



Pro Bono Practices and Opportunities in Argentina¹

INTRODUCTION

The Argentine legal system has long provided a mechanism for pro bono legal services. But support in Argentina for the emerging concept of voluntary pro bono work among private lawyers and law firms began in earnest in the late 1990s and intensified as the country suffered through an economic crisis. The Argentine legal community is increasingly aware that fostering a culture of pro bono facilitates equal access to justice, bolsters democratic institutions, provides satisfying personal and professional experiences for lawyers, and is ultimately good for business. As leaders push for the development of this culture, the infrastructure supporting pro bono opportunities and the number of lawyers who perform this work in Argentina is growing. This chapter summarizes the existing regime of legal aid for persons with scarce economic resources, highlights the recent growth of the pro bono movement, and discusses ways to get pro bono work in Argentina.

OVERVIEW OF THE LEGAL SYSTEM

Constitution and Governing Laws

Argentina is a federal Presidential Republic and a representative democracy. The political system is formed, pursuant to the constitution,² by the three traditional branches: the Judicial, the Legislative, and the Executive.

The Legislative Branch is the Congress, formed by the House of Representatives and the Senate. The primary function of the Congress is to pass, amend, revoke, and repeal laws. The Executive Branch is made up of the President, the Chief of the Ministerial Cabinet, the Vice-President, Ministers, and other officers and directors of administrative agencies. The President is the head of the State.

The judicial power is vested in a Supreme Court and in such lower courts as Congress may constitute in the territory of the Nation. The President cannot exercise judicial functions in any case, nor can the President assume jurisdiction over pending cases or reopen those already adjudged.

National Supreme Court justices are appointed by the executive power with the consent of the Senate. All other national judges are appointed by the Council of Magistracy.

The Council is periodically constituted so as to reflect a balance between representatives of the political bodies elected in popular elections, judges, and lawyers with federal registration. It also includes other scholars and scientists as indicated by law in number and form.

The judges of the National Supreme Court and lower courts may be removed by a special jury composed of legislators, judges, and lawyers with federal registration. They can be removed for misconduct or crimes committed in the fulfillment of their duties or for ordinary crimes.³ The country is divided into a Federal Capital (the city of Buenos Aires) and 23 provinces. Each province has its own governor, legislature, and judiciary.

The Argentine federal system was adopted following the United States Constitution. The National Constitution recognises rights and guarantees and sets forth the political system. Each province enacted its own constitution under the republican, representative system in accordance with the principles, declarations, and guarantees of the National Constitution.

¹ This chapter was drafted with the support of M.&M. Bomchil Abogados.

² Constitucion Nacional de Argentina, Articulo 108-114, available at <http://www.senado.gov.ar/Constitucion/judicial> (last visited on September 4, 2015).

³ Constitucion Nacional de Argentina, Articulos 53 and 115, available at <http://www.senado.gov.ar/delInteres> (last visited on September 4, 2015).



The provinces have reserved to themselves all the powers not delegated to the Federal Government. Provinces determine their own local institutions and are governed by them. They elect their governors, legislators, and other provincial officers, without intervention of the Federal Government.

The Federal Congress enacts codes (civil, commercial, bankruptcy, criminal, mining, labor and social security codes) that are applicable within the entire country, while the provinces are only empowered to enact procedural rules.

After several attempts to enact a unified Civil and Commercial Code, on October 1, 2014, the Argentine Congress passed Law Number 26,994. That law created a new Civil and Commercial Code and repealed and modified several laws, including the Civil Code, the Commercial Code, and the Argentine Commercial Corporations Act Number 19,550, among others. According to Law Number 27,077, the New Civil and Commercial Code came into effect on August 1, 2015.

The new Civil and Commercial Code will introduce important changes to the Argentine legal system that will impact several aspects of civil and commercial regulations, including family law, contract law, and civil liability. One of the most important changes is the unification of the Civil and Commercial Codes into a single code. Other important changes are the elimination of the distinction between contractual and tort liability, the regulation of new contracts, and the establishment of shorter statute of limitation periods.

