

Welcome to 2009! According to Dr Brian Bruce, Murray & Roberts CEO, a corporate culture of volunteering is one of the five characteristics of enduring, successful businesses. (Kudos, December 2008 – Annual Newsletter for Alumni of Wits). We wish you all a successful year.

We are delighted that the November 2008 AGM of the Law Society of the Northern Provinces adopted a compulsory pro bono rule. It is a flexible rule which encourages law firms and attorneys to render pro bono legal services according to their expertise and means. The rule is to be finally approved by the Law Society Council and submitted to the Judge President, followed by publication in the Government Gazette.

Rule 79A: Pro Bono Services

79A.1 Definitions:

- (a) Pro Bono services shall include, but not be limited to, the delivery of advice, opinion or assistance in matters, falling within the professional competence of a member, to facilitate access to justice:
 - (aa) of a benevolent nature having regard to the needs, interest and wellbeing of the general public;
 - (bb) in the public interest according to the spirit, purport and objects of the Bill of Rights;
 - (cc) performed on a gratuitous basis with an altruistic or philanthropic intent;
 - (dd) on behalf of:
 - (i) non-governmental, or non-profit, or community-based, or public benefit, corporate or unincorporated bodies, trusts, foundations or charities working for the public interest or working to secure or to protect human rights, which are mainly funded by donations; or
 - (ii) individuals or groups who cannot afford to pay and who would otherwise be denied access to justice;
 - (ee) primarily designed to address the needs of persons of limited means and/or on behalf of the aforesaid organisations where the payment of legal fees would deplete the organisation's economic resources and adversely affect their ability to carry out their charitable or public interest work.
- (b) Recognised structures shall include, but not be limited to, the office of the Registrars of the High Court when issuing in forma pauperis instructions, Small Claims Courts, community (non commercial) advice offices, university clinics, non-government organisations, the office of the Inspectorate of Prisons and others approved in terms of sub-rule 79A.7 and identified in terms of sub-rule 79A.8.

79A.2

- (a) Practising members who have practised for less than 40 years and who are less than 60 years of age, shall, subject to being asked to do so, perform pro bono services of not less than 24 hours per calendar year.
- (b) This Law Society endorses the performance by practising members of pro bono legal services which shall only be required to be performed within the professional competence of a member.
- (c) A firm of attorneys with more than one member shall comply with this requirement if such firm executes pro bono work which will cumulatively be equal to the number of members multiplied by 24 hours per member, notwithstanding the fact that only one or more of the members in the firm executes pro bono work.

79A.3

Members may refer to the Society, for approval by Council as pro bono services, a written description of areas of professional work proposed for recognition as pro bono services.

79A.4

The Society shall, within 30 days of publication of this Rule and from time to time, publish, through its Circular, a non-exclusive list of services which, when performed by members at no charge for those who cannot afford to pay, shall be recognised as pro bono services capable of being delivered in compliance with the provisions of this Rule.

79A.5

Pro Bono services may be delivered through or approved by recognised structures or may be delivered directly to those described in Definition 79A.1 (a).

79A.6

Members may refer to the Society, for approval by Council as a recognised structure, a written description of a structure proposed for recognition.

79A.7

The Society is mandated by members to enter into partnership and joint venture agreements with recognised structures, the effect of which is that only matters that fall within the professional competence of members are referred to practising members for advice, opinion or assistance, that briefs addressed to practising members are reasonably well formulated, and that potential language and cultural barriers are overcome.

79A.8

The Society shall, within 30 days of publication of this Rule and from time to time, publish, in a Circular, a non-exclusive list of recognised structures, including structures with which the Society has concluded partnership, or joint venture, agreements for the delivery of pro bono services.

79A.9

Members shall submit to the Society, a certificate providing full particulars of pro bono services delivered, within 60 days of the conclusion of the matter or the end of each year.

79A.10

The Society shall, within 30 days of the publication of this Rule, publish, in a Circular, the form of the certificate to be submitted by practising members. Any amendments introduced to the certificate, by Council, shall be published, from time to time in a Circular.

79A.11

The Society shall keep a record of services delivered per member, which record shall be raised from member certificates. A report of all services rendered shall be extracted annually and shall be retained by the Society, but individual member records substantiating the report shall be expunged. On 1 January of each year, all individual member records shall be refreshed to show an availability of hours for the New Year. The record of hours served or not served in

the previous year, shall then be expunged. The Society shall report to its members annually and at the Annual General Meeting, and shall make such report generally available on the total delivery of pro bono services by members.

79A.12

Members who travel a distance of more than 50km from their office in order to deliver pro bono services may make written application to the Society to recover the actual cost of travel, excluding the first 100km.

79A.13

Disbursements incurred, save for travel expenses referred to in 79A.12 in respect of pro bono services, may be charged to the client.

