



STORIES OF PRO BONO LAWYERS ALLEVIATING POVERTY



17-23 OCTOBER 2010

National Pro Bono Resource Centre

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INTRODUCTION

Pro Bono is an esteemed feature of the legal profession. Lawyers have a shared professional responsibility to help improve access to justice by providing pro bono legal assistance and many Australian lawyers take this responsibility very seriously and derive significant satisfaction from helping those that wouldn't otherwise obtain access to legal services. Much of this work is done for individuals who are disadvantaged or marginalised or for organisations that seek to assist people in such circumstances.

The most recent ABS survey of the legal profession indicated that Australian lawyers did a remarkable 955,400 hours of pro bono work in 07/08.

This set of 12 short stories provides a glimpse of some of this legal pro bono work which has helped in its own way to alleviate poverty.

John Corker
Executive Director
National Pro Bono Resource Centre

Anti-Poverty Week 17 -23 October 2010.

Allens Arthur Robinson

Helping victims of people trafficking in Vietnam

Hagar International has been operating in South East Asia (primarily in Cambodia) for 16 years developing a long term assistance program for its beneficiaries, abused, exploited and rejected women and children, combining both social rehabilitation and economic empowerment. In 2009, Hagar Vietnam was launched in response to the growing incidences of violence and human trafficking in Vietnam and the lack of services available for victims. Hagar uses a capacity building approach alongside local partners to deliver a specialised model of training and care with enterprise partners who provide job training support and placement for Hagar's beneficiaries in Vietnam.

Allens has been fortunate enough to be involved with Hagar Vietnam since the early stages of its decision to launch its programs in Vietnam. The firm assisted Hagar with a review of its memorandum of understanding with Vietnam's Women's Union Centre for Women and Development that officially launched Hagar Vietnam's activities. The firm also provided Hagar Vietnam with advice on personal income tax as a charitable entity as well as conducted a review of Hagar's local employment contracts and human resources manual.

Agnes Lam, Country Representative of Hagar Vietnam says:

*Hagar Vietnam is enormously grateful to Allens Arthur Robinson. In the past year, we've benefited from your generous pro bono legal assistance as we've worked alongside women who are at the highest risk of exploitation and abuse. At Hagar Vietnam, we sincerely appreciate your professional legal advice and **commend your clear commitment to support extremely disadvantaged women.***

We look forward to continuing cooperation and welcome future opportunities to promote practical involvement of the Allens team in our program activities

Australian Government Solicitor

Street Law assisting Canberra's homeless

When most people envision a homeless person, they think of a person sleeping rough in parks or public spaces. Perhaps this is why many people don't believe that homelessness is a problem in Australia's capital. However, this definition of homelessness fails to include a large part of the homeless population. A person is homeless or at risk of homelessness if they do not have adequate access to safe and secure housing. This includes situations where the person's housing:

- Damages, or is likely to damage their health;
- Is unsafe;
- Fails to provide adequate amenities or the supports that a home normally affords; or
- Is not affordable.

In 2009, funds were made available by the ACT Government to establish a homelessness legal centre in Canberra. In 2010, Street Law was established with Amy Kilpatrick as the Principal Solicitor. It is an outreach legal service, which provides free legal advice, representation, education and referral to clients in Canberra and surrounding regions who are homeless or are at risk of homelessness.

Street Law's outreach model was set up in response to research on the most effective methods for delivery of legal services to vulnerable and disadvantaged people. Figures published by ACT Government about homelessness pointed the way towards where outreach services were most required. While it is estimated that approximately 1500-2000 people are homeless each night in Canberra, the ACT Government recognised that women and children escaping violence were the overwhelming population of people at risk of homelessness or already homeless. As such Street Law was integrated with existing support services such as women's refuges, youth and family centres. This engagement with a key demographic of people at risk of homelessness has improved access to legal services for some of Canberra's most vulnerable and disenfranchised persons.

Since commencing in mid 2010 Street Law has assisted over 150 clients. Of these clients over 60% were women and of these women and over 60% experienced mental illness and/or domestic violence.

The most common issues Street Law deals with are:

- access to housing;
- violence and victims of crime;
- family law;
- consumer rights (especially in relation to credit and debt);
- human rights; and
- employment rights.