The Courts

The National Supreme Court of Justice (the “**Supreme Court**”) is the highest level of the Argentine judicial system. It exercises ordinary (general) and special appellate jurisdiction, and exclusive and original jurisdiction.

General appellate jurisdiction is exercised with respect to matters previously treated by courts of first and second instance. These matters are those governed by the National Constitution and federal laws; for example, issues related to international treaties, admiralty, and maritime jurisdiction.

Special appellate jurisdiction is exercised through what is commonly referred to as *constitutional control*, since the Supreme Court has been endowed with the power to control legal rules and administrative acts.

The Supreme Court’s exclusive and original jurisdiction involves all matters related to ambassadors, ministers, and foreign consuls and those involving a province. The provincial courts are vested with general jurisdiction over matters that involve laws dictated by both national and local congresses. Moreover, alongside the aforementioned provincial courts presiding over ordinary matters, there are also provincial tribunals having jurisdiction over controversies involving federal matters (i.e., federal jurisdiction). Most courts preside over subject matter-specific issues (civil, commercial, criminal, labor, etc.).

Independent of the Supreme Court’s Office, the Office of Domestic Violence seeks to unify jurisdictional criteria for recording cases of domestic violence since these cases are handled either by family courts or civil courts depending on the local jurisdiction. Additionally, it is working on developing and organising material and human resources to produce domestic violence statistics and analysis to assess the true magnitude of the phenomenon.⁴

Argentine courts typically follow a written procedure that may involve any of the following stages: complaint, answer, defenses to the complaint, counterclaim, evidence stage, and final ruling; but criminal proceedings generally comprise two stages: a probable cause-type proceeding followed by an oral trial before a three-judge court.

To take part in a judicial controversy, it is necessary to instruct a registered attorney. Only registered attorneys are allowed to file written pleadings or writs before the courts.

⁴ See <http://www.ovd.gov.ar/ovd/> (last visited on September 4, 2015).



The Practice of Law

Education

According to Law Number 23,187, Section 11, in order to practice law in Argentina, attorneys must earn a law degree from an accredited university (i.e., authorized by the Ministry of Culture and Education). Argentina does not have a standard and common system of examination after high school, thus admission to universities is strictly defined by each university. Law degree courses tend to last five to six years.

After graduation, lawyers must register before the *Colegio de Abogados* (Bar Association) of the legal district they intend to practice in.⁵ Bar associations regulate and discipline their members by adopting and enforcing the ethical rules that govern the practice of law in their jurisdiction.⁶ In addition to regulating their attorneys' conduct, bar associations promote and organize the provision of free legal services by their members. Some of their policies provide that their attorney members have a duty to provide free legal services. They also oversee free student legal clinics. The Buenos Aires Bar Association, for example, oversees the Consultorio Jurídico Gratuito, offered by Buenos Aires University law students. The Bar Association of Córdoba is similarly responsible for creating free student clinics for people with limited resources and developing the procedures and policies that govern these clinics.

Licensure

In order to practice law in Argentina, lawyers must have a degree from an accredited university⁷ to register before the relevant *Colegio de Abogados* (Bar Association). This is a barrier to foreign lawyers practicing law in Argentina. In order to practice law, foreign lawyers should obtain the recognition of their foreign diplomas at a state or private university. The recognition of diplomas is strictly defined by each university.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

Argentina's Constitution and Supreme Court decisions interpreting its provisions provide that all individuals - even when they cannot afford it - have the right to a legal defense in criminal matters as well as when they are sued in civil court.⁸

Civil Proceedings

In civil proceedings, people of limited resources may seek free assistance through bar associations that promote and organize the provision of free legal services by its members or through university legal clinics. Although the work performed by law students is free of charge, it is not typically categorized as pro bono in Argentina because it is not a university requirement.

Furthermore, people with limited resources are allowed to request a waiver of court fees, which vary between two to three percent of the claimed amount, depending on the jurisdiction. In consumer cases, all claimants have an exemption on court fees.⁹

⁵ Colegios de Abogados are authorized semi-public bodies. Although these Bar Associations collect dues from their members, they are distinct from private clubs for lawyers, such as the Asociación de Abogados de Buenos Aires.

