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TRUSTLAW INDEX OF PRO BONO: The Thomson Reuters Foundation Global Pro Bono Survey

In 2014, the Thomson Reuters Foundation will launch the first annual TrustLaw Index of Pro Bono (the “Index”) to analyse pro bono data and trends from around the world.

The aim of the Index is to further our mission of spreading the practice of pro bono worldwide by highlighting successful programmes and demonstrating the amount of pro bono being done globally, especially outside the traditional pro bono markets. The Index will demonstrate how the global pro bono market is developing and uncover emerging trends. Quantitative analysis will show where and to what extent pro bono work is being performed by lawyers, broken down by country and region.

At its core, the Index is a central repository for global information on the pro bono sector. It will show the average number of pro bono hours performed per fee-earner in jurisdictions around the world over a 12-month period.

We acknowledge that a great deal of other community work is done by lawyers, though this analysis will look only at the work that falls within our definition of pro bono.

For the purposes of the Index, pro bono is defined as legal assistance provided without expectation of payment to people of limited means or to organisations that have a social, environmental, humanitarian or community focus (including certain government agencies and entities).

Since different cultures and jurisdictions hold different attitudes to pro bono, we have created a definition that allows for submissions from the same country, and different countries, to be compared effectively.



DEFINITION OF QUALIFYING PRO BONO

The below guidelines set out the criteria under which we define Qualifying Pro Bono.

Only Qualifying Work done by Qualifying Fee-Earners for Qualifying Clients is considered Qualifying Pro Bono for the purposes of the Index. All of these elements must be in place for Qualifying Work to count towards a firm's submission for the Index.

The definition cannot be exhaustive, and should not be considered to be so, particularly given the global nature of the work encapsulated. We ask those submitting data to determine whether specific situations would be considered Qualifying Pro Bono based on these guidelines.

Who does the work? Who are **Qualifying Fee-earners**?

Any legal professionals who perform fee-earning work for clients can be considered Qualifying Fee-Earners.

- Any fee-earners employed by a firm or working within a firm can be considered Qualifying Fee-Earners. This includes trainees. Paralegals and summer associates can also be considered Qualifying Fee-Earners. If the hours of paralegals and summer associates are included for the purposes of the Index, then all such staff members must also be included as part of the head-count in terms of numbers of fee-earners. Employees of a firm who do not provide legal advice to clients cannot be Qualifying Fee-Earners.
- Pro bono coordinators/counsel can be Qualifying Fee-Earners, but only when the work they are doing is legal and substantive in nature.
- Legal professionals who have been seconded or externed to public interest or non-profit organisations, or to public sector entities with limited means, are considered Qualifying Fee-Earners, as long as they are seconded into a legal role and remain employees of the law firm throughout their secondment or externship. If they cease to be employed by the firm or are not working in a legal role, they are not Qualifying Fee-Earners.
- When sponsoring a fellowship, the fellow is not considered a Qualifying Fee-Earner, as the fellow is not an employee of the law firm sponsor.

What work are they doing? What is **Qualifying Work**?

Legal advice, assistance, representation and research, as well as drafting agreements, policy documents or legislative instruments, are all examples of Qualifying Work.

- Only legal work provided without expectation of payment is Qualifying Work. If any fees are charged, the work is not considered Qualifying Work. Legal work can only be considered Qualifying Work if there is no expectation of payment when the matter commences.
- Charging for disbursements, registration fees or other ancillary costs does not prevent work being Qualifying Work.
- Qualifying Work must be legal work. A lawyer volunteering in a non-legal capacity, for example to perform manual labour or administrative tasks for a non-profit, would not be considered Qualifying Work in the context of the Index. Mentoring young people or reading at a school is also not considered as Qualifying Work in this context. Giving presentations to young people to get them enthused about a career in law would also not qualify.
- Business development projects and maintenance or production of internal know-how are not considered Qualifying Work, even if they are performed without expectation of payment.



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- Time spent acting as a board member of a non-profit organisation is not Qualifying Work, though providing legal advice to or for such non-profit would be. Acting as a member of a committee related to pro bono would not count as Qualifying Work, though again provision of legal advice or performing legal work for such a committee would be considered Qualifying Work.
- Contentious (whether a public interest case or not) and non-contentious work, as well as legal research or drafting of legislation or legal policy, can be considered Qualifying Work. Providing legal advice in legal clinics can also be considered Qualifying Work, as can interviewing pro bono clients for a legal purpose.
- Pro bono work performed as part of a requirement of the local bar association is considered Qualifying Work, as long as it is done without financial return.
- Attending or running training that is specifically designed to support and is essential for the performance of pro bono programmes is considered Qualifying Work. Travelling time to attend pro bono matters or hearings would also be considered Qualifying Work. Attending training sessions on development topics that are incidental to pro bono matters or for personal interest are not considered Qualifying Work.
- Offering training sessions, seminars or webinars etc on legal topics, including explaining legal concepts to students in secondary education, specifically to or for pro bono clients is Qualifying Work.
- Performing work at discounted rates is not considered Qualifying Work. 'No win no fee' work does not count as Qualifying Work. Deferred fee matters also do not count.
- Charging for disbursements, registration fees or other ancillary costs does not prevent work being Qualifying Work.
- Work done by pro bono coordinators in coordinating a firm's pro bono programme or other administration roles related to the pro bono programme is not considered Qualifying Work, however supervising pro bono matters, representing pro bono clients or conducting legal research would all be Qualifying Work.
- Acting as an observer on protest marches or for elections is not Qualifying Work.

Who is the work done for? Who are **Qualifying Clients**?