For many clients, approaching Street Law is the first time they have ever spoken to a lawyer despite their high need for legal help. Often, clients have multiple legal issues requiring legal advice and resolution. Street Law's clients may come to discuss one issue they are facing – such as family law – but just below the surface, there are many more legal problems. ***Clients do not usually have only one legal issue – rather, they may have five or six or more.***

With only two full-time employees, Street Law is greatly assisted by the pro bono assistance of the private legal sector. In order to provide pro bono support, the Australian Government Solicitor (AGS) has included in its graduate program a series of part-time secondments to Street Law. Volunteer law students also provide significant support to Street Law across a range of services.

Street Law is a project of the Welfare Rights and Legal Centre ACT.

DLA Phillips Fox

Building employment capacity in NSW

As part of its Outreach program, TAFE NSW runs free courses for people who are long term unemployed and wanting to re-enter the work force. The students groups are comprised of people from non-english speaking backgrounds, women leaving abusive relationships and post release prisoners. DLA Phillips Fox supports the program by proving lawyers to speak on a variety of topics including an overview of the employment law landscape, changes to workplace laws (WorkChoices, Fair Work etc); rights in the workplace such as the right to be safe, to be not bullied, to be not harassed, sexually or otherwise, as well as looking at discrimination issues; tips for attending job interviews. The talks normally last for around two hours and are supervised by a coordinator from the TAFE. The talks are well received, and often promote a good level of discussion and questions from the attendees. The program **assists students to re-enter the workforce**, by building knowledge and confidence.

Assisting vulnerable tenants in Canberra

In May 2010, Megan Knight and Michael Will, both of DLA Phillips Fox, Canberra, assisted residents of the Narrabundah Long Stay Caravan Park to challenge an increase in site fees charged by the owner of the Park: the ACT Government. The Caravan Park is home to about 200 residents and is one of few low cost accommodation alternatives available to Canberra residents within close proximity of the city centre. The Territory government took over ownership of the Park in 2008 but without consultation proposed a 40% rise in site fees in March 2010.

The Territory government raised a number of jurisdictional points to evade the resident's challenge. DLA Phillips Fox was able to **negotiate a reduced fee increase for the residents** and split the increase over two years – capping the rise for 2011. DLA Phillips Fox will continue to work with the residents to prepare a submission to the Attorney-General and the Minister for Housing regarding appropriate amendments to the legislation, with the aim of enabling residents to safely challenge any future proposed increase to the site fees.

Creating and protecting income streams for remote communities in WA

In partnership with the Arts Law Centre of Australia, DLA Phillips Fox provides advice and assistance to Indigenous artists in remote communities **to create and protect sustainable streams of income**. Since 2005, DLA Phillips Fox has sent 10 lawyers to work with remote communities in Western Australia, South Australia and the Northern Territory. The lawyers provide advice and assistance in relation to intellectual property rights, the establishment of trusts and other legal structures, copyright, resolution of disputes between artists and galleries, drafting of culturally appropriate documents such as contracts and license agreements, preparation of wills and advice in relation to intestate estates. The partnership between DLA Phillips Fox and the Arts Law Centre won the pro bono partnership award at the 2008 Justice Awards at Parliament House in Sydney.

Minter Ellison

Relocation of impoverished retirees in Brisbane

Gleneagles On The River is a retirement village in Brisbane. In April 2009, it had approximately 40 residents living in two high rise towers ranging in age from 63 to 92 years old

A company that had recently acquired the facility from the Churches of Christ Care notified residents to vacate their homes within 3 months on the basis of an assertion that the residents were incapable of living independently and thus the building was a risk to the 'life safety of the residents'.

Seniors Legal and Support Service (SLASS) at Caxton Legal Centre ('Caxton') was contacted to assist the residents in this matter. 32 residents appointed Caxton as their agent to commence litigation and provide instructions to national law firm Minter Ellison ('Minters') who agreed to act on a pro bono basis.

In this unique co-counsel arrangement, Minters managed the work related to the litigation in the Commercial and Consumer Tribunal (CCT) while Caxton maintained responsibility for client management including affidavit drafting and providing instructions to Minters and counsel. Senior and Junior counsel, both with a long history of involvement with Community Legal Centres, were engaged on a reduced fee basis.

This collaboration between Minters, a top tier law firm, Caxton a community legal centre and the barristers involved, produced a desirable outcome for the clients. Despite an unsuccessful mediation, the matter was settled before the CCT providing satisfactory settlement offers to the then remaining 23 residents at Gleneagles. All residents were eventually relocated to appropriate housing.

Minters had 3 solicitors working on the matter who did approximately 675 hours of pro bono legal work. Caxton had a solicitor working full-time for approximately 3 months with the assistance of other solicitors from the Centre and importantly, a number of social workers who contributed by providing support to individual residents and assisting some of them find housing at the conclusion of the matter.