⁶ See, e.g., "Requisitos para el ejercicio de la profesión de abogado en la Capital Federal, Jerarquía, deberes y derechos, Matricula, colegiación." (Law No. 23,187), June 25, 1985; Código de Ética del Colegio de Abogados de Buenos Aires, approved by the General Assembly of the BA Bar Association on March 31, 1987; Colegio De Abogados de La Provincia de Córdoba, Ley No. 5805.

⁷ Law 23,187.

⁸ Argentine National Constitution.



Criminal Proceeding

If a criminal defendant chooses to proceed without securing legal representation or without representing himself, a judge will appoint an official defender (*defensor oficial*) to the case.¹⁰ In addition, people with limited resources with legal needs outside of the criminal system may seek free assistance through university legal clinics. Although the work performed by official defenders and law students is free of charge, it is not typically categorized as pro bono in Argentina because the former is state-funded legal aid, and as mentioned above, the latter is a graduation requirement.

State-Subsidized Legal Aid

Subsidized legal aid is provided through the State in criminal cases; if a criminal defendant chooses to proceed without securing legal representation, an official defender (*defensor oficial*) is appointed. In these cases there are no eligibility criteria since the National Constitution states that all individuals (without any restriction based on immigration status, financial means, or merits) have the right to a legal defense in criminal matters.

In the past few years, the government has opened a number of legal-aid centres in slum neighborhoods, which provide services to assist immigrants and address the problem of lack of police action in cases of domestic violence. Five pilot centres were opened in Buenos Aires in 2008. Their activities shed light on the need to offer a wider range of services. Thirty-three more centres were eventually opened, several of them in the provinces. In addition to providing legal assistance, the centres act as mediators. They also raise awareness about new laws that expand rights in areas such as immigration, mental health, and domestic violence.

The centres work with ministries, public offices, universities, and foreign consulates, and in some cases, these institutions supply their own staff. Moreover, young people coming under the Labour Ministry's "More and Better Jobs" program work as administrative employees at some of the centres.

According to a study conducted by the National Office for the Promotion and Strengthening of Access to Justice, these centres have provided assistance in more than 152,000 cases since their creation. Nine mobile units were added in 2012 because of the overwhelming number of people seeking help.¹¹

Assistance through bar association or law school clinics is restricted to persons with extremely limited means. More than a quarter of the clients are unemployed, with a monthly income of under \$300. Law students may not charge a fee for their services. There are also certain substantive restrictions; for example, labor or pecuniary cases are precluded.

Similar to the clinical education programs prevalent in US law schools, law students in many Argentine universities learn the practical skills of lawyering by offering free legal assistance to people with limited resources. In Buenos Aires, for example, all University of Buenos Aires law students must spend part of their final year of study providing free services either through the Consultorio Jurídico Gratuito ("**Consultorio**"),¹² a legal clinic supervised by law professors, or through an NGO-affiliated clinic in collaboration with the Centro de Estudios Legales y Sociales (Center for Legal and Social Studies or

⁹ Law 24.240, Section 53.

¹⁰ Law No. 24.946, Section 60. Though the public defender provides free legal services, a defendant who is convicted and has sufficient means at the time of sentencing must reimburse the cost of this representation.

¹¹ See http://www.ibanet.org/PPID/Constituent/AccessToJustice_LegalAid/Projects.aspx (last visited on September 4, 2015).

¹² The Consultorio is structured through commissions, each of which centres around a particular area of law, e.g., children's rights or property law. "Docentes y Alumnos Llevan Las Causas," May 14, 2007, available at <http://edant.clarin.com/diario/2007/05/14/sociedad/s-03401.htm> (last visited on September 4, 2015). See also, the description of the Consultorio program on the University of Buenos Aires' "University Extension" website, available at http://www.uba.ar/extension/trabajos/derecho_patro.htm (last visited on September 4, 2015).