People of limited means or organisations that have a social, environmental, humanitarian or community focus, as validated by the law firm, referral organisations or pro bono organisations, can all be considered Qualifying Clients. Ultimately, if the law firm considers the client meets their criteria for pro bono assistance, and the client fits into the below examples, the client is a Qualifying Client.

- Registered charities are considered Qualifying Clients, irrespective of their country of registration or their annual income. Not-for-profit organisations and multi-lateral institutions with a social, humanitarian, environment or community focus are considered Qualifying Clients. Low income individuals and enterprises would also count as Qualifying Clients.
- Social enterprises (businesses with a social, humanitarian, environmental or community focus) are considered Qualifying Clients. If the social, humanitarian, environmental or community focus is incidental or a fortunate by-product of the business, it is not a social enterprise and therefore not a Qualifying Client, rather only when such focus is the sole aim of the business would it qualify.
- Governments in developing countries, or other government institutions (including judicial, educational, medical institutions run by the state) based anywhere, are Qualifying Clients as long as the law firm considers that the payment of fees would be a significant barrier for them to receive the advice.

All of these elements must be in place for work done to be considered Qualifying Pro Bono for the purposes of the Index.

TRUSTLAW CONNECT

SPREADING THE PRACTICE OF PRO BONO WORLDWIDE TO DRIVE SOCIAL CHANGE



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Some scenarios of whether work should be considered Qualifying Pro Bono for the purposes of the Index:

Scenario	Qualifying Fee-Earner?	Qualifying Work?	Qualifying Client?	Qualifying Pro Bono?
A partner reading to children at a local charitable after-school club	✓	✗ Reading to children is non-legal volunteering	✓	NO
A human resources employee at a law firm paints fencing at a hospice	✗ Human resources employees do not provide legal advice to clients so would not be considered Qualifying Fee-Earners	✗ Non-legal volunteering	✓	NO
A paralegal prepares court bundles for a civil liberties case on behalf of an international NGO	✓	✓ This would be considered legal work	✓	YES
A junior associate drafts an employment contract for a for-profit business devoted to improving access to clean water	✓	✓	✓ Though the client is for-profit, it has an entirely social focus and therefore could be considered a Qualifying Client	YES
A partner drafts a commercial agreement for a large corporate client for free, in the hope that fee-earning work would follow	✓	✓ Drafting a commercial contract would count as Qualifying Work. Though there is an expectation of payment on future matters, the fact that there is no expectation of payment for this matter means it could still be considered Qualifying Work	✗ Providing advice to a corporate client, even without the expectation of payment, would not be considered working for a Qualifying Client	NO Even though the work performed is Qualifying Work, the fact that the client here would not be a Qualifying Client means that this would not be Qualifying Pro Bono
A trainee attends a training course solely designed to provide skills required to assist an NGO working on death row cases	✓	✓ As training is necessary to be able to work on the death row case here, attending the training course would be considered Qualifying Work	✓	YES



DATA TO GATHER

We will request submissions from law firms all over the world that provide information on both the structure of the firm's pro bono practice and the level of engagement in the pro bono programme.

Structure of the Pro Bono Practice

In order to help establish the criteria for successful pro bono programmes and uncover emerging trends in the sector in different countries, we will request information on the size, composition and structure of pro bono teams (to the extent such teams are present in a firm) and the policies implemented by legal practices to embed pro bono within the culture of the firm, such as whether and how it is remunerated. The information provided relating to the pro bono practice will be used to inform the industry analysis we create and will only be used in an anonymised and aggregated form.

Level of Engagement in Pro Bono Programme

We intend to publish indices that demonstrate how much pro bono is being done by firms on a jurisdiction by jurisdiction basis. This will enable us to compare legal practices in the same country. We will also bundle together data on a regional basis so we can highlight the most successful African, European, Asian and Latin American pro bono programmes.

The data we publish will show the average number of hours of Qualifying Pro Bono performed per Qualifying Fee Earner over a 12 month period in each jurisdiction. We will also publish a figure showing what proportion of the Qualifying Fee-Earners in each jurisdiction have performed 10 or more hours of Qualifying Pro Bono over that same period.

We will also request data on the engagement of partners in the firm's pro bono programme. Gauging the level of partner involvement in pro bono programmes is a key indicator to determine the sustainability of the programme and the success that firms have achieved in make sure that pro bono is part of the fabric of a firm. This data will not be published, but will again be used to inform our industry analysis and will be used in an anonymised and aggregated form.



PRESENTATION OF RESULTS

Public Information

Along with our detailed industry analysis, we will provide a number of different indices. The indices will either be country specific or a regional index populated by data we aggregate from relevant country submissions.

Information provided in the index in relation to each firm will be limited to:

- # hours Qualifying Pro Bono done per Qualifying Fee-Earner (this is the primary ranking that firms would be judged against);
- # Qualifying Fee-Earners doing 10 hours Qualifying Pro Bono in a 12 month period;
- # Qualifying Fee-earners per country/region; and
- # Qualifying Pro Bono hours done per region (together, the “Indexed Data”).

For each index, we will provide the Indexed Data for all firms that have provided a submission.

Indices

Indices will be based on average Qualifying Pro Bono hours per Qualifying Fee-Earner in the following regions and jurisdictions.

Regional indices:

1. Asia and Pacific (excluding Australia). NB, for the purposes of the Index, Central Asia is considered part of Asia and Pacific.
2. Europe (excluding England). NB, for the purposes of the Index, Russia and Turkey are considered part of Europe.
3. Africa and Middle East
4. Americas (excluding US)

Jurisdictions-specific indices:

1. Australia
2. England
3. US
4. Other: we will provide country specific indices for any other countries where a minimum number of submissions are received to allow meaningful comparisons to be made.

Timeline

The Index will launch early in 2014, with submissions welcomed for an initial eight week period. The collated data will then be published in Spring 2014.