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How does Pro Bono Students Australia (PBSA) fit with clinical legal education in Australia? (includes a preliminary report on the trial of the PBSA program conducted at the University of Western Sydney)

**By John Corker, Director
National Pro Bono Resource Centre
University of New South Wales
www.nationalprobono.org.au**

Pro Bono Students Australia

The Pro Bono Students Australia (**'PBSA'**) project was developed by the National Pro Bono Resource Centre (**'the Centre'**) in conjunction with the University of Western Sydney Law School. (**"UWS"**). It followed from a recommendation made in June 2001 by the National Pro Bono Taskforce to the Commonwealth Attorney-General (**'the Taskforce'**) and is based on the successful Pro Bono Students Canada (**'PBSC'**) program.

The program matches law students with public interest and community organisations who are in need of 'law related' services. Students do not get academic credit for participating in the program but they do get the experience of working on law related work in the community. The primary focus of the program is community service. The placements introduce law students to the workings of the legal profession and provide them with the opportunity to meet, observe and work with practising lawyers involved in public interest work. To this extent it has similarities with clinical legal education (**'CLE'**) programs.

The report of the Taskforce recommended that¹:

Australian law schools should be encouraged to support programs that (a) highlight the legal profession's service ideal and promote a pro bono legal culture and (b) enable students to acquire 'high order professional skills and a deep appreciation of ethical standards and professional responsibility'²

This would involve providing all law students with opportunities for internships/outreach programs with a pro bono focus; opportunities to undertake clinical experience, clinical components within the curriculum and stand alone electives such as 'Public Interest Advocacy'; and opportunities for reflection upon and critical analysis of ethical matters (including pro bono) in the classroom.

This quote indicates that the Taskforce considered all these recommended activities part of the one strategy: to foster a strong pro bono culture among law students.

One of the central features of the PBSC program and the PBSA program is the opportunity it offers for students to become involved in the operation and management of the program as well as doing pro bono work.

The Canadian PBSC program was established in 1996 and has reached 17 law schools. Since its inception, the program has involved approximately 6000 students from across

¹ Report of the National Pro Bono Taskforce to the Commonwealth Attorney-General, 14 June 2001 at p 30.

² As recommended by the Australian Law Reform Commission in Managing Justice, ALRC 89, Recommendation 2, at p 142.

Ontario and Canada. Currently over 1000 students volunteer close to 5000 hours each week.³ It has made placements that include the Autism Society of British Columbia, Downtown Eastside Residents Association, Multiple Sclerosis Society of Canada, Greenpeace Canada, Vancouver Co-op radio and Toronto Child Abuse Centre. Some examples of work done by PBSC law students include production of a research report as background for an urban alliance on a Race Relations conference, assisting the Canadian Cancer Society in preparing submissions to the Ministry of Health on draft legislation, preparing a parent handbook on child abuse and accompanying victims of domestic violence to court to assist them in understanding the legal process and provide support.

The concept of student pro bono is far from new but PBSA offers a structure for law schools and law student societies to expand and develop these activities in a coordinated fashion. Springvale Legal Service, now a key part of Monash University's clinical legal education program, was first established on a purely voluntary basis as a student run telephone referral service then merged with a student run community aid and advice bureau. Bond University, runs a student pro bono program through its Pro Bono Club. Queensland Public Interest Law Clearing House (QPILCH) has had and continues to have considerable voluntary pro bono contributions from law students with two of three universities now making monetary or in kind contributions to assist QPILCH with its activities.

The UWS trial

The current Australian trial commenced in May 2004 when the Centre provided UWS with a template for all relevant forms and agreements necessary to conduct the project. These were developed by the Centre based on sample agreements, forms and other information provided by PBSC and taking into account precedents from Harvard and Columbia Universities. It is early days for that trial but the program is now established and placements have been made.