The effort of this unique collaboration **prevented the retirees from becoming homeless**, and facilitated them being relocated into suitable housing thus alleviating poverty in our community.

Jackson McDonald

Corporate support for an Aboriginal Corporation in the Pilbara, WA

An Aboriginal corporation (the Corporation) in a small town in the Pilbara is an existing client of Jackson McDonald. The community of Aboriginal people represented by the Corporation have had a native title determination in their favour and the Corporation is their Prescribed Body Corporate (ie it holds their native title rights and interests on their behalf).

Jackson McDonald's assistance to the Corporation has related to corporate governance issues, and in the negotiation, design and drafting of arrangements with third parties (such as economic and property development opportunities).

The Corporation's core activities relate to the preservation and protection of the members' native title lands and culture, and in improving the circumstances of its members by way of community and economic development projects and activities. One of its primary objects is to provide direct relief from poverty, sickness, suffering, misfortune, destitution or helplessness among Aboriginal people especially the members.

The economic, health and living conditions of a majority of the Corporation's members are dire. Despite the ongoing economic growth that is being experienced in the Pilbara in connection with the resources industry, the circumstances of the Corporation's members remain significantly worse when compared to non-Aboriginal people in the region.

During 2010 the Corporation has experienced functional difficulties, with a number of key employees leaving the Corporation and difficulty in recruiting replacements. Further, 2010 has been an important period for the Corporation with a number of long term funding opportunities being negotiated. The heavy workload of the existing staff has resulted in the Corporation not having its records adequately managed and a number of projects have not been progressed.

Jackson McDonald made one of its solicitors available to work in the Corporation's office in the Pilbara on a pro bono part time basis over the course of a month. Working from the Corporation's office enabled the lawyer to meet with appropriate people (such as directors) and to have direct access to records.

The lawyer provided assistance with a range of matters at the instruction of the acting CEO and in house legal counsel including:

- reviewing consultants' contractual arrangements;
- facilitating the preparation of employment contracts for staff;
- undertaking due diligence by way of interviews and review of records to progress a legal matter that has required attention for a number of years;
- reviewing and updating corporate registers;
- processing of membership applications; and
- liaising with consultants, accountants, banks etc to consolidate the Corporation's records.

The lawyer's work within the Corporation has enabled a number of routine matters to progress, allowing the Corporation's key staff to focus on pursuing the opportunities that will improve the Corporation's position for the future.

Mallesons

Litigating the rights of a public housing applicant in Victoria

In late 2008, Mallesons Stephen Jaques ('Mallesons') agreed to act for Sudi, a client of the Homeless Persons' Legal Clinic, in a VCAT matter before Justice Bell regarding the application of the Charter of Human Rights to a transitional housing agency.

Mr Sudi came to Australia with his siblings and mother as a refugee from Somalia in 1995. In 1998, the family moved into public housing, which was leased under the name of Mr Sudi's mother. His mother died of cancer in 2007 - Mr Sudi had been his mother's carer and was also the primary carer for his four year old son, following a separation from his wife.

The matter arose in the context of an application by Metro West Housing Services Ltd ('Metro West'), a private non-profit company, for orders of possession against two groups of vulnerable tenants, including Mr Sudi. The primary issue was the meaning of 'public authority' under the Victorian Charter of Rights and Responsibilities.

Mallesons had one senior associate and three solicitors working pro bono on the matter, which required more than 125 hours of work. Their efforts were well rewarded when, in a landmark decision handed down on 9 October 2009, Justice Bell, President of VCAT, declared that Metro West is a public authority bound by the Charter. This decision has significant implications for the operation of the Charter in respect of private entities – both commercial and non-profit – providing services of a public nature, and **has the potential to affect some 70,000 public housing applicants in Victoria.**

Justice Bell found that the provision of social housing to people at risk of homelessness is an important function which government exercises on behalf of the community in the public interest:

"Disadvantaged people in need of social housing and at risk of homelessness are among the most vulnerable in the community. Their human rights are imperilled by their circumstances."

His Honour concluded that the function of providing social housing, which includes the management of transitional housing tenancies, is a function of a public nature.

This decision will no doubt be useful in developing the jurisprudence regarding the application of the Charter, and will have continued impact in the area of social housing.

Maurice Blackburn

International students and poverty in Melbourne

Maurice Blackburn has traditionally fought for the rights of working people. Lately, we have also been concerned about the treatment of international students. By working with a number of community legal centres, including the Western Suburbs Legal Service, we became aware of the systemic poor treatment of international students at work and decided to try and do something about it.

