



A DECADE OF
DEDICATION

ANNUAL REPORT



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ANNUAL REPORT 2016

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"More attorneys and advocates need to be encouraged to undertake pro bono work willingly and with enthusiasm, committing themselves to make their skills available to the most vulnerable members of our society."

Letter from the Chair

A Transformation Issue

Two decades after the dawn of democracy, the majority of South Africans cannot afford legal services and race and gender still substantially determine access to the justice system. The inability of millions to access legal services is not only unjust; it also perpetuates inequality, thus maintaining an untransformed society. The definition of transformation remains the topic of much debate.

Unless lawyers accommodate the needs of those who cannot afford their fees, society runs the risk of either tyranny or anarchy. The Constitutionally enshrined goal of access to justice for all cannot be realised without a hands-on commitment thereto by the legal profession. Shaping the law and ensuring an alignment of society's and Government's actions with the law of the land are, however, not sufficient to improve the lives of individuals faced with a myriad crises on a daily basis: a mother battling to obtain payment of maintenance from a delinquent father, a grandmother who can't produce paperwork to lay claim to the place she has called home for many years, and an unschooled worker whose loss of a menial job means children going to bed with empty stomachs. These are the people who cannot wait for the right

test case to come along; and judicial pronouncements will not miraculously solve the hurdles they face in asserting their rights. They need immediate, effective and personal assistance – pro bono services in the narrow sense.

Over the last few years, law societies have adopted detailed pro bono rules, and so have the bigger bars. Most, if not all, of the large law firms have dedicated pro bono units and several law clinics work in dedicated areas where there are particularly pressing daily needs, such as realising housing, education and women's and children's rights. Nevertheless, much more work still needs to be done before we can call ourselves committed.

ProBono.Org has grown from little more than the vision and dedication of a handful of individuals at the beginning of 2007, to an organisation with offices in Johannesburg, Pretoria, Durban and Cape Town, opening in excess of 7,000 files in 2016. Its main activity as a clearing house matches indigent clients' needs with appropriate legal expertise. Its training and education functions and awareness campaigns have expanded substantially over the years. ProBono.Org maintains help desks at several courts, including the Gauteng High Courts in Johannesburg and Pretoria in co-operation with the Office of the Judge President and the Law Society

of the Northern Provinces. With the assistance of attorneys from a wide range of firms, the organisation interviews clients at its offices, clinics and help desks. This includes applying a means test similar to one used by Legal Aid SA. If they qualify, clients are assisted there and then, referred elsewhere or processed for further assistance. This usually entails finding an attorney from the extensive panel of firms accepting referrals from ProBono.Org and obtaining a commitment from a member of the Bar to assist in the matter.

Irrespective of the ultimate form and place of the legal profession in the new dispensation under the Legal Practice Act, lawyers should realise and appreciate that the privilege of pursuing such a noble profession carries obligations that cannot be avoided or disavowed. A failure to provide pro bono services projects a profession indifferent to the Constitution, insensitive to the needs of society and unable to regulate its own affairs.

Adv Andy Bester
Johannesburg Bar Council



"Any organisation that is worth its salt must be prepared to look introspectively at its achievements and performance. It is only by evaluating one's work that one can improve it."

National Director's Report

I have been the National Director of ProBono.Org since 1 January 2013 and a staff member of ProBono.Org since its inception on 1 October 2006. In these two capacities I have watched the organisation grow and flourish. From our cramped office in the Johannesburg CBD we now occupy spacious offices at the Women's Jail, Constitution Hill, Johannesburg, in the Kutlwanong Democracy Centre, Pretoria, the Durban CBD and the inspirational Isivivana Centre in Khayelitsha.

Despite being bigger and having more clients, attorneys and advocates working with us, there is always room for improvement. Any organisation that is worth its salt must be prepared to look introspectively at its achievements and performance. It is only by evaluating one's work that one can improve it. So while we have enlarged our client base substantially, built an ever-increasing panel of law firms and advocates prepared to do pro bono work for our clients, extended our reach geographically and developed new and exciting projects, have we performed well?

This year we undertook a strategic evaluation of our work in order to look critically at how we do things. We interviewed attorneys to find out what their experience of working with us is like, and we interviewed clients to find out how they felt about our work on their cases.

Overall, attorneys were satisfied with the matters they took on from ProBono.Org and the support we gave them. They believe that we offer them exposure to cases that they may not ordinarily come across at their corporate law firms. We were told that our background support and screening is invaluable.

Clients were in the main satisfied, even if their cases had no merit. As one client put it, *"Even though they did not take my case they empowered me with enough information that led me to take an informed decision of dropping the case"*. Another client said, *"Other lawyers are not like ProBono.Org – they don't explain or keep in contact with you."*

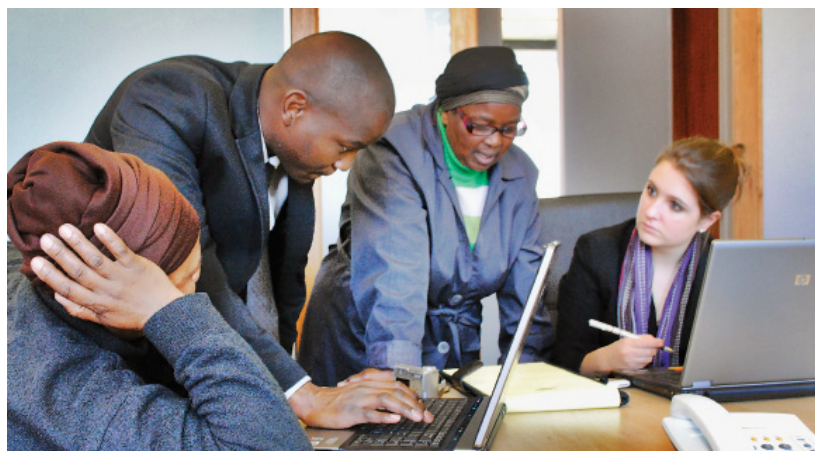
Yes, there are things we must improve, and we will work towards improving them, but we were touched by the general positive feedback received. There was an

appreciation of the role we play as a bridge between clients and lawyers and as an organisation that makes legal excellence available to those in our society with so few resources.

Comments we received included, *"The work of ProBono.Org is invaluable"*, *"ProBono.Org is generally very helpful and a pleasure to work with"* and *"ProBono.Org does good work and you should pat yourself on the back."* There were many more comments like these.

So looking back over the past ten years, my impression is that we have built the quantity and quality of work of work we do and the geographical reach; and have created new and exciting projects. But most importantly, both the law firms and attorneys we work with and the clients we serve have indicated to us that they believe in us. They find it has value and that there is a need for us to be around to play the role we play and for our innovative and increasingly indispensable model to prevail.

