practice. The appeal of pro bono work stems not just from the fact that lawyers are given the opportunity to use their skills to help people who would otherwise not receive assistance but because often it also gives them the opportunity to work in areas of personal interest to them. The cases can add variety and new experiences to their work because they frequently involve matters outside the scope of a lawyer's usual work load and allow them to work with people from sectors they would not normally work with.

Naturally conducting a pro bono practice in a successful commercial law firm also has its challenges. The time pressures on lawyers mean we cannot always assist with as many matters as we would like. Occasionally the nature of the work some clients or organisations ask us to take on can

be controversial and the debates surrounding our participation in some of these matters have allowed us to develop a more mature and effective pro bono practice. A further difficulty faced by those undertaking and promoting pro bono work is trying to assist in the provision of access to justice without encouraging the government to surrender its responsibility to adequately fund community legal services. Despite our dedication to assisting those who are marginalised and disadvantaged, Gilbert + Tobin is strongly of the view that it is not the private sector's role to meet government's responsibility in ensuring access to legal services for a large number of the community. Our practice aims to help meet the needs of those who 'fall between the gap' and cannot access government or community sector services but are unable to afford legal services themselves. This factor is something that is foremost in our mind when accepting matters on a day to day basis and making decisions about the broader development of our service.

Michelle Hannon is a pro bono lawyer with Gilbert + Tobin Lawyers.
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Social conscience — a legal responsibility

LUCY LIMBERS interviews a managing partner, GARY FLOWERS, about corporate philanthropy and the legal profession.

Modern day law firms are very much commercial entities. They are challenged daily by the need to compete in a growing market of legal service providers and to meet client expectations that are often unrealistic. Where does pro bono work fit into this picture? This interview puts these questions to Gary Flowers, the national Managing Partner of a Sydney Law Firm. It represents a dialogue in the growing debate on the role of corporate philanthropy in the law profession.

LL: The idea of corporate social responsibility has in a sense come back into vogue with policies such as the Federal Government's notion of a social coalition. But the traditional idea of philanthropy is now more broadly defined. What does it mean for lawyers?

GF: I guess there are two ways you can look at what constitutes corporate philanthropy. In the narrow or more traditional definition for lawyers, it comprises legal work done without charge for whomever you might identify as being in need.

In a sense, this is more personal and harder to integrate into the social contributions of an organisation. Lawyers usually do pro bono work off their own bat and on a one-to-one basis. But having said that, there is significant need out there for this type of work. 'Personal plight' cases in criminal and family law feature most frequently in the statistics on legal pro bono work.

However, it is quite rare for these requests to come through to larger firms, obviously, due to the structure and the nature of commercial practices. Instead, large firms usually allocate resources to community justice centres — like sending one or two lawyers on secondment for 6 months. This is a more effective way for large firms to take part in personal plight pro bono work.

Moreover, gaining casework experience in criminal and family law is not irrelevant to the staff of a larger firm. While

it's a community responsibility, it also provides good training to young lawyers.

LL: What are the figures like on legal pro bono?

GF: Well there was a report released in August 2000 by the Australian Bureau of Statistics on the legal profession's patterns of practice etc. According to the report, solicitors donated around 1.8 million hours and barristers a further 489,000 hours doing pro bono work in 1998/99. Then there is legal aid, which further broadens access to justice but I think it's interesting to look at what is done by the private sector on a voluntary basis. It gives you a better indication of what the business community's sense of social responsibility is really like.

LL: So what is the second definition of corporate philanthropy?

GF: The broader definition, which is more in keeping with the workings of large legal practices, includes all forms of corporate social responsibility.

This is where business practices and philanthropy meet in a more deliberated way. I think it's in this integration of philanthropy into core business objectives that Australian corporate culture is changing more noticeably.

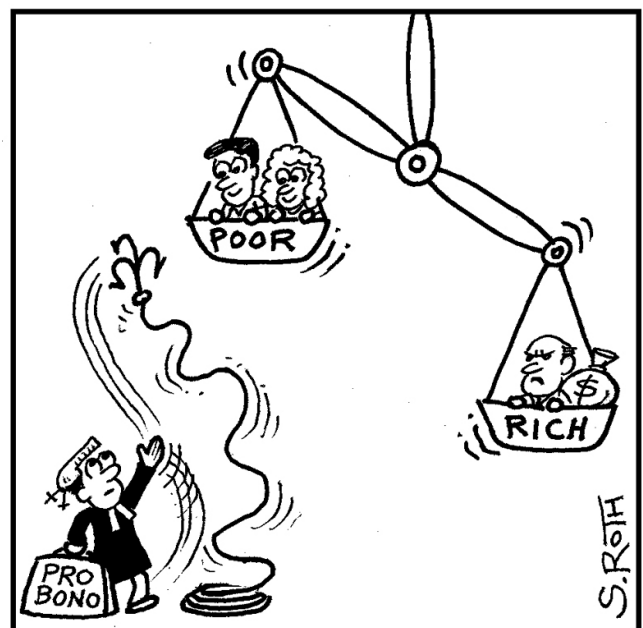
Corporate social responsibility is becoming more and more a part of a corporation's identity, rather than just a figure on its balance sheet.

