



A THOMSON REUTERS FOUNDATION SERVICE



## TRUSTLAW INDEX OF PRO BONO

### THE THOMSON REUTERS FOUNDATION GLOBAL PRO BONO SURVEY

In 2014, the Thomson Reuters Foundation launched the first annual TrustLaw Index of Pro Bono (the “Index”) to analyse pro bono data and trends from around the world. Now in its third year, the 2016 Index will be bigger and better and will continue to highlight key trends and year-on-year growth of the sector.

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 demonstrates how the global pro bono market is developing and uncovers emerging

trends. Quantitative analysis shows 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. Beyond that, it also shows the average number of pro bono hours performed per fee earner in jurisdictions around the world over the last year.

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. 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.

## 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 work to be considered Qualifying Pro Bono and therefore count towards a firm's submission for the Index.

The definition cannot be exhaustive and should not be considered so, particularly given the global nature of the work. 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 performs fee-earning work for clients can be considered a Qualifying Fee Earner.

- Any fee earners employed by a firm or working within a firm can be considered Qualifying Fee Earners. This includes trainees, articled clerks and candidate attorneys, and other fee earners on fixed-term contracts.
- Pro bono coordinators/counsel can be Qualifying Fee Earners, whether or not they perform fee-earning work.
- Paralegals can also be considered Qualifying Fee Earners. If the hours of any paralegal is included for the purposes of the Index, then all such staff members must also be included as part of the headcount. Firms may opt to exclude all paralegals from the calculations for the purposes of both Qualifying Pro

Bono hours and headcount, should they wish to do so.<sup>1</sup>

- 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 considered 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.

- Qualifying Work can be performed as part of a requirement of the local bar association, as long as it is done without financial return.

### **Nature of Work**

- Qualifying Work must be legal work. Volunteering in a non-legal capacity, for example to perform manual labour or administrative tasks for a non-profit organisation, would not be considered Qualifying Work in the context of the Index.
- Contentious (whether a public interest case or not) and non-contentious matters, 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.

<sup>1</sup>Following feedback received, summer associates are no longer considered Qualifying Fee Earners for the purpose of the Index.

- Work done by pro bono coordinators in coordinating a firm's pro bono programme or other administrative roles related to the pro bono programme is not considered Qualifying Work. However, supervising pro bono matters, attending legal clinics, representing pro bono clients or conducting legal research would all be Qualifying Work.
- 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.
- Travelling time to attend pro bono matters or hearings would also be considered Qualifying Work.

### Training and Education

- Attending or running training that is specifically designed to support and/or is essential for the performance of pro bono programmes is considered Qualifying Work. Attending training sessions on topics that are incidental to pro bono matters or for personal interest is not considered Qualifying Work.
- Preparing and running training sessions, seminars or webinars etc specifically to or for pro bono clients on legal topics can be considered Qualifying Work.
- Legal teaching at tertiary institutions can be considered Qualifying Work if the work is undertaken for public interest reasons. Examples of public interest reasons may include: supporting the development of a law school or legal profession in a less-developed country; teaching on subjects such as legal ethics and pro bono in an institution where such subjects may not otherwise form part of the curriculum or which would otherwise not be available; improving the legal skills and employability of under-represented or disadvantaged groups in order to improve diversity in the legal profession; or teaching which is aimed at developing the teaching abilities of law lecturers at under-resourced institutions.

- Providing legal education lessons to students in under-resourced schools is considered Qualifying Work.
- Offering training sessions, seminars or webinars etc on legal topics at secondary education institutions would be considered Qualifying Work if undertaken for public interest reasons.
- Mentoring young people or reading at a school is not considered Qualifying Work in this context. Giving presentations to young people about career development or to get them enthused about a career in law would not qualify.

### Committee and Board Membership

- 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 providing legal advice or performing legal work for such a committee would be considered Qualifying Work.
- Acting as an observer on protest marches or for elections is not Qualifying Work.

### Payment and Costs

- 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.
- Performing work at discounted rates is not considered Qualifying Work. 'No win no fee' work does not count as Qualifying Work, unless the firm undertakes to donate any proceeds to an independent charitable cause in advance of work commencing. Deferred fee matters also do not count.

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



















People of limited means or organisations that have a social, environmental, humanitarian, cultural 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 non-profit organisations 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, environmental 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, cultural or community focus) can be considered Qualifying Clients. If the social, humanitarian, environmental, cultural or community focus is incidental or a fortunate by-product of the business, it is not a social enterprise and therefore should not be considered a Qualifying Client. Only when such social mission is the primary aim of the business would it qualify.
- Governments in developing countries, or other government institutions based anywhere (including judicial, cultural, educational and medical institutions run by the state), 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.

## SCENARIO TABLE

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

Scenario	Qualifying Fee-Earner?	Qualifying Work?	Qualifying Client?	Qualifying Pro Bono?
A law firm partner reading to children at a local charitable after-school club		 Reading to children is non-legal volunteering		<b>NO</b> Though in this scenario a Qualifying Fee Earner is working for a Qualifying Client, reading is not considered Qualifying Work and therefore this would not be considered Qualifying Pro Bono
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		<b>NO</b>
A paralegal prepares court bundles for a civil liberties case on behalf of an international NGO		 This would be considered legal work		<b>YES</b>
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	<b>YES</b>
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	<b>NO</b> 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 assisting an NGO working on death row cases attends a training course solely designed to provide them with skills required to assist that NGO with the death row matters		 As training is necessary to be able to work on the death row case here, attending the training course would be considered Qualifying Work		<b>YES</b>

## | DATA TO GATHER

We are requesting submissions from law firms all over the world providing us with information on both the structure of the firm's pro bono practice and the level of engagement by lawyers 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 are requesting 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 law firms to embed pro bono within the culture of the firm, such as whether and how it is rewarded and remunerated. The information provided 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 will 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 how much pro bono is being done across Africa, Europe, Asia and the Americas.

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 ten or more hours of Qualifying Pro Bono over that same period.

We will also request data on the engagement of partners in a firm's pro bono programme. Whilst this information will not be made publically available, 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 ensuring that pro bono is part of the fabric of a firm. Such partner engagement data will not be published, but will again be used to inform our industry analysis 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 on a jurisdiction-by-jurisdiction basis will be limited to:

- Average number of hours of Qualifying Pro Bono done per Qualifying Fee Earner; and
- Percentage of Qualifying Fee Earners doing ten hours or more of Qualifying Pro Bono in a 12-month period (together, the “Indexed Data”).

For each Index, we will provide the Indexed Data for all firms that have provided a submission, and relating to each jurisdiction in which they operate.

### Indices

Indices will provide benchmarking data 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 and Wales)

*NB, for the purposes of the Index, Russia and Turkey are considered part of Europe.*

#### 3. Africa and Middle East

#### 4. Americas (excluding the US)

### Jurisdiction-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 allows meaningful comparisons to be made.

### Timeline

The Submission Period will open in April 2016, with submissions welcomed for an initial six-week period. The collated data will then be published in July 2016.