Casus Omissus – The Aberdeen Law Project

RYAN T. WHELAN

There is a misplaced perception that the North East of Scotland, particularly Aberdeen, is an area of great affluence. That is to some extent true. It is inaccurate to infer from this, however, that there is neither poverty nor deprivation. Both exist. Aberdeen is not a legal narnia where access to justice is universal. Pro bono has a considerable role to play within the Granite City.

Casus Omissus, or the Aberdeen Law Project as we are to be colloquially known, like many notable legal ventures of repute and standing, not least this very publication, was conceived in a public house, on a typically Aberdonian September evening in 2008. Discussions continued in a more conventional setting, and in November 2009 tentative steps were taken towards launching the project.

As the name suggests, Casus Omissus, is concerned with the gaps within our legal system. We thus principally exist in order to provide legal assistance to those that would otherwise be unable to seek or defend legal adjudication. Our motivation in offering this service to the people of Aberdeen is to provide a legal recourse where there would otherwise be none. This will be achieved through students, supervised by practitioners, providing members of the public with legal advice and otherwise assisting in pursuing their case. Recognising that pro bono representation is sparse in Scotland, Casus Omissus will, where we have rights of audience, appear on behalf of clients in Court.

The aims of Casus Omissus extend beyond the provision of advice and representation. Broadly speaking, the aims of Casus Omissus are threefold; (i) to increase access to justice for the economically deprived; (ii) to undertake educational outreach projects with schools and prison facilities, and; (iii) to promote legal education and access to the legal profession for those from ‘non-traditional’ backgrounds. Working to achieve the aforementioned objectives is a student body of over one hundred at the time of writing. The said students are divided into the core sectors within which Casus Omissus operate, namely: housing; employment; consumer rights; and the Innocence project. Following in the tradition of law clinics throughout the world, we have established a management board consisting of respected academics, practitioners and members of the judiciary. Professor Margaret Ross (Head of School, University of Aberdeen); Lord Woolman (Senator of the College of Justice); Lady Dorrian (Senator of the College of Justice); Sheriff Cowan (Sheriff, Grampian, Highland and Islands); Professor Ian Diamond (Principal and Vice-Chancellor, University of Aberdeen); Mr. Gary Allan
QC (Advocate, Queens Counsel); Dr. David Parratt (Advocate); Mr. Roger Connon (Partner, McGrigors); Professor Roderick Paisley (Professor of Commercial Property Law, University of Aberdeen); and Mr. Greg Gordon (Lecturer in Law, University of Aberdeen) have all kindly accepted invitations to join our inaugural management board.

The prevailing legal and social environment is one of great opportunity for pro bono ventures. The Gill review illustrated that there are many improvements that can be made regarding access to justice in Scotland. As the report noted, ‘there is a need for changes to court practices and procedures so that people who do not have legal representation are able to enter and navigate their way through the court process effectively’. It is the aim of Casus Omissus to assist the public in this oft problematic navigation.

A recent conference hosted by the Lord Advocate further highlighted the possibilities that now exist for the establishment of an accomplished Scottish pro bono network. Within her keynote address Elish Angiolini QC noted the ‘huge width of potential’ pro bono work offers in the provision of legal services to those who have been excluded from them. (‘For the Public Good: The Future of Pro Bono Legal Services in Scotland’, Friday 14 May 2010.) This, combined with the economic downturn, presents a landscape within which pro bono is not simply desirable, it is a necessity. Furthermore, if undertaken correctly, pro bono will flourish to the benefit of the wider profession. As the Law Society asserted in response to the Gill Review, ‘access to legal advice must be at the heart of Civil Justice in Scotland.’ We at Casus Omissus hope to make a substantial and lasting contribution towards this end.

The present author is of the view that the motivation for undertaking pro bono should, ideally, be solely to assist worthy persons in a time of need. Nevertheless, in a more pragmatic sense, it is not necessarily objectionable that pro bono be undertaken for self-serving reasons. The caveat must however be that the work undertaken is not of a second class nature. Work done on a pro bono capacity should always be first rate, and provided that is so, there is little reason to object that the work was undertaken for the lawyer’s own self interest. It seems counterintuitive in some quarters that pro bono, the undertaking of work without remuneration, can ultimately economically assist the profession by increasing revenue streams. To hold such a view is, however, to misrepresent the experience in other jurisdictions. It is trite in civil justice research that pro bono actually benefits law firms. In the purely economic sense, pro bono is desirable as it unearths worthy cases that are eligible for legal aid. Many such cases would otherwise be undiscovered because, quite simply, those involved would not approach a law firm. Furthermore, with companies becoming ever more conscious of their corporate social responsibility obligations, the development of an impressive pro bono output by commercial law firms will assist in submitting the most impressive legal tenders. Pro bono need not, therefore, be purely charitable.
A central principle of Casus Omissus is, in fact, sustainability. Pro bono projects should, in our view, be economically efficient. Think social business; not charity. We as a law project have taken a conscious decision, partly driven by necessity, to operate with minimal financial sustenance. Each of our partners are therefore central to the availability and success of Casus Omissus. We are grateful to the School of Law at the University of Aberdeen for providing facilities and professional support; law firms for legal assistance and sponsorship; and a number of practitioners, Advocates and judges for generously giving of their time to provide supervision, direction and training. In providing their respective means of support, each of our partners recognise that pro bono can be universally beneficial – clients gain from advice that would otherwise have been unavailable or not utilised; students gain from the practical experience; and the wider profession, not least law firms, benefit from a higher standard of intrant. Accordingly, access to justice need not be at the expense or detriment of any one person; we can – and should - all contribute, but in order to maximise the universal gain offered by pro bono, we should begin to make this contribution, as Professor Nicolson of Strathclyde University has noted, whilst attending Law School. The students of Aberdeen University now have that option.

If you are interested in assisting Casus Omissus in any capacity, we would be delighted to speak with you.

Ryan T. Whelan LLB (Hons), Dip. L.P.
Founder and Director

Casus Omissus
C/o School of Law
University of Aberdeen
Taylor Building Room C34
Dunbar Street,
Old Aberdeen,
AB24 3UB

Email: abdnlawproject@googlemail.com