79A.14

It shall be unprofessional conduct for a practising member who still has to perform pro bono service hours to refuse, with no good cause, to deliver pro bono services. Pending investigation of such a complaint, the Society shall refer the complainant to another practising member for assistance.

79A.15

In the event of the Society receiving a complaint of refusal to deliver pro bono services and it is alleged by the member concerned that the required number of hours for a specific year have already been served, but this is not reflected in the records of the Law Society, the member will be afforded an opportunity to provide the Society with certificates relating to such additional services within 21 days of receipt by the Society of the complaint. If the member fails to comply, such additional services will not be recognised by the Society, for purposes of investigating the complaint.

79A.16

Professional standards applicable to services rendered by members, shall apply to pro bono services.

Johannesburg Legal Centre

For many legal practitioners, Pauline Lipson was a household name. Pauline ran the Legal Advice Bureau and enlisted pro bono legal services simply by making a telephone call. The Legal Advice Bureau became the Johannesburg Legal Centre, which sadly closed its doors at the end of June 2008.

By agreement ProBono.Org has taken over about 140 matters which were still open when the Centre closed. With the assistance of two interns from the International Human Rights Exchange Programme we worked through these files. The types of matters vary from evictions, to breach of contract, damages claims resulting from motor vehicle collisions, transfer of property, deceased estates, pension and provident fund, to labour and family cases.

We are grateful that a large number of the matters relating to breach of contract have been taken on by Bowman Gilfillan Attorneys. The rest are matters in progress.

Cooperation Agreement between ProBono.Org and the Legal Aid Board

We are very pleased to announce that on 7 November 2008 the Legal Aid Board entered into a Cooperation Agreement with ProBono.Org. As a country we have to deal with a huge unmet legal need. This is borne out by the burden faced by the Legal Aid Board (LAB). Because of the incredibly high demand for its core business which is criminal defense, only 10% of the new matters taken on by the LAB in 2007/8 were civil matters. In addition, there is a decreased capacity among

legal NGOs to take on matters other than those within their strictly defined focus areas. This has led the LAB chairperson, Justice Dunstan Mlambo, to say, "The sooner pro bono services are provided on a sustainable basis by the organised legal profession, the better for our democracy." (LAB Annual Report 2007/8)

The work of ProBono.Org is synergistic with Judge Mlambo's call to action. ProBono.Org is the only pro bono legal clearing house in South Africa – matching people and/or communities in need of access to justice to private law firms and advocates who take up these matters on a pro bono basis. In terms of the Cooperation Agreement with the Legal Aid Board, requests for assistance in appropriate **civil** matters will be forwarded from their more than 60 Justice Centres around the country.

In terms of the Choice on Termination of Pregnancy Act, 92 of 1996, the circumstances in which and conditions under which pregnancy may be terminated, are:

2. (1) A pregnancy may be terminated-
 - (a) upon request of a woman during the first 12 weeks of the gestation period of her pregnancy;
 - (b) from the 13th up to and including the 20th week of the gestation period if a medical practitioner, after consultation with the pregnant woman, is of the opinion that-
 - (i) the continued pregnancy would pose a risk of injury to the woman's physical or mental health; or
 - (ii) there exists a substantial risk that the fetus would suffer from a severe physical or mental abnormality; or
 - (iii) the pregnancy resulted from rape or incest; or
 - (iv) the continued pregnancy would significantly affect the social or economic circumstances of the woman; or
 - (c) after the 20th week of the gestation period if a medical practitioner, after consultation with another medical practitioner or a registered midwife, is of the opinion that the continued pregnancy-
 - (i) would endanger the woman's life;
 - (ii) would result in a severe malformation of the fetus; or
 - (iii) would pose a risk of injury to the fetus.

24 Hours Later

Sometimes we have to deal with difficult situations in which legal interventions may be ineffective, but we can still make a difference. One such case is that of Ms M., who is partially blind, unemployed and HIV+.

When Ms M. consulted with Simon Delaney of Deneys Reitz at the HIV/ Aids Legal Clinic during December 2008, she was 14 weeks pregnant as a result of a rape. She was extremely distressed and traumatised. She was destitute and not in a position to support a baby. Being partially blind, she lives in constant fear of being raped again. She must always ask friends to accompany her whenever she goes anywhere to protect her from attack. This also means that it takes longer to make trips to and from hospital.

Delaney had trouble getting hold of the person in charge at the Hillbrow Community Health Centre where Ms M. was treated most unprofessionally and inhumanely. The Centre has no superintendent and no one answered the phone. There was also no functioning fax number or e-mail address.

Ms M. had been sent from the Helen Joseph Hospital to the Hillbrow Community Health Centre for a termination of pregnancy (TOP). Despite her obviously dire situation, the nursing staff made her go to Hillbrow twice, only to be dismissed with the statement, "everyone claims they are raped". She was told they would do the TOP only at the end of January 2009 – when client would have been 21 weeks' pregnant.