Erica Emdon
National Director



Pro Bono Service and the Legal Practice Act, 28 of 2014

Pro bono service by legal professionals is primarily aimed at providing the most marginalised, poor and vulnerable members of our society with free legal assistance. The very raison d'être for pro bono is to expand access to justice through the private profession.

Whether pro bono service should be regulated by laws or rules governing the profession is a moot point. To some people, regulation is anathema to the very concept. For them, the hallmark of being a legal professional is a willingness and desire to contribute on a pro bono basis to better the lives of others. There is a belief that a legal practitioner should hold dear this inner value of giving back, and have a strong inclination to contribute his or her legal skills to the less fortunate in society.

Others believe that the profession needs to be prodded along by rules that regulate pro bono. Without rules, they argue, pro bono would not be done. Lawyers would be too busy making money and serving their paying clients to give time to the poor and needy.

In South Africa, we have had a combination of voluntarism and

rules when it comes to pro bono. Originally there were no rules, but there was also not much pro bono. In around 2010 most law societies and bar councils began introducing rules requiring their members to perform a minimum 20 to 24 pro bono hours per annum. Yet the rules were enforced patchily and in some instances not at all, leaving it up to the profession to make their pro bono contributions voluntarily.

Many law professionals give a far higher number of pro bono hours than the minimum regulated, indicating that for them the rule is not necessary. Others do no pro bono work at all.

This begs the question: Does one want a situation where law practitioners unwilling to do pro bono work are forced to do it?

Some might say that pro bono has grown in South Africa despite the rules, not because of them. Others would argue that pro bono would not have happened at the scale that it is happening, without those rules; even if they have not been enforced systematically.

Section 29 of the Legal Practice Act, 28 of 2014 intends to regulate community service. The section provides that the Minister (of Justice) may prescribe requirements for community service that may include “a minimum period of recurring community service by practising legal practitioners upon which continued enrolment as a legal practitioner is dependent.”

Some have asked whether this is pro bono with another name. It is the same idea, which is that a legal professional must give something back for the greater social good, on a recurring annual basis. To those who favour regulation of pro bono, this reading of the Act would seem very helpful, as it would mean that national legislation would be regulating and requiring community service that might include pro bono.

However, the wording of Section 29 makes it unclear whether the recurring community service referred to will include pro bono as we know it. The Act states that community service may include service for the state, service for the South African Human Rights Commission, service as a commissioner in a small claims court, certain types of legal



education provision, or “any other service which the candidate legal practitioner or the legal practitioner may want to perform, with the approval of the Minister.” Pro bono service is not included in the list though it could potentially be added as an additional form of community service with the approval of the Minister.

There are many questions that arise. Why did the Act not explicitly state that community service includes pro bono service? Why is it that the four types of community service set down in the Act refer to forms of community service that have nothing to do with the provision of legal services to the vast numbers of people who are not able to pay for private legal assistance?

The current situation is that pro bono continues to be regulated by law society and bar council rules. There is not much clarity regarding what will happen when these current structures are replaced by others, as provided for by the Legal Practice Act. Will new bodies such as the Legal Practice Council (LPC) or new voluntary and non-statutory bodies regulate pro bono and

require a minimum number of hours for pro bono service per annum? Will the Legal Practice Act extend the list of rules that the National Forum or LPC may promulgate to include pro bono?

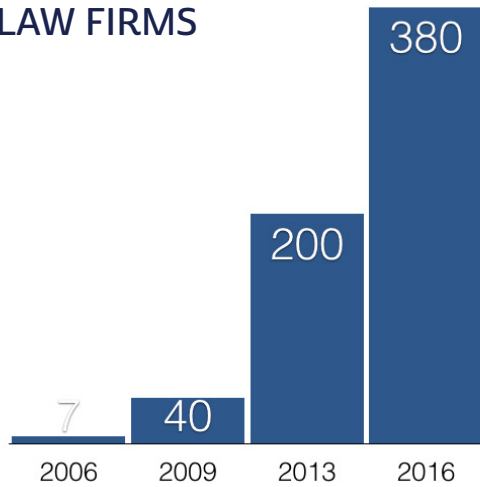
There are more questions than answers at the moment. ProBono.Org believes that every practitioner should undertake pro bono service so as to enable all members of our society to use the law to protect themselves, and to benefit from the rights set out in our Constitution.

Whether pro bono service is regulated or whether it is unregulated is of less concern to us than whether it gets done or not.

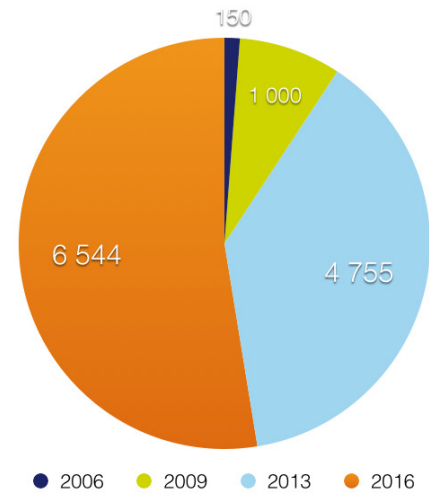
We remain clear. It should be something that is an essential element of what it means to be a legal professional; something that we as lawyers do, regardless of whether someone tells us to do it or not; something our privilege compels us to do.

Erica Emdon

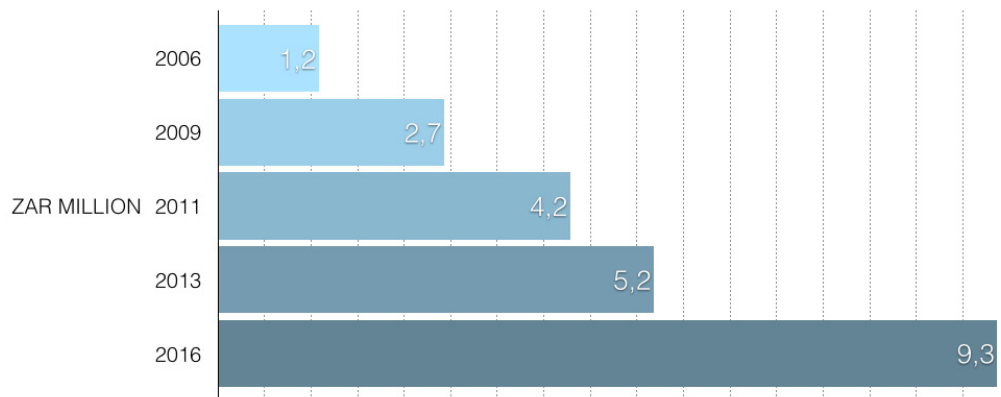
LAW FIRMS



WALK IN CLIENTS FILES OPENED



ANNUAL BUDGET



A Decade of Growth

ProBono.Org has reached its 10th birthday. What an important milestone this is!