It's a more structured approach, which can be better integrated into a corporation's culture and standard practices.

I saw the broader approach to philanthropy working well for a legal firm I visited in the United States. They called it a 'community support program' and it has a stronger societal focus, and allows more staff to be involved.

LL: Why was this better?

GF: The community support program went beyond legal support. So the results were further reaching too and not purely legal. They were working with an entire disadvantaged community to improve young people's education outcomes, social resources and access to justice where needed. The firm also carried out a few landmark legal suits as part of the program.



I think that, while you could give random financial support to a larger number of charities, this is not as effective and can become tokenism. Our preferred way to go is to engage in one or two select, ongoing relationships with community groups. This type of philanthropy is more strategic and less ‘ad hoc’. It also allows a legal firm to use all their resources — not just legal — such as with the partnership between Sparke Helmore and Patrick Rafter’s Cherish the Children Foundation. That’s a good case study of a diversified ongoing contribution.

So, in the next 12 months we intend to follow the US example by structuring and better resourcing this partnership, including the provision of some of our Brisbane office space for the Cherish the Children Foundation to use, as well as providing them with ongoing legal and human resource services. This is more holistic and perhaps more in keeping with the revived notion of corporate social responsibility advocated by the Howard government.

LL: Do lawyers or legal firms have more social responsibility than other professionals because of the service ideal that characterises the legal profession?

GF: The legal profession has always had a strong sense of social welfare about it. Lawyers do see community service as part of what goes with the profession. You see this throughout the profession — in smaller and rural practices as well. Most lawyers carry out pro bono legal work in their own time at a fairly constant rate throughout their professional lives. It’s not a marketing ploy — but seen rather as something integral to a normal lawyer’s workload at various stages.

While law firms run as a business, at the end of the day they are a service. They have a duty to clients.

In a sense, the revival in business of the notion of social responsibility these days is nothing new for the legal profession, while it may be for the some of the business sector.

LL: In 2000, the Attorney-General established a Legal Pro Bono Taskforce to examine the whole issue of social responsibility and philanthropy within the legal profession. In the subsequent report to the Attorney-General handed down last year, it was stated, ‘... law firms, (of all sizes and practice types) need to develop and maintain a healthy “pro bono culture” — and in this regard, all of the evidence suggests that the attitude of senior partners is critical in setting the right tone’.

Pro bono ‘culture’ denotes more of a voluntary attitude and has to be unprompted. How do you formally foster something, which is essentially informal?

GF: In any organisation, things have to be driven from the top down, not the bottom up. In any area, the partners have to set the tone. But something like social responsibility doesn’t come as an imposition to staff anyway. To the contrary, an organisation that is more driven by the triple bottom line is attractive to employees. It’s really a question of being the ‘employer of choice’.

LL: Does the pursuit of these intangible goals detract from achieving financial targets?

GF: At the end of the day, social responsibility, staff morale and business profits are not mutually exclusive as some economists affirm. There has been considerable, ongoing debate about the relationship between the social and financial objectives of business. There are those who say that the former don’t exist at all — that the only duty of business is to generate profit.

The key is that there shouldn’t be any element of conflict between these goals, but rather a mutual benefit among them. Financial profits are enhanced when a firm’s social responsibility is given attention. This is for a range of reasons — morale, profile, and productivity.

LL: Back to fostering a culture of pro bono. Are young lawyers socially minded or are they over-ambitious and slightly too focused on getting ahead in their career? Volunteerism for example is said to be a fading phenomenon from a previous generation.

GF: I actually think younger lawyers have a strong social conscience. It is not hard to foster volunteerism at all. If anything, they outdo the previous generation in this regard. They are values-driven and easier to motivate — I think this could be the product of a different education system with greater emphasis on environmental and social awareness. I think the 1980’s image of capitalist greed in young professionals is not as prevalent today.

LL: In the United States, they make sure lawyers are socially minded, by setting a quota of hours every lawyer must spend on pro bono work if they want to be professionally accredited. Is this contradictory to what you are saying? Does it stifle a real culture of social responsibility?

GF: Again the danger here is tokenism. However, I don’t see that the two things are incongruous. Setting a quota of hours may serve as a reminder or a framework for the individual to work within.

The whole area of social responsibility is becoming more formalised. It doesn’t mean we have to go down the path of quota hours, but I think businesses are becoming smarter in the way they plan and contribute to communities. The investment is better and far more effective.

I go back to the point — when a firm takes its social responsibility seriously and thinks it through, the flow-on effects both to staff, profit and the community are better. There’s no conflict.

Gary Flowers is the National Managing Partner for legal firm Sparke Helmore.

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Lucy Limbers is a Senior Consultant for communications and research firm, Henderson Parker.

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The Homeless Persons’ Legal Clinic

PHILIP LYNCH reports on a pro bono project in Melbourne that provides assistance to one of society’s most disenfranchised groups.