We have acted for a number of students who have found themselves grossly underpaid or not paid at all for work they performed. International students face particular difficulties as they are usually limited by their visa conditions to working only 20 hours per week during the semester. This rule puts them in a very difficult position: they either survive on extremely low incomes or work longer hours to make ends meet and risk being sent home.

These are invariably matters that involve serious issues relating to poverty for the students. One of our clients was a student who was sending home money to support his wife and infant twins. He has not seen his twins in nearly two years because he has been unable to afford to fly home or bring his family to Australia. He was surviving on instant noodles and was too ashamed to explain to his family what had happened. We have heard of other international students who have experienced serious workplace injuries but have not been aware of compensation entitlements that might be owing to them.

The courts have recently shown short shrift to employers that have breached award conditions and pay rates, particularly when it concerns employees who are particularly vulnerable. Under the Fair Work Act 2009 employers can be liable for a maximum penalty of \$36,000 for a company and \$6,000 for an individual for breaches of the relevant award. In 2009, a Magistrate awarded over \$200,000 in fines against such an employer who was described as a 'want-to-be slave merchant' by the Fair Work Ombudsman.

Our clients tended to struggle with English, were nervous about demanding payment from their employers and were generally unaware of what protections were offered to them. Our aim was to litigate some individual test cases in a high profile manner. We hoped that this would act both as a warning to employers that they would not get away with exploitative practices and also encourage students who may find themselves in this position to have the confidence to demand respect for their rights.

We have resolved a number of these cases and these have had an impact beyond the individual. In one case, the international student we worked with passed on their experience to their work colleagues and boss, which resulted in an immediate change in behaviour from their employer. Other cases we have run led to more referrals arising from similar treatment. We are doing this work together with an educational campaign aimed at informing students of their rights.

Unfortunately, the solution to this problem will require more than just a contribution from lawyers. Australia has a growing community of international students who have come to Australia to seek an education and a better life, but are being rewarded with poverty, exploitation and indifference to their poor treatment. We need government action to change these visa rules and a more powerful Fair Work Ombudsman to police employers' behaviour. Until then, ***Maurice Blackburn, together with community legal centres, will continue to campaign to improve the plight of international students through strategic litigation and legal education.***

Queensland Public Interest Law Clearing House

Helping a refugee negotiate a motor accident settlement

The Refugee Civil Law Clinic (RCLC) hosted by the Multicultural Development Association and staffed by the Brisbane office of **Corrs Chambers Westgarth** assisted a refugee client who was involved in a motor vehicle accident. The client's unlicensed brother was driving when a taxi ran into them. RCLC lawyers obtained a police report which indicated that the taxi driver was at fault in the accident. The lawyers wrote several letters to the taxi owner who eventually provided the lawyers with the details of his insurance. RCLC lawyers then **pursued the insurer who accepted the claim** and offered the client \$4,800 for her car and also paid for the client's towing and search expenses. The client was extremely happy with the outcome.

Defending assault police charges for a homeless woman

A client staying in crisis accommodation was charged with assault police, when police entered the dining room of the residence uninvited to intervene in a dispute between residents. The client received injuries and was concussed in the course of the police action. The client has endured a long history of abuse from males in her life and suffers from post traumatic stress disorder. Brisbane Homeless Persons' Legal Clinic lawyers from **Freehills**, with the assistance of pro bono **Barrister TP O'Brien**, defended the charges and prepared the matter for trial. On the day of trial, the prosecutor agreed to refer the matter to mediation. Post mediation, which the client found "quite healing" the charges were discontinued. It has been particularly gratifying to have the client and the accommodation provider acknowledge the HPLC involvement as pivotal in the **client returning to community living and working actively towards reunification with her young child, after years of chronic homelessness.**

Achieving a debt waiver from a mobile phone company for a disabled person who was taken advantage of

A client from the Brisbane Homeless Persons' Legal Clinic was assisted by lawyers at **Blake Dawson and Murphy Schmidt**. The client is suffering from a terminal illness and was convinced by an acquaintance to enter into a mobile phone contract while under the influence of strong pain killers. That acquaintance then took possession of the mobile phones and accrued debts of over \$3,000. The client, who had no income other than the Disability Support Pension and who was also responsible for caring for her daughter, had no capacity to repay these debts. Through written and verbal communication with the phone company, lawyers were able to have the entire \$3,000+ debt waived, **a great relief for the client.**