In 2006 we had 7 law firms on the panel of volunteers. We had a staff of 4 and opened about 150 client files. By 2009, we had 40 law firms on our panel, a staff of 6, 5 interns, and opened 1 000 client files. This grew exponentially and by 2013 we were assisting over 4 755 people with over 200 law firms on our panel. We had a staff compliment of 15, plus 8 interns.

We had by then launched our highly successful intern programme which employs LLB graduates, enabling them to find articles or other employment at the end of the period they spend with us.

In 2016 we opened 6 544 client files, had 380 law firms on our panel and access to 2 000 advocates at the Durban, Johannesburg and Pretoria bars, in addition to 60 mediators. As we reach the end of 2016, we expect to have maintained these figures and hope to increase them in 2017 as the new Cape Town office starts to operate. We now employ 26 staff members which includes 8 interns.

Having started in Johannesburg, we expanded our geographic reach

rapidly. By the end of 2013 we were operating in the Vaal Triangle, North West and in a number of towns in Limpopo. During 2011 we opened an office in Durban and started to have a presence in the greater Durban area and Pietermaritzburg. In 2014 we opened an office in Pretoria to service the greater Tshwane area. In 2016 we opened our 4th office, in Cape Town, in the exciting Khayelitsha building, Isivivana, that houses a collection of social justice NGOs.

A big part of what we do is to refer matters to private sector attorneys to undertake on a pro bono basis.

During 2012 (when we started keeping accurate statistics on referrals) we referred over 700 matters to private sector attorneys and in 2015 we referred just over 1 800, 17% of all matters opened.

In 2006, we raised R1,2m to cover our budget and we operated from a small office in Schreiner Chambers in central Johannesburg. By 2009 we were running on a budget of over R2,7 million having raised this amount from donors, our core funder being The Atlantic Philanthropies. By 2011 our budget was up to nearly R4,2m and by 2013 it had reached

R5,2 raised from a donor base of over 16 donors. The Atlantic Philanthropies continued to be our major donor, awarding us a grant of R3 million in that year. In 2016 we raised enough to cover our budget of R9,3m.

We now have 21 donors contributing, and having been reliant on The Atlantic Philanthropies as the most significant donor for the first eight years of our existence until it closed down in 2014, have managed to replace it with a number of other committed donors.

Erica Emdon



Special Projects



One-Child-a-Year Campaign (OCAY)

This project continues to expand, but for our organisation's 10-year anniversary we take this opportunity to reflect

on the legal services that have been provided, along with the project's broader objectives.

We became a key member of the Johannesburg Child Advocacy Forum (JCAF), participating in a discussion on undocumented minors. This discussion has led to the formation of a forum (uMazisi Wethu) seeking to advocate for children faced with statelessness or those without documentation.

We attended and participated in various deliberations held by the Department of Social Development and others during the National Promotion of Children's Dialogue week, while signing up to be part of the Child's Rights Advocacy Network. These activities helped us develop our advocacy work on children's rights to a great extent, along with other like-minded organisations. This has significantly increased our understanding of the legal services we provide within the child's rights sector, while positioning us to provide input on issues affecting children on different levels to key stakeholders and role players. In turn, our expertise will

flow into the private legal profession by way of case referrals, legal support, education drives and partnerships.

Since the inception of this campaign, our comprehension of child matters and cases has resulted in participation in important submission work, specifically on policies and/or bills directly affecting children.

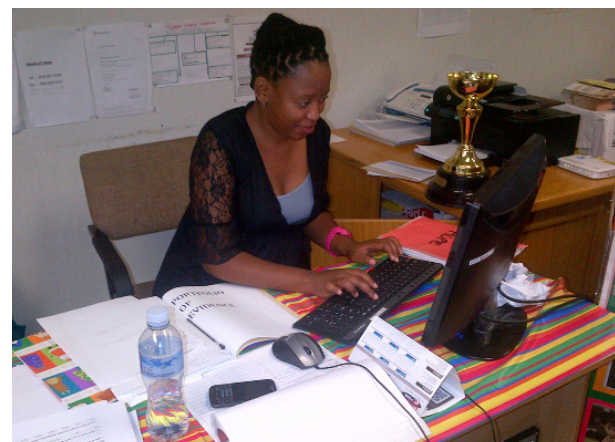
Calls from the Department of Justice and Constitutional Development for comment on two bills affecting children were answered, allowing us to engage and network with organisations like Lawyers for Human Rights, the Centre for Child Law and the Children's Institute at the University of Cape Town on provisions in the Children's Act and Sexual Offences Act. Engagement on this level by any organisation has wider impact and public interest benefits, as it exposes systemic and/or legislative oversights within the system, while allowing for dialogue, debate and possible redress.

The OCAY project has resulted in huge internal learning; it has capacitated our staff to deal with children's court cases more effectively by building an understanding of the court processes, forms and legislation. This in turn has caused us to empower our clients who

need to navigate the children's court processes and proceedings without initial support. We do this by providing active encouragement, guidance and legal representation (where required) to those who run and finalise their own matters. We believe this was the intention of the Children's Act as it was geared towards creating a more informal environment where matters can be dealt with expeditiously, benefiting the child. It was not intended to be utilised as an adversarial and litigious court process.

During the life of this project we have dealt with more than 120 cases, of which about 76 were referred to pro bono attorneys, (a referral rate of about 63%). The rest were either dealt with internally or referred to other service providers. Although the number of referrals is important, this project should not be assessed on the numbers alone. The project has had a much bigger scope and application in our work as a whole, particularly if one considers our underlying function, which is to increase access to justice to those most in need, which in this instance means advocating for, strengthening and simplifying processes already in place to protect children.

Annelie du Plessis



Community Advice Office Support Project – Redefining a legacy

Community Advice Offices (CAOs) in South Africa have a long history of delivering justice at the grass roots level and have been operating for decades without recognition. Despite this they have stood the test of time and continue to provide first-level legal support to impoverished people in urban and rural areas. For over four years we have been collaborating with CAOs in Gauteng and Limpopo, deepening and improving the support we give.

Our CAO support project aims to enable CAOs to refer matters that require legal intervention to pro bono attorneys in their areas, to give CAOs training and educational support and, more recently, to give them the tools to keep records of their case information.

The latter innovative development, known as the Device Pilot Project, was set up to test whether we could use accessible and commonly available social media platforms to improve case management information.

We made tablets available to five CAOs, and initiated a system whereby they complete Intake Sheets in writing in respect of all clients that they see in their offices, take a photograph of the hand-written Intake Sheet using these devices, and send them to ProBono.Org via WhatsApp. We then enter the case information into our data management

system, creating a complete database of cases opened which contains information about the client, nature of the case, whether the case has been referred, and other pertinent information.