“CELS”),¹³ overseen by its legal professors. Other Argentine universities such as Universidad Católica Argentina, Universidad Torcuato Di Tella, and Universidad Nacional de Córdoba have similar clinical programs.¹⁴

This free legal assistance is only available to individuals; non-profit organisations do not qualify. This exclusion is an important gap in the legal aid regime that is being addressed by the pro bono movement.

Mandatory Assignments to Legal Aid Matters

Bar associations regulate and discipline their members by adopting and enforcing the ethical rules that govern the practice of law in their jurisdiction. In addition to regulating their attorneys’ conduct, bar associations promote and organize the provision of free legal services by their members. Some of their policies provide that attorney members have a duty to provide free legal services.

Although lawyers and law firms may publicise that they offer pro bono work, in practice there is limited benefit in doing so since they receive pro bono cases through the Comisión de Trabajo Profesional Pro Bono en Causas de Interés Público (the “**Pro Bono Commission**”) of the Colegio de Abogados de la Ciudad de Buenos Aires (the “**City of Buenos Aires Bar Association**”), described below, or other pro bono clearinghouses. Though there is technically no ethical restriction on pro bono lawyers’ ability to collect fees, lawyers must comply with the pro bono policies of whichever clearinghouse or referring agency they work with.

Alternative Dispute Resolution

Mediation and Arbitration

The Argentinean legal system contemplates non-judicial dispute resolution procedures. Within the city of Buenos Aires, Law Number 26,589 and Decree 1467/2011 implement a mandatory mediation proceeding before publicly or privately appointed mediators, who are not empowered to decide cases. Instead they bring the parties together in order to reach an amicable settlement. If no agreement is reached, the plaintiff is entitled to bring the case before the courts. On the other hand, if an agreement is reached, its execution is compulsory for the parties, once the mediator’s signature is certified by the Ministry of Justice and Human Rights. After which, the parties may judicially enforce the agreement. As of today, no provincial jurisdiction has established this mechanism as mandatory, with the exception of the Province of Buenos Aires, which set forth mandatory mediation proceedings through Law Number 13,951. These proceedings have not been implemented yet, but are expected to be in force within the year. This mediation procedure is mandatory before filing any suit in the courts of the city of Buenos Aires, with the sole exception of those types of cases which are expressly excluded by Law Number 26,589 (for instance, provisional remedy cases).

Ombudsman

The Ombudsman is an independent body created within the National Congress that operates with full autonomy: it does not receive instructions from any authority. The mission of the Ombudsman is to defend and protect human rights and other rights, guarantees, and interests defined in the Constitution and the laws of Argentina from the deeds, acts, or omissions of the administration. The Ombudsman receives complaints, investigates, and litigates in public interest matters free of charge and it also controls public administrative functions. The Ombudsman’s term of office is five years, and he may only be re-

¹³ CELS is a non-governmental organisation that promotes the protection of human rights and the strengthening of the democratic system in Argentina. See <http://www.cels.org.ar> (last visited on September 4, 2015).

¹⁴ See Red Latinoamericana de Clínicas Jurídicas, available at <http://www.clinicasjuridicas.org/universidades-latinoamerica.htm> (last visited on September 4, 2015). Students who participate in the NGO-affiliated clinic at the University of Córdoba work with the Centro de Derechos Humanos y Ambiente (CEDHA), available at <http://wp.cedha.net/> (last visited on September 4, 2015).



appointed once. The Ombudsman is appointed and removed by Congress with the vote of two-thirds of the members present of each House.

PRO BONO ASSISTANCE

Pro Bono Opportunities

Bar Association Pro Bono Programs

As previously discussed, the City of Buenos Aires Bar Association's Pro Bono Commission is a bridge, largely between large law firms and pro bono clients. To a lesser extent, in-house and government lawyers have also developed pro bono programs in partnership with either the Pro Bono Commission or global law firms, particularly in larger companies.

