

Pro bono 2011: Time is not money

Monday, 19th September 2011 by Rosie Cresswell and Emiliano Mellino

Clearinghouses are a key piece in the pro bono puzzle, linking lawyers with those in need of free legal assistance. Like any organisation they need funding, but securing regular cash injections is easier said than done. Emiliano Mellino and Rosie Cresswell look at the challenges these organisations face when trying to source financing and what is being done to overcome them



It was with much fanfare that Peru's pro bono clearinghouse was launched almost two years ago. Both internationally and locally, the project was welcomed as a step in the right direction for the institutionalisation of the practice of providing free legal assistance to those who can't afford it.

But this June, the clearinghouse, which matches law firms with organisations or individuals in need of free legal advice, was forced to suspend its operations because corporate firms had reached an impasse over how it should be funded, with many unwilling to put up the amounts called for in its budget.

Fortunately, after a series of crisis talks, the system has been saved and is due to start up again in October; but the clearinghouse's temporary suspension highlights how dependent such projects are on law firms contributing money as well as their time.

Peru's clearinghouse, managed by local NGO Ciudadanos al Día (CAD), was founded in 2009 when the outlook for pro bono in the country was optimistic. As well as a group of 20 firms backing the project, CAD had found more than 30 NGOs to provide pro bono cases. The clearinghouse's early results were commendable: by June this year it had referred 74 cases to member firms. Meanwhile, a total of 40 Peruvian firms have signed the Pro Bono Declaration for the Americas (PBDA), through which they pledge to complete a minimum 20 hours of pro bono legal service per lawyer per year.



Initially, the clearinghouse was funded by the Ford Foundation, a known source of finance for such projects in Latin America, with the 20 member firms committing themselves to provide the additional funding. The Ford Foundation grant only covered the first year and by the end of 2010 the project was in need of a capital injection.

CAD asked firms to pay between US\$3,000 and US\$1,000, depending on their size, and most paid up. Come 2011, the clearinghouse needed further funding, prompting CAD to present an initial budget that would require firms to pay up to US\$20,000 for the year. This was later reduced to a maximum contribution of US\$10,000; but only one firm paid initially and the proposal was not accepted by other firms, meaning many of the programme's overheads were being met from CAD's general budget, prompting Beatriz Boza, CAD's director, to cancel the programme.

For now, there is a happy ending in Peru; a taskforce made up of partners from five firms – Benites, Forno, Ugaz & Ludowieg, Andrade; Miranda & Amado Abogados; Estudio Echecopar; García Sayán Abogados; and Jorge Avendaño - Forsyth & Arbe – stepped in to act as a go-between for the legal community and the NGO to resolve the financing issue. This August, 17 of the 20 firms agreed to draw up a new budget, factoring in debts to CAD and allowing the pro bono clearinghouse to re-open next month.

The scenario illustrates a problem for the future of channelling pro bono work through clearinghouses in Latin America; some law firms have difficulty with the concept of contributing funding when they are already giving their time for free, which puts huge pressure on clearinghouses.

A vital organ

While there are firms very proficient at providing free legal services to those in need without the aid of a clearinghouse, such organisations provide a useful go-between for firms and NGOs, helping to match expertise to projects and ensure pro bono work is of a high quality, organised and institutionalised within a legal community. On the whole, firms have reacted positively to their creation.

When Colombia's clearinghouse opened in 2009, it was well received by the country's corporate law firms, with lawyers tripping over each other in their eagerness to be assigned cases. Firms were also willing to make financial contributions for its establishment. But thereafter, a large number were happy with their role as providers of legal services, but not of finance. While a core group of firms have continued to make regular annual payments, the clearinghouse has faced an uphill struggle getting others on board ever since.

Member firms each paid approximately US\$2,800 in 2009 to get the foundation up and running, but only six paid the voluntary contribution (between US\$1,400 and US\$2,800) for the next year and the foundation was only able to keep on going thanks to a grant from the Tinker Foundation, a US-based non-profit organisation, which also regularly provides funds.

'The firms said they were willing to give an initial lump sum but they didn't understand why they had to not only give their time but also money,' says Gómez-Pinzón Zuleta Abogados SA partner Paula Samper, who helped launch the country's clearinghouse, the Fundación Pro Bono.

This year, Samper took action and went to the clearinghouse members' meeting and asked firms' representatives whether they found its services useful. 'They all said that it was and agreed to finance it on a more regular basis,' she says. Nine firms have paid so far this year, with the biggest contribution totalling US\$3,000 and the smallest US\$2,100. The rest have until the end of 2011 to cover their membership. At the moment, firms aren't kicked out of the organisation if they don't pay, and Samper thinks that the fear of a 'moral' sanction and peer pressure will be enough to ensure that all contribute.