Through this innovative case management system, we were able to capture information on 904 cases opened at five hub CAOs that were active in the project during 2016.

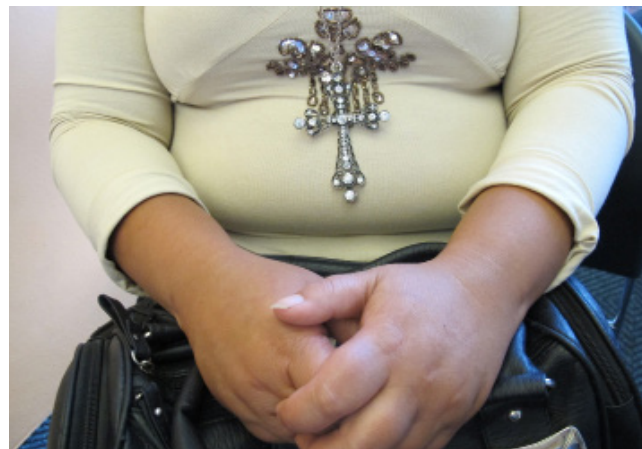
This information gives potential donors of the CAO sector an accurate picture of what cases are being seen and the volume of matters. It enables ProBono.Org to recruit law firms that match the types of cases coming through, and it allows ProBono.Org and the CAOs to develop a clear idea of the areas of law that are affecting clients in particular regions.

ProBono.Org and CAO staff are consequently in a position to plan educational and training workshops for attorneys so that they can familiarise themselves with laws that affect CAO clients, and for the clients themselves. In the latter situation, we are able to plan education that will provide information on law and provide people with the tools to ascertain when they need the services of a law firm, and when not.

This project has ensured that attorneys from all walks of life are exposed to the work of CAOs and the issues that have had the greatest level of impact for communities and pro bono clients. Great strides have been made in ensuring that communication between CAOs and attorneys is improved, and attorneys are increasingly available to take on cases.

Moving forward, we hope to increase the involvement of attorneys and initiate programmes that will see more interactions between the CAOs and the private legal profession. We are sure that these interactions will set the tone for the redefinition of the CAO sector in relation to the private legal profession.

Tshenolo Masha



Our clients' stories

Children's cases

Poverty is the single most negative factor at play in dealing with One Child a Year campaign cases in that it obstructs progress with the case, severely hampers options and choices that can be made and implemented in the best interest of children, and deprives children of much needed medical intervention on emotional, psychological and even psychiatric levels.

Social welfare organisations, the Department of Social Development (DSD) and the SA Police Services (SAPS) which deal with children, are plagued with a lack of resources, capacity and professionalism. Many cases die in the system, especially cases of alleged sexual abuse. The amount of energy ProBono.Org and our team of lawyers have to put into getting the system to function properly is extensive. As an example, we have a current case where both a child welfare organisation and the DSD passed the ball, or child, from pillar to post with no intervention for the last four years.

If a child does not have a "caretaker" like a headmaster, a teacher, a neighbour or a grandmother who reports the case to us, nobody will take responsibility for the child. Although one of the parents may try to assist, that parent is so often overwhelmed, powerless and without the basic physical and mental resources, that more often than not, they are part of the problem..

A pawn in her parents' game

ProBono.Org was approached in 2016 by foster parents of a young girl of 13. She had lived with the family since she was three months old and they had become her "true" family. We found a legal firm to represent the child. At the point that we became involved the foster parents were involved in litigation with the biological parents over the care of the child, each with their own legal representatives.

Over the years, the child's maternal grandmother had been a major figure in her life, assisting the foster family to

care for the child. The child's biological mother abused alcohol and was not able to look after her daughter, and the biological father chose not to, although he paid maintenance. The biological parents were never married.

The child's maternal grandmother passed away in 2014 leaving money and her house to the girl. The biological mother took the child to live with her, presumably wanting access to the money. She left the day to day care of the child to the foster family while every night the child slept at her house. This arrangement was not sustainable.

The girl kept running back to the foster family and although the court had made an interim order placing the girl with her biological mother for six months, this arrangement did not work and the girl returned to her foster family before the six month period was over.

In between all this to-ing and fro-ing the biological father became part of the complicated court proceedings, making application himself for the girl's primary care.

The court had to find a solution and made an order that the child stay with the foster family but that the biological parents have visitation rights. This also proved difficult as the child refused to see her biological parents when they wished to exercise their visitation rights. Obviously the biological parents blamed the foster parents..

The law firm representing the child found that the child was in mourning for her grandmother who had been a central figure in her life, was craving stability and wanted to have a relationship with her biological parents but had difficulty dealing with her mother's problems. Because of the severe stress she was under she developed anger issues and had learning difficulties.

The firm realised that many of the problems were not legal at all, and took the step of securing the services of a



forensic social worker to assist. The case has now been postponed and taken away from the legal process and the courts while the social worker assesses what is in the child's best interest.

The time that a case like this takes is extraordinary and indicates a remarkable level of commitment from the attorney involved. The law firm involved estimates that the case would have cost over R21 000 by now had it been a paying matter.

Maternal and paternal families at war

This case demonstrates how protracted and difficult child cases are. It concerns a paternal grandmother (with very little means) and paternal relatives, an aunt and grandmother, in a battle with maternal relatives, for two children. Each side has been fighting for the safe-keeping and preservation of two sisters, now respectively ten and six years old, since they were born. The biological parents never married and have severe drug abuse problems.

When ProBono.Org accepted the case, the court process was near judgment stage in the application being made by the paternal relatives for primary residence of the child. A tremendous amount of work had to be done to get all the facts in a consistent and chronological form. This included making contact with the legal representatives

for the mother and children and visiting the paternal grandmother's home, the school, the place of safety, the hospital and the SAPS. The advocate and attorney team, which took on the case, had to bring two formal applications in the case; had to file a written instruction; and battled for co-operation from the court, the opposing lawyers and the social worker.

Despite the case being finalised, with the two sisters being placed in a children's home for two years, the case continues as the paternal relatives still have valid concerns about the best interests of the sisters. The case was and still is plagued with very bad relations between the paternal and the maternal families, and the paternal family and the social worker. For instance, the social worker has still not allowed the paternal aunt visitation rights to the children despite the request of the court.

To make matters worse, during 2014, in a period when the biological mother snatched the girls away from their paternal grandmother who was caring for them, the eldest girl was sexually abused by a number of family members and neighbours. The law firm has had to assist with the criminal investigation in addition to everything else. Despite a criminal case being opened and charges brought, the case has not proceeded even though there is excellent medical proof.

The advocate alone has spent over 80 hours on the case so far.