The City of Buenos Aires Bar Association formed the Pro Bono Commission in 2000. Not to be confused with a group of lawyers offering pro bono legal work, the Pro Bono Commission is an administrative group that acts as a clearinghouse to match lawyers with pro bono clients. Potential pro bono clients must first present the Commission with a request for services, after which the Commission analyzes the request to determine if it qualifies as a matter of "public interest". If accepted, the case is circulated among registered law firms with a summary of its essential characteristics and assigned to the law firm that expresses an interest in taking the case. If several law firms are interested, the case will be assigned in accordance with the preference of the client or, in the absence of a client preference, by lottery.¹⁵ In order to facilitate a positive match between attorneys and clients, and to ensure that public interest cases receive the highest quality of legal work, the Pro Bono Commission formed a network of participants consisting of many of the leading law firms in Argentina.¹⁶ It also works in association with other bar associations in Latin America.

The Pro Bono Commission has traditionally emphasized disability, microfinance, NGO advice, and transparency. New focus areas also include criminal law as well as childhood and adolescence issues, health issues, and public ethics and political transparency.¹⁷ A recent accomplishment that exemplifies the Commission's work is attorney participation in "Project Manuel", which has facilitated the adoption of 130 children.¹⁸ Moreover, the Pro Bono Commission is currently working with several universities, such as Universidad de Buenos Aires, Universidad Torcuato Di Tella, and Universidad Austral, to promote pro bono services and foster the understanding of law as a tool for social change and developing public policies.

Recently, several in-house legal teams have joined the Pro Bono Commission. The last one to join in May, 2015 was AIG La Meridional Cía. Argentina de Seguros S.A., an important insurance company in Argentina.

Clearing Houses

The Pro Bono Commission has worked with TrustLaw to identify projects in which legal departments can partner with law firms and each other in matters that might be too large for any one department to handle on their own.

¹⁵ Commission Protocols and Standards, available at <http://www.probono.org.ar/en/commission-s-protocol-and-standards.php>. (last visited on September 4, 2015).

¹⁶ The network has grown over time. The participating law firms as of September 13, 2010, are: (1) Allende & Brea; (2) Baker & McKenzie; (3) Beccar Varela; (4) Brons & Salas; (5) Bruchou, Fernández Madero & Lombardi; (6) Bulló, Tassi, Estebanet, Lipera, Torassa & Asociados; (7) Cárdenas, Di Cío, Romero & Tarsitano; (8) Casal, Romero Victorica & Vigliero; (9) Del Carril, Colombres, Vayo & Zavalía Lagos; (10) Klein & Franco; (11) Llerena y Asociados Abogados; (12) M. & M. Bomchil; (13) Marval, O'Farrell & Mairal; (14) O'Farrell; (15) Pérez Alati, Grondona, Benites, Arntsen & Martínez de Hoz (h); (16) Raggio & García Mira; and (17) Zapiola Guerrico & Asociados.

¹⁷ See <http://www.probono.org.ar/en/index.php> (last visited on September 4, 2015).

¹⁸ See <http://www.probono.org.ar> (last visited on September 4, 2015).

For example, TrustLaw recently connected a group of law firms and corporate counsel, including Hewlett-Packard Company, with a nonprofit organization in Latin America focused on alleviating poverty in slums. The legal team collaborated to provide the organization with research on laws relating to the right to housing, forced evictions and "squatters rights". The organization used this research to create a comprehensive guide on access to housing best practices and laws in the Latin American context and to inform policy decision makers on measures to fight social exclusion in Latin America¹⁹.

Fundación Poder Ciudadano (the Argentine chapter of Transparency International) is a non-profit organisation in Buenos Aires that promotes civic participation and political transparency. Fundación Poder houses the Programa Acción Colectiva por la Justicia (the **"Collective Action Program"** or **"PAC"**) which acts as the second major clearinghouse for pro bono legal work in Buenos Aires. Like the Pro Bono Commission, the PAC accepts cases that are in the public interest. It also finds matches for individual clients, provided that those individuals demonstrate that their claimed legal rights are representative of violations being committed against a larger group of individuals. The PAC maintains an internet-based network of volunteer lawyers rather than a network of law firms (although law firms can and do participate). PAC members include lawyers not only from Buenos Aires but from throughout Argentina. Lawyers in the network can take cases individually, in groups or can arrange to provide limited assistance in a particular case, such as only performing investigative work. Generally, the PAC offers flexibility and a broad range of opportunities for lawyers interested in pro bono.²⁰