It's important to note here that there are firms across the region that are willing to make that financial commitment. In our pro bono survey, profiled over pages 10 to 14, some 38 per cent of respondents from jurisdictions where there are clearinghouses say they have made financial contributions to such organisations in the last year, with 39 per cent saying they will do in 2012. (Those Latin American countries with clearinghouses are Argentina, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Mexico, Paraguay, Peru and Venezuela.) The average annual payment from the 11 firms that chose to reveal the value of such contributions is US\$4,914, from a range of US\$1,325 to US\$10,000. Furthermore, a quarter of the 49 firms that completed the survey say they have a pro bono budget, which ranges enormously – from US\$1,340 to US\$50,000.

But clearinghouses want to see more firms on board. Law firms across Latin America have long pledged considerable amounts of time to assist with projects and no one would brush aside these achievements, but their

economic support is critical for a clearinghouse's survival. The Ford Foundation, the Tinker Foundation and other local and international bodies are valuable sources of finance, but their grants are often for limited periods only and are not even applicable in some cases. In Colombia, for example, Fundación Pro Bono was able to secure financing from the Tinker Foundation but couldn't from the Ford Foundation, which has different priorities there. Another application to the Clifford Chance Foundation also fell through.

Clearinghouses do pursue other avenues: Brazil's raised 50,000 reais (US\$31,500) through a fundraising breakfast; and Colombia's has organised football tournaments and conferences with lawyers paying to participate, which allowed the foundation to raise 30 million Colombian pesos (some US\$17,000) in 2010. This March, Latin Lawyer's charity Deal of the Year dinner raised US\$20,000 for clearinghouses in Colombia, Peru and Brazil.

But while such fundraising activities are successful tactics, they are not enough to cover a clearinghouse's revenue and they also eat up staff's precious time. The executive director of Colombia's Fundación Pro Bono, Juliana Amaya, says even with grants, financial support from firms will always be necessary. 'You can't live with that kind of pressure [of whether a grant will come through or not]. You need fixed finances and then you get the international support for specific projects,' she explains.

These organisations have been able to operate in recent years with minimal investment, but expenses are growing. 'The maintenance of our web system is very precarious and we are finding that we need to hire someone or outsource our IT needs to another company,' says Amaya, who runs the clearinghouse with one coordinator – meaning all administrative, IT and executive work is done by just two people. 'You end up giving priority to things that shouldn't be your priority,' she says.

Is it right to ask?

Chile's clearinghouse is widely considered a leading example in the region in terms of its organisation and its funding. Chilean member law firms provide finance for the clearinghouse's regular operations and overheads. Those Chilean firms responding to our survey that chose to provide details of how much they contribute to it revealed payments of anything between US\$2,816 and US\$10,000, with the average coming in at US\$6,193. (It's worth noting that this is significantly lower than the original US\$20,000 asked for in Peru this year.) Any extra financing for specific projects comes from grants or donations and it tries to work out where the funds will come from before embarking on a new project.

Other countries would like to reach this level of financial stability, but Pablo Guerrero of Chilean firm Barros & Errázuriz Abogados and chair of the Fundación Pro Bono notes that it took some time to reach this point. Chile's pro bono foundation was set up in 2000, but firms were only approached for regular funding five or six years later; before that it was lucky enough to rely on grants.

At that stage, Guerrero says those running the clearinghouse felt it was sufficiently mature to tell firms they have to cover the costs of office space, salaries and other overheads or it will close. 'When firms are proud of it you can ask for money; when you are starting a project it's hard to convey that,' says Guerrero, who thinks that is the key difference between the situation in Chile and that of Peru and Colombia. Even five years on it was a time consuming task in Chile.

A decade old, Brazil's Instituto Pro Bono is one of the longest running clearinghouses in the region, but it too only recently started asking firms for money, having also been fortunate enough to fund its first years of existence through grants from the UN, the Ford Foundation and the Tinker Foundation, as well as some support from local NGO Conectas Human Rights. This put it in the comfortable position of only needing to ask the lawyers for their time.

'During this period, the dollar was very high and the real weak. The currency was helping us,' says the institute's director, Marcos Fuchs. But in 2009, it launched its Amicus pro bono programme, which asked firms for voluntary contributions. Currently, three firms and two companies contribute to the programme – each donating between US\$7,560 and US\$38,000 per year, which helps cover the institute's annual budget of US\$140,000. 'We have

started to ask the large firms for contributions and now we are looking to go to the smaller firms but that is more difficult,' says Fuchs.

Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados is one of three firms currently financing the institute. Flavia Regina de Souza Oliveira, the partner who runs its pro bono programme and a founding member of the institute, says that it is still difficult to have a frank discussion in Brazil on the funding of pro bono. 'Instituto Pro Bono is preparing for its 10 year anniversary in December and no one has clearly said how much money each firm will contribute,' she says.

Oliveira is optimistic that things will change. 'The system will end up spreading to all firms since the best firms are now doing it and because medium firms are getting multinational clients that will pressure them into changing,' she says.

Creating ownership

Unfortunately, younger clearinghouses don't have time or grants on their side, so they are employing a number of tactics to get more firms to make necessary regular payments. They realise the need to create ownership and pride – as has been the case among Chilean firms. Samper says that one way to motivate firms is by getting their lawyers on the clearinghouse board of directors and executive committee, whose members change every two years. This way the lawyers can truly feel that they are stakeholders in the project. 'When they go to meetings and realise all the things that we are doing they develop a bond with the organisation and end up giving their support,' she explains.

Peru's clearinghouse learnt this the hard way. Firms decided CAD, a well established NGO, would manage the project best; but Estudio Echeopar's Javier de Belaunde says the firms dissociated themselves from the running of the project as a result.

'We saw that Ciudadanos al Día was doing a good job in managing the project so we took a step back... and when you feel that something is not yours, it becomes more difficult to dig into your pockets,' says de Belaunde, who also places a lot of blame on the taskforce of which he is a member – lawyers' professional obligations meant that they didn't have enough time to dedicate to the clearinghouse project.

Now de Belaunde wants to get more firms involved in the day to day running of the clearinghouse through an elected directorship that will steer the project, while CAD will continue to handle all the technical aspects. The new organisational structure will be defined in a meeting in September. José Ugaz, of Benites, Forno, Ugaz & Ludowieg, Andrade, hopes this will also help them overcome many organisational and communication issues. 'At the beginning, the dialogue wasn't intense enough... there wasn't a formal structure and communication was done through this committee but at an informal level,' he says. Those 17 firms that attended the meeting to ensure the preservation of the clearinghouse pledged to increase the number of members by each introducing a new one with a view to having 30 members by the end of the year. (The three firms that did not attend the meeting have expressed their interest in continuing as members.)

Greater forces at play

In Colombia, Amaya thinks it is important to balance the foundation's needs with law firms' attitudes to giving money. 'We are as flexible as the firms need us to be,' she says. 'We don't want money to become our Achilles' heel.'

After all, firms' efforts should be commended, and there are greater forces at play that make bringing pro bono to the forefront of the Latin American legal profession so challenging. Even in a country such as Brazil, where pro bono has been discussed for 20 years and the clearinghouse up and running for almost a decade, there are local issues that make it hard to nurture a strong pro bono culture. Under Brazilian bar rules, pro bono work is seen as unethical since it takes work away from court appointed lawyers. Brazil has a very advanced legal-aid system, where the state covers the court costs of the neediest. This system provides jobs for 48,000 lawyers and the bar believes that if pro bono is allowed to take a foothold in the country it will put these jobs in jeopardy.

'It was a big fight to start institutionalising pro bono,' says Fuchs. After many meetings with the bar they decided that firms could provide pro bono assistance but only to small NGOs, since the larger ones don't need legal assistance and individuals and families are already being covered by the state. But this makes it tricky to generate interest among firms. 'If you take the poor NGOs, they don't have sexy cases; but if you get something from a big NGO, they have sexy cases and that attracts firms,' says Fuchs, who adds that he is always working with NGOs to try and get the most interesting cases for lawyers. Fuchs finds that it is becoming easier to interest firms since social responsibility is in vogue in Brazil.

In Peru, for example, the lack of a pro bono culture is a major limitation according to Ugaz, who says this will take far longer to overcome. 'These are firms that are very corporate, so they don't have much contact with the reality that the pro bono system is trying to change,' he says, referring to Peru's poorer sectors. The ground covered since then has been undoubtedly significant. Walter Alban, head of the law department at Pontifical Catholic University, draws attention to the bar association's rules demanding that lawyers take some cases free of charge, saying that system has rarely worked. The head of the law department of the Universidad del Pacifico and former business lawyer Cecilia O'Neill points out that there was very little talk of pro bono until 2009.

Breaking down these barriers is not limited to Peru or even the region's corporate lawyers. Barros & Errázuriz's Guerrero makes an important distinction between Latin American culture and the US, where people are more inclined to donate to charities. 'We have to change that' he says. With so many parties backing such an important initiative, one hopes all mindsets will soon shift in that direction for good.

Comments

There are currently no comments.

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