A murderer seeks control

This case is one of great tragedy and sadness. ProBono.Org became involved when the maternal grandmother of two brothers, now respectively five and two years old, frantically visited our office, begging for assistance. The biological father has made an application to the children's court for the primary residence of the children after their mother was murdered – by him.

The parents of the boys were never married but the father had an emotional hold over the mother which ended tragically when the grandmother was called to his home by neighbours. She found him lying with one leg on top of her daughter's body, announcing that he had killed her. The elder of the two brothers witnessed this terrible scene.

The legal firm that accepted the case has to deal with highly traumatised children and family members. The attorney moreover must protect the children from the father, now out on bail pending the criminal case. The firm has to oppose the permanent residency application being brought by the father and ensure that the children remain safe, in the care of their maternal grandparents.

Elsabe Steenhuisen



Refugee cases

Elvira

The client, originally from the DRC and who has a South African Permanent Residence Permit, attended our Refugee Help Desk as she required assistance in opening a bank account with Nedbank. The bank had refused to allow her to open an account as she already had an account with FNB. We advised her that in terms of FICA requirements, as long as the person has valid identification, there should not be a problem. Nedbank's refusal to allow the client to open an account was discriminatory. We contacted Nedbank and informed them of this. They thereafter advised that client can open an account with them provided she furnishes them with the necessary documents. We explained the process to client and she was grateful for our intervention.

Amiri

Originally from Burundi, Amiri sought asylum in South Africa due to the civil unrest in his country. His application for temporary asylum was rejected. He approached our offices for assistance in order to appeal the decision. The matter was referred for an attorney to draft the appeal. The appeal was successful in that he was afforded a six month extension to remain in South Africa.

Baruti

Together with his aunt, Baruti attended our Refugee Help Desk. The client is a diagnosed schizophrenic. He applied for a temporary asylum seeker permit but the matter was referred to the Department of Social Development in order for his aunt to be appointed as his curator. The Department did not correspond with the client or his aunt, nor did they furnish them with the necessary documents for the client to proceed with this application. After making written submissions and numerous telephone calls on behalf of the client, we were able to obtain the letter from the Department of Social Development that will enable the client's aunt to proceed with his application.

Sarah

Sarah is a minor from the Democratic Republic of the Congo (DRC). She informed us that she came to South Africa with her mother in 2006. Unfortunately, the mother's application for asylum was rejected and she was issued with an order to leave. The mother abandoned Sarah and her three siblings. The client came to us without a permit or any other documents. She required urgent assistance as she was registering to write her matric exams, and the school was refusing to allow her to write because she had no permit or identification. We drafted a letter to the Department of Home Affairs explaining the situation and requesting them to at least provide her with a study permit so that she can complete school. As a result, Sarah was able to obtain a study permit and wrote her matric.

Shamika Dwarika



A labour case – constructive dismissal

One of our clinics which has seen a considerable growth in the past year is our Labour Law Clinic. Claims for constructive dismissal have been on the rise at this clinic with many employees leaving their workplace alleging that their employer has made the environment or working conditions so bad that they could not continue with the employment relationship. .

A client who approached us with such a claim was employed by a sales company as a warehouse assistant. She advised us that when she started at the company her job description was not clearly defined, which resulted in her doing a little bit of everything. Her duties included reporting to the head of department, acting as their personal assistant, drafting reports and a few other administrative duties. At one point she was asked to perform IT-related duties despite the fact that she had no experience or qualification in this field. Our client tried to perform to the best of her ability but the department head was not satisfied with her performance, neither giving her adequate training or guidance and eventually ceasing to give her work altogether. Our client had to seek out tasks from other staff members in order to keep herself occupied. To make matters worse the head shouted at and abused her in front of other

colleagues, frequently using vulgar language. As a consequence of this untenable working situation our client eventually resigned.

We were approached to assist with lodging a case of constructive dismissal in terms of Section 186(1) (e) of the Labour Relations Act No 66 of 1995. Such an action takes place in *“circumstances where an employee terminates a contract of employment with or without notice because the employer has made the continued employment intolerable for the employee.”*

Although in most situations the employee's experience might have become intolerable in the employee's eyes, these cases can be very difficult to prove. In order to convince an arbitrator or judge that constructive dismissal has taken place the employee must show that:

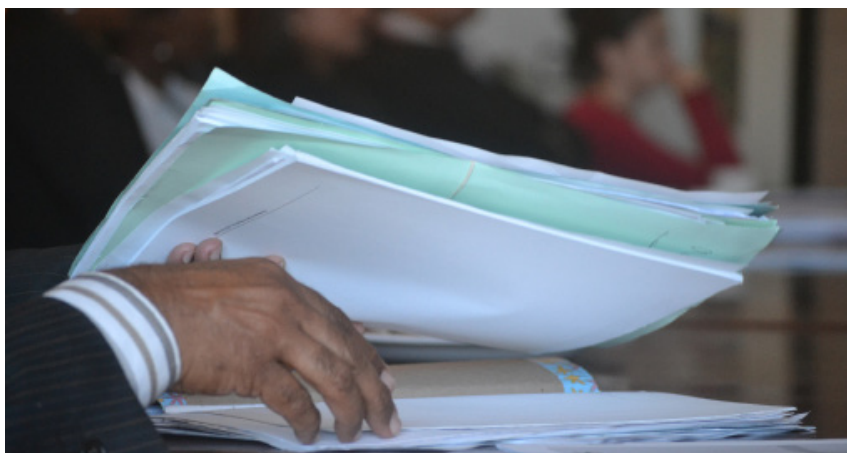
- The employment circumstances were so intolerable that the employee could truly not continue to stay on;
- The unbearable circumstances were the cause of the resignation of the employee;
- There was no reasonable alternative at the time but for the employee to resign to escape the circumstances;

- The employer must have caused the unbearable situation;
- The employer must have been in control of the unbearable circumstances.

This is one of the most difficult dismissals to prove as the burden of proof lies with the employee as opposed to the employer. For this reason, we often advise that it is preferable that the employee lodge an unfair labour practice case instead of a case of constructive dismissal since there may be a greater chance of success. To succeed with a constructive dismissal claim the very least an employee must do is to ensure that they have a comprehensive and watertight portfolio of evidence to prove their case.

While there is employee protection under the law, not all conduct by an employer amounts to constructive dismissal.

Swazi Malinga



Durban Office overview

The Durban office continues to thrive, partly as a result of the staff team being encouraged to grow both professionally and personally, and also because everyone involved - pro bono law firms, the organised legal profession and the public we serve - can see that the work that is done makes a significant difference to the lives of impoverished people.