The Cyrus R. Vance Center for International Justice in New York serves as a clearinghouse for foreign attorneys to offer pro bono services in Argentina. For example, in November 2002, Shearman & Sterling assisted Fundación Poder with issues of citizenship, civic information, collective action, and democracy. It also helped Fundación Poder with its incorporation in the United States as a 501(c)(3). The Vance Center has set up a small committee of senior human rights law practitioners from Africa and Latin America. The committee, called the South-South Human Rights Steering Committee, meets by telephone on a regular basis to discuss the challenges that are common to human rights advocates in Africa and Latin America and to identify opportunities for attorneys to help.

Historic Development and Current State of Pro Bono

The pro bono movement in Argentina was shaped in large part by the two aspects of the country's legal aid system described above. First, law students who provide free services through their university clinics do so as a requirement to graduate, rather than as volunteers. Secondly, non-profit organisations are not eligible to receive free government or student legal aid. These two unique facts presented leaders of the Argentine pro bono movement with opportunities for improving and developing a complementary system. The Buenos Aires Bar Association has been instrumental in this effort. In the late 1990s—before Argentina's financial crisis—Argentine lawyers began considering how to address these opportunities. The answer was to define the concept of pro bono and to create an infrastructure that would facilitate the performance of pro bono work and educate lawyers about the merits of pro bono. While the idea of pro bono was still in its infancy, Argentina descended into an unprecedented financial crisis, and members of the legal community came face to face with poverty and social issues. This experience strengthened the conviction among early pro bono supporters that offering free legal services was an ethical responsibility of those with the greatest access to the judicial system.

When defining the concept of pro bono, the Buenos Aires Bar Association distinguished the term from the already-existing practice of free legal aid in several important ways. First, pro bono work is not to be done out of a sense of obligation, but rather from a firm or lawyer's individual motivation or commitment to do good, and as such, should be carried out with the same quality as all paid legal work. Second, to leverage the scarce resources of practitioners in a way that ensures the greatest social impact, the Buenos Aires Bar Association treats as pro bono only those cases deemed to be in the "public interest," meaning cases

¹⁹ See <http://www.trust.org/publications/i/?id=d54c4446-8a0c-4000-b30e-3672a1f52dd0> (last visited on 3 February 2016).

²⁰ See <http://poderciudadano.org/> (last visited on September 4, 2015).



implicating broad social issues or the rights of multiple persons. Towards that end, unlike in the free legal assistance regime, NGOs and other organisations can qualify as pro bono clients to the extent they seek assistance with issues that are in the public interest. In December 2000, the Buenos Aires Bar Association formed the Comisión de Trabajo Profesional Pro Bono en Causas de Interés Público (the Pro Bono Commission) as discussed above to further support pro bono work.

The Pro Bono Declaration for the Americas, spearheaded by the Cyrus R. Vance Center for International Justice of the New York Bar, was launched in January of 2008 by a committee of leading practitioners in Latin America and the United States. Signatories affirm that it is the duty of the legal profession to promote both a fair and equitable legal system and respect for human and constitutional rights. The Declaration calls for each signatory to commit to an average of no less than 20 hours of annual pro bono work per practicing attorney. As of April 3, 2009, 16 private Argentine law firms have signed the Declaration, as well as the Bar Association of Buenos Aires, six law schools, and one NGO (the Fundación Poder Ciudadano). This Declaration strengthened the pro bono movement in Buenos Aires.

CONCLUSION

The pro bono movement in Argentina is part of the growing recognition within the legal community in Latin America of the importance of fostering a culture of pro bono among lawyers and law firms. On a national level, the movement is still growing and has made rapid strides. With an effective infrastructure in place, the Argentine pro bono movement is poised to continue this momentum.

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