The law, in its majestic equality, forbids the rich as well as the poor from sleeping under bridges, begging in the streets, and stealing bread.

Anatole France, *The Red Lily*, 1894

Over 100 ago, Anatole France, writer, critic, communist and winner of the Nobel Prize for Literature in 1921, identified the disproportionate impact that the application of formally equal laws can have on unequals. The counterview, recently expressed by the Police Chief Inspector for Melbourne, that ‘where you live and your social standing is a non-issue’ fails

to account for the social context of law. The application of law without regard to substantive injustice and inequality tends towards the perpetuation, rather than the subversion, of marginalisation and disadvantage.

The Homeless Persons' Legal Clinic, a joint project of the Public Interest Law Clearing House (PILCH) and the Council to Homeless Persons (CHP), was established in October 2001 to provide free civil and administrative legal assistance and empowerment to one of society's most disenfranchised groups – homeless people. In addition to providing legal services, the Clinic seeks to identify the range of legal issues facing homeless people, identify gaps in the delivery of services, and examine relevant law and policy reform issues. The Clinic is modelled on similar services in the United States and Canada which have demonstrated that many homeless people face distinct legal problems. These services have established that their clients are disproportionately affected by the vacuous application of the law, are sometimes targeted for the selective enforcement of laws, and require that services be appropriately targeted and delivered. Services are provided by the Clinic at crisis accommodation centres and welfare agencies to encourage direct access by clients.

The Clinic is funded by a non-recurrent grant of \$57,000 from the Department of Human Services (Supported Accommodation Assistance Program Unit) and staffed by pro bono lawyers from participating law firms and legal departments, including Blake Dawson Waldron, Clayton Utz, Hunt & Hunt, Mallesons Stephen Jaques, Minter Ellison and National Australia Bank.

To date, the Homeless Persons' Legal Clinic has provided assistance to over 100 clients. The most common legal problems for which homeless people have required assistance involve debts, fines, social security, housing and tenancy. If the Clinic cannot meet a client's needs, it does its best to refer the client to a service that can. In this respect, the Clinic has developed strong referral relationships with financial counsellors, community legal centres and Victoria Legal Aid.

As Anatole France would have predicted, many clients of the Clinic are adversely affected by laws which disproportionately impact on the poor, such as laws which criminalise begging or drinking in the street. In one case, Mark (not his real name), who suffers from an acquired brain injury and is subject to an administration order, received more than \$100,000 in fines over a period of five years for offences such as drinking in a public place, travelling without a valid ticket and begging. Most of the fines were issued around Flinders Street Station — his community, his home and his support network. Non-payment of such fines can result in imprisonment for one day per \$100. On 14 December 2001, the Melbourne Magistrates' Court dismissed all fines against Mark. Magistrate Grant imposed a condition that Mark comply with a case management plan prepared by Ozanam Community Support Services, stating that 'the community should accept responsibility for people in the offender's position'. The plan will enable Mark to obtain stable accommodation and aged care support. Magistrate Grant also acknowledged the efforts of Felicity Hampel SC, Brian Bourke, barrister, Minter Ellison, the Homeless Persons' Legal Clinic, and the Magistrates' Court Disability Support Coordinator, all of whom assisted Mark for free: 'The proper functioning of the legal system has come to rely on the pro bono efforts of law firms and members of the Victorian Bar. Their assistance is of



significant benefit to the community and to the Court itself'. The decision of the Court in Mark's case recognised that any meaningful notion of justice requires that the formulation and application of the law account for inequality and context. Responses that eliminate inequality and promote human dignity, such as the provision of secure and affordable accommodation, are far more appropriate than imprisoning people for manifestations of poverty such as drinking in the street or begging.

Clients like Mark are also affected by the selective enforcement of laws or the usurpation of rights by people and organisations attempting to exercise power with impunity. Evan (not his real name), who is on a Disability Support Pension and often sleeps rough, was bodily evicted from a rooming house in Fitzroy. The rooming house proprietor gave no reasons for the eviction and refused to provide Evan with access to his belongings, which remained locked in his room. Anecdotal evidence suggests that the practice of evicting the most 'destitute' boarders is not uncommon when rooming houses are full. On behalf of Evan, the Clinic is seeking to negotiate an apology and compensation in connection with the illegal eviction. If this is unsuccessful, it is likely that proceedings will be issued in the VCAT.

The feedback from clients, welfare agencies and crisis accommodation facilities in respect of services provided by the Clinic has so far been very positive. As Mark commented to the legal team assembled on his behalf, 'no-one has ever helped me like this before'.

The funding provided by the Department of Human Services will enable the Clinic to operate until about August 2002. Recurrent funding is being sought from government and corporate sectors to establish a permanent homeless persons' legal service and to supplement the advice and casework provided by the Clinic with law reform work which addresses systemic issues of disadvantage and disempowerment. In the meantime, the Clinic will continue to seek solutions to situations that are unfair or unjust.

Philip Lynch is the Coordinator of the Homeless Persons' Legal Clinic run by PILCH and a part-time lawyer at Allens Arthur Robinson.

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