The special projects we have initiated and carried out in Durban demonstrate the impact of our work. For instance the Women's Month help desks, which ran over five days at six magistrates' courts in KZN, gave a great many women an opportunity to have one-on-one legal assistance with pro bono attorneys, something rare and not frequently available to poor women. The help desk we set up at the Durban Master's Office for Wills Week where clients attended and had their wills drafted for free was a special week that enabled people once again to benefit from legal assistance from the private sector wills' gurus regarding succession planning. The partnership we forged with the Door Crisis Centre in Pinetown and Child Welfare: Durban and District where we held seminars for social workers on laws affecting children were highly empowering, giving social workers an opportunity to gain an understanding

of laws that affect the people they work with.

For six days during the 16 Days of Activism for No Violence against Women and Children, we hosted help desks at four courts in KZN.

Our work with the hard of hearing has been inspiring. In partnership with the KZN Blind and Deaf Society we have been able to build awareness of the law among hard of hearing people. It is heart warming to see the enthusiasm with which beneficiaries attend these seminars. The flurry of questions directed at our speakers, lawyers from the private sector, indicates that there is a great deal of interest in seminars. In addition to the seminars, we held a special help desk for these beneficiaries, to assist those with legal challenges. In less than three hours, five attorneys on our panel consulted with 34 clients!

We cannot underestimate the role of pro bono attorneys in Durban in enhancing access to justice. Over 450 matters were taken on in 2016, indicating the high level of support we are managing to obtain. Their willingness to undertake training for our clients, to come into our offices and consult clients, to staff help desks and to take on cases

is what makes our work as dynamic and meaningful as it is. We are part of a great chain, a cog in a wheel of services that can only work with the different contributions of the various stakeholders. We hope that our work puts it all together and enables it to function optimally.

Shamika Dwarika



Pretoria Office overview

ProBono.Org opened its Pretoria office in a collaborative arrangement with the Law Society of the Northern Provinces (LSNP) in May 2015. A year later, it is possible to see what value this office is adding to the social justice landscape in Tshwane. Clients line up at our office on a daily basis, are interviewed by our staff and, if an attorney is needed, sent via the LSNP to one of its members.

While this model differs from how we do things in Durban and Johannesburg, our Pretoria office is managing to deliver legal services as efficiently as those two offices. The practice in Durban and Johannesburg is one in which attorneys volunteer to be on our panel to take on pro bono matters which ProBono.Org sends out. ProBono.Org ensures that it has information on the areas of law that attorneys prefer and have expertise in, and tries to ensure that the legal issues are clearly defined and that relevant documents are gathered.

The LSNP model, on the other hand, is one that uses the pro bono rule as a mechanism to ensure attorneys take on pro bono matters. The member is informed that they must accept the matter referred to them by the LSNP, which ensures that almost all matters

are taken on by private practitioners and that no client goes unrepresented. The drawback is that the matter allocated to attorneys may involve an area of law not practised by the attorney or may be sent at a time that is highly inconvenient.

The Pretoria office has combined the two approaches in the short term, hoping to become aligned with Johannesburg and Durban in the longer term. The recruitment of attorneys to join our panel has been slow, so if we are unable to find an attorney our fall back position is to ask the LSNP to allocate cases in its usual way, by going down its list of members.

What has worked well in the Pretoria office has been the willingness and availability of law firms to do training, particularly of paralegals and community members, and the support law firms have given to our various special events held in Tshwane.

In August, for instance, we hosted a women's day event at which lawyers addressed about 50 women on marriage and consumer law. In excess of 40 members of various communities attended a housing day event held in October at which presenters gave talks on housing and property rights. A workshop for the deaf community

of Tshwane was held in collaboration with the South African National Deaf Association and the Commission for Conciliation, Mediation and Arbitration (CCMA). Over 50 people were in attendance and were addressed by CCMA Commissioners about the processes of the CCMA and labour rights in the workplace.

The office partnered with the South African Women's League on their Access to Justice campaign in Pretoria in August, where the National Prosecuting Authority, the Master's office, the Legal Aid Board SA and South African Police Services provided information to the community participants on access to justice and their roles in helping members of the public.

Our aim going forward is to grow our panel of law firms, encouraging them to willingly make a difference in the lives of the poor.

Neo Chokoe



Recognising the contribution of the legal profession



The third annual Pro Bono Awards

Our third Pro Bono Awards ceremony was held at Constitution Hill on 6 September. This event is aimed at giving the attorneys that assist our clients an opportunity to showcase their work to other members of the profession.

While we celebrate the achievements of winners and finalists, our hope is to celebrate everyone's contribution to giving back their time and skill to those that cannot afford private legal fees, even those that do not submit entries.

This year's event was significant in that it coincided with the tenth anniversary of ProBono.Org and the twentieth anniversary of the Constitution.

Access to justice, and in particular the legal system and courts is an essential ingredient of a healthy democracy. As guest speaker Dali Mpofu SC, Vice-Chairperson of the Johannesburg

Bar Council said: "... Access to justice is obviously a public good. If we are to discourage self-help, violence and anarchy with attendant social instability, then it is in our self-interest as a society that all members of the public should prefer court based solutions to their legal disputes". He added that the Legal Practice Act offers a great opportunity for the legal profession to enhance and encourage pro bono giving. He believes that "we need a regulatory framework which must simply make it impossible and unprofessional conduct to go on for years without having rendered a measurable amount of pro bono services to those in need. The detail and nitty gritty of such a framework can and must be discussed as a matter of urgency by all those concerned".

Our awards ceremony aims to make the giving of pro bono service something to acknowledge and celebrate, and both large well resourced firms with pro bono departments and small practices with few resources are to be praised for their contribution.

This year Webber Wentzel, Hogan Lovells, Norton Rose Fulbright South Africa, Cliffe Dekker Hofmeyr and Fasken Martineau were finalists, with attorneys from Bowman Gilfillan and ENS receiving special mentions. All these seven firms, with pro bono departments and projects, make an enormous impact on the lives of the poor and indigent, giving hours and hours of time and dedication. Significant pro bono work has resulted in unlawfully evicted individuals and communities being restored to their homes, people who are victims of police brutality receiving compensation, women finding assistance in domestic violence cases, refugees and asylum seekers receiving legal support, and high profile matters such as the Al-Bashir matter coming to the Constitutional Court.

But it is not only these seven firms that are making their mark; a number of smaller firms like Garlick & Bousfield in Durban, Cullinan & Associates in Cape Town and Maponya Attorneys in Pretoria, all made their mark with some exceptional work being done. For instance Cullinan represented the AmaPondo communities on the Wild Coast in a long protracted environmental matter, while Garlick & Bousfield and Maponya Attorneys are firms that have helped individual clients



from our Durban and Pretoria offices on a consistent basis throughout the year.

Then there are the very small practices, sometimes with only one or two attorneys, who must be recognised. They too play a role in making access real to the neediest members of our community.

