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Children's Rights

ONE CHILD A YEAR CAMPAIGN

ProBono.Org commenced its One Child a Year Campaign in the course of last year calling on lawyers to participate in this initiative by representing children. Bowman Gilfillan (BG) has since then worked closely together with ProBono.Org to take on Children's Court matters and to represent children in these matters.

There have been a number of significant cases all involving representing children directly in situations of high conflict between their parents. Each case demonstrates the manner in which conflict between parents can escalate to such an extent that children become the unfortunate victims of such acrimony. For instance BG represented three minor children aged 15, 12 and 5 in a custody battle between their parents in a situation where the mother was the primary caregiver of the children but found herself in financial difficulty. She requested support from the father until she was able to find her feet, but instead of receiving support he applied to court for the sole custody of the children alleging that she was unfit to care for the children due to substance abuse. The matter became acrimonious and BG spent over a year in the Children's Court representing the children. After all that time, and all the emotional upheaval involved in the case the court ordered that the children's best interests would be realised by them remaining with their mother.

BG is currently acting for a father in a custody battle where the children have been in a dangerous situation while living with the mother's family. Relatives and others threatened and beat the children. BG was successful in obtaining a High Court order in July 2014 condoning the father's non-compliance with an existing order (there was an order requiring the children to be staying with the mother) placing the children in the temporary care of the father and referring the matter to the

Children's Court for final adjudication.

In a third matter, BG was appointed by the Children's Court to represent a minor child, J, born out of wedlock in 2010. BG was appointed to assist the court in deciding whether J was a child in need of care and protection since both parents were accusing each other of sexually abusing the child. In cases like this, the court is unable to assess the situation and in this matter a case manager was appointed to advise the court. The case manager was granted authority to investigate any disputes between the parties relating to J and to make written recommendations which would be final and binding.

BG worked closely with the case manager to determine what the best interests of the child were. The collaboration between the BG attorney and the case manager enabled the magistrate in the Children's Court to make an informed decision. The court accepted BG's recommendations that the child did not need to be placed in a place of safety, but could remain with the mother. The case was closed in the Children's Court and handed back to the case manager to further manage it.

In a fourth matter BG represents 3 minor children aged 11 and twins of 7 years in an on-going matter for access, primary residence and other related issues (care and protection) in the Randburg Magistrate's Court

This is a typical case of children being pushed around like a football, while their parents mess up their lives. Here the mother alleged that all three children were sexually abused by their father in 2010 and gave a very serious and graphic description of the matter. However, through various court processes outside of the Children's Court it was found that the evidence against the father was not conclusive and that he be allowed

supervised access. However, it then emerged that the children would need to be removed from the mother's care as one of the children found the mother's tablets for bipolar disorder, took them and had to be hospitalised. They have been placed in a children's home.

BG's attorney consulted with the children on various occasions at the children's home to get their instructions and to consult further with the social worker assigned to the matter. The matter has been postponed by the Children's Court for the social worker's report and on the next court date the firm will make representations on behalf of the children for the speedy resolution of the matter.

In conclusion, BG has taken on many matters representing children in Children's Court proceedings in the past year. On the 7th July 2015, the firm facilitated a seminar for ProBono.Org on children's matters and reflecting on the One Child a Year Campaign. BG's team of lawyers facilitated a



BG Bowman Gilfillan
AFRICA GROUP



session in which it shared with attendees the experience and practical lessons learnt from legally representing children in Children's Court and High Court proceedings.

As a firm BG has demonstrated its commitment to children's rights. Every child represented received the highest and most professional level of service. The firm did not hesitate to make resources available for the proper litigation of their matters. Since its inception a year ago, BG's participation in ProBono.Org's One Child a Year Campaign has grown from strength to strength making a difference in the lives of many children.

Outstanding Law Student
at a University Law Clinic



Danélle Prinsloo

There is sometimes a student who exhibits dedication and diligence far in excess of what is expected of a final year LLB student working in the Law Clinic as part of an elective module. Ms Danélle Prinsloo was such a student and for this reason she is being nominated by the University of Pretoria Law Clinic in the category of "Outstanding Law Student at a University Law Clinic".

Ms Prinsloo spent far more time than the compulsory 90 minute "duty time" at the Law Clinic and in fact attended to her cases at the Law Clinic on a daily basis. Students are not expected to attend to cases during the university examination and vacation periods, but Ms Prinsloo diligently assisted her supervising attorney with cases during these periods, when other students focussed on their studies and on enjoying their vacation.

National Director's Special Award

NORMAN MOABI

Funanani Centre is an institution established by the Lewende Woord Kerk. The church had community projects. Mr Nic Swart who was then the Director of the Law Society of the Northern Provinces (LSNP) started a pro bono project at the Funanani Centre. As part of the LEAD programme for Practical Legal Training he organised students to work as student counselors at the centre. The students had to give legal advice to members of the public who came to the centre.



matters but mainly family law, administration of deceased estates, general litigation and housing matters. He rendered full legal services for free at the Centre and he would take the

In 2005 Mr Nic Swart asked Norman Moabi to assist at the Centre by supervising the students. Moabi started to oversee and supervise the student counselors. He realised that the students were not fully capacitated to deal with legal matters and in 2006 decided to take over the legal work at the Centre. He started doing consultations and running the clinic on his own and the students would only observe as he did the work. He dealt with various legal

follow up to his office to work on them. He went to the Centre on Saturdays to assist clients. In 2009 he started to recruit lawyers to staff the clinic through the LSNP. In 2012 the office had two attorneys and two conveyancers and as of 2015 the Centre has six attorneys.

He was the Chairperson of the LSNP from 2002-2003, the Chairperson of the Pro Bono Committee of the LSNP from 2004-2012 and the Chairperson of the Law Society of South Africa Pro Bono Committee.

He is currently a Trustee of the Funanani Centre and renders free legal assistance to the Centre. He prepares legal contracts and also does debt collection for free for the school that was opened as part of the Funanani Centre.

MORAY HATHORN

INDIVIDUAL
ATTORNEY

WEBBER WENTZEL



After a 16 year career in public interest law, Moray was appointed to start the first pro bono practice group in a private law firm in South Africa in 2003 - the Webber Wentzel Pro Bono Practice Group.

Through his strategic leadership and inspiration, the practice group's work now, more than a decade later, encompasses a range of impactful practice areas

in which the law is applied as a tool towards social change. Using constitutional and administrative law extensively, the practice areas which Moray has guided include: gender based violence; traditional leadership issues; land claims and post-restitution support to land claims beneficiaries; services to and upgrading of informal settlements; HIV discrimination in the workplace; discrimination generally and specifically in relation to LGBTIs; corporate governance in the NGO sector, including the HIV sector in particular; cases for the protection and promotion of the rule of law; refugees; health care issues including HIV, TB and mental and physical disability.

Driven by an exemplary work ethic and sense of justice, Moray has not shied away from taking on the hard, and in some quarters, unpopular cases. Shortly after his appointment he became involved in representing a number of women in their parole applications, who had been sentenced to lengthy terms of imprisonment for the murder of abusive spouses. This was the start of the team's focus on gender based violence as an important area for legal intervention.

In the early years Moray was the attorney in an urgent application to interdict a group which sought to unlawfully supplant the legitimate leadership of the Aids Consortium, an umbrella body for some 1 200 NGOs and CBOs involved in the fight against HIV/Aids. This was the beginning of the significant practice at Webber Wentzel in

relation to HIV/AIDS being developed.

Well known in legal circles for his integrity and collegiality, Moray is often approached for legal advice and positional thinking, and is asked to be a member in legal teams. His willingness to share legal expertise and know-how makes him a popular member of such teams. In the successful challenge to the constitutionality of the Communal Land Rights Act, 2004 Moray and the Webber Wentzel team acted jointly with the Legal Resources Centre as attorneys. The collaboration with the LRC has been carried forward in securing post-restitution support to the Khomani San.

His interest in decent shelter or adequate accommodation has been addressed in many different matters; and the one way has been by providing legal services extensively to informal settlements in Johannesburg on behalf of the Landless Peoples' Movement to secure services and upgrading in situ in line with national housing policy. These cases have met with mixed success in the courts but the struggle continues, and the successful outcome of the Protea South matter (see below) before Mr Justice Wright is of considerable importance, and may represent a breakthrough - opening the way for other in situ upgrading of informal settlements in Johannesburg.

Moray has ensured that the practice group is a site of learning. It has trained 25 candidate attorneys in, and has exposed eight associates to public interest lawyering.

There are four cases that should be highlighted. While they respectively illustrate very clearly the significant gains which can be achieved for communities through the application of law, what is opaque is the numbers of years, literally, that Moray has devoted specifically to these matters.

The first is the Khomani San matter. The Khomani San, among the first peoples of South Africa, lodged a sensitive land claim which was won and had their land restored to them in 1999 in terms of the Restitution of Land Rights Act. The successful land claim comprises 22 000 hectares of the Kgalakgadi Transfrontier Park in the Northern Cape; certain economic, cultural and traversing rights over the southern half of the Transfrontier Park; and six farms outside the park of some 60 000 hectares in extent. An agreement was reached with the state to provide post-restitution support to the Khomani San to manage this

significant resource.

By 2012 it became evident that the state did not have the capacity or will to comply with either its contractual or legal duties to the Khomani San in respect of this agreement. Webber Wentzel under Moray's leadership, and the Legal Resource Centre (LRC) assisted the Khomani San to obtain post-restitution support under the supervision of the courts. The structural interdict appears to be the first of its kind for post-restitution support to land reform beneficiaries.

The second case is the Protea South matter. Protea South is a large informal settlement near Johannesburg and houses some 6 400 households. Having worked with this community over a number of years, more recently Webber Wentzel assisted the residents to successfully oppose their eviction by the City of Johannesburg (COJ). In March 2014, the High Court ordered the COJ be interdicted from undertaking any demolition of residential structures at Protea South, pending finalisation of the main issues of the matter. The COJ was further ordered to provide interim basic services such as communal water taps located within 200m of each household, chemical toilets of one per household, and high mast lighting.

Moray assisted the Protea South residents to obtain a judgement, not only of considerable importance to them, but potentially a judgement which stands as a precedent for the in situ upgrading of informal settlements elsewhere in the country.

Webber Wentzel represented the Helen Suzman Foundation (HSF) in its successful challenge to the constitutionality of section 16 and Chapter 6A of the South African Police Service Act. The SAPS Act governs the establishment and operation of the Directorate of Priority Crime Investigation (DPCI), informally known as the Hawks.

On 27 November 2014, the Constitutional Court declared certain provisions of the SAPS Act, which are inconsistent with the Constitution, invalid. Accordingly the Court granted the extraordinary remedy of severing the impugned provisions from the Act, without remitting the matter to Parliament.

The judgement represents a crucial victory in the

safeguarding of the functional, structural, jurisdictional and constitutional integrity of the DPCI and creates the space within which the DPCI can meaningfully operate as a dedicated corruption fighting entity.

There are so many extraordinary examples of the work Moray has done at Webber Wentzel, which have had an impact on the lives of communities and individuals. His determination to champion the rule of law and to fight for social justice without respite, indicates an exceptional character.

