

Young Lawyers Pro Bono Event – Keynote Speech

Lord Hodge, Deputy President of the UK Supreme Court

Tuesday 5 November 2024

1. Introduction

It is an honour and a pleasure to speak to you this evening. I would like to start by thanking the panel who have spoken to you, and all of those who have organised this event, including those behind the scenes. I am glad that my Inn's Young Barristers' Association has supported this event.

Pro bono work is an essential aspect of our profession. It is not an exaggeration that it is an important component of why we can call ourselves a profession. It is very good that we have taken time to share stories and inspire each other to continue this honourable and historic custom. As the new generation of lawyers, you not only inherit this proud tradition but are entrusted with the task of continuing it.

I will comment briefly on three topics before you consume the canapés: the history, importance and value of pro bono legal work.

2. The History of Pro Bono

The roots of 'pro bono publico' in the legal sphere stretch back deep into history, before the Roman era notwithstanding the Latin tag.

It is possible, it seems, to track the idea of free legal assistance back to ancient Athens.

In 600 BCE, when courts were created in ancient Athens, alongside a standard procedure and body of rules for the conduct of cases, the practice of individuals representing themselves started to diminish, and professional lawyers emerged. Originally, lawyers were paid for the services they provided; however, this practice was soon prohibited, amid fears that this system was undemocratic, allowing the rich to benefit at the expense of the poor.¹

¹ [“A Lawyer and Yet Not a Thief, to the Wonder of the People”: A Brief History of Pro Bono Work](#) (2021), Decisis Law Reports; Lamin Khadar, [‘Expanding Access to Justice: An exploration of large firm pro bono practice across Europe’](#) (PHD Thesis at the University), p125-129; Rekosh E, Khadar L. [Le Pro Bono: The Development of Legal Volunteerism in Europe](#). In: Cummings SL, de Sa e Silva F, Trubek LG, eds. *Global Pro Bono: Causes, Context, and Contestation*. Cambridge Studies in Law and Society. Cambridge University Press; 2022, 218-220.

This prohibition was challenging to enforce, and, in time, legal services were formalised, leading to a decline in free legal assistance for those in need. There is evidence that this led to concerns about access to justice. Plato complained: “justice was at the service of whomsoever was able and willing to pay for the services of a professional lawyer.” Upholding the democratic ideals of society at the time, and with a sense of responsibility for the community, some of the profession volunteered to provide legal assistance for free. However, unlike our modern pro bono practice, these services were commonly provided to the relatives and associates of the legal professionals at the time.²

As the legal system developed, the skills required of legal professionals expanded, creating an ever-increasing challenge to those who were forced to represent themselves due to their financial circumstances.

As a Scots lawyer by origin, I won’t miss the opportunity to point out that it was the Scottish legislature who first recognised this problem and proposed a solution. In 1424, Scotland enacted the world’s first statutory authority for legal aid for the poor, which stated that, ‘if there be any poor creature for default of cunning or means that cannot or may not follow his course’, free legal assistance should be given to him.³ Whether the money was there to implement this worthy legislation in 15th century Scotland may have been a different matter.

More than five centuries later, I recall that when I was a teenager working on my father’s farm in Scotland a farm worker used to say that there was one law for the rich and another for the poor. I think I questioned that at the time but have come to see what he meant. When I was a young lawyer in the 1980s, legal aid was widely available but since then, due to highly publicised funding cuts, it has been greatly curtailed. There is now, sadly, much truth in the painful statement that “the courts of law are open to everyone, like the Ritz,” if one considers legal representation as a necessary component of a visit to the courts.

3. Why Pro Bono is Important

Given the widespread unavailability of legal aid, pro bono representation has never been more important.

Most people cannot competently represent themselves throughout a legal case. Our rules and procedures are complex, the meaning of legislation can be hard for a lay person to

² Ibid.

³ Tom Bingham, ‘The Rule of Law’ (2010), p87.

decipher, and the rules of the common law require guidance to navigate. This system requires skilled lawyers if it is to operate at its best and achieve equality of arms.

When people cannot afford these services, the knock-on effects are wide-ranging. Not only does it cause an increase in costs and delay to the resolution of claims, but many people with legitimate grievances will not bring these claims forward in light of the hurdles that they face. Indeed, the consequences can stretch further and affect the health of those who cannot pursue their rights, as Professor Hazel Genn has demonstrated in a ground breaking study.⁴ As free legal services in the community reduce, there is evidence that the NHS becomes the next port of call for those struggling with social problems, or medical problems with a social cause, for example employment issues, family breakdown and housing insecurity.⁵

Pro bono volunteering does not solve this problem, but it *does* help. Engaging in pro bono services represents a commitment to the fundamental principles of our legal system, primarily the rule of law and access to justice. Without the generosity of professionals who engage in pro bono work, vulnerable individuals would be left without access to the legal support that they desperately need.

The tradition of giving such assistance is a noble one. In Scotland after the Second World War, Sir John Cameron, a distinguished advocate who was, at that time, the Dean of the Faculty of Advocates, used to appear pro bono in criminal cases involving the death penalty to ensure that the accused had very able representation. You can imagine what a burden that must have been. More recently, the Judicial Committee of the Privy Council often acknowledges its appreciation for the continuing contribution of pro bono lawyers and expert witnesses who take appeals from some of the jurisdictions whom we serve. Their work can result in the release of people who have been in prison for many years on unsafe convictions.

4. The Value of Pro Bono

The value of pro bono work extends beyond the benefits that it brings to individual clients and society as a whole. Pro bono services also provide immense benefit to the lawyers that undertake the work.

⁴ Hazel Genn, 'When Law is Good for Your Health: Mitigating the Social Determinants of Health through Access to Justice', *Current Legal Problems*, Vol. 72, No. 1 (2019), pp. 159-202.

⁵ *Ibid.*

As a young lawyer, pro bono cases can provide you with an opportunity to explore new areas of law. If you volunteer at legal centres to provide advice on social welfare issues or appear on behalf of clients in employment tribunals, you will deepen and enrich your understanding of the law. It also provides an opportunity to collaborate with other students, solicitors, barristers and charitable organisations, thereby expanding your network and fostering social and professional connections.

The importance of pro bono services in court and tribunal proceedings is evident. As judges, we are responsible for deciding the fair and appropriate outcome of cases. We rely on counsel to distil the issues and steer through complex facts and legal arguments to help us come to a just and correct decision. Our job becomes much more challenging when proceedings are conducted by a litigant in person, who may struggle to present a case in a clear and coherent manner.

One day in the future the use of Artificial Intelligence may provide a form of access to justice for many. But that is still a long way off. Pro bono work can and does help to fill the gap.

5. Final Remarks

To conclude, I'd like to thank those of you who have given your time and energy to the promotion and provision of pro bono legal services, and those of you at the start of your career for your energy and interest in this essential and honourable tradition of our profession.

Thank you.