David Masilela, another dedicated professional, has given the community advice offices around Pretoria on-going legal support, and Henk Strydom has taken on almost 40 pro bono children's cases over the past four to five years, each long, complex and emotionally draining. Legal Aid South Africa made their own award for an attorney from a small firm, Tsepiso Matubatuba, for his dedication in taking on high numbers of referrals from them. Juvon Prinsloo, a sole practitioner, was recognised by the Law Society of the Northern Provinces for the same reason.

Then there are the advocates. This year's awardees included Isabel Goodman, Donrich Jordaan, Luke Kelly and Kate Hofmeyr. Each of them has

brought their exceptional expertise to a number of key matters, including the Al Bashir matter, a case on surrogacy, hate speech, corruption and media freedom cases.

Students working in law clinics are at the start of their careers and we hope that by recognising them at our event they realise how important their work is in these clinics. More importantly we hope that they carry on, as legal professionals, to enable access to justice by doing pro bono work throughout their legal careers. This year, Mikhaile Brookes, Lindie Hein and Ashley Seckel were shortlisted for the student award.

It is not only lawyers that are recognised. The service provider DNAbiotec which offers a pro bono screening service in regard to DNA evidence was recognised for the pro bono work they do for Legal Aid SA. And two journalists, Niren Tolsi and Siphso Kings, were awarded for their coverage of social justice matters in the media.

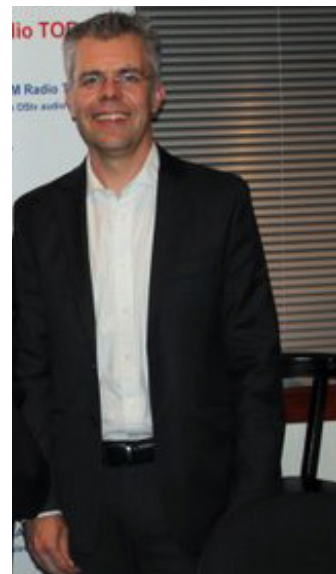
Our awards judges were Alice Brown, a human rights activist, Professor Jonathan Klaaren of the Wits Law School, Clive Ramathibela-Smith, well known radio personality and businessman, Nomboniso Nangu, Director of the National Association for the Development of Community

Advice Offices, Nic Swart, CEO of the LSSA and LEAD and Jonathan Berger, an advocate of the High Court and a member of the Johannesburg Bar. They had an extremely hard time sifting through the excellent submissions and making the difficult choices they had to make to select finalists for the awards.

This is the case because all attorneys, advocates, candidate attorneys, students and journalists that are committed to pro bono and social justice are winners.

(Read more about the awards in the October 2016 newsletter of ProBono.Org and on our website).

Margaret Fish



Pro Bono Law - our constitutional law radio programme

For the past ten years ProBono.Org, in partnership with Norton Rose Fulbright SA has organised a half-hour constitutional law programme on Radio Today every second Thursday evening from 6.30 to 7pm.

The purpose is to inform the public about the Bill of Rights and the broader Constitution, and we air topical issues through the participation of expert speakers in various fields of the law. We have been fortunate to have had a wide range of guests from law firms, academia and civil society who have covered issues from consumer rights, children's rights, labour, housing and refugees, to name but a few.

Patrick Bracher of Norton Rose Fulbright SA has been the host of this show since its inception. He prepares diligently for each show and has a knack of putting our guests at ease and leading an interesting discussion.

This is a small sample of the guest speakers and the topics we have covered over the past year:

Lwando Xaso from ENS Africa:
The suspension of rights in wars and emergencies.

Pierre de Vos, UCT Dept of Public Law:
Nkandla – what should have happened but never did.

Nikhiel Deeplal, Chair of Students for Law and Social Justice (SLSJ):

The relevance of 16 June 1976 to today's student protests and whether the rights demanded then have been realised.

Lisa Vetten from the Wits Institute for Social & Economic Research (WISER): *Rape and sexual harassment, with reference to the current frustrations at SA universities and other institutions around the lack of policies and procedures for reporting and dealing with complaints against alleged perpetrators.*

Bulelwa Mabasa, Werksmans Attorneys:

Can the right to property coexist with land reform?

David Lewis, Executive Director, Corruption Watch:

The State Capture Report and the way forward.

Mpumelele Tshabalala, Bowman Gilfillan Attorneys:

The rights of women and children.

Radio Today is broadcast on 1485 AM, on DSTV audio channel 869, www.1485.mobi or www.1485.org.za. The show airs from 18:30 to 19:00 on alternate Thursdays.

Podcasts of all our programmes can be found on the ProBono.Org Facebook page.

Margaret Fish



Johannesburg, Pretoria and Cape Town Offices 2016



Staff during 2016

Erica Emdon	National Director
Annelie du Plessis	Head Staff Attorney
Neo Chokoe	Pretoria Manager
Uzair Adams	Cape Town Manager
Nomaswazi Malinga	Staff Attorney
Elsabe Steenhuisen	Consultant
Margaret Fish	Operations, Grants & Communications Manager
Phumzile Ngenelwa	Office Manager
Pretica Singh	Financial Manager
Tshenolo Masha	Paralegal
Nwabisa Njaba	Administrator, Cape Town
Josephine Diba	Receptionist
Nkuli Zuke	General Worker
Lorraine Mashava	Data Capturer

Interns and volunteers during 2016

Thembelihle Khubeka (RIP)	
Romeo Gumede	
Ntombi Bhengu	
Katlego Mthelebofu	
Luke Goncalves	
Lebogang Makgwale	
Refilwe Mmusi	Pretoria
Ellen Boriwondo	Cape Town

Volunteers

Lesego Vakalisa
Liepollo Selatile
Koketso Molotsi
Zandile Manda





Durban Office 2016

Staff during 2016:

Shamika Dwarika	Regional Director
Petrina Chetty	Staff Attorney
Trisha Dhoda	Staff Attorney
Gugulethu Makhanya	Administrator

Interns during 2016:

Haseenah Myeza
Nomfundo Buthelezi
Sinegugu Mkhiza
Thabile Memela



Directors 2016

Andy Bester
Ayanda Ngubo
Erica Emdon
Ilan Lax
Jacqueline Cassette
Janet Love
Liesl Williams
Masizakhe Mathai
Mohamed Randera
Seleka Morwe
Sushila Dhever