The clock was ticking for Ms M. and her mental health was deteriorating. Deneys Reitz and ProBono.Org realised that urgent intervention was required. Through the very swift and decisive action of a doctor who practices at the Johannesburg General Hospital and who is a member of the South African HIV Clinicians Society, within 24 hours Ms M. had undergone the required procedure.

She was very grateful for this assistance and has said that she could not have made it through without it.

Labour Pains

Ndumiso P. Voyi Attorneys who frequently accepts labour briefs from ProBono.Org, secured a 12-month settlement for Nicolene Swart for her automatically unfair dismissal based on her pregnancy. Greenmachine Horticultural Services fired Swart after she had worked for them for less than four months. The Labour Court was of the view that Swart had succeeded in proving that her dismissal was for her pregnancy or for a reason related to her pregnancy. The compensation amounts to R96,000.

Acting Labour Court Judge Urmilla Bhoola also had strong words in her reportable judgment about the manner in which the employer chose to cross-examine Swart. At para [21], "The respondent's attorney was reprimanded by the court and reminded to respect the constitutional rights of the applicant when he sought to cross examine her on her sexual behaviour and how a pregnancy arose. He put it to her that pregnancy was

not "caused by standing in the wind". This line of questioning was improper and disrespectful to the applicant, and exceeded the bounds of legitimate cross examination." (Nicolene Symm Swart / Greenmachine Horticultural Services (A division of Sterikleen (Pty) Ltd), Labour Court of South Africa, JS844/07)

The Right to Education

On 21 November 2008 the Arthurseat Commercial School succeeded in obtaining an urgent interdict with costs against the Department of Education to allow learners to sit for their final examinations. The Deneys Reitz Public Interest Law Department represented the applicants, two representative learners and the school governing body.

The School was originally started in the 1980s by a minister of the Church of Nazarene of the USA on church property. There is a long history of regulatory muddle through the administrations of Lebowa, Limpopo and ultimately Mpumalanga. Be that as it may, the school was as late as February 2008 registered and operated as a public school, with teachers employed by the Department, and some by the school governing body. This seems to have been the case for a considerable period of time at least.

In October 2008 the Education Department had, three weeks before exams, decided to close the school and suspend the teachers, ostensibly because the school was not properly registered in its database. The school descended into chaos, with 300 learners attempting to write exams on the floor; no toilets in the vicinity and no invigilators. The Court ordered the Department to assign qualified educators to ensure the proper administration of exams and provide supplementary exams where necessary. Deneys Reitz is now pursuing the reregistration of the school as a public school, one of few in a desperately poor area.

Were it not for this pro bono intervention, the learners of Arthurseat Commercial School would have been denied their constitutional right to education.

This matter also indicates a trend in that ProBono.Org is increasingly receiving requests for assistance from outside Gauteng province.

ProBono.Org Refugee Legal Clinic

The Refugee Legal Clinic is one of the very few places for refugees and asylum seekers to turn to for legal advice in Johannesburg. Most of the matters require advice and are dealt with immediately.

The Refugee Legal Clinic was started during July 2008 and as word of its services spread, the number of refugees and asylum seekers approaching it has increased vastly to the extent that the Clinic hours have been extended until 13h00.

In the past six months attorneys from various law firms who staff the Clinic have assisted almost 130 refugees and asylum seekers who would not have been assisted otherwise. This clearly demonstrates that the Legal Clinic is indeed providing a valuable service.

ProBono.Org extends its thanks to the attorneys who volunteer their time. We already have a number of law firms who have indicated that they will staff the 2009 Refugee Legal Clinic once a month. We still have some slots available.

Sharon Pillay, who manages the Clinic, has practised in this area, and provides an induction as well as the necessary documentation to practitioners who are new to refugee law. If you would like to dedicate some of your pro bono time - four hours once a month – please contact Sharon on 011 336 9510 or sharon@probono-org.org.



Pro Bono Law

Pro Bono Law has an exciting programme lined up for this year. At 6:30 pm every second Thursday, from 15 January 2009 onwards, Patrick Bracher (Deney's Reitz) talks to legal experts about many issues affecting public interest law, including electoral reform and the Constitution, just administrative action, the use of human rights to protect women from gender-based violence, consumer law, competition law, environmental law, application of the Constitution to corporations, employment law, customary law, the Equality Act, socio-economic rights, media freedom, etc.

***Pro Bono Law on Radio Today, 1485 AM
or DStv Audio Channel 169.***

**9th Floor Schreiner Chambers – South Wing
94 Pritchard Street Johannesburg
tel: 011 336 9510
fax: 011 336 9511
www.probono-org.org**