Initially, the precedents were presented to UWS and an existing staff member, with the close support of the Head of the School of Law took on the role of coordinator. There was no extra allocated time or money to do the job. She says that it took her at least 300 hours of work last year and this year has worked on the program for over 200 hours to date of which 150 hours have now been allocated in her workload for the year.⁴

Unfortunately a substantial part of this time has been spent looking for funds and resources but this has recently borne fruit with the UWS Regional Council approving in May 2005, \$9,970.00 for the promotion, consolidation and evaluation of the program. Part of this grant supports a research assistant to identify potential sources of and apply for infrastructure funding.

The coordinator tailored the precedents for UWS and placed them online. They can be seen at <http://www.uws.edu.au/about/acadorg/clb/sl/probono/documentrepository>.

³ Pamela Shine, National Director, Pro Bono Students Canada.
<http://www.yorku.ca/osgoode/pbsc/history.htm>

⁴ Information from conversation with Tracey Booth, law teacher at the University of Western Sydney.

Another major activity that has occupied the coordinator's time has been the briefing and supervision of a software developer to create electronic forms to facilitate the process of both students and community organizations registering their interest in participating in the program online. The coordinator is currently responsible for maintaining hard copy records, matching students, answering enquiries and organizing office space.

Student interest and involvement has been high. A steering committee of 6 students has been formed and demand for placements from students exceeds supply. Administrative assistance has been supplied by the student steering committee on a voluntary basis.⁵

The only communication with community organizations in Western Sydney was through a single mail out to community organizations that were identified with the assistance of Pro Bono Australia and through a meeting facilitated by the Centre with the Federal Magistrates Court in Sydney.

Six students have been placed at the Federal Magistrates Court assisting the court with drafting information sheets aimed at unrepresented asylum seekers coming before the Court. Students are being coordinated by a legal officer at the Court.

One student has been placed at the Migrant Resource Centre in Blacktown where he has been assisting the pro bono solicitor and the Resource Centre with research regarding Sudanese refugees and drafting a report to the Ombudsman about discrimination matters. The pro bono solicitor attends once a fortnight for half a day. The student attends one day per week.

Other organizations such as the Wilderness Society, The Combined Community Legal Centres Group in NSW and a group entitled Enough is Enough Anti Violence Movement Inc have expressed interest in taking in students.

The coordinator hopes to lift the visibility of the program by producing and distributing brochures and posters and believes with increased visibility the program will take off. She believes that \$50,000 would have adequately paid for a dedicated staff member, an administrator for the first 12 months to get the program up and running and a computer/printer/filing cabinet etc. but on this occasion it has been done for a lot less. The School has spent \$2,550 on software development, paid for stationary (\$500 approx) and for incidental expenses such as postage and has allowed 150 hours of an existing staff member's time.

Where does PBSA fit with CLE

To look at the similarities and differences between CLE and student pro bono it is instructive to look at definitions of these terms.

⁵ Tracey Booth, 'Student Pro Bono, Developing a public service ethos in the contemporary Australian law school', *AltLJ* Vol29:6 Dec 2004, p 280@284.

The Centre has adopted a definition of ‘student pro bono’ as follows:

‘**student pro bono**’ is where students, without fee, reward or academic credit provide or assist in the provision of services that will provide or enhance access to justice for low income and disadvantaged people or for non-profit organisations that work on behalf of members of the community who are disadvantaged or marginalised, or that work for the public good.⁶

Programs for which students receive course credit are not included on the basis that the student is getting a reward – in the same way that definitions of pro bono for legal practitioners are usually limited to work done without a fee. This reflects the view that ‘pro bono’ is in essence voluntary work done out of a sense of professional responsibility – where the primary motivation for the work is a concern for justice as opposed to securing gain or for reasons of kinship or friendship.

Griffith Law School use the following definition of CLE in their most recent strategic plan.

‘**clinical legal education**’ involves an intensive small group learning experience in which each student takes responsibility for legal and related work for a client (whether real or simulated) in collaboration with a supervisor. The student takes the opportunity to reflect on matters including their interactions with the client, their colleagues and their supervisor as well as the ethical aspects and impact of the law and legal processes⁷.”

In many Australian law schools CLE programs take place in a community service setting and are deliberately established with a view to engendering a pro bono ethos in the participating students. Few clinical programs focus solely on practical lawyering skills. It has been suggested that the features of a clinical program that are most likely to impart the pro bono ethos are⁸:

- the presence of a real client in the student’s activities;
- a focus on ethics and professionalism, social needs and the lawyer’s role in society, rather than the development of legal skills competency; and
- emphasis on community service to people with legal need but without the resources to address the need to a sufficient degree or at all.

It has also been suggested that a sub-set of the third criteria is:

- participation in ‘non profit organisations which work on behalf of members of the community who are disadvantaged or marginalised, or which work for the public good’; and
- interests underrepresented by the private market, including the poor, ethnic minorities, unpopular causes ‘across the political spectrum’ and diffuse interests;

⁶ ‘National Pro Bono Resource Centre, Information Paper, Clinical Legal Education and pro bono programs in Australian law schools’, August 2004 available at http://www.nationalprobono.org.au/publications/documents/PUBLISHEDVERSION_000.doc, p 10.

⁷ Griffith Law School, Clinical Legal Education Programs Strategic Plan 2003 -2007, p.1..

⁸ S Rice and G Coss, A guide to implementing Clinical Teaching Method in the Law School Curriculum (Sydney: Centre for Legal Education 1996) 9-10

provided that these activities are coupled with supervision by a lawyer/teacher and the student has an opportunity to reflect on and discuss issues related to the work they have done⁹.

CLE and pro bono programs do occupy different roles in the context of a law school education. Clinical programs form part of the academic curriculum and involve “an intensive small group learning experience”¹⁰. The primary focus of the clinical program is the development of practical lawyering skills in a closely supervised environment. The clinical student will have the advantage in most cases of both practitioner and academic supervision. Organised pro bono activity within a law school requires supervision to the extent that the work involves interaction with real clients but it does not form part of the academic curriculum. Its primary focus is community service.

In a pro bono placement the academic context is inevitably less evident. It is a purely voluntary activity so accountability is likely to be lower to the university but probably higher to the community organisation that hosts the placement. There is a difference to the degree to which the student has the opportunity to reflect on and discuss the experience with an academic supervisor as such a person is unlikely to be available in the pro bono program. But apart from these differences the experience may not be that dissimilar.

This Centre would argue that CLE and student pro bono activity are vital components of a comprehensive social justice education at law school. They should both exist in all law schools in Australia so as to provide a proper legal education for students. It is important that they be managed as complementary activities, occurring in close co-operation with each other. As noted earlier a number of clinical programs in Australia were first established as voluntary pro bono community service activities.

The overall program should be managed to help students make choices about the experience they seek and the commitment they want to make at various stages during their course of study. A positive pro bono experience early in a law student’s career may make it more likely that they will pursue a CLE program later on. It may be that in Australia this is where pro bono programs can best complement CLE programs as these programs are usually only available to students in the later years of a course of study.

Why Should Law Students Be Encouraged To Do Pro Bono?

A number of objectives can be suggested as to why law students should be encouraged to undertake pro bono work, many of which also apply to the question of why law students should be encouraged to undertake CLE programs.

Key objectives are suggested as follows:

⁹ Les A McCrimmon, Associate Professor and Director of Clinical Programs, University of Sydney Faculty of Law, “Mandating a Culture of Service: Pro Bono in the Law School Curriculum (2003-4)14 (1) Legal Ed Rev 53-76)

¹⁰ Ibid

- To develop and nurture a commitment in law students to practice law in a way that promotes justice and fairness for all, particularly the poor and disadvantaged members of society.
- To provide legal services that benefit poor and disadvantaged members of society.
- To introduce law students to the workings of the legal profession and to meet, observe and work with practising lawyers involved in public interest work.
- To assist students to develop interpersonal skills in a professional environment.
- To provide students with practical experience in research, writing and advocacy in a legal environment.
- For pro bono projects that are run by the students themselves, the student directors of these programs learn through experience some important lawyer competencies related to developing a law practice and managing a law office.

It is not a primary objective of student pro bono to enhance students' legal practice skills or improve their CVs, although that will often be an outcome and is a key way of promoting the idea to students.

The Benefits to Law Schools from student pro bono programs

The Commission on Pro Bono and Public Service Opportunities of the Association of American Law Schools in its pro bono project in 1999 (the AALS report)¹¹, identified three key benefits to law schools. These would all seem to apply in the Australian context.

- Law schools are often located in communities with which they have little relationship. Programs through which opportunities for students to help the underprivileged in those communities with law related matters is likely to create a friendlier and more hospitable climate between the local community and the school so long as the projects are well supervised and the quality of service provided to the community is high.
- Public service projects provide the school with valuable goodwill among the alumni who are often members of the local community.
- Pro bono programs can be used as a central part of selling the school to applicants. Many applicants to law schools have high ideals and an extensive pro bono program is a credible way for a school to demonstrate its commitment to public service and to the needs of lower income people.

To this I would add the long term benefit of enhancing the reputation of the law school due in part to graduates who emerge with a strong pro bono ethos often finding themselves in high public positions. A good example of this is Monash University which has always had a strong emphasis on social justice education and its graduates now hold some of the most senior positions in the judiciary in Victoria including Chief Justice of

¹¹Association of American Law Schools Commission (AALS) on Pro Bono And Public Service Opportunities, Learning to Serve: <http://www.aals.org/probono/report.html>

Victoria, Chief Justice of the County Court, Chief Magistrate, President of the Administrative Tribunal and Solicitor-General¹².

Issues for Law Schools in Establishing Pro Bono Programs

The AALS report identified seven key issues that schools should consider in establishing a pro bono program. These all seem to apply in the Australian context:

1. Finding the necessary funds

The AALS report recognises that the funding issues law schools face are indeed difficult and for pro bono projects the main expense is staff costs, “a minimum being a person nearly full-time during the season of the year when students are matched with placements”¹³. The UWS experience also seems to bear this out. The report states that pro bono work is an important part of the overall academic experience of the student and deserves to be treated as a part of the school’s core academic budget. However, it notes that many schools have been successful in obtaining outside funding for public service activities for students from a wide range of outside organisations including law firms, bar associations, interest on lawyer’s trust accounts funds, local and state governments, private foundations and direct contributions from alumni.

The Centre notes that the cost of running clinical programs is significant due to the need for a close degree of supervision of students in the performance of their clinical duties as well as in their academic assessment for the course, whilst pro bono programs tend to cost less because they do not entail any academic assessment and they can be operated on a day-to-day basis by students. This is not to say that they should be seen as a cheaper substitute for CLE. A pro bono students program should be seen as a separate but complementary activity.

2. The importance of adequate staffing and space

In the US every school that succeeds in placing a large number of its students in a pro bono placement has at least one staff person who devotes a substantial part of his or her time to the pro bono program. The necessary tasks for this person are well described in the AALS report. Importantly they can be carried out by an administrative rather than an academic person. The coordinator of the UWS trial states, ‘First the PBSA should be provided with separate physical space within the law school. An identifiable and easily accessible office renders the program visible and legitimate.’¹⁴

3. The location and structure of projects

The AALS report refers to ‘outside projects’ where the law school matches students with available work outside the University or ‘inside projects’ where opportunities are offered in projects operating within law schools or even projects with an element

¹² “Law Matters”, Monash University newsletter, April 2004.

¹³ Ibid.

¹⁴ Op. Cit 5, @ p 283.

conducted in both environments. In Australia, ‘outside projects’ have been referred to as ‘external programs’ or ‘externships’. PBSA is an external program.

4. Should student participation be required or voluntary?

As Professor David Weisbrot, President of the Australian Law Reform Commission and chair of the National Pro Bono Taskforce 2001, notes¹⁵ the issue of whether student participation in pro bono programs be required or voluntary has not yet been fully debated in Australia. The University of Wollongong provides an example of a compulsory undergraduate subject where the practical component involves 40 days of external placement for a student. The University of Notre Dame includes a regular community service requirement (not necessarily legal) in its compulsory ‘Ethics for Lawyers’ subject. UNSW requires law students to undertake a course containing a clinical component but in most law schools clinical and pro bono programs are voluntary.

5. Relationship between clinical courses and pro bono projects

The definitional issues are addressed above. As the AALS report notes:

The principle goal of most clinical experience is to teach students lawyering skills and sensitivity to ethical issues through structured practice experience and opportunities to think about and analyse those experiences. By contrast, the most important single function of pro bono projects is to open student’s eyes to the ethical responsibility of lawyers to contribute their services.¹⁶

Developing a pro bono ethos in law students can start early. It can be done from the first days at law school through introductory lectures but also through facilitating pro bono volunteering at appropriate organisations. New law students are often keen to put the law in a context they can understand and relate to.

Clinical programs in Australian law schools tend to have a community service focus possibly due to the strong historical links between the clinical teachers and Community Legal Centres (‘CLCs’). Some clinical programs have evolved from an informal link between a law school and a CLC through the volunteering activity of students at that CLC over a period of time, e.g. Macquarie University and Macquarie Legal Centre.

6. Assuring adequacy of supervision for students: the importance of evaluation

Supervision is important not only for assuring that clients receive competent legal assistance but also for assuring students receive the right messages about the quality of services to which all clients are entitled. Evaluation is vital for any program which is to be successful. A vital part of the success of the PBSA program is identifying placements that can provide this supervision. The PBSA precedents provide a simple method of evaluation to be conducted at the end of each placement.

¹⁵ Op Cit 6, Foreword by Professor David Weisbrot.

¹⁶ AALS report, supra note 2.

7. The importance of enthusiasm of law deans and faculties and rewarding the efforts of student leaders

The AALS report emphasizes the importance of the dean and the faculty in encouraging and praising student pro bono work. The coordinator of the UWS trial states, ‘staff enthusiasm and support will be crucial and the role of the PBSA director will need to be held by one committed to the program’¹⁷. Student enthusiasm for pro bono work is greatly enhanced by appropriate forms of recognition.

The AALS report highlights the importance of developing a school plan and urges schools to consult with other schools that seem to be in like situations to learn about their programs. The Centre published an information paper on the CLE and pro bono activities of all Australian law schools in August 2004¹⁸ which could be used to facilitate such consultations in Australia. Kingsford Legal Centre also publishes the Clinical Legal Education Guide which provides a guide to CLE courses offered by Australian universities.

Conclusion

A critical part of the success of the PBSA program is finding suitable placements where adequate supervision is available and the work is worthwhile and stimulating to the student. Early indications from the UWS trial show that this is possible in Australia.

Law schools should not assume that even a good pro bono program is a substitute for a clinical program, or that a good clinical program eliminates the need for a law school to support student pro bono projects. A pro bono student program is one of a range of activities that can be conducted in a law school with a view to engendering a long-term pro bono ethos in its students. The PBSA program is designed to empower students to play a meaningful role in the management of the program. The mindset that law students will only do activities if there is academic credit for doing so is not borne out in practice. The evidence in Canada and at UWS is to the contrary.

The Centre encourages Australian law schools and law student societies who might be interested in initiating such a program to obtain the PBSA precedents from UWS or the Centre, to discuss with the Centre, UWS, other law schools, and in particular law students, ways in which the program might be introduced at their school. Through this process a school plan for introduction of the program may be developed. PBSA provides a relatively low-cost structured program which together with CLE can help foster a strong bono culture among law students. This may in turn assist, not only now but into the future as these law students become lawyers, in meeting the high level of unmet demand for legal assistance for the low income, socially disadvantaged and marginalized persons in our community.

¹⁷ Op. Cit 5 @ p 283.

¹⁸ Op. Cit. 7