Financials 2016

PRO BONO ORGANISATION
NON PROFIT COMPANY
REGISTRATION NO.
2007/002099/08

STATEMENT OF FINANCIAL POSITION AS AT 30 SEPTEMBER 2016

	2016 R	2015 R	2014 R
ASSETS	12 274 429	10 328 681	10 008 756
Non current assets	127 070	57 694	96 016
Equipment	127 070	57 694	96 016
Current assets	12 147 359	10 270 987	9 912 740
Accounts receivable	130 074	202 979	208 192
Investments	8 143 896	4 837 356	4 390 884
Cash and cash equivalents	3 873 389	5 230 652	5 313 664
Total assets	12 274 429	10 328 681	10 008 756
RESERVES AND LIABILITIES	12 274 429	10 328 681	10 008 756
Reserves	2 174 641	1 988 055	2 039 255
Accumulated surplus	2 047 571	1 930 361	1 943 239
Equipment fund	127 070	57 694	96 016
Current liabilities	10 099 788	8 340 626	7 969 501
Accounts payable	159 828	54 665	95 581
Deferred income	9 706 441	8 128 398	7 769 641
Provision for leave pay	233 519	157 563	104 279
Total reserves and liabilities	12 274 429	10 328 681	10 008 756

STATEMENT OF
COMPREHENSIVE
INCOME FOR THE
YEAR ENDED
30 SEPTEMBER 2016

PRO BONO ORGANISATION
NON PROFIT COMPANY
REGISTRATION NO.
2007/002099/08

	2016 R	2015 R	2014 R
INCOME	10 022 580	8 198 836	6 140 028
Grants and donations	9 433 903	7 487 728	5 677 769
Interest received	588 677	655 331	462 259
Administration fees received	-00	55 777	-00
EXPENDITURE	9 789 874	8 198 836	6 177 258
Accounting fees	292 478	249 020	146 244
Advertising and marketing	53 513	67 890	100 883
Annual report	46 112	54 619	42 160
Assets expensed directly	18 310	22 901	-
Audit fees	36 524	34 733	40 887
Award ceremony	237 395	202 242	152 181
Bank charges	18 534	18 012	18 073
Computer expenses	27 212	25 205	27 998
Consulting fees	118 219	182 960	121 766
Courier and postage	3 836	11 200	12 561
Directors emoluments	1 119 136	1 006 488	982 489
Equipment hire and maintenance	218 172	182 235	132 062
Insurance	47 377	38 963	32 643
Interest and penalties - SARS	55 514	4 727	-
Office supplies	97 657	74 441	83 532
Printing and stationery	52 945	62 505	46 917
Provision for leave pay	-	53 284	-
Refreshments and entertainment	17 743	18 031	15 546
Rent, parking, water and electricity	1 004 285	950 929	705 696
Repairs and maintenance	7 611	7 802	6 925
Salaries, wages and contributions	4 412 037	3 596 845	2 990 812
Secretarial fees	4 488	9 961	6 268
Seminars and workshops	1 301 340	793 972	143 378
Staff recruitment	47 971	92 839	62 299
Staff training	57 367	64 604	16 538
Subscriptions	26 116	24 459	10 782
Telephone	301 700	230 217	192 075
Travel and accommodation	103 212	97 254	76 966
Website costs	37 570	20 498	9 577
(DEFICIT)/SURPLUS FOR THE YEAR	232 706	- 0	(37 230)
BALANCE AT BEGINNING OF YEAR	1 930 361	1 943 239	2 023 930
TRANSFER TO EQUIPMENT FUND	(115 496)	(12 878)	(43 461)
BALANCE AT END OF YEAR	2 047 571	1 930 361	1 943 239

GRANTS AND
DONATIONS
FOR THE YEAR
ENDED
30 SEPTEMBER 2016

PRO BONO ORGANISATION
NON PROFIT COMPANY
REGISTRATION NO.
2007/002099/08

GRANTS AND DONATIONS

GRANTS

	2016 R	2015 R	2014 R
Anglo American Chairman's Fund	-	100 000	-
CDT	-	-	100 000
Claude Harris Leon Foundation	400 000	400 000	300 000
Constitutionalism Fund	2 000 000	-	-
CS. Mott Foundation	757 485	573 540	408 653
DG Murray Trust	-	405 000	150 000
Ford Foundation	-	1 057 406	263 119
Foundation for Human Rights	109 000	-	205 920
Freedom House	2 886	222 633	81 718
H C I Foundation	100 000	100 000	100 000
Legal Resources Centre - ELMA Philanthropies	-	119 301	145 530
Millennium Trust	1 220 557	701 243	1 000 000
Open Society Foundation	600 000	800 000	486 081
Raith Foundation	925 000	1 506 522	-
The Atlantic Philanthropies	-	-	1 229 248
The ELMA Foundation	1 125 000	-	-

DONATIONS

Bowman Gilfillan	400 000	-	200 000
Cliffe Dekker Hofmeyr	200 000	175 000	150 000
Fasken Martineau	135 000	135 000	110 000
Foundation for Human Rights	189 000	-	-
Hogan Lovells	100 000	100 000	100 000
R B Hagart Trust	250 000	200 000	100 000
Johannesburg Bar Council	-	100 000	100 000
KwaZulu-Natal Law Society	-	162 000	-
Legal Resources Centre - Bertha Foundation	150 000	-	-
Open Society Foundation	145 000	-	-
Norton Rose Fulbright SA	150 000	150 000	105 000
Webber Wentzel	250 000	200 000	205 000
Werkmans Attorneys	40 000	80 000	80 000
Sundry donors	184 975	200 083	57 500
	9 433 903	7 487 728	5 677 769



On our ten year anniversary we remember Gerald Kraak, whose commitment to democracy and human rights allowed him to imagine an organisation such as ProBono.Org and through The Atlantic Philanthropies, give us years of financial support.

Donors 2016

Bowman Gilfillan
C S Mott Foundation
Claude Leon Foundation
Cliffe Dekker Hofmeyr
Constitutionalism Fund
Elma Philanthropies
Fasken Martineau
Foundation for Human Rights
HCI Foundation
Hogan Lovells
Johannesburg Bar Council
KZN Law Society
Millennium Trust
Norton Rose Fulbright SA
Open Society Foundation of South Africa
R B Hagart Trust
Raith Foundation
Webber Wentzel
Werksmans

Awards Ceremony Sponsors

Legal Aid South Africa
Law Society of the Northern Provinces
Juta Law
AJS Business Management Systems
Spoor & Fisher
Lexis Nexis



JOHANNESBURG: 1st Floor West Wing, Constitution Hill, 1 Kotze Street, Braamfontein 2017
telephone: 011 339 6080
fax: 086 512 2222

DURBAN: 9th Floor, Nedbank Centre,
 Durban Club Place, Durban
telephone: 031 301 6178
fax: 031 301 6941

PRETORIA: Kutlwano
 Democracy Centre,
 357 Visagie Street
telephone: 012 320 00571

CAPE TOWN: Ground Floor,
 Isivivana Centre, 8 Mzala Street,
 Khayelitsha, 7784
telephone: 087 806 6070/1/2
fax: 086 665 6740



www